

# **UACES 45<sup>th</sup> Annual Conference**

**Bilbao, 7-9 September 2015**

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**Opening a door to an enhanced democratic functioning of the International  
Organizations: the European Citizen's initiative.**

**1. Introduction**

The Lisbon Treaty reformed the Constitutive Treaties<sup>1</sup>, reinforcing citizenship of the European Union (EU) and enhancing further the democratic functioning of the Union by providing, inter alia, that every citizen is to have the right to participate in the democratic life of the Union by way of a European citizens' initiative. Then, one million citizens who are nationals of a significant number of Member States may take the initiative of inviting the European 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. This possibility enlarged the list of citizens' rights under European Union's Law.

But taken from a broader perspective, the mere existence of this legal institution seems to be of a great relevance in both European and global level, since it strengthens the constitutional side of the European Union and by the same token its position as a model of international organization of regional integration.

To ascertain the scope of this new legal institution of European Law, it is necessary to delve into the regulation of the European citizens' initiatives in order to find out how this right can be implemented. Afterwards, we will compare the citizens' initiative in EU law with similar rights under the law of other international organizations of regional integration. I will then turn to which has been the treatment given by the European Commission to all the initiatives presented until now, especially in relation to the initiatives that have met until today the requirements set out in the Regulation of the European Parliament and the Council on the citizens' Initiative. At that juncture, we will be in possession of a global picture of the relevance of the European citizens' initiative in European Law and in International Law.

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<sup>1</sup> See Article 11 of the Treaty on European Union and the Article 24 of the Treaty on the Functioning of the European Union.

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## **2. The European Citizen's initiative in the context of the democratic functioning of the European Union.**

In order to evaluate the contribution of the Citizens' initiative, among the forms of democratic participation in the functioning of the EU, it is necessary to define the term 'democracy'. For the purpose of this paper, we understand democracy to be the liberal, political representative system predominant in the western world during the last century, in which the legislative and executive power are delegated by the people to a political elite chosen through free and periodical elections. This system has restrained the participation of the citizens to voting from time to time; something central at the same time to the legitimization of those political elites in power that represent them.<sup>2</sup>

Nevertheless, the neoliberal mainstream in international society, prevailing after the shipwreck of the Soviet Union, has brought with it, among other phenomena, a trend to the globalization, to the erosion of the State-nation, and to the appearance of new forms of 'stakeholderism' that promote the need of a major participation of the citizens in the politics.<sup>3</sup>

Besides, both inside the States and on the worldwide scale, these phenomena have also taken place in the European stage.<sup>4</sup> As a matter of fact, in relation with the Community law, which traditionally responded to the typical characters of the political systems of the liberal western States featured above, where the political and legislative life was a property quasi-absolute of a representative elite of the citizenship, the situation began to change little by little with the change of millennium. In 2000, the Commission launched an ambitious policy initiative aimed at promoting a greater involvement of non-state actors in the EU law-making process, which led to the publication of the 'White Paper on European Governance'.<sup>5</sup> This initiative was translated afterwards, among other things, on the adoption of a Communication on 'general principles and minimum standards for consultation of interested parties by the

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<sup>2</sup> In this sense see: B. Cammaerts, *Internet-mediated participation beyond the nation state* (2008), at 15-16.

<sup>3</sup> *Ibid.*, at 18-19.

<sup>4</sup> In this sense see: *ibid.*, at 21.

<sup>5</sup> Communication from the Commission of 25 July 2001 "European governance - A white paper" (COM(2001) 428 final), OJ C 287.

Commission', with the objective to involve non-state actors in the law-making process of some policies of the EU,<sup>6</sup> and this has proven to be instrumental in certain improvements.

Along the same lines, the Treaty of Nice of 2001<sup>7</sup> incorporated a provision by which the former Treaty Establishing the European Community was modified,<sup>8</sup> in order to include the reference to the organised civil society as a constituent element of the European Economic and Social Committee. This slight turn was confirmed with the setting up of the Forum of the civil society<sup>9</sup> in parallel with the proceedings of the Convention convened with the intention to pave the way for the following intergovernmental conference aimed to draft the future Treaty establishing a constitution for Europe. It took the form of a structured network of organizations receiving regular information on the Convention's proceedings' and expected to be heard and consulted on specific topics in accordance with arrangements established by the Praesidium.<sup>10</sup> In reality, a total of 160 organizations participated in the Forum, including public institutions, university and cultural circles, NGOs, etc.<sup>11</sup> Consultations were organized into eight contact groups: social field, environment, academic world and think tanks, citizens and institutions, local and regional authorities, human rights, development and culture.<sup>12</sup> The Forum's influence in the final achievements of the Convention may have been quite limited, but it can be considered an important step, at least theoretically, in the way leading the individuals to participate more effectively in the treaty making process in the EU law.<sup>13</sup>

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<sup>6</sup> 'Towards a reinforced culture of consultation and dialogue - General principles and minimum standards for consultation of interested parties by the Commission of 11 December 2002, COM(2002) 704 final'. About the outcome of the participation of non-state actors in the law-making of the EU after the White Paper on European Governance see: D. Gerard, 'Non-state actors in European law. Enhanced participation of non-state actor in EU law-making and law-enforcement processes – a quest for legitimacy', in J. D'Aspremont (ed.) *Participants in the International Legal System. Multiple perspectives on non-state actors in international law* (2011) 407.

<sup>7</sup> OJ 2001 C 80/1.

<sup>8</sup> Article 257.

<sup>9</sup> Meaning by that: '... the social partners, the business world, non-governmental organizations, academia, etc.'). See: Presidency conclusions. European Council meeting in Laeken on 14 and 15 December 2001. About the final relevance in the Convention that had the Forum see: Cammaerts, *supra* note 2, at 170-175.

<sup>10</sup> European Communities (2001). Presidency Conclusions of the Laeken European Council. Annex I, Laeken declaration on the future of the European Union', 14 and 15 December 2001, *Bulletin of the European Union* 12, at 19-23.

<sup>11</sup> Digest of contributions to the Forum, Conv. 112/02.

<sup>12</sup> See the study: European Parliament, 'The European Parliament and the proceedings of the European Convention', at 28 ([http://www.europarl.europa.eu/pdf/cardoc/pe\\_and\\_job\\_ce\\_en.pdf](http://www.europarl.europa.eu/pdf/cardoc/pe_and_job_ce_en.pdf)).

<sup>13</sup> On that point see: Cammaerts, *supra* note 2, at 170-175.

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Continuing in the direction of fostering the direct participation of citizens, one of the more relevant developments was the introduction of the European citizens' initiative,<sup>14</sup> in the Treaty establishing a Constitution for Europe and then in the Treaty of Lisbon, which constitutes the object of this article.

Thus, during the last phase of the Convention, in May 2003, professor Jürgen Meyer, representative of the German *Bundestag*, proposed to insert in the future Constitution the possibility for the citizens of submitting to the European Commission any proposal on matters on which they consider that a legal act was needed for the purpose of implementing the Constitution.<sup>15</sup> This proposal was accepted by the *Praesidium*, and then appeared as the paragraph 4 of Article I-47 of the Treaty establishing a Constitution for Europe<sup>16</sup> and that, later on, became the paragraph 4 of Article 11 of the Treaty on European Union, cited above.

However, the facts should be placed in their context. In this respect, it is important to note that the insertion of the Citizens' initiative in the Treaty establishing a Constitution for Europe took place in an article named 'The principle of participatory democracy' (I-47),<sup>17</sup> which was linked to a previous one, called 'The principle of representative democracy' (I-46), in a title dedicated to 'the democratic life of the Union' (Title VI). After the failure of the Constitution, those provisions have entered into the Constitutive Treaties with the Treaty of Lisbon, being today Article 10 and 11 respectively of the Treaty on European Union.

Therefore, even if the institution of the European citizens' initiative of Article 11 of the Treaty on European Union supposes a great advance as for democratic participation of the

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<sup>14</sup> In that sense see: *Ibid.*, at 169.

<sup>15</sup> Suggestion for amendment of Article: I-46, part I, title VI (CONV 724/03), by Prof. Dr. Jürgen Meyer, Delegate of the German Bundestag. Available online at: [http://european-convention.europa.eu/docs/Treaty/pdf/34/34\\_Art%20I%2046%20Meyer%20EN.pdf](http://european-convention.europa.eu/docs/Treaty/pdf/34/34_Art%20I%2046%20Meyer%20EN.pdf) (last visited on 4 August 2015). The proposal contained the following explanation: 'The effect of the above proposal is to bring Europe closer to the people, as Laeken recommended. It represents a large step in the democratisation of the Union. It will extend the existing right of petition to a right of the citizens to present legislative proposals to the Commission of the EU. The commission has then to decide whether it will take legislative activity or not. It is very important that the threshold for the signatures that are to be gathered for the European Citizens' Legislative Submission is not too high. A high threshold interferes with the process and effectively allow only powerful organizations the possibility of securing the required signatures.' (*Ibid.*). About the origin of the European citizens' initiative during the Convention see as well: N. Levrat, 'L'initiative citoyenne européenne: une réponse au déficit démocratique?', *Cahiers de droit européen* (2011) 53, at 58 and V. Cuesta López, 'The Lisbon Treaty's Provisions on Democratic Principles: A Legal Framework for Participatory Democracy', *European Public Law*, 16, 1 (2010) 123, at 136.

<sup>16</sup> OJ 2004 C 310/01.

<sup>17</sup> For professor Auer, the citizens' initiative opened '... a new constitutional competence for the citizens ...'. See: A. Auer, 'European Citizens' Initiative', 1 *European Constitutional Law Review* (2005)79, at 80.

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citizens, it is however very significant the clarity with which the current Article 10 gives absolute priority to the traditional, or representative, democracy. Indeed, the paragraph 1 reads as follow: ‘The functioning of the Union shall be founded on representative democracy’, and the paragraph 2 states that: ‘Citizens are directly represented at Union level in the European Parliament.’ This language contrasts with the indefinite promises contained in Article 11, according to which the institutions of the Union will give to the citizens some ability to express their opinions through the appropriate channels. Definitively, the difference of weight between the participative democracy and the representative one in the functioning of the Union, according to the Constitutive Treaties, is enormous.<sup>18</sup>

Anyway, let us continue exposing the origin and the legal framework of the European citizens’ initiative. Article 24 of the Treaty on the Functioning of the European Union, authorized both the Parliament and the Council to adopt the provisions for the procedures and conditions required for a citizens’ initiative within the meaning of Article 11 of the Treaty on European Union.

Those procedures and conditions are set out in the Regulation (EU) No 211/2011 of the European Parliament and of the Council of 16 February 2011 on the citizens' initiative.<sup>19</sup> According to this Regulation, in order to launch a citizens' initiative, the individuals must form a citizens’ committee composed of at least seven EU citizens old enough to vote in the European Parliament elections and being resident in at least seven different member states.<sup>20</sup> The citizens' committee must require the Commission to register its initiative online before starting to collect statements of support from citizens. Then the Commission, within two months from the receipt of the information, has to verify that the citizens’ committee has been correctly formed; that the proposed citizens’ initiative does not manifestly fall outside the framework of the Commission’s powers to submit a proposal for a legal act of the Union for the purpose of implementing the Treaties; that the proposed citizens’ initiative is not

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<sup>18</sup> But, it seems to us that the participative democracy has also its limits and should not replace the representative one, because in principle the traditional democracy can serve better the general interest of the population, whereas the NGOs or the groups of individuals are at risk of defending only particular interests. In that sense see also: J.L. Martí, ‘Alguna precisión sobre las nuevas tecnologías y la democracia deliberativa y participativa’, in: *La democracia electrónica [monográfico en línea]*. 6 IDP. *Revista de Internet, Derecho y Política* (2008), at 5; M. Prieditis, ‘Participation in the legislative process and new information technology’, in U. Karpen (ed.), *E-Government : Proceedings of the Fifth Congress of the European Association of Legislation (EAL) in Athens (Greece), November 28th-29th, 2002* (2005) 99, at 114.

<sup>19</sup> European Parliament and Council Regulation (EU) 211/2011, of 16 February 2011, on the citizens’ initiative, OJ 2011 L 65.

<sup>20</sup> *Ibid.*, Article 3.

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manifestly abusive, frivolous or vexatious; and that the proposed citizens' initiative is not manifestly contrary to the values of the Union as set out in Article 2 of the Treaty on European Union.<sup>21</sup> Once the registration is confirmed, organisers have one year to collect statements of support in paper form or electronically.<sup>22</sup> The initiative has to be backed by at least one million EU citizens, coming from at least seven out of the 28 member states.<sup>23</sup> A minimum number of signatories<sup>24</sup> is required in each of those seven member states. In order to be eligible to support a proposed citizens' initiative, signatories shall be citizens of the Union and shall be of the age to be entitled to vote in elections to the European Parliament.<sup>25</sup> Once the required number of statements of support has been collected, and once organisers have received the certificates from the competent national authorities demonstrating that they have collected the required number of statements of support, the organisers may submit the citizens' initiative to the Commission, accompanied by information regarding any support and funding received for that initiative.<sup>26</sup> The Commission shall, 'within three months, set out in a communication its legal and political conclusions on the citizens' initiative, the action it intends to take, if any, and its reasons for taking or not taking that action'.<sup>27</sup>

When it comes to ascertaining the possible remedies in the hands of the organisers in face of a negative answer by the Commission, either *ab initio*, when considering admissibility at registration, or upon examination of a successfully registered proposal, the Regulation does not clarify matters deeply. Nevertheless, regarding the decision on registration, Article 4(3) states that '[w]here it refuses to register a proposed citizens' initiative, the Commission shall inform the organisers of the reasons for such refusal and of all possible judicial and extrajudicial remedies available to them'. The Regulation itself does not provide any further detail as to what the remedies in question are. However, it seems logical that the organisers should be able to challenge such a decision in the framework of an action for annulment

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<sup>21</sup> *Ibid.*, Article 4, paragraph 2.

<sup>22</sup> *Ibid.*, Article 5, paragraph 2, and 5.

<sup>23</sup> *Ibid.*, Article 5, paragraph 5, and Article 7.

<sup>24</sup> *Ibid.*, Annex I.

<sup>25</sup> *Ibid.*, Article 3, paragraph 4.

<sup>26</sup> *Ibid.*, Article 8, paragraph 2, and Article 9, paragraph 1.

<sup>27</sup> *Ibid.*, Article 10 c). On 31 March 2015, the European Commission adopted the Commission Delegated Regulation (EU) 2015/1070 of 31 March 2015 amending Annexes III, V and VII of the Regulation (EU) No 211/2011 of the European Parliament and of the Council of 16 February 2011 on the citizens' initiative, OJ L 178/1.

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under Article 263 of the Treaty on the Functioning of the European Union (TFEU),<sup>28</sup> something that the Commission has recommended for cases in which the registration has been rejected.<sup>29</sup> On the other hand, in reality, the Commission has also recommended to file a complaint about maladministration with the European Ombudsman under the conditions specified in Article 228 of the TFEU.<sup>30</sup>

On the contrary, nothing is foreseen in regard to the decision of the Commission upon examination of a successfully registered proposal, but the same solution would be applicable here.

To sum up, the relevance of the new institution of European citizens' initiative in the Public International Law context is that it gives the individual the possibility to participate in the legislative process of an international organisation with capacity to create binding norms for all the subjects in Community Law. Of course, it is in an indirect way, since the European Commission can reject the citizens' invitation and in the end, if the Commission accepts the initiative, the idea will be transformed in a Commission proposal. However, the European citizens' initiative supposes a new exception to the monopoly to draft and submit legislative proposals that the Constitutive Treaties in Community Law have given to the European Commission. Therefore, in the context of the right of legislative initiative in the European Union, it places the individual in the same position as the European Parliament, the Council of Ministers, the member states, the European Central Bank, the Court of Justice of the European Union and the European Investment Bank, which, in a few well defined cases, may ask the Commission to submit legislative proposals.<sup>31</sup>

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<sup>28</sup> On this matter see also: D. Szeligowska and E. Mincheva, 'The European Citizens' Initiative – Empowering European Citizens within the Institutional Triangle: A Political and Legal Analysis', in 24 *Bruges Political Research Papers* (2012) 52, at 71; and: Levrat, *supra* note 15, at 93-97.

<sup>29</sup> For instance, in the case of the Stop TTIP, see: European Commission, *Commission's reply stating the reasons for refusal of registration of a proposed citizens' initiative entitled "STOP TTIP*, C (2014) 6501 final, 10.09.2014, available online at: <http://ec.europa.eu/citizens-initiative/public/initiatives/non-registered/details/2041>, last visited on 10 August 2015.

<sup>30</sup> *Ibid.*

<sup>31</sup> On this matter see i.e: Articles 17. 2 and 22.2 TEU, and 76, 129, 225, 241, 257 and 289 TFEU.

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### 3. Citizens' initiative in other international organizations of regional integration: an overview.

In order to determine the relevance of the European citizens' initiative in an appropriate context, it is necessary to see if there are similar institutions in other international organizations of regional integration.<sup>32</sup> So far in this article, the focus has been directed towards international organizations of integration, because, via their resolutions, they can create rights and obligations in International Law directly by themselves in the areas in which they have been given competences. However, we take that category in a broad sense, referring also to organizations that, even if only have few supranational competences today, also have some aspirations to become real international organizations of integration in the future.<sup>33</sup>

#### A. Africa.

For the time being, it is difficult to consider the regional international organizations in Africa as a model of regional integration, due to the fact of the few competences allotted to the African institutions and the prevalence of the national sovereignties on the decision-making institutions in the international regional level.<sup>34</sup>

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<sup>32</sup> In this regard, it is worth mentioning that there are already some studies about the level of democratization of international organizations. One of them is the 2014 first report of the International Democracy Watch, an international research study group promoted by the Centre for Studies on Federalism, based in Turin, Italy, which constitute a useful tool to compare the European Union with other regional international organizations: L. Levi, G. Finizio and N. Vallinoto (eds), *The democratization of International Institutions* (2014). Another interesting studies are: Th. D. Zweifel, *International Organizations & Democracy. Accountability, Politics, and Power* (2006); A. Ribeiro Hoffmann and A. van der Vleuten (eds), *Closing or Widening the Gap? Legitimacy and Democracy in Regional Integration Organizations* (2007).

<sup>33</sup> Therefore, we have not taken into account some relevant regional international organizations, like the North Atlantic Treaty Organization, for being essentially a military alliance; the Organization for Security and Co-operation in Europe, whose supranational nature and international legal personality is doubtful; or the Council of Europe, which does not create direct obligations for states or a community of law, something that in Europe is reserved to the European Union. With respect to the post-soviet regional organizations, they seem to have achieved a rather low level of international co-operation and integration. The Commonwealth of Independent States, regardless its aspirations in the past, cannot be seen today as an international organization of regional integration in the sense described above. On the other hand, the Eurasian Economic Community demonstrates nowadays more leadership as a motor of regional integration, but in any case the level of citizen's participations remains very low. About the democratization of the post-soviet international organizations see: A. Libman, 'Commonwealth of Independent States (CIS) and Eurasian Economic Community (EurAsEC)', in L. Levi, G. Finizio and N. Vallinoto (eds), *The democratization of International Institutions* (2014) 435.

<sup>34</sup> See the conclusions of Panel 4 of the International conference over the regional integration in West Africa organized by the Centre de recherché pour le développement international, hold in Dakar, from 11 January 1993 to 15 January 1993, *L'Intégration régionale en Afrique de l'Ouest. Résultats de la Conférence internationale organisée par le Centre de recherché pour le développement international à Dakar (Sénégal) du 11 au 15 janvier 1993*, (1995), available on line at: [http://www.idrc.ca/EN/Resources/Publications/openebooks/298-8/index.html#fn\\_51](http://www.idrc.ca/EN/Resources/Publications/openebooks/298-8/index.html#fn_51), last visited on 14 August 2015.

The Economic Community of West African States, which was created in 1975 as an organisation with the aim of encouraging economic cooperation and developmental regionalism, has intergovernmental institutions that can be considered democratic structures of governance but do not yet allow the participation of citizens in their decision making.<sup>35</sup> With respect to the African Union, created in 1999 aiming at accelerating the process of integration in the continent, it is still in an early stage but is struggling to promote the defence of democracy in the continent, and so to date there is not any provision or practice similar to the European citizens' initiative.<sup>36</sup> Relating to the West African Economic and Monetary Union, set up in 1994, to present, the role of the citizens in its functioning is very weak, since decisions are mainly taken by the Conference of Heads of State and Government.<sup>37</sup> In relation to other regional organizations, for instance the Economic Community of Central African States,<sup>38</sup> the Central African Economic and Monetary Community,<sup>39</sup> the East African Community<sup>40</sup> or the Southern African Development Community,<sup>41</sup> the situation remains the same than in the previous organizations, because the opportunities offered to citizens to contribute actively in the work of its institutions are very few.

### ***B. Americas.***

The achievements of regional integration through international organizations are, until now, more important in the Americas than in Africa, and therefore the possibilities to find some institutions similar to the European citizens' initiative are greater. Nonetheless, the traditional

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<sup>35</sup> On this point, see for example: H. Gandois, 'Economic Community of West African States', in L. Levi, G. Finizio and N. Vallinoto (eds), *The democratization of International Institutions* (2014) 196.

<sup>36</sup> In this sense see: Zweifel, *supra* note 32, at 147; and: S. S. Kingah, 'African Union', in L. Levi, G. Finizio and N. Vallinoto (eds), *The democratization of International Institutions* (2014) 183, at 191.

<sup>37</sup> On this matter see: K. T. Bérenger, 'West African Economic and Monetary Union', in L. Levi, G. Finizio and N. Vallinoto (eds), *The democratization of International Institutions* (2014) 207, at 213.

<sup>38</sup> See for instance: A. Meyer, 'Economic Community of Central African States', in L. Levi, G. Finizio and N. Vallinoto (eds), *The democratization of International Institutions* (2014) 215, at 218.

<sup>39</sup> On this matter see: A. Meyer, 'Central African Economic and Monetary Community', in L. Levi, G. Finizio and N. Vallinoto (eds), *The democratization of International Institutions* (2014) 221.

<sup>40</sup> See for example: K. G. Adar, 'East African Community', in L. Levi, G. Finizio and N. Vallinoto (eds), *The democratization of International Institutions* (2014) 230.

<sup>41</sup> A. Godsäter, 'Southern African Development Community', in L. Levi, G. Finizio and N. Vallinoto (eds), *The democratization of International Institutions* (2014) 242.

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presidential political systems of the American republics and the absence of a long democratic culture present a barrier to the development of real regional integration processes.<sup>42</sup>

Starting with the Organization of American States (OAS), established in 1948, it must be pointed out that the level of participation of civil society and citizens organizations in the decision making of the organization is insignificant, since there are no channels to express their views and suggestions.<sup>43</sup>

Regarding the law governing the Southern American Common Market (MERCOSUR), it has to be pointed out that in the Constitutive Treaty of Asunción of 1991,<sup>44</sup> section 14, foresaw that the Common Market Group, one of the three main bodies of the organisation, might, whenever it deemed appropriate during the first years of its activity, call on representatives of other government agencies or the 'private sector', without defining much more what that would mean or which would be the procedures related to the direct representation of the citizens. Years later, with the Additional Protocol to the Treaty of Asunción on the Institutional Structure of MERCOSUR,<sup>45</sup> of 1994, some initiatives were taken to create a mechanism for civil society representation: the Economic and Social Advisory Forum, which according to article 28 of the said legal instrument was to be the organ representing the economic and social sectors, it would have a consultative function and would present its views in the form of Recommendations to the Common Market Group.<sup>46</sup> After Common Market Group Resolution 35/00 of the year 2000, for the first time a mechanism was established to receive proposals or expressions from civil society, which the Economic and Social Advisory Forum could analyse and decide whether to raise in the form of recommendations. However, there is still no form of citizens' initiative at the supranational level.<sup>47</sup>

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<sup>42</sup> It goes without saying that the mere existence of those international organizations is useful for the achievement of democracy and its survival. In that sense see: J.C. Pevehouse, *Democracy from above* (2005), at 3.

<sup>43</sup> About the democratization of the OAS see: M.A. Guedes de Oliveira, 'Organization of American States', in L. Levi, G. Finizio and N. Vallinoto (eds), *The democratization of International Institutions* (2014) 412.

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<sup>44</sup> Treaty establishing a Common Market between the Argentine Republic, the Federative Republic of Brazil, the Republic of Paraguay and the Eastern Republic of Uruguay (Common Market of the South [MERCOSUR]) 2140 UNTS 257.

<sup>45</sup> Additional Protocol to the Treaty of Asunción on the Institutional Structure of MERCOSUR, 2145 UNTS 346.

<sup>46</sup> Article 29.

<sup>47</sup> On this point see: M. Luna Pont, 'Southern American Common Market (MERCOSUR)', in L. Levi, G. Finizio and N. Vallinoto (eds), *The democratization of International Institutions* (2014) 261. About the participation of

With regard to the Andean Community of Nations, which was created in 1969, it has to be stated that despite the existence of a number of advisory institutions allowing civil society participation, like the Labour, Business, Municipal and Indigenous Advisory Councils, the influence of civil society on the decision-making processes is not obvious.<sup>48</sup> The will of the member states to promote democracy as a key factor on development and integration is undeniable, but the absence of a true regional citizenship halts the creation of citizen's participation channels like the citizens' initiative in the European Union.

With reference to the Union of South American Nations, which was established in 2008, it is still in process of building and consolidating itself as an integration organisation in the region. Nevertheless, it can be said that so far the decision-making process is exclusively in the hands of the executive branch, and despite the fact that the need to increase citizen participation through mechanisms for integration and dialogue was set forth in Article 3 of its Constitutive Treaty as a specific objective of the UNASUR, none of these mechanisms has been set up yet.<sup>49</sup>

Turning to the Central American Integration System (SICA), created in 1991, it is to be stressed its potential as a model of supranational integration, because it is one of the few integrational schemes not limited to the economics goals. In fact, the integration concept proposed in the Tegucigalpa Protocol and reaffirmed by the Sustainable Development Alliance signed in 1994, consists of four main pillars: political, social-cultural, economic, and the sustainable management of natural resources.<sup>50</sup> However, the institutional structure and the amount of competences allotted to the international institutions do not allow qualifying the system as a genuinely supranational so far.<sup>51</sup> Therefore, the key decisions at the

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civil society in MERCOSUR see also M. Ratton Sanchez, 'Is There Any Room for Input and Control Legitimacy by Civil Society in Mercosur?', in A. Ribeiro Hoffmann and A. van der Vleuten (eds), *Closing or Widening the Gap? Legitimacy and Democracy in Regional Integration Organizations* (2007) 117.

<sup>48</sup> See for example: D. Sánchez Rodríguez, 'Andean Community of Nations', in L. Levi, G. Finizio and N. Vallinoto (eds), *The democratization of International Institutions* (2014) 276, at 281.

<sup>49</sup> With regard to the citizens' participation in UNOSUR, it is recommended to read: N. M. Comini, 'Union of South American Nations', in L. Levi, G. Finizio and N. Vallinoto (eds), *The democratization of International Institutions* (2014) 286.

<sup>50</sup> SICA, Historical overview of SICA, available online at: [http://www.sica.int/sica/resena\\_sica\\_en.aspx](http://www.sica.int/sica/resena_sica_en.aspx), (last visited 22 July 2015).

<sup>51</sup> In that sense see: I.F. Papageorgiou, 'Central American Integration System', in L. Levi, G. Finizio and N. Vallinoto (eds), *The democratization of International Institutions* (2014) 296, at 307.

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supranational level are taken by representatives of the governments, and it is difficult to perceive any channel open to the participation of citizens.

Relating to the Caribbean Community and Common Market (CARICOM), which was established in 1973, it seems that this international organisation lacks from the beginning of true citizens participation structures, a problem which was intended to be resolved by means of the creation of the Assembly of Caribbean Community Parliamentarians, integrated by representatives of Member States of the Community elected or appointed by their Parliaments, as a deliberative body to discuss and make resolutions on issues related to citizens. One of its objectives is to provide a forum for people of the Community to make their views known through their representatives.<sup>52</sup> All the same, the influence of the Assembly in the decision-making process has been until now minimal, taking into account that the assembly lacks continuity in its meetings and that it is subordinate to the member states governments. Thus, nothing like the European citizens' initiative would allow the Caribbean citizens to be involved in the creation of supranational law.<sup>53</sup>

To conclude on the integration systems in the Americas, we can refer to the North American Free Trade Agreement (NAFTA), which was created in 1992. As long as it is mainly an intergovernmental cooperation organisation, there is no parliament or citizen institution foreseen in the institutional structure of NAFTA. But the economic success of the organisation is asking for the setting up of more supranational institutions, which could lead it to find ways to increase the citizen's participation in the future.<sup>54</sup>

### ***C. Arab States.***

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<sup>52</sup> CARICOM, Objectives of the Assembly of Caribbean Community Parliamentarians, available online at: <http://www.caricom.org/jsp/community/accp.jsp?menu=community> (last visited 22 July 2015).

<sup>53</sup> On the democratic standards of the CARICOM we can recommend the study: G. van Roozendaal, 'The Contribution of Non-state Actors to the Legitimacy of the Caricom', in A. Ribeiro Hoffmann and A. van der Vleuten (eds), *Closing or Widening the Gap? Legitimacy and Democracy in Regional Integration Organizations* (2007) 135; or: T. Brown-Onnis, 'Caribbean Common Market', in L. Levi, G. Finizio and N. Vallinoto (eds), *The democratization of International Institutions* (2014) 311.

<sup>54</sup> On the democratization of NAFTA see: Zweifel, *supra* note 32, at 159; and J. Bankhead, 'North American Free Trade Agreement', in L. Levi, G. Finizio and N. Vallinoto (eds), *The democratization of International Institutions* (2014) 321.

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The level of integration in the Arab states is, for different reasons, weaker than in Europe or the Americas.

There is doubt as to whether the Gulf Cooperation Council, which was established in 1981, when the rulers of the six member states agreed on a cooperative framework, is an integration organization or a military alliance. The fact remains that neither the member states, nor the supranational organization, are democratic. The international organization is ruled by a Supreme Council that controls the decision making process. With such a framework, there is little room for the citizens' participation.<sup>55</sup>

With reference to the League of Arab States, which is the oldest international organisation in the Arab world, since it was founded in 1945, it has a strong intergovernmental structure also with little room for citizens' participation.<sup>56</sup>

#### ***D. Asia.***

The Association of Southeast Asian Nations, or ASEAN, was established in 1967. Initially, it was essentially an intergovernmental association, but at present it seems that the member states intend that ASEAN would evolve towards the status of an international organisation of integration,<sup>57</sup> without including, for the time being, any juridical institution allowing the citizens to participate in the decision making.<sup>58</sup>

Another regional international organisation in South Asia is the South Asia Association for Regional Cooperation, created in 1985. Taking into account the absence of a real supranational governing structure and the endemic conflict between India and Pakistan, the

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<sup>55</sup> With regard to the participation of citizens in the Gulf Cooperation Council see: J. Bankhead, 'Gulf Cooperation Council', in L. Levi, G. Finizio and N. Vallinoto (eds), *The democratization of International Institutions* (2014) 353.

<sup>56</sup> With respect of the democratic functioning of the League of Arab States see: N.M. Sika, 'League of Arab States', in L. Levi, G. Finizio and N. Vallinoto (eds), *The democratization of International Institutions* (2014) 391.

<sup>57</sup> ASEAN, Overview, available online at: <http://www.asean.org/asean/about-asean>, (last visited on 23 July 2015).

<sup>58</sup> On the democratization of the Association of Southeast Asian Nations see: T. Hsien-Li, 'Non-state actors in Southeast Asia. How does civil society contribute towards non-building in a state-centric environment?', in J. D'Aspremont (ed.) *Participants in the International Legal System. Multiple perspectives on non-state actors in international law* (2011) 109; Zweifel, *supra* note 32, at 159; and: H.J. S. Kraft, 'Association of Southeast Asian Nations', in L. Levi, G. Finizio and N. Vallinoto (eds), *The democratization of International Institutions* (2014) 331.

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conditions for a real cohesion between member states and for a real democratic functioning are far from being created. Even further away is the opening of channels for the expression of citizen's views and initiatives.<sup>59</sup>

### *E. Oceania.*

The Pacific Islands Forum, formerly the South Pacific Forum until a name change in 2000, which was founded in 1971,<sup>60</sup> is today a regional association of 16 island states mostly located in the South Pacific. This entity is still in an early stage of development, with a very low level of institutionalization. A lot has to be done before we will see any institutional participation of citizens in this international organisation.<sup>61</sup>

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This exploration of international organizations of regional integration, reveals that any other legal institutions similar to the European citizens' initiative has yet to emerge in the rest of the world.<sup>62</sup>

## **4. The relevance of the European Citizens' initiative until now in practice.**

It is still too early to assess the influence of the European citizens' initiative both on the EU legislative process and on International Law, taking into account that only three and a half years passed since the moment at which the possibility to promote citizen's initiative arrived, that is to say the entering into effect of the Regulation (EU) No 211/2011 on 1 April 2012. However, some reflection can already be done on this matter. Since that date, the

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<sup>59</sup> About the democratic standards of the South Asian Association for Regional Cooperation see: D. Shahi, 'South Asian Association for Regional Cooperation', in L. Levi, G. Finizio and N. Vallinoto (eds), *The democratization of International Institutions* (2014) 342.

<sup>60</sup> South Pacific Forum (SPF), 'Joint Final Communiqué', Wellington, 5-7 August 1971; SPF, 'Communiqué', Canberra, 23-25 February 1972.

<sup>61</sup> On this point see: Ch. Hamer, 'Pacific Islands Forum', in L. Levi, G. Finizio and N. Vallinoto (eds), *The democratization of International Institutions* (2014) 358.

<sup>62</sup> To a similar result has arrived a study conducted by Democracy international, an association registered in Germany with international scope, aimed at strengthening direct democracy at all political levels in the nation states, in the EU and on the global level. See: [https://www.democracy-international.org/sites/democracy-international.org/files/PDF/eci\\_support\\_centre\\_response\\_to\\_the\\_european\\_ombudsman\\_own\\_inquiry\\_into\\_the\\_functioning\\_of\\_the\\_european\\_citizens\\_initiative.pdf](https://www.democracy-international.org/sites/democracy-international.org/files/PDF/eci_support_centre_response_to_the_european_ombudsman_own_inquiry_into_the_functioning_of_the_european_citizens_initiative.pdf).

Commission has received 51 requests for registration of proposed citizens' initiatives.<sup>63</sup> 31 of them were registered.<sup>64</sup> 20 proposed initiatives did not fulfil the registration criteria set up in Article 4.2 of the Regulation (EU) No 211/2011, and therefore could not be registered by the Commission.<sup>65</sup> Among those registered, ten were withdrawn before the end of their collection period<sup>66</sup> and 18 initiatives reached the end of it. Among those 18, two seem to be in a sort of grey zone in which, according to the Commission, it is not clear whether the organizers managed or failed to collect the required number of statements of support;<sup>67</sup> 13 did not manage to collect the required number of statements of support;<sup>68</sup> three initiatives have reached the required number of statements of support and were submitted to the Commission: 'Water and sanitation are human rights! Water is a public good, not a commodity!' ('Right2Water'), 'One of us', and 'Stop vivisection'; the three of them have already received a

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<sup>63</sup> European Commission, *Report from the Commission to the European Parliament and the Council on the application of Regulation (EU) No 211/2011 on the citizens' initiative*, COM(2015) 145 final, 31.3.2015, available online at: <http://ec.europa.eu/transparency/regdoc/rep/1/2015/EN/1-2015-145-EN-F1-1.PDF>, last visited on 10 August 2015.

<sup>64</sup> *Ibid.*

<sup>65</sup> Stop TTIP; Vite l'Europe sociale ! Pour un nouveau critère européen contre la pauvreté; Ethics for Animals and Kids; A new EU legal norm, self-abolition of the European Parliament and its structures, must be immediately adopted ; The Supreme Legislative & Executive Power in the EU must be the EU Referendum as an expression of direct democracy; Our concern for insufficient help to pet and stray animals in the European Union; Right to Lifelong Care: Leading a life of dignity and independence is a fundamental right!; To hold an immediate EU Referendum on public confidence in European Government's (EG) competence; Minority SafePack – one million signatures for diversity in Europe; Stop cruelty for animals; Cohesion policy for the equality of the regions and sustainability of the regional cultures; Ensemble pour une Europe sans prostitution légalisée; Enforcing selfdetermination Human Right in the EU; Unconditional Basic Income; Création d'une Banque publique européenne axée sur le développement social, écologique et solidaire; One million signatures for a Europe of solidarity; Abolición en Europa de la tauromaquia y la utilización de toros en fiestas de crueldad y tortura por diversión; My voice against nuclear power; Fortalecimiento de la participación ciudadana en la toma de decisiones sobre la soberanía colectiva; Recommend singing the European Anthem in Esperanto. (<http://ec.europa.eu/citizens-initiative/public/initiatives/non-registered>; last visited on 10 August 2015).

<sup>66</sup> Moveurope; New Deal 4 Europe; Turn Me Off;; Teach for Youth -- Upgrade to Erasmus 2.0; Kündigung Personenfreizügigkeit Schweiz; European Initiative for Media Pluralism; End Ecocide in Europe: A Citizens' Initiative to give the Earth Rights; Let me vote; EU Directive on Dairy Cow Welfare; Single Communication Tariff Act. ([http://ec.europa.eu/citizens-initiative/public/initiatives/obsolete/withdrawn\\_by\\_organiser](http://ec.europa.eu/citizens-initiative/public/initiatives/obsolete/withdrawn_by_organiser); last visited on 10 August 2015).

<sup>67</sup> Weed like to talk; European Initiative for Media Pluralism; ([http://ec.europa.eu/citizens-initiative/public/initiatives/finalised/collection\\_closed](http://ec.europa.eu/citizens-initiative/public/initiatives/finalised/collection_closed); last visited on 10 August 2015).

<sup>68</sup> European Free Vaping Initiative; DO NOT COUNT EDUCATION SPENDING AS PART OF THE DEFICIT! EDUCATION IS AN INVESTMENT;; Act 4 Growth; Let me vote; End Ecocide in Europe: A Citizens' Initiative to give the Earth Rights; Unconditional Basic Income (UBI) - Exploring a pathway towards emancipatory welfare conditions in the EU; Single Communication Tariff Act; "30 km/h - making the streets liveable!"; Central public online collection platform for the European Citizen Initiative; Suspension of the EU Climate & Energy Package; Pour une gestion responsable des déchets, contre les incinérateurs; High Quality European Education for All; Fraternité 2020 - Mobility. Progress. Europe ([http://ec.europa.eu/citizens-initiative/public/initiatives/obsolete/conditions\\_not\\_fulfilled](http://ec.europa.eu/citizens-initiative/public/initiatives/obsolete/conditions_not_fulfilled); last visited on 10 August 2015).

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formal response from the Commission. Finally, three initiatives are currently collecting statements of support.<sup>69</sup>

At the present, only the *Right2Water* initiative has been accepted by the Commission,<sup>70</sup> which means that only about 2% of the initiatives promoted achieved partially their objectives. And that is not all, since we have to wait to see what the outcome of this initiative in the legislative process will be, bearing in mind that, in its communication accepting the initiative, the Commission did not announce any new legal proposal, but only that it would ‘... reinforce implementation of its water quality legislation,...’.<sup>71</sup> Such a poor outcome has already been criticized by some within the European Parliament, and has led to the submission of a motion for a resolution on the follow-up to the European citizens’ Initiative *Right2Water* stressing that ‘...the response given by the Commission to the *Right2Water* ECI is insufficient, as it does not make any fresh contribution and does not introduce, as it should, all the measures that might help to achieve the goals’.<sup>72</sup>

On the other hand, seven citizens’ committees decided to bring proceedings before the General Court against Commission decisions refusing the registration of their proposed initiatives.<sup>73</sup> All of these cases are pending. The European Ombudsman received two complaints from organisers of initiatives, which were both resolved, concluding that there

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<sup>69</sup> 10 August 2015. On The Wire; For a socially fair Europe! Encouraging a stronger cooperation between EU Member States to fight poverty in Europe; An end to front companies in order to secure a fairer Europe (<http://ec.europa.eu/citizens-initiative/public/initiatives/ongoing>; last visited on 10 August 2015).

<sup>70</sup> European Commission, *Communication from the Commission on the European Citizens’ Initiative "Water and sanitation are a human right! Water is a public good, not a commodity!"*, COM(2014) 177 final, 19.3.2014, available at: <http://ec.europa.eu/transparency/regdoc/rep/1/2014/EN/1-2014-177-EN-F1-1.Pdf>, last visited 10 August 2015.

<sup>71</sup> *Ibid.*, conclusions.

<sup>72</sup> European Parliament, *Motion for a European Parliament resolution on the follow-up to the European Citizens’ Initiative Right2Water (2014/2239(INI))*, available online at: <http://www.europarl.europa.eu/sides/getDoc.do?type=REPORT&mode=XML&reference=A8-2015-0228&language=EN#title1>, last visited 10 August 2015.

<sup>73</sup> Cases T-754/14 (*Efler and Others v Commission*); T-561/14 (*One of Us and Others v Parliament and Others*); T-361/14 (*HB and Others v Commission*); T-44/14 (*Costantini and Others v Commission*); T-646/13 (*Minority SafePack – one million signatures for diversity in Europe and Others v Commission*); T-529/13 (*Izsák and Dabis v Commission*); and T-450/12 (*Anagnostakis v Commission*).

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had been no maladministration by the Commission.<sup>74</sup>

This result is of course very poor and says little in favor of the scope of the European citizen's initiative in the democratic functioning of the EU and of the role of the EU as a model of an international organization of regional integration.

## 5. Conclusion.

The European citizens' initiative was conceived to open a door to direct democracy in the functioning of the EU. In this sense, it is a unique legal institution in the law of international organizations, considering that, so far, no similar right for citizens is supported by any other international organization in the world.

By associating European citizens in the formation of some important EU resolutions, the European citizens' initiative allows individuals to take part in the law making process of International Law, at least in an indirect way. In that sense, potentially, it is a significant step towards expanding the international legal personality of individuals.

Nevertheless, this potential influence is weakened by the poor outcome that hitherto the proposals arrived to the European Commission have had in the first three years elapsed since the way was opened for presenting initiatives. The fact that, to date, among 51 initiatives presented only one has been accepted by the European Commission supposes an enormous shock for the citizen's expectations. Furthermore, bearing in mind the feeble legal response given by the European Commission to the only successful initiative, Right2water, the situation becomes even more cloudy; something that is being strongly criticized by the civil society and for some voices in the European Parliament, where a motion has been submitted for a resolution on the follow-up to the European Citizens' Initiative Right2Water.

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<sup>74</sup>European Ombudsman, *Decision of the European Ombudsman closing the inquiry into complaint 2071/2013/EIS against the European Commission*, 12 December 2014, available at: <http://www.ombudsman.europa.eu/en/cases/decision.faces/en/58564/html.bookmark>, last visited 10 August 2015; European Ombudsman, *Decision of the European Ombudsman closing the inquiry into complaint 402/2014/PMC against the European Commission*, 31 Mar 2015, available online at: <http://www.ombudsman.europa.eu/en/cases/decision.faces/en/59451/html.bookmark>, last visited 10 August 2015.

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If European institutions do not seize upon the opportunity created in 2007 by the Treaty of Lisbon aimed at the democratization of European policies and the association of European citizens in their daily work, the gap between the EU and its citizens will grow at this critical moment. For that reason, the European institutions could profitably be urged to modify the regulation of the European citizens' initiative, even at the level of the Constitutive Treaties.

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