

# **The European Citizens' Initiative: Changing modes of EU participative democracy?**

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## Introduction

The Treaty of Lisbon introduced the European Citizens' Initiative (ECI) into art. 11 (4) of the Treaty on the European Union (TEU), granting one million citizens from a significant number of member states the right of inviting the European Commission to submit a proposal for a European law, where they think it is necessary. The Treaty of Lisbon entered into force on the 1<sup>st</sup> of December 2009 but it will not be possible to register initiatives with the Commission<sup>1</sup> before the 1<sup>st</sup> of April 2012, as soon as the ECI regulation will apply. (art. 23 ECI regulation) Since the ECI regulation is already into force and the European Commission and the member states are currently implementing the regulation, the formal framework of the ECI is nearly clear. So far, we do not know anything about the constitutional reality ('Verfassungswirklichkeit') of putting the formal framework of the ECI into practice. From a neo institutionalist perspective I agree with March and Olson who regard institutions as "constitutive rules and practices prescribing appropriate behavior for specific actors in specific situations." (March/Olson 2005: 4) The ECI can be considered as a 'specific situation' in which organizers of a single ECI, the European Commission, the European Parliament, and maybe the Council of the European Union are 'specific actors'. While the primary and secondary law of the European Union prescribes appropriate behavior, they bequeath considerable discretion to the actors of how to behave within these formal institutions. As the ECI is a new instrument within the political system there yet are no informal institutions structuring the actors' behavior within the formal institutions. On the one side new informal institutions will prescribe appropriate behavior within the process of conducting an ECI, on the other hand new informal institutions will prescribe the interaction of other actors and organs with the ECI in the framework of the political system of the European Union. As a first hypothesis I expect the evolvement of such informal institutions during the first initiatives starting in 2012. For that reason I am not able to present any empirical evidence on the process of institutional change caused by the ECI. However, I will give several hypotheses on the future relationship between EU institutions<sup>2</sup>, especially the European Commission, and civil society in the European Union.

In fact I will give a short overview on what the ECI is and on what the ECI is not. Secondly, I will discuss the differences between the ECI instrument and other instruments of participative democracy of the European Union. In a third paragraph I will present a model of institutional change and give several reasons why there will be most likely institutional change on the level of informal institutions. Finally, I will discuss hypotheses on how the ECI will affect the relationship between the EU institutions and the civil society and what implications that might have for EU politics and the legitimacy of the European Union. The hypotheses of the four paragraphs are the following:

- (1) The ECI is not an element of direct democracy.
- (2) The ECI will open EU politics for new types of actors.
- (3) Nonconformity of new actors will challenge existing informal institutions.
- (4) The ECI is an option for supranational actors to oppose intergovernmental politics.

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<sup>1</sup> According to art. 4 of the Regulation on the Citizens' Initiative (ECI regulation) initiatives have to be registered with the Commission before organizers can collect statements of support.

<sup>2</sup> The term 'EU institutions' refers to the third title of the TEU and does not correspond with the neo institutionalist definition of institution according to March and Olson (1989; 2005), which I use in this paper.

## 1. The ECI is not an element of direct democracy

Later on I will present a model of institutional change, which regards different structures of meaning as one of the drives of institutional change. The assumption is that there is no commonly accepted structure of meaning applied to the ECI, yet. Instead we can observe different interpretations of what the ECI is and what it is not. In this paragraph I will give an overview on some interpretations of the ECI and confront them with formal institutions as they are defined in the primary and secondary law so far.

The ECI is a compromise which has been negotiated during the Convention on the future of the European Union. During the Convention politicians from member states' governments, from the European Parliament, the European Commission, and national parliaments discussed the option to hold an EU wide referendum on the Treaty on the Constitution for Europe (Constitutional Treaty) or to introduce elements of direct democracy into the political system of the European Union. Nevertheless, agreements could not be reached on none of the options during the Convention. (Plottka 2011: 99) Instead the representative of the German Bundestag in the Convention, Jürgen Meyer and other members, proposed the introduction of a citizens' 'right to request the Commission' a compromise, which became the ECI in art. I-47 (4) of the Constitutional Treaty later on. In his amendment, he argues that this compromise "will extend the existing right of petition to a right of the citizens to present legislative proposals to the Commission of the EU". (Meyer 2003: 2) Considering this origin of the ECI we can already look at different interpretations of the ECI. As the ECI is a compromise on the lowest common denominator between those preferring direct democracy on the EU level and those opposing it, the former group will most likely regard the ECI as a nucleus of direct democracy in the European Union which has to be extended in the next years.<sup>3</sup> On the other hand, Jürgen Meyer compares the ECI with the right of petition (Meyer 2003:2). Following this interpretation the ECI is a formalized channel for freedom of speech.

On its way from the European Convention to art. 11 (4) TEU the ECI was substantiated by defining that one million citizens from a considerable number of member states have the right to request the Commission to initiate a law. Furthermore, the article states that the subject of an ECI has to lie within the framework of the Commission's powers and must have the purpose of implementing the Treaties. No other provisions on the process of an ECI are given. They were defined in the ECI regulation, which was agreed on in accordance with the ordinary legislative procedure (art. 11 (4) TEU and Art. 24 TFEU<sup>4</sup>). As a first step in the legislative process the European Commission published a green paper on the ECI to initiate a consultation. (European Commission 2009) To major issues discussed in the consultation process concerned the questions of how to define 'a significant number of member states'<sup>5</sup> and identifying the minimum age of ECI supporters. The European Commission proposes a first reason in the green paper why a minimum number of member states are required. In fact, it 'is to ensure that an initiative is sufficiently representative of a Union interest.' (European Commission 2009: 4; European Commission 2010a: 74) On the one hand, this consideration points to the necessity that an ECI should have 'a genuine European flavor' as the Commission (2009: 5) puts it later on. On the other hand, talking about representativeness is contrary to every interpretation, which regards the ECI as an expression of the freedom of speech. In the same manner the

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<sup>3</sup> E.g. Andrew Duff expressed the idea 'of using the ECIs to test the boundaries' of the regulation. (European Citizen Action Service 2011)

<sup>4</sup> Treaty on the Functioning of the European Union.

<sup>5</sup> Finally, the number is defined as one quarter of the member states (currently 7), while for each member state a quota of supporters ranging from 3,750 in Malta to 74,250 in Germany is defined (annex I ECI regulation).

Commission discusses the eligibility to the ECI with regards to a minimum age. Even more instructive is, what the European Commission does not discuss in its green paper. The green paper raises the question, whether there should be a time limit for the Commission to examine a citizens' initiative. However, the question what such a reaction should include is not mentioned. To make its opinion clear, the European Commission states in the draft for an ECI regulation: 'It is important to underline however that the citizens' initiative is an agenda setting initiative. Whilst it does not affect the Commission's right of initiative'. (European Commission 2010a: 2) That has been codified in the ECI regulation. According to art. 10 and 11 of the regulation successful initiatives<sup>6</sup> will be followed by:

- The publication of the initiative (art. 10 (1) a ECI regulation);
- The reception of the organizers by the Commission (art. 10 (1) b ECI regulation);
- A hearing in the Parliament during which the organizers get the chance to present their initiative (art. 11 ECI regulation);
- The publication of the judicial and political conclusions which the Commission draws from the initiative including the reasons why the Commission will take the initiative or not (art. 10 (1) c ECI regulation).

This argumentation of the European Commission shows a considerable mistrust against the instrument of the ECI, which could be summed up in the perception of the ECI being a threat to the Commission's exclusive right of initiative.

At the same time the European Commission uses another interpretation of the ECI, when it considers the ECI as 'a significant step forward in the democratic life of the Union.' (European Commission 2010a: 2) This interpretation is shared by the majority of the civil society actors who participated in the consultation on the ECI regulation. 'Most of the contributions highlight the fact that the citizens' initiative is an important step for European democracy and the construction of a European public space.' (European Commission 2010b: 2) Nevertheless, as this interpretation of the ECI is supported by fast arrays of different actors, it does not include the understanding of the ECI as an element of a specific type of democracy. Some of them might support the idea of seeing the ECI as a nucleus for direct democracy, while others regard it being a sufficient substitute to representative democracy. To cover these different interpretations in just one term, this structure of meaning might be called 'The ECI bridges the gap between citizens and EU institutions.'

In further literature another interpretation of the ECI is mentioned. So far, I have dealt with the perception of the ECI by the European Commission. The ECI regulation assigns a minor role in the process of an ECI to the European Parliament as well. According to art. 11 of the ECI regulation the European Parliament hosts a public hearing on the subject of every successful initiative. The fact that the European Parliament adopted a resolution requesting the Commission to submit a proposal for a regulation on the implementation of the citizens' initiative in May 2009 already, that is half a year before the entering into force of the Lisbon Treaty, points to a generally positive attitude of the European Parliament towards the ECI. However, the European Parliament considers the ECI in this resolution as 'a means of exercising public sovereign power in the area of legislation'. (European Parliament 2009) Considering the fact that the European Parliament became an equal legislator in about 95 per cent of all European legislation (Brok 2008: 228) verifies that the ECI could be interpreted as a threat to the European Parliament's rights, too. Hierlemann and Wohlfarth consider

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<sup>6</sup> The term 'successful initiative' refers to an initiative, which has gathered the required of 1 million statements of support from at least seven member states.

such a skeptical attitude of the Members of the European Parliament as being prevailing towards the ECI for example. (Hierlemann/Wohlfarth 2010: 6)

So far, I have depicted five different interpretations how actors perceive the ECI, which are all taken from primary sources or academic literature in the last case. Nevertheless, there is a sixth interpretation of the ECI, which might play a role in the eyes of those actors, who are involved in the legislative process on EU level. The European Commission, the European Parliament and the Council of the European Union possess a veto in the ordinary legislative procedure. (Art. 294 TEU) In the case of a successful ECI that is followed by a Commission's proposal for a European law, the complexity of the legislative procedure increases. The ECI has not a veto player role in this process, as the request of 1 million citizens is strictly separated from the legislative procedure itself, but the opinion expressed in the ECI will have an informal restriction on the room for a compromise by the three major legislators. Thus, the ECI might be interpreted as a means of increasing the complexity and decreasing the efficiency in the decision making process.

Depending on normative foundations, the institutional interest of the respective EU institution, or personal interest actors might apply one or more of the following structure of meaning when handling the new instrument of the ECI for the first time.

- The ECI as a nucleus of direct democracy on the EU level.
- The ECI as formalized version of the freedom of speech.
- The ECI as a threat to the Commissions' exclusive right of initiative.
- The ECI bridging the gap between citizens and EU institutions.
- The ECI contesting the European Parliaments role as the representation of the citizens.
- The ECI as a toothless veto player.

All interpretations have in common that they do not regard the ECI as an instrument of direct democracy. Even those actors, who regard the ECI as a nucleus for direct democracy on the EU level, confess that the ECI assigns a formalized agenda setting power to one million citizens. Despite the above mentioned notion of the European Parliament (2009), the ECI is not part of the legislative procedure of the European Union. The European Commission is not obliged to initiate a European law following every successful initiative. It is only obliged to give the reason why it does not act. Thus, the ECI is not an instrument of direct democracy and should be called an instrument of participative democracy.

## **2. The ECI will open EU politics for new types of actors**

When I consider the ECI 'just' an instrument of participative democracy I have to give a reason for discussing this innovation of the Treaty of Lisbon to such a great extent. The involvement of interest groups in the process of European integration is not new. It has been discussed since the early years of European integration research. The probably most widely known example is Ernst. B Haas' book 'The Uniting of Europe', which he calls a 'factual record' of 'the behavior of interest groups'. (Haas 1968: XII) Neo-functionalism, like Liberal Intergovernmentalism, (Moravcsik 1997) explores the role of interest groups in the European integration process. Later on, research became much more diversified. From the perspective of comparative politics scholars were interested in the role of interest groups in the decision-making process on EU level, the process of interest intermediation

and the Europeanization of interest groups on national level. (Eising 2008: 7) Most of this research focused on the interest groups' contribution to effective problem solving. With the vanishing of the 'permissive consensus' (Laumen/Maurer 2006) and the rise of the debate on the 'democratic deficit' (Grande 1996) of the European Union the perspective changed. Scholars became interested in the contribution of interest groups, or more specifically civil society, (Quittkat/Kohler-Koch 2011) to the legitimacy of EU politics. The increasing interest of academics in the role of interest groups and civil society in EU politics went hand in hand with an increasing interest of the European Commission to involve interest groups in EU decision-making processes. The first interest of the European Commission to make use of the expertise of interest groups, (Beyers 2004) later on it regarded consultation regimes and other instruments as means to increase its own legitimacy and the legitimacy of the Union at all. (European Commission 2001)

From this perspective the ECI seems to be just another step in an ongoing process of developing the 'participative governance' in the European Union, (Kohler-Koch 2011: 244) which is hardly worth noticing. From my point of view discussing the ECI is worth it, because the ECI changes the relationship between the European Commission and civil society actors fundamentally. My hypothesis is that the instrument of the ECI will open EU politics for new actors, which have never been involved in EU politics before. There are three reasons for this hypothesis:

- The European Commission has a limited gate-keeper function in the process of an ECI.
- Organizing an ECI is considerably cheaper than traditional lobbying strategies.
- The possibility to collect statements of support electronically opens new potentials for mobilization.

The relationship between the European Commission and civil society actors in the traditional instruments of 'participative governance' (Kohler-Koch 2011: 244), can be theoretically, described by the strategy of 'access'. (Beyers 2004) It constitutes a relationship between the interest group or the civil society actor and the European institution which is based on the exchange of access goods. The hypothesis is that the EU institution demands information, either expert knowledge or information about the distribution of preferences in the respective constituency. Actors who present reliable information of one or of both types are rewarded with 'access' to EU policy makers. 'Access' does not mean influence, 'access' simply means privileged information about decision-making processes or the willingness by EU policy makers to listen to the arguments of the interest group or civil society actor. Considering, the perspective of the EU institutions this strategy aims at increasing the quality of policy making. Using the 'access' strategy interest groups and EU institutions are in a 'win-win situation'.

While parts of these instruments may occur in explicitly public spaces, such as open hearings or online consultations, the exchange of access goods occurs more implicitly within this space without the public necessarily observing a privileged relationship between the EU institutions and certain interest groups. In an in-depth analysis of the consultation policy of two directorates-generals of the Commission Quittkat (2011) concludes that more (and new) actors are involved during the early stages of EU policy making, the number of instruments used during consultations is more diversified, and actors are asked to evaluate consultation processes and policies more often. Nevertheless, most consultations are still 'closed shops' which are dominated by established 'issue communities' on the EU level. While the Commission is trying to open consultations for new actors its success has been limited. (Quittkat 2011: 121-124) In these instruments of 'participative governance' the European

Commission has a gate-keeper function, due to the fact that it organizes all instruments. The only exception is the instrument of online consultation, where every citizens and every organization or institution can submit its opinion. However, most of these consultations follow a two step approach, where the first public consultation is followed by a stakeholder hearing for invited stakeholders. The consultation on the ECI is an example of such a process. (European Commission 2010c)

For the ECI the European Commissions' role as a gate keeper as far more limited. The only obstacle for citizens or civil society actors interested in organizing an ECI is the registration of the initiative with the European Commission. They have to form a citizens' committee of at least seven citizens from at least seven member states. (art. 3 ECI regulation) This committee can register the ECI with the Commission. The Commission is allowed to refuse the registration of an ECI, when it manifestly falls outside the framework of the Commissions' powers to submit a proposal for a legal act, when it is manifestly abusive, frivolous or vexatious, or when it is contrary to the values of the European Union. (art. 4 ECI regulation) This leaves some discretion to the European Commission to refuse the registration of an initiative, but it cannot control anymore who starts an ECI, when the organizers fulfil all these criteria. Especially civil society actors with a more critical attitude towards the process of European integration are likely to enter EU politics via the ECI while having a more limited access to other forms of 'participative governance'

The second argument is closely related to the strategy of 'access' as well. Following the strategy of access is most influential when civil society actors target the EU decision-making process in the early phases. It is much easier to get a specific interest into a draft proposal of the European Commission than getting the draft changed after it is published. To gain influence in these early stages of the decision-making process actors have to be present in Brussels, to keep in touch with the relevant Commission and Council staff and the relevant Members of the European Parliament. However, many civil society actors cannot afford having a representation in Brussels. This is especially true for new types of social actors, which do not have dense formal structures. Organizing an ECI does cost money, too. Berg estimates that 100,000 Euros are necessary to start an ECI. (Berg 2008: 45) Nonetheless, in contrast to the 'access' strategy most of the work to organize an ECI can be conducted by volunteers. Collecting statements of support is done locally by being present on the market place, what can be done during the leisure time, while lobbying the European Commission is done during working hours. Thus, the ECI is likely to be attractive for organizers of an ECI, which are able to mobilize a huge reservoir of members or activists. This is true for European umbrella organizations whose member organizations have the potential to mobilize. Furthermore, that is true for networks which include a large number of small civil society actors across Europe. (Maurer/Vogel 2009: 18; Berg 2008: 45) While the former ones are already present in EU politics the latter ones would be a new type of actors in EU politics. An illustrative example for the latter ones is the campaign asking for a work-free Sunday all over Europe, which tries to organize the first citizens' initiative next year.<sup>7</sup> It includes organizations ranging from local party groups and catholic congregations to the European umbrella organization of Christian students' organizations.

The third argument presented here, why the ECI will most likely include new actors in the EU decision-making processes, facilitates the organization of initiatives especially for new types of social actors. Unlike new types of social actors traditional member organizations with a dense formal structure have different channels to contact their members and fellows at their disposal. In their day

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<sup>7</sup> See: <http://www.free-sunday.eu> (last access. 25 September 2011).

to day work this deficiency is commonly compensated by using new media technologies. Here the possibility to collect statements of support electronically opens new dimensions of gathering support. The experience of the German Bundestag with online petitions is instructive: Since the decision to allow petitions to the Bundestag to be signed online, the instrument has become much more attractive. (Riehm/Coenen/Lindner/Blümel 2009) Depending on the technical standards for the software to collect statements of support online that will be published by the European Commission in early 2012 (art. 6 (5) ECI regulation) it might be expensive for civil society actors to design an own software. Regarding, this issue, two decisions in the formal framework reduced the costs of online collection systems. First of all, the European Commission will provide open-source software. Secondly, according to the revised draft version of the German law to implement the ECI, the process of certification that the online collection systems comply with the required technical standards will be free of charge. (Bundesrat 2003)

For these three reasons it seems to be likely that the ECI will not become a closed shop like other instruments of participative democracy. Instead it is an attractive instrument for new actors to enter EU politics. The established civil society actors and interest groups in EU politics will have the choice to use either the traditional lobbying strategies or to start an ECI.

### **3. Nonconformity of new actors will challenge existing informal institutions**

In the first paragraph I showed that there is no commonly accepted interpretation of what the ECI is. The minimal consensus is that it is not an instrument of direct democracy. In the second paragraph I argued that the ECI opens EU politics for new types of actors, which have never been active on the EU level before. Now I will turn to the above mentioned hypothesis that within in the discretion that the formal framework of the ECI currently leaves to the actor informal institutions will emerge. First of all, I will describe why the creation of new informal institutions and the change of existing informal institutions are very much likely to happen, before I propose a theoretical model to describe the creation and change of informal institutions. That will be based on diverging interpretations as one driving factor of processes of institutionalization.

I expect institutional change and the creation of new informal institutions, in the sense of sociological neo institutionalism (March/Olson 1989; 2005) to happen in two dimensions due to the reason that the ECI is a new instrument introduced into the political system of the European Union. The first dimension is the process of conducting an ECI itself. Starting with the registration of an ECI with the European Commission and ending with the Commission drawing conclusions from successful initiatives, the primary and secondary law define formal institutions of how of this process is structured. Within the discretion that these formal institutions bequeath to the actors new informal institutions which structure the actors' behavior within this discretion are likely to emerge. In the second dimension, the ECI is considered as a new element of the overall political system of the Union. The European Union is a set of formal institutions which are defined by primary and secondary law, e.g. the rules of procedure of the European Council, as well. Within these formal institutions informal institutions emerged, too. From a neo institutionalist perspective the Union is a dense network of formal and informal institutions that can be defined as rules, roles and procedures. Following the 'logic of appropriateness' these institutions structure the actors' behavior. Introducing the ECI into this dense network of institutions, existing institutions have to be adjusted to this new

specific situation. (Maurer/Vogel 2009:29) Within the formal framework this has already been done, for example for the interrelation of the ECI and the ordinary legislative procedure. Art. 10 and 11 of the ECI regulation make clear that there is no formal influence of a successful initiative on a legislative procedure. The Commission's exclusive right to initiate law is not touched by the ECI. However, these formal institutions bequeath discretion to the actors' behavior, too. Thus, we will most likely see the emergence of informal institutions structuring the action of the new ECI and other actors in the political system. The European Commission could extensively use its right to initiate law in cases of successful initiatives, for example. In the long run, an informal institution could overlay the formal division between the process of an ECI and the legislative procedure, establishing the rule that each successful ECI is followed by a Commission proposal for a European law.

Discussing the second dimension of institutional change and the creation of new informal institutions already described the first reason why we will most likely observe institutional change. That is theoretically discussed as the 'misfit' hypothesis. Börzel regards 'institutional change [being] most likely if there is a strong misfit between European and domestic institutions'. (Börzel 1999: 591) The argument behind the 'misfit' hypothesis is that institutions on the national level distribute resources among national actors. New European legal acts can change this distribution of resources due to an incompatibility between the EU and the domestic institutions. This institutional 'misfit' constitutes adaptational pressure' (Börzel 1999: 574-575) on the domestic institutions. The strategy how domestic actors respond to this pressure depends, according to Börzel (1999: 575), on the 'institutional culture' understood as 'informal understanding of appropriate behavior'. By applying this concept to the ECI, I have shown above that there can be a 'misfit' between the new and old EU level institutions, redistributing resources among the Parliament, the Commission on the one hand and interest groups and civil society actors on the other hand (the hypothetical informal institution of a Commission proposal following each successful initiative would distribute resources from the Commission to ECI organizers).

The second argument why we will most likely observe institutional change and the emergence of new informal institutions elaborates Börzel's argument (Börzel 1999: 575) of 'institutional culture' understood as 'informal understanding of appropriate behavior' influencing institutional adaptation further. In the previous chapter, I argued that the ECI will open EU politics for new types of actors that have never been involved in EU politics before. Thus, they cannot be aware of or socialized to the existing informal institutions which structure the actors' behavior within the political system of the European Union. However, actors pursuing the traditional lobbying strategy of 'access' (Beyer 2004) must be aware of these formal and informal rules to be successful. A good example is the attention that lobbyists pay to the European Parliament and its members. After the entering into force of the Lisbon Treaty that increased the European Parliament's competence lobbyist contact the Parliament more frequently than before. (Kluger Rasmussen 2011) These lobbyists seem to be well aware of the changed formal institution. Comparing actors who are socialized to the existing informal institutions with those actors who are not even aware of these institutions, we can expect that the 'informal understanding of appropriate behavior' of the former is closer to the existing institutions than the understanding of the latter. Thus, we can expect an adaptation which is smoother, the more common the actors' 'informal understandings of appropriate behavior' are. Or vice-versa: 'nonconformity of new actors will challenge existing informal institutions'.

Being socialized to a specific set of informal institutions is just one aspect that defines the 'informal understanding of appropriate behavior'. A second aspect has been discussed in the first paragraph of this paper. The 'informal understanding of appropriate behavior' depends on normative foundations, as well. The understanding is strongly dependant on which structure of meaning a specific actor assigns to the ECI. As shown above, these interpretations of the ECI differ considerably among the different actors or even within collective actors, such as the Commission or the European Parliament. Going along with Berger and Luckmann's (1966) sociology of knowledge of actors cannot agree on a common 'informal understanding of appropriate behavior' as long as they do not share a common knowledge about the ECI. Thus, the more the structures of meaning diverge, the more institutional contestation can be expected.

The three above mentioned hypotheses an institutional change include the following four assumptions which are the basis for the model of institutional change I propose: (1) Actors' behavior can change institutions. (2) A single actor cannot change institutions unilaterally. (3) Action means communicative action. (4) Informal institution exist because they are accepted by all actors involved (Lauth 2004:16).

Based on the work of Barley/Tolbert (1997) and Tolbert/Zucker (1983) that developed a model of the diffusion of innovations of formal institutions, I understand institutional change of informal institutions as a discursive process.<sup>8</sup> Specific Situations (March/Olson 2005: 4) in which existing informal institutions eroded,<sup>9</sup> no informal institutions exist due to the newness of formal institutions, or existing informal institutions are challenged, confront actors with a multitude of options to behave within in the discretion that the formal institutions bequeath. Informal institutions do not reduce the complexity of decision-making processes on how to act anymore. In this situation actors cannot simply follow the logic of appropriateness. They have to decide about their behavior based on their own interpretation of the specific Situation. They have to create knowledge about the situation and deduce their action from this knowledge. Due to the fact that diverse actors will interpret the situation differently, they will conclude on other models of appropriate behavior and act differently. Actors interpreting the ECI as the nucleus for direct democracy in the EU will challenge the existing formal institutions to broaden the discretion within them, for example. Other actors which regard the ECI as a challenge to their own competences and resources might try to reduce the discretion within the formal institutions. As long as all actors define appropriate behavior differently the process of an ECI will not function well. To develop a common understanding of appropriate behavior all actors have to agree on a common interpretation of the ECI, at first. Actors with different actors' positions (defined by formal and informal institutions) and different structures of knowledge will be part of a discourse on the instrument of an ECI. The discourse will produce a commonly shared knowledge about the ECI which contains a shared interpretation of the ECI or at least a compromise on the lowest common denominator on the structure of meaning applied to the ECI. On the basis of common understanding of the ECI, actors will develop a commonly shared understanding of appropriate behavior. According to this understanding of appropriate behavior the actors involved will develop roles and standard operating procedures. (March/Olsen 2005: 4) Some of them will become dominant and involved in informal Institutions which are commonly accepted.

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<sup>8</sup> The proposed model is an elaborated version of the model proposed in Knaut/Plottka 2011.

<sup>9</sup> The informal institution is commonly not accepted anymore.

#### **4. The ECI is an option for supranational actors to oppose intergovernmental politics**

As the discourse on the ECI instrument has just started and no initiative will be underway before April 2012, I cannot present any empirical evidence that the process of discourse driven institutional change. Thus, this paragraph deals with three hypotheses about the institutional change induced by the ECI in the overall political system of the European Union. Here, I will focus on the three EU institutions which are involved in the ordinary legislative procedure.

What has become obvious in the first paragraph of this paper is that neither the European Parliament nor the European Commission has a clear defined interpretation of the ECI instrument. Both institutions, or more precisely representatives of both institutions regard the ECI as a means to bridge the gap between citizens and EU institutions. However, the European Commission has clearly pointed out the limits (especially regarding the Commission's monopoly to initiate EU law) of the ECI, fearing that non-representative opinions will be issued. Some members of the European Parliaments regard the ECI as a threat to the parliaments' role as the representative of the citizens' interests. This refers to a more fundamental political and academic debate on the interrelations of representative and direct, or participative democracy. An issue that is widely discussed on the national level and has been brought to EU level by the ECI. While the European Parliament and the European Commission, as actors on the supranational level, develop an own interest as EU institution more easily, the Council of the EU consists of 27 member state governments. Here, we are able to detect diverging interpretation of the ECI instrument, too. A good example is the requirement to provide a personal identification number/personal identification document number. While 18 member states require such a number, 9 member states do not. (Annex 111 ECI regulation) While the previous states' interpretation of the ECI seems to be closer to the Commission one, the latter seems to regard the ECI as a part of the freedom of speech.

Mapping out these interpretations of the ECI several hypotheses on the future constitutional reality ('Verfassungswirklichkeit') of the ECI are possible:

(1) The prevailing interpretation is a reluctant reaction of the European Commission to the new instruments. The Commission's own interest of having the mono poly to initiate law will succeed and will, quite frequently, refuse to initiate law in the aftermath of successful initiative. Accordingly, this strategy of the European Commission will remain control over the legislative procedure and its gate keeper function concerning participative democracy in the European Union. In the long run such a behavior will reduce the ECI's value and damage the Union's legitimacy further. However, it will not challenge the European Commission's credibility as a supranational autonomous bureaucracy as it draws its legitimacy from effective problem solving instead of democratic accountability.

(2) For the European Parliament it is more unlikely that the institutions' own interest will prevail because the parliament's own perception as the representation of the citizens and a reluctant attitude towards the ECI are quite contradictory. The differentiation between representative and direct or participative democracy is mainly academic and hard to explain to a broad audience in detail. If the European Parliament refuses to react on the directly issued concern of one million or more citizens by arguing that it knows much better what the citizens' interests are, that will damage the European Union's overall legitimacy and the parliament's legitimacy as the speaking tube of the citizens, in particular. Thus, it is more likely that the European Parliament will become a proponent of the ECI. The fact that Members of the European Parliament are allowed to be part of the citizens' committee of ECI organizers but do not count to reach the quorum (art. 3 ECI regulation) points in

this direction. Especially the role of European political parties might become crucial in conducting ECIs. They are EU wide umbrella organizations and include member organizations in the member states, which have the potential to mobilize their members. Thus, the European political parties could become actors making the ECI work. Because European political parties lack media attention currently, the ECI might be a chance for the European political parties to receive broader public perception, as well. But I have to leave this question up to empirical research, so far. During the process of the ECI the European Parliament will most likely become active after the organizers of an ECI have submitted their initiative to the European Commission. In these three months the European Parliament could stimulate a debate on the subject of the respective initiative among EU decision makers to exert pressure on the European Commission to initiate an EU law. I expect the influence of a debate in the European Parliament lower, when it takes place while the organizers are collecting statements of support. Becoming an active proponent of the ECI instrument is a solution for the European Parliament to bridge the tension between representative and direct democracy.

(3) Since the entering into force of the Lisbon Treaty EU politics have become far more intergovernmental. Missiroli even describes EU politics as being 'presidential'. (Missiroli 2011) The European Council became an EU institution in 2009 and defines 'the general political directions and priorities' of the European Union. (Art. 15 (1) TEU) It gained agenda setting power. This is especially obvious in the current Euro zone crises. While the supranational European Commission was the major driving force behind the economic and monetary integration in the 1980<sup>th</sup> and 1990<sup>th</sup> the European Council dominates the current crisis management and sets the agenda. The European Commission plays a minor role with regard to defining priorities. Under these circumstances the ECI could be a means for the European Parliament and the European Commission to regain some agenda setting power in EU politics. To be precise, I do not think that the ECI is an instrument to re-adjust the imbalances between supranational and intergovernmental politics, completely. However, it is an option to give initiatives on which both institutions agree additional legitimacy in the EU legislative procedure. A good example might be the draft council directive on a common system of financial transaction tax. (European Commission 2011) The European Council will decide on this proposal in the consultation procedure, where the European Parliament is not an equal legislator. Thus, the ECI could be an option to exert pressure on the European Council in case it cannot agree on this directive. The Austrian and German Social Democrats proposed to start an ECI on the financial transaction tax some month ago. (Arcas 2011) If the European Commission and the European Parliament agree, the ECI could become a bridge to EU citizens and a counter weight to intergovernmental politics, at once.

These three hypotheses discuss possible scenarios for the institutional change we will be able to observe after April 2012, when we can expect the first initiatives to take place. An issue that has been widely neglected in my paper is the role of ECI organizers. The first initiatives will be crucial prime examples, leaving an imprint on the ECI instrument. However, these questions are issues for empirical research to take place in the next years.

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