

**The European Citizens' Initiative:
New Knowledge Regimes for Interest Groups' Involvement
in European Law Making Processes?**

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In December 2009 the Treaty of Lisbon came into force, ending a process of reforming the European Union (EU) which was started in 1999. (Marhold 2011) But this is just one side of the truth. The other side is that since December 2009 we are able to observe the implementation of the new treaty articles. We have entered a kind of a second phase of the reform process: some new articles initiate the creation of new formal institutions, e.g. the setup of the new European External Action Service (Lieb/Kremer 2010) or the European Citizens' Initiative (ECI). (Plottka 2011) Some reforms are just the formalisation of what has been practised over years, e.g. the recognition of the European Council as an institution¹ of the EU. (art. 13 (1) Treaty on European Union, TEU) Others continue reforms which had been started during earlier treaty revisions, e.g. the continued empowerment of the European Parliament. (Brok/Selmayr 2008: 228-230)

All these reforms and others which have not been mentioned here have something in common – the entering into force of the treaty revision is not the terminus of reform but a stopover in the whole reform process. The next challenge, which the EU has faced since early 2010, is to translate the new articles of the primary law into secondary law. This process has already begun: so far the 'Council Decision of 26 July 2010 establishing the organisation and functioning of the European External Action Service', the 'European Council Decision of 1 December 2009 adopting its Rules of Procedure', and the 'Regulation (EU) No. 211/2011 of 16 February 2011 on the citizens' initiative' have been adopted. Following the second phase of treaty reforms these new provisions have to be put in practice. That is what European institutions and actors are doing at present. Meanwhile, scholars of European integration (e.g. Wessels/Traguth 2010) are discussing which new rules, norms and procedures will emerge within the current formal framework of the primary and the secondary law.

In political science the importance of informal institutions has been underlined by Neo-Intuitionism (NI). With its three large strands (rational-choice, sociological and historical NI) the debate on NI has brought back institutions into political science. Unfortunately few NI scholars have ever tried to conceptualise institutional change. (For an overview see Quack 2006) As pointed out above, few of the new treaty articles establish new institutions on the EU level. Most of them modify formal institutions which have been in practice since the last treaty reform which came into force in 2002. Thus, to analyse the above mentioned phase 3 of treaty reforms the evolution of informal institutions has to be conceptualised. To do this we have to develop a concept of institutional change from a NI perspective. To do so, we discuss in this paper possible links between NI and the "sociology of knowledge approach to discourse" (SKAD). This theoretical alliance might be a way to integrate the concept of knowledge and power into NI. A second blind spot of NI, the role of power in institutions, might possibly be overcome this way, too. On the other hand from a SKAD perspective the role of formal (political) institutions is not clear.

The second aim of our paper is to discuss the application of this new approach to an empirical example. For this we chose the European Citizens' Initiative (ECI) as an example. Art. 11 (4) TEU grants the right of taking 'the initiative of inviting the European Commission [...] to submit any appropriate proposal on matters where citizens consider that a legal act of the Union is required' to 'not less than one million citizens who are nationals of a significant number of Member States'. To implement the ECI the Commission, the Parliament, and the Council of the European Union agreed on the Regulation No. 211/2011 on the Citizens' Initiative, which came into force on the 1st of April 2011. But according to art. 23 the regulation 'shall apply from' the 1st of April 2012. Thus, we cannot present empirical evidence on the evolution of informal rules, yet. But we can describe the formal institutions framing a 'blank sheet of paper' on which the informal institutions will evolve. Furthermore, we can argue why the informal institutions, guiding the behaviour of the actors involved, are likely to change.

In the first section of this paper (1) we follow two aims on the conceptual level: we apply the SKAD to the analysis of politics; and to make such an approach more fruitful we try to integrate the theoretical approaches of SKAD and NI. Afterwards we discuss the application of this new approach to an empirical example. To do that we will first of all give (2) a short introduction to the ECI, the agreed formal framework, and the crucial

¹ Here 'institution' does not refer to the NI definition but to art. 13 TEU.

points not covered by the formal law. (3) Then we will give an overview on the research on the involvement of the civil society into the decision making process on the EU level. (4) Then we will argue why the current informal rules are likely to change. (5) Finally, we will propose a research design to analyse institutional change.

1. *Neo-Institutionalism and the Sociology of Knowledge Approach to Discourse*

In political science, like in sociology, there is no clear definition of what is meant by an institution, nevertheless by an organisation. Despite the debate on NI political scientists define 'institutions' as formal and legal rules. This definition does not connect 'institution' with the 'social world', social actors, their behaviour or the creation of sense and symbols. Noticing the absence of social processes and structures of meanings in political concepts of institutions, Gerhard Göhler differentiates between social and political institutions. Göhler argues that both types of institutions interplay and influence political processes. (Göhler 1987; 2004) On the one side this view of institutions is traditional, on the other side Göhler recognizes the influence of the 'social world' on the political sphere. However, NI is much more influential in political science. Fritz Scharpf's 'Akteurzentrierter Institutionalismus' (2000) based on a rational-choice NI, and the works of James G. March and Johan P. Olsen based on the sociological NI have inspired empirical research in political science. In 'Rediscovering Institutions' (1989) the latter propose a model of political institutions which refers to the research of the sociology of organisations. (e.g. Meyer/Rowan 1977; Zucker 1977; and DiMaggio/Powell 1983) In political science this concept is an outstanding project because of its understanding of politics as depending on social structures: 'Political democracy depends not only on economic and social conditions but also on the design of political institutions.' (March/Olsen 1989: 17) March and Olsen set their understanding of politics against functionalist and rational-choice approaches to politics. The logic of acting is the 'logic of appropriateness' and it is not a 'logic of rationality'. 'Actions are fitted to situations by their appropriateness within a conception of identity.' (March/Olsen 1989: 38)

We propose the following model of institutions which is inspired by March's and Olson's definition of institutions as 'collections of structures, rules and standard operating procedures that have a partly autonomous role in political life' (March/Olsen 2005: 4) and which refers to Peter L. Berger's and Thomas Luckmann's 'The social construction of reality'. (Berger/Luckmann 1966) We define institutions as being composed of rules, roles and procedures. These rules, roles and procedures integrate formal and informal institutions or respectively political and social institutions. In a heuristic manner the differentiation between formal and informal institutions should be kept alive; in an 'empirical reality' both types go together. Theoretically the terms should make clear that formal and informal institutions have comparable effects on the behaviour of actors. In communicative interactions formal and informal institutions are relevant; they structure the actions of actors and the actors' interpretation of situations. Actors in a political context include all active and passive participants in political processes. They act in institutions which constrain their spectrum of options and stabilise the relationships of all participating actors. Institutional 'resources' empower actors to interact in given opportunity structures. The institutions define appropriate behaviour options for the actors in specific situations. Institutions include also structures of meanings which enable the actors to review the interactions. In a communicative process institutions construct identities, images, meanings, and symbols. Both formal and informal institutions are historically and culturally bound and permanently renewed in interactions. The main difference between the two types of institutions is their materiality. Formal institutions are specified by rules, which are written down, and by roles with defined tasks. This is not true for informal institutions. Another difference is their ability to punish actors if they violate rules. Formal institutions have defined sanction. Informal institutions do not have defined sanctions, but there are subtle mechanisms to exclude actors, if they do not live up to the expectations of the institutional structure. Formal and informal institutions are a symmetrical concept.

This concept is useful to analyse the interplay of formal and informal structures of behaviour or interactions between actors, and also to analyse the influence of socially, culturally and historically based structures in high formalised political contexts. But with respect to the rise of new institutions, the concept fails to explain why and when institutional change takes place. Furthermore NI does not integrate power and knowledge-relations into its concepts. NI is blind to power in institutions.

The combination of both concepts seems to be promising due to their common root, the Sociology of Knowledge of Peter L. Berger and Thomas Luckmann (Berger/Luckmann 1966). Both concepts referred to actors and structures (institutions). Both the SKAD and NI (as it is presented here) want to overcome the exclusive focus on 'one' side, actors or structures. Reiner Keller considers 'the processing of discourses through society as a dialectical interplay between actors producing statements, and the pre-given as well as emerging structurations and sociohistorical means they have to draw upon.' (Keller 2011: 52) Working from this assumption we can describe the relationship between institutions and discourses as relevant in interaction. In a way NI broadens the concept of the SKAD, because of its understanding of institutions as formal and informal structures which give orientation in communicative interactions and structure actions in specific situations. Moreover integrating the SKAD into NI makes it possible to analyse the role of complexes of power and knowledge in institutions.

Subsequently we argue that conceptualising the interplay of discourses and institutions will be fruitful for the analysis of politics. Basically we claim that discourses have some sort of influence on institutions and institutions influence the structure of discourses. In discourses defined as complexes of power and knowledge (Keller 2008; 2011) institutions become visible. Thus, it is possible to detect institutions by analysing discourses. They produce hierarchies and imbalances between actors in communicative processes. We do not consider discourses in a deliberative sense as ideal fora with evenly distributed power. (For such a concept see Habermas 1960; 1981) Instead, linking NI with SKAD introduces questions of power into the understanding of institutions in political science. Informal institutions stabilise interactions but do not determine them. Additionally, informal institutions influence the distribution of knowledge and speakers' positions in discourses. This concept tries to explain why informal institutions are in some situations more relevant than in others. To analyse the relevance of informal institutions in communicative processes we have to differentiate between two levels of structuring interactions: the level of knowledge and the level of institutions. The level of institutions is bound by rules, roles and procedures; the level of knowledge is related to the communicative content of the interaction.

The interplay of discourses and institutions refers to the question of institutional change. The NI proposes different concepts of institutional change. (Quack 2006) Altogether these concepts remain vague in explaining institutional change. Neither the role of knowledge and power nor the role of discourse in institutional change has been discussed. Bringing together institutions and discourses will enable us to introduce the concept of knowledge into institutions, and to explain how discourses emerge and how institutional change takes place.

2. *The formal framework of the ECI*

The ECI (art. 11 (4) TEU) is a new instrument of participative democracy, which grants a formal agenda setting power to 'not less than one million citizens'.² This new right of the citizens is restricted in several ways. First of all, the ECI is not an instrument of direct democracy. The Commission is not obliged to react on a successful initiative.³ According to art. 10 and 11 of the regulation successful initiatives will be followed by:

² The article originates from art. I-47 of the Treaty establishing a European Constitution. It was formulated during the European Convention.

³ We define a successful initiative as one that has at least 1 million approved supporters and is accepted by the Commission.

- The publication of the initiative (art. 10 (1) a regulation);
- The reception of the organisers by the Commission (art. 10 (1) b regulation);
- A hearing in the Parliament during which the organisers get the chance to present their initiative (art. 11 regulation);
- The publication of the judicial and political conclusions which the Commission draws from the initiative (art. 10 (1) c regulation).

These regulations show that the Commission's exclusive right to initiate legal acts is not touched by the ECI. Thus, the ECI is not a right of initiative, but a power of agenda setting. The Commission still has significant discretion in deciding how to react to a successful ECI. The way the Commission uses this discretion will be crucial for the ECI's ability to improve European democracy.

The second restriction concerns the subject of an ECI. The subject of an ECI has to lie within the Commission's right to initiate a legal act. All other issues, especially a treaty reform, cannot be subject of an ECI. (art. 4 (2) c regulation) In the academic debate three positions on this issue have been voiced: Some authors take the treaty literally and deny the possibility of initiatives that would reform the treaties. Other authors argue from a normative perspective that such initiatives have to be made possible. And an intermediate position argues that smaller treaty reforms based on art. 48 (7) TEU or art. 352 Treaty on the functioning of the European Union (TFEU) can be subject of an initiative. (Maurer/Vogel 2009) Politicians and activists have called for 'using the ECI's to test the boundaries' (European Citizen Action Service 2011) on this subject and leave the decision to interpret art. 11 (4) TEU to the European Court of Justice (ECJ).

There is a third point of discretion for the Commission to decide on the success of an ECI. Organisers willing to start an ECI have to register their initiative before collecting statements of support. Initiatives which are 'manifestly abusive, frivolous or vexatious' (art. 4 (2) c regulation) or which are 'manifestly contrary to the values of the Union as set out in Article 2 TEU' (art. 4 (2) c regulation) may not be registered by the Commission. How the Commission deals with its discretion to register an initiative will be another crucial factor influencing the ECI's ability to improve European democracy. Being either too strict or being too lax might damage the effectiveness of the ECI.

So far we have dealt with the discretion of the Commission to act within the formal framework of the ECI. A related question is how the Parliament will deal with successful initiatives. According to art. 11 of the regulation the Parliament must give the floor to the organisers of an initiative. If the Commission decides that a successful initiative will be followed by a proposal for a European legal act, the Parliament will have to deal with the proposed law during the subsequent law making process. If the Commission does not propose a legal act, no reaction of the Parliament is foreseen in the formal framework. But how will it react in this case? Will it respect the Commission's exclusive right to initiate legal acts? It seems to be more likely that the representatives would try to exert pressure on the Commission. Regarding themselves as the representatives of the citizens of the Union, the Members of the European Parliament might debate the initiative in a plenary session or vote on a resolution.

As shown above, the formal framework of the TEU and the regulation on the ECI does leave the Commission and the Parliament considerable discretion in how to deal with initiatives. To recall the picture from above: There are some blank spots within the formal framework where informal institutions still have to be sketched. Our hypothesis is that the first ECIs will be prime examples how to deal with successful initiatives within the remaining discretion. Thus, the discourses on the first ECIs will be about the subject matter of the initiative and on the informal rules structuring the European institutions' behaviour during future ECIs. This hypothesis includes one premise: The current informal institutions structuring the European institutions' relations with the civil society are not transferable to the new situation. To prove this premise we will sketch the relationship between the Commission and the civil society in the next section before we argue why there is a misfit of the new formal institutions.

3. Civil society and European institutions

The role of interest groups in the process of European integration 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 behaviour of interest groups'. (Haas 1968: XII) Neo-functionalism, like Liberal Intergovernmentalism, (Moravcsik 1997) tries to explore 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 the EU level, the process of interest intermediation and the Europeanization of interest groups on the national level. (Eising 2008: 7) Most of this research focussed 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 view that 'Participatory democracy via civil society involvement was ... a promising supplement to representative democracy'. (Finke 2007: 4) was a perspective shared by the Commission (2001), and it tried to change its relations with civil society accordingly.⁴ (Quittkat/Kohler-Koch 2011)

Research interested in the role of interest groups in the decision making process at the EU level and the process of interest intermediation has identified three strategies of interest groups or actors from civil society to influence EU policy making: 'access', 'voice' and 'litigation'. (Beyers 2004)

The logic of the 'litigation' strategy is to target EU policy via national courts through the preliminary reference mechanism of art. 267 TFEU. Interest groups challenge EU law hoping that the activist case law of the ECJ will bring about policy change. (Bouwen/McCown 2007) Because the ECI does not address the ECJ we will not discuss this strategy any further.⁵

The logic of the 'voice' strategy is to voice information in public arenas which address European policy makers indirectly. Beyers (2004) distinguishes between 'information politics' and 'protest politics'. 'Information politics' is defined as placing expert information or opinions at strategic points in public arenas, e.g. specialist media observed by the relevant actors. 'Protest politics' either combines the voicing of opinions with events trying to receive large media coverage, or is a demonstration organised for constituents of an interest group to publically voice their views. What both types of the 'voice' strategy have in common is to access policy makers via the public arena, in a one way direction.

The 'access' strategy is different in this respect. The 'access' strategy 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 has a demand for 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' means simply 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. Seen from the perspective of the EU institutions this strategy aims at increasing the quality of policy making. Consulting interest groups and civil society actors increases the decision makers' knowledge about the policy issue and

⁴ The debate on improving European democracy influenced the 'Convention on the Future of the European Union', too. (Council of the European Union 2001: 19-20) Thus, the ECI can be regarded as a result of this debate (Plotka 2011).

⁵ Andrew Duff expressed the idea 'of using the ECIs to test the boundaries' (European Citizen Action Service 2011) by initiating an ECI which has a treaty reform as its subject. If the European Commission refuses to register the ECI, the organizers should bring the case before the ECJ.

makes it possible to decide on policy options which come close to the constituencies' preferences. Furthermore, it is easier to implement policies people agree to, rather than force people to follow rules they oppose. Using the 'access' strategy interest groups and EU institutions are in a 'win-win situation'. While parts of the policy process 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. This approach does not live up to the demands for transparency in a democratic Union and has long been criticised. In the course of the debate on the democratic deficit of the European Union the Commission reacted to this criticism and published its white paper on 'European Governance' (European Commission 2001) to make its consultations more transparent. (Quittkat/Kohler-Koch 2011: 80) 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. But still most consultations are '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) Kohler-Koch comes to a sceptical conclusion, too. She sums up that we should not talk about 'participative democracy' but 'participative governance' in the European Union. (Kohler-Koch 2011: 244)

4. *The European Citizens' Initiative: initiating institutional change?*

So far we have given an overview on the formal framework of the ECI created in phase 1 (primary law) and phase 2 (secondary law) of the reform process. Phase 3 of the reform process (informal institutions) has just started with the entering into force of the regulation on the citizens' initiative and its implementation, but the phase will not come to an end until the first successful ECIs are completed and the European institutions have reacted. Our hypothesis is that during phase 3 informal institutions which currently structure the behaviour of interest groups and civil society actors on the one hand and EU institutions on the other hand will change due to the introduction of the ECI. We cannot yet give empirical evidence for this, because the process has just started. However we can present reasons why we think that change will take place and a concept of how to analyse it. The first task will be done in this section, the second task in the last section of this paper. We have two reasons why we think that institutional change will take place: The first one is the involvement of new actors in EU politics via the ECI; the second reason is closely related to the concept of institutional 'misfit' from Europeanization research.

(1) As cited above Quittkat concludes that most consultations are 'closed shops' in which only a limited number of well-established actors participate. (Quittkat 2011: 121-124) One reason for this is the transaction costs interest groups and civil society actors face in participating. The previously discussed strategies to participate in European law making, especially the strategies of 'litigation' and 'access', require continuous financial support and a direct presence in Brussels. In accordance with this hypothesis Eising concludes that business associations, which can be regarded as prime example of well-equipped organisations presenting specific interests, 'rely on their contacts with EU institutions to influence policies.' (Eising 2005: 30) A finding that comes close to the results of Beyers (2004: 234) who found that diffuse interests more often address the Parliament while specific interests more frequently address the Commission. We can assume that the Commission is more interested in costly expertise and the Parliament is more interested in information about the preference distribution among an interest group's constituencies, due to the fact that the Members of the European Parliament depend on re-election, while the accountability of the Commission is still limited. We see that the threshold to enter European politics via the strategies of 'access' and 'litigation' seem to be quite high, limiting the number of interest groups and civil society actors participating in EU politics. For the strategy of 'voice' we can assume that the transaction costs are lower. Whereas placing information in the relevant media and fora requires resources, organising events such as protests that attract broad media coverage depends

more on creativity than money. But Imig and Tarrow (2003: 137) find for the 1990s that still nearly 95 per cent of all protest events take place at the national level and address national actors. The threshold to enter EU politics via the strategy of 'voice' is lower but most interest groups still remain within the national borders when organising protest events.

Will the instrument of the ECI change this? On the one hand, we can argue that there are huge thresholds: formulating an initiative which fulfils the formal criteria requires expertise in EU law; organising a transnational campaign to collect 1 million statements of support from seven member states presupposes infrastructure and a considerable amount of money; the nature of the personal data signatories are required to provide; and finally the necessity to collect the statements of support within twelve months. Taken together, these thresholds arguably restrict the potential organisers of an ECI to large transnational associations. On the other hand, we can argue: Collecting statements of support is less a question of expensive media campaigning than of hard voluntary ground work. Berg estimates that 100,000 Euros are necessary to start an ECI. (Berg 2008: 45) The possibility to collect statements of support electronically opens new dimensions of gathering support. The German Bundestag has comparable experience: 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) Actors from the civil society plan to organise help desks giving judicial support for people wanting to start an ECI. Organisers of ECIs do not need to be transnational associations; smaller more national oriented organisations can create networks of ECI organisers across Europe. (Berg 2008: 45) This has already happened. 25 pilot initiatives have already been started or are preparing to be the first ECI to be registered in April 2012. (Green European Foundation 2010: 63-66) What makes the ECI so attractive is a combination of low transaction costs with the guarantee of consideration of the proposed legal act by the EU institutions according to art. 10 and 11 of the regulation, which is far beyond what other activities using the 'voice' strategy can expect. Furthermore, the instrument of the ECI lives up to changed participation demands. Organisations using the strategies 'litigation' or 'access' require stable and lasting support of members which are interested in an issue over a long time. Labour unions and business associations are good examples. Members expect them to deal with a multitude of different issues. Today the participation of citizens is much more issue oriented. Citizens organise themselves to achieve a clear cut policy goal and end their participation, if the policy is changed. The ECI is an instrument perfectly designed to fulfil such participatory demands.

Thus, we hypothesise that new types of actors, such as grassroots campaigners and new social movements, which were never involved in EU politics before will enter the EU level to voice their demands by initiating an ECI. As these new actors were rarely or even never involved in the consultation regimes of the Commission before they do not have any knowledge about EU politics. As mentioned above there is the idea to establish help desks for these actors because people currently involved in EU politics fear that these new actors will not be able to fulfil the formal criteria of an ECI. Beyond the formal institutions these actors do not have any knowledge about rules, norms and procedures (informal institutions) structuring the interactions between the EU institutions and civil society. One possible option is that these actors will learn the necessary knowledge during a process of socialisation. But most of the new actors are likely to quit EU politics shortly after completing an ECI. The other possible option is that not all new actors will be fully socialised, but an influx of new actors is constantly challenging the existing knowledge, the existing rules, norms and procedures. Especially during the first ECIs when no commonly accepted informal institutions exist (as we will argue in the next section) those new actors will challenge the institutions of the old consultation regimes and fuel the process of institutional change.

(2) New actors challenging the existing institutions due to a lack of knowledge are just one cause of institutional change. Not all actors are new. The EU institutions and established interest groups and actors from civil society participate in the process of an ECI, too. They do have the knowledge from their former participation in EU politics and they are aware of the formal and informal institutions structuring the interaction of EU-society relations. That makes institutional change quite unlikely. But the ECI is a new instrument of participative democracy introduced in the institutional system of the EU. As shown in the section

2 of this paper, new formal institutions have been created in primary and secondary law. That raises the question whether the existing rules, norms and procedures are applicable to these new formal institutions. Here we rely on the concept of 'misfit' from research on Europeanization. From an institutionalist perspective Börzel regards 'institutional change [as 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 the 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 behaviour'. Applying this concept to ECI we will show that there is a 'misfit' between the new and old EU level institutions redistributing resources among the Parliament, the Commission on the one hand the interests groups and civil society actors on the other hand. Furthermore we will identify two different 'institutional cultures' influencing the strategy actors will choose to adapt.

As shown above the strategy of 'voice' still plays a minor role in interest representation on the EU level. The dominant strategy of interest representation is 'access'. The Commission is the main addressee of this strategy while the number of interest groups targeting the Parliament increases with its power. (Kluger-Rasmussen 2011) The Commission organises its civil society relations in consultation regimes, while the Parliament is currently discussing its policy towards lobbyists. (EurActive 2011) As shown above these consultation regimes involve mainly established actors in EU policy making and they are based on the exchange logic of the 'access' strategy. Thus, the relationship between interest groups and civil society actors can be characterised as a 'win-win' situations and mainly cooperative. In some cases the Commission even supports interest organisations to even the imbalances between diffuse and specific interests. The Commission is in the role of a double gate-keeper. First, it controls the gate to consultation regimes and has an influence on the composition of the participating interest groups. Despite the fact that the Commission tries to involve more and new actors this is a powerful position. Second, the Commission has the exclusive right to initiate European legal acts. It controls which interests are considered in the draft versions of legal acts. European consultation regimes can be regarded as menus of opinions and arguments from which the Commission can choose what will be included in its draft. Without evaluating the Commission's behaviour this is a powerful position, too. As shown above the ECI will change this situation partly. On the one hand, the Commission's exclusive right to initiate European legal acts remains untouched by the ECI. On the other hand the Commission loses its gate keeper function concerning the participation of interest groups and civil society actors in EU interest intermediation. Thus, we can expect the cooperative culture in Commission-society relations will become more conflictual. We can consider this as a redistribution of resources from the Commission to civil society actors.

What about the Parliament? It is hardly involved in the ECI and the Parliament as a collective actor still has a minor role regarding lobbying strategies of interest groups and civil society actors. They address the individual Members of the European Parliament, which makes it much more difficult to conceptualise these relations. But we can detect a redistribution of resources for the Parliament as well. The classical model of interest representation in the European Union regards the Commission as the representative of the supranational interest, the Council as the representative of the member states' interests and the Parliament as the representative of the citizens' interests. The ECI does change this partly. ECI gives actors agenda setting power. Although they cannot initiate European law making ECI gives actors a formal instrument to bring their concern onto the European agenda without any institutional gate keeper able to prevent them. Thus, the ECI is a challenge to the Parliament's role as the exclusive representative of the citizens' interests. We consider this as a redistribution of resources.

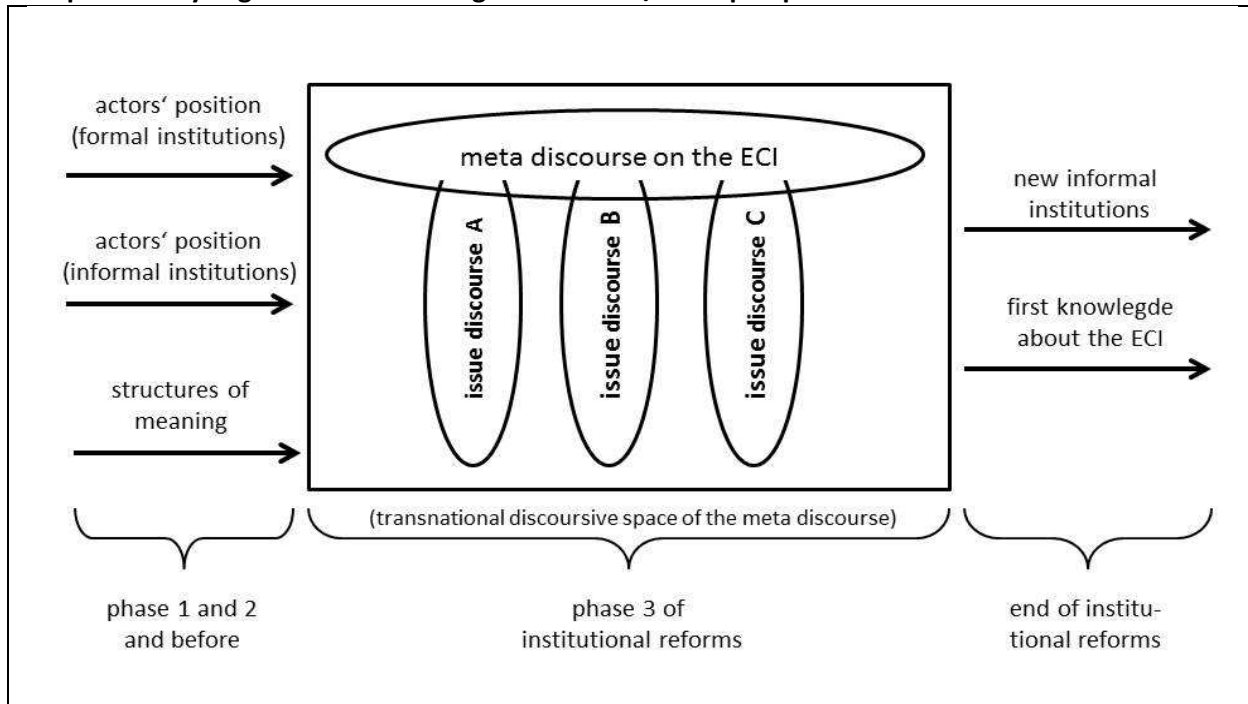
So far we have argued that there is an institutional 'misfit' which exerts adaptational pressure on the informal institutions structuring the EU-society relations. According to the 'misfit' hypothesis it depends on the 'institutional culture' understood as the 'informal understanding of appropriate behaviour' (Börzel 1999: 575)

whether institutional change will come. The model of appropriate behaviour the Parliament and the Commission apply to the ECI depends on how they perceive the ECI. We have identified two contrary structures of meanings the two institutions could possibly apply to the ECI, one that will lead to institutional change and one that will most likely prohibit or at least hamper institutional change. But these two structures of meanings have to be backed by more empirical research, as will be shown in the next section. Furthermore, the list is not exhaustive; maybe we will find more structures of meanings of the ECI. The one model refers to the formal rights that institutions possess and regards the ECI as a challenge to stability of the EU's institutional system. The Commission sees its own role in the EU endangered by the ECI. The output oriented model of European democracy is challenged by a process of politicising EU decisions. Similarly the European Parliament could regard the ECI as a challenge to representative democracy. New actors evolving on the EU level challenge the Parliament's role as the exclusive representation of citizens' interests. The ECI is one step in the process of deparliamentarisation. If the Parliament and the Commission understand the ECI this way, we can expect them to limit the functionality of the ECI. Despite its duty in art. 11 of the regulation to host a hearing on successful initiatives the Parliament would ignore the instrument of the ECI. The Commission would try to reject as many ECIs as possible, receive the organisers on the lowest possible level, and tear down each and every successful initiative. The outcome of such behaviour would be the end of art. 11 (4) TEU. The alternative model would tie in with the debate on the democratic deficit. As shown above the Commission considers participative democracy as a complement to representative democracy and a way to overcome the democratic deficit of the European Union. The ECI prominently proposed by parliamentarians from the European and national level during the European Convention might be away to adapt the European Union to new participatory demands of its citizens. If the Parliament and the Commission act according to this interpretation of the ECI we will see institutional change. The Parliament will take up the initiatives and debate them; the Commission will use its right to refuse the registration of ECIs very sparingly, it will receive the organisers on a high political level, and finally adopt ECIs and draft proposals quite frequently. Despite the restricted formal framework we will see a coalition of the Parliament, the Commission, and civil society actors testing the boundaries of the ECI regulation and making participative democracy work. Both possible options we sketched here are extremes, but both will induce institutional change on the informal level. What will happen in reality cannot be analysed before the first ECIs are successfully completed, but we can propose a research design how to do that.

5. Analysing institutional change: a first sketch of a research design

In the previous sections we tried to argue why we think that institutional change as a discursive process will take place due to the impulse of establishing the ECI.

Graph 1: Analysing institutional change from an NI /SKDA perspective



Graph 1 and table 1 try to summarise the process of institutional change in accordance with the above mentioned phases of institutional reforms. In phase 1 and 2 the presuppositions evolve. The actors' positions are defined by the formal institutions (primary and secondary law) and by the informal institutions structuring the EU-society relations in consultation regimes. The actors' positions defined by the new formal institutions and the old informal institutions have been sketched above. Two possible structures of meaning closely related to the Parliament's and the Commission's institutional culture have been proposed above, too. But what we have identified so far is not based on empirical research. They are just hypotheses we have identified by reading official documents of the Parliament and the Commission, literature on the ECI, and statements of actors involved. To back these hypotheses and to identify more structures of meaning we propose interviews with members of the Parliament and the Commission, and with actors from the civil society planning to organise ECIs. Furthermore, official documents and statements of the above mentioned actors should be analysed. We are well aware of the problem future interviews will create when our aim is to identify former informal institutions, which have started to change already. Thus, we have to rely on former research on EU-civil society relations to cope with this problem. According to our theoretical model proposed above we expect the process of institutional change to be driven by discourse. The discourse will produce new knowledge that will become manifest in new and changed informal institutions. Thus we expect the process of institutional take place as a meta discourse on the instrument of the ECI. In early 2012 some ECIs will start dealing with different issues, e.g. initiatives on a moratorium on GMO, a work-free Sunday, a European Obesity Day Charter, and the reimbursement of costs of buying organic food are planned. (Green European Foundation 2010: 65-66) They will create issue discourses in transnational discursive spaces dealing with the respective topic. Meanwhile each of this issue discourses will be part of a discourse on the instrument of the ECI, too, because each of the initiatives might become the prime example how to deal with ECIs. Parallel there will be an experts' discourse on the instrument of ECI itself. This expert discourse and the intervening issue discourses will constitute the meta discourse which produces in an overlapping transnational discursive space new knowledge

concerning the ECI. That will become manifest in new informal institutions. As table 1 and 2 show in the last column we propose an analysis of interviews with actors, campaigning material, press material on the ECIs, and statements of the EU institutions and political actors to identify the new knowledge, the transformed structures of meanings from which we can deduce the new informal institutions, which structure actors' behaviour in the process of an ECI.

Table 1: Operationalizing the variables

	Phase 1 and 2	Phase 3	End of institutional reform
actors' position (formal institutions)	defined in primary and secondary law	Constant	defined in primary and secondary law ⁶
actors' position (informal institutions)	informal institutions defining the positions of actors within the consultation regimes of the EU institutions	Transformation	new informal institutions
structures of meaning (of the ECI)	created during the Convention on the Future of the EU and the law making process on the regulation	possible transformation	transformed structures of meaning
knowledge about the ECI	not existing	Creation	Knowledge

Table 2: Material for the empirical research

actors' position (formal institutions)	- primary law - secondary law	Constant	/
actors' position (informal institutions)	- literature on interest intermediation - interviews with actors	Transformation	- interviews with actors - campaigning material - press material on the ECIs - statements of the EU institutions and political actors
structures of meanings (of the ECI)	- interviews with actors - material published during the Convention and the law making process	possible transformation	
knowledge about the ECI	/	Creation	

⁶ The European Commission shall present a review of the regulation on the citizens' initiative on 1 April 2015 and every three years thereafter. (art. 22 regulation) This review might be an impulse for a reform of the formal institutions defined in the secondary law.

6. Literature

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