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# **The European Citizens Initiative: Do New Actors in EU Politics and Challenge EU Law Making?**

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## 1. Introduction

Since 1st April 2012 one million EU citizens, from at least seven member states, have the opportunity to invite the European Commission (Commission) to submit a proposal for a European legal act. This European Citizens' Initiative (ECI) is a new channel for the EU citizens to set the agenda, but it does not directly involve them into EU law-making. The Commission or the European Parliament might regard the ECI as a threat to their established roles in EU politics. Formally, the ECI does not touch upon the Commissions' exclusive right of initiative, but in practical terms successful initiatives could force the Commission to become active. That is shown in the following *second* section of this paper, which presents the ECI procedure and draws first conclusions on aspects relevant for the introduction of the ECI into the political system of the European Union.

The *third* section of this paper presents a concept to understand the overall process of treaty reforms in the European Union. It points out that what have been called the introduction of the ECI into the political system of the European Union are the establishment of a constitutional practice and the emergence of new informal institutions. This is a sociological neo-institutionalist perspective on the process of treaty reforms that is explicated in the *fourth* section, which presents furthermore a model of treaty reforms. To do that the neo-institutional perspective of March and Olson (1989; 2005) on institutions is complemented with Berger's and Luckmann's (1966) idea of how institutions emerge. By using Keller's 'Sociology of Knowledge Approach to Discourse (SKAD)' (2010) the process of institutionalisation is opened for empirical research.

A first attempt is undertaken in the *fifth* section. As the first initiatives were registered in May 2012 and have not started collecting statements of support, yet, this paper cannot give empirical evidence on the introduction of the ECI in the political systems of the European Union. But as it will be shown in the fourth section, for the proposed concept of institutionalisation the actors' perception of reality is crucial. Thus, based on a discourse analysis of documents from the decision-making process and the implementation of the regulation on the citizens' initiative the paper identifies the structures of meaning that different EU institutions apply to the ECI.

These different structures of meaning applied to the instrument of the ECI are the base for three scenarios presented in the *sixth* section. Each of the three scenarios describes a potential outcome of the process of institutionalisation, depending on which structures of meaning will become dominant in the discourse on the ECI.

## 2. What is the ECI? And what is it not?

The European Citizens' Initiative (ECI) is a new citizens' right, introduced by the Treaty of Lisbon into the European primary law (art. 11 (4) Treaty on the European Union, TEU). It assigns one million citizens of the Union, who are nationals of a significant number of member states, the right to invite the Commission to make a proposal for a European legislative act, where they think this is necessary. The subjects eligible for an ECI are limited in two ways: The Commission has to have the right to draft a proposal in the respective policy field and the proposal has to implement, but not amend the treaties. The exact procedure and the definition of a significant number of member states are not given in the treaty, but in the Regulation (EU) No 211/2011 on the citizens' initiative (ECI regulation) agreed by the European Parliament and the Council of the European Union in the ordinary legislative procedure (art. 24 Treaty on the Functioning of the European Union, TFEU). The ECI regulation came into force on 1 April 2011 but became valid one year later on 1 April 2012. Since then organisers willing to start an ECI, they can register their initiative with the Commission.

The ECI procedure itself consists of five consecutive steps: (1) setting up a citizens' committee; (2) registering the ECI with the Commission; (3) collecting signatures; (4) verification and certification of signatures by national authorities; (5) examination of an ECI by the Commission.

**Graph 1: Overview of the five step ECI procedure**

1	2	3	4	5
Setting up of a citizens' committee  7 citizens residing in 7 different member states	Registering of the ECI depending on the admissibility check  European Commission	Collecting statements of support online and offline  citizens' committee and supporters	Verification of statements and certification of the number collected  national authorities (BVA in Germany)	– Publication – Reception of organisers – Public hearing – Political + judicial conclusions  Commission (and Parliament)
no timeframe	2 months	12 months	3 months	3 months
art. 3 ECI regulation	art. 4 ECI regulation	art. 5-7 ECI regulation	art. 8 ECI regulation	art. 9-11 ECI regulation

Source: Own graph.

*Step 1:* As a first step seven citizens of the union residing in at least seven different member states have to found a citizens' committee. A representative and a substitute of the citizens' committee are the contact persons for the Commission during the process of the ECI (art 3 ECI regulation). Organisations are not allowed to become organisers of an ECI, but they are allowed to support organisers in conducting an ECI. Furthermore, Members of the European Parliament (MEP) are allowed to be members of a citizens' committee, but they are not counted with regard to the quorum of seven. The idea behind both constraints is the understanding of the ECI as an instrument for citizens and not for lobby organisation or politicians.

*Step 2:* In a second step an ECI initiative has to be registered with the Commission. To do that the organisers have to send the title of the initiative (max 100 characters), the subject matter (max 200 characters), the description of its objective (max 500 characters), the treaty provisions considered to be relevant, the information on the citizens' committee and the information on all sources of

founding to the Commission. Additional material and/or a complete legislative proposal can be included as an annex (annex II ECI regulation). After having received this information the Commission has to complete an admissibility check within two months. It may refuse the registration of an ECI if not all information are provided, if it is 'manifestly abusive, frivolous or vexatious' (art. 4 (2) c ECI regulation), if it is 'manifestly contrary to the values of the Union as set out in article 2 TEU' (art. 4 (2) c ECI regulation), and if it falls manifestly outside the framework of the Commission's powers (art. 4 (2) b ECI regulation). Compared to other instruments of participative democracy or governance, as Kohler-Koch (2011: 47) puts it, the Commissions' gate keeper role is significantly reduced. For most of the other instruments of participatory democracy, with the exception of online consultations (Quittkat 2011a), the Commission has an almost full control of the participants (Quittkat 2011b: 121-124). Organisers fulfilling the criteria defined in art. 4 (2) ECI regulation cannot be prevented from starting their initiative.

*Step 3:* After the registration of an initiative, the organisers get twelve months to collect the necessary number of statements of support. A successful initiative has to fulfil two quora: (1) The total number of collected statements of support has to be at least one million (art. 11 (4) TEU). (2) In at least one quarter of all member states (currently seven) national quora according to annex III ECI regulation have to be fulfilled. They range from 4.500 in Malta and other member states with the minimum number of deputies in the European Parliament to 74.250 in Germany.<sup>1</sup> Statements of support can be either collected on paper in the streets or online. To collect them electronically, the organisers have to set up an online collection system that is certified by a responsible national authority.<sup>2</sup> It has to certify that the online collection system meets all necessary requirements (Commission Implementing Regulation (EU) No 1179/2011). About two month after the first ECI was registered on 9 May 2012 (European Commission 2012) none of the organisers is able to set up an online collection system that meets these requirements (Initiative for the European Citizens' Initiative (2012)).

*Step 4:* After twelve months or after having collected a sufficient number of statements of support, the statements have to be verified by the responsible national authorities within three months (art. 8 ECI regulation). In Germany for example the Bundesverwaltungsamt (BVA) is responsible for the verification (§ 1 Gesetz zur Europäischen Bürgerinitiative, EBIG). To verify the number of collected statements of support, the national authorities can either check all statements or just check a control sample.

*Step 5:* If the certified number of statements of support meets both quora the organisers can submit their initiative to the Commission. Within the next three months the initiative will undergo an examination procedure. The examination procedure includes the publication of the initiative in the register, a meeting between the Commission and the organisers on an appropriate level, and a hearing in the European Parliament giving the organisers an opportunity to present their initiative. Finally, the Commission has to draw its legal and political conclusions, which have to be published (art. 9-11 ECI regulation). That means that Commission can check the admissibility criteria once more and finally decide whether an initiative is eligible with regard to the above mentioned criteria. Furthermore, the Commission has the right to decide whether it will draft a legislative proposal or

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<sup>1</sup> The quora are calculated on the basis of the number of MEPS from each member state (art. 7 ECI regulation; Commission Delegated Regulation (EU) No 268/2012).

<sup>2</sup> The responsibility depends on where the online collection system is physically hosted. In Germany the responsible authority is the Bundesamt für Sicherheit in der Informationstechnik (BSI).

not. There is no automatism that a successful initiative starts a legislative procedure.<sup>3</sup> The European Commission's exclusive right remains untouched by the ECI.

Considering this formal procedure of an ECI, we can draw four major conclusions: (1) Constituting a new citizens' right, the ECI is an instrument of participative democracy and not of direct democracy. It assigns a formalised agenda-setting power to the European citizens, but does not formally involve them in the legislative procedure. The organisers' ability to exert pressure on the Commission, to initiate a proposal for a legal act, is of informal nature. It depends very much on the publicity an initiative is able to attract.

(2) But the ECI differs from other instruments of participative democracy. Most of the other instruments take place in secrecy or in very limited publics among EU experts, lobbyists, politicians, and administrative staff. The actors' influence increases most often with the secrecy of the instruments. Contributions to public consultation are less likely to influence a Commission's proposal than confidential long term contacts with Commission staff (Beyers 2004). As mentioned above, the logic of an ECI is different: The more publicity an initiative attracts, the more likely it will force the Commission to initiate a legislative procedure. While traditional interest groups' strategies to influence EU policy making by taking part in instruments of participative democracy, such as 'access' (Beyers 2004), create a win-win situation between interest groups and EU institutions, the instrument of the ECI is more conflictive. While the strategy of 'access' relies on an exchange of information (provided by interest groups/civil society organisations) for access (granted by the EU institutions), an ECI is criticism of the Commission's (or all EU institutions') inactivity.

(3) A second difference between the ECI and other instruments of participative democracy is the Commission's ability to control the access to the instrument. While it has an obvious gate keeper role in most other instruments of participative democracy, online consultations are an exception (Quittkat 2011a), its powers to prevent organisers from starting an ECI are limited. Thus, it seems to be likely that new actors that have never been involved in EU politics before will have a try and make use of the ECI (Plottka 2012).

(4) Being a new instrument, introduced by the Treaty of Lisbon, and being different from established instruments in some respects, the ECI has to be adapted into the political system of the European Union. This poses especially for the Commission the question: How to deal with initiatives? But the other two relevant actors in the legislative procedure have to take a stance as well. While the Council of the European Union is hardly mentioned in the context of the ECI, the European Parliament has a limited formal role in the ECI procedure. It hosts the public hearing during the examination procedure. Furthermore, the restrictions on MEPs to become actors in an ECI point to an expectation that the European Parliament could become a relevant actor for ECIs.

### **3. Evolving Constitutional Practises as the Third Step of Treaty Reforms**

Considering the procedure of the ECI, we concluded that the instrument of the ECI has to be adapted to the political system of the European Union, as the ECI regulation leaves considerable discretion for the EU institutions to deal with initiatives. While doing this, we implicitly used the perspective of the sociological neo-institutionalism on the ECI. But before we make this perspective

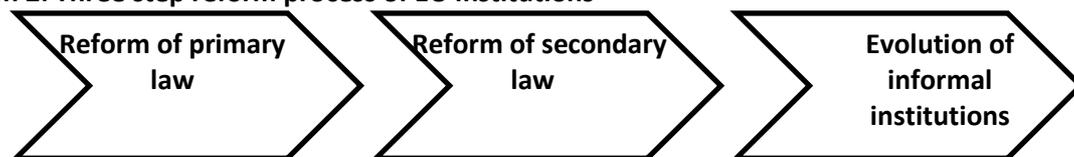
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<sup>3</sup> The word 'invite' used in art. 11 (4) TEU is very clear in this respect.

explicit and conceptualise the process of adaptation as a process of institutionalisation, we first have to step back and have a broader look at the overall process of institutional reform in the European Union. By now means the ECI regulation is the initial of the adaptation process, but a step in the process itself.

A commonly used understanding of reform processes in the European Union equates the reform process with the negotiation of new treaties or reform treaties that ends with their entering into force. From this perspective the last treaty reform ended on 1 December 2009. This is a very formal understanding of treaty reforms. From my point of view, the first step of a three step reform process ended on 1 December 2009.

**Graph 2: Three step reform process of EU institutions**



Source: Own graph.

As graph 2 points out, the idea of the three step reform process is rather an analytical concept but empirical reality. This is underlined by showing an open line of arrows that does not start with the first step (reform of primary law) and that does not end with the third step (evolution of informal institutions). In reality, step three is always the base for a new step one in the on-going process of European integration. The first step is the treaty reform itself. The exact procedure depends on whether it is done according to art. 48 (2 ff.) TEU (ordinary revision procedure), art. 48 (6 ff.) TEU (simplified revision procedures), art. 352 TFEU (flexibility clause) or even outside the formal framework of the European Union by negotiating a new international treaty (e.g. fiscal compact: Treaty on Stability, Coordination and Governance in the Economic and Monetary Union). After having agreed on the reform of the primary law, the new (reform) treaty have to be ratified according to the constitutional provisions of all signatories<sup>4</sup> and all instruments of ratification has to be deposited with the Italian government, before the reform enters into force. The provisions of the primary law are the first part of the formal framework. In the second step new treaty provisions have to be implemented. Since December 2009 we are able to observe this implementation in the form of secondary law. The Rules of procedures of the European Council, the Council Decision establishing the organisation and functioning of the European External Action Service, and the ECI regulation are examples of secondary law that substantiates the treaty provisions. Both, the treaty provisions and the newly created secondary law set up the formal framework in which the political actors act. But as pointed out in the previous section, the formal framework of the ECI, constituted by art. 11 (4) TEU, art. 24 TFEU, the ECI regulation, the Commission Delegated Regulation (EU) No. 268/2012, the Commission Implementing Regulation (EU) No. 1179/2011, and the national implementation laws, leaves considerable discretion to the EU institutions, to deal with the ECI. From a sociological neo-institutionalist perspective the blank spots within the formal framework will be filled by informal institutions, defined as ‘collections of structures, rules and standard operating’ (March/Olsen 2005: 4), that structure the behaviour of the actors involved. In other words, after the setup of the formal

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<sup>4</sup> Art. 352 TFEU (flexibility clause) does not require ratification in the member states, but the German Constitutional Court demands ratification of amendments according to art. 352 TFEU by the German Bundestag und the German Bundesrat according to art. 23 (1) German basic law (Bundesverfassungsgericht 2009: 328).

framework in the first and second step of the reform process, a constitutional practice emerges during the third step of the process. My hypothesis for this paper is that the first ECIs will be prime examples establishing a constitutional practice how to deal with successful initiatives within the established formal framework. During the first initiatives, we expect a process of institutionalisation to take place in two dimensions: In the first dimension, there will be adaptation processes that fit the instrument of the ECI into the existing institutional system of the European Union (e.g.: Has the ECI an influence on the Commission's exclusive right to initiate European law?). In the second dimension, we will be able to observe the emergence of informal institutions that structure behaviour within the procedure of an ECI.

Besides this theoretical argument, that new formal provisions have to be put into practice, there are two reasons, why we will most likely be able to observe a process of institutionalisation and institutional change. First of all, that has already been mentioned, the ECI differs from other instruments of participative democracy. Thus, informal institutions structuring the interaction of the EU institutions and interest groups/citizens in instruments of participative democracy are not easily transferable to the ECI. While the former create a kind of partnership, the latter is conflictive. It is comparable to the lobbying strategy of 'voice' (Beyers 2004). While there is no required formalised interaction between the EU institutions and civil society actors or citizens when the strategy of 'voice' is pursued, there is required formalised interaction during an ECI. Secondly, we can expect that new actors, who have never been involved in EU politics before, will enter EU politics by conducting an ECI. An analysis of the actors involved in the consultation process on the ECI regulation, the organisers of test ECIs,<sup>5</sup> and the actors, who claimed in February 2012, that they are willing to start an ECI, shows that new actors seem to be more interested in using the ECI than established actors (Plottka 2012: 342-343). There are some arguments that make it plausible why new actors are more interested: Organising an ECI requires financial and other resources. Established actors might reach their policy goals more efficiently by using other lobbying instruments. Organising an ECI requires first and foremost volunteers who collect the statements of support. Because volunteers can hardly be substituted by financial resources, civil society actors active at the grass root level have the potential to mobilise volunteers, while EU level umbrella organisations will have more problems to do that. Furthermore, the institutional design of the ECI fits the changing participatory demands of citizens (Rucht 2010). It has a clearly defined time frame, and it deals with a single issue. Thus, it is more interesting for citizens who like to participate, but who are not willing to work in traditional political organisations, requiring long term membership and covering a wide range of issues (Merkel 2011; Süssmuth 2011). For these reasons and the first empirical evidences quoted above we can expect a considerable number of new actors to enter EU politics via the ECI. These actors are neither aware of the existing informal institutions nor socialised to them. For them conducting an ECI is a process of socialisation and learning. But at the same time they challenge the existing informal EU level institutions, because they cannot follow them.

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<sup>5</sup> Test ECIs are initiatives that have conducted before the entering into force of the ECI regulation, to show that it is possible to collect one million statements of support (Kaufmann 2010: 63 ff).

#### 4. Processes of Institutionalization and Legitimation as Knowledge Production in Discourses

Up to now we have shown that the formal framework of the ECI (primary, secondary and national law) is set up and that it leaves considerable discretion for the actors' behaviour. Furthermore, we have argued that we will be able to observe new informal institutions emerge, conceived as the genesis of a constitutional practice. It seems to be unlikely that informal institutions structuring the behaviour in other participative instruments will be transferred to the new instrument, because the ECI differs considerably from other instruments and new actors will challenge the existing institutions. To analyse the supposed processes of institutionalisation and institutional change and later on the new informal institutions, we have to clarify our understanding of (informal) institutions and hypothesise how these processes will take place.

Here we follow March's and Olson's (1989) 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). This quotation emphasises two main elements of March's and Olson's definition of institutions: First of all, they have a broad understanding of institutions, that is not restricted to formalised institutions, such as law, but includes informal institutions, too. Informal Institutions can be rules which clearly define what is allowed to do in a specific context and what is not. Institutions prestructures behaviour that people follow in specific situations as a matter of routine. In interactions they are like the rules of a game and thereby they enable communication. As basis structures of all human (inter-)action they inhibit norms and values. Individuals are normally not aware of these institutions while following them. Some of them are so common, like the ways of greeting, that individuals take them for granted; they perceive them as being part of their reality and do not question them. "Rules are followed because they are seen as natural, rightful, expected, and legitimate." (March/Olsen 2005: 8) In general, people obey to institutions following this 'logic of appropriateness'. That is why informal institutions can be as persistent as formal institutions. While formal institutions are written down, agreed on in a defined procedure, people can file a suit against violation and the state can enforce appropriate behaviour, informal institutions are neither written down nor would behaviour against them officially sanctioned. There are only informal sanctions possible like misregard and other forms of marginalization. So a status of not knowing informal institutions would at least cause confusion of the participating actors in interactions, if not exclusion of actors (Knaut 2011: 131ff.). Subtle language-driven mechanisms in collectives enforce informal institutions in the daily life Doing that they integrate actors and differ who fits to an institution and who not. In sum, formal and informal institutions are a symmetrical concept. Both types enable interaction and maintain all sorts of human activities (see Graph 3). According to March and Olson includes this concept that also informal institutions influence politics. This was often forgotten in political science by focussing on the formal rules and norms. But, also informal rules, norms and procedures arise also when people in a professional or specific context interact. We have to take in mind that informal institutions structure the sphere of politics, like the social or the economic sphere, too. For a better understanding of how formal and informal institutions work in the political sphere, we have to go one step back to the roots of the Neo-Institutionalism of March and Olsen, to the sociology of knowledge's view on institutions as it was developed by Peter L. Berger and Thomas Luckman in their book "The Social Construction of Reality" (Berger/Luckmann 1966). There they explain how institutions work and how they become part of people's subjective reality and influence their perception of the world. In their view institutions are structures who form the reality of individuals as 'as a reality interpreted by men and subjectively meaningful to them' (Berger/Luckmann 1966: 19). Actors do neither follow institutions because it is rational to do so nor

because they face the threat of punishment. It is not a calculus to follow institutions. Their aim is to analyse the reality of people's everyday life. In the sense of Berger and Luckmann reality, as an individual perceives it, is constituted by the knowledge the individual has about the context or the environment in which he or she is acting. E.g. we expect that an individual actor behave appropriately to churches rules in a service and appropriately (but following other informal rules of behaviour) at the doctor's or in parliament.<sup>6</sup> The specific context (or institutions) comes with a specific symbolic or discursive universe, where specific knowledge about the appropriate rules of the game is needed.

Institutions are so crucial for daily interaction because they reduce the complexity of life. Otherwise people would be overwhelmed with a large number of necessary decisions on how to behave they could not deal with (Berger/Luckmann 1966: 53). This raises the question, how institutions emerge. According to Berger and Luckmann the base of institutions is habitualised behaviour. If individuals commonly repeat a specific behaviour in a specific situation the behaviour becomes habitualised. This takes place on the individual level: An individual habitualises a specific behaviour and repeats it whenever it is confronted with the specific situation. The process of institutionalisation takes place on the level of society, as institutions are per definition commonly shared. 'Institutionalization occurs whenever there is a reciprocal typification of habitualised actions by types of actors. Put it differently, any such typification is an institution.' (Berger/Luckmann 1966: 54) An institution is a habitualised behaviour in a specific situation shared in a group of individuals. Different actors who come together create on the ground of their taken for granted knowledge, a new symbolic universe. The symbolic universe integrates the well-known institutional orders of actors by objectivating subjective meanings (see Berger/Luckmann 1966: 96). Now it is the question why and when actors could be able to create new institutions with new structures of knowledge. For individuals, which grew up in shared cultural spaces, it is obvious why they have a common knowledge about the relevant institutions. To new actors, like actors with another cultural, social or historical background, institutions are passed on like other knowledge about the world is passed on (Berger/Luckmann 1966: 56-57). This raises a question: Why should they regard institutions, in which they come in, as being legitimate? For some institutions that might be self-evident. Other institutions do not explain themselves, but actors need to know the background of habitualisation and typification to understand, why the institution emerged. This problem, that occurs when institutions are passed on, is solved by legitimation. 'Legitimation "explains" the institutional order by ascribing cognitive validity to its objectivated meanings. Legitimation justifies the institutional order by giving a normative dignity to its practical imperatives.' (Berger/Luckmann 1966: 93) To put it different, over time the reasons why individuals should behave specifically in a specific situation are included in the institution itself. In the strongest way individuals perceive following an institution as the only option to act in their subjective reality.

Above we hypothesised that the third step of institutional reforms is the emergence of a institutional practice. From the point of view of Berger's and Luckmann's theory, that means the following: We have a new specific institutional context, in our example the ECI procedure, in which individuals never acted before. During the first initiatives they have to decide how to act and specific behaviour will occur. In a trial and error manner some of the behaviours will be repeated, habitualised and,

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<sup>6</sup> Besides we find in a cultural sphere a widely shared base of institutions who fits in different contexts. Such cultural and societal bounded rules and norms are developed primary socialization. Every child is born "into an objective social structure" (Berger/Luckmann 1966: 131) which teaches first views on the world and which is further developed and differentiated in second socialization.

finally, a process of typification will take place. Due to the fact that from the first initiative on, every actor involved does not act independently but interacts with the other actors involved, the selection of which behaviour is repeatedly used and will be habitualised depends on whether the other actors regard a specific behaviour being appropriate and legitimate. The processes of habitualisation and typification are a kind of informal negotiation among the knowledge structure of future institutions: which types of actors could be integrated, which are excluded, which rules will lead the communicative interaction in negotiations about an ECI. As a product of their own history (Berger/Luckmann 1966: 93) institutions structuring the ECI procedure this history takes place since 1 April 2012.

Thus, we cannot present any final results on the knowledge structure of institutions which will emerge and how this process takes place. Currently, the actors involved in the ECI procedure have different interpretations of the instrument of the ECI. Some regard it as a nucleus for direct democracy in the European Union. Some regard it as a threat to their exclusive right to initiate law. Others do not think that the ECI is worse to be mentioned. But there is neither a commonly accepted knowledge about the ECI nor a predominant structure of meaning applied to the ECI. This part of the institutionalization does not take place in a vacuum. It is influenced by the institutions actors bring with them. But it's crucial here that actors cannot agree on a common 'understanding of appropriate behaviour' and commonly accepted 'normative dignity' (Berger/Luckmann 1966 93) as long as they do not share a common knowledge. This means first that they have to bring their symbolic universes on a cultural and social level together. Second, and that is important in a political context, they have to change their knowledge about the instrument of the ECI. Because, we can assume that the actors do not share a common knowledge about the ECI, yet, it will be a change to analyse the development of new institutions, even then the processing of knowledge on the ECI has started during the European Convention (Kaufmann/Wolfram 2008), has taken place since then and continues at present (Kaufmann/Plotka 2012). But we can't speak of a established setting of formal and informal institutions; the ECI-related institutions are just 'in the making'. We can only mention fully developed and then stable institutions in politics when discourses arise (and could be analysed). Following Reiner Keller's 'Sociology of Knowledge Approach to Discourse (SKAD)' (Keller 2011a; 2011b; 2010, 2012) discourses are structures of knowledge and power. He 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 [meanings] they have to draw upon' (Keller 2011a: 52). This means that specific arguments and structures of meanings about a topic are shared and could be used by actors. Alternative arguments are not approved as appropriate. So a hierarchical order of knowledge asserts. The aim of discourse analysis is to trace back the processing of knowledge exchange, understood as a communicative interaction between actors (Knaut 2011: 124). This communicative interaction takes place in a specific context, an universe of discourse, draws upon existing knowledge and structures of meaning, practices of communication (rules of communication) and it depends in a high specialized context, like politics, very much on the speakers' position, e.g. on which formal or informal role an actor has. In contrast to Habermas' ideal type of deliberation, discourse is not an empirical reality of actively, purposeful and equal communicating actors. In contrast, discourse includes power structures referring to positions and to the interpretation of the agenda. The discourse is reconstructed during research by defining all discursive events and actors that are part of the discourse, by defining all elements of an institutions' history. It has an empirical base, because it does not focus on abstract ideas and ideologies but concrete communicative interactions.

These concrete communicative interactions we do find in all discourse fragments (resolutions, speeches, brochures, presentations, statements, texts, interview transcriptions etc.) dealing with the instrument of the ECI since the initial debate during the European Convention. Furthermore, other discourses on the future of the EU (e.g. Brincker/Jopp/Rovná 2011), on the democratic deficit of the Union (e.g. Grande 1996), on the role of direct democracy (e.g. Schiller 1999), etc. form the context of the discourse on the ECI and contribute knowledge and structures of meanings to it. The actors involved are the delegates of the European Convention, institutions participating in the law making process, representatives of non-governmental organisations, researchers working on the ECI, activist promoting the instrument of the ECI, actors willing to initiate an ECI, media, and individual citizens and actors contributing to the consultation on the ECI. These actors have different positions that are relevant for the processing of the discourse on the instrument of the ECI. To give an example: During the legislative process of the regulation on the ECI, the European Commission had the role of a powerful moderator that structured the process by organising the consultation, hearings, and drafting documents. It has a strong institutional self-interest on how the ECI will be understood, finally. And it has formal rights at its disposal to influence the discourse. Even if it has a dominant position, the Commission is not the 'master of the discursive universe' (Keller 2011a: 52) on the ECI. Other actors inhibiting less relevant speakers' positions contribute to the discourse on the ECI as well, and the formal rights of an actor involved do not necessarily give it dominance within a discourse. Structures of meaning proposed by an actor without own institutional interests might become more dominant in the discourse than the interpretation of powerful actor that defends its own institutional interests.

The following section does not provide a fully fledged analysis of the discourse of the instrument of the ECI for two reasons: First, the discourse is still going on and there is no commonly accepted knowledge on the ECI, yet. The crucial phase of the discourse is just ahead, when the first initiatives will take place. Second, the research question of this paper does not refer to the process of knowledge production itself, but to its outcome. What knowledge on the ECI will emerge? Which interpretations will become dominant? Which informal institutions will structure the actors' behaviour within the formal framework of the ECI? To have a base for empirical grounded hypotheses on the results of the discourse on the ECI and its influence on the institutional equilibrium of the European Union the following section presents a snapshot from the discourse in the ECI. The analysis focuses on the decision-making process on the ECI regulation and its subsequent implementation. It tries to identify those structures of meaning that are relevant with respect to the above mentioned research questions.

## **5. Toothless tiger or threat to the institutional equilibrium: Analysing the Discourse on the Instrument of the ECI**

The starting point for this phase of the discourse on the ECI was the Commission's Green Paper on a European Citizens' Initiative (European Commission 2009) that initiated an online consultation followed by a public stake-holder hearing. In that consultation 329 stakeholders participated, nearly half of them were individual citizens (European Commission 2010: 2). From these contributions to the online consultation and the legislative process 90 documents were randomly selected (half of

them from individual citizens and half of them from organizations and public authorities).<sup>7</sup> The analysis starts with four interpretations of the instrument of the ECI that are taken from literature. The following four structures of meanings were used as initial codes to analyse the data corpus:

- (A) *The ECI bridges the gap between citizens and EU institutions*: The first and most prevailing argument in this paper is the interpretation of the ECI as a device to bridge the gap between citizens and the EU institutions (Schnellbach 2011: 2-3; Garcia 2012). The historical interpretation of art. 11 (4) TEU suggests that this was the initial intend of the actors proposing the ECI. Thus, it is important to analyse, whether this argument is dominant in the discourse on ECI or whether other counter interpretations are more relevant.
- (B) *The ECI is a toothless veto player and decreases the efficiency of decision-making*: This interpretation of the ECI is a counter position to the argument mentioned previously. It includes two separate arguments: First, the ECI is a toothless tiger, a superfluous tool without any effect. Second, the ECI is red tape for the European institutions. The instrument has no effect, but dealing with ECIs requires resources (at least of the European Parliament and the Commission as well as on the national level) which could be used more effective for other purposes.
- (C) *The ECI is a threat to the Commission's exclusive right of initiative*: Whether the ECI will threaten the Commission's exclusive right of initiative and subsequently the Commission's position in the political system of the EU is a second highly relevant argument discussed in the literature. While art. 11 (4) TEU and art. 10 (1) ECI regulation are clear in this respect, the comparison of the ECI to agenda initiatives on the national level fostered a debate about the appropriateness of the Commission's powerful role in the process of an ECI (Maurer/Vogel 2009: 11; Kaczyński 2010; Sauron 2011: 4).
- (D) *The ECI contests the European Parliament's role as the representation of the citizens*: How the interrelation of the European Parliament and the instrument of the ECI will be interpreted is especially relevant to the question whether the ECI will weaken representative democracy. This interpretation of the ECI being a challenge to the representative institutions is rarely expressed in literature on the ECI (Hierlemann/Wohlfahrt 2010: 6-7).

With regard to these four initial codes the data corpus was analysed. But following the paradigm of 'grounded theory' (Strauss/Corbin 1998) new codes were added during the process of coding. If there was a new argument expressed in one document being relevant for the research question of this paper a new code was added. After having coded the whole data corpus for each code a new corpus of all discourse fragments (selected quotations) relevant for the respective code was created. These corpi were recoded with regard to different argumentations (subcodes) within each corpus. This is especially relevant, if there are counter interpretations with in a corpus: e.g. some discourse fragments include an argumentation that challenges the Commission's exclusive right of initiative while others include an argumentation that underlines the Commission's exclusive right. This way the codes and subcodes shown in table 1 were found in the data corpus:

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<sup>7</sup> For reasons of practicality only documents in German and English were used. Thus, the selected documents biased towards contributions from Austria and Germany (Only a few documents from the United Kingdom and Ireland where handed in). Due to the fact that a majority of contributions from Austria have a rather critical tone, while a majority of contributions from Germany are less critical towards the new instrument, thus both 'critics' and 'supporters' views are included in the analyses. Unfortunately contributions written in all other language could not be analysed. While the number of contributions in most official languages is low, there is a considerable number in French and a high number of individual contributions in Spanish.

**Table 1: Overview of Codes and Subcodes**

<b>Code</b>	<b>Subcode</b>	
<b>A</b>		<b>The ECI bridges the gap between citizens and EU institutions</b>
	A.1	The ECI bridges the gap / strengthens democracy
	A.2	The ECI will not bridge the gap
	A.3	The ECI strengthens an European public
	A.4	The ECI strengthens the European civil society
<b>B</b>		<b>The ECI is a toothless veto player and decreases the efficiency of decision-making</b>
	B.1	The ECI is superfluous
<b>C</b>		<b>The ECI is a threat to the Commission's exclusive right of initiative</b>
	C.1	The Commission's monopoly remains uncontested
	C.2	The ECI should automatically start a legislative process
	C.3	The Commission has to take initiatives serious
<b>D</b>		<b>The ECI contests the European Parliament's role as the representation of the citizens</b>
	D.1	Representation is not sufficient on the supranational level
	D.2	Participatory democracy and representative democracy are complementary
	D.3	EP (and other Institutions) should rescue ECIs the EC has not reacted to
<b>E</b>		<b>Organisers of an ECI</b>
	E.1	The ECI should be an instrument for citizens
	E.2	The ECI should be an instrument for associations
	E.3	There is a danger of manipulation
<b>F</b>		<b>Representational Focus of the ECI</b>
	F.1	The ECI is an instrument to voice minorities' interests
	F.2	The subject of an ECI should be representative for a Union's interest

*Source: Own table.*

### ***The ECI bridges the gap between citizens and EU institutions***

The first interpretation (subcode A.1) of the ECI refers to the intention behind incorporating the ECI into primary law. The historical interpretation of art. 11 (4) TEU suggests that its intention was to bridge the gap between EU institutions and the citizens of the union and to strengthen EU democracy. The analysis of the documents shows that nearly all actors agree with this interpretation that became part of the ECI regulation (lit. 1 ECI regulation), too. Some discourse fragments literally contain this interpretation. To give just two examples:

The ECI 'can be perceived as an instrument to close the gap between EU institutions and its citizens' (D 048 ORG).

'The ECI is a tool to start up the dialogue between EC and citizens' (D 048 ORG).

This argument is commonly accepted by individuals, organisations, public authorities, and EU institutions. Furthermore, sharing this interpretation seems not to depend on a specific attitude towards the instrument of the ECI. Discourse fragment of a critical and those of a more supportive attitude share this interpretation. But this interpretation seems to be a kind of hope instead of a hypothesis on the expected influence of the instrument of the ECI. Just a few of the analysed documents go into detail on how they expect the ECI to improve European democracy. Two expected outcomes of the new instrument are mentioned: the ECI will strengthen a European public (subcode A.3) and it will strengthen the European civil society (subcode A.4):

It will 'encourag[e] a multi-level European public' (D 014 IND).

'[I]t will encourage our emerging European civil networks' (D 003 IND)

„Durch die Europäische Bürgerinitiative wird die Zivilgesellschaft in Bezug zur europäischen Ebene gestärkt' (D 056 ORG).

While the majority of the analysed documents share the argument of subcode A.1, just a few contributions express the opinion that the ECI has an undemocratic tendency (D 021 IND) and some see 'the risk of setting up an oppositional dynamic between citizens and Commission' (D 37 IND).

### ***The ECI is a toothless veto player and decreases the efficiency of decision-making***

These results are supported by the findings with regard to code B 'The ECI is a toothless veto player and decreases the efficiency of decision-making'. While in the academic debate the expectations with regard to the influence of the ECI on the legitimacy of the Union seem to be very low, few of the analysed documents regard the ECI as being 'superfluous', an 'occupational therapy' (D 002 IND) for citizens or an 'alibi' (D 061 ORG) for not involving citizens directly. In some documents actors expressed the fear that the ECI will create bureaucracy. But this decreasing efficiency of political institutions was not discussed in the context of the EU decision-making process but with regard to administrative question (translation of ECIs, necessity of verification of statements of support).

One reason for these findings might be the fact that few of the documents analysed are authored by actors who are either critical of the ECI or the process of European integration in general. The data corpus used for this analysis has a pro-European bias, what reflects the empirical base. Most actors involved in the discourse on the ECI are pro-European. There are hardly any incentives for other

actors to participate. From a normative point of view this can be regarded as deficiency, but with regard to the research questions it does not create any methodological problems.

Considering these findings we can expect a dominant role of the actors involved in the first ECIs during the production of knowledge on the ECI and during the process of institutionalisation. The structures of meaning applied to the ECI under 'code A' are very vague and open to further interpretation. So far there are neither contested interpretations that could stimulate a discursive battle nor an argument that offers a clear cut interpretation of the ECI. An example for such an interpretation would be regarding the ECI as a 'nucleus of direct democracy' on the EU level. But the ECI is hardly named a tool of direct democracy.<sup>8</sup> A second conclusion we can draw from the analysis of 'code A' and 'code B' is that there seem to be few or no actors expecting a fundamental change in the institutional equilibrium caused by the ECI. Both improvements expected by the authors of the analysed documents do not refer to the institutional setting or the EU institutions, but to civil society organisations and the public.

### ***The ECI is a threat to the Commission's exclusive right of initiative***

While the arguments analysed as 'Code A' are widely shared and the discourse on the 'the ECI as a toothless veto player and decreasing the efficiency of decision-making' is hardly relevant, the arguments concerning the Commission's exclusive right to initiate law ('code C') has the character of a controversy. But first of all there is a broadly shared consensus on the interpretation of art. 11 (4) TEU: In none of the analysed documents actors interpret the primary law in a way that the ECI is a binding initiative. The Commission's interpretation (European Commission 2012) supported by the European Parliament became the dominant one.

'The European Commission and the European Parliament have already made it clear that, under their interpretation, there is no binding effect. [...] For the reasons outlined in the above mentioned paper, I agree with this interpretation, as the only one allowed by the Treaty' (D 009 IND).

But it is quite illustrative that the question on how the Commission should react to successful initiatives is widely debated, because the Commission had excluded this aspect from its green book on the citizens' initiative (European Commission 2010). On the base of the commonly shared interpretation of the status quo the opinions on how the ECI should develop in this question are diverging (subcode C.1):

'[T]he popular request should be automatically passed on by the Commission to the lawmaking process.' (D 003 IND)

'In short, the future ECI Regulation should foresee the Commission's obligation to pass an ECI on to the legislative bodies, unless this would clearly be contrary to the interests of the European Union.' (D 009 IND)

On the other hand there is the opinion that the Commission's monopoly should not be put into question in the future (subcode C.1):

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<sup>8</sup> All analysed discourse fragments that include the words 'direct democracy' do not provide an alternative interpretation of the ECI, but reflect an imprecise wording.

‘Ultimately, it should be for the Commission to determine whether to put forward an initiative’ (D 001 IND).

‘Zu berücksichtigen ist ferner, dass das Initiativmonopol in der Rechtsetzung ohnedies weiterhin bei der Europäischen Kommission verbleibt. Für die technische Ausarbeitung eines entsprechenden Legislativvorschlags trägt daher allein sie die Verantwortung’ (D 061 ORG).

This controversy is supplemented by arguments on what the Commission’s appropriate behaviour is. Even actors agreeing to the unchallenged monopoly of the Commission consider it necessary that the Commission takes successful initiatives serious:

‘Vor diesem Hintergrund ist es entscheiden, dass [...] zweitens die Ergebnisse einer EBI ernst genommen werden’ (D 061 ORG).

‘Natürlich muss die Kommission verpflichtet werden diese Bürgerinitiativen zu behandeln’ (D 021 IND).

Then options to institutionalise a dialogue between the Commission and the organisers of successful initiatives and ways to force the Commission to seriously deal with these initiatives are discussed:

‘Eine Ablehnung der Initiative wäre durch die Kommission möglichst ausführlich und nachvollziehbar zu begründen’ (D 054 ORG).

‘The organizers should have the right to a hearing with the Commission to formally present the initiative and begin a process of dialogue’ (D 049 ORG).

‘The Commission has the right to reject the proposal and thus the organizers should have the right of appeal either to the European ombudsman or to the European Court of Justice Article 263 of the Treaty. The Court may decide whether the Commission has used its decision in an arbitrary way’ (D 049 ORG).

All discussed proposals that suggest obligations for the Commission during its reaction to successful initiatives express the fear that the instrument of the ECI might lose its value and the interpretation of an insufficient accountability of the Commission. Thus, we can expect that the interpretation of the ECI with regard to the Commission’s discretion to reject successful initiatives which meet all requirements will be one of the battlefields of the discourse on the ECI. The same is true for the institutionalisation of informal institutions structuring the Commission’s decision to reject initiatives: Will the intention to strengthen the instrument of the ECI will be the guiding principle? Or will the Commission’s intention to preserve its monopoly of initiative become the dominant motive? This is a trade-off between accountability and decision-making efficiency. On which of the two principals most actors the Commission expect to put more emphasis show the structures of meaning detected with respect to ‘code D’.

### ***The ECI contests the European Parliament’s role as the representation of the citizens***

A fourth argument expected to find in the discourse on the instrument of the ECI is ‘The ECI contests the European Parliament’s role as the representation of the citizens’. In none of the analysed documents we could find this interpretation of the ECI. The efficiency of representation is put in question (subcode D.1):

‘[T]he process of political representation does not operate properly within a supranational context. It seems highly questionable whether the EP is able to assume the effective representation of a huge and extremely heterogeneous polity such as the EU’ (D 004 IND).

But in the same document the interrelation of both principles of democracy are seen as being complementary (subcode D.2):

'[P]articipation of civil society organizations in the policy-making can never replace widespread political participation through representation. Direct participation and political representation should thus be seen as complementary to democratize the EU' (D 004 IND).

This interpretation of the principal of representative democracy and the principal of participatory democracy being complementary is by far the dominant one. Many documents even reflect a hope that the European Parliament and the Council will safeguard the success of the ECI.

'So hätten EP und Rat die Möglichkeit, einer BI noch zum Erfolg zu verhelfen, indem sie sie an sich ziehen' (D 063 ORG).

'[T]o give the Citizen's Initiative a real democratic character, the Commission should defend its reaction to the Initiative before the European Parliament' (D 019 IND).

The European Parliament and in particular its Petition Committee should play a supportive and monitoring role in this context. In any case should the Commission be obliged to report on an annual basis to the European Parliament about the functioning of the citizen's initiative' (D 060 ORG).

While in the academic literature it is mentioned (Hierlemann/Wohlfahrt 2010: 6-7) that MEPs could regard the ECI as a threat to their role in the political system of the European Union, the argument in the analysed documents is that the European Parliament (and in some documents the Council as well) is an ally of the organisers and signatories of an initiative against the veto right of the Commission. Such expectations with regard to the European Parliament seem to strengthen the principle of representative democracy vis à vis the principal of participative democracy. But the crucial question is whether the European Parliament will live up to these expectations: Will the European Parliament (and the Council) try to exert pressure on the Commission if it rejects an ECI for political reasons.<sup>9</sup>

### ***Organizers of an ECI***

If the European Parliament is regarded as the ally of the organisers of an ECI, the question arises, who should be the organisers of an ECI. The ECI regulation is very clear in this respect: a citizens' committee that consists of at least seven citizens of the union who reside in at least seven different member states (art. 3 ECI regulation). But is the right to organise an ECI an individual citizens' right? Or is this instrument of participative democracy at the disposal of the civil society organizations? The arguments discussing this aspect are voiced in the discourse on the 'requirements for organisers – transparency and funding' (European Commission 2009: 11). Some actors have the opinion that the ECI should be open for civil society organisations:

'Hinsichtlich der Organisatoren einer Initiative sollten keinerlei spezifische Anforderungen vorgesehen werden, sodass jede/r Unionsbürger/in sowie natürliche oder juristische Personen mit (Wohn)Sitz in einem Mitgliedstaat aber auch Initiativkomitees als Organisator einer Initiative aufzutreten können sollen' (D 050 ORG).

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<sup>9</sup> If the Commission rejects an ECI for formal reasons the Ombudsman and the European Court of Justice are discussed to be the appropriate institution to appeal.

‘Die Organisation einer Bürgerinitiative ist ein Individualrecht. Privatpersonen ohne Bezug zu einer größeren Organisation muss es somit möglich sein, eine derartige Initiative zu starten. Daneben können sich auch Organisationen der Zivilgesellschaft beteiligen’ (D 059 ORG).

In contrast to this interpretation of the ECI as a right for citizens and associations in a number of the analysed documents the ECI is regarded as an individual citizens’ right that should not be open for associations:

‘Schließlich soll die Initiative vom Volk und nicht von übernationalen Partei-Organisationen und deren Funktionären ausgehen!’ (D 015 IND).

‘In the Lisbon treaty it is foreseen that citizens, not organizations, could take the initiative to do proposals to the European Commission’ (D 019 IND).

This view on the ECI is supplement by a quite frequently voiced fear that the ECI could be subject of misuse and manipulation:

‘This is very important to ensure that each ECI represents the genuine interest of citizens and is not used, for example, by business interests as marketing or indirect lobbying tools’ (D 029 IND).

‘The Group considered that to truly be a citizens’ initiative the process must be voluntary and not open to manipulation by large corporations’ (D 001 IND).

This discourse on the organisers of initiatives is not of practical relevance, but it is relevant with respect to the question how legitimate are the interests put forward by an ECI? For reasons of practicality it will be very unlikely that individual citizens will start an initiative. Already the necessity to form a citizens’ committee shows that a minimum of organisational structures are required. But an own analyses of the actors behind the pilot initiatives, the actors who declared to be ready to start an initiative,<sup>10</sup> the actors participating in the consultation and the subsequent public hearing reveals that actors established on the EU level do not dominate. Two other findings are interesting as well: First, in a significant number of the analysed initiatives are MEPs involved. Second, the actors behind a significant number of planned initiatives and of pilot projects are coalitions of established actors, new actors, and MEPs (Plottka 2012). The participation of new actors in in the decision-making process on the EU level increases the inclusiveness of EU politics and can be regarded as strengthening the legitimacy of EU politics. But considering the ECI being an individual citizens’ right would question the legitimacy of almost all initiatives included in the study: Are citizens’ initiatives legitimate that are supported by MEPs? Is this a reason for the Commission to reject an initiative? The same question arises with respect to initiatives that are organized by associations.

### ***Representational Focus of the ECI***

That refers directly to the last question that is discussed here: What and who should an ECI represent? Under Code F we find two diverging interpretations in the discourse on the instrument of the ECI: On the one hand, some authors regard the ECI an instrument to voice minority rights (Subcode F.1):

‘Whatever the mechanism used, the opinion of 1 million citizens will neither be representative of the entire EU population nor can it represent a ‘majority interest’ in any convincing way – the ECI differs from EP elections!’ (D 030 IND).

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<sup>10</sup> The analysis was made in February 2012.

In another discourse fragment we find a clear differentiation between the instrument of an ECI and the legislative process that follows:

‘The objective of this requisite is not to guarantee that the proposal will adequately reflect the interest of the Union. That determination must be made, at a later phase, by the European Commission and, ultimately, by the EU legislator’ (D 009 IND).

This interpretation was used as an argument to justify low hurdles for an ECI: There is the agenda-setting on the hand and the decision-making on the other hand. Even minorities’ interests expressed by an ECI do not cause problems, because the legitimate decision-making bodies of the European Union guarantee the interest of the union to be preserved.

Other interpretations (Subcode F.2) of the ECI see a trade-off between the necessary representativeness and the functionality of the instrument:

‘Die Problematik bei diesem Thema liegt darin, einerseits eine Balance zwischen der europäischen Repräsentativität und andererseits einem für die einzelnen BürgerInnen angemessenen Schwellenwert zu finden’ (D 031 IND).

‘Entscheidend ist es, einen sinnvollen Ausgleich zwischen einer hinreichenden Repräsentation im Rahmen einer Bürgerinitiative [...] und der Einfachheit und Objektivität des Verfahrens zu schaffen’ (D 063 ORG).

These two contrasting interpretations seem to reflect two fundamentally different understandings of democracy: Considering the ECI a minorities’ right to voice special interests reflects a more competitive understanding of European democracy. Interest groups, citizens’, civil society organisations and other actors can use the ECI to put their own interest on the agenda. The subsequent decision-making has to mediate between potentially conflicting interests. The understanding of the ECI as an instrument to voice an interest representative for the whole Union that was strongly underlined by the Commission (2009) reflects a much more consensual understanding of democracy. The European institutions should represent a commonly shared supranational interest. The cleavages of political conflicts do not take place between different social groups but between the supranational principal (represented by the Commission and European Parliament) and the intergovernmental interest (represented by the Council and the European Council).

## **6. Complementing or Challenging Representative Democracy?**

With regard to the four codes taken from academic literature the sketched first step of the discourse analysis of the documents reveals some interesting results. First and foremost but expected the interpretation of the ECI being a mean to strengthen European democracy and to bridge the gap between citizens and EU institutions is widely shared in the discourse on the ECI. With regard to the question how the ECI will strengthen European democracy a positive influence on the emerging European civil society and a European public are expected. But changes within the political system are not expected. While these perspectives on the ECI are quite positive, there is hardly a discourse on whether the instrument is superfluous and produces red tape. But this finding is probably caused by a pro-European bias of the actors participating in the discourse.

Secondly, we did not find structures of meaning on whether there is a possibility to develop the indirect agenda-initiative into a direct agenda-initiative under the current treaty provisions. The

opinion that the ECI does not touch upon the Commission's exclusive right to initiate the legislative process is widely shared. But the discourse reflects a considerable fear that the Commission's accountability vis à vis the organisers of successful initiatives will be deficient. On the one hand actors propose to turn the ECI in a direct agenda-initiative during the next treaty reform; the other solution proposed is to bring the Commission in a dialogue with the organisers. This argument is based on the premise that the Commission will regard initiatives as a threat to its position within the institutional system, and that the relationship between organisers and the Commission is conflictive.

Thirdly, the question whether the ECI being a new channel to represent interests on the EU level will challenge the European Parliament's role is not part of the discourse on the ECI. Instead many actors regard the European Parliament to be an ally of organisers of successful initiatives that have been rejected by the Commission. This view on the ECI is supported by an analysis of the pilot initiatives and planned initiative: MEPs play an important role among the organizers of those initiatives. This raises the question how the principles of representative and participative democracy interrelate. Will the European Parliament try to gain additional legitimacy by supporting rejected initiative? Is supporting initiatives a strategy for MEPs to set topics on the agenda they failed within the Parliament?

The fourth conclusion we can draw from the analysis is that there is no agreement on whether the ECI is an individual citizens' right or an instrument for associations. For practical reasons a minimum of organisational base will be necessary. But will initiatives organised by interest groups and civil society organisations be regarded as legitimate? If that will become the dominant interpretation, the ECI will become a mean for civil society organisations to prove their representativeness. While the question of internal structure of interest groups and civil society organisations is discussed with regard to the question of formal representation (Johansson 2012), the ECI could be one solution to this question, because it makes the citizens' support of an associations' position transparent. If initiatives organised by associates will be regarded as being less legitimate than those organised by individual citizens the question of representativeness arises in another way. If an association organizes an initiative the background of the initiatives is obvious (Who stands behind it? In who's interest is the suggested legislation?). If a group of citizens' organises an initiative the answers to these questions are not obvious. Is the ECI just in their individual citizens' interest? Or whose interest do they represent? This debate is partly reflected in the interpretations we analysed under code F.

The fifth conclusion we draw from the analysis is that there is discontent about what an ECI represents. Some arguments favour the interpretation of the ECI being a minorities' right to voice special interests. The counter argument, already given in the Commission's green book, is that a successful ECI should represent a union's interest. Understanding this union's interest as a supranational interest, this interpretation of the ECI is compatible with the above mentioned consensual understanding of democracy. Taking the criteria of representativeness literally, we have to conclude that the ECI is not designed to fulfil such expectations. The ECI is not a referendum. Thus it cannot describe the preference distribution within in the European people.

Based on this conclusions, is it likely that we will be able to observe a rebalancing of the institutional equilibrium caused by the ECI? Currently, we can just speculate about what will happen, but from our point of view one of the three following scenario one might take place.

*Scenario 1:* The discourse producing knowledge on the instrument of the ECI reveals to be not an equal one, but the imbalances between the involved actors, with regard to their influence on the ECI

discourse, become prevailing. Due to the fact that the Commission has the strongest position in the discourse on the ECI, because it has the formal right to veto every initiative in the end, it will be able to dominate the discourse and the commonly accepted knowledge about the ECI will be close to the Commission's point of view. As every ECI is a threat to the Commission's exclusive right of initiative and a criticism of its inactivity, the ECI could be interpreted as an unnecessary veto-point preventing the Commission from effective problem solving and giving the European floor to specialised self-interests. Such a commonly shared interpretation of the ECI would legitimise the informal institution that each and every initiative is stopped by the Commission, either during the admissibility check or by using the Commission's veto. The ECI would be dead in a few years or months. But this scenario is very unlikely, because a precondition would be that other actors interested in using the ECI are not able to influence the ECI discourse.

*Scenario 2:* The interpretation becomes dominant that the ECI should represent a supranational Union's interest. Because the supranational interest is often congruent with the European Parliament's and the Commission's institutional interest, we can expect the Commission to accept initiatives favouring supranational interests and the European Parliament to support them during the legislative process. This scenario is compatible with the current logic of the political system of the European Union. The aim of such a strategy is to gain additional legitimacy for the European Parliament and the Commission. Somehow, this strategy would be a sequel to the Commission's interest in strengthening European civil society and promoting participatory democracy. Thus, the ECI might lead to a rebalancing of the equilibrium between the supranational and the intergovernmental momentum. In the long run the ECI would become a top-down instead of a bottom-up instrument. The organisation of initiatives by MEPs and political parties (Hrbek 2012) could be a catalyst for this scenario. The Commission's decision to register an initiative asking for intensified European exchange programs as the first initiative ever, could be a good example of application the logic of scenario 2 to the ECI.

*Scenario 3:* The interpretation of the ECI being a minorities' right and an instrument at the disposal of associations becomes dominant. The understanding of democracy is more conflictive. The ECI is an instrument to set the agenda and to stimulate political controversies during the subsequent legislative process. The ECI is a mean to criticize the EU institutions, especially the Commission for being inactive. This scenario will more likely produce the expected outcomes of strengthening European civil society by including new actor into EU politics and to contribute to European publics by fostering transnational networks among civil society actors and creating transnational discursive spheres (Knaut 2012; Knaut/Keller 2012). But due to the fact that this scenario is more conflict driven and less congruent with the institutional logic of the European Union, initiatives are less likely to pass the bottle neck of the process at the Commission.

Which scenario will become reality depends on the first initiatives that will be most likely completed next year and is up to further research on the ECI.

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