



The role of experts in the internal legitimation of European non- majoritarian bodies:

compared study between the European Food
Safety Authority (EFSA) and the European
External Action Service (EEAS)

Master thesis submitted by Antoine Grall

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Supervisor: Virginie Van Ingelgom

Reader: Clément Fontan

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DEDICATION

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INTRODUCTION

I) General considerations

At an increasing pace since the 1990s, the European Union is facing a governance transformation. More and more non-majoritarian institutions (NMIs) have been empowered and a “myriad of independent regulatory bodies have been created and become the *loci* for making new rules”¹. In a growing number of policy domains, “the ongoing exercise of authority by non-majoritarian bodies is [...] central to governance”². These bodies can take various structural forms and can be defined as “governmental entities that (a) possess and exercise some grant of specialized public authority, separate from that of other institutions, but (b) are neither directly elected by the people, nor directly managed by elected officials”³. They have been empowered through an “authoritative decision, formalised as a matter of public law, that [...] transfers policy-making authority away from established, representative organs”⁴, elected organs. This phenomenon has been referred to as a “regulatory shift”⁵ in the literature. This raises the question of their democratic legitimacy as they are neither directly controlled by elected officials, nor by citizens themselves. Nonetheless, they have a major impact on the “everyday lives of the 500 m[illion] people living in the EU”⁶. Their establishment may have contributed both to the legitimacy and the democratic crises of the European Union and the description of the European Union as a technocratic machinery. Since the early 1990s, the EU is facing a legitimacy and a democratic crises. Scharpf distinguishes between two types of democratic legitimacy. The legitimacy by the *input* can be defined as the “government by the people”⁷ whereas the legitimacy by the *output* corresponds to the “government for the people”⁸. According to Scharpf,

¹Thatcher Mark, Stone Sweet Alec, “Theory and Practices of Delegation to non-majoritarian institutions”, in West European Politics, 25:1, 2002, p.1. URL: <https://doi.org/10.1080/713601583>

²Ibidem

³Ibid. p.2

⁴Ibid. p.3

⁵Majone Giandomenico, “From the Positive to the Regulatory State: Causes and Consequences of Changes in the Mode of Governance”, Journal of Public Policy, vol.17, n°2, Cambridge University Press, 1997, pp.139 – 167

⁶European Union, “Decentralised Agencies”, Website of the European Union, URL: https://moodleucl.uclouvain.be/pluginfile.php/2043332/mod_resource/content/1/Me%CC%81mento%20%20M120%202019_2020.pdf, consulted on 03rd April 2020

⁷Scharpf Fritz (1), “Problem-Solving Effectiveness and Democratic Accountability in the EU”, MPIfG Working Paper, February, 2003, URL: <http://www.mpifg.de/pu/workpap/wp03-1/wp03-1.html#2>, p.1

⁸Ibid., p.2

the legitimacy by the *input* at the EU level is weak⁹. He shows that majoritarian legitimacy is not available at the EU level. Scharpf concludes that what is more important at the EU level is “the authority of the technical expertise”¹⁰. The weakness of the legitimacy by the input at the EU level became problematic after the entry into force of the Maastricht Treaty. Indeed, the “permissive consensus”¹¹ according to which citizens, by their indifference, gave their consent to the EU, has been replaced by a “constraining dissensus”¹² according to which citizens started to claim their disapproval. This shift has led to the emergence of debates concerning the democratic deficit at the EU level that continues until today. Therefore, the multiplication of European non-majoritarian bodies since the 1990s seems to confirm the expert and technocratic logic of the European construction and to dig the ditch between European technocrats and ordinary citizens. This expert logic has conducted to the emergence of a new centre of political power in the EU, the “eurocracy”¹³. European NMIs’ experts can be considered as eurocrats as the “eurocracy” can be defined as “the distance between ordinary citizens and the European polity, or even a confiscation of democratic sovereignty by unelected experts”¹⁴ that are not accountable to elected organs. According to the neo-functionalist theory, this expert logic tends us to look at the EU and its NMIs as a “regulatory State”¹⁵ made for the citizens, corresponding to the *output* logic of legitimacy. Though, the legitimacy by the *output* has been contested in recent decades as some scandals, notably in the food chain, undermined the credibility and the efficacy of policymaking at EU level. Therefore, on the one hand, experts are contested because they lack the democratic *input*. On the other hand, they faced criticisms because of the inefficiency and the contestation of the outcome, undermining the legitimacy of this system of governance. Though, this project will tend to nuance this dichotomy between the *input* and the *output* sides of legitimacy at the non-majoritarian bodies’ level. Indeed, strictly applying this *input/output* distinction would lead us to look at these institutions as a kind of expert *deus ex machina*. Rather, by opening the black box of European non-majoritarian bodies and by studying the role of experts in their internal legitimation, we will argue that an expert driven governance could reconcile these two crises as the inclusion of a myriad of stakeholders and interests could contribute to resorb the democratic deficit and to lead to a better outcome.

⁹Scharpf Fritz (2), « Européanisation et gouvernement démocratique ». In: *Politiques et management public*, vol. 15, n° 1, 1997, p.12. URL : https://www.persee.fr/docAsPDF/pomap_0758-1726_1997_num_15_1_2130.pdf

¹⁰ Scharpf Fritz (2), op. cit., p.3

¹¹ Van Ingelgom Virginie, “Mesurer l’indifférence. Intégration européenne et attitude des citoyens », in *Sociologie*, 2012/1, vol. 3, 2012, p.3

¹² Ibidem

¹³ Term invented by Scharpf to designate European experts

¹⁴ Georgakakis Didier, *The field of eurocracy: Mapping EU actors and professionals*, Palgrave MacMillan, 2013, p.3

¹⁵ Scharpf Fritz (2), op. cit., p.3

Our aim is to differ from other research projects that “often remain built on a formal separation between “politico-institutional” and “sociological” aspects, that make the European-Institution-society nexus opaque”¹⁶. Thus, to fully understand the processes, it is necessary to introduce a third kind of legitimacy defined by Vivien Schmidt: the “throughput legitimacy”¹⁷. She defines the throughput legitimacy as a general theory about the practices that go in the black box of governance, in the space between the political input and the policy output¹⁸. This concept will be important to understand the internal legitimization strategies of European NMIs. Indeed, the “throughput legitimacy” implies the introduction of a sociological approach that will allow us to study the dynamics that are going inside European NMIs. Focusing both on institutions and on actors will permit us to combine “the study of formal institutions and informal practices with a variety of sociological indicators and concepts such as habitus, configuration or field”¹⁹. However, we will try to nuance the distinction between the *input* legitimacy and the throughput legitimacy concerning inclusiveness and openness mechanisms. To differentiate the *input* and the throughput legitimacy, Schmidt defines the throughput legitimacy as the “governance with the people”²⁰. It will be argued that the throughput legitimacy can be seen as the deepest perspective of legitimacy by the *input*. By showing this, we will nuance the fact that *input* legitimacy is weak at the EU level. European non-majoritarian bodies constantly rely on Member States’ representatives, national expert groups, national interest groups in the decision-shaping process.

Though, to be able to shape the decision, EU non-majoritarian bodies need the normative consensus of all Member States. As Majone shows, this normative consensus is not available for all policy domains²¹. He supposes that this normative consensus is functioning in the matter of product security, meaning it is possible in all domains where the EU has the competence, but that it is impossible in all domains where an ideological conflict is endemic, particularly in the Common Foreign and Security Policy (CFSP). Nevertheless, non-majoritarian bodies have been set up in both domains:

- The European Food Safety Authority (EFSA) has been established in 2002 in order to secure food safety at the European level after some crisis and scandals at the end of the 1990s. It has been created to increase the confidence of European consumers in food safety, hence the

¹⁶ Georgakakis Didier, Weisban Julien, “From above and below: a political sociology of European actors”, in *Comparative European Politics*, 2010, p.93

¹⁷ Schmidt Vivien, “Democracy and legitimacy in the European Union revisited: Input, Output and “Throughput””, in *Political Studies*, 2012, pp.2-22. URL: <file:///C:/Users/Utilisateur/Downloads/Democracyandlegitimacyfinalfinalpoliticalstudies.pdf>

¹⁸ Ibidem, p 5

¹⁹ Georgakakis Didier, Weisban Julien, “From above and below: a political sociology of European actors”, in *Comparative European Politics*, 2010, p.94

²⁰ Ibidem, p 14

²¹ Majone Giandomenico, *La Communauté européenne, un Etat régulateur*, Paris, Montchrestien, 1996

legitimacy of decisions taken at the EU level. Indeed, it is written at paragraph n°18 of the EFSA's founding regulation that "[i]n order for there to be confidence in the scientific basis for food law, risk assessments should be undertaken in an independent, objective and transparent manner, on the basis of the available scientific information and data"²².

- The European External Action Service (EEAS) has been set up after the Lisbon Treaty in the matter of CFSP. The EEAS has been created for an undefined period and supports the cooperation between the EU and national authorities in a particular domain.

We could claim that the main difference between the EFSA and the EEAS is that the mandate of the EFSA is given by the Commission, whereas the EEAS can act when it gets the previous authorization by Member States. This master thesis aims to analyse and compare the role of experts in the internal legitimization processes of two European non-majoritarian bodies: the EFSA and the EEAS.

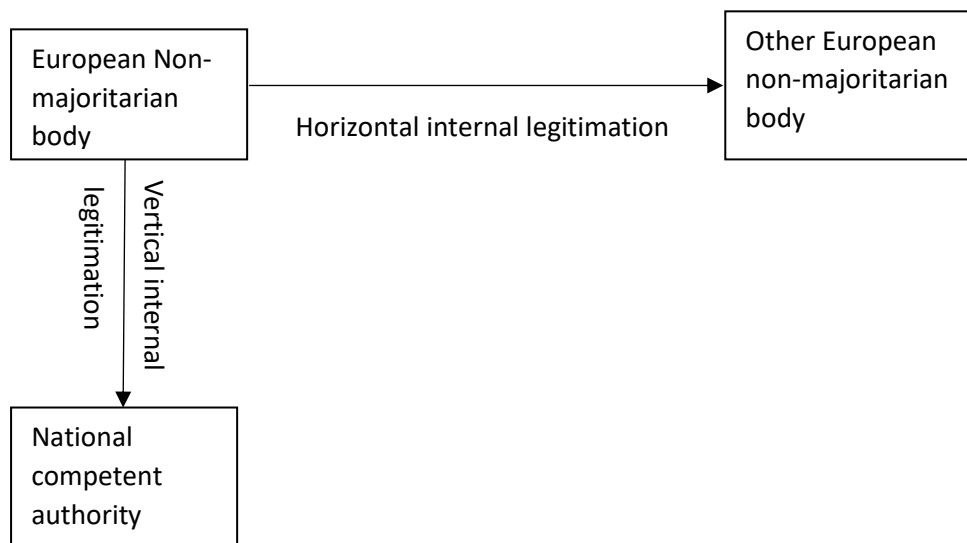
Because they are very different (the EFSA deals with a domain where the normative consensus is possible whereas the EEAS deals with a domain where an ideological conflict is endemic), the objective is to determine whether experts have a comparable role in their legitimization. By identifying comparable mechanisms, we would be able to generalize our findings to all European NMIs. In his PhD, Samuel Defacqz defines the internal legitimacy as the way national interest's groups perceive the legitimacy of European interest groups²³. This project aims to study the internal legitimization of European NMIs, meaning how they legitimate their existence vis-à-vis competitors. These competitors can have two distinct natures. We can thus define:

- A vertical internal legitimization vis-à-vis national competent authorities: How European NMIs legitimate their work vis-à-vis national competent authorities?
- A horizontal internal legitimization vis-à-vis other European NMIs: how European NMIs justify their existence, their *raison d'être* towards other European NMIs?

²² European Commission, EFSA's founding regulation, REGULATION (EC) N° 178/2002, 28/01/2002, Paragraph n°18. URL: <https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32002R0178&from=EN>

²³ Defacqz Samuel, « the internal legitimacy of European interest groups: analyses of national interest groups perspectives ». Prom.: Rihoux Benoît, Koutroubas Theodors, 2018, p.9. URL: <http://hdl.handle.net/2078.1/207032>

Figure 1: Horizontal and vertical internal legitimacy



author's own elaboration

This research project is concentrated on the vertical internal legitimacy, meaning how experts contribute to legitimize the existence of a European body vis-à-vis 27 competitive national authorities. We argue that actors and experts influence the legitimization process of these bodies. Therefore, the throughput legitimacy and sociological approaches will be at the core of this research project. Indeed, actors' social origins, discourses but also personal strategies will be assessed to define how they contribute to legitimize the institution they are working in. As we have shown, European NMIs lack democratic legitimacy. To be more precise, they lack democratic legitimacy under the concept of representative democracy. However, in this project, we will suggest and try to prove that NMIs might rely on other concepts of democracy such as the associative or participative ones. Indeed, we argue that European NMIs seek their legitimacy elsewhere through eurocrats' expertise and professional backgrounds, trying to build a collective legitimization thanks to the gathering of various profiles. So, this project aims to determine the role of experts in the legitimization of European NMIs vis-à-vis national competent authorities. This development leads us to the research question:

- To what extent do experts contribute to the vertical internal legitimization of European non-majoritarian institutions?

To answer this research question, we argue that experts contribute to the legitimization of European NMIs through two main mechanisms:

- The first mechanism is that their personal attributes are of first importance for the legitimization of NMIs. They will be assessed through the analysis of four components:
 - Academic background,
 - Professional experiences,
 - Personal relations,
 - Any other important sources discussed by experts in interviews.
- The second mechanism that we will attempt to prove is that European NMIs do not only rely on individuals' attributes but are trying to gather experts with different profiles to build a collective legitimization.

To test our hypotheses, we will analyse and compare the EFSA, and the EEAS based on the design of difference. Because they are different, the identification of common mechanisms will allow us to generalise our results to all European NMIs.

II) Plan of the dissertation

This research is based on four chapters that will progressively lead us to the conclusion of our analysis. We introduce, in the next chapter, the theoretical frameworks that will be used. As it will be explained, the objective is to link the micro-level of actors with the meso-level of institutions. Therefore, the chapter will be divided in three main parts. The first part is dedicated to the introduction of general considerations concerning the organisational legitimacy at the meso-level. The second part introduces the sociological approach, used to analyse the role of experts at the micro-level. The third part explains how we intend to link the micro- and the meso-level thanks to the concept of throughput legitimacy, particularly the openness and inclusiveness mechanisms.

Our methodology and research design are defined and explained in the second chapter. This chapter will be divided in five parts. The first part is dedicated to the relational approach. An approach based on the importance of relations between experts allow us to better capture the influence of individuals as well as the collective legitimization of NMIs. In the second part, we describe how we gathered our data. The third part explains our methodology which consists in applying the process-tracing method for inductive purposes as it will allow us to draw a generalization based on theorisation. The fourth part details how our comparative study will be conducted. We will apply the design of difference to draw a generalisation based on our two different cases. The fifth part comes back on the reasons that drove our choice to focus on the EFSA and the EEAS.

Despite the apparent differences between the EFSA and the EEAS identified in Chapter II, common points are identified in Chapter III. In the first part, after deepening the analysis of two important differences, we identify common points both in their tasks and compositions that could apparently seem very different. In the second part, we apply the inclusiveness and openness mechanisms to our two cases to argue that they rely on comparable legitimization mechanisms.

The final chapter deepens the analysis. After showing that our two cases rely, to some extent, on comparable legitimization mechanisms, we will analyse to what extent experts contribute to their legitimization and test our two hypotheses. A first part is dedicated to the comparison of individuals based on our three main mechanisms: their academic backgrounds, professional experiences, and personal relations. We will assess the importance of these mechanisms in the legitimization of our two cases by applying them to the two types of experts: EEAS' diplomats and EFSA's scientists. After analysing how experts, as individuals, contribute to the legitimization of the EFSA and the EEAS from a bottom-up approach, the second section will explain how institutions are building a collective legitimization, thus following a top-down approach.

Therefore, we will conclude on the important influence of experts in the internal legitimization of European non-majoritarian institutions. Our results on the collective legitimization seeking will lead us to provide some arguments concerning the importance that expertise could play to resorb both the democratic and the legitimacy deficits at EU level. Indeed, through the inclusiveness and openness mechanisms, European NMIs might rely on concept of democracy such as the associative or the participative ones, different from the dominating representative concept of democracy in Western States. This argument will lead us to argue that inclusiveness and openness might be the deepest concept of the legitimacy by the *input*, rather than relying on a third concept of legitimacy.

III) Literature review and state of the art

This project aims to contribute to the research on European governance, focusing on the influence of experts in the internal legitimization of European non-majoritarian institutions. Both experts and non-majoritarian institutions have become two important fields of research on European governance. We will come back on both, respectively in the first and second subparts. The third subpart details how we aim to contribute to the research on these two fields.

Even though experts are part of the EU's decision making since the creation of the Communities, the research agenda on the influence of experts on decision-making started to develop in the late 1990s with the emergence of sociological approaches to EU studies. Though, sociological approaches characterized the first research agenda on European integration. In the late 1950s and 1960s, scholars

such as Haas²⁴, Deutsch and al²⁵ and Etzioni²⁶ already tried to understand the European integration through sociological lenses respectively working on the socialization of elites, the increased interaction between citizens and the influence of elites in the European integration. This first approach to the EU integration was then put aside by the research on European integration until its re-emergence in the early 2000s. Since the early 2000s, sociological approaches became more and more important as individuals and experts tend to be identified as the new centre of European governance. The application of sociological approaches to the EU studies are mainly made by French-speaking scholars. Indeed, some French-speaking scholars such as Jacquot and Woll²⁷, Georgakakis and Rowell²⁸ or Vauchez and Cohen²⁹ insist on the role of usage and individuals in the European integration. In their book, Georgakakis and Rowell invites to extent the sociological approaches to the study of “recent European agencies”³⁰. This project partly aims to reply to this invitation by studying the role of EFSA’s experts in the legitimization of the agency. The research on experts also led some scholars to follow a different path. Indeed, a book recently published by Christiansen and al focus on the contestation of expertise in the European Union³¹. Despite their non-elected mandates, our objective is to prove that experts can play a role to resorb both the democratic and the legitimacy crises.

To do it, we will study their role in the legitimization of non-majoritarian institutions. As for experts, some scholars argue that European non-majoritarian institutions and agencies might become the centre of the EU’s policymaking. Indeed, Gérardin and al. identifies the “Regulation through agencies as the new paradigm of European governance”³². These two considerations drove our willingness to study the role of individuals in European non-majoritarian institutions. Most of research focusing on European non-majoritarian institutions or European agencies remain centred at the institutional level. Moreover, these researches often remain built on the Principal/Agent framework³³, studying the delegations of power to non-majoritarian institutions and their willingness to increase their room of

²⁴ Haas Ernst, *The Uniting of Europe: Political, Social and Economic Forces*, Stanford University Press, 2008

²⁵ Deutsch Karl and al., *Political Community in the North Atlantic Area: International Organization in the Light of Historical Experience*, Princeton University Press, 1957, 228p

²⁶ Etzioni Amitai, *Political Unification: A comparative study of Leaders and Forces*, New York: Holt, Rineheart and Winston, 1965, 346p

²⁷ Jacquot Sophie, Cornelia Woll, “Usage of European integration. Europeanisation from a Sociological Perspective”, *European Integration Online Papers*, 2003

²⁸ Georgakakis Didier, Rowell Jay, *The Field of Eurocracy: Mapping EU Actors and Professionals*, Palgrave MacMillan, 2013

²⁹ Cohen Antonin, Vauchez Antoine, “Sociologie Politique de l’Europe du droit”, in *Revue Française de Sciences Politiques*, 2010, pp. 223 – 226

³⁰ Georgakakis Didier, Rowell Jay, op. cit., p.10

³¹ Christiansen and al, *The Contestation of Expertise in the European Union*, Palgrave MacMillan, 2021

³² Gérardin Damien, Munoz Rodolphe, Petit Nicolas, *Regulation Through Agencies in the EU*, Edward Elgar, 2005, 280p

³³ Gilardi Fabrizio, “Principal-Agent Models Go to Europe: Independent Regulatory Agencies as Ultimate Step of Delegation”, *ECPR General Conference of Canterbury*, 2001, pp.1-33.

manoeuvre vis-à-vis their principals. Indeed, Mark Thatcher studies the delegation to independent regulatory agencies from a Principal-agent framework to argue that “the creation of independent regulatory agencies did indeed respond to powerful functional logics”³⁴. Busuioc goes beyond the delegation step and argues that “the *de facto* level of autonomy displayed by some European agencies is below the autonomy provided by the formal legal rules as a result of ongoing controls exercised by one (or other) of the principals”³⁵. Other academics are focusing on accountability mechanisms, therefore using one mechanism of the output concept of legitimacy. In her study, Curtin follows this path and studies public accountability mechanisms of European non-majoritarian institutions³⁶.

Both experts and non-majoritarian institutions are becoming increasingly important in the European governance. It raises questions concerning their legitimacy. Whereas the legitimacy of non-majoritarian institutions has extensively been studied following *input* or *output* legitimacy criterion, only few studies apply throughput mechanisms. Maggetti, as Curtin, studies the accountability of independent regulatory agencies from two “alternative sources of legitimacy [...] the positive evaluation of regulatory performance by citizens [...] and the existing approaches to ensuring agency accountability”³⁷. Glencross opposes the democratic *inputs* and the *output*-oriented governance in his study on the role of the ECB during the sovereign debt crisis where he argues that “the ECB stayed focused on outputs [and shows] how input legitimacy is institutionalized at a time of a “constraining dissensus”³⁸. Borrás and al. followed an approach from the *input* to explain the legitimacy of European agencies and “argues that procedural credibility is a fundamental property that explains the need for an increased interaction between agencies and stakeholders at the post-delegation stage”³⁹. Even though this last research resembles the most what we intend to do, it remains different. Indeed, all these approaches follow the dichotomy between the legitimacy by the *input* and the legitimacy by the *output*. Our objective is to open the black boxes of governance and rely on a third concept of legitimacy, the throughput legitimacy. Introduced by Vivien Schmidt⁴⁰, this concept has been applied

³⁴ Thatcher Mark, “Delegation to Independent Regulatory Agencies in Western Europe”, London School of Economics, 2002, p.2

³⁵ Busuioc Madalina, “Accountability, Control and Independent: The Case of European Agencies”, European Law Journal, vol.15, n°15, 2009, p.599

³⁶ Curtin Deirdre, “Delegation to EU Non-Majoritarian Agencies and Emerging Accountability”, in Gérardin Damien, Muñoz Rodolphe, Petit Nicolas, *Regulation through agency in the EU: a new paradigm of European governance*, Edward Elgar, Cheltenham, 2005, pp. 87 – 117

³⁷ Maggetti Martino, “Legitimacy and Accountability of Independent Regulatory Agencies: A critical Review”, Living Reviews in Democracy, 2010, p.1

³⁸ Glencross Andrew, “Democratic Inputs versus Output-Oriented Governance: the ECB’s Evolving Role and the New Architecture of Legitimacy in the EU”, JIOS, vol.5, ISSUE 2, 2014, p.23

³⁹ Borrás Susana, Koutalakis Charalampos, Wendler Frank, “European Agencies and Input Legitimacy: EFSA, EMeA and EPO in the Post-delegation phase”, European integration, vol.25, n°5, 2007, p.583

⁴⁰ Schmidt Vivien, “Democracy and legitimacy in the European Union revisited: Input, Output and “Throughput””, in *Political Studies*, 2012, pp.2-22

to study the EFSA by Chatzopoulou as she argues that “the ‘inputs’ (politics) and ‘output’ (policy) criteria fail to capture what happens within the actual governance (process), between the decisions and the outcomes”⁴¹. This is what our project intends to do. Indeed, the objective is to contribute both to the literature on non-majoritarian institutions and on experts. Whereas these two approaches often remain analysed independently from each other, our objective is to bridge them, to create a dialog between them. Most studies linking these two dimensions show how experts are using institutions for their own careers and renown. Our objective is not to determine how institutions contribute to develop experts’ reputation. We do not want to make a sociology of experts. On the contrary, the objective is to study the influence that experts can have to legitimize the institution, how institutions are using experts to build their legitimacy. Some researches follow this objective such as the study conducted by Holst and Gornitzka who explore “the role and use of expert knowledge in decision-making in and by EU executive institutions”⁴². Studying the role of experts in the legitimization of non-majoritarian institutions will allow us to bridge these two increasingly important parts of the European governance.

⁴¹ Chatzopoulou Sevasti, “Unpacking the Mechanisms of the EU ‘Throughput’ Governance Legitimacy: The Case of EFSA”, *European Politics and Society*, 2014, p.1

⁴² Gornitzka Åse, Holst Cathrine, “The Expert-Executive Nexus in the EU: An introduction”, in *Politics and Governance*, 2015, vol.3, Issue 1, p.1

PART I: THEORETICAL CONSIDERATIONS, METHODOLOGY AND RESEARCH DESIGN

Chapter I: The role of experts in internal legitimation: theoretical considerations

In this chapter, we will explain our theoretical framework. As the objective is to use the process tracing method from an inductive approach to be able to generate a theory, our theoretical considerations are of first importance. This research aims to combine the sociological approach with the concept of throughput legitimacy, more precisely the openness and inclusiveness mechanisms, to explain how individuals contribute to the legitimation of institutions. However, we do not consider the openness and inclusiveness mechanisms as throughput mechanisms. Indeed, one of the aims of this research is to argue that the two mechanisms we will use might be the deepest perspective of the *input* legitimacy, relying on concepts such as associative or participative democracy. The objectives of this chapter are to justify our approaches and to explain to what extent this research will allow us to generate our theory. By exploring and explaining the different mechanisms through which experts contribute to the legitimation of the organisation from a sociological approach, we will propose a theory which consists to argue that the micro-level and the meso-level are not independent from each other. We will provide an attempt to demonstrate that the micro-level of experts largely contributes to legitimize the meso-level of the organisation. There are many articles and academic papers concerning both the organisational legitimacy and the increasing role of experts in the EU decision-making. However, only very few studies are trying to combine them. It has not yet been explored concerning European non-majoritarian institutions, be it European agencies or the European External Action Service. This chapter will start by general considerations concerning non-majoritarian institutions and the role of experts. In a second section, we will provide some explanations concerning the organisational legitimacy and the sociological approach. As we aim to prove that the sociological approach can contribute to explain the organisational legitimacy through the influence of experts, we will provide some elements on how we will combine these two approaches. Therefore, in the last section of this chapter, we will introduce the concept of throughput legitimacy and the two mechanisms we will use: the inclusiveness and openness.

I) Why study the role of experts in NMIs legitimation?

Explaining our choice to focus both on experts and on non-majoritarian institutions imply two questions. The first one answers our choice to focus on non-majoritarian institutions. The second question concerns our focus on experts. As we aim to generate a theory concerning the role of the micro-level in the legitimation of the meso-level, studying both experts and institutions seems logical. Moreover, as one of our objectives is to go beyond the concept of throughput legitimacy, combining experts and institutions is a key starting point. More precise arguments will justify our choice to precisely focus on non-majoritarian institutions. This section will therefore be divided in three parts. The first sub-section justifies our choice to focus on NMIs. The second one provides some elements concerning our willingness to focus on experts. Indeed, beyond our objective to generate a theory, the purpose of this project is also to contribute to the research on European governance. The increasing role of experts in the decision-making process is therefore of first interest to better understand how the decision-making process evolves in the European Union.

A) The increasing importance of non-majoritarian institutions

A regulatory shift in the European governance since the beginning of the 1990s increased the importance of non-majoritarian institutions. The introduction of the Single Market coincided with a shift in European governance as globalization led to a weaker State that needed to increasingly delegate its powers to NMIs. This change has led some authors, such as Majone, to argue that the EU progressively became a regulatory State⁴³. For this research, we will define the regulatory State as a mode of governance where States delegate their powers and capacities to non-majoritarian, independent, or semi-independent bodies where the decision-making process is detached from the political pressure, depoliticized and technocratic. Therefore, as already explained in the introduction, this shift in governance led both to a democratic crisis from the *input* side and to a legitimacy crisis from the *output* side. The regulatory shift in European governance can be defined as follows:

“[F]unctions formerly performed by state agencies were either privatized or transferred to new public authorities which were granted broader margins of autonomy than classic State department. Where new forms of regulations emerged,

⁴³ Majone Giandomenico, “From the Positive to the Regulatory State: Causes and Consequences of Changes in the Mode of Governance”, *Journal of Public Policy*, vol.17, n°2, Cambridge University Press, 1997, pp.139 – 167

the choice between [...] legislation and regulation by an “agency” more often than not ended up privileging the last option”⁴⁴.

Therefore, a myriad of non-majoritarian institutions has been set up since the 1980s, dealing with various tasks and policies, weakening, and reducing the power of Member States. Indeed, the “agencification” phenomenon corresponds to a transfer of capacity from Member States to this new centre of European governance. From a principal agent perspective, which will not be used in our research, we can observe that most European non-majoritarian institutions are trying to go beyond the tasks defined by their principals, trying to get access to formal decision-making powers. Madalina Busuioc defined three main roles for European non-majoritarian institutions. Firstly, EU agencies may “serve as autonomous administrative spaces with formal and factual independence vis-à-vis the Member States and EU institutions”⁴⁵. Secondly, “they may act as EU-level institutions, being de facto integral parts of the EU institutional apparatus”⁴⁶. In that sense, and because they are neither directly elected, not directly controlled by elected representatives, they may escape the political pressure and contribute to the democratic deficit at the EU level. However, other forms of democracies exist beyond the concept of representative democracy of Western States. Indeed, EU non-majoritarian institutions are also “multilevel networks that integrate web of independent experts, industry, NGOs, universities, and research institutes”⁴⁷. This third role will be at the core of our analysis. Indeed, it justifies our choice to rely on the concept of throughput legitimacy but also our willingness to contest the distinction between the *input* and the throughput concerning the openness and the inclusiveness mechanisms.

As we have seen, these multilevel networks are composed of many stakeholders. For this research, we focus on one specific stakeholder: national competent authorities. We have made this choice to better understand the relations between European NMIs and national competent authorities and how the former builds his legitimation towards the latter. Indeed, non-majoritarian institutions appear to lack democratic legitimacy. However, we will see that the presence of Member States representatives in the board of these bodies tend to nuance this claim. Considering the fact that many other stakeholders are also represented, we will argue that NMIs might lack representative democratic legitimacy but may rely on other forms of democratic legitimacy, which we will define as participative or associative.

⁴⁴ Gérardin Damien, Munoz Rodolphe, Petit Nicolas, *Regulation Through Agencies in the EU*, Edward Elgar, 2005, p.5

⁴⁵ Busuioc Madalina, Groenleer Martijn, Trondal Jarle, *The Agency Phenomenon in the European Union: Emergence, institutionalisation, and everyday decision-making*, Manchester University Press, 2012, 224p

⁴⁶ Ibidem

⁴⁷ Ibidem

B) The Expert-driven governance as a response to both the legitimacy and the democratic deficits?

From the beginning of the European integration process, the technocracy, defined as a system of rule which “recognises expertise as the sole basis of authority and power”⁴⁸, is at the core of the European governance. Indeed, “this reliance on technical expertise rather than the response to popular preferences [...] justified governments delegating competences to “Brussels”⁴⁹. Therefore, following the Scharpf’s dichotomy between the *input* and the *output*⁵⁰, European policymaking relied more on the *output* side than on the *input* one. The relative success of this way of functioning was made possible because of the “permissive consensus”⁵¹ of European citizens. However, the Maastricht Treaty, combined with the creation of the Economic and Monetary Union, constituted a critical juncture. European policymaking became politicized and the “permissive consensus” that made the success of the European Union became a “constraining dissensus”⁵² as citizens raised their voice to oppose the ratification of the Maastricht Treaty and later of the Treaty Establishing a Constitution for Europe. As summed-up by Christiansen and al, the Maastricht Treaty “opened the door to political contestation [...] and launched a debate about the EU’s “democratic deficit” that continues until today”⁵³. According to Höreth, the increasing politicisation did not lead to the disappearance of the technical expertise. The European Union seems to be stuck between three irreconcilable sources of legitimation: popular preferences, state interest and technocratic expertise⁵⁴. Indeed, despite the progressive politicization of the EU decision-making process, the European Commission continues to rely heavily on the expertise as a legitimating factor. One major reason can be identified to explain it. Together with the progressive politicization of the decision-making, the European Union faced a regulatory shift in governance, consisting in the delegation of powers and competences to non-majoritarian institutions who escape the politicization and the political pressure of majoritarian systems. Therefore, expertise remains a key component of the EU’s decision-making process. Indeed, in some very technical areas such as setting technical or food safety standards, the expert-driven

⁴⁸ Radaelli Claudio Maria, “The public policy of the European Union: whither politics of expertise?”, *Journal of European public policy*, vol.6, n°5, 1999, pp. 757-774.

⁴⁹ Christiansen and al, *The Contestation of Expertise in the European Union*, Palgrave MacMillan, 2021, p.9

⁵⁰ Scharpf Fritz (1), “Problem-Solving Effectiveness and Democratic Accountability in the EU”, MPIfG Working Paper, February, 2003, URL: <http://www.mpifg.de/pu/workpap/wp03-1/wp03-1.html#2>, p.1

⁵¹ Van Ingelgom Virginie, “Mesurer l’indifférence. Intégration européenne et attitude des citoyens », in *Sociologie*, 2012/1, vol .3, 2012, p.3

⁵² Ibidem

⁵³ Christiansen and al, op. cit., p.9

⁵⁴ Höreth Marcus, “No Way Out for the Beast? The Unsolved Legitimacy Problem of European Governance.” *Journal of European Public Policy* 6, n°2, 1999, pp. 249–268.

governance promises a best outcome than the political pressure⁵⁵. Therefore, the European commission has outsourced most of its regulatory powers to decentralized agencies. Legislative proposals shall often be evidence-based and subject to impact assessments. In all these technical areas, the influence of experts remains important both in the policymaking and in the manner policy is legitimized.

In this project, we will argue that the influence of experts could go beyond and that they could contribute to solve both democratic and legitimacy issues. Indeed, the inclusion of individuals with different experiences, interests and career path in Management Boards of European agencies could bring a democratic dimension in the policy making. Even though they do not rely on representative democracy, we suggest that the inclusion of stakeholders in some bodies of NMIs could be identified to other forms of democracy. After some scandals, particularly concerning the food chain, which undermined the *output* legitimacy of this mode of functioning since the end of the 1990s, the inclusion of stakeholders might also contribute to resorb the legitimacy deficit. Indeed, it puts into question the concept of evidence-based policy making as science is not evident and is subject to controversies. Therefore, the inclusion of stakeholders tends to politicize science in the sense that it allows debates. As the outcome relies on diversified methods and analysis, it might gain legitimacy. We could argue that the combination of the regulatory shift with the legitimacy crisis led to the evolution of the influence of experts in the policy process. Indeed, before the Maastricht treaty, the main dimension of being an expert was to be exceptionally good in a specific domain. Hence, the expertise could be seen as a scientific *deus ex machina*, independently operating in the shadow. With the emergence of contestations in the aftermath of the Maastricht treaty, this conceptualisation of expertise was no more acceptable by the wider public. Therefore, being an expert was less defined by exceptional capacities in a specific domain but encompassed more dimensions. To a certain extent, being an expert is “as much about expertise as it is about superior resources, particular interests, and existing institutional ties”⁵⁶. In that sense, because of the combination and inclusion of different profiles and interests, experts may contribute to the legitimation of European non-majoritarian institutions. The purpose of this research, by examining how experts can contribute to the internal legitimation of NMIs, is to check whether this assumption is relevant.

⁵⁵ Christiansen Thomas. “Governance in the European Union.” In Cini Michelle, Borraran Nieves Perez-Solorzano, *European Union Politics*, pp. 97–109. Oxford: Oxford University Press, 2015.

⁵⁶ Chalmers Adam, “Getting a Seat at the Table: Capital, Capture and Expert Groups in the European Union.” *West European Politics*, 37, no. 5, 2014, pp. 989 – 990 (976–992).

II) How to study the role of experts in internal legitimation

A) Studying organisational internal legitimation from a subjective approach

The concept of legitimacy can be addressed in many ways and can concern many different political objects. Hence, it is important to clearly define the concept of legitimacy in this framework. Some general considerations are necessary in order to frame the definition that will be used here. The concept of legitimacy was traditionally used to study the State legitimacy because it originally “pertains to how power may be used in ways that citizens consciously accept”⁵⁷. In that sense, the legitimacy is “the basis of the creation of political community that is the focal point of political science”⁵⁸. According to some academics, the question of legitimacy is the “master question of politics”⁵⁹. The concept of legitimacy was then enlarged by Max Weber to many kinds of relationship of power and subordination both in the public and the private sphere⁶⁰. Based on that broad definition, the legitimacy of any political object can be studied from an actor to the entire political system. Three levels can be identified to address the issue of legitimacy⁶¹:

- The issue of legitimacy can be addressed at the macro level by studying the legitimacy of a political system.
- The issue of legitimacy can be addressed at the meso level by studying the legitimacy of an organization such as a European agency or a European non-majoritarian body.
- The issue of legitimacy can be addressed at the micro level by studying the legitimacy of a political actor.

These three levels are only ideotypes and are not isolated from each other. Indeed, we will argue that the legitimacy, the credibility, the expertise of one level has a role on the legitimacy and the legitimation of the other levels. Because our aim is to analyse to what extent experts contribute to the legitimation of European NMIs, we will show the influence of the micro-level on the meso-level.

In addition to this vertical division, a horizontal one can be addressed. Indeed, research on legitimacy can focus both on the outcomes of a political object (studying the legitimacy of a public policy) or

⁵⁷ Gilley Bruce, “the meaning and measure of State legitimacy: Result for 72 countries”, in *European Journal of Political Research*, 2006, p.499. URL:

<http://www.web.pdx.edu/~gilleyb/MeaningMeasureofLegitimacyFor72.pdf>

⁵⁸ Ibidem

⁵⁹ Crick Bernard, *In defense of politics*, University of Chicago Press, 1993

⁶⁰ Weber Maximilian, *Economy and Society*, University of California Press, 1978

⁶¹ Defacqz Samuel, op. cit., p.28

address the broader question of the legitimacy of the political object, as an entity (studying the legitimacy of a European agency)⁶². This research focuses on the experts' driven legitimation of the EFSA and the EEAS as organizations. Now that the broader framework has been established, the concept of legitimacy still needs to be defined. What does legitimate mean, to whom and which criterion need to be considered to assess the legitimacy of such political objects? Answering that question requires a precise definition of legitimacy. Suchman identifies three primary forms of legitimacy⁶³:

- The pragmatic one is based on audience self-interest,
- The moral one is based on normative approval,
- The cognitive one is based on comprehensibility and taken-for-grantedness.

For the purpose of this research, legitimacy refers to the definition of Marc Suchman:

“Legitimacy is a generalized **perception** or **assumption** that the actions of an entity are desirable, proper, or appropriate within some socially constructed systems of norms, values, beliefs and definitions”⁶⁴

This definition was chosen because it incorporates both the moral and the cognitive forms of legitimacy. Indeed, the moral dimension of legitimacy based on normative approval, legitimacy as an assumption, refers to the analysis of legitimacy based on predefined values⁶⁵. On the contrary, the cognitive dimension of legitimacy, legitimacy as a perception, refers to the analysis of legitimacy from a subjective perspective⁶⁶.

Because the aim of this study is to define how “an organization justifies to a peer or superordinate system its right to exist”⁶⁷ from an expert driven approach, legitimacy will be studied as a perception. In other words, we will try to assess to what extent the competences, the expertise, the credibility of experts contribute to legitimate the institutions as well as how these personal attributes are used by institutions to build their legitimation. Indeed, the objective of this research is to analyse

⁶² Ibidem

⁶³ Suchman Marc C., « Managing legitimacy: strategic and Institutional approaches”, in the Academy of Management review, vol 20, n°3, 1995, p. 571. URL: https://www.jstor.org/stable/pdf/258788.pdf?casa_token=2uLdaRw5xCoAAAAA:WpUjtire8WbJ6cZXZRDYReYxnWegwp6ZNbn_ChXNYuf1Z3NUz1VEn8XI9M3jfhm675m0H1DTR2djKUGV-gdqlEqLRY8QTYt4DRYCesla_LWUTyp7-jE

⁶⁴ Ibid. p 574

⁶⁵ Defacqz Samuel, op. cit., p.29

⁶⁶ Ibidem

⁶⁷ Maurer, J. G., *Readings in Organization Theory: Open-System Approaches*, MW Books, 1971, p.361

how European non-majoritarian bodies build their legitimacy vis-à-vis national competent authorities. Two different approaches can allow us to study internal legitimization strategies. The first one is called a “norm-guided approach”⁶⁸. The objective of this kind of approach is to determine to what extent organizations comply with the criterion that have previously been defined. The aim is to “measur[e] real-world phenomena against theory guided expectations”⁶⁹. The second approach is defined as a subjective approach. It consists in focusing on the considerations of political objects themselves regarding the legitimacy of other political objects⁷⁰. In a bottom-up approach, it would have consisted in examining the legitimacy of NMIs’ actors as perceived by actors working in other NMIs and in national competent authorities. In our case, the subjective approach will help us to determine explanatory mechanisms on the influence of experts in the legitimization of NMIs vis-à-vis competent and competitive organisations. Contrary to the norm-guided approach which is based on normative considerations designed by the researcher, the subjective approach is “based on observations and analysis of the perception of subjects”⁷¹. What will matter here is not the legitimacy of NMIs vis-à-vis clear criterion predetermined by the researcher but vis-à-vis their own perception of what is important to gain trust and credibility. As it has been demonstrated by Samuel Defacqz, “this approach aims neither to analyse what organizations are nor what they should be but to understand what makes them exist within relationship with their audiences”⁷². Therefore, adopting a subjective approach seems to be the best choice as we aim to determine to what extent eurocrats contribute to NMIs’ legitimization. The following scheme summarizes the framework in which the internal legitimization of European non-majoritarian bodies will be studied:

⁶⁸ Defacqz Samuel, op. cit., p.29

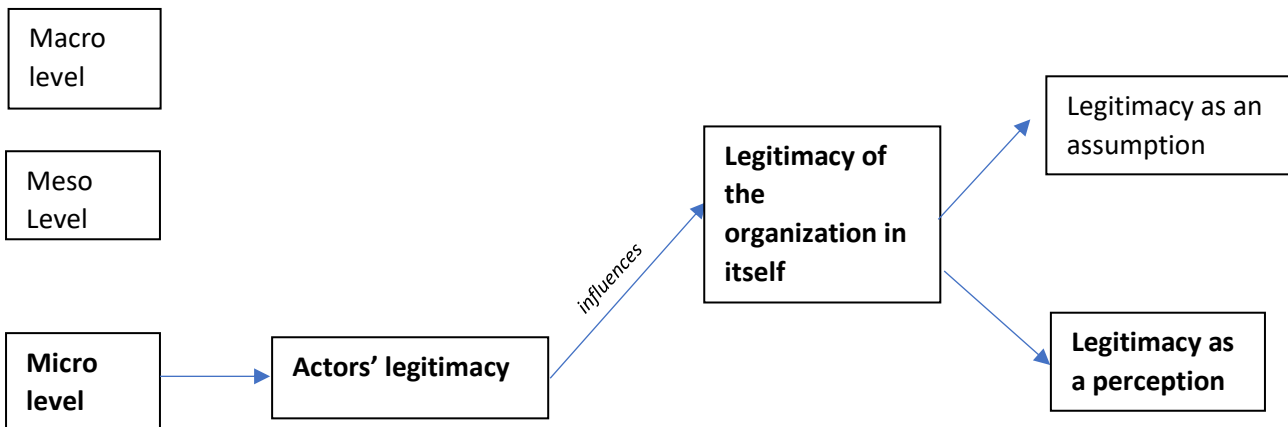
⁶⁹ Steffek Jens & Hahn Kristina (Eds.), Introduction, in: Steffek Jens & Hahn Kristina (Eds.), *Evaluating transnational NGOs: Legitimacy, accountability, representation*, Basingstoke: Palgrave Macmillan, p.7, 2010

⁷⁰ Defacqz Samuel, op. cit., p.29

⁷¹ Ibidem

⁷² Ibid. p.36

Figure 2: Conceptualising the role of actors in organisational legitimacy



author's own elaboration, based on Samuel Defacqz's thesis

This scheme summarizes what has previously been said and shows that this research is not exhaustive. It only focuses on one of the two facets of legitimacy: legitimacy as a perception. This scheme shows that the actors' legitimacy, at the micro-level, can be considered as one of the facets of the legitimation process of the organization, at the meso-level. To complete the system, we could argue that the legitimation of actors, which will be analysed as a perception, could be one normative criterion to analyse the legitimacy of European NMIs from a norm-guided approach. The following board will help us to situate our project in a broader study of organizational legitimacy of European NMIs.

Figure 3 : Input, Throughput and Output Legitimacy

dimension	Criterion	definition	Key questions
Input	The "raison d'être"	The identity of the agency, the reason why it has been established	How the "raison d'être" of the body guarantee its legitimacy vis-à-vis national authorities?
	The procedural fairness	The neutralization of power differences in the decision-making structure	Does each national authority have the same voice in the process? Does the involvement depend on the power of the State?
	Transparency	Transparency of the structure, of information, of results	Does each national authority get the same information? Does the body give a full information to national authorities? How important is the discretionary power of the body?
Throughput	inclusiveness	The involvement of National Authorities at the European level to issue a common answer to a problem	To what extent do Member States authorities are involved in the decision-making process?

	openness	“the active duty of the administration” to ensure the “right to know” through dissemination and access of information to people, and by proactively promoting the participation of civil society and the broader EU democratic principles” ⁷³	To what extent the involvement of various origins ensures a proper dissemination of information among all stakeholders (National administrations)?
Output	The accountability	Type of ex-post control mechanism where there is a relationship between an institution and a forum, in which the institution has the obligation to explain and justify its conduct	To what extent is this mechanism important?
	The efficacy/compliance (EFSA)	The efficacy of the work at EFSA level corresponds to the level of compliance of risks managers with what has been assessed by the EFSA	To what extent EFSA’s outcomes are followed by risks managers to issue legislation?
	The efficacy as the problem-solving ability (EEAS)	The efficacy of the EEAS is determined by its capacity to provide a solution to a common problem that could not have been solve by Member States separately	To what extent what was done by the EEAS could not be better achieved by national authority separately?
	The enforcement	The intervention of the body at the enforcement stage of the policy process	Does the institution monitor the implementation of the outcome at the national level?
	The credibility	The credibility of the outcome determines the credibility of the agency in the long term	Is there a correlation between the salience of the issue at stake and the credibility of the outcome?

Author's own elaboration, based on Mena Sebastien's and Guido Palazzo's work⁷⁴

This board, adapted from a work made by Mena Sebastien and Guido Palazzo (Annex 1), shows what could be a complete study of organisational legitimacy. Our research does not aim to be exhaustive but to focus on the sociological aspects of a legitimation process, on the roles of eurocrats personal attributes to legitimate the organization they are working in. Because European non-majoritarian bodies have different tasks, missions, and audiences, it is likely that they have different legitimation mechanisms. As it has been said by an EFSA’s political adviser in interview #2, European NMIs have been set up for various tasks, from the risk assessment upstream of the decision-making, to

⁷³ Chatzopoulou Sevasti, « Unpacking the Mechanisms of the EU “Throughput” Governance Legitimacy: the Case of EFSA”, in European Politics and Society, 2014, p.14

⁷⁴ Mena Sebastien, Palazzo Guido, “Input and Output Legitimacy of Multi-stakeholder Initiatives”, Cambridge University Press, in Business Ethics Quarterly, vol 22, n°3, 2012, pp. 257 - 556

operationalization tasks downstream of the decision-making. Indeed, “organizational legitimacy can be addressed as a context-dependent concept”⁷⁵. It is thus useful to study the legitimation processes through a subjective approach. Using a norm-guided approach, with clear criterion previously defined, could have influenced the interviewees in their answers. Indeed, instead of pre-determining criterion, we will use our interviews and empirical results to draw the main legitimation criterion. However, we will see in the research design that some exploratory interviews conducted us to identify the main legitimating criterion. Therefore, we mainly insisted on three of those in our interviews.

Now that legitimacy has been defined, it is important to define the theoretical framework through which the internal legitimation of European non-majoritarian bodies will be analysed. In this research, we will apply the sociological approach together with two mechanisms of the throughput legitimacy, the openness and the inclusiveness, in order to be able to link the micro-level with our previous explanations on organisational legitimacy. The next section aims to explain why such a choice has been made.

B) Applying a sociological approach to study the impact of experts in NMIs’ legitimation

Studying the impact of experts in the legitimation of European NMIs through a sociological approach seems the most relevant framework. Indeed, applying “traditional” integration theories such as the Principal/Agent framework or sociological institutionalist lenses will not make possible to link the micro- and the meso-level as we intend to do. The principal/agent theory helps us to understand the relationship between two different institutions but do not allow us to go beyond the meso-level and to study what is happening at the micro-level. We could claim the same for the sociological institutionalist theory where institutions are defined by March and Olsen as a “relatively stable collections of practices and rules defining appropriate behaviours for specific groups of actors in specific situations”⁷⁶. Even if this approach considers actors and specific groups, it remains centred on the institution, whereas our objective is to put experts at the centre of the analysis. To be able to go beyond that institutional level and to study what is happening inside these institutions, we must introduce a third theory which will allow us to study and analyse the actor’s driven legitimation process. This approach, which has long been unused, refers to the French sociologist school that is complementing the institutionalist approach of the Anglo-Saxon model. As it has been observed by

⁷⁵ Defacqz Samuel, op. cit., p.30

⁷⁶ March James G., Olsen Johan P., “The Institutional Dynamics of International Political Orders”, International Organization, vol.52, n°4, 1998, p.948

some French scholars such as Didier Georgakakis, “several interesting approaches have emerged [...] but [...] they often remain built on a formal separation between “politico-institutional” and “sociological” aspects, that make the European Institution-society nexus opaque”⁷⁷. The aim of our project is precisely to reconcile these two approaches by studying how the micro-level (actors) is contributing to the legitimization of the meso-level (institutions). This research project could be an initial answer to the invitation of Didier Georgakakis to extend the sociological theories to “recent European agencies”⁷⁸. Using a sociological approach is interesting for many reasons. First, it allows us to focus more on actors than on institutions and thus to understand “what social agents involved in EU processes think and do considering their position in wider structures of interaction and domination”⁷⁹. Secondly, it will contribute to open new perspectives to rethink integration theories. Indeed, studying the European integration through the role of actors will bring something new to the analysis as social actors, through their expertise and the various positions they hold, could be one of the elites of the European integration process⁸⁰. Thirdly, the sociological approach perspective takes a new way to study the dynamics and the politics in European institutions. Indeed, most theories either adopt a sectoral approach or a national approach to study EU integration’s logics. This theory introduces a third kind of approach which is focused on “social, professional or academic background of people working in institutions”⁸¹. Indeed, experts or diplomats working in NMIs are not there to represent national interests, neither to defend only their specific sectoral perspectives. One of the main ideas behind European NMIs is to gather a myriad of experts from diverse origins to build a collective that will contribute to their legitimization. Sociological approaches allow to study the correlation between institutions and experts within these institutions. Indeed, “sociological approaches would allow [...] for taking into account the link between policies and politics, to emphasize power struggle among actors”⁸² and to study how institutions are using experts’ profiles to build their legitimization. Sociological approaches are focused on the study of interdependencies between institutions and the European societies “as well as the arenas in which they interact”⁸³. Precisely, European NMIs can be referred to as these arenas in which European institutions and various societies’ interests interact. Hence, applying a sociological approach will allow us to bring an expert-centred approach both to the EEAS and to the EFSA. With this approach, the objective is to contribute to the emerging academic

⁷⁷ Georgakakis Didier, Weisban Julien, op. cit., p.93

⁷⁸ Georgakakis Dider, Rowell Jay, op. cit., p.10

⁷⁹ Georgakakis Didier, Weisban Julien, op. cit., p.94

⁸⁰ Vauchez Antoine, « Une élite d’intermédiaire : Genèse d’un capital juridique européen (1950 – 1970) », Actes de la Recherche en Sciences Sociales, Editions du Seuil, 2007, p.1

⁸¹ Georgakakis Didier, Weisban Julien, op. cit., p.97

⁸² Saurugger Sabine, Sociological Approaches in the EU Studies, Journal of European Public Policy, vol. 16, n°6, 2009, p. 938

⁸³ Ibidem

literature on the increasing importance of individuals in the governance of the European Union. According to some scholars, individuals tend to become the core of the governance process as, within this multi-level governance, actors' choices, more than institutional logics, help to apprehend politics changes processes⁸⁴. With this approach, we will tend to put aside two diverging concepts that shaped the EU governance debates in the past decades: the bottom-up or top-down nature of the EU governance. Indeed, eliminating this distinction allow not to freeze actors in one specific position or identity⁸⁵, an actor not being only national, European, scientist or lawyer. Therefore, experts find a central place in the analysis of European public policies but also in the analysis of the entire EU's political system. We will focus on formal practices that happen within the framework of these institutions but also on informal meetings and discussions. The increasing powers given to NMIs since the regulatory shift of the 1990s, combined with the central and increasing role of individuals and their usage drove our willingness to analyse how these two entities were interconnected, how the latter contributes to the legitimation of the former. Moreover, contrary to other entities in which the role of actors has been widely analysed, actors working in NMIs remain insufficiently studied. Though, they are susceptible to constitute one of the elites of the European construction both through their expertise and the multiple position they hold at the national, European, and sometimes international levels⁸⁶. One of the main interests in studying these experts is the ambivalence in their position. Indeed, various academics insist on their increasing role in the European governance. However, they remain quite invisible⁸⁷.

According to Sabine Saurugger, sociologists start from three promises "to analyse the legitimacy empirically through empirical sociological lenses"⁸⁸. The first assumption is that European institutions are not monolithic blocs. Rather, European NMIs are a gathering of a myriad of different stones coming from different origins with different backgrounds. The second assumption is that every research design must start with an "analysis of actor's resources and in particular the divergence of these resources"⁸⁹. As we will explain below, one part of our empirical study is dedicated to the analysis of actors' resources. However, we choose a different path. Indeed, the core of this research is not to concentrate on the divergence between actor's resources but to apply a set of three resources to two very different NMIs. We will therefore test their academic background, professional experiences, and personal

⁸⁴ Jacquot Sophie, Woll Cornelia, « Action Publique Européenne : les acteurs stratégiques face à l'Europe », in *Politiques Européennes*, n°25, 2008, p. 171

⁸⁵ Ibid. p.168

⁸⁶ Vauchez Antoine, « une élite d'intermédiaires : Genèse d'un capital juridique européen (1950 – 1970), *Actes de la Recherche en Sciences Sociales*, Editions du Seuil, 2007, p.54

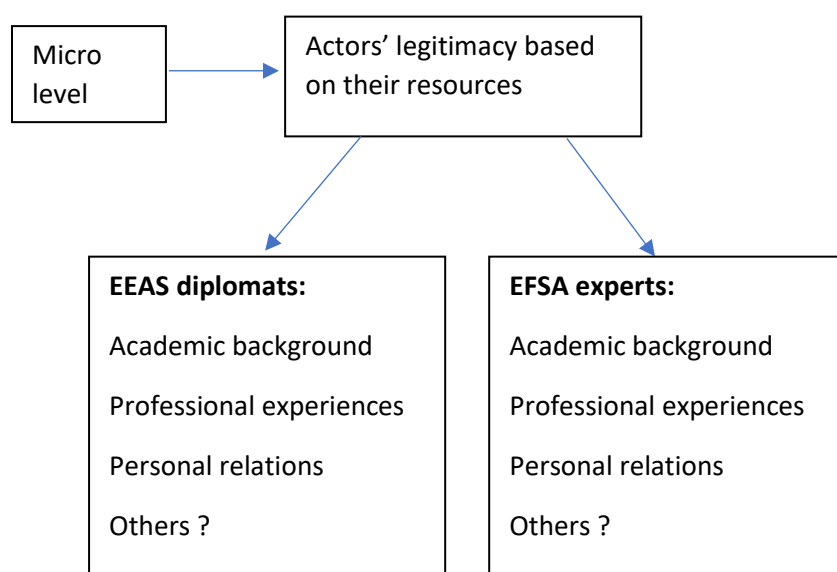
⁸⁷ Ibidem

⁸⁸ Saurugger Sabine, op. cit., p.941

⁸⁹ Ibidem

relations. These three criteria have been identified after our exploratory interviews. This will lead us to the observation that actors' resources are indeed different within NMIs, independently from the type of NMI studied. NMIs rely on different kinds of profiles. The third dimension is that applying a sociological approach shall have the objective to address the problem of legitimacy. Precisely, the objective of this research is to study how experts can contribute to the internal legitimization of European NMIs. Further explanations will be detailed in the research design. The following scheme summarizes how we will analyse actor's resources:

Figure 4: Analysing experts' legitimacy



Author's own elaboration

The following section explains how we will link the micro- and the meso-level by introducing the two notions of openness and inclusiveness, relying on the concept of throughput legitimacy.

C) The concept of throughput legitimacy: studying the openness and inclusiveness mechanisms

To study the role of experts in the internal legitimization of European non-majoritarian institutions, we will rely on the concept of throughput legitimacy as defined by Vivien Schmidt⁹⁰. Indeed, as our objective is to open the black boxes of governance, going to the micro-level of experts, the concept of throughput legitimacy seems the most appropriate. With the introduction of this

⁹⁰ Schmidt Vivien, 2012

concept, Vivien Schmidt adds a new perspective to the Scharpf's dichotomy between the *input* and the output *sides* of legitimacy. Indeed, as the *output* concerns the effectiveness of the outcome and the *input* relies on the EU's responsiveness to citizens' concerns, the concept of throughput legitimacy "builds upon yet another term from systems theory, and is judged in terms of the efficacy, accountability, and transparency of the EU's governance process along with their inclusiveness and openness to consultation with people"⁹¹. Hence, this concept relies on five different mechanisms. However, for this specific research, we will concentrate on two of them: the inclusiveness and openness. The openness refers to "the active duty of the administration" to ensure the "right to know" through dissemination and access of information to people, and by proactively promoting the participation of civil society and the broader EU democratic principles"⁹². The inclusiveness is defined as a mechanism which "indicates whose interests are considered and who participates (formally and informally) in the governance process"⁹³. Studying these two mechanisms allow us to "concentrate on what goes on inside the black box of EU governance, in the space between the political *input* and the policy *output*"⁹⁴. A deep analysis of these two mechanisms applied to the case of the EFSA and the EEAS will drive us to the hypothesis that openness and inclusiveness might be the deepest perspective of the *input* side of legitimacy as defined by Scharpf. Indeed, the difference made by Schmidt between the governance by the people and the governance with the people might be artificial to a certain extent. Schmidt herself recognises that "throughput legitimacy includes [...] the intermediation processes through which citizens organised in interest groups have a direct influence on policy-making"⁹⁵. Moreover, "throughput governance [...] through pluralist type consultation [...] has deliberately been encouraged as a way of counterbalancing the paucity of the *input* governance by the people through political participation"⁹⁶. European NMIs largely rely on these pluralist type consultations and therefore make possible to examine whether these mechanisms shall be considered as throughput mechanisms or if they could be interpreted as the deepest side of the *input* legitimacy, relying on other conceptions of democracy. Some arguments will be provided in the conclusion of this research. Indeed, this theoretical debate is not at the core of this project. What is important is to analyse to what extent these two mechanisms, combined with the analysis of experts' social capital from a sociological approach, contribute to the internal legitimation of European non-majoritarian institutions.

⁹¹ Schmidt Vivien, op. cit., p.2

⁹² Chatzopoulou Sevasti, « Unpacking the Mechanisms of the EU "Throughput" Governance Legitimacy: the Case of EFSA », in European Politics and Society, 2014, p.14

⁹³ Ibidem

⁹⁴ Schmidt Vivien, op. cit., p.5

⁹⁵ Ibid. p.6

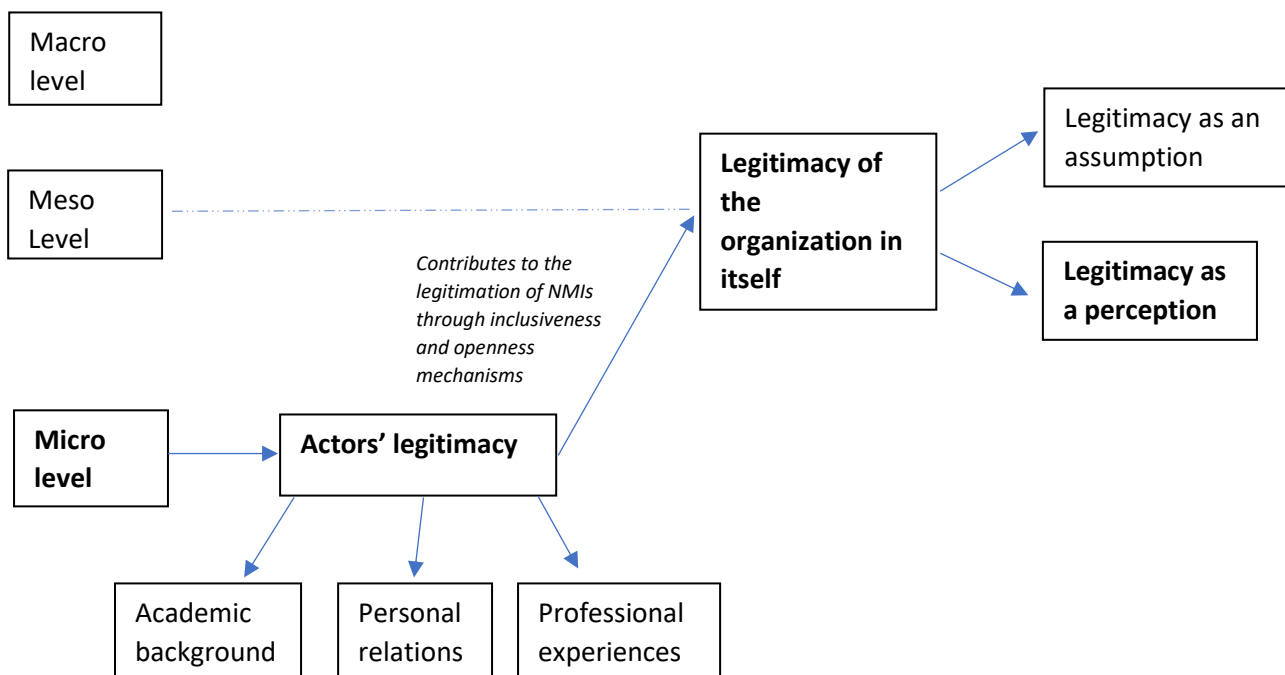
⁹⁶ Ibidem

Applied to our case, the concept of throughput legitimacy will explain to what extent the micro-level of actors can contribute to the legitimization of the meso-level of institutions. Indeed, we argue that non-majoritarian institutions, beyond their tasks in the policy-cycle, are also huge *fora* in which many interests are represented. We will observe and explain, through this concept, that European NMIs are trying to rely on different kinds of profiles and backgrounds in order to build a collective legitimization. These concepts of openness and inclusiveness will hence be key concepts in our analysis. Indeed, thanks to these concepts, we can link the micro-level of experts with the meso-level of institutions and explain to what extent the former contributes to the legitimization of the latter, to what extent experts contribute to the internal legitimization of European NMIs. Two main arguments will be put forward in the analysis:

- On the one hand, from a bottom-up approach, experts' personal attributes and social capital confer them credibility and legitimacy, contributing to the legitimization of their services.
- On the other hand, from a top-down perspective, non-majoritarian institutions rely on different kinds of profiles to build a collective legitimization rather than a legitimization only based on experts' scientific or diplomatic famousness.

We have detailed, in the first part of this chapter, how to study the organisational legitimacy. In the second part, we introduced and explained how we will use the sociological approaches to study the role that actors can play in the legitimization of the organisation. In this last section, we explain how we intend to link the micro- and the meso-level thanks to the concepts of inclusiveness and openness. The scheme below summarizes the theoretical approach of this project:

Figure 5: Summary of the theoretical framework



author's own elaboration, inspired by Samuel Defacqz's PhD

CHAPTER II: Methodology and research design

In this chapter, the method that will be used to answer the research question will be explained based on the theoretical framework previously presented. Firstly, we explain our choice to focus on the relational approach. Contrary to other approaches that study much more the internal structure of the organization, this approach allows to centre the analysis on individuals. Even if these approaches will be used in our framework as a starting point, we will see how the different functions and experts' profiles work together to contribute to legitimate the organization. Secondly, this relational approach will be implemented by semi-structured interviews and the analysis of primary sources, mostly experts' CVs and institutional sources. Thirdly, we will explain how we intend to use the process tracing method for inductive purposes. To be able to generate a theory, we must combine the process-tracing method with the design of difference that will allow us to generalise our findings. Fifthly, we explain why do we compare the EFSA and the EEAS.

I) A relational approach to NMIs

As we have mentioned above, researches that analyse the relations between Member States' foreign ministers and the EEAS are mostly based on the Principal-Agent theory. The same trend can be observed concerning studies between the EFSA and the European Commission as their focal point is often put on the accountability and independence seeking. Most of studies do not apply a sociological approach and remain focused on the analysis of relations between institutions. As our objective is to open the black boxes of European non-majoritarian institutions from a socio-political approach, applying a relational approach to our research design will allow us to capture the credibility of eurocrats vis-à-vis national scientists and bureaucrats. For the purpose of this research, the relational approach relates to the approach developed by Josselson⁹⁷. Indeed, this research investigates "how people understand and make meaning of facets of their lives"⁹⁸ to gain trust and credibility vis-à-vis national experts and diplomats. An approach based on the social relations between different experts will help to better understand the role of experts in the legitimation of European non-majoritarian institutions. However, an approach based on relations between eurocrats and national diplomats and scientists require a deep understanding of the existing structures of organizations that will be studied. Therefore, research on the internal structure of these organizations will be used as a starting point in

⁹⁷ Josselson Ruthellen, *Interviewing for Qualitative Inquiry: a Relational Approach*, The Guilford Press, 2013

⁹⁸ Ibid, p.9

our project. In order to fully capture the relations between experts and the way they contribute to legitimize the work of the service, we must firstly understand the internal structure of the institution. In the case of the EFSA, we must explain how the management board is built, what is the recruitment procedure and what kind of equilibrium between scientific expertise and understanding of European institutions is sought. Moreover, the difference between risk assessment and risk management will need to be detailed in order to capture what is and what is not the competence of the EFSA. Concerning the EEAS, applying a relational approach firstly requires understanding the different functions and their tasks. The EEAS is composed of EU diplomats, Seconded National Experts, Temporary Agents. We firstly need to explain these roles before opening the black boxes and studying relations between these experts and their national counterparts. Once the necessary background will be defined, we will be able to analyse the core of this research, the role of eurocrats in the legitimation of European non-majoritarian institutions. Starting from the hypothesis that experts' academic backgrounds, previous professional experiences and personal acquaintances matter to generate trust and credibility, we will examine experts' personal trajectories to capture their role in the legitimation of the EFSA/EEAS. The relational approach fits our objective to study legitimacy as a perception as it implies a subjective approach based on semi-structured interviews.

II) Data collection

A study based on a relational approach necessitates to conduct interviews. In these interviews, experts are being treated as actors and not as witnesses. Indeed, the objective is to understand how they interpret the role of their experiences and functions as a legitimating tool. Under the relational approach, "the form of interview to be considered here aims for a rich, nuanced, storied sample of subjectivity that details how it has felt to the participant to be living the life he or she has lived in relation to the phenomena of the research question"⁹⁹. In our case, interviews are made to understand how experts from the EEAS and the management board of the EFSA observe to what extent they contribute to legitimate the work of their respective institution. The interview grid has been designed to follow this approach. Indeed, we tried to keep questions as open as possible in order not to influence experts' answers. Conducting this kind of interviews requires a huge transcription work. Indeed, experts, from one field to another, do not necessarily use the same words to talk about the same issue. What we observed, for example, is that experts do not talk about legitimation but more about trust and credibility. Therefore, we need to transcript the vocabulary used during the interviews in academic terms. Our research follows an abductive research design, meaning that our hypotheses are refined

⁹⁹ Ibid. p.11

iteratively thanks to the observations issued from our interviews and the analysis of primary sources. The same holds true for our interview grid. Indeed, three exploratory interviews were realized to precise and polish it. Here lies the definitive interview grid:

Tableau 1: Interview Grid

Themes	Under-Themes	Relances
Structure Interactions	How would you define a typical day at the office?	What does your task exactly consist in?
	How often are you in touch with national FAMs and for what purpose?	Do you exchange information?
		Do you advice each other?
	How would you define the relations between your service and national competent services?	Are relations between your service and MS ones based on mutual trust?
Actor's contribution to the legitimization of the institution	What does your function bring to the service that other function does not?	Why have you been recruited?
		What did make you the "ideal" candidate?
	Do you feel that you have a personal role to play in the credibility seeking of your service?	vis-à-vis national competent services ?
	Of the EEAS/EFSA as a whole?	Vis-à-vis national FAMs/Food Safety Authorities?
Actor's personal attributes	What is your academic background? Your field of expertise? Do you have experiences in research institutes or think tanks related to your actual task?	Does your academic expertise contribute to generate trust in your service's work? in the EEAS' work? vis-à-vis national competent services
	Do you have any experience in FAMs? In other EU institutions? In other international organisations? Do your previous professional experiences contribute to generate trust in the EEAS' work? vis-à-vis national competent services	
	Do you have personal acquaintances in FAMs?	
	To what extent do your personal acquaintances contribute to generate trust in your service? in the EEAS as a	

	whole? Vis-à-vis national competent services	
	Any other important source of credibility ?	

It is structured in three parts. The first one can be identified as an introductory one. The objective is to capture the daily task of the expert and the frequency of formal and informal exchanges with national diplomats in the case of the EEAS and national risk assessors in the case of the EFSA. The second part is made to capture the personal feelings of experts interviewed. We try to capture to what extent eurocrats feel involved in the legitimization of their respective services. The third part serves to test the factors that we identified as the main legitimacy providers: the academic background or field of expertise, previous professional experiences either in national ministries or other European institutions, personal acquaintances in national administrations. The remaining question serves to identify potential other sources of legitimization such as the nationality or cultural traditions.

Now that the interview grid has been detailed, we can explain the interviewees panel (Annex II). Three exploratory interviews were conducted in April and May 2020 and helped to get first insights to precise our interview grid and research field. Interview #4 to interview #15 were conducted between December 2nd, 2020 and March 30th, 2021. Our analysis is mostly based on the results of these interviews. In order to create a climate of confidence, interviews were not recorded, and the anonymity of the interviewees is guaranteed. Therefore, only few details are given in the interviewees' list in order not to be able to identify them. The nationality of EFSA's Management Board members is not given as it would reveal their identity. Concerning the EFSA, we focus on the management board and interviewed three members. Moreover, our three exploratory interviews concerned the EFSA. We respectively interviewed a former EFSA executive director, an EFSA policy adviser and an EFSA's Scientists working in a Panel. Concerning the EEAS, interviewees were chosen according to their function (mainly EU Diplomats and Seconded National Experts). We conducted interviews with experts coming from different services. This choice responds to a practical consideration. Indeed, considering the difficult situation we are living, we faced difficulties to contact experts. Therefore, interviews were conducted with people that replied to our request. Eight interviews were conducted with EEAS experts and we tried to reach an equilibrium between the different functions and nationalities. Therefore, we interviewed three seconded national experts and five EU diplomats. In terms of nationality, we tried to reach an equilibrium between small and bigger States. French experts are however overrepresented (3 interviewees) as it is my nationality, thus the country in which I have most of my contacts. However, we also conducted an interview with one Dutch, one Belgian, one Swedish and two Germans. Seven men and seven women were interviewed. This research could therefore be seen as an introductory

approach of the role of expert in the legitimization of European non-majoritarian institutions. Indeed, the small size of our panel do not allow us to draw clear conclusions. We could say that these interviews allowed us to reshape our hypothesis and to observe primary results. It would require a large-scale study to see whether our primary observations could be confirmed.

Mainly three platforms were used to identify and contact experts. CVs of EFSA's management board members were easily accessible on the EFSA's website. Most of the investigation work concerned the EEAS. Indeed, two platforms were mainly used to identify experts that could bring an added value to our work. We investigate their profiles, CVs, previous professional experiences thanks to LinkedIn. The degree of precision of LinkedIn profiles determined our willingness to contact them. Even if they might all be of interest for our research, we contacted diplomats that provided a bigger description on their LinkedIn because it is easier to discuss with people when knowing a little about what he has done in the past and showing him some interest. It helped experts to feel more comfortable and increased their willingness to share relevant information. We developed this approach because this research project implies to get and analyse private information that experts are primarily hesitant to share. We thus needed to create a climate of confidence. In line with this, we promised to experts that their anonymity will be kept. Once their profile had been identified, the most difficult part was to reach them. Indeed, even if their mail addresses are quite easy to find on EUWhoIsWho website¹⁰⁰, it often takes weeks, sometimes months to get a reply, if they reply at all. The idea was thus to identify their assistant who are more willing to provide a quick answer or to "activate our network". It has proven to be the most efficient solution as nine out of fifteen interviews were made possible by this way. Once people have been identified, we reach them out per mail. Here lies a mail model:

Dear Ms. / Mr. XXX

I am Antoine Grall, I am a second-year master student at the Catholic University of Louvain (Belgium) and I am conducting my master thesis on the role of experts in the legitimization of the EEAS/EFSA vis-à-vis Foreign Affairs Ministers/Member States Food Safety Authorities.

Applying a socio-political approach, the aim of my research project is to analyse to what extent experts' academic background, previous professional experiences, and personal relations contribute to generate trust and credibility in the work of the EEAS/EFSA. Your profile seems of high interest for my research because XXX reasons.

¹⁰⁰ Link to EUWhoIsWho website: <https://op.europa.eu/en/web/who-is-who>

Therefore, I would be grateful if we could convene an interview that would last approximately 20-25 minutes. It could take place on Skype/Whatsapp/Zoom or any other platform, depending on your preference.

I hope I could benefit from your experience to carry out this project which aims to better understand the role of experts and non-majoritarian institutions in the European governance.

I remain at your disposal for any further information or precision,

Best regards,

Antoine Grall

These interviews allow us to gather key information on how experts envisage their own contribution to the legitimization of the EFSA/EEAS. It brings an added value to our work as it makes us understand better how actors themselves perceive their role. We could not understand it by only analysing experts' CVs. These insights bring a stronger perspective to the analysis.

None the less, gathering, and analysing experts' CVs remain useful for the purpose of our research. Analysed under the lights of results extracted from our interviews, these primary sources will contribute to reinforce our arguments. It will help us to better understand what kind of profiles the institution seeks. Based on our first observations, we make the hypothesis that institutions seek to build a team rather than counting on individual experts to legitimize it. To verify it, we are relying on fifteen CVs from the EEAS and fifteen CVs from the EFSA. Concerning the EFSA, we have chosen to rely on the EFSA's management board as it is the governance body of the institution. Concerning the EEAS, building our sources has been more difficult. Indeed, CVs are not directly available online as it is the case of the EFSA's management board¹⁰¹. We thus need to investigate through other channels, mainly LinkedIn. In order to remain as objective as possible, we tried to randomly choose fifteen experts working in the EEAS or in the delegations. We therefore have a pool of fifteen CVs that is approximately representative of the composition of the EEAS. Indeed, we gathered information on EU diplomats, Seconded National Experts and Temporary Agents. Finally, we analysed these interviews and CVs under the light of institutional documents related to the organization of these non-majoritarian institutions. Concerning the EFSA, it concerns the Regulation (EC) 178/2002 establishing the EFSA and the Regulation (EU) 2019/1381 on transparency and sustainability of the EU risk assessment in the food chain. Concerning the EEAS, it concerns the Council Decision (2010/427/EU) establishing the organisation and functioning of the EEAS. These legal acts will mainly be used in the first stage of the

¹⁰¹ Page on which we gathered EFSA's Management Board CVs : [Membres du conseil d'administration | Autorité européenne de sécurité des aliments \(europa.eu\)](#), consulted on 21/04/2020

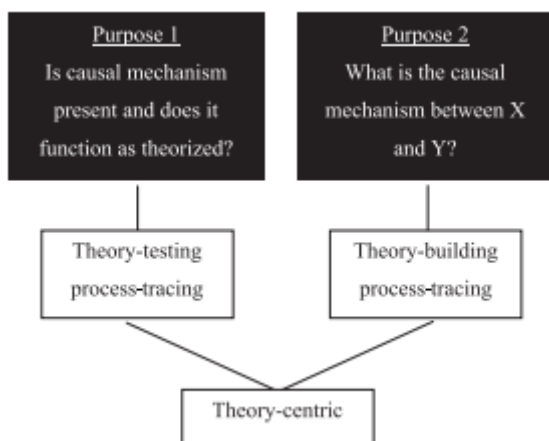
analysis to explain the internal structure of the two institutions. The Regulation (EU) 2019/1381 will also be used at a second stage of the analysis as it can be argued that this Regulation is an adaptation of the EFSA to gain legitimacy and credibility in Member States. It will be further explained in the last Chapter.

III) Applying the method of process tracing for inductive purposes

To analyse data gathered both for the EFSA and the EEAS, the method of process tracing will be used. In recent years, the process tracing method has become one the main means to carry-out within-case studies. This method has been developed in the 1990s, but the reference book is the one published by George and Bennett in 2005¹⁰². Their main claim is that causal mechanisms are central to causal explanation. According to them, within-case analyses are the best in order to examine causal mechanisms. Two main use of the process tracing method can be identified:

- It can be used for deductive purposes, aiming to test theories,
- It can be used for inductive purposes, aiming to generate theories.

Figure 6: Two-types of process-tracing methods



Beach Derek, Pedersen Rasmus Brun, "Process-Tracing Method: Foundations and Guidelines", 2013, p.12

Our objective is to apply the process method for inductive purposes. We must be cautious with the approach as "inductive analysis of processes does not merely consist of naïve observations of empirical events from which theoretical ideas are derived, but rather forms a theoretically informed analysis

¹⁰² Bennett Andrew, George Alexander L., *Case Studies and Theory Development in the Social Sciences*, Belfer Center Studies in International Security, 2005, 343p

(=decomposition) of processes that is looking for causal chains between the observed events”¹⁰³. It exists different inductive use of process-tracing method. Annex III shows the different inductive types of process tracing. The objective of our research is to use the theory-building type. Indeed, “in its purest form, theory-building process tracing starts with empirical material and uses a structured analysis of this material to detect of plausible hypothetical causal mechanism whereby X is linked with Y [...] when we know that a correlation exists between X and Y but we are in the dark regarding potential mechanisms linking the two (X-Y centric theory building)”¹⁰⁴. In this project we have:

- X = experts’ personal attributes
- Y = the legitimization of European NMIs
- Plausible hypothetical mechanisms = (a) experts’ personal attributes as individuals as well as (b) the combination of all experts’ personal attributes to build a collective legitimization contribute to the legitimization of NMIs.

It will therefore feed our main statement which is to say that the micro-level and the meso-level are not independent from each other. On the contrary, they are strongly linked and studying actors without considering the institutional dimension and vice versa might be artificial. Actors do not only use institutions for their own career and reputation. They are also used by these institutions, notably for legitimization purposes. The process tracing method seems the best suited to achieve our goal. Indeed, over time, “process tracing has been expanded: from being a method to analyse decision-making processes at the individual level and the micro-foundations of behaviours, to a method of scrutinising mechanisms that may also operate beyond the individual level to analyse macro-level causal mechanisms”¹⁰⁵. It therefore directly corresponds to our objective to determine causal mechanisms that link the micro- and the meso-level. To reinforce our arguments, we apply our hypotheses to two apparently very different institutions and compare them based on the design of difference.

IV) A comparison based on the design of difference

Applied to both the EFSA and the EEAS, the relational approach will lead to a comparison of the two non-majoritarian institutions. Following the theories developed by Mill, our comparative study

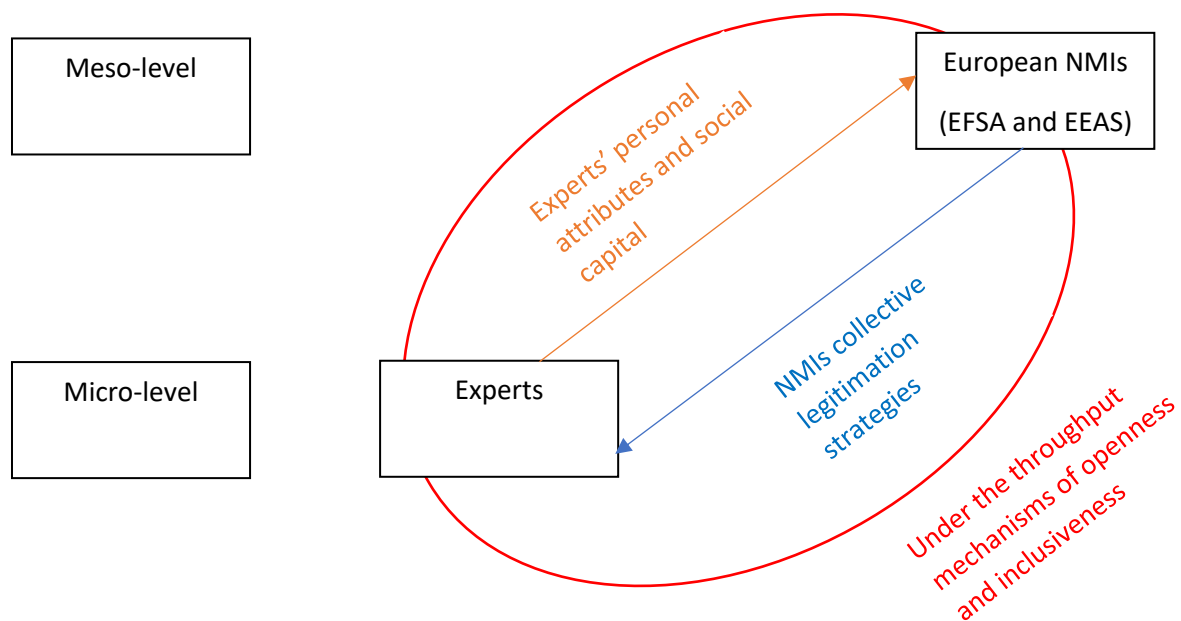
¹⁰³ Falletti Tulia G., “Process tracing of extensive and intensive processes”, in *New Political Economy*, 21:5, 2016, p.457

¹⁰⁴ Beach Derek, Pedersen Rasmus Brun, *Process-Tracing Method: Foundations and Guidelines*, The University of Michigan Press, 2013, p.16

¹⁰⁵ Trampush Christine, Palier Bruno, “Between X and Y: how process tracing contributes to opening the black box of causality”, *New Political Economy*, 2016, p.5

will follow the design of difference¹⁰⁶. Indeed, this method seems to be the most appropriate one to allow us to identify common mechanisms between two very different institutions and to contribute to a theoretical generalization. Therefore, the objective of this study is to try to determine a causality between experts' personal attributes and the legitimization of European NMIs through the analysis of two mechanisms: experts' personal attributes on the one hand and NMIs' collective legitimization strategies on the other hand.

Figure 7: Linking the meso-level and the micro-level thanks to the concept of throughput legitimacy



Author's own elaboration

Experts' personal attributes will be analysed through three different factors: academic backgrounds, professional experiences, and personal relations. Only few academic works tried to contribute to the concept of throughput legitimacy from a sociological perspective. We will therefore try to use our data in order to help construct a theory. The method of difference is useful for the purpose of our research. Indeed, because we observe common mechanisms in two very different institutions, it makes possible to generalize our observations and to contribute to build a theory. To do so, we will apply a specific type of paired comparison which is inspired from the following form: "even though it appears that X [experts' personal attributes + collective legitimization] may be the cause of Y [internal legitimization of

¹⁰⁶ Mill John Stuart, *A System of Logic, Ratiocinative and Inductive: Being a Connected View of the Principles of Evidence, and the Methods of Scientific Investigation*, Vol 1, Cambridge University Press; 2011 (first published in 1843)

European NMI] in [case] A [EFSA], it is not, because [case] B has X but lacks Y”¹⁰⁷. This general form as described by Ragin does not exactly fits our project and needs to be adapted to our comparison. Indeed, our intention is to demonstrate that X contributes to the legitimization of Y in our two opposite cases. We will explain below what has driven the choice of our two cases, one the main reason being their differences. Case A and case B, the EFSA and the EEAS are very different. Therefore, the link between our two cases could be the following: **Because case A and case B are very different, if X appears to be one of the causes of Y in both cases (in A + B), X may be a cause of Y in all cases.** In other words, applied to our comparative study: Because the EEAS and the EFSA are very different in nature, if experts’ personal attributes as well as the collective legitimization developed by NMIs themselves appear to be two of the causes of internal legitimization in both cases, they may be causes of internal legitimization in all cases. However, we must remain cautious with this kind of approach and keep in mind its flaws. Indeed, the method of difference “suffer some of the same liabilities as the method of agreement in situations of multiples causation”¹⁰⁸. We might face these difficulties when trying to understand separately our two different causal explanations: personal attributes and the collective legitimization. Indeed, Ragin explains this flaw with an example: “if land hunger and rapid commercialization both independently cause peasants revolt, there may be instances of revolt caused by rapid commercialization in the absence of land hunger and vice versa”¹⁰⁹. It seems however that we can escape this flaw in our analysis. Indeed, our two causal explanations are not independent from each other and are even strongly linked. In their collective legitimization, European non-majoritarian institutions choose to rely on many different stakeholders with very different academic backgrounds, relations and professional experiences. Therefore, experts’ personal attributes and the collective legitimization cannot independently explain the internal legitimization of NMIs. The difference between the two causal explanations is the level of analysis. Whereas analysing experts’ personal attributes implies a bottom-up perspective in which individuals themselves are at the centre, analysing the collective legitimization implies a top-down approach where individuals are part of a broader strategy defined by institutions.

Because these two institutions are different, both in their composition and their tasks, it is interesting to compare them and try to find common points in their legitimization strategies vis-à-vis national competent authorities. The idea of studying two different institutions is to overcome one criticism that has been made in the literature concerning case-oriented studies. Schneider and Wagemann stressed that “the concentration of just a few cases often leads to interpreting each case as unique entity and,

¹⁰⁷ Ragin Charles C., *The Comparative Method: Moving Beyond Qualitative and Quantitative Strategies*, University of California Press, 2014, p.40

¹⁰⁸ Ibidem

¹⁰⁹ Ibidem

thus to neglecting the possibility of providing generalizable causal explanations”¹¹⁰. Indeed, analysing the role of experts in these two-different non-majoritarian bodies will allow us to provide a theoretical generalisation. Because they are opposed in many dimensions, if we can identify common roles for experts in the internal legitimation of the institutions, we could argue that our conclusions will be applicable to all kind of non-majoritarian institutions. In that case, it would be possible to conclude that the role of experts in the internal legitimation of European non-majoritarian institutions is partially the same, independently of the tasks and functions of the institution. We will not claim that the role of experts is identical because there are case-specific dimensions, but it would be possible to identify common mechanisms. However, if we cannot find common roles for experts in the EEAS and the EFSA, we will not be able to determine generalizable conclusions and each case will be interpreted as a unique entity. We will below argue that there are common mechanisms between the EFSA and the EEAS that could be extended to all kind of non-majoritarian institutions. By doing this, we will make a step toward a theoretical generalisation. Indeed, in the past few years, there has been more and more work on experts on the one hand, and on the black boxes of governance and the concept of throughput legitimacy on the other hand. However, all these works seem to stay at the same level of analysis. Indeed, the sociological approach remains focused on the role of experts, actors and eurocrats and the way they use institutions to build their career. It therefore remains concentrated on the micro-level of experts. On the other hand, as we have shown in the literature review, the concept of throughput legitimacy is often studied through approaches such as sociological institutionalism or constructivism. It could look like what we intend to do but these approaches remain centred on institutions, at the meso-level. What we aim to bring to the theory is a dialog, an interaction between the meso-level of institution and the micro-level of experts. Indeed, not only experts use the possibilities offered by EU institutions. We will also argue that institutions use the possibilities offered by experts. In that sense, using the data we gathered, we will provide an attempt to make a theoretical generalisation.

V) Why comparing the EFSA and the EEAS?

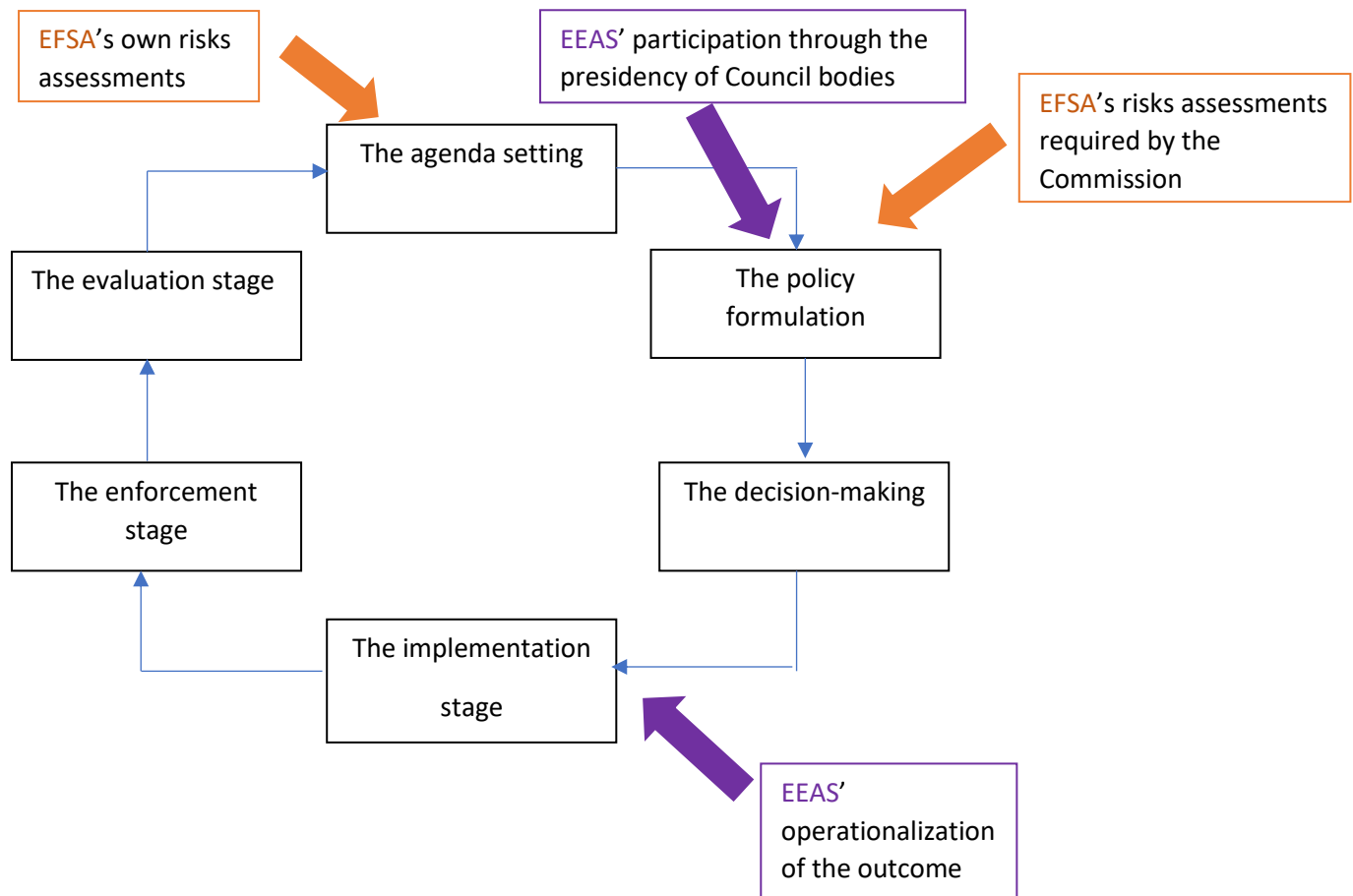
In this section, we explicit our choice to focus on the EFSA and the EEAS. Indeed, it might seem curious to compare these two NMIs as they do not seem to have anything in common. To test our theoretical hypothesis which is to say that there are interactions between the micro-level of actors and the meso-level of institutions, the former contributing to legitimize the latter, we decided to compare the case of the EFSA with the one of the EEAS. Firstly, these two bodies are non-majoritarian institutions. Indeed, none of them are directly elected, neither directly controlled by elected

¹¹⁰ Schneider Carsten Q., Wagemann Claudius, “Improving inferences with a “Two-Step” Approach: Theory and Limited Diversity in fs/QCA”, EUI working Paper SPS, n°2003/7, 2003, p.7

representatives. That being said, this choice has been driven by the apparent differences between these two institutions. Five main differences can be identified:

- Firstly, the EFSA, as a European agency, is controlled by the European Commission whereas the EEAS is controlled by Member States in the Council.
- Secondly, the two institutions deal with very different tasks and have a different “raison d’être”. The EFSA deals with a task directly related to the functioning and efficiency of the Internal Market, food safety. Hence, the supranational logic dominates. On the contrary, the EEAS has been set up to bridge Member States Foreign Policy. It therefore deals with a topic where national sovereignty largely dominates. Thus, the intergovernmental logic dominates.
- Thirdly, the two institutions intervene at different moments of the policy-making process. The core tasks of the EFSA are risk assessment and risk communication. Therefore, her key role takes place before the adoption of the decision, either at the agenda setting stage as the EFSA, by itself, can decide to assess the risk of a specific product, either at the policy formulation stage as their outcome will be used by the European Commission in their legislative proposals. The task of the EFSA stops there. On the contrary, the EEAS intervenes both before and after the decision-making stage. Indeed, as the EEAS chairs some Council bodies and Working groups, the EEAS also plays a role in the policy formulation. However, its main task takes place at the implementation stage as one of the main roles of the EFSA is the operationalization of the outcome. The scheme below summarizes the differences between the tasks of the EFSA and the EEAS:

Figure 8: role of the EFSA and the EEAS in the policy-cycle



author's own elaboration

- Fourthly, the EEAS and the EFSA are composed of different types of experts. Indeed, the EEAS is mostly made of diplomats, be they national or European. On the contrary, the EFSA is mainly composed of scientists. Though, as we will see, the two institutions are seeking an equilibrium and therefore also recruit other types of experts such as food lawyers in the case of the EFSA and academics in the EEAS.
- Fifthly, the internal structure of the two NMIs is different. Indeed, it seems that the internal structure of the EEAS is more hierarchical than the one of the EFSA.

These five differences show that the EEAS and the EFSA appear to be very different institutions. By applying the design of difference to analyse our cases, we will be able to generalise our observations as the EEAS and the EFSA could be put at the two opposites end of a continuum. Indeed, the EEAS

relies on intergovernmental logics whereas the EFSA is an exception within European agencies. Indeed, the EFSA is one of the only agencies whose Management Board is not yet made of Member States representatives. These differences will be further developed in the following chapter.

Conclusion

Thanks to this research design, we will be able to show how the micro-level of experts and the meso-level of institutions are interlinked. Moreover, the combination of the process tracing method together with the application of the design of difference allow us to avoid the potential flaws of these two methods. Firstly, by comparing two NMIs that could be put at the two ends of a continuum, we will be able to draw a generalization and therefore not to study our two cases independently from each other. Secondly, because our two causal mechanisms are strongly linked, we avoid the flaw presented by Ragin because our two causal mechanisms cannot be studied independently from each other. We will only reverse the level of the analysis: from a bottom-up perspective firstly, from a top-down approach secondly.

PART II: ANALYSING THE ROLE OF EXPERTS IN THE INTERNAL LEGITIMATION

Under the light of the theoretical framework and the research design previously explained, we will analyse and compare the influence of experts in the internal legitimation of the EEAS and the EFSA. As seen in the literature review, many studies have been made concerning non-majoritarian institutions. However, there is still a gap concerning the role of experts, from a sociological approach, in the legitimation of these institutions. Analyses on experts remain centred on the micro-level and their objective is not to explain the influence that they could have in the legitimation of institutions. Indeed, studies that combine experts and institutions often remain focused on what institutions could bring to experts' careers but do not explain what experts could bring to the institution. We will contribute to fill this gap by studying the influence of experts in the legitimation of non-majoritarian institutions. Moreover, as remarked by an EU diplomat (interview #12), after ten years of existence, it is interesting to study the role of EEAS experts in order to identify advantages of such an institution but also room for improvement for the future. We argue that common mechanisms exist in the internal legitimation of the two non-majoritarian bodies. We will see, on the one hand, that both institutions rely on the specific expertise of their members to generate trust and credibility. On the other hand, both the EFSA and the EEAS are seeking an equilibrium between different sources of legitimation such as a deep understanding of the functioning of European institutions, the expertise in a specific field, experience in national administrations and national public authorities. Before analysing the influence of actors' personal attributes, social capital, we explain, in Chapter III, that, even though the two bodies have been set up for very different tasks, we can observe common points in their composition. We will insist on two key differences: their *raison d'être* and internal structures. None the less, they both create expertise on specific fields, they both serve as an exchange platform for Member States, helping smaller Member States to benefit from the expertise of bigger ones. They therefore have an important coordination role, both between national authorities and between national and European interests. Whereas the first chapter approaches the meso-level, we will go through the analysis of the micro-level in the second one. Indeed, we will examine experts' profiles and social capital to argue that both the EEAS and the EFSA are recruiting similar profiles in order to reach an equilibrium between various legitimating capacities. Legitimizing capacities are defined as experts' personal attributes that contribute to legitimize the institution, authority, service, they are working for. This will lead us to argue that non-majoritarian institutions are relying more on a collective legitimation rather than on a legitimation only based on individuals' credibility. This trend has mostly been observed in the case of the EEAS whose primary objective is to bridge various interests. We will however argue that the same

trend is observable in EFSA's case as the shift that will occur in the Management Board composition in 2022 will strengthen national representation, contributing to legitimize the authority vis-à-vis national competent authorities, yet raising some concerns.

The table below summarizes the structure of our analysis. It corresponds to the theoretical table made at p.35 applied to our empirical case. Indeed, we start by analysing the organisational legitimacy. The concept of throughput legitimacy is introduced as a transition, as a bridge between the meso-level and the micro-level. In Chapter IV, we open the doors of the micro-level, assessing the influence of experts in the internal legitimation through three mechanisms (academic backgrounds, professional experiences, personal relations), initially from a bottom-up approach, then from a top-down one.

Tableau 2: Structure of the Analytical Part

Chapter III: The organisational legitimacy at the meso-level: comparable points in the legitimation despite differences in the structure	Differences	The <i>raison d'être</i> : originally set up for different tasks A more hierarchical structure in the EEAS than in the EFSA
	Common points	A competitive relationship with national competent authorities The production of expertise and exchange platforms between Member States A common coordination role
	Comparable legitimation mechanisms	The reliance on the concept of throughput legitimacy: openness and inclusiveness mechanisms
Chapter IV: Analysing the role of experts in the legitimation at the micro-level: comparable mechanisms for an expert-driven legitimation	Profiles of experts	Comparable CVs and "euro-socialization" Different main source of legitimation but for common purposes
	The use of experts by NMIs for legitimation purposes	A collective legitimation strategy in both bodies

Author's own elaboration

Chapter III: The organisational legitimacy at the meso-level: comparable points in the legitimation despite differences in the structure

I) Set up for different tasks, there are common points in their composition and structure

Despite important differences, there are common points between the two bodies. In this part, we will focus on the *raison d'être* and internal structures of the EFSA and the EEAS, following a two-fold objective. Firstly, a deep understanding of the internal structure and the *raison d'être* is a necessary step to be able to understand the influence of actors. Secondly, these two facets contribute to shape experts' influence in the internal legitimation of the EFSA and the EEAS. Insisting on these two differences in the first part will allow us to nuance them in the second part, showing that some common mechanisms exist between the two bodies. We argue, in the third part that the concept of throughput legitimacy, precisely the openness and inclusiveness mechanisms, offer relevant lenses to analyse expert-driven organisational legitimacy. This third part will make the transition to the second chapter, dedicated to an analysis at the micro-level, both from a bottom-up and a top-down approaches.

A) Key differences in the “raison d'être” and the structure

This section details the two main differences between the EFSA and the EEAS: the *raison d'être* and the structure of the two organisations. Whereas we previously identified five differences, we detail these two differences in this part because they directly contribute to shape the role of experts in these institutions. Insisting on these two differences in this part will allow us to nuance them in the second part. Using legal texts and previous academic works, we argue that the EEAS has been designed as a bridge between various interests whereas the EFSA has been created to increase consumers' confidence in food safety after the Bovine Spongiform Encephalopathy (BSE) crisis.

1) A different *raison d'être*

One of the main tasks of the EEAS is to work “with the national diplomatic services of EU countries”¹¹¹. Indeed, as stated in article 27(3) TEU, the EEAS “shall work in cooperation with the

¹¹¹ Website of the European Union, consulted on 08/03/2021, URL: https://europa.eu/european-union/about-eu/institutions-bodies/eeas_en

diplomatic services of Member States and shall comprise officials from relevant departments of the General Secretariat of the Council and of the Commission as well as staff seconded from national diplomatic services of the Member States”¹¹². Therefore, because the TEU establishes the EEAS as a platform of cooperation, relations between experts from the Council, the Commission and seconded national experts will be important for the service to gain credibility and trust towards national competent authorities. In that sense, the idea behind the EEAS is to bridge the EU’s foreign policy between the Commission and the Council. Therefore, the EEAS is bridging different kind of interests: the EU’s interest and Member States’ interests. Experts are at the core of the EEAS’ bridging function and thus, contribute to legitimize the service (see below). The EEAS also serves to bridge different policy-making method: the Community method, and the Intergovernmental method. To bridge these interests and “make EU foreign policy more coherent and effective”¹¹³, the Council decision 2010/427/EU establishes that “staff from Member States [...] should represent at least one third of all EEAS staff at AD level. Likewise, permanent officials of the Union should represent at least 60% of all EEAS staff at AD level”¹¹⁴ excluding seconded national experts¹¹⁵. Therefore, the composition of the EEAS itself suggests that the role of experts and the interaction between them will matter to legitimate the service. It seems however that the *de jure* equilibrium between various interests does not necessarily lead to a *de facto* equilibrium. Indeed, the *de jure* equilibrium established by the Treaties can be undermined when experts do not have the necessary experience or expertise. Therefore, it seems that the expertise and knowledge concerning the functioning of the institution matter to reach an effective equilibrium, which will internally legitimate the work of the service. The difference between the *de jure* and the *de facto* equilibrium will be detailed in the following chapter as it directly concerns the influence of individuals in the legitimation of the institution. Therefore, as will be seen below, experts certainly influence and contribute to the legitimation of the service, through their expertise on specific fields, their previous professional experiences as diplomats and their relations and acquaintances in national ministers.

Contrary to the EEAS, the original idea of creating a European Food Safety Authority was not to bridge national risk assessment authorities. Indeed, “the EFSA was set up in 2002 following a series of food crises in the late 1990s to be a source of scientific advice and communication on risks

¹¹² European Union, Treaty on European Union, article 27(3), 2016

¹¹³ Website of the European Union, consulted on 08/03/2021, URL: https://europa.eu/european-union/about-eu/institutions-bodies/eeas_en

¹¹⁴ European Union, Council Decision 2010/427/EU of 26 July 2010 establishing the organisation and functioning of the European External Action Service, article 6(9)

¹¹⁵ Ibid, recital 12

associated with the food chain”¹¹⁶. More specifically, the EFSA has been created after the BSE and its “very existence [...] is due to the lack of public trust in the safety governance of the food chain”¹¹⁷. Therefore, the EFSA has been set up in order to increase the confidence of European citizens in the food safety. Indeed, as stated in the Regulation (EC) No 178/2002, “it is necessary to ensure that consumers [...] have confidence in the decision-making processes underpinning food law, its scientific basis and the structures and independence of the institutions protecting health and other interests”¹¹⁸. In order to generate trust and confidence, “risk assessments should be undertaken in an independent, objective and transparent manner”¹¹⁹. Therefore, the EFSA has been established to provide risks assessments and “is responsible for orchestrating cooperation between the Agency, the European Commission, and the Member States to “promote effective coherence between risk assessment, risk management and risk communication””¹²⁰. Indeed, risk assessment is only the first component of risk analysis which also includes risk management and risk communication. However, “risk assessment alone cannot [...] provide all the information on which a risk management decision should be based”¹²¹. Other interests such as societal or economic considerations are taken into account and sometimes lead risk managers to take a different decision. Contrary to the European Medicine Agency (EMA) which can establish risk regulation, thus intervening in the risk management process, “the creation of the EFSA is based upon the idea of a strict separation of the two functions”¹²² making “its standing in risk regulation much weaker than that of the EMA”¹²³. However, we will not study these issues as our aim is not to study the legitimization of the EFSA vis-à-vis risk management bodies. Still, this division is important to understand the legitimacy crisis of the food safety governance. Indeed, “the sharing of risk competences by the Commission and EFSA increased complexity and fragmentation in food governance and it did not necessarily achieve scientific independence and transparency”¹²⁴. Therefore, some crises and scandals, such as the horsemeat one, questioned the legitimacy of the food safety governance as “the ambiguous nature of the issues (political or scientific) [...] turned a fraud into a

¹¹⁶ EFSA website, « About us » section, consulted on 10/03/2021, URL: [About us | European Food Safety Authority \(europa.eu\)](https://efsa.europa.eu/about-us)

¹¹⁷ Klintmann Mickaël, Kransell Anica, « Challenges to Legitimacy in Food Safety Governance? The Case of the European Food Safety Authority (EFSA) », *Journal of the European Integration*, 32:3, 2010, p. 309

¹¹⁸ European Union, Regulation (EC) No 178/2002 establishing the European Food Safety Authority, 28 January 2002, Recital 9.

¹¹⁹ Ibid. Recital 17

¹²⁰ Sabel Charles F., Zetlin Jonathan, “Learning from Difference: the new architecture of Experimentalist Governance in the European Union”, *European Law Journal*, vol.14, n°3, 2008, p.296

¹²¹ European Union, op. cit., Recital 19

¹²² Busuoiu Madalina, Groenleer Martijn, Trondal Jarle, *The Agency Phenomenon in the European Union: Emergence, Institutionalisation, and everyday decision-making*, Manchester University Press, 2012, p.116

¹²³ Ibidem.

¹²⁴ Chatzopoulou Sevasti, « Unpacking the Mechanisms of the EU “Throughput” Governance Legitimacy: the Case of EFSA », in *European Politics and Society*, 2014, p.10

crisis of food safety governance”¹²⁵. The ambiguity between the political and the scientific nature could increase with the introduction of Member States representatives in the Management Board. This issue is of first interest to better understand the expert legitimacy that has been developed in the European Union since the shift of the European governance towards a “regulatory State”¹²⁶. One could question the relevance of studying the legitimization of the EFSA vis-à-vis national risk assessment bodies. Indeed, as non-scientist, we could think that risk assessments are quite uncontroversial because they are scientifically elaborated by an independent agency. However, highly controversial, and salient issues can sometimes lead to different outcomes between risk assessment authorities and therefore undermine EFSA’s credibility and legitimacy. As highlighted in an interview (Interview #3), the legitimacy of the EFSA has been questioned concerning GMOs as it was accused to be linked with the industry sector. There has been a huge debate on glyphosate between the EFSA and the German risk assessment authority, questioning EFSA’s credibility (Interview #3). Different outcomes can question the legitimacy of the EFSA vis-à-vis national risk assessment authorities. Therefore, experts influence the legitimization of EFSA’s work through their expertise and internal scientific renown, notably. We will analyse below to what extent experts contribute to legitimize the EFSA. To do so, we will focus on the governance body of the agency, the Management Board. Indeed, the EFSA’s Management Board is an interesting case to study as it is different from Management Boards of other European agencies. Indeed, Management Boards of agencies are mostly composed of Member States representatives who carry out two main functions: they manage the organisation of the agency and monitor its functioning. Because made of Member States representatives, Management Boards are “hybrid bodies, simultaneously internal and external to the organisation”¹²⁷. Precisely, the Management Board of the EFSA is not yet composed of Member States representatives. EFSA’s Management Board members are still selected based on their professional background and expertise. However, the Regulation (EC) No 178/2002 has been amended by the Regulation (EU) 2019/1381, modifying the recruitment procedure of the Management Board. Indeed, Recital No 14 foresees that, among experts from other origins, representative of all Member States will be included in the Management Board¹²⁸. We will explain how the shift in the governance and composition of the Management Board is aiming at increasing EFSA’s legitimacy vis-à-vis national risk assessment authorities, comparing it to the bridging structure of the EEAS.

¹²⁵ Ibidem

¹²⁶ Majone Giandomenico, *La Communauté européenne, un Etat régulateur*, Paris, Montchrestien, 1996, 158p

¹²⁷ Busuoiu Madalina, Groenleer Martijn, Trondal Jarle, op. cit., p.128

¹²⁸ European Union, Regulation (EU) 2019/1381 amending Regulation (EC) No 178/2002, Recital 14, 20th June 2019

2) *Different structures: a more hierarchical organisation in the EEAS*

When we look at their organigrams and organisations, the EEAS¹²⁹ and the EFSA¹³⁰ are two different bodies. Even though the structures are comparable, two key differences could be identified, one being directly related to the relations between the European body and national competent authorities. Firstly, their internal structures are comparable. Indeed, both bodies are divided in departments dealing with specific tasks. The EEAS follows two different divisions: a thematic and a geographical division. The EFSA's organisational division follows the competence of the agency. It is therefore divided in three main departments directly related to its main tasks and under the supervision of the Management Board: the Scientific Evaluation of Regulated Products Department, the Risk Assessment and Scientific Assistance department and the Communication Engagement and Cooperation department.

Despite this comparable organisation in departments, it seems that there are some important differences between the structure of the two bodies. Indeed, it seems that the EEAS is organized in a more hierarchical way than the EFSA. The EEAS is the service in the hands of the HR/VP. We cannot claim that the EFSA is in the hands of the EFSA's Executive Director or in the ones of the Management Boards' members. Even though the Management Board supervises the work of the Panels and determines the general workplan of the agency, it does not directly intervene in the daily work of the Panels. For instance, the Management Board is not the combination of all Panel's directors. On the contrary, it seems that the EEAS rely on a more hierarchical structure. Indeed, members of the Secretary General oversee specific departments. There are three main deputy secretary general (DSG) in charge of specific departments: the DSG for economic and global issues, the DSG for political affairs, the DSG for CSDP and crisis response. We will limit ourselves at this stage concerning the analysis of the two organisational charts. It is not at the core of this project. However, a key difference directly concerns this research. In the EEAS, there is no body 100% made of Member States representatives. We could argue that because the EEAS is a bridge between the European Commission and Member States diplomatic services, it is quite logical that diplomats from all origins are working together within the same sub-committees. On the contrary, such a body exists in the framework of the EFSA. The EFSA's advisory Forum is composed of representatives of national food safety authorities. This forum is used by Member States to advise the EFSA on scientific matters, on its work programme and

¹²⁹ Organisational Chart of the EEAS can be found here: https://eeas.europa.eu/sites/default/files/2021 - 01 - 02 - eeas_2.0_orgchart.pdf

¹³⁰ Organisational Chart of the EFSA can be found here: [Visio-2020-09-01-OrgChart.vsd \(europa.eu\)](Visio-2020-09-01-OrgChart.vsd (europa.eu))

priorities. It can also serve to identify potential risks as early as possible¹³¹. Therefore, we can observe that at the meso-level, under the organisational legitimacy concept, the EFSA and the EEAS are building the internal legitimacy differently. Whereas all diplomats are represented in all departments in the EEAS, a specific body of the EFSA, the advisory Forum, is dedicated to Member States representatives. As suggested in the name of this body, Member States representatives only have an advisory role through this Forum. This could partially explain their willingness to gain power on EFSA's work programmes through their inclusion in the EFSA's Management Board, which will be later discussed.

B) Common points: competitive relationship, expertise production, exchange platforms and coordination role

Even if the EFSA and the EEAS are two different institutions that have a different *raison d'être* and different internal structures, common points can be identified in their tasks and internal structure. Firstly, they both experience a competitive relationship with their national counterparts. On the contrary, the two non-majoritarian institutions serve to produce expertise and to allow Member States to exchange information. Even though different, the two internal structures reflect a common coordination role.

1) A competitive relationship

Relations between the European body and their national counterparts are sometimes tensed. Indeed, national authorities often fear to be absorbed or replaced by their European counterparts. There is no clear hierarchy between the European NMI and national competent authorities. Indeed, European bodies are not superior to national competent authorities and it sometimes leads to conflictual situations. As we will explain later with the Ashton's story, Member States clearly wanted to keep the EEAS under control because Foreign Policy is identified as one of the most important competence of States. Even in the case of the EFSA, even though it deals with a domain related to the Internal Market, relations with national authorities are sometimes tensed, mainly concerning salient issues such as glyphosate or GMOs. It happened that some national authorities came up with a different outcome than the one of the EFSA concerning the risk associated with these substances. It therefore undermined EFSA's credibility. It shows the competitive nature of the relations between European and national authorities. What is interesting to identify and what emerged from the interview is that the competitors are often the same. Indeed, both in the EFSA and in the EEAS, the main competitors are the bigger Member States with bigger interests and bigger financial and human

¹³¹ European Food Safety Authority, "EU Member States" dedicated page on EFSA's website, consulted on May 04th, 2021, URL: [EU Member States | European Food Safety Authority \(europa.eu\)](https://eufsa.europa.eu/eu-member-states)

capacities. For example, France, who has a permanent seat at the UN Security Council, has strong interests in some parts of the world, in Africa for example. France therefore wishes to remain an important player in this region. Concerning the EFSA, we could take the example of Germany whose risk assessment authority issued a different outcome than the one of the EFSA on glyphosate. It shows that bigger Member States want to remain powerful. Lequesne and Weber conducted a study in 2016 about the influence of the EEAS on national foreign affairs ministries, comparing France and Austria¹³². They highlighted these different views between bigger and smaller States. Austria might not be the smallest States in the EU but has twice less diplomatic services than France in the world. They found that, while French diplomats consider that EU delegations cannot substitute national ones, Austrian diplomats need EU delegations and rely much more on their information in countries where they do not have a diplomatic service¹³³. They however showed that Austria considers the use of EU delegations as a second-choice option in countries where it has diplomatic services. Though, European NMIs have a coordination role that will nuance the competitive relationship. European NMIs clearly provides some advantages for national authorities. These advantages justify the existence of European services and contribute to legitimize them.

2) The production of expertise

Firstly, both the EEAS and the EFSA serve to create expertise on specific fields to help decision-makers to establish policies. Indeed, the production of expertise is the *raison d'être* of the EFSA. The food safety authority is asked to produce risk assessment “based on the available scientific evidence and undertaken in an independent, objective and transparent manner”¹³⁴ which should be considered in the risk management process in order to ensure trust and confidence in the food safety within the Internal Market. Concerning the EEAS, this task is not clearly stated in the Council Decision 2010/427/UE. Indeed, the article 2, related to the tasks of the service, states that “the EEAS shall support the High Representative”¹³⁵ and “assist the President of the European Council, the President of the Commission, and the Commission”¹³⁶. Moreover, it is written, in the article 3, that “[t]he EEAS shall support, and work in cooperation with, the diplomatic services of the Member States”¹³⁷. Therefore, the primary role of the EEAS is not to produce expertise. Nonetheless, what we observe in

¹³² Lequesne Christian, Weber Valentin, “L’influence du SEAE sur les ministères des affaires étrangères : une comparaison France - Autriche”, in *Revue française d’administration publique*, n°158, 2016, pp. 505 – 515

¹³³ *Ibid.* p. 512

¹³⁴ European Union, Regulation (EC) No 178/2002 establishing the European Food Safety Authority, 28 January 2002, article 6(2)

¹³⁵ European Union, Council Decision 2010/427/EU of 26 July 2010 establishing the organisation and functioning of the European External Action Service, article 2(1)

¹³⁶ *Ibid.* article 2(2)

¹³⁷ *Ibid.* article 3(1)

practice is rather different. Indeed, the EEAS, through its support to Member States' diplomatic service, is producing expertise. Interviews conducted with EEAS experts are clear. They are producing expertise, knowledge on specific fields (Interview #9, Interview #10, Interview #11) that they can share with national diplomatic services. Two main types of expertise can be identified: geographical expertise and thematic expertise. The production of expertise seems to be even more important in delegations. Indeed, as the EU has delegations in around 140 countries in the world, it develops knowledges that some Member States do not necessarily have. Some Member States do not have the administrative capacities to develop such knowledges. EEAS experts therefore produce knowledges and expertise that they can share with national diplomatic services to allow them to better understand the position of specific countries. For instance, thematic discussions between EU and national diplomats serve to exchange expertise and knowledges in order to deepen the understanding of national diplomats to give them the opportunity to better weigh in the discussion with the third countries' diplomats (Interview #9). In that sense, the EEAS is also producing expertise. The EEAS helps to deepen the understanding, both of the EU and of the Member States, on specific countries or specific thematic.

3) Information sharing platform

Thirdly, both the EFSA and the EEAS serve as an exchange platform between Member States, sharing the expertise and capacities available in bigger Member States to deepen the knowledges of smaller ones. In the case of the EU's Foreign Policy, certain Member States have stronger interests than others in some areas. For instance, countries like France, Germany, Italy and Spain have strong interests in Israel. Therefore, they produce more knowledge and have more capacities than some other Member States. The EEAS therefore serves as an exchange platform where knowledges and expertise are shared in the context of formal or informal meetings (Interview #9). The macro-economic theory of Marshallian district might be helpful to better understand it. Indeed, the EEAS gathers experts from diverse origins and therefore allows to share the best practices, available knowledge in an informal way. Therefore, both the EU and Member States can rely on these shared knowledges to strengthen their arguments, their positions vis-à-vis third countries. The same trend can be observed concerning the EFSA. Indeed, bigger Member States put their scientific expertise at the disposal of the EFSA as scientists in the panel are national. They therefore share their expertise with smaller Member States. However, this can create some tensions, mostly between bigger Member States and the European authority. Indeed, in the case of the EEAS, some Member States have strong positions and interests. The task of the service is to try to reach a consensus among, sometimes, very opposite interests (Interview #6). This can lead to some tensed relations in some cases. The same holds true for the EFSA.

Indeed, concerning glyphosate, the EFSA and the German authority assessed the risk which led to tensed debates that questioned the credibility of the European authority (Interview #3). Non-majoritarian institutions therefore have an important coordination role between different national interests and between national and European interests. Because of these coordination tasks, the credibility of experts is important in order to legitimize the work of both authorities vis-à-vis national competent services. Before analysing the role of experts' social capital in the following part, we will explain, in the following section, how does the internal structure of our two cases reflect their coordination task and suggest an important role for experts.

4) A common coordination role

The two internal structures reflect the common coordination role of the two non-majoritarian bodies. Indeed, in both structures, some organs have been set up to increase the coordination both between the EU and national administrations and between national administrations themselves. This coordination role is partly related to the role of NMIs as information sharing platforms. The existence of European NMIs is partly justified and legitimated by this task. Indeed, they contribute to the coordination of national authorities. National authorities are using the European NMI to exchange their views, their ideas, methodologies, thoughts. It can therefore lead to the inclusion of other modes of thoughts in national policymaking, trying to adapt what has been done elsewhere. Therefore, European NMIs can serve as a coordination platform for National authorities. However, this horizontal coordination does not necessarily include the vertical and competitive relationship between the European level and the 27 national ones. Though, some formal and informal structures exist for the European level to be able to contribute to the coordination of the 27 Member States. Concerning the EEAS, EU delegations have a major influence in the coordination. The interviewee #9 insisted on the importance of EU delegations to broaden the thoughts of national diplomats and to allow them to get out of their national thoughts. According to the interviewee, enlarging their thoughts beyond their national interest clearly allows them to weight more in the debates because they are aware of many issues that go beyond the national scope and bilateral relations between States. Concerning the EFSA, it seems that focal points can fulfil this coordination task. On the EFSA's website, focal points are defined as "EU food safety interfaces"¹³⁸. Indeed, focal points are an interface made to strengthen the cooperation between the EFSA and many stakeholders, including national food safety authorities. Focal Point network is composed of members from all 27 EU Member States and is made to

¹³⁸ European Food Safety Authority, "EU Member States", consulted on 05/05/2021, URL: [EU Member States | European Food Safety Authority \(europa.eu\)](https://www.efsa.europa.eu/en/members)

“significantly improve scientific cooperation and networking activities between and among Member States and EFSA”¹³⁹ through four main mechanisms:

- Assisting in the exchange of scientific information and experts
- Advising on cooperation activities and scientific projects,
- Promoting training in risk assessment,
- Raising EFSA’s scientific visibility and outreach in Member States¹⁴⁰.

The role of the EFSA as a cooperation platform can also be expressed in the framework of the scientific networks where the “EFSA coordinates several networks of nationally appointed EU Member State organisations with expertise in specific scientific fields”¹⁴¹. The objective of these networks is to “facilitate scientific cooperation by coordinating activities, exchanging information, developing and implementing joint projects, and exchanging expertise and best practices”¹⁴². Therefore, the EEAS, through EU delegations, and the EFSA, thanks to Focal Points and the Scientific Networks, have a common coordination role. It also shows that they rely on a multitude of stakeholders.

The four common roles we identified contribute to justify and legitimize the existence of European NMIs. These four mechanisms, because they suggest an important place for experts, also justify our willingness to rely on the concept of throughput legitimacy and mainly on the inclusiveness and openness mechanisms, as explained in the following section.

II) Comparable legitimization mechanism: the throughput mechanisms of openness and inclusiveness

Before analysing the influence of experts in the internal legitimization of the EFSA and the EEAS in the following chapter, it is important to explain the internal legitimization mechanisms used by these two institutions. To do so, we follow the argument developed by Chatzopoulou¹⁴³, and we argue that European non-majoritarian institutions rely on throughput mechanisms to legitimize their work and their existence. Trying to understand the legitimization of the EFSA and the EEAS with a throughput perspective allow us to open the black boxes of the European governance and to better understand the mechanisms. The concept of throughput legitimacy is based on five different mechanisms: efficacy,

¹³⁹ Ibidem

¹⁴⁰ Ibidem

¹⁴¹ Ibidem

¹⁴² Ibidem

¹⁴³ Chatzopoulou Sevasti, « Unpacking the Mechanisms of the EU “Throughput” Governance Legitimacy: the Case of EFSA”, in European Politics and Society, 2014

transparency, accountability, openness, and inclusiveness. Whereas it would require analysing these five mechanisms to fully capture the legitimization of the EFSA and the EEAS vis-à-vis various stakeholders, we will only focus on the inclusiveness and the openness. Indeed, as our research concerns the contribution of experts to the internal legitimization of the EFSA and the EEAS, we will not enter in further explanations concerning the efficacy, the transparency, or the accountability. We therefore concentrate on the inclusiveness and openness and we will argue that the inclusion of experts from diverse origins contribute to internally legitimate European non-majoritarian institutions. Moreover, these general considerations on the throughput legitimization strategy at the meso-level will serve to introduce the following chapter dedicated to the impact of experts' social capital, at the micro level, in the legitimization of the two bodies, following a sociological approach. Indeed, in the next pages, we will try to contribute to the concept of throughput legitimacy at the meso-level, by applying a sociological approach to study the micro-level, the level of experts. However, we will explore a different path in the conclusion of this research. Indeed, we suggest that both the openness and the inclusiveness mechanisms could be the deepest perspective of the input, relying on others forms of democracy than the representative one. Therefore, in this section, we will try to explain to what extent does the EFSA and the EEAS rely on these mechanisms, staying at the meso-level. We will then deepen our analysis and dive into the micro-level. This part is therefore a transitional part. Even if included in the organisational legitimacy chapter, the concept of throughput legitimacy makes the link between our two analytical levels.

A) The openness mechanism

We will start with the analysis of the openness mechanism. Following the definition of Chatzopoulou, the openness is “promoted through dissemination of and access to information that mobilises the informants”¹⁴⁴. It refers to “the active duty of the administration” to ensure the “right to know” through dissemination and access of information to people, and by proactively promoting the participation of civil society and the broader EU democratic principles”¹⁴⁵. The openness mechanism is therefore relevant to analyse in order to bridge the meso- and the micro-level. Indeed, it implies the creation of mechanisms by institutions to ensure dissemination and exchange of information among all the stakeholders. Two of the common roles previously defined directly refer to this mechanism. Indeed, as explained below, both the EFSA and the EEAS can be identified as information sharing and coordination platforms. The bodies previously examined such as Focal Points and EU delegations are the two main platforms through which the openness mechanism can be

¹⁴⁴ Chatzopoulou Sevasti, op. cit., p.5

¹⁴⁵ Ibid., p.14

analysed. The two main components of the openness mechanism are respectively the dissemination of information on the one hand, and the access to information on the other hand. Firstly, the dissemination of information among the stakeholders is one of the key principles driving the existence of our two cases. The dissemination of information, either from a top-down approach (EU NMI to national NMI), a bottom-up approach (national NMI to EU NMI) or a horizontal approach (national NMI to national NMI) can contribute to the legitimacy of European NMIs. Indeed, Focal Points and EU delegations can be identified as institutional settings created to favour interactions and exchange of information. According to Borrás and al.¹⁴⁶, the institutionalisation of interactions through the development of regulatory networks can lead to “credible procedures” that could contribute both to the input and output legitimacy. This argument will feed our willingness to show that experts are not anymore only the ones who have an expertise in a specific field but that their role goes beyond. Indeed, the existence of such structures of information through which information is disseminated reinforces the credibility of the outcome. Indeed, as Maggetti argues, “even in case where the involved actors disagree with a decision, this decision can be accepted as legitimate irrespective of the consequences it may entail if it is taken in a way considered fair, namely if originated from an open and inclusive political process, ideally based on openness, transparency, equal access, and deliberation”¹⁴⁷. Therefore, the openness mechanism directly contributes to legitimate the outcome. The role of the EFSA and the EEAS as an exchange and a coordination platform, as previously explained, allow this dissemination of information. As we have seen, the European authority often benefits an asymmetry of information but can share it with national authorities which allows them, on the one hand, to debate on an equal basis with the European authority and, on the other hand, to strengthen their position vis-à-vis third parties as it is the case for national embassies around the world. In that sense, relying on exchange between experts from different levels can help to legitimize the European authority. However, the openness mechanism would only be an empty box without inclusiveness. Indeed, Maggetti insists on the inclusive dimension of the political process for it to gain trust and credibility¹⁴⁸.

B) The inclusiveness mechanism

The second mechanism on which we will focus is the inclusiveness. Inclusiveness is defined as the “participation and interaction among actors as an integral part of the governance process”. It “indicates whose interests are considered and who participates (formally and informally) in the

¹⁴⁶ Borrás Susana, Koutalakis Charalampos, Wendler Frank, “European Agencies and Input Legitimacy: EFSA, EMeA and EPO in the Post-delegation phase”, *European integration*, vol.25, n°5, 2007, p.585

¹⁴⁷ Maggetti Martino, “Legitimacy and Accountability of Independent Regulatory Agencies: A Critical Review, *Living Reviews in Democracy*, 2010, pp. 3 – 4

¹⁴⁸ Ibidem

governance process”¹⁴⁹. It is likely that the inclusion of various stakeholders with different interest would improve the problem-solving capacities at the EU level thanks to the combination of different views, methods, arguments. In that sense, it would lead to a stronger trust and credibility in the outcome, therefore contributing to solve the legitimacy deficit of the EU policies. From the input side, the inclusion of numerous stakeholders coming from Member States, from interest groups or from the academic sector contributes to bring a democratic dimension to the decision-making process. This dimension does not refer to the representative democracy but to concepts such as the participative or the associative democracy. By this mechanism, we clearly see the interaction and the influence of experts in the legitimization of European non-majoritarian institutions. Indeed, both the openness and the inclusiveness mechanisms contribute to bridge the level of actors and the one of institutions. Experts do not only perceive such experiences as a career opportunity, but they are also part of a strategy designed at the institutional level to reinforce the credibility of their decision-making process. Taking a decision when knowing all the stakes, when considering all the interests and methods surely lead to a more acceptable outcome than if it was taken behind closed doors. The inclusiveness appears everywhere both in the EFSA and in the EEAS. Indeed, each EEAS department is bridging national and European experts. In the EFSA, we have already seen the Focal Points in which experts from national authorities participate. Such inclusiveness mechanism also applies in the Panels where the daily work of the Agency happens. Indeed, the Panels gather experts from all the European Union, coming from Research Institute, from Universities or from national authorities. Both the inclusiveness and the openness mechanisms will lead us to argue, in the last part of Chapter IV, that European NMIs seek to rely on a collective legitimization. This collective legitimization could contribute to the reduction of both the democratic and the legitimacy crises as the inclusion of many stakeholders will lead to a better acceptance of the outcome. Therefore, we can already see that the influence of experts goes beyond their scientific expertise but includes broader considerations. Scientific expertise matter to legitimate the work of NMIs but it seems that being an expert is “as much about expertise as it is about superior resources, particular interests, and existing institutional ties”¹⁵⁰. The combination of all these different factors makes that experts largely contribute to the legitimization of European non-majoritarian. Therefore, bridging the micro-level and the meso-level to contribute to the literature on the legitimacy of the European Union is relevant and actual as both experts and NMIs became a new centre of European governance.

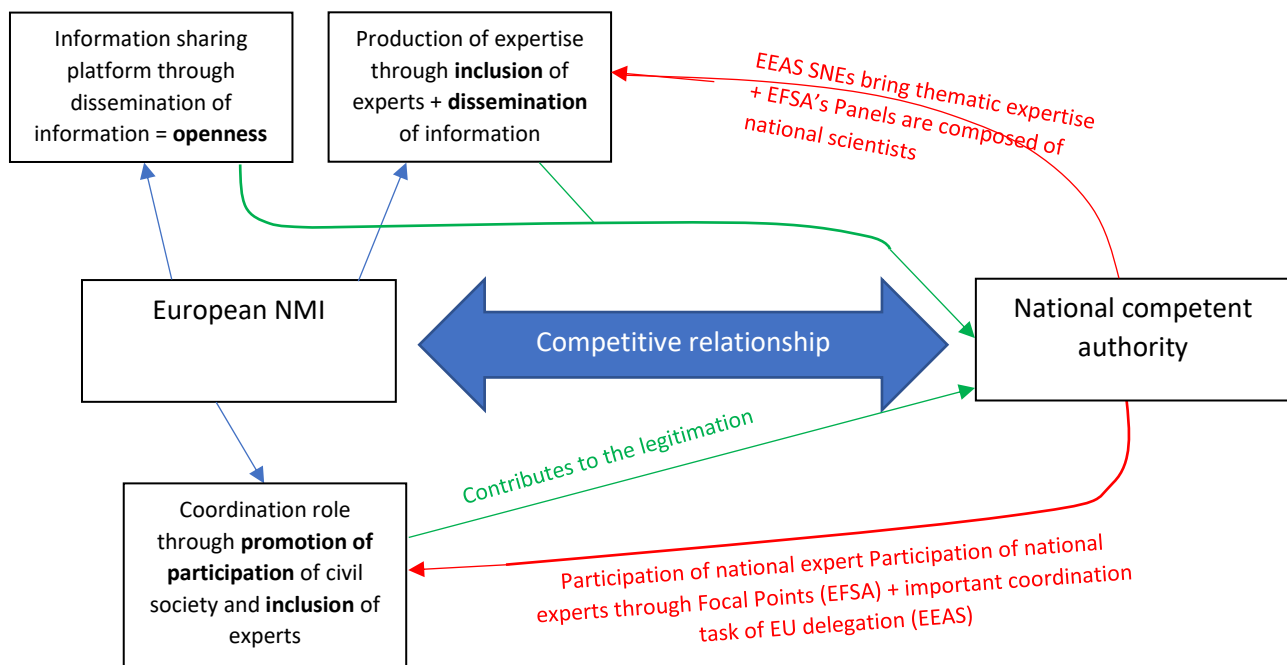
¹⁴⁹ Chatzopoulou Sevasti, op. cit. p.14

¹⁵⁰ Chalmers Adam, “Getting a Seat at the Table: Capital, Capture and Expert Groups in the European Union.” *West European Politics*, 37, no. 5, 2014, pp. 989 – 990

Conclusion

This chapter served to prove the relevance of studying the impact of experts in the internal legitimization of the EFSA and the EEAS. We firstly detailed two of the main differences of the EFSA and the EEAS to justify our choice to rely on the design of difference. Moreover, both their *raison d'être* and internal structures suggest the importance of individuals in the legitimization of the service. Secondly, we proved the relevance of studying and comparing the legitimization of the EFSA and of the EEAS as a competitive relationship exist with national authorities. Thirdly, we highlighted the common points between the two bodies. These four points are an integral part of the organisational legitimacy as they contribute to justify the existence of the service to their national counterparts. Moreover, these four common points show the importance of experts and individuals and therefore justify our willingness to argue that experts are an integral part of the organisational legitimacy. To link our two level of analysis, we introduced the two throughput mechanisms of inclusiveness and openness as they reveal the interconnectedness between institutions and individuals. The following scheme summarizes the arguments and prove that individuals are part of the organisational legitimacy.

Figure 9: openness and inclusiveness mechanisms in organisational legitimacy



CHAPTER IV: Analysing the role of experts in the legitimization at the micro-level: comparable mechanisms for an expert-driven legitimization

The previous section has served to emphasize that, despite their differences, the EEAS and the EFSA share common tasks. Their internal structures, even though different, suggest an important place for experts, be they scientists or diplomats. Indeed, personal attributes have an important role to legitimize the work of the institution through the different channels and structures we have seen. Moreover, as we have previously argued, we rely on the openness and inclusiveness mechanisms to explain the expert-driven legitimization of European non-majoritarian institutions. Therefore, the inclusion of various stakeholders is a necessary legitimating condition as well as the participation of stakeholders and the dissemination of information. This part is structured following two main sections. The first section is dedicated to the analysis of experts' profiles from a bottom-up perspective. How experts, as individuals, participate to the legitimization of EU NMIs? It will be argued that experts, both in the EFSA and the EEAS have comparable CVs and that experience in European institutions, services, agencies tend to "euro-socialize" experts. The second section analyses to what extent experts contribute to the internal legitimization from a top-down perspective. Indeed, EU NMIs do not only rely on individuals but are trying to rely on a collective legitimization where each expert has something to bring to contribute to the overall legitimacy. This argument will be detailed and explained through the example of the EFSA and the amendment of the Regulation (EC) No 178/2002.

I) The role of experts as individuals in the legitimization: a bottom-up approach

What is interesting to observe is that EFSA Management Board members and diplomats working in the EEAS share a common profile. Indeed, most of them have an experience in national competent authorities. Moreover, national experts that experienced a job in European institutions are more inclined to collaborate with European bodies. Therefore, a deep understanding of the functioning of European institutions is a clear added value, both for national and European experts.

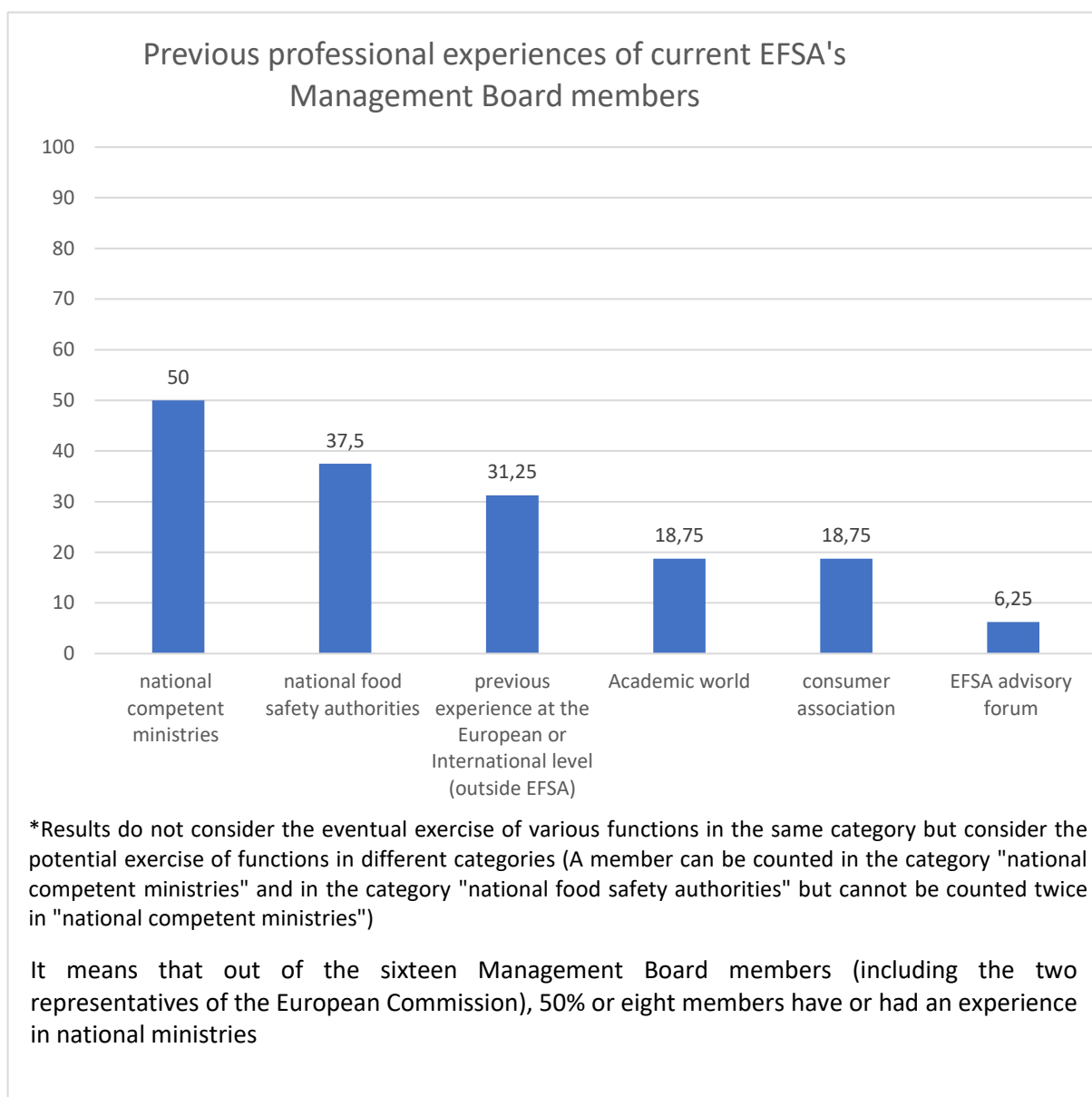
A) Professional experience in national authorities

The EFSA relies on expertise and scientists available at the national level to fulfil their risk assessment tasks. Indeed, we have seen, when describing the internal structure of the organisation, that the EFSA is composed of different entities composed of Member States scientists. This is for instance the case of the Panels where national scientists assess risks. Moreover, the advisory forum comprises representatives of the 27 national food safety authorities and advises the EFSA "on scientific

matters, its work programs and priorities, and to identify emerging risks as early as possible”¹⁵¹. Therefore, Member States representatives and scientific expertise are already included in the European food safety governance. However, the EFSA’s Management Board is interested to study as it is not yet composed of Member States representatives. This shift in governance, that will occur in 2022, raises questions and concerns among EFSA’s Management Board members. Indeed, even if not formally composed of Member States representatives, most EFSA’s Management Board members have or had a post in national food safety authorities or competent ministries. Indeed, eight out of sixteen members have or had an experience in national food safety authorities. Some of them occupied a high responsibility post in these authorities. For instance, the French member chaired the Management Board of the *Autorité Nationale de sécurité sanitaire de l’Alimentation, de l’Environnement et du Travail (ANSES)*, from 2013 to 2016. The Belgian Member is the current chief executive officer of the Belgian Federal Agency for the Safety of the Food Chain. Furthermore, five out of sixteen members have an experience in national competent ministries, either health or agriculture. Therefore, even though they are not Member States representatives, the position they occupy or occupied at the national level gives them credit as Management Board members and help to legitimate the work of the EFSA. Figure 10 below summarizes what we explained:

¹⁵¹ Website of the EFSA, consulted on 21/03/2021, URL: [EU Member States | European Food Safety Authority \(europa.eu\)](https://eufsa.europa.eu/eu-member-states)

Figure 10: Previous professional experiences of current EFSA's Management Board members¹⁵²



However, despite their experiences at the national level, Management Board members are not there to represent the interest of their national organisation. Indeed, they are present as individuals, as independent experts. Therefore, they cannot push for a national interest, but their presence surely contributes to generate trust and credibility in the work of the European authority, mostly vis-à-vis the most powerful Member States such as France and its national authority, the ANSES. Having a former chairman of one of the most powerful national risk assessment body in the Management Board contribute, without a doubt, to internally legitimate the EFSA. Moreover, a clear chart has been

¹⁵² We have decided not to draw such graphs for the EEAS as it would not have been relevant to draw a graph based on 15 out of hundreds of members. Moreover, the Council decision founding the EEAS already formally establish the equilibrium between national and EU diplomats.

elaborated to avoid any conflict of interest, as it happened in the past. Indeed, at the beginning of the last decade, the Milieu scandal delegitimised the European food safety governance¹⁵³. Milieu was hired by the EFSA to evaluate its transparency and openness efforts. His evaluation was criticized “for bias, because the vice chair of EFSA’s Panel on Food Additives and Nutrient Sources Additives (ANS), Dr Iona Pratt, was simultaneously a senior technical associate of Milieu and she failed to declare their active collaboration”¹⁵⁴. Since then, a deeper declaration of interest has been elaborated to avoid these kinds of conflicts. Therefore, the EFSA only takes the positive side of having a former chairman of a national food safety authority as he contributes to legitimate the service but do not push for national interests. This might change, as we will see, with the shift in the governance structure and the inclusion of Member States representatives in the Management Board.

Concerning the EEAS, the whole structure is rather different than the one of the EFSA’s Management Board. Indeed, whereas EFSA Management Board members do not represent their States, some EEAS experts are national representatives. Therefore, in this part, we will make the distinction between EU diplomats and Seconded National Experts. EU diplomats are EEAS permanent officials that succeeded in EPSO contests. Seconded National Experts are national representatives, sent to Brussels or in delegation by their national ministries. Firstly, most EU diplomats have an experience in national competent ministries such as Foreign Affairs or Defence ministries. Because they know the internal structure of their country of origins, they know how to act and to whom to address in case they need to reach a consensus on a specific subject. Indeed, EU diplomats we interviewed (Interview #6, Interview #8) strongly emphasized that knowing the internal structures and administrations of the national level is a clear source of legitimation. Moreover, it contributes to legitimate the work of the EEAS as these diplomats experience another form of legitimacy. As European diplomats (Interview #8), their first source of internal legitimacy is their success in EPSO contests. It gives them a certain recognition and credibility among their peers, but also a source of respect. The internal legitimation of the EEAS also partly depends on Seconded National Experts. Indeed, these experts, detached from the national ministries for a defined period largely contribute to legitimize the EEAS. Firstly, they incarnate the bridging function of the EEAS as they have a privileged relation with the national ministries (Interview #5). They are not asked to defend national interests, but they can easily get access to more information than other EEAS experts which helps the EEAS to reach a consensus among the 27 Member States. In addition to their bridging role, one other important source of legitimation for the EEAS is that these experiences in Brussels or in delegations “euro-socialize” them. Indeed, they experience an international working environment where the aim is to consider the position of 27 Member States in

¹⁵³ Chatzopoulou, op. cit. p.170

¹⁵⁴ Ibidem

order to reach a common position. They experience a much more collaborative way of making Foreign Policy than what they experience in national ministries. It therefore makes them much more inclined to integrate this dimension once they are back in their national ministries (Interview #12). Indeed, it seems that national experts that were seconded to the EEAS are getting socialized and better understand the functioning of the European Foreign Policy. Therefore, once back in their national ministries, they are much more inclined to consider these dimensions in their daily task and to work much more easily with the EEAS or national ministries from other Member States. Therefore, under the concept of throughput legitimacy, more precisely the inclusiveness mechanism, the internal legitimization of the micro-level is based on two dimensions. On the one hand, the first dimension is the social capital of experts and their success in integrating the EEAS as diplomats. Their previous experiences in national ministers also contribute to legitimise them as they know the functioning of national administrations. On the other hand, the second dimension is the socialization of national experts seconded in Brussels or in the delegations. Indeed, it makes them more inclined to cooperate with their European counterparts. We will come back to them later as they play a role in the collective legitimization seeking.

B) The importance of understanding the “Brussels-bubble’s” functioning

Because the EFSA and national food safety authorities are agencies that deal with very scientific topics, they are mainly made of scientists than do not necessarily know the functioning of European institutions. For instance, the interviewee #13 did not know the existence of the EEAS whereas she is a Management Board member of a European agency. Therefore, it is a clear added value for Management Board members to have some knowledge about the functioning of European institutions. To illustrate this, we will use two examples issued from our interviewees. The first interview concerns a former EFSA’s Executive Director (Interview #3) whereas the second one concerns a current EFSA’s Management Board Member. Interviewing a former EFSA’s executive director allowed us to better understand what her/his role was, and how did he/she contributed to legitimate the work of the EFSA. First of all, the main task of the Executive Director is to deploy the governance. He/She thus plays an important role to determine the way in which the organisation will select and organise the different working methods. Hence, the Executive Director plays a key role because depending on the quality of the decisions taken and the way the work is organised, he/she will deepen or weaken the confidence in the work of the EFSA, therefore strongly influencing its legitimacy. So, what is interesting to highlight is that the scientific expertise may not be the main legitimating tool in the hand of the EFSA’s Executive Director. We do not claim that someone without a scientific expertise could become EFSA’s Executive Director. However, it is not enough, and it needs to be complemented by, at

least, two other legitimating tools. It firstly requires strong management and organisation skills. Secondly, it requires a deep understanding of the institutional environment. Indeed, firstly, the capacity of the Executive Director to favour a rapprochement with national agencies is determining. Secondly, understanding the European institutional design is also important. It allows the Executive Director to identify and talk to the right people. The same holds true for the Management Board. Indeed, it seems that the Management Board does not only require a high-level scientific expertise (Interview #4). This claim has been verified in the Interview #14. Interviewee #14 does not necessarily have a deep scientific expertise, but his knowledge of the European institutional environment allowed him/her to contribute to deepen EFSA's internal legitimacy. Indeed, he/she helped the EFSA to better interact with the European Parliament through meetings with MEPs, what did not happen before. Moreover, he/she contributed to deepen the procedure of declarations of interests what reinforced the independency of EFSA's Management Board members. We will come back to these cases in the last section. Indeed, the seeking of different profiles can be identified as a collective legitimization. This tendency has been observed in both cases.

Before explaining this collective legitimization strategy, we still must explain to what extent do the deep understanding of the European institutional design contribute to legitimate the EEAS. This directly relies to the *raison d'être* of the EEAS which is to bridge various interests. Therefore, some experts are present to incarnate the European interest and therefore contribute to the legitimization of the service because of their deep understanding of the European governance and institutional design. This legitimating tool is in the hand of EU Diplomats and EEAS experts coming from the Council. It is not in the hand of SNEs even though we have seen that their socialization, hence their better understanding of European institutional processes, contribute to the internal legitimization. Previous professional experiences in European institutions largely contribute to the legitimization of EU diplomats, hence to the EEAS. Indeed, their experience, either in the Council, the Commission, sometimes at the European Parliament helped them to capture the essence of the work in European institutions and to better understand how it works. What is interesting to remark is that it is not so much related to the field of expertise but much more to the way of working that these experiences develop. It allows experts to learn to work in an international environment and develop skills that cannot be learned in books, that are directly related to the experience on the ground, within European institutions. Indeed, as the EU is a consensual machinery (which is not necessarily the case in Member States), it helps to develop working skills much more based on interaction and exchanges (Interview #6, Interview #8, Interview #12). Therefore, EU diplomats not only bring the European vision but also what is related to the European vision, meaning a different way of working. In addition, and related to that, there is a second legitimating tool in the hand of EU diplomats. Indeed, they serve as the

institutional memory of the service. Therefore, through their knowledge and experience, they are able to share and transmit the way the service is working. They developed skills that national representatives do not have but that they can learn from them. They also probably have better access to some information because they know better how to search and to whom to talk. They also developed relations. Therefore, experiencing the “Brussels’ bubble” is an essential component of the internal legitimation. As in the case of the EFSA, it goes beyond pure expertise but is more related to the relations and mind skills developed. These mind skills can evolve over time as experts continue to seek and gain experience during their careers, enhancing their credibility. Therefore, the internal legitimation, both of individuals at the micro-level and of organisations at the meso-level, are an iterative processes. It evolves over time and depends upon the conjuncture. Experts can also gain legitimacy as they achieve a deeper level of expertise and gain experience.

C) Two different main sources of credibility

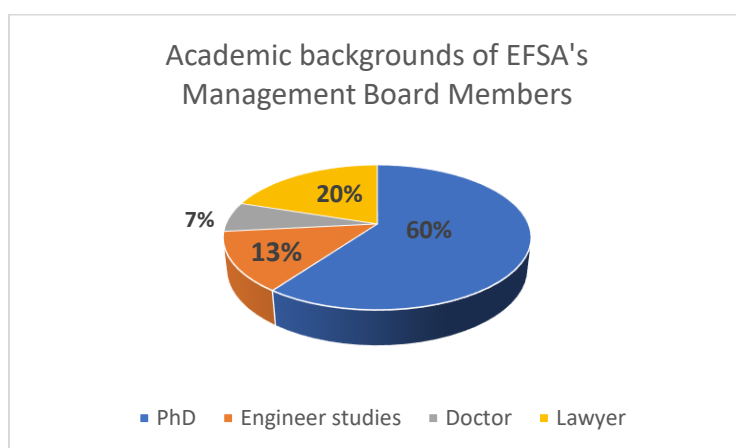
Even though the EFSA and the EEAS rely on comparable mechanisms to gain legitimacy, it appears that the main source of expert legitimacy is different. It is not a problem since we have already explained that the organisational legitimacy follows a context-dependent approach. Moreover, our objective is to determine common mechanisms, not to show that the EFSA and the EEAS exactly rely on the same criteria. After analysing our interviews and the CV we gathered, it seems that the main criterion for a diplomat is to benefit from an experience in delegations, on the ground. On the contrary, the PhD seems to appear as the main source of legitimacy for EFSA’s scientists.

Concerning the EEAS, three out of the eight interviewees (Interview #7, #9, #12) strongly insisted on the importance of the experience on the ground to gain trust and legitimacy vis-à-vis national counterparts. The interviewee #12 identifies the post in delegation as central for diplomatic careers. According to him/her, not having an experience in delegations is a brake in the construction of the European official. It is a necessary step in the completion of European diplomats. It could therefore explain the four-years rotation that exists within the EEAS, according to which experts should normally move away from the headquarter to delegations. An experience in a delegation, on the field, is a necessary step to be fully recognized as diplomat and to gain leadership and trust. It is a crucial step for a European diplomat. At the end, a diplomat will not have a career if he does not have an experience in delegations. Indeed, an experience in delegations is necessary in order to be fully recognized as a diplomat both by the peers in the EEAS but also by the peers in national administrations. Therefore, having in post, in Brussels, a diplomat that has an experience in delegations grant him/her a personal legitimacy that he/she puts at the service of the EEAS. In that sense, the EEAS as a whole gain

credibility. It seems that an experience in delegations changes the way an official operates. Indeed, it serves to open the mind of diplomats. It helps them to consider and bridge different interests. Moreover, they also gain expertise that they can use when they are back in the headquarter. Two interviewees shared their experience in delegations. According to interviewee #9, an experience in New York, at the UN Security Council is a strong legitimacy provider and strongly helps to be recognized by the peers in national administrations. It brings trust and clearly serves in daily meetings. It also works in the other way. Indeed, being someone from the EU in New York also brings credibility and trust. Moreover, experience in European delegations contributes to experience what the EEAS is all about, a bridge between national and European interests. EU diplomats who work in delegations incarnate this bridge between EU and national interests as they can share information that national administrations do not necessarily have. They contribute, through discussions and exchange of information, to bring national positions closer. As we have explained when explaining the throughput mechanisms, EU delegations really serve as a platform where bigger Member States can share their information with smaller ones. The two interviewees also insisted on the expertise that an experience in delegation brings. Indeed, when back in the headquarter, they can put their newly developed expertise at the service of the EEAS and the Member States to improve the knowledge and the understanding of specific part of the world. The four-years rotating position of the EEAS is partly made to help EU diplomats to “get out of their comfort zone” and to develop an expertise on specific parts of the world. It therefore contributes to the legitimization of the EEAS in two directions. Firstly, it creates expertise. Secondly, it develops the mind of EU diplomats and helps them to consider and bridge different interests, which is the “raison d’être” of the service.

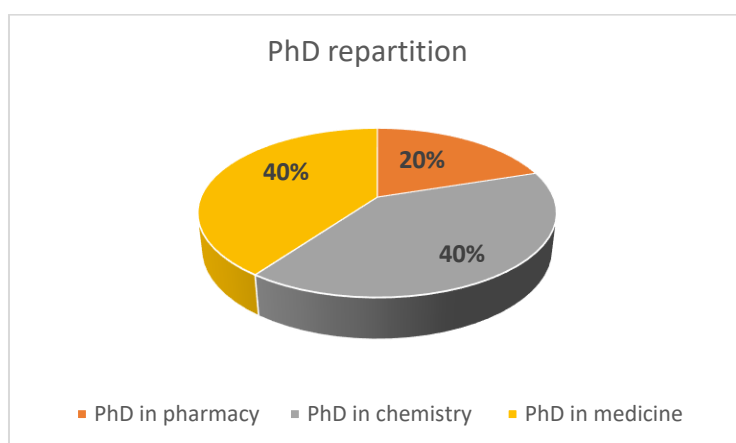
Concerning the EFSA, it seems that completing a PhD is the main source of individual legitimacy. Indeed, completing a PhD attests a scientific expertise in the field of food safety or any other field related to food safety. It brings a strong scientific legitimacy and helps to be recognized by the peers in national authorities. In the current Management Board, nine out of sixteen members (including the two representatives of the European Commission) have a PhD in a field related to the daily task of the agency (Figure 10). Four of them have a PhD or a post-doctoral degree in veterinary medicine, two of them obtained a PhD in chemical fields. One member has a PhD related to pharmacy and the two other ones are doctors: one medical doctor and one surgeon (Figure 11).

Figure 11: Percentage of PhD holders in EFSA's Management Board



Author's own elaboration

Figure 12: PhD repartition



Author's own elaboration

Therefore, in addition to the importance of having a PhD, we can already observe the importance, for the EFSA, to rely on different types of scientific expertise. Indeed, the Panels of fields represented almost represent all the different tasks of the EFSA. Interviewees confirmed the importance of the PhD in the scientific credibility. The fact that 60% of Management Board members have a PhD grants the EFSA a better legitimacy *vis-à-vis* competitive authority. These quantitative findings have been confirmed by the qualitative analysis of our interviews. Indeed, interviewee #4, #13 and #15 confirmed that the PhD appears as an attestation of a scientific credibility. Though, some members of the EFSA's Management Board do not have a PhD, including their president. Therefore, it seems necessary to have some members with a PhD, but other backgrounds are important.

As we will see in the next part, the EEAS cannot only rely on diplomats that have an experience in delegation and the EFSA does not only build its legitimacy on the scientific renown of Management

Board members. The assembly of different experiences and backgrounds is important for the legitimacy building of European NMIs.

II) A collective legitimization built by institutions: a top-down approach

After the analysis of the role of personal attributes in the previous part, we analyse, in this part, how the EFSA and the EEAS are building a collective legitimization, using different backgrounds and experiences of their members. Whereas the previous part explained, from a bottom-up approach, how experts as individuals contributed to legitimate the service, this part follows a top-down approach to show how institutions are using experts to build their legitimacy. Beyond the addition of different backgrounds and interests, what seems to be important is the way EU NMIs gather and combine them in order to build a collective legitimization. This hypothesis emerged after some interviews when the interviewees, both in the case of the EFSA and in the case of the EEAS, strongly insisted on the collective legitimization built by EU NMIs. Relying on different interests, backgrounds and experiences clearly contribute to the legitimization of NMIs as each member can bring something different. The section dedicated to the EEAS will put the emphasis on the bridging *raison d'être* of the service. We will therefore insist on the bridging nature of the service which compel it to rely on different interests. Concerning the EFSA, we will concentrate on the reform of the Management Board as Member States representatives will be included.

A) The bridging “*raison d'être*” of the EEAS

Since its creation, the EEAS has been designed as a bridge between national interests and European long-term vision. These different functions contribute to legitimize the work of the service. This bridging *raison d'être* is established in the Council decision 2010/427/EU as it is stated that “staff from Member States [...] should represent at least one third of all EEAS staff at AD level. Likewise, permanent officials of the Union should represent at least 60% of all EEAS staff at AD level”¹⁵⁵ excluding seconded national experts¹⁵⁶. Therefore, a *de jure* equilibrium is established between national and European interests. As it has been highlighted in some interviews, particularly in interview #6, EU officials bring the long-term EU vision whereas interviewee #5 highlighted that SNEs incarnated the bridging function between national authorities and the EEAS. Because of their role as a bridge, SNEs play an important role through informal meetings and discussion to get insights from the Member States. Indeed,

¹⁵⁵ European Union, Council Decision 2010/427/EU of 26 July 2010 establishing the organisation and functioning of the European External Action Service, article 6(9)

¹⁵⁶ Ibid, recital 12

interviewee #5 insisted on the importance of SNEs as rotating plate for information within the headquarter. Depending on the tasks, SNEs enter in contact with their national administrations to inform the EEAS with relevant information on the position of some Member States. Informal meetings and conversations are of first importance to learn more about Member States positions. For example, concerning Lybia, the most consulted Member States are Cyprus, Malta, Italy and France. Not only SNEs are rotating plate. Indeed, as we have explained above, EEAS staff members working in delegations also fulfil this task. EU delegations allow Member States to develop a broader view on the issues and to develop a deepened understanding beyond the bilateral relationship as explained by interviewee #9. Interviewee #9 insisted on the very informal format of some meetings that happen at any time to better understand the position of the main stakeholders and exchange information. The interviewee #9 also insisted on the differences existing between Member States. France, Germany, Italy and Spain have a strong interest in the country concerned and therefore, informal meetings are more frequent with the representative of these countries than with others. It allows to better understand each position so that the delegation is able to legitimize its position as it is a compromise between all the stakeholders. This combination of interests participates to legitimate the service. However, as we have seen, a *de jure* equilibrium does not automatically lead to a *de facto* equilibrium. Indeed, some competences are required in order to properly contribute to the legitimation.

Therefore, beyond experiences in delegations, the EEAS relies on other sources of legitimation to gain credibility. Some of them can be identified. As it is the case for the EFSA, it seems that a PhD or an activity in Research Institute or a Think Tank provide the EEAS with a thematic expertise, which it apparently often lacks. Indeed, interviewee #5 recognized that the PhD strongly helped to be considered as an expert. Discussions are therefore considered as “very credible” (Interviewee #5). Interviewees #10 and #11 respectively work for a think tank and a Research Institute. The interviewee #10 insisted on her role as a civilian expert. Indeed, most of EEAS staff members are diplomats, be they European or nationals. Therefore, being an expert in a specific field is rare and very important to provide the EEAS with more knowledge. She concluded that the EEAS could recruit more temporary agents that are often experts with a thematic expertise. Indeed, building a team around diplomats that are often generalists and experts could substantially improve the credibility of the EEAS as it would contribute to build another bridge between the diplomacy and the academic field. Moreover, another source of credibility in the EEAS, beyond the diplomatic capacities and the academic expertise are the managerial capacities. Indeed, managerial capacities are of first importance to be able to lead a team and can be illustrated by the example of Catherine Ashton. The EEAS has been set up in 2010, with Catherine Ashton as the first High-Representative / Vice-President (HR/VP). It has been widely recognised, both in the literature and by EU diplomats themselves that lady Ashton lacked “any

experience of international leadership and indeed in political stature”¹⁵⁷. Therefore, the appointment of lady Ashton undermined, from the beginning, the legitimization of the service and its potential added value for the European Foreign Policy. Indeed, “that signal [...] appeared to amount to a message that the Union *per se* would not be setting any agendas or taking any initiatives on the world stage”¹⁵⁸. On the one hand, appointing lady Ashton as the HR-VP has been badly seen by EEAS staff members as “Ashton’s performance was said to have negatively affected staff morale”¹⁵⁹ and her lack of experience undermined the legitimacy of the service during the first years of her office. However, we should not underestimate the role played by Member States in her appointment. Indeed, Member States were aware that giving the keys of the EEAS to someone who had an international leadership could have led to a more autonomous EU Foreign Policy, using the possibilities offered by the establishment of the new service. Indeed, we could think that the aim of nominating Ashton was that “EU foreign and security policy [...] would stay in the hands of the member states”¹⁶⁰. Therefore, we could argue that Member States remain reluctant to confer too many powers to the service. Indeed, some officials complained about the lack of organisation and capacities and the dysfunction of the management of crises¹⁶¹. Frequently, officials criticized the lack of leadership of Catherine Ashton and the negative impact it had on the general mood inside the EEAS¹⁶². This general mood did not contribute to legitimize the service vis-à-vis national foreign affair ministers and hence, did not incentivize them to work hand in hand with the service. Indeed, in 2012, twelve Member States wrote a letter to emphasize that “bureaucracy and bad management are hampering the effectiveness of the EU’s new diplomatic service one year after its launch”¹⁶³. Finally, was not it the aim of some Member States? This is not our task to enter in this debate, but this example shows that establishing a *de jure* equilibrium might be insufficient to reach a *de facto* equilibrium as it remains possible to play on the competences of individuals to influence the outcome. As highlighted by Howorth, even if “the adoption of common foreign policy preferences requires agreement among the member states, [...] that agreement can be considerably facilitated by having in post, in Brussels, an individual of genuine stature, with a deep knowledge of the issues, possessed of strategic vision, who is able clearly to formulate the available options, and persuasively to indicate a way forward”¹⁶⁴. Therefore, beyond the

¹⁵⁷ Howorth Jolyon, “Catherine Ashton’s five-year term: a difficult assessment”, in *Les Cahiers Européens de Sciences Po.*, n°03/2014, 2014, p.5

¹⁵⁸ *Ibidem*.

¹⁵⁹ Juncos Ana E., Pomorska Karolina, “In the face of adversity”: explaining the attitudes of EEAS officials vis-à-vis the new service”, *Journal of European Public Policy*, vol 20, n°9, 2013, p.1336

¹⁶⁰ Howorth Jolyon, *op. cit.*, p.5

¹⁶¹ Juncos Ana E., Pomorska Karolina, *Op. cit.*, p. 1337

¹⁶² *Ibidem*

¹⁶³ Rettman Andrew, “Minister identify glitches in EU Diplomatic Service”, *EU Observer*, 6th January 2012, consulted on 16th May 2020, URL: <https://euobserver.com/foreign/114783>

¹⁶⁴ Howorth, *op. cit.*, p.19

professional experience who seems to be the key to be recognized by the peers as a diplomat, the EEAS relies on many other backgrounds to build its legitimacy. It is true that a diplomat needs an experience on the field for many reasons. It firstly helps them to develop an expertise in a specific country whereas diplomats are often seen as generalists. Secondly, they can better apprehend what the EEAS is all about, a compromise building service. However, relying only on EU diplomats is not enough. Therefore, SNEs are also present to incarnate the bridge between national authorities and EU officials in the headquarter. Some members with managerial capacities are also essential to create an optimal working environment. Last but not least, the presence of thematic experts is essential to develop the knowledge of EU diplomats and increase their legitimacy. Therefore, this analysis on the EEAS shows that all these characteristics contribute to the legitimation of the service. Some might be more important than others, but it is the combination of them that make the EEAS a credible and trusted institution.

B) The EFSA: a bridging institution?

The EFSA is an interesting case to study the collective legitimation. We will develop a two-step analysis. Firstly, as we previously did for the EEAS, we will show that the EFSA relies on experts with different backgrounds and experiences. Secondly, we will enter in the debate concerning the reform of the EFSA's governance system and try to analyse it from a legitimacy perspective. Indeed, will the inclusion of Member States representatives in the EFSA's Management Board contribute to legitimize the agency? We will try to weigh the pros and the cons.

Whereas the PhD appears as an important background for the legitimation, the EFSA Management Board cannot only rely on this background. Indeed, some interviewees (interview #2, #14, #15) insisted on the necessity, for the EFSA's governance body, to rely on other backgrounds to diversify the Management Board and increase its credibility. The need to rely on different backgrounds is also expressed in the Regulation 2019/1381. Indeed, it is expressly stated that "the members of the Management Board should be elected in such a way as to secure the highest standards of competence and the broadest range of relevant experience available"¹⁶⁵. Interviewee #3 told that, as a former EFSA's Executive Director, it was not necessary to have a scientific expertise to contribute to legitimize the agency. Indeed, other backgrounds can compensate the lack of scientific expertise. Having knowledge concerning the institutional design and the task of the EFSA seems enough to become a credible Executive Director. The action is more important than the background. Interviewee #3 identified three determining aspects to contribute to legitimate the EFSA vis-à-vis national authorities:

¹⁶⁵ European Union, Regulation (EU) 2019/1381 on the transparency and sustainability of the EU risk assessment in the food chain, Recital 15, 20th June 2019

the experts' selection procedure which corresponds to the inclusiveness mechanism, ensuring a good access to resources corresponding to the openness mechanism and contributing to the rapprochement with national administrations. Therefore, because the action seems more important than the background, a deep understanding of the EU's institutional design is a key factor. Hence, next to scientific experts who compose 60% of the EFSA's Management Board (see above), the EFSA's Management Board is also composed of members who have an experience in EU institutions. It is interesting to note that the EFSA's Management Board's director is not a scientific expert but has an experience in the Brussels environment. According to interviewee #14, this experience allowed him to develop the relations between the EFSA and EU institutions, in particular the European Parliament. Beyond this dichotomy between scientific expertise and an understanding of the EU's institutional design, a willingness to rely on other backgrounds to build a collective legitimation is observed. Figure 10 showed that the Management Board was also composed of former food lawyers, engineers, and medical doctors. Interviewees #13, #14, #15 insisted on this collective dimension. Interviewee #15 identified the equilibrium with different backgrounds as a key point for the Management Board. This collective legitimation makes them reflect on their own careers and try to think how they can contribute to the legitimation from their perspective. Interviewee #14 even thought, at the beginning, that he took the wrong job. Finally, he identified how would he be able to contribute to develop the legitimacy of the agency and found his place. Being able to rely on food lawyers concerning legal issues is a necessity for a Management Board of a Food Safety authority. Indeed, scientific experts do not have all the necessary legal knowledge. Therefore, having the possibility to rely on former food lawyers is a necessity and it clearly contributes to legitimize the authority vis-à-vis national counterparts. Beyond the different backgrounds, we can also observe a geographical diversity within the EFSA's Management Board. This diversity is legally binding but is interesting to observe. Indeed, big EU Member States are all represented, whereas it is not the case of smaller Member States.

Even if EFSA's Management Board members are not Member States representatives, it could have driven the willingness of Member States to include their representatives in the Management Board of the authority. This shift will occur in 2022. Indeed, the Regulation 2019/1381 stipulates that "it is appropriate to increase the role of Member States [...] in the Management Board"¹⁶⁶. This shift is interesting to observe, mainly for two reasons. The first reason is that the EFSA was an exception among the EU agency's landscape. Indeed, it is the only agency whose Management Board is not yet composed of Member States representatives. Secondly, at a time when there are debates about the composition of the European Commission, we could identify the current composition of the EFSA

¹⁶⁶ European Union, Regulation (EU) 2019/1381 on the transparency and sustainability of the EU risk assessment in the food chain, 20th June 2019

Management Board as a prototype of what the composition of the Commission could become. However, contrary to the willingness to reduce the composition of the European Commission, the EFSA's Management Board will be composed of Member States representatives from 2022. Whereas there are today fourteen members plus one member representing the European Commission, there will be at least 27 members from 2022 as "each Member State shall nominate a member and an alternate member as its representatives to the Management Board"¹⁶⁷. What could be the consequences for the legitimacy of the EFSA? Two arguments could be put forward. On the one hand, the inclusion of Member States representative could increase the EFSA's legitimacy as the outcome will be a consensus between Member States. On the other hand, it could undermine the current source of legitimacy which is based on the independence of the members. Firstly, from an internal legitimation perspective, the inclusion of Member States representative could be a good option. Indeed, having a Management Board composed of representatives from each Member States will avoid contradictory assessments as it has sometimes been the case in the past. It could also contribute to increase the role of the EFSA as an information sharing platform between bigger and smaller Member States. However, it could overall weaken the legitimacy of the authority. Indeed, even though Recital 14 of the Regulation emphasizes that "the role of the Management Board is focused on administrative and financial aspects and does not impact the independence of the scientific work performed by the Authority"¹⁶⁸, interviewee #13 and #14 insisted on the likelihood that this shift will tend to politicize the work of the Management Board. It is likely that, despite the guarantee of independence, the nomination of experts will be subject to negotiations between national representatives such as to secure a proportionate representation of all Member States. Moreover, it could be more difficult to reach agreements at twenty-seven than it is at fourteen, even more when these negotiations at twenty-seven will occur between twenty-seven States representatives. States interests are already represented in the framework of the advisory forum. Even if only advisory, the forum secures States' representativeness in the EFSA. The appointment of States representatives could undermine the equilibrium reached between different backgrounds in the current Management Board. Therefore, the inclusion of Member States representatives could improve EFSA's legitimacy as long as the equilibrium between States interests does not question the equilibrium between different backgrounds and experiences. Indeed, it is unlikely that a Management Board composed of twenty-seven scientific experts would increase the overall EFSA's legitimacy. A wise equilibrium will be necessary, and the inclusion of engineers and food lawyers is a key component of the EFSA's collective legitimation. Lastly, we could argue that States are informally represented in today's Management Board. Indeed, even

¹⁶⁷ European Union, Regulation (EU) 2019/1381 on the transparency and sustainability of the EU risk assessment in the food chain, Article 8c, 4(a), 20th June 2019

¹⁶⁸ Ibid, Recital 14

though current Management Board members does not respond to their governments, some of them also exercise or exercised a function in national food safety authorities. Indeed, out of the fourteen members¹⁶⁹ of the Management Board, nine members have an experience in national health ministries or in national food safety authorities. Four out of these nine members continue to exercise responsibilities in national authorities. Therefore, even though they do not respond to their national government in the context of the EFSA's Management Board, it is likely that, because of their relations and national responsibilities, they unconsciously consider their national interests. Overall, this shift in EFSA's governance could be compared to the bridging *raison d'être* of the EEAS. Indeed, the inclusion of Member States representatives in every bodies of the authority will increase the relations and the cooperation between Member States and between Member States and the European Union. However, one trap should be avoided for this change to properly increase the EFSA's legitimacy. Indeed, some interviewees regretted the lack of inclusion of temporary agents in the EEAS. These experts could bring a thematic expertise that often lack in the intellectual baggage of diplomats who are usually considered as generalists. Therefore, it will be determining to continue to rely on diversified backgrounds and to build an equilibrium between scientific (PhD), legal (food lawyers) and technical (engineers) expertise in the new EFSA's Management Board.

Conclusion

Both in the EEAS and in the EFSA, experts contribute to the legitimation. Indeed, their backgrounds, their professional experiences and their relations are three important elements used by European NMIs to gain legitimacy. From a bottom-up approach first, we have seen that individuals can contribute to the legitimation of the institution. Their career path and field of expertise serve the institution. Whereas most research on experts show how experts are using the possibilities offered by these institutions for their careers, we showed, on the contrary, that institutions also rely on experts to build their legitimacy vis-à-vis competent and competitive stakeholders. The top-down approach used in the Chapter IV reversed the analysis and showed how institutions relied on a collective legitimation. It shows how institutions are building their legitimacy around experts' different experiences and backgrounds. Therefore, experts are part of the organisational legitimacy of European NMIs. Both the openness and the inclusiveness mechanisms allow to explain how the micro-level contribute to the legitimation of the meso-level. Hence, the definition of what is an expert has evolved. Being an expert is not only being exceptionally good in a specific domain. Indeed, the legitimacy by the scientific expertise is not enough and no more acceptable for the wider public. Being an expert

¹⁶⁹ Excluding the representative of the European Commission

encompass more dimensions. To a certain extent, being an expert is “as much about expertise as it is about superior resources, particular interests, and existing institutional ties”¹⁷⁰. In that sense, because of the combination and inclusion of different profiles and interests, experts contribute to the legitimization of European non-majoritarian institution. However, our empirical findings are based on a small-scale study. A deepened empirical analysis would be necessary to be able to confirm our first findings, especially concerning the EEAS since our analysis is based on fifteen members.

¹⁷⁰ Chalmers Adam, “Getting a Seat at the Table: Capital, Capture and Expert Groups in the European Union.” *West European Politics*, 37, no. 5, 2014, pp. 989 – 990 (976–992).

GENERAL CONCLUSION

Through this project, we have been able to show the link between the micro-level of experts and the meso-level of institutions. While most of previous studies linked these two dimensions to explore experts' career paths and opportunities, we reversed the analysis by showing the influence of experts on the internal legitimization of non-majoritarian institutions. Indeed, both from a bottom-up and a top-down approaches, the three mechanisms analysed have proven to be relevant. The academic background, professional experiences and personal relations of experts contribute to the legitimization of European non-majoritarian institutions. Firstly, experts individually can influence the legitimization through their credibility and renown. Secondly, we have demonstrated that institutions are relying on a combination of different profiles to gain legitimacy. In both cases, what seems to be determining is the direct intervention of Member States representatives in the work of the institution. Whereas the EEAS is partially composed of Member States representatives, the EFSA's Management Board will be made of Member States representatives from 2022. It shows, to a certain extent, the intergovernmental nature of European governance and raises questions concerning the nature of our two non-majoritarian institutions. However, state's representativeness does not seem to be enough. Indeed, to take the example of the EFSA, nominating a national representative who is neither a scientist, nor a food lawyer would not contribute to EFSA's legitimization. Therefore, other characteristics must be considered as experts do not only have one identity. Beyond their nationality, they also have a specific expertise, with specific interests. The equilibrium between these different identities and interests contribute to the legitimization of European non-majoritarian institutions. It explains both the bottom-up and the top-down approaches.

We have been able, in our two opposite cases, to determine comparable legitimization mechanisms. Indeed, in both cases, the influence of experts is comparable and comparable mechanisms could be identified. Therefore, following the design of difference and its adaptation to our case (**Because case A and case B are very different, if X appears to be one of the causes of Y in both cases (in A + B), X may be a cause of Y in all cases**), we could claim that the use of experts personal attributes both from a top-down and a bottom-up approaches contribute to the internal legitimization of all non-majoritarian institutions. However, as our study rely on a small-scale empirical analysis, conclusions drawn might not be solid enough to allow us to generalise our findings. Therefore, this research could be used as a starting point for deeper research in that field. Still, we have been able to prove that experts contribute to the internal legitimization, not only through their scientific or diplomatic expertise but through other mechanisms. Therefore, being an expert is "as much about

expertise as it is about superior resources, particular interests, and existing institutional ties”¹⁷¹. Indeed, experts contribute to the internal legitimation also because they represent societal interests. Experts do not only have one identity and institutions are using the different identities of experts to build the collective legitimation. Beyond the expertise, many other characteristics contribute to shape the human-being. Institutions are relying on these different facets to gain legitimacy. Therefore, as we have seen that being an expert is not limited to being exceptionally good in a specific domain but encompass more dimensions, we could question the possibility of the expert-driven governance to contribute to reduce both the democratic and the legitimacy deficit of the European Union. Indeed, as they represent societal interests, their inclusion in the decision-making process and their access to information could be identified as the deepest form of the *input* legitimacy. In this research, we only focused on the legitimation vis-à-vis Member States competent authorities, but EU NMIs also rely on many other stakeholders coming from different fields.

Therefore, in this conclusion, we will argue that EU NMIs could contribute to solve the democratic deficit at the EU level. Though, these NMIs are at the centre of the regulatory shift of the European governance which is one of the main explanatory factor behind the democratic deficit. Indeed, a parallel can be made with interest groups. As for interest groups, EU NMIs’ experts are neither elected, nor representatives and are often considered as a threat for democracy more than actors that play a central role in the decision-making process. Though, this vision of expertise is directly related to the classic vision of democracy, the representative concept, which foresees the notion of representation from a territorial angle¹⁷². To conclude, we draw a parallel between European NMIs and interest groups based on the article published by Saurugger¹⁷³. Because European non-majoritarian institutions rely on and gather a myriad of stakeholders representing different interests (states interests, economic interests, social interests), we argue that they could be identified to a new form of representative democracy. Instead of relying on a territorial form, we could claim that they are a combination of interests. Hence, we argue that EU NMIs could be identified as *fora* of participative or associative democracy. Therefore, the inclusiveness and openness mechanisms could be identified as *input* mechanisms. Indeed, in order for this participative democracy to work, it is essential to establish the conditions of a complex participative democracy where a continued dialog is created between all relevant instances of public opinions, scientific expertise and political decision¹⁷⁴. This continued dialog has been put in place in European NMIs through the channels we previously

¹⁷¹ Chalmers Adam, “Getting a Seat at the Table: Capital, Capture and Expert Groups in the European Union.” *West European Politics*, 37, no. 5, 2014, pp. 989 – 990 (976–992).

¹⁷² Saurugger Sabine, « Les groupes d’intérêts entre démocratie associative et mécanismes de contrôle », *Presses de Sciences Politiques, Raisons Politiques*, vol. 2, n°10, 2003, p. 151

¹⁷³ *Ibid.* pp. 151 – 169

¹⁷⁴ *Ibid.* p.158

described. However, two limits can be identified for EU NMIs to be recognized as *fora* of participative democracy. Firstly, they remain unknown for most of the population whereas the implication of citizens is a necessary step for this concept to work. Indeed, only 19% of EU citizens know that the EU has a separate institution that provides scientific advice on the safety of food¹⁷⁵ and one of our interviewees from the EFSA did not know the existence of the EEAS. The second reason is related to the stakeholders themselves. Indeed, most interest groups represent economic interests¹⁷⁶ and the representation of social interest might lack. To conclude, EU NMIs could become *fora* of participative democracy and contribute to reduce the democratic deficit at EU level, but some obstacles remain to be crossed.

This reflexion on the role of NMIs as platforms of participative democracy could be an interesting perspective for further research. These kinds of approaches have been analysed concerning interest groups. It could be relevant to apply this framework to European non majoritarian institutions.

¹⁷⁵ Eurobarometer, Survey requested by the EFSA and co-ordinated by the European commission, « Special Eurobarometer Wave EB91.3, Food Safety in the EU », European Union, 2019, p.5. URL: http://www.efsa.europa.eu/sites/default/files/corporate_publications/files/Eurobarometer2019_Food-safety-in-the-EU_Full-report.pdf

¹⁷⁶ Saurugger Sabine, op. cit., p. 160

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ANNEXES

Annex I: Criteria of MSI Democratic Legitimacy

Table 2: Criteria of MSI Democratic Legitimacy

Dimension	Criterion	Definition	Key questions
Input	Inclusion	Involvement of stakeholders affected by the issue in the structures and processes of the MSI	Are the involved stakeholders representative for the issue at stake? Are important stakeholders excluded from the process?
	Procedural fairness	Neutralization of power differences in decision-making structures	Does each of these categories of stakeholder have a valid voice in decision-making processes?
	Consensual orientation	Culture of cooperation and reasonable disagreement	To what extent does the MSI promote mutual agreement among participants?
	Transparency	Transparency of structures, processes and results	To what extent are decision-making and standard-setting processes transparent? To what extent are the performance of the participating corporations and the evaluation of that performance transparent?
Output	Coverage	Number of rule-targets following the rules	How many rule-targets are complying with the rules?
	Efficacy	Fit of the rules to the issue	To what extent do the rules address the issue at hand?
	Enforcement	Practical implementation of the rules and their verification procedures	Is compliance verified and non-compliance sanctioned?

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Annex II: List of interviewees

Exploratory interviews	DATE	FUNCTION
Interviewee #1	14/04/2020	Senior scientific researcher Member of the Panel on Plant protection Products and their Residues
Interviewee #2	21/04/2020	Senior Political Adviser EFSA
Interviewee #3	02/05/2020	Former EFSA's Executive Director
Interviews		
Interviewee #4	02/12/2020	Same person as interviewee #3
Interviewee #5	11/12/2020	Policy officer at the EEAS, Seconded National Expert, French
Interviewee #6	14/12/2020	EU Diplomat, head of division at the EEAS, Swedish
Interviewee #7	15/12/2020	Head of sector in the EEAS, Dutch
Interviewee #8	18/12/2020	Principal policy officer and EU diplomat in the EEAS, French
Interviewee #9	18/02/2021	EU diplomat in delegation, Belgian
Interviewee #10	18/02/2021	Policy officer, seconded national expert in the EEAS, German
Interviewee #11	25/02/2021	Policy officer, seconded national expert in the EEAS, German
Interviewee #12	04/03/2021	Deputy Head of Division in the EEAS, EU Diplomat, French
Interview #13	18/03/2021	Member of the EFSA's Management Board
Interview #14	19/03/2021	Member of the EFSA's Management Board
Interview #15	30/03/2021	Member of the EFSA's Management Board

Annex II: Different types of inductive process-tracing

More inductive types of process tracing

Process tracing procedure	'A more direct and potentially more satisfactory approach to causal interpretation in single case analysis takes the form of an attempt to trace the process – the intervening steps – by which beliefs influence behaviour. Process-tracing seeks to establish the ways in which the actor's beliefs influenced his receptivity to and assessment of incoming information about the situation, his definition of the situation, his identification and evaluation of options, as well as, finally the choice of a course of action' (George 1979b: 113). See also George and McKeown (1985), George (1979a).
Historical explanation, detailed narrative	'This is the type historians typically seek. Their objective is usually to explain the occurrence of a specific set of events in a limited set of cases, such as the outbreak of the English Revolution in 1640 or of World War I in 1914' (Hall 2008: 305). See also George and Bennett (2005); Bennett and George (1997)*
Process tracing (backward process trace)	'The investigator traces backward the causal process that produces the case outcome, at each stage inferring from the context what caused each cause. If this backward process-trace succeeds it leads the investigator back to a prime cause' (Van Evera 1997: 70).
Process induction	'inductive observation of apparent causal mechanisms and heuristic rendering of these mechanisms as potential hypotheses for future testing' (Bennett and George 1997: 5).
Analytical explanation	'converts a historical narrative into an analytical causal explanation couched in explicit theoretical forms' (George and Bennett 2005: 211).
More general explanation	'the investigator constructs a general explanation rather than a detailed tracing of a causal process' (George and Bennett 2005: 211).
Process Analysis	'Process analysis generates leverage in part by allowing researchers to examine the specific mechanisms through which an independent variable exerts an effect on a dependent variable (George and Bennett 2005). Under this approach, the analyst starts with an observed association and then explores whether the association reflects causation by looking for mechanisms that link cause and effect in particular cases' (Mahoney 2004: 88).
Theory-building process tracing	'In its purest form, theory-building process tracing starts with empirical material and uses a structured analysis of this material to detect a plausible hypothetical causal mechanism whereby X is linked with Y ... Theory-building process tracing is utilized in two different research situations: (1) when we know that a correlation exists between X and Y but we are in the dark regarding potential mechanisms linking the two (X-Y-centric theory building) as we have no theory to guide us; or (2) when we know an outcome (Y) but are unsure about the causes (Y-centric theory building)' (Beach and Pedersen 2013: 16).
Explaining outcome process tracing	'This type of process-tracing can be thought of as a single-outcome study, defined as seeking the causes of a specific outcome in a single case' (Beach and Pedersen 2013: 18 with reference to John Gerring).
Theory guided process tracing	<i>"I define the method of theory-guided process tracing (henceforth, TGPT) as the temporal and causal analysis of the sequences of events that constitute the process of interest. Such process must be clearly conceptualized, both theoretically and operationally, with reference to previous theories. The TGPT method assumes that in these temporal sequences of events, their order is causally consequential."</i> (Falleti this symposium; italics by Falleti).

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