



Brugge

College of Europe
Collège d'Europe



Natolin

Scientific and Political Narratives: Discursive Strategies in EU Agrifood Policies and Legislation

Pierre WALCKIERS



DEPARTMENT OF
EUROPEAN LEGAL STUDIES

Research Paper in Law

01 / 2025



College of Europe
Collège d'Europe



European Legal Studies
Etudes Juridiques Européennes

RESEARCH PAPERS IN LAW

1/2025

Pierre WALCKIERS

Scientific and Political Narratives: Discursive Strategies in EU Agrifood Policies and Legislation

© *Pierre WALCKIERS*, 2025

European Legal Studies/Etudes Juridiques Européennes
Dijver 11 | BE-8000 Brugge, Belgium | Tel. +32 (0)50 47 72 61
www.coleurope.eu

Scientific and Political Narratives: Discursive Strategies in EU Agrifood Policies and Legislation

Pierre WALCKIERS *

1. Introduction

A series of meetings among “European thinkers” was initiated in 2012 under the impulsion of European Council President Van Rompuy, aiming to shed light on the “destiny of the European Union.” These meetings resulted in the publication of a book, in which philosopher Van Parijs conclude by comparing two types of narratives that justify and legitimize the European Union (EU), drawing on the example of the dialogue between Van Rompuy and Habermas.¹ These two examples of narratives are based on different forms of legitimacy: Habermas uses input legitimacy (politics by the people), while Van Rompuy argues for output legitimacy (results for the people).²

On one hand, by emphasizing “results, results, results,” Van Rompuy bases his narratives of justification on *output* legitimacy. For the former President of the European Council, the legitimacy of EU institutions should be based on results: what the EU delivers for its citizens. To this end, these results can be objectively demonstrated and must be technically justified.³ On the other hand, Habermas’ approach advocates for *input* legitimacy. Indeed, he believes that strengthening Europe’s supranational democracy should be the main argument justifying Europe. Drawing on the slogan “no taxation without representation,” Habermas considers that EU policies can only be legitimate through adherence to a deliberative process and the enhancement of political representation and the power of the assembly representing the European peoples.⁴

During the same period, in his State of the Union address on 15 July 2014, Juncker, the President of the European Commission (Commission), announced a “more political” Commission, which some interpreted as a “narrative shift” signaling a return to politics.⁵ He clearly stated: “The Commission is not a technical committee [...]. The Commission is *political*. And I want it to be *more political*.”⁶ For Mérand, this shift towards a “more political” narrative can be explained by the political momentum surrounding Juncker’s appointment as

* PhD candidate, FNRS Research Fellow, Université Catholique de Louvain. Scientific Collaborator, EcoLAWgy Lab, Université de Liège.

¹ Luuk Van Middelaar and Philippe Van Parijs, *After the storm: How to Save Democracy in Europe* (Lannoo 2015) 247; Philippe Van Parijs, ‘La Philosophie Dans Le Monde d’aujourd’hui: «Ni Luxe Ni Blabla»’ (2016) 114 *Revue philosophique de Louvain* 39, 42.

² Vivien Schmidt, ‘Democracy and Legitimacy in the European Union Revisited: Input, Output and “Throughput”’ (2013) 61 *Political Studies* 2, 5; Van Parijs (n 2) 42.

³ Van Middelaar and Van Parijs (n 2) 18.

⁴ Jürgen Habermas, ‘Democracy in Europe: Why the Development of the EU into a Transnational Democracy Is Necessary and How It Is Possible’ (2015) 21 *European Law Journal*; Van Middelaar and Van Parijs (n 2) 236.

⁵ Frédéric Mérand, *Un sociologue à la Commission européenne* (Les Presses de Sciences Po 2021) 6, 10, 289; Neill Nugent and Mark Rhinard, ‘The “Political” Roles of the European Commission’ (2019) 41 *Journal of European Integration* 203; Stefano Bartolini and Simon Hix, ‘La Politisation de l’UE : Remède Ou Poison ?’ (Notre Europe -Institut Jacques Delors 2006) Policy Paper 19.

⁶ Jean-Claude Juncker, ‘A New Start for Europe’ (14 May 2015) <https://ec.europa.eu/commission/presscorner/detail/en/SPEECH_14_567> accessed 18 July 2023.

“*Spitzenkandidat*.” This enabled him to forge a comfortable alliance between the European People’s Party (EPP) and the Socialists & Democrats (S&D).⁷

These statements and political discourses, designed to persuade and justify, reveal underlying worldviews and can be analyzed empirically through the lens of narratives. Indeed, the discourses and narratives of International Organizations (IOs) have received significant attention in political science literature. Specific methods, such as the Narrative Policy Framework (NPF),⁸ have been employed to examine these narratives as modes of justification, aiming to uncover their underlying assumptions, worldviews, and potential strategic uses. In this context, narratives are understood as structured communications employed by political actors to advocate for their policy preferences, convey values, and construct distinct realities.⁹

Based on this methodology, the discursive landscape of the Commission and the Member States is often compared to a “justification jungle,” as actors seek to rely on multiple forms of legitimacy by deploying various narrative registers (Democracy, Solidarity, Economic Prosperity, Effectiveness, Security),¹⁰ and where narrative frameworks can be identified in specific domains (for example, exceptionalist and post exceptionalist justifications in EU agricultural policies).¹¹ While several narrative registers coexist, this paper focuses on a strategic oscillation between two specific types of narratives: political and democratic narratives versus technical and scientific narratives. In fact, these two types of narratives are reflected in the Commission’s justifications: on the one hand, the political narrative, where rules are decided by legitimate institutions representing the will of the people; and on the other hand, the justification based on the scientific narrative, which includes concepts such as technical harmonization or reliance on evidence and data.¹²

Taking Juncker’s statement as an example, we describe the “political narrative” as a form of justification that, from a classical perspective in law and political science, is rooted in the will of the people and adherence to democratic procedures as the foundation of political legitimacy.¹³ This political narrative also goes beyond the classical approach of the representative assembly and can draw its source from other forms of democratic innovations,

⁷ In addition, Mérand still identifies a political narrative in von der Leyen’s State of the Union address, which proposed a “geopolitical” Commission focused on external relations ; Mérand (n 6).

⁸ Elizabeth A Shanahan, Michael D Jones and Mark K McBeth, ‘How to Conduct a Narrative Policy Framework Study’ (2018) 55 *The Social Science Journal* 332; Colette S Vogeler and others, ‘Agri-Food Technology Politics: Exploring Policy Narratives in the European Parliament’ (2021) 7 *European Policy Analysis* 324, 326.

⁹ Shanahan, Jones and McBeth (n 9) 332.

¹⁰ Pieter de Wilde, ‘Peace, Prosperity and Protection: Narratives of Integration and the “Justification Jungle” of Europe’s Public Spheres’ [2022] *JCMS: Journal of Common Market Studies* 9.

¹¹ Carsten Daugbjerg and Peter H Feindt, ‘Theorising Post-Exceptionalism: From Diagnostic Tool to Explanation’.

¹² Mérand (n 6) 6; Pamela Pansardi and Pier Domenico Tortola, ‘A “More Political” Commission? Reassessing EC Politicization through Language’ (2022) 60 *JCMS: Journal of Common Market Studies* 1047, 1063.

¹³ Pedro T Magalhães, *The Legitimacy of Modern Democracy: A Study on the Political Thought of Max Weber, Carl Schmitt and Hans Kelsen* (Taylor & Francis 2021) 6; Alexandre Viala, *Faut-il abandonner le pouvoir aux savants ? La tentation de l’épistocratie* (Daloz 2024) 117; Mark Brewer, ‘The European Union and Legitimacy: Time for a European Constitution’ (2001) 34 *Cornell International Law Journal* 555, 583.

such as the Conference on the Future of Europe (COFE), where different European policies are framed as being justified by the democratic will resulting from the citizen panels.¹⁴

In contrast to political narratives, the Commission can use a “scientific narrative” when it relies on expertise and employs technical and scientific arguments to justify its policies, presenting them as rational, neutral, and objective. This narrative has an epistocratic dimension, as scientific arguments portray policies as rational and apolitical, reinforcing a dualism between objective science and subjective politics.¹⁵ We present the Commission’s proposal for a regulation on New Genomic Techniques (NGT) as an illustration of this use of scientific narratives.¹⁶

This paper theorizes the coexistence of these two forms of narratives, their rhetorical use, and their strategic narrative shifts. Using examples from the agri-food sector, we highlight situations where the Commission employs a scientific narrative to justify its decisions as being grounded in science. In this example of a “hybrid” issue, which intertwines technical debates, significant socio-economic implications, and social concerns,¹⁷ we argue that the Commission adopts the scientific narrative to depoliticize the NGT regulation and avoid engaging in political or value-based justifications. In other cases, particularly when the Commission encounters political and epistemological conflicts, the Commission chooses to address the political dimension of its statements.¹⁸ In this context, we aim to demonstrate the strategic shifts in these narratives when the Commission changes narrative registers depending on the audience or the subject matter (for instance, presenting itself as “more political”).¹⁹ These narrative shifts are also particularly evident in the justifications surrounding the NGT regulation, where the Commission has resorted to political narratives, notably through the COFE, but also in earlier instances such as the General Agreement on Tariffs and Trade (GATT) litigation.²⁰

1.1 Methodology and Theoretical Framework

This paper provides an interdisciplinary analysis of the narratives employed by the Commission to justify its policies and legislation, with particular emphasis on the use of scientific narratives.²¹ It also examines how these narratives are later reintegrated into the institutional framework or legal reasoning. An interdisciplinary methodology is applied, combining a critical legal approach to EU law with legal philosophy, political science, and

¹⁴ Alvaro Oleart, *Democracy Without Politics in EU Citizen Participation* (McMillan, Palgrave Macmillan 2023).

¹⁵ Alexandre Viala, ‘L’épistocratie : proposition de définition’ in Alexandre Viala, *Demain, l’épistocratie?* (Mare & Martin 2022) 17; Bruno Latour, *Politics of Nature: How to Bring the Sciences into Democracy* (Harvard University Press 2004).

¹⁶ Commission, ‘Proposal for a Regulation of the European Parliament and of the Council on plants obtained by certain new genomic techniques and their food and feed’ COM (2023) 411 final (Hereafter : NGT proposal).

¹⁷ Isabelle Stengers, *Cosmopolitiques* (Empêcheurs de penser rond 2022) 565; Bruno Latour, *We Have Never Been Modern* (Harvard University Press 1993) 12.

¹⁸ Jérôme Favre, ‘Épistocratie et droit global’ in Alexandre Viala, *Demain, l’épistocratie?* (Mare & Martin 2022) 126.

¹⁹ Agnieszka Cianciara, ‘(De-)Legitimizing Differentiated (Dis)Integration in the European Union: Between Technocratic and Populist Narratives’ (2021) 17 *Journal of Contemporary European Research* 140; Pansardi and Tortola (n 13) 1063.

²⁰ Favre (n 19) 126.

²¹ This article is part of my PhD in philosophy of law on the role of scientific arguments and different knowledge systems in legal interpretation, supported by the Belgian National Funds for Scientific Research (FNRS) under grant n° 40011887.

discursive analyses inspired by the NPF.²² Although the relationships between science, policy and law have largely been theorized through different angles as Science and Technology Studies,²³ Systems Theory,²⁴ Posthuman Theory,²⁵ or the role of science in a risk society,²⁶ this paper focuses more on narrative as an empirical manifestation of an ontological dualism separating politics and science, nature and culture.

The NPF allows for the identification of world constructions and beliefs through the narratives used by political actors. By mobilizing the NPF, we identify the epistocratic use of scientific narratives as discursive manifestations of an ontological dualism that separates, on one side, the sphere of science and objective, external reality, and on the other, the social, subjective, and political world.²⁷ This dualism makes the ontological wager that it is possible to develop rational, neutral, and objective policies based on science or factual data, thereby avoiding engagement with ethical, political, or subjective domains. In other words, by prolonging—and in some cases radicalizing—this ontological dualism between facts and values or science and politics, the scientific narrative employs scientific arguments to justify policies as “rational” and, to a certain extent, “apolitical.”²⁸ In this context, we have previously argued that classical approaches in legal theory and philosophy are ill-equipped to address the epistocratic use of scientific arguments.²⁹

Although still innovative in classical legal research, narrative approaches are commonly used in social and political sciences (particularly in IOs and EU studies), to identify political and ontological beliefs as well as the strategies employed by political actors.³⁰ In this context, analyses of narratives and discourses of political justification can be found across several EU sectors, for example in the context of the agri-food and climate change debates.³¹ We argue that critical narrative analysis is important for complementing conventional legal approaches,

²² Luis Bouza Garcia Guinda Carmen Sancho, ‘The Narrative Turn in European Studies: A Synergic Approach’, *The Routledge Companion to Narrative Theory* (Routledge 2022); Jonas Tallberg and Michael Zürn, ‘The Legitimacy and Legitimation of International Organizations: Introduction and Framework’ (2019) 14 *The Review of International Organizations* 581, 581.

²³ Sheila Jasanoff, ‘The Floating Ampersand: STS Past and STS to Come’ (2016) 2 *Engaging Science, Technology, and Society* 227.

²⁴ Niklas Luhmann, *Law as a Social System* (Klaus A Ziegert tr, Oxford University Press 2004).

²⁵ Matilda Arvidsson and Emily Jones, *International Law and Posthuman Theory* (1er édition, Routledge 2024); Rosi Braidotti, *Posthuman Knowledge* (Polity Press 2019).

²⁶ Ulrich Beck, *Risk Society: Towards a New Modernity* (SAGE Publications Ltd 1992); David Collingridge, *The Social Control of Technology* (Palgrave Macmillan 1981).

²⁷ Latour (n 16); Jean-Sylvestre Bergé, ‘Les contraintes, un a priori, des droits : tentative de mise en oeuvre d’une démarche antécédente’ (2023) 4 *Communitas* 18.

²⁸ J Christensen and others, *Expertise in EU Policy-Making* (Edward Elgar 2022) 7; Katrin Milzow and others, ‘Understanding the Use and Usability of Research Evaluation Studies’ (2019) 28 *Research Evaluation* 94, 95; Alexandre Viala, *Demain, l’épistocratie ?* (Mare Martin 2022) 17; Miriam Hartlapp, ‘Politicization of the European Commission: When, How, and with What Impact?’ in Michael W Bauer and Jarle Trondal, *The Palgrave Handbook of the European Administrative System* (Palgrave Macmillan 2015).

²⁹ In short, natural law grants legitimacy to transcendental metaphysical elements (divine elements, rationality, or scientific objectivity). Legal positivism, while distinguishing pure law from these extra-legal elements, ultimately reinforces the dualistic notion that scientific arguments in law are indisputable; Pierre Walckiers, ‘La science et l’ontologie dualiste en droit : le droit naturel et le positivisme juridique face à l’argument épistocratique’ (2024) 94 *Revue interdisciplinaire d’études juridiques* 27.

³⁰ Guinda (n 23); Tallberg and Zürn (n 23) 581.

³¹ Frank Wendler, ‘Contesting the European Union in a Changing Climate: Policy Narratives and the Justification of Supranational Governance’ (2022) 30 *Journal of Contemporary European Studies* 67; Vogeler and others (n 9).

which often treat law as a distinct system separate from political discourses.³² Indeed, scientific or political narratives can be employed within various justificatory discourses in law and may be integrated in positive law through general principles, formally included in explanatory memoranda or recitals, and may even be considered essential components of judicial reasoning.³³

In the context of our interdisciplinary research, we use the NPF as it describes specific narratives as constructions of reality and demonstrates their strategic uses.³⁴ In other words, the NPF helps to describe the ideal types of scientific and political-democratic narratives and identify the strategic uses of these narratives by political actors.³⁵ Compared to other methods, such as the Advocacy Coalition Framework, which also addresses the role of actors' beliefs in political processes, the NPF is often considered a more structural and positivist method as it focuses on explicit discourses.³⁶ The NPF is based on three methodological assumptions: first, that discursive forms contain generalizable elements and narrative structures (setting, characters, plot, moral of the story); second, that political beliefs of actors are expressed through their policy narratives, including their use in discussions with allies or political opponents; and finally, that analyzing strategies can reveal how actors strategically employ these narratives to influence the policy process.³⁷

The study of narratives is also linked to questions of legitimacy, defined by the literature as “an attribute of an institution based on a given audience's belief that the exercise of authority by this entity is justified even when it goes against the audience's narrow self-interest or instrumental cost-benefit calculation.”³⁸ Legitimacy is understood in a relational and sociological perspective, because it must be accepted by the public towards an institution.³⁹ In the context of international relations and supranational issues, legitimacy is considered a crucial element for the functioning of IO.⁴⁰ Indeed, the complementary use of types of justification to assert legitimacy is highly visible at the European level, where the environment is sometimes described as a “Justification Jungle”: “in which actors can argue for anything through an appeal to a wide range of different values.”⁴¹ Therefore, narratives and justifications of a different nature can be used to assert legitimacy, with, as Cianciara shows, flexible and complementary uses.⁴²

In this justification jungle, both Habermas and Van Rompuy's justification, as well as the political or scientific narratives, are based on different registers if we look at them from a

³² Hans Kelsen, *Pure Theory of Law* (Max Knight tr, University of California Press 1967) 70; Herbert Hart, *The Concept of Law* (2nd edn, Clarendon Press 1994) 100; Antoine Bailleux, 'Enjeux, jalons et esquisse d'une recherche sur les récits judiciaires de l'Europe' in Antoine Bailleux, Elsa Bernard and Sophie Jacquot, *Les récits judiciaires de l'Europe. Concepts et typologie* (Bruylant 2019) 3.

³³ Serge Gutwirth and Niels Van Dijk, 'Judging New Plant Modification Techniques: Law, Science, Innovation and Cosmopolitics' (2020) 45 *Revue juridique de l'environnement* 123; Léa Navel, 'L'argument scientifique dans la jurisprudence de la Cour de justice de l'Union européenne' (2023) 2 *Revue du droit public* 384.

³⁴ Wendler (n 32) 68; Cianciara (n 20) 131.

³⁵ Tallberg and Zürn (n 23) 589; Wendler (n 32) 70.

³⁶ Wendler (n 32) 69; Frank Fischer and Gerald J Miller, *Handbook of Public Policy Analysis: Theory, Politics, and Methods* (CRC Press 2006) 123.

³⁷ Shanahan, Jones and McBeth (n 9) 335; Cianciara (n 20) 133.

³⁸ Cianciara (n 20) 131; Tallberg and Zürn (n 23).

³⁹ Tallberg and Zürn (n 23) 583; Cianciara (n 20) 131.

⁴⁰ Tallberg and Zürn (n 23) 581.

⁴¹ de Wilde (n 11) 13.

⁴² Cianciara (n 20) 132.

sociological perspective. We base our analysis on the classification by Boltanski and Thévenot, who describe and analyze the different types of justifications (*order of worth*) and values that are mobilized in narratives and arguments.⁴³ To be precise, they describe six worlds of justification: the *inspired world* (creativity and artistic dimension), the *domestic world* (tradition and authority), the *civic world* (democratic processes and the general interest), the *industrial world* (rationality and technical expertise), the *market world* (competition and economic success), and the *world of opinion* (reputation and celebrity).⁴⁴

Following their framework, Habermas' views and the political narrative correspond to the "civic world," legitimized by its representative process, its respect for democratic rules, and similar principles. In opposition, Van Rompuy's results-based justification and the scientific narrative belong to the industrial world: legitimacy is justified according to the idea that a policy would be better if it followed scientific criteria and was decided by those with knowledge or technical expertise.⁴⁵ Yet, multiple registers may be used within these narratives, and scientific narratives may simultaneously rely on the market world (due to economic necessities), the world of opinion (scientific renown), or the inspired world (where science gives rise to transcendent truths, embodying values of neutrality).⁴⁶

1.2 Research Questions, Hypotheses and Materials

Building on this theoretical and methodological framework, two research questions (RQs) guide this paper: How do scientific and political narratives appear in the Commission's discourse, communication, and justification of its legislative proposals? (RQ1) Building on agri-food case studies, particularly the NGT proposal, how does the Commission strategically utilize scientific or political narratives, and how does it implement strategic narrative shifts (from a scientific narrative to a political one)? (RQ2) We hypothesize that the Commission's discourses incorporate both scientific and political narratives to justify legislative proposals and that these narratives are subsequently reintegrated into formal law (H1). Our second hypothesis is that the Commission strategically combines and shifts between scientific and political narratives, employing rhetorical flexibility to justify its policies depending on the context, audience, or strategic goals (H2).⁴⁷ Finally, we argue that ontological beliefs (such as a strict separation between science and politics) can be identified within these narratives (H3).

Alongside the literature review, we support our hypothesis with a legal, political and NPF analysis of the justifications provided by the Commission for its recent legislative proposal on NGT. We therefore analyze the legislative text, its justifications, as well as the Commission's communications and related statements. Additionally, we extended this analysis through participant observation of the Commission's statements to the European Parliament and debates in the Committee on Environment, Public Health and Food Safety, as well as

⁴³ Luc Boltanski and Laurent Thévenot, 'The Sociology of Critical Capacity' (1999) 2 *European Journal of Social Theory* 359.

⁴⁴ *ibid* 368.

⁴⁵ Érik Neveu, 'Justifier. Fonder l'importance des problèmes publics', *Sociologie politique des problèmes publics* (Armand Colin 2015) 127.

⁴⁶ Boltanski and Thévenot (n 44) 368.

⁴⁷ Pansardi and Tortola (n 13) 1048; Michelle Cini, 'The European Commission — Politics and Administration' in Michael W Bauer and Jarle Trondal (eds), *The Palgrave Handbook of the European Administrative System* (Palgrave Macmillan UK 2015); Hartlapp (n 29).

structured interviews with Commission representatives, journalists, and academics regarding the use of science, narratives, and NGT policies.

The first part of this paper describes the scientific narrative, its utilization by the Commission, and its pragmatic political and legal consequences. The second part theorizes the political narratives, arguing that, despite claims for a “more political” Commission, this institution still strategically employs both narratives. Both parts include concrete examples of the Commission’s narratives in agri-food cases, focusing on the NGT proposal, COFE, and GATT.

2. The Scientific Narrative and Its “Objective” Policies

This section identifies the scientific narrative (2.1) before describing its consequences in the political and legal fields (2.2). Then, the NGT proposal is analyzed through this lens (2.3)

2.1 Identifying the Scientific Narrative

As a working definition, a scientific narrative is a mode of justification for legislation that relies on technical and scientific considerations and, consequently, claims a certain degree of rationality and objectivity.⁴⁸ The scientific narrative is thus broader than scientific expertise or scientific practice itself, as it involves the use of scientific discourse in public spheres without precise references or a clearly defined methodological framework.⁴⁹ Several concepts are useful for theorizing this narrative, notably “*agenciarisation*”, which refers to the increasing delegation of political power to European agencies;⁵⁰ “technocracy”, which denotes a political transfer to non-elected institutions and actors deemed legitimate due to their independent technical expertise;⁵¹ and finally, “epistocracy”, which designates a form of governance where those with scientific expertise are considered legitimate to hold political power.⁵² These three concepts help to understand how some actors may mobilize narratives based on knowledge, scientific objectivity, and expertise to justify policies.

Based on these elements, we can enrich our definition of the scientific narrative with several components found in discursive forms. First, the scientific narrative places authority in the hands of agencies, experts, and scientists who are deemed best equipped to act based on their knowledge.⁵³ Brosset illustrates this transfer with the Regulation 178/2002, through which the institutions agreed to subordinate political power to the consultation of independent experts in cases of scientific uncertainty regarding the harmfulness or safety of a product or food item.⁵⁴

⁴⁸ Viala, ‘L’épistocratie : proposition de définition’ (n 16) 17.

⁴⁹ Roger A Pielke, *The Honest Broker. Making Sense of Science in Policy and Politics* (Cambridge University Press 2017) 30.

⁵⁰ Estelle Brosset, ‘L’expert, l’expertise et le juge de l’Union’ in Eve Thruilhé-Malengo, *La relation juge-expert dans les contentieux sanitaires et environnementaux* (La documentation Française, 2011) 247.

⁵¹ The objective of this political transition would be to enhance the long-term welfare of the community (for its citizens), surpassing the efficacy of the democratic political process (by the people) ; Cianciara (n 20) 132.

⁵² David M Estlund, *Democratic Authority: A Philosophical Framework* (Princeton University Press 2007); Hélène Landemore, *Democratic Reason: Politics, Collective Intelligence, and the Rule of the Many* (Princeton University Press 2013) 50; Viala, *Demain, l’épistocratie ?* (n 29).

⁵³ Cianciara (n 20) 133; Viala, *Demain, l’épistocratie ?* (n 29) 19; Chantal Mouffe, *L’illusion Du Consensus* (Albin Michel 2016).

⁵⁴ Regulation (EC) No 178/2002 of the European Parliament and of the Council of 28 January 2002 laying down the general principles and requirements of food law, establishing the European Food Safety Authority and laying down procedures in matters of food safety, Official Journal L 031 , 01/02/2002 P. 0001 – 0024; Brosset (n 51) 248.

As consequence, the scientific narrative promotes governance by independent and competent officials and institutions, who are not bound by short-term political preoccupations. Unlike short-term political objectives aimed at specific constituencies, the scientific narrative is portrayed as long-term and beneficial to society.⁵⁵

Second, the scientific narrative values an evidence-based approach to policymaking. Policy choices are justified technically, rationally, and by necessity (when influenced by external constraints like market constraints or food safety).⁵⁶ In this context, the legitimacy of EU policies is supported by their “problem-solving” function, which emphasizes a technical, objective, and depoliticized approach.⁵⁷ Following this narrative: “Good policy results are based on unbiased ‘expertise and knowledge of the facts’ [...] derived from the concept of science as an independent search for knowledge, without regard for particular interests.”⁵⁸ As we argue later, this approach leads to the depoliticization and marginalization of any opposition, which is sidelined in favor of rational, technical, and scientifically appropriate options.⁵⁹ These beliefs are particularly visible throughout the languages used. Indeed, scientific narratives operate a language shift towards impersonal terms to eliminate human agency.⁶⁰

Third, this scientific narrative is evaluated based on performance, results, efficiency, and growth, while disregarding non-technical values.⁶¹ Consequently, the decision-making process (political or democratic narratives) is considered secondary in this evaluation.⁶² Accountability here is a form of a posteriori control, holding decision-makers responsible through various means (legal, electoral) but does not involve direct participation from the public.⁶³ Based on the elements described above, Table 1 outlines scientific narratives through the lens of NPF narrative components and their corresponding contents.

Table 1. Scientific Narratives based on the NPF structure

<i>Scientific narratives</i>	<i>Scientific narrative content</i>
Settings: Evidence-based approach to policymaking: Most policy decisions can be justified technically and rationally through unbiased expertise and knowledge. Legislative bodies can rely on scientific institutions to provide the “science of policy” necessary for informed decision-making. Characters: Experts and independent regulatory agencies that are not bound by short-term political concerns. Some actors spread fake news or irrational fears that contradict scientific evidence.	Belief System: Modern dualism between science and politics; the assumption that science is objective and neutral. In some cases, there are tensions between “sound science” and “junk science.” Strategies: Science can be used to justify policies without

⁵⁵ Cianciara (n 20) 133.

⁵⁶ Michael Zürn, ‘From Constitutional Rule to Loosely Coupled Spheres of Liquid Authority: A Reflexive Approach’ (2017) 9 International Theory 261, 247; Cianciara (n 20) 133.

⁵⁷ Erik Oddvar Eriksen and John Erik Fossum, ‘Europe in Search of Legitimacy: Strategies of Legitimation Assessed’ (2004) 25 International Political Science Review 435, 439.

⁵⁸ Pansardi and Tortola (n 13) 1053; Giulia Claudia Leonelli, *Transnational Narratives and Regulation of GMO Risks* (Hart Publishing 2021) 102.

⁵⁹ Cianciara (n 20) 133; Viala, *Demain, l’épistocratie ?* (n 29) 19; Alvaro Oleart, ‘The Political Construction of the “Citizen Turn” in the EU: Disintermediation and Depoliticisation in the Conference on the Future of Europe’ (2023) 0 Journal of Contemporary European Studies 1, 3.

⁶⁰ Pansardi and Tortola (n 13) 1053.

⁶¹ Cianciara (n 20) 133; Zürn (n 57) 274; Viala, *Demain, l’épistocratie ?* (n 29) 19; Mouffe (n 54).

⁶² Pansardi and Tortola (n 13) 1053.

⁶³ Zürn (n 57) 247.

Plots: A narrative trajectory where, in response to a political question, science or technical expertise provide the best solutions.

Moral of the story: Policies based on science and technical expertise will lead to better outcomes, benefiting society.

addressing value-laden questions, offering a depoliticized approach to decision-making. This is often reflected through impersonal language.

To provide some (non-exhaustive) examples, the scientific narrative can be observed in the way the legitimacy of the European Union is established in the governance of the Economic and Monetary Union: rather than relying on democratic representation and surpassing democratic control, expert institutions assumed a necessary growing role during the 2008 liquidity crisis.⁶⁴ The report on the “Cost of Non-Europe” exemplifies this narrative by justifying European integration not politically, but technically, by highlighting the costs associated with the absence of the integrated market.⁶⁵ Then, the White Paper on European Governance is also a form of scientific narrative because it stresses the importance of independent regulatory agencies in contributing to better policies.⁶⁶ At the individual level, this narrative is also visible in Macron’s speeches, such as his statement that “Europeans wish to be able to trust experts.”⁶⁷ Additionally, we also find the scientific narrative within Monnet’s notion of “high modernism,” “which work not by compulsion but more by the mobilization of technical knowledge as a mechanism of persuasion.”⁶⁸ Furthermore, the scientific narrative is evident in opposition contexts as well, where data and scientific analyses have been used to critique the economic consequences of a hard Brexit.⁶⁹ Based on our interviews with Commission’s representative, we identify these elements and scientific narratives, arguing for the scientific legitimacy of European policies:

“The impact of science is crucial. It is important in the development of health policies because political decisions are based on science.”⁷⁰ “Everything we do is grounded in science. A significant challenge we face is how to effectively communicate complex scientific concepts to the public.”⁷¹

Our interviews, however, have allowed us to identify a broader consideration of data and evidence in policy development. In addition to natural sciences, the Commission integrates market and economic data into the “policymaking black box”:

“The scientific dimension should not be narrowly interpreted and *can be expanded to include socio-economic considerations*.”⁷² “I think it’s broader than ‘based on science’ because it also looks at things like what do we know about how society reacts to something? What do we know about what the likely economic impact of something is going to be? In conclusion, what we’re looking at is the scientific evidence that we have

⁶⁴ Louise Fromont, ‘L’impact de la nouvelle gouvernance économique européenne sur l’Union de droit’ (2021) 5 e-legal, *Revue de droit et de criminologie de l’ULB* 29; Jean-Yves Chérot, ‘Dépasser l’épistocratie. Le cas de la gouvernance économique de la zone euro’ in Alexandre Viala, *Demain, l’épistocratie* (Mare & Martin 2022) 140.

⁶⁵ EPRS | European Parliamentary Research Service, ‘The Cost of Non-Europe in the Single Market I - Free Movement of Goods’ (September 2014) PE 536.353.

⁶⁶ Jens Henr Haahr, *Governing Europe: Discourse, Governmentality and European Integration* (Routledge Advances in European Politics) (2005) 84.

⁶⁷ Cianciara (n 20) 136.

⁶⁸ Haahr (n 67) 33.

⁶⁹ Cianciara (n 20) 136.

⁷⁰ Interview with European Commission (Representative), ‘Interview (1) on Science in EU Commission Work and on NGT Regulation’ (5 December 2023).

⁷¹ Interview with European Commission (Representative), ‘Interview (2) Science in EU Commission Work and on NGT Regulation’ (31 January 2024).

⁷² Interview with European Commission (Representative) (n 71).

about the potential of these techniques [NGT]. We are looking at the business framework, and the fact that we do want to have more biotech companies here in Europe.”⁷³

The following section delves deeper into the details with the analyses of the NGT Proposal, and the final section describes the consequences of these scientific narratives from a legal and functionalist perspective.

2.2 The NGT Proposal and Its Scientific Narratives

The discussion on Genetically Modified Organisms (GMO) and NGT within the EU legislative framework is perhaps one of the most striking examples of the use of scientific narratives in EU policymaking. To analyze in detail the proposals and discussions on NGT as scientific narratives, we present the technical and legislative context in which the Commission introduced its regulation (2.2.1); then how the Commission justifies its proposal (2.2.2), and how these narratives are articulated in the European Parliament (2.2.3).

2.2.1 Technological and Legal Context

The term NGT is used alongside NBT (New Breeding Techniques), both of which refer to a variety of gene-editing methods that can modify plants precisely, without the need to insert a foreign gene into the DNA.⁷⁴ The fact that NGT do not necessarily involve the insertion of a gene from another species (but rather modifications within the genes of the organism) has been a – narrative - tool to differentiate these new techniques from traditional GMO or other mutagenesis techniques.⁷⁵ Indeed, there were some issues considering whether NGT should benefit from the mutagenesis exemption clause from GMO obligations provided for in the 2001 directive.⁷⁶

The 2001 directive provides a legal framework including risk assessment and authorization for the commercialization of GMO, the conditions under which a state can ban GMO within its territory, and the labeling of GMO as food.⁷⁷ The directive defines a GMO as: “an organism, with the exception of human beings, in which the genetic material has been altered in a way that does not occur naturally through mating and/or natural recombination.”⁷⁸ Following the structure of the directive, there are techniques that are considered as GMO (Annex I A, part 1) and others that are excluded from the definition (Annex I A, part 2). Based on Art. 3(1), some techniques/methods are considered as GMO but are exempted from the scope of the

⁷³ Interview with European Commission (Representative) (n 72).

⁷⁴ These techniques include, in particular, intragenesis, cisgenesis, Clustered Regularly Interspaced Short Palindromic Repeats (CRISPR), the Zinc Finger Nuclease Technology (ZFN), Oligonucleotide Directed Mutagenesis (ODM), or the Transcription Activator-Like Effector Nucleases (TALENs); Tomasz Zimny and others, ‘Certain New Plant Breeding Techniques and Their Marketability in the Context of EU GMO Legislation – Recent Developments’ (2019) 51 *New Biotechnology* 49.

⁷⁵ Interview with States Representatives, ‘Interview (4) on Science in the EU Commission Work and on NGT Regulation’ (11/09/2024).

⁷⁶ Directive 2001/18/EC of the European Parliament and of the Council of 12 March 2001 on the deliberate release into the environment of genetically modified organisms and repealing Council Directive 90/220/EEC [2001] OJ L 106; Jochen Menz and others, ‘Genome Edited Crops Touch the Market: A View on the Global Development and Regulatory Environment’ (2020) 11 *Frontiers in Plant Science* 130.

⁷⁷ Laura Pignataro, ‘La politique de l’Union européenne en matière d’OGM’ [2011] *Revue du Droit de l’Union Européenne* 361, 361; Hans-Georg Dederer and David Hamburger (eds), *Regulation of Genome Editing in Plant Biotechnology* (Springer 2019) 145.

⁷⁸ Directive 2001/18/EC (n 76), Art. 2.

directive (listed Annex I B) : mutagenesis, and “cell fusion (including protoplast fusion) of plant cells of organisms which can exchange genetic material through traditional breeding methods;” but at the condition that they “do not involve the use of recombinant nucleic acid molecules or genetically modified organisms other than” those techniques/methods.⁷⁹

In 2018, the European Court of Justice ruled that NGT should be included in the definition of GMO and covered by their obligations.⁸⁰ Based on a teleological interpretation and in light of the Recital 17, the Court stated that the exemption should be narrowly interpreted to the techniques/methods “which have conventionally been used in a number of applications and have a long safety record.”⁸¹ Therefore, the Court considered that the exception provided by the directive should only cover techniques that were used before the date of adoption of the Directive (2001) and that have a long safety record.⁸² Upon reading the 2018 ruling, we can also observe a recurrence of the narratives that accompanied Directive 2001/18, particularly those related to the precautionary principle and the distinction between techniques with a 'history of safe use' and new techniques requiring regulation.⁸³

Yet, the 2018 ruling provoked a backlash from the scientific, industrial and political community, criticizing the judgment as scientifically incorrect, and calling for a science-based revision of the EU GMO Framework (including the European Commission’s Group of Chief scientific Advisors European Commissioner for Health and Food Safety). Therefore, the Council had asked the Commission to present a study on the possibilities for legislative revision and to submit a proposal for revisions based on this study.⁸⁴ The Commission initiated the process with a stakeholder consultation in 2020, followed by the publication of a study on NGT in 2021, and a legislative proposal on NGT was submitted in 2023. The study had several objectives: to clarify the legal status of these organisms under the GMO Directive, to provide a summary of research and innovation in the field, particularly regarding risk assessment, to outline the opportunities and risks of NGT, and to gather input from stakeholders and Member States. It also includes information from public dialogue, national surveys, and ethical considerations related to NGT.⁸⁵

The study concludes that NGT are widely used outside Europe and can contribute to EU agrifood sustainability objectives that the legislative framework is inadequate (as NGT are similar to conventional plants) and should be adapted to scientific and technological progress.⁸⁶ The Study also notes that Stakeholders and Member States are concerned about

⁷⁹ Hans-Georg Dederer and David Hamburger, ‘Are Genome-Edited Micro-Organisms Covered by Directive 2009/41/EC?—Implications of the CJEU’s Judgment in the Case C-528/16 for the Contained Use of Genome-Edited Micro-Organisms’ (2022) 9 Journal of Law and the Biosciences Isab033, 16.

⁸⁰ *Confédération paysanne v. Commission*, C-528/16, EU:C:2018:583 (July 25, 2018) (CJEU) ; Juan Antonio Vives-Vallés and Cécile Collonnier, ‘The Judgment of the CJEU of 25 July 2018 on Mutagenesis: Interpretation and Interim Legislative Proposal’ (2020) 10 Frontiers in Plant Science.

⁸¹ Vives-Vallés and Collonnier (n 83) 5.

⁸² Yet, this decision as partially mitigated in another ruling of 2023 ; *Confédération paysanne v. Commission*, C-688/21, ECLI:EU:C:2023:7 (Feb. 7, 2023) (CJUE); Valentine Delcroix, ‘OGM’ (2023) 48 *Revue juridique de l’environnement* 467.

⁸³ Gutwirth and Van Dijk (n 34) 125.

⁸⁴ Menz and others (n 77) 12.

⁸⁵ European Commission, ‘Study on the Status of New Genomic Techniques under Union Law and in Light of The Court of Justice Ruling in Case C-528/16’ (2021) SWD(2021) 92 final 6; See also: Joint Research Centre, *Current and Future Market Applications of New Genomic Techniques* (Publications Office of the European Union 2021) <<https://data.europa.eu/doi/10.2760/02472>> accessed 18 April 2022.

⁸⁶ European Commission (n 86) 59.

the potential negative impact of NGT on organic farming, biodiversity and the ecosystems in general.⁸⁷ The Commission took up this study to initiate a science-based regulation on NGT, strategically marking a techno-scientific narrative approach to justify its proposal.

Following this legal, political, and scientific context, the Commission introduced the 2023 proposal for a regulation on NGT, aimed at providing a *sui generis* legal framework for NGT and removing them from the regulation on GMO under Directive 2001/18. Article 3(2) of the proposal defines an NGT as: “a genetically modified plant obtained by targeted mutagenesis or cisgenesis, or a combination thereof, on the condition that it does not contain any genetic material originating from outside the breeders’ gene pool that may have been temporarily inserted during the development of the NGT plant.”⁸⁸

The Commission’s proposal distinguishes between Category 1 NGT plants and Category 2 NGT Plant Plants. Category 1 NGT plants are those that “(a) fulfils the criteria of equivalence to conventional plants, set out in Annex I, or (b) is progeny of the NGT plant(s) referred to in point (a), including progeny derived by crossing of such plants, on the condition that there are no further modifications that would make it subject to [the GMO framework.]”⁸⁹ Annex I establish a limit of 20 genetic modifications, which must not be exceeded for an NGT plant to be considered, “equivalent to conventional plants.” Indeed, Category 1 NGT plants benefit from a derogatory regime compared to the legislative rules for GMO, involving a simple procedure of verification and registration in a transparency register. These plants do not require authorization, risk assessment, traceability, or labeling as GMO (except for plant reproductive material).⁹⁰ Category 2 NGT plants refer to those that do not meet the criteria for Category 1 NGT plants and are subject to the GMO regulatory framework. Yet, states no longer have the option to restrict or prohibit the cultivation of Category 2 NGT plants as they can under the GMO legislative framework.⁹¹ In the following section, we analyze how the Commission justified the NGT proposal based on a scientific narrative

2.2.2 NPF Analysis of the NGT Proposal.

By applying the NPF methodology, we identify a strong use of scientific narratives by the Commission to justify the proposal. The NPF analysis focuses on the justification of the Commission’s proposal, supplemented by interviews and the monitoring of debates within the European Parliament. The analysis spans the period from the discussions following the 2018 ruling to the ongoing debates, during which the Parliament adopted its mandate on 7 February 2024. Following prolonged deadlocks, the Council adopted its negotiating mandate on 14 March 2025, paving the way for the opening of the EU trilogues.⁹² The present analysis

⁸⁷ *ibid* 27, 40, 47.

⁸⁸ This implies that the presence of genetic material foreign to the “breeders’ gene pool” excludes the organism from the NGT framework, subjecting it to GMO regulation. Yet, within the legislative process, several actors have raised concerns that the wording of the definition of “breeders’ gene pool” is broad enough to theoretically include techniques capable of crossing different species; NGT proposal, Art. 3(1).

⁸⁹ NGT proposal, Art. 3(7).

⁹⁰ NGT proposal, Art. 6, 7, 9.

⁹¹ NGT proposal, Art. 3(8), 12.

⁹² Council, Interinstitutional File 2023/0226(COD), Brussels, 7 March 2025; Interview with Sofia Sanchez Manzanaro (journalist Euractiv), ‘Interview (5) on Science in EU Commission Work and on NGT Regulation’ (15 November 2024).

focuses on the arguments used by the Commission and, subsidiarily, by the European Parliament during this initial phase of the legislative-making process.

As anticipated, the Commission relies on a scientific narrative to justify the proposal, resulting in explicit scientific elements being included in the proposal memorandum. For instance, this scientific narrative can be clearly identified in the Commission's responses to Members of the European Parliament (MEPs) during specific events, such as the Greens/EFA and S&D events in 2023, as well as in the ENVI Committee meetings in 2023 and 2024. Table 2 analyzes the scientific narrative used by the Commission to justify its proposal, drawing on excerpts from written and oral statements by the Commission, as well as explanatory memoranda and recitals.

Table 2 Scientific Narratives used by the Commission for the NGT Regulation

Scientific narratives	Excerpts from the narratives used by the Commission."
Settings: <i>There are scientific differences between NGT and GMO. NGT are innovative tools designed to meet the objectives of the Green Deal.</i>	"New genomic techniques allow us to do exactly the same [i.e. conventional breeding], but faster and with more precision." ⁹³ "The existing framework [...] does not really correspond to the biology of these techniques." "There are differences with GMO, as NGT do not insert DNA from another organism." ⁹⁴ The European Green Deal Farm to Fork Strategy specifically identifies new techniques, including biotechnology, that are safe for consumers and the environment and bring benefits to society as a whole, as a possible tool to increase sustainability of agri-food systems and contribute to guaranteeing food security." ⁹⁵
Characters: <i>The commission follows the study from EFSA and JRC. The Commission also undertakes consultation of experts and stakeholders.</i>	"The Commission has relied on EU-level scientific advisory bodies. Safety issues have been thoroughly addressed by the European Food Safety Authority, [and the Commission's Joint Research Centre.]" ⁹⁶
Plots: <i>Following the 2018 ruling, Member States asked the Commission to study NGT. The 2021 study concluded that the GMO framework should be adapted, as NGT are similar to conventional breeding methods, essential for the</i>	"The 2021 Commission study concluded that the current rules – mainly the existing GMO legislation - lags behind scientific and technological progress" and this study "considers that the risk assessment of these techniques should be adapted." ⁹⁷ This proposal is necessary considering the "current challenges in the agri-food system. Climate change and biodiversity loss have put the focus on long-term resilience of the food chain and the need to transition to more sustainable agriculture and food systems." ⁹⁸ The proposal is also necessary to ensure the

⁹³ European Commission, 'Questions and Answers' (2023) <https://food.ec.europa.eu/plants/genetically-modified-organisms/new-techniques-biotechnology/ec-study-new-genomic-techniques/questions-and-answers_en> accessed 28 July 2023.

⁹⁴ Commission's oral statement in MEP Martin Häusling Event, '*Patents and New Genomic Techniques: Do Not Risk the Future of Our Seeds!*' (2023) <<https://www.youtube.com/watch?v=X0s1zar9INA>> accessed 25 July 2023.

⁹⁵ NGT proposal, p. 2.

⁹⁶ European Commission (n 94).

⁹⁷ NGT proposal, p.7 and recitals 6-7.

⁹⁸ NGT proposal, p. 4

agricultural market, and can help address Green Deal Objectives.

Moral of the Story: The NGT regulation reflects independent scientific authorities' conclusions, creating a legal framework aligned with scientific advancements. Its authorization will provide farmers and European stakeholders with additional tools to achieve Green Deal objectives while ensuring EU competitiveness.

competitiveness of the EU market, given that NGT are used in other parts of the world.⁹⁹

“Based on EFSA's conclusions, the Commission is proposing that plants that are comparable to conventional plants (according to criteria defined in the proposal) are treated in the same way and not subject to a further risk assessment.”¹⁰⁰ In the proposal, “there is a verification procedure based on objective criteria. The criteria are based on scientific observation of what has been seen so far in terms of what has been produced by conventional breeding.”¹⁰¹ “The proposal will create a legal framework so that NGT can support the green transition of the agri-food system. It is designed to meet the demands of farmers for the development and commercialisation of new plant varieties with beneficial characteristics.”¹⁰²

Based on these analyses, several characteristics of the scientific narrative can be highlighted. Among these elements, the Commission presents the regulation as a science-based policy, responding to external and apolitical necessities (the development of NGT techniques, which no longer align with the distinctions established by the 2001 Directive). Therefore, the NGT regulation proposal considers these techniques as essential tools to address the challenges of climate change and argues that their authorization would benefit society as a whole.

However, our interviews also demonstrated internal differences of opinion regarding the instrumental and strategic use of scientific narratives to justify the NGT regulation :

“Indeed, this proposal assumes that there is a scientific consensus that plants, or at least some NGT, they do not pose more risks than plants obtained through conventional breeding. Arguments such as the ‘Green Deal,’ farm to fork, and food security (an argument that gained prominence with the war in Ukraine) are then used to assert that these techniques are indispensable for sustainability (and food security). Therefore, a positive narrative is developed to show that opponents are ‘anti-science.’ We see the Commission’s discourse: ‘we believe in science. If you are against it [NGT proposal] then you don’t believe in science.’ This is a very strong position. The ‘necessity’ has never been discussed anywhere; it reflects a technological worldview, in my opinion. The issue of competitiveness is not clear, and the idea that ‘Europe without GMO has a negative impact on competitiveness’ is a narrative, a conviction that is almost religious. We appeal to science with the 2021 study on NGT, but what is not mentioned is that this study was conducted by Commission officials. It also ignores research on modifications to agricultural systems (reintroducing complexity). Science is used rhetorically to separate categories 1 and 2. I would have been more convinced if this distinction had come from an independent scientific body and not developed by colleagues from DG SANTE or JRC.”¹⁰³

Although we exclude discussions within the Council from the scope of our analysis, we can also see in some public documents the use of the scientific narrative, as well as the

⁹⁹ Commission’s oral statement (n 94).

¹⁰⁰ NGT proposal, p. 1-2, recital 7; European Commission (n 94).

¹⁰¹ Commission’s oral statement (n 94).

¹⁰² NGT proposal, p. 1-2, recital 7; European Commission (n 94).

¹⁰³ Interview with European Commission (Representative) (n 67).

contestation of certain elements of the proposal.¹⁰⁴ Within the European Parliament, we also find this scientific narrative echoed by MEPs who support the proposal; or by others who criticize it, always from a scientific and technical perspective:¹⁰⁵

Firstly, the rapporteur Jessica Polfjård (EPP-SE) emphasized that NGT were an opportunity to improve agriculture, EU competitiveness, and sustainability for the climate and the environment. Faced with agricultural shocks (such as the war in Ukraine and COVID), it was necessary to provide farmers with all the tools they needed. These new technologies were presented as a step in the right direction toward scientific progress, said Peter Liese (EPP-DE). “I am in favor of science, rationality, innovation, not your religion,” also declared Alexandr Vondra (ECR-CZ). It was argued that the ruling of the CJEU, considering NGT equivalent to GMO, was not scientifically accurate, and that from a scientific standpoint, there was no difference between NGT and conventional plants, especially in a context where NGT were necessary to combat climate change (Pietro Fiocchi, ECR-IT).

Then, we also observed that some MEPs contested the proposal while still relying on a scientific narrative.¹⁰⁶ “The scientists themselves say it,” they argued, acknowledging their limited knowledge in this field (Marina Mesure, GUE-FR). Christophe Clergeau (S&D-FR) therefore reminded that he was in favor of science and innovation, but he wanted to question the conditions, guarantees, and transparency of the current proposal. He also criticized part of the NGT proposal, relying on the opinion of ANSES to show the absence of a scientific foundation for the proposal.

Others also criticized this scientific narrative, echoing discourses against technocracy, false promises, or opposition to agro-industrial interests (characters and plot identifiable through the NPF): the proposal started from a biased assumption, offering technocratic solutions to problems that did not fundamentally exist (Benoit Biteau, Greens/EFA-FR). Technologies were promised to tackle climate change, but these were unfulfilled promises from past legislation (Martin Häusling, Greens/EFA-DE). Anja Hazekamp (GUE-NL) explained that the winners would be large seed companies monopolizing the market, while small producers, farmers, consumers, and ecosystems would be the losers in this proposal.

In conclusion, these illustrations show how the Commission uses scientific narratives to justify its NGT proposal. We have also seen that this scientific narrative is not fully accepted, even by some actors within the Commission. This contestation can be observed not only among MEPs but within the Council. Additionally, political actors contest this proposal also with scientific arguments (confronting the Commission with conflicting studies and data) thus perpetuating the scientific narrative. The following section critically discusses the beliefs and strategic use of the scientific narrative

¹⁰⁴ Critics challenge aspects that reflect scientific robustness, such as the 20 genetic modifications/nucleotide criterion for Category 1 NGT plants ; General Secretariat of the Council, ‘Regulation on New Genomic Techniques (NGT) – Comments from Austria, Belgium, Croatia, Cyprus, Czechia, Denmark’ (Contribution) Interinstitutional File 2023/0226(COD), 27 September 2023, 13330/23, p. 20-21, 24-25, 49, 86-87, 107, 111-113, 120-123.

¹⁰⁵ European Parliament, Committee on Environment, Public Health and Food Safety, 7 November 2023 and 9 April 2024.

¹⁰⁶ See for example : Adrian Ely and others, ‘The Possible Deregulation of Certain GMOs in the EU: What Would the Implications Be? A Pathways Analysis’ (The Greens/EFA group in the European Parliament 2023).

2.3 (Para)legal implications of the Scientific Narrative

Alongside a varied critique of the actual possibilities of justifying public policies based on a reliable body of knowledge (from philosophy of science, decolonial approach to knowledge or Science and Technologies Studies),¹⁰⁷ this scientific narrative is primarily criticized in the NPF literature for its strategic use, as it allegedly allows legislation to be justified in a supposedly “neutral” and “objective” manner, without having to politically assume and justify it.¹⁰⁸ This section explores the strategic uses of scientific narratives, drawing on pragmatic political and legal approaches with the concepts of epistocracy and global law.

2.3.1 The Epistocratic Argument

The scientific narrative reintegrates the epistocratic argument by justifying its policies as being based on science and, to some extent, as objective, rational, and apolitical. The concept of “epistocracy” is used by Viala, Estlund, and Landemore to identify an ideal type of governance where scientific expertise and knowledge are used to gain political legitimacy.¹⁰⁹ The epistocratic justification represents a shift in the source of political legitimacy from the Leviathan to the laboratory. It is also part of the continuation of a truth-based argument that imposes itself on politics, thereby extending the Platonic model of governance by enlightened rulers.¹¹⁰ According to this logic, the application of the best available knowledge would lead to better political decisions. As these decisions are based on science, technical expertise, or impact assessment, they are better designed to achieve specific purposes.

These science-based decisions are also seen as “neutral” because they only apply objective and unbiased knowledge and do not concern themselves with partisan interests.¹¹¹ Thus, the epistocratic argument contains a depoliticizing and post-political dimension.¹¹² Indeed, the epistocratic argument provides political legitimacy to these science-based decisions, which are presented as more just compared to a democratic debate involving a public considered ignorant or factually mistaken.¹¹³ To frame it differently, this justification enables the imposition of a “liberal rationality” positioned above any contentious political debate.¹¹⁴

Applying this concept to the legal domain, Viala stresses that while epistocracy does not formally exist in positive law, there are nonetheless narratives with epistocratic tendencies that can be identified in legislative texts, explanatory memoranda, and even judicial decision.¹¹⁵ These epistocratic tendencies are particularly visible in European policymaking and governance. As presented in Table 2, the NGT proposal reintegrates elements of the scientific

¹⁰⁷ Florence Piron and Élisabeth Arsenault, *Guide décolonisé et pluriversel de formation à la recherche en sciences sociales et humaines* (Éditions science et bien commun 2021); Pielke (n 49) 8.

¹⁰⁸ Cianciara (n 20) 140; Pansardi and Tortola (n 13) 1063.

¹⁰⁹ Estlund (n 53); Landemore (n 53) 50; Viala, *Demain, l'épistocratie ?* (n 29).

¹¹⁰ Viala, *Faut-il abandonner le pouvoir aux savants ?* (n 14) 27.

¹¹¹ *ibid* 153; Chérot (n 65); Favre (n 19).

¹¹² Mouffe (n 54).

¹¹³ Walter Lippmann, *The Phantom Public* (Wilder Publications 2023); Viala, *Faut-il abandonner le pouvoir aux savants ?* (n 14) 15.

¹¹⁴ Viala, *Demain, l'épistocratie ?* (n 29) 17; Claire A Dunlop, ‘The Possible Experts: How Epistemic Communities Negotiate Barriers to Knowledge Use in Ecosystems Services Policy’ (2014) 32 *Environment and Planning C: Government and Policy* 208.

¹¹⁵ Chérot (n 65) 142; Cathrine Holst, ‘What Is Epistocracy?’ in Simen Andersen Øyen, Tone Lund-Olsen and Nora Sørensen Vaage (eds), *Sacred Science? On science and its interrelations with religious worldviews* (Academic Publishers 2012) 52.

narratives within its justification and structure. Indeed, Recital 14 of the NGT proposal affirms that the criteria for equivalence of a Category 1 NGT plant “should be objective and based on science,” and that, “that since “scientific and technical knowledge evolves rapidly in this area, the Commission should be empowered [...] to update these criteria in light of scientific and technical progress.”

Therefore, the epistocratic argument unfolds progressively: it begins with the idealization of an objective and neutral truth discovered by “pure” science, followed by the application of this scientific truth in the political realm through science-based decision-making, and ultimately culminates in the recognition of these objective, science-based laws within positive law.¹¹⁶ In other words, the epistocratic argument radicalizes the idea of science and integrates objective and indisputable truths into the legal and political spheres.¹¹⁷ However, the idea of a pure and disinterested science, and its objective use in politics and law, is criticized by a whole field of literature ranging from the philosophy of science in context to critical decolonial and feminist philosophies of science.¹¹⁸ Addressing the use of science in politics and law, there is a critique of power-knowledge, as the use of scientific arguments could lead to discourses that, while claiming to limit themselves to describing facts, are actually prescriptive.¹¹⁹ Indeed, there are cases of politicization of science, where value judgments are hidden behind statements of fact. A good example with the NGT debates is when actors selectively use only certain scientific data that align with their political agenda.¹²⁰

Another branch of the literature denounces the deliberate circumvention and instrumentalization of science for political purposes. In this vein, Oreskes and Conway identify the instrumentalization of science by lobbyists and industrial actors. By funding scientific studies to contest the construction of consensus, these actors generate doubt and maintain the status quo on the dangers of tobacco, thereby delaying its regulation.¹²¹ Another strategy employed by these “merchants of doubt” was to disqualify “junk science” that did not align with their interests and promote “sound science.”¹²² Again, transitions and narrative continuity can be observed in the way notions of “sound science” are used in the Commission's communication and legislative text,¹²³ as was highlighted in our interviews:

¹¹⁶ Alberto Alemanno, ‘The Emergence of the Evidence-Based Judicial Reflex: A Response to Bar-Siman-Tov’s Semiprocedural Review’ (2013) 1 *The Theory and Practice of Legislation* 327, 334.

¹¹⁷ Viala, *Demain, l’épistocratie ?* (n 29) 17.

¹¹⁸ In particular, addressing the non-objectivity of Western science or the exclusion of subaltern groups and their knowledge systems; Ramón Grosfoguel, ‘The Epistemic Decolonial Turn. Beyond the Political-Economy Paradigm’ (2007) 21 *Cultural studies* (London, England) 211, 214; Braidotti (n 26); Patricia Hill Collins, *Black Feminist Thought: Knowledge, Consciousness, and the Politics of Empowerment* (2nd edn, Routledge 2000) 255; Donna Haraway, *Simians, Cyborgs, and Women* (Routledge 2013).

¹¹⁹ Michel Foucault, ‘Il faut défendre la société’. *Cours au Collège de France. 1976*” (Seuil 1997) 172; Audrey Boisgontier, ‘Neutralité scientifique, neutralité juridique ? La prise en charge de l’intersexuation appréhendée dans le cadre de la loi de bioéthique’ [2023] *La Revue des droits de l’homme* 9.

¹²⁰ Interview with Sanchez Manzanaro (journalist Euractiv) (n 93).

¹²¹ Naomi Oreskes and Erik Conway, *Merchants of Doubt* (Bloomsbury Press 2010).

¹²² *ibid* 5; See also : Leonelli (n 59) 181.

¹²³ See for example, : European Commission, Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions, EU Biodiversity Strategy for 2030: Bringing Nature Back into Our Lives, at 1, COM (2020) 380 final (May 20, 2020), at 3.3.4; Commission Decision of 5 July 2012 on Setting Up a Multisectoral and Independent Expert Panel to Provide Advice on Effective Ways of Investing in Health, 2012 O.J. (C 198), recitals 7-8.

“However, the introduction of the notion of science into the agricultural and food domain has somewhat politicized science, as evidenced by certain international discussions or exchanges between industrial interest groups. We have seen the term ‘sound science’ (good science) develop in opposition to ‘junk science’. For me, ‘sound science’ refers to science that aligns with the interests of the industry. In fact, this qualification of ‘sound science’ aims to discredit scientific results that are unfavorable (junk science). While the term ‘sound science’ was initially very American and part of specific jargon, we now see it appearing in texts from the Commission.”¹²⁴

These epistemological conflicts create challenges in the context of international relations. Indeed, relying on technical and scientific justifications offers limited value when faced with conflicts between sovereign states. When this scientific approach to policymaking is insufficient, the Commission has no choice but to enter the political sphere, as illustrated later with the GATT example.¹²⁵

2.3.2 Scientific Narratives and Global Law

As a second theoretical approach, the epistocratic and strategic utilization of scientific narratives is also theorized from the perspective of global law.¹²⁶ In short, the concept of global law highlights norms and mechanisms that are not recognized as formal law in the strict sense, but still have a normative effect.¹²⁷ As a research program, global law aims to unveil new actors and sources of normativity, including among others, ethics committees, recommendations, codes of conduct, soft law instruments, labels, indicators.¹²⁸

Shifting from a hierarchical approach to a network-based analysis, global law aims to establish itself beyond state sovereignty and traditional positivist political and legal frameworks. According to Kelsen, legal systems follow a hierarchy of norms, where each norm must result from an act of creation authorized by a higher norm, and reflecting the will of the state or its population.¹²⁹ Conversely, approaching law through the framework of global law allows us to identify all the rules emerging from globalization that are effective, compete with, and operate alongside the model of state sovereignty, and that have practical consequences for citizens.¹³⁰

This postmodern approach to law seeks to identify a normative inflation of technical norms and standardization processes, especially those emanating from IOs and non-state actors.¹³¹ Following this approach, sovereign states agree to set aside their sovereignty, making room for a different mode of governance that emanates from IOs and entities other than nation states.¹³² Several reasons can be advanced to explain the competition between strict positivist law and the inflation of global law, including among others, the rise of commercial law,

¹²⁴ Interview with European Commission (Representative) (n 67).

¹²⁵ Favre (n 19) 126.

¹²⁶ *ibid* 113.

¹²⁷ *ibid* 2022; Benoît Frydman and others, *Foucault, le droit et la dynastique du savoir* (Mare & Martin 2020) 10; François Ost, *Sources et systèmes de droit* (Presses Universitaires de France 2007) 117.

¹²⁸ Karim Benyekhlef, ‘Droit global : un défi pour la démocratie’ (2016) 353 *Revue Projet* 14; Frydman and others (n 127) 10–11; Mariachiara Tallacchini, ‘Governing by Values. EU Ethics: Soft Tool, Hard Effects’ (2009) 47 *Minerva* 281.

¹²⁹ Kelsen (n 33).

¹³⁰ Benyekhlef (n 129) 14.

¹³¹ Favre (n 19) 118.

¹³² Benoît Frydman, *Les défis du droit global* (Bruylant 2017); François Ost and Michel van de Kerchove, *De la pyramide au réseau? Pour une théorie dialectique du droit* (Publications des Facultés universitaires Saint-Louis 2002); Gunther Teubner, *Constitutional Fragments: Societal Constitutionalism and Globalization* (Oxford University Press 2012).

globalization, the development of IOs, the dominance of the managerial model, the digital revolution.¹³³

Based on these elements, Favre theorizes a combination of epistocracy and global law within the development of IOs, which may also be applicable to the EU.¹³⁴ His argument identifies the rhetorical or instrumental use of scientific discourse as a tool of normativity and as a means used by IOs to advance their functionalist agendas. In this regard, Nugent and Rhinard observe a decrease in the Commission's legislative proposals and a greater reliance on non-binding instruments, justified more by technical than political criteria, particularly in more sensitive areas.¹³⁵ The scientific narrative reinforces the depoliticization of these supposedly "objective" and "impartial" institutions, while promoting the necessity and desirability of "technical" cooperation.¹³⁶ Since their policies are based on science, these organizations would not be involved in politics and would confine themselves to impartial technical cooperation.¹³⁷ Therefore, IOs can use epistocratic narratives and consider themselves neutral bodies that only carry out technical missions, in line with the goals set by their founding instruments.

In addition, these organizations develop reports and expertise in their own fields, and according to their own logic and rationality.¹³⁸ The knowledge produced by these institutions is compiled into reports presented as objective, neutral, and science-based, even though much of it may consist of economic evaluations. Then, this knowledge serves as the foundation for new arguments or epistocratic narratives.¹³⁹

Presented as neutral, these specific knowledge and reports may conflict with other knowledge from other organizations that do not have the same missions (or knowledge systems).¹⁴⁰ For example, reports from IOs with social, environmental, and economic objectives can lead to divergent conclusions. In other words, this knowledge is specific and linked to the fields in question, and they can collide with one another.¹⁴¹ In line with Foucault's "dispositifs" and their "regimes of truth," these are specific knowledge intimately linked to the subjects in question, their rules of conduct, and their political functions.¹⁴² Following Koskeniemi's conclusion that "vocabularies of constraints are cognitive rather than normative," Favre identifies a strategic and epistocratic dimension in the reliance on knowledge and technical reports by IOs: such reports and expertise can be used in an epistocratic manner, as an argument of authority.¹⁴³

¹³³ Favre (n 19) 118.

¹³⁴ *ibid* 113.

¹³⁵ Nugent and Rhinard (n 6) 210.

¹³⁶ Favre (n 19) 118; Tallberg and Zürn (n 23) 582; Dario Battistella, *Théorie des relations internationales* (3e édition, Les Presses de Sciences Po 2009) 419.

¹³⁷ Battistella (n 137) 419; Favre (n 19) 118; Tallberg and Zürn (n 23) 582.

¹³⁸ Philippe Coppens, 'La fonction du droit dans une économie globalisée' (2012) 26 *Revue internationale de droit économique* 269, 278; Mark Dawson, 'Juncker's Political Commission: Did It Work?' [2019] *European Policy Analysis* 2.

¹³⁹ Favre (n 19).

¹⁴⁰ *ibid* 122; Teubner (n 133).

¹⁴¹ Teubner (n 133); Favre (n 19) 122; Martti Koskeniemi, *The Politics of International Law* (Hart Publishing 2011) 338; Michel Foucault, *On the Government of the Living: Lectures at the Collège de France, 1979-1980* (Michel Senellart ed, Graham Burchell tr, Palgrave Macmillan 2014).

¹⁴² Foucault (n 142) 90; Favre (n 19) 120.

¹⁴³ Koskeniemi (n 142) 338; Favre (n 19) 121.

These elements may offer broader avenues for reflection, which are not covered in this paper, regarding the functionalist dimensions of these strategic narrative uses.¹⁴⁴ Indeed, some argue that the hybrid nature of the Commission—presenting itself as both a technical and political entity—allows it to use these scientific narratives to neutralize supranational issues, thereby justifying integration or international cooperation.¹⁴⁵ It is therefore argued that, from a functionalist perspective and at the level of IO, the scientific narrative could also be a strategic tool to avoid going against the sovereignty of Member States and to justify their objectives under the guise of “objectivity.” A final critique advanced by the NPF literature that has not been addressed yet is the narrative inconsistency and strategic shifts by the Commission between different narrative registers, strategically alternating between scientific and political narratives. This strategic narrative is examined through the analysis of the political narrative.¹⁴⁶

3. Strategic narrative Shifts: From Scientific to Political Narratives?

The first part of this paper theorized and illustrated the scientific narrative as a means of justifying policies under the guise of impartiality, objectivity, and neutrality. Following a dualistic model between science and politics, we positioned the scientific narrative in opposition to a “political narrative,” which, by contrast, emphasizes a discourse of legitimacy wherein political decisions are based (even indirectly) on the will of a popular majority. Unlike a scientific narrative, the political narrative allows for subjective and value-based judgments in discourses of legitimacy.

The second part of this paper focuses on the use of political and democratic narratives by the Commission, which we analyze through the lens of NPF analysis, revealing their strategic uses and narrative shifts. We begin by conceptually framing political and democratic narrative (3.1). From the perspective of strategic changes, we also examine the narrative shift towards a “more political” Commission. Despite claims of politicization, we conclude that it continues to strategically employ both scientific and political narratives in a complementary and strategic manner (3.2).

3.1 Legitimizing Through Political and Democratic Narratives

As presented in the introduction, an NPF methodology is used to analyze narratives and justifications. This political narrative is analyzed in contrast to scientific narratives, as seen when the Commission includes elements such as expertise, independent agencies, objectivity, and the neutrality of the policies. More fundamentally, these models of justification rely on a heteronomous model, as the source of legitimacy is based on external elements: whether by the precepts of natural law, scientific truths, or purely technical or scientific “outputs.”¹⁴⁷

The political narrative, on the other hand, is a discourse that justifies policies based on internal criteria of legitimacy. Indeed, it emphasizes the autonomous choice of the political community.¹⁴⁸ This approach therefore recalls Kelsenian legal positivism, which holds that the legitimacy of a norm is established by the arbitrary acts of human beings rather than by

¹⁴⁴ Cianciara (n 20) 132; Guinda (n 23).

¹⁴⁵ Mérand (n 6) 287.

¹⁴⁶ Favre (n 19) 123; Guillaume Devin, *Les organisations internationales. Entre intégration et différenciation* (Armand Colin 2022) 242.

¹⁴⁷ Mérand (n 6) 17; Vivien Schmidt, ‘Politicization in the EU: Between National Politics and EU Political Dynamics’ (2019) 26 *Journal of European Public Policy* 1, 1019.

¹⁴⁸ Cornelius Castoriadis, *The Imaginary Institution of Society* (Kathleen Blamey tr, The MIT Press Cambridge, 1975).

external criteria of legitimacy (as found in natural law).¹⁴⁹ Nevertheless, the definition of the political narrative is intentionally broad, and several political regimes or traditions in political philosophy could adopt it to justify their policies, invoking reasons related to the will of the sovereign, human deliberation, collective decision-making, or societal values.¹⁵⁰

Although this paper uses the generic term “political narrative” to analyze the discursive forms employed in the Commission’s justifications, we can distinguish between “restrictive” and “democratic” definitions of the political narrative. Within the framework of a political narrative, some interpretations emphasize the democratic dimension by incorporating participatory and procedural elements, substantive content such as fundamental rights, and, more broadly, a focus on including as many humans (and sometimes non-humans) as possible.¹⁵¹ For example, we can classify Habermas’ statements within these more democratic approaches to the political narrative.¹⁵² Indeed, Habermas criticizes the scientific and technical justification of the European Union, and calls for a more democratic approach to be integrated within political justification:

The “Union legitimized itself in the eyes of the citizens primarily through its outcomes and not so much from the fact that it fulfilled the citizens’ political will;”¹⁵³ “The democratic will of European citizens has almost zero impact because European ‘policies’ are uncoupled from ‘politics.’”¹⁵⁴

Moreover, justifications based on “input” (politics by the people) and “throughput” (politics with the people) can also be integrated into these policies and democratic narratives, mentioning examples such as the Participatory Democracy narrative, which is based on equal opportunities for participation by those affected by the measure, and the theory of Deliberative Democracy, where democratic legitimacy is derived from exchanges among all members before a decision is made.¹⁵⁵ Other alternative models are emerging within this political and democratic narrative framework, such as mini-publics and citizens’ panels. The democratic legitimacy of citizens’ panels thus lies in the deliberative nature of the assembly, which is composed of randomly selected citizens who are not bound by partisan interests.¹⁵⁶ These new forms of democratic and political narratives are examined below with the COFE as an example.

Having presented some conceptual frameworks regarding political and democratic narratives the section identifies how the Commission uses these political and democratic narratives to justify its policies and describes strategic uses with the NPF lens.

¹⁴⁹ Kelsen (n 33) 10; Hans Kelsen, ‘Le positivisme juridique et doctrine du droit naturel’, *Mélanges en l’honneur de Jean Dabin* (Sirey 1963) 141.

¹⁵⁰ In this regard, the political narrative can encompass both tyrannical and democratic regimes. Yet, tyrannical regimes can also mix narratives, notably by appealing to heteronomous and epistocratic narratives; Viala, *Faut-il abandonner le pouvoir aux savants ?* (n 14) 72.

¹⁵¹ Donna Haraway, ‘Anthropocene, Capitalocene, Plantationocene, Chthulucene: Making Kin’ (2015) 6 *Environmental Humanities* 159; Latour (n 16).

¹⁵² Habermas (n 5).

¹⁵³ Jürgen Habermas, ‘Democracy, Solidarity, and European Crisis’ (2014) 339 *Revue Projet* 49..

¹⁵⁴ Habermas (n 5) 547.

¹⁵⁵ Schmidt (n 148) 1019; Schmidt (n 3).

¹⁵⁶ Julien Vrydagh and others, ‘Les mini-publics en Belgique (2001-2018) : expériences de panels citoyens délibératifs’ (2020) 2477–2478 *Courrier hebdomadaire du CRISP* 5, 4; Alberto Alemanno and others, *What’s in an Experiment? : Opportunities and Risks for the Conference on the Future of Europe* (European University Institute 2021) 4, 9–10; Oleart (n 60) 11.

3.2 The Strategy Behind the “More Political” Narrative

In this section, we explore the questions surrounding a narrative shift towards a “more political” Commission and its strategic implications. Despite signs of a “more political” Commission, we observe that the Commission continues to strategically employ both political and scientific narratives (3.2.1). Using the COFE and GATT Agreement as concrete examples, we illustrate how narratives can be instrumentalized (3.2.2 and 3.2.3).

3.2.1 Analyzing the “More Political” Commission

Since its establishment, the Commission has been identified as a hybrid with diplo-techno-bureaucratic missions that go beyond the powers typically granted to an IO secretariat or civil service.¹⁵⁷ Nevertheless, in recent years, and in continuity with Juncker’s statement for a “more political” Commission, academic analyses and debates have reopened discussions on the politicization of the Commission, particularly focusing on the role of the President and the Commissioners.¹⁵⁸ Indeed, parts of the literature theorize a “more political” Commission that would have shifted its justifications, moving from a technocratic decision-making model to adopting a more political one. Although it remains debated, several discursive, policies, and institutional signs have been linked to this shift towards political justification.¹⁵⁹

In particular, the literature presents the predominant role of the European Parliament throughout since the Maastricht Treaty as a sign of this politicization, culminating in the election of Jean-Claude Juncker as the informal *Spitzenkandidat*.¹⁶⁰ Additional indicators include the transfer of power from the Directorates-General (administrative level) to the Commission and its cabinets (political level), the establishment of a new organizational structure that introduces a political dimension earlier in the legislative process, including the centralization of the spokesperson service, and the enhanced role of the First/Executive Vice-President, as well as the individual appointment of career politicians to key positions.¹⁶¹ Finally, politicization is also analyzed from the perspective of the Commission’s priority policies.¹⁶²

The assumption of the politicization of the Commission is mainly explained in the literature through two cumulative aspects. The first reason for this politicization is addressed through a functionalist and historical approach, which argues that the nature and missions of the European Union have evolved over time and can no longer be defined solely as a “regulatory

¹⁵⁷ Pansardi and Tortola (n 13) 1048; David L Coombes, *Politics and Bureaucracy in the European Community: A Portrait of the Commission of the E.E.C.*, (Allen & Unwin 1970) 101; Stefano Bartolini, *Restructuring Europe: Centre Formation, System Building, and Political Structuring between the Nation State and the European Union* (OUP Oxford 2005); Hartlapp (n 29); Alemanno and others (n 157) 4, 9–10.

¹⁵⁸ Pansardi and Tortola (n 13) 1048.

¹⁵⁹ Nugent and Rhinard (n 6) 205; Pansardi and Tortola (n 13) 1049.

¹⁶⁰ Mérand (n 6) 7; Schmidt (n 148) 1018; Pansardi and Tortola (n 13) 1049; Desmond Dinan, ‘Governance and Institutions: A More Political Commission’ (2016) 54 *Journal of Common Market Studies* 101, 101; Steven Blockmans (ed), *What Comes after the Last Chance Commission?: Policy Priorities for 2019-2024* (Centre for European Policy Studies (CEPS) 2019) 7.

¹⁶¹ Marine Borchardt, ‘Une Commission Européenne politique grâce à une nouvelle Organisation « Cette fois, c’est différent ». Vraiment ?’ (Notre Europe -Institut Jacques Delors 2016) Policy Paper 180 8; Mérand (n 6) 9; Nugent and Rhinard (n 6) 104; Pansardi and Tortola (n 13) 1050; Hartlapp (n 29).

¹⁶² Pansardi and Tortola (n 13) 1050; Nugent and Rhinard (n 6) 104.

state.”¹⁶³ In practice, the Commission has taken on responsibilities (agriculture, asylum, national budgets) where it is indeed difficult to justify itself solely based on objective and neutral knowledge.¹⁶⁴ The second reason is described as a response to the “internal legitimacy crisis.”¹⁶⁵ In other words, this shift towards a “more political” narrative can be seen as a reaction to criticism of the Union’s democratic deficit.¹⁶⁶ Indeed, to legitimize the EU to the electorate, forms of democratic legitimation beyond technical evaluation criteria are deemed necessary.¹⁶⁷ Finally, academic and institutional discussions on the politicization of the Commission also raise political concerns about the legitimacy and appropriateness of this political shift.¹⁶⁸

Without going into the details of this alleged politicization, we argue that the narrative of a “more political” Commission is mostly rhetorical, as the Commission adjusts its discourse, oscillating between political and technical narratives depending on the interests involved. To assess this narrative shift in the Commission’s discourse, we draw on Pansardi and Tortola’s study, which challenges the idea of a “more political” Commission based on its language. Using a method similar to NPF, their analysis of Commission speeches from 1999 to 2019 finds no clear shift toward a more political narrative. On the contrary, by distinguishing between charismatic language (as a sign of the Commission’s politicization) and technical language, the analysis shows a decline in charismatic language and a rise in technical language over time. The authors conclude that the Commission’s rhetoric became less political during the period under review, with the lowest level of politicization observed during the Juncker Commission.¹⁶⁹

Two explanations are proposed by the authors. The first suggests that the Commission’s self-perception remains unchanged, as it continues to see itself as a technocratic institution. While it has developed technocratic tools (such as the European Semester) it has adopted political language to enhance its effectiveness considering the prevailing political context. The second explanation points to the Commission’s acknowledgment of its politicization.¹⁷⁰ According to the authors, the Commission is fully aware of its politicization efforts but uses technical and depoliticized language as a narrative strategy to avoid conflict. This hypothesis opens the door to theorizing the strategic narrative shift in relation to the Commission’s hybrid roles and its shifting strategic considerations depending on timing and subject matter.¹⁷¹ In sum, this study

¹⁶³ Dawson (n 139) 2; Pansardi and Tortola (n 13) 1047; Giandomenico Majone, ‘From the Positive to the Regulatory State: Causes and Consequences of Changes in the Mode of Governance’ (1997) 17 *Journal of Public Policy* 139.

¹⁶⁴ Nugent and Rhinard (n 6) 204; Dawson (n 139) 2.

¹⁶⁵ Sabine Saurugger, ‘Crise de l’Union européenne ou crises de la démocratie ?’ [2017] *Politique étrangère* 23, 24.

¹⁶⁶ Luis Bouza García, ‘Introduction: A Narrative Turn in European Studies’ (2017) 25 *Journal of Contemporary European Studies* 285, 286; Oleart (n 60) 2.

¹⁶⁷ Saurugger (n 166) 29; T Banchoff, *Legitimacy and the European Union* (1999) 96; Van Middelaar and Van Parijs (n 2) 247.

¹⁶⁸ For example, Stef Blok, the former Dutch Minister for Foreign Affairs, argued that “a Commission that prides itself on being political undermines its own objectivity.” Barolini and Hix warn that politicizing the Commission could risk losing its culture of consensus. Van Parijs and van Middelaar, while confirming and welcoming this politicization, suggest that it would be more appropriate for it to occur at the level of the Council; Mérand (n 6) 292; Van Middelaar and Van Parijs (n 2); Stéphanie Hennette-Vauchez and others, *Pour un traité de démocratisation de l’Europe* (Éditions du Seuil 2017); Bartolini and Hix (n 6).

¹⁶⁹ Pansardi and Tortola (n 13) 1062.

¹⁷⁰ *ibid* 1048.

¹⁷¹ *ibid*; Hartlapp (n 29); Bartolini (n 158).

underscores the ambiguity and strategy within the narrative it employs, oscillating between technocratic and political narrative depending on the type of legitimacy required. In this same vein, this strategic use of narratives is also reflected in Cianciara's NPF study, which highlights the complementary use of technocratic and populist justifications.¹⁷²

In the end, these NPF analyses conclude that the Commission undergoes a narrative shift, strategically adapting its forms of legitimacy depending on the subject or audience.¹⁷³ Indeed, Pansardi and Tortola consider that the Commission has indeed become a more political actor over time, but that this institution has counterbalanced this politicization by a strategic use of technocratic and epistocratic language to downplay or conceal its politicization. Indeed, they suggest that this strategic narrative shift could, on the one hand, be employed to minimize politico-institutional conflicts with institutions and actors whose functions might be threatened by the political empowerment of the Commission, and on the other hand, to mitigate the legitimacy issues of a "more political" Commission (as it evolves toward a supranational executive model) in the context of a democratic deficit and without the functioning mechanisms of democratic representation or accountability.¹⁷⁴ We continue the discussion on the strategic changes in narratives based on two case studies with the COFE and the GATT and the SPS agreement.

3.2.2 Framing the Democratic Narrative With the COFE

In this section, we analyze the COFE as an example of a new form of democratic narrative, while critically highlighting its instrumentalization. Among the various manifestations that political and democratic narratives can take (from appeals to the majority will, the respect for fundamental rights, to citizens' panels), their ultimate rhetorical goal is to provide (a "civic") legitimacy to policies.¹⁷⁵ Particularly aware of the strategic shifts in narratives within the justification jungle, we argue with the COFE that the Commission also instrumentalizes political and democratic narratives to defend decisions and gain legitimacy.

We use the example of the COFE as a political experiment, carefully framed and strategically employed to inject fresh impulsion into certain projects through a new form of political legitimacy. Certain European decisions and policies can thus be justified as directly or indirectly stemming from the democratic will expressed by these citizens' panels.¹⁷⁶ Indeed, while we discuss the politicization of the Commission below, EU institutions can also seek political legitimacy beyond the classical approach of the representative assembly, drawing on new models of democratic innovation, as exemplified by the citizens' panels during the COFE.¹⁷⁷

¹⁷² Cianciara (n 20) 140.

¹⁷³ With different relations with the EP and the Council: the relationship with the European Parliament is one of dialogue and mutual politicization. For the Council, there is a more technocratic narrative that is used, in order to avoid defending itself too much on the political level; Dinan (n 161) 111; Pansardi and Tortola (n 13) 1063..

¹⁷⁴ Pansardi and Tortola (n 13) 1064; Christian Rauh, Bart Joachim Bes and Martijn Schoonvelde, 'Undermining, Defusing or Defending European Integration? Assessing Public Communication of European Executives in Times of EU Politicisation' (2020) 59 *European Journal of Political Research* 397.

¹⁷⁵ Cianciara (n 20) 131.

¹⁷⁶ Oleart (n 60) 7.

¹⁷⁷ Oleart (n 15).

We therefore take the COFE as an example of the strategic use and change of political and democratic narratives to justify political decisions based on the deliberations of citizens' panels. Jointly chaired by the European Parliament, the Commission, and the Council, the COFE aimed to bring together a citizens' panel at the European level to reflect on key European issues and, ultimately, to reinvigorate European democracy.¹⁷⁸ By addressing a broad range of topics on a wide variety of issues, the COFE is particularly suited to legitimizing the Commission's policies.¹⁷⁹ Then, the COFE could also serve as a justification for treaty reform or a call for greater integration, presented as the result of citizens' deliberation. The reformist objective was explicitly raised by Macron, for whom the COFE aimed to "propose all the changes our political project needs, with an open mind, even to amending the treaties."¹⁸⁰ Thus, in a context of legal and political rigidity surrounding treaty amendments, the COFE provided a platform for advancing new attempts at legitimacy through new democratic and political imaginaries.¹⁸¹

In practice, the COFE provided political and democratic narratives that could be reused by the Commission, which explicitly included several initiatives in its 2023 work programme as a response to citizens' demands (despite these initiatives largely being already existing or initiate).¹⁸² For example, in its work programme, the Commission includes the NGT proposal as a continuation and response to the conclusions of the COFE, which, in our view, constitutes an instrumentalization of this political narrative.¹⁸³

Moreover, the strategic use of the democratic narrative within the COFE is also analyzed through the framing and the repolitisation of citizens' deliberations by design.¹⁸⁴ Drawing on the concept of "democracy without politics,"¹⁸⁵ Oleart is critical of the depoliticization of the democratic experiment of the COFE, particularly due to its political design and the mediation of intermediary actors (media, social movements, political parties, and civil society organizations).¹⁸⁶ For him, the organization of the COFE tended to depoliticize and "purify" discussions by creating small groups of "everyday" citizens, guided by "neutral" technical experts selected by EU institutions, to steer the conversation toward more consensual decisions. In this context, the choice of "neutral" experts was also a source of conflict between EU institutions, as they were ultimately quite aware of the directions and preferences (in terms of treaty change ambitions, etc.) that these experts could influence among the "pure citizens".¹⁸⁷

As a result, the COFE is criticized for its tendency to "depoliticize" and "disintermediate" the intermediary bodies, delimiting citizen participation by replacing it with "neutral" mini publics

¹⁷⁸ Oleart (n 60); Federico Fabbrini, 'The Conference on the Future of Europe A New Model to Reform the EU?' (2019) 3.

¹⁷⁹ Oleart (n 60) 7.

¹⁸⁰ Fabbrini (n 179) 3.

¹⁸¹ *ibid* 15.

¹⁸² Oleart (n 60) 3.

¹⁸³ European Commission, 'Commission Work Programme 2023: A Union Standing Firm and United' (Communication) COM(2022) 548 final, Strasbourg, 18 October 2022, Annex, 1; DG Sante, personal communication (2023).

¹⁸⁴ Oleart (n 60) 11; Oleart (n 15) 83.

¹⁸⁵ Pieter Mair, *Ruling the Void: The Hollowing of Western Democracy* (Verso 2013); Mouffe (n 54).

¹⁸⁶ Oleart (n 60) 11.

¹⁸⁷ Oleart, *supra* note 63 at 7; Council (Representative), Interview (6) on Science in EU Commission Work and on the COFE (2023).

whose legitimacy stems from their “descriptive representation.”¹⁸⁸ Paradoxically, while the COFE seeks to propose a shift toward a political narrative, it still integrates a strong depoliticization and technocratic approach within the framing of discussions.¹⁸⁹ Carefully structured for “pure citizens”, the political nature of the debates remains absent in the COFE’s organization. As Oleart argues:

“Through these mechanisms, the goal is to generate ‘fact-based’ and ‘neutral’ deliberation that ‘represents’ the views of ‘ordinary citizens.’ [...] The logical outcome is the depoliticization of the process, discouraging (agonistic) conflict and the involvement of a wide range of actors to provide input for the panels, cutting the feedback loop between democratic innovation and the public sphere.”¹⁹⁰

In this context, where the Commission increasingly turns to “mini-publics” as a new democratic narrative to gain legitimacy, we advocate for a critical perspective on the risks of their strategic use and potential instrumentalization — as exemplified by the justification of the NGT proposal as an outcome of the COFE. This shift towards a democratic narrative should therefore be approached with a critical lens, considering all attempts to depoliticize and instrumentalize the debate.

3.2.3 The Narrative Shift with the GATT and the SPS Agreement.

In this final part, we explore the strategic uses of narratives and the shifts between scientific and political narratives. The analysis focuses on EU–third country relations concerning the application of the GATT and SPS agreements. More specifically, the revision of the GATT with the SPS agreement led to the creation of an international instrument “based on science,” which ultimately resulted in litigation involving political cases and extending to epistemological issues.

The GATT is an international treaty governing trade in goods entered signed in 1947.¹⁹¹ It was revised during the Uruguay Round (1986-1994) which led to the creation of the World Trade Organization (WTO).¹⁹² The objective of the revision was to liberalize agricultural trade by limiting the ability to block free trade through protectionist measures.¹⁹³ In this case, Article XX of the GATT allowed contracting parties to take general exemptions for measures in specific situations. These exemptions applied, notably, when necessary for the protection of public morals, human, animal, or plant health, or the protection of natural resources, among others. This article provides a broad protection criterion that can be based on cultural, social, or religious considerations, if they are not arbitrary, discriminatory, or disguised restrictions on trade.¹⁹⁴

During the Uruguay Round, there was a desire to shift from a model that limited protectionist measures based on legal criteria to one based on science and objective reasons. The negotiations led to the adoption of the new Agreement on the Application of Sanitary and

¹⁸⁸ *ibid* 9.

¹⁸⁹ *ibid* 11.

¹⁹⁰ *ibid* 12.

¹⁹¹ General Agreement on Tariffs and Trade (GATT), adopted on 30 October 1947, entered into force on 1 January 1948, 55 *UNTS* 187.

¹⁹² Michael Burkard, *Conflicting Philosophies and International Trade Law: Worldviews and the WTO* (1st edn, Palgrave Macmillan 2018) 82; Favre (n 19) 124.

¹⁹³ Favre (n 19) 126.

¹⁹⁴ *ibid* 125; Burkard (n 193) 269.

Phytosanitary Measures (SPS Agreement).¹⁹⁵ The SPS Agreement introduces a scientific criterion for the exemption measures outlined in Article XX of the GATT. More specifically, the SPS Agreement complements Article XX(b) on measures restricting trade for the protection of human, animal, and plant health by requiring that these barriers be justified based on scientific principles and supported by documented evidence:

“Members shall ensure that any sanitary or phytosanitary measure is applied only to the extent necessary to protect human, animal or plant life or health, *is based on scientific principles* and is not maintained without *sufficient scientific evidence*.”¹⁹⁶
“Members may introduce or maintain sanitary or phytosanitary measures which result in a higher level of sanitary or phytosanitary protection than would be achieved by measures based on the relevant international standards, guidelines or recommendations, *if there is a scientific justification*.”¹⁹⁷

The SPS Agreement represents a shift from a rule-based approach to a science-based approach. According to Burkard, this science-based approach follows the “positivist belief that science is ‘objective’ and ‘value-neutral’, and therefore, an appropriate arbiter in trade disputes.”¹⁹⁸ In addition, the SPS Agreement provides a perfect illustration of the integration between epistocratic arguments and global law, as the recourse to science allows for justifying a legal system designed to harmonize measures that promote liberal economic trade, presenting them as both objective and apolitical.¹⁹⁹ However, this evolution towards a science-based approach presents further practical challenges, particularly evident in legal disputes with epistemological and political implications. In these hybrid situations, the science-based approach and scientific narratives have not always been effective persuasive tools, and their use has been contradictory or sidelined in favor of more political arguments.²⁰⁰ Two examples are relevant for the analysis: *EC-Hormones*²⁰¹ and *EC Biotech*.²⁰²

In the *EC-Hormone* case, the EU legislative framework (restricting the administration of hormones to farm animals, with an exemption for therapeutic and zootechnical purposes) was challenged by the United States and later by Canada for being inconsistent with the SPS Agreement.²⁰³ They argued that the EU imposed unnecessary measures without sufficient scientific evidence or risk assessment from human health.²⁰⁴ Through an NPF analysis of the arguments used between Canada and the EU in their dispute, we can see that both parties rely on scientific narratives to strengthen their positions:

For Canada: “[EU] measures were maintained without sufficient scientific evidence, since study after study had confirmed that the six hormones in question were safe for use in growth promotion.”²⁰⁵

¹⁹⁵ The Agreement on the Application of Sanitary and Phytosanitary Measures (SPS Agreement), signed on 15 April 1994 and entered into force on 1 January 1995, with the Establishment of the World Trade Organization; Favre (n 19) 125; Burkard (n 193) 269.

¹⁹⁶ Emphasis added; SPS Agreement, Art. 2.2.

¹⁹⁷ Emphasis added; SPS Agreement, Art. 3.3; See also, Art. 5.1 and 5.2.

¹⁹⁸ Burkard (n 193) 263.

¹⁹⁹ Favre (n 19) 126.

²⁰⁰ Burkard (n 193) 269.

²⁰¹ EC – Hormones, Panel Report (adopted 18 August 1997) WT/DS48/R/CA (*EC – Hormones*).

²⁰² EC – Measures Affecting the Approval and Marketing of Biotech Products, Panel Report (adopted 21 November 2006) WT/DS291, WT/DS292, WT/DS293 (*EC – Biotech*).

²⁰³ Favre (n 19) 125; Burkard (n 193) 269.

²⁰⁴ Leonelli (n 59) 186.

²⁰⁵ *EC – Hormones*, para 4.42.

Controversy, the EU replies that “sanitary or phytosanitary measures must be based on scientific principles, as opposed to non-scientific ones [...]. Canada had not shown that the measures complained against were not based on scientific principles.” According to the EU: “the measures were based on scientific principles as required by Article 2.2 of the SPS Agreement, and a risk assessment had been performed which established the scientific basis for regulatory action.”²⁰⁶

With both parties grounding their opposing positions in scientific narratives, the argument loses effectiveness and raises questions about the practical interpretation of the “scientific” requirement.²⁰⁷ A distinction was made between the Panel and the Appellate Body, highlighting differences between “positivist” and “relativist” conceptions of science. On one hand, the Panel distinguishes between risk management, which is a political activity involving values, and risk assessment, which is narrowly interpreted as the “scientific examination of data and factual studies.” Consequently, the Panel excluded various reports that evaluated the scientific assessment processes from the European Parliament or other EU institutions. On the other hand, the Appellate Body adopted a broader approach to science including social elements into the methodology, treating “not only risk ascertainable in a science laboratory operating under strictly controlled conditions, but risk in human societies as they actually exist.”²⁰⁸ As Burkard observed, “instead of being an objective arbiter in trade disputes, ‘science’ turned out to be a new challenge for the WTO.”²⁰⁹ Indeed, Panel and the Appellate Body were challenged by epistemological conflict based on the relative nature of science.²¹⁰

As a second example, the *EC-Biotech* case presents a similar epistemological conflict.²¹¹ In this case, the United States criticized the European Union for imposing a “de facto” moratorium on GMO. The Panel recognized the legitimacy of the Commission's case-by-case evaluation procedure but concluded that the Commission had intentionally delayed some decisions and called for progress on the disputed authorization cases.²¹² Aside from the legal questions, the *EC-Biotech* case is also interesting from a narrative perspective. Required to justify the GMO restrictions, the Commission relied on a strong scientific narrative to defend the scientific legitimacy of its legislative framework, emphasizing, among other points, the existence of scientific uncertainties, the lack of comprehensive studies on certain risks, and expert assessments identifying potential risks and unforeseen impacts.²¹³ This contrast between the scientific narrative used by the Commission to liberalize NGT and the one employed to justify the ban on GMO was discussed in our interviews:

“The case was very difficult for the Commission [and] schizophrenic. We were trying to obtain GMO approval from the Member States; however, in Geneva, we were forced to defend the Member States. In Geneva, we fought to include the testimony of scientists (specialists in applied ecology) to inform the Panel. [...] We had to employ strong

²⁰⁶ *EC – Hormones*, paras 3.6, 4.43.

²⁰⁷ Burkard (n 193) 272; Leonelli (n 59) 186.

²⁰⁸ *EC – Hormones*, Appellate Body Report, para. 187; Burkard (n 193) 273–274.

²⁰⁹ *ibid* 280.

²¹⁰ *ibid*; Karl Popper, *The Logic of Scientific Discovery* (2nd ed, Taylor and Francis 2005) 94.

²¹¹ Burkard (n 193) 367; Leonelli (n 59) 178.

²¹² Leonelli (n 59) ch 5.

²¹³ European Communities – Measures affecting the approval and marketing of biotech products (DS291, DS292, DS293). Comments by the European Communities on the scientific and technical advice to the Panel, January 28, 2005; Daniel de Beer, ‘OGM : risque et pic et kolegram, faites vos droits, rien ne va plus !’ in Yves Cartuyvels (ed), *Les ambivalences du risque : Regards croisés en sciences sociales* (Presses de l’Université Saint-Louis 2019).

scientific rhetoric, and we were in a difficult position. The dispute fell within the scope of the SPS Agreement, which requires that risk assessments be based on science. This raised the question of what constitutes a risk assessment.”²¹⁴

Through these two case studies, we see how hybrid issues with conflicting political conceptions extend to scientific narratives. In this regard, Burkard notes that the objectivist, science-based approach of the SPS Agreement is not appropriate when the underlying issues behind the legal questions are more about public morality or economic factors than a supposed technical and sanitary neutrality.²¹⁵ In the end, with conflicting worldviews at play, scientific narratives “leave interested parties with no alternative but to bend scientific arguments to fit their respective political agendas.”²¹⁶

4. Conclusion

This paper explores how the Commission mobilizes scientific and political narratives to justify its policies. We employed an interdisciplinary approach that integrates EU law in context, legal philosophy, and political science, combined with NPF discursive analyses. Our research questions lead us to determine how scientific and political narratives are used in the Commission’s justificatory discourse, from its policies to its legislative instruments (RQ1), and how the Commission strategically mobilizes scientific and political narratives (RQ2). We hypothesized that these two ideal types of narratives (scientific and political) are indeed present in the Commission’s discourse (H1) and that the Commission strategically combines and shifts between these narratives (H2). We further hypothesized that beliefs and ontological assumptions, such as strict dualism between science and politics, can be inferred from the use of these narratives (H3).

The NPF was used in the first part to describe the components and implications of the “scientific narrative.” The discursive elements of this scientific narrative include an emphasis on objectivity and rationality, the role of agencies, evidence-based policymaking, and performance evaluation, among others (H1). We consolidated our analysis of the scientific narrative with the regulation of NGT as a case study. The NGT regulation case exemplifies how scientific narratives are used to justify policies and depoliticize debates. This narrative even extends to the opposition, which also tends to contest the proposal based on scientific arguments. The role of scientific narratives was then examined from a critical perspective using the concepts of epistocracy and global law. Therefore, a scientific narrative could be strategically used to justify policies and present them as “neutral” and “objective” (H2-3). In this context, this narrative can employ science as an authoritative argument, ultimately drawing on the modern dualism that separates science from politics (H2-3).

The second part of the paper theorizes the political and democratic narrative and analyzes the strategic shift between these narratives. Using the discussion on the politicization of the Commission as a starting point, we argued that the Commission still combines and strategically shifts between political and scientific narratives. In fact, contrary to the stated changes in narrative, NPF analysis reveals that technical language, and the scientific narrative

²¹⁴ Interview with European Commission (Representative) (n 71).

²¹⁵ Tracey Epps, *International Trade and Health Protection: A Critical Assessment of the WTO’s SPS Agreement* (Edward Elgar Publishing 2008) 305; Burkard (n 193) 260.

²¹⁶ Burkard (n 193) 246.

have increased over time, potentially indicating a desire to depoliticize policies. Therefore, and contrary to the assertions of a “more political” Commission, we argued that the Commission relies on both rhetorical narrative registers (H3). Two illustrations discuss the strategic shift and instrumentalization of narrative. First, we explored the COFE as a more political narrative tool, gaining legitimacy through the desires of the citizen panel. Yet, we observed numerous processes of depoliticization within the COFE. The final section examines the *EC-Hormones* and *EC-Biotech* cases under the GATT and SPS agreements. Despite a legal system requiring that any measures be justified on scientific grounds, both disputes revealed epistemological conflicts and a failure of the scientific narrative, ultimately leading to a shift toward political justifications.