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Justifying the logic of regulatory post-crisis decision-making

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the case of the French structural banking reform

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Abstract

Relying on the theories of institutional logics (Friedland and Alford) and French pragmatist sociology (Boltanski and Thévenot), this study aims to contribute to a deeper understanding of the dynamics of the regulatory rule-making processes in the aftermath of the financial crisis. It focuses on a national post-crisis financial market reform, namely the French structural banking reform of 2013, which is characterized by a remarkable discrepancy between the ambitious announcements that accompanied the reform and its actual impact on banks' structure. By analysing the justifications put forward by policy-makers in support of their decisions on the amendments to the bill, this paper investigates how policy-makers succeeded in maintaining and defending the historically dominant logic (i.e., market) in a situation of controversy by actively mobilizing different orders of worth. Complex mechanisms of reconciliation between orders of worth are revealed. In particular, the study identifies the strategy of symbolization of the competing order as a means of supporting the dominating logic in the context of a national post-crisis financial market reform. The technique of balancing different measures with diverging impacts on the banking sector enables the policy-makers to refer to a (symbolic) equilibrium solution, which shields their actions against criticism and helps them to achieve legitimacy.

Keywords: banking regulation, institutional logics, orders of worth, justification

1. Introduction

“In this fight that is going on, I am going to tell you the name of my adversary, my real adversary. He has no name, no face, belongs to no political party, he will never stand for election, so he will never be elected, and yet he is governing. This adversary is the financial world.”
(Hollande, 2012)

During a debate on the financial crisis in 2008, the French government accused the belief in the deregulation of the financial markets of having contributed to the financial crisis while emphasizing the role of insufficient supervisory mechanisms and illusory self-regulation (National Assembly, 2008). A few years later, in 2012, François Hollande made the re-regulation of financial markets one of the central themes of his presidential campaign which is exemplified by the quote above. On this occasion, he announced his intention to introduce a bill on structural banking reform, if elected. The reform was then adopted about one year after his election. In general terms, the idea of this reform is to re-establish clear boundaries between different activities carried-out by banks, to make the socially most vital parts of banks (e.g. deposit taking and financing of the non-financial sector) safer and less connected to high-risk trading activities (Liikanen report, 2012).¹ This idea – which gained prominence as the Glass-Steagall-Act in the US in the 1930s – was not only pursued in France but also in Belgium, Germany, the UK and the US in the years following the financial crisis. However, these national reforms differ in several respects, e.g. the scope of activities that must be separated, the type of separation (i.e. ownership or functional separation) or the institutional scope.²

Among the different reforms that have been implemented in the wake of the financial crisis, I chose to study the French structural banking reform for several reasons. Firstly, the discrepancy between the ambitious announcements that accompanied the reform and its actual impact on banks’ structure is remarkable. French officials refer to a reform that profoundly changes the financial sector over the next 20 years (Council of Ministers, 2012). During the parliamentary debates, Pierre Moscovici, the Finance Minister, stated: “This intelligent

¹ Moreover, as outlined by the European Commission, structural reforms pursue further objectives: A simpler banking structure would reduce complexity and enhance market discipline and supervision. Recovery and resolution could be facilitated. Taxpayer bailouts could be limited. The deposit-taking entity would be safer and less connected to high-risk trading activities. Finally, the implicit and explicit guarantee associated with deposits would no longer directly support trading activities (European Commission, 2014a, p. 26). Research in finance and economics has shown mixed results with respect to different aspects of the separation of banking activities, e.g. economies of scale (e.g. Amel et al., 2004; Berger et al., 1999; Wheelock and Wilson, 2012) or economies of scope (Deng et al., 2007; Drucker et Puri, 2005; Stiroh, 2014).

² An overview of different approaches to structural banking reforms can be found, for instance, in the European Commission (2013). It should be noted that none of the recent post-crisis structural reforms envisage an “extensive” separation as existed in the past in the US (Glass-Steagall-Act of 1933) or in France (Banking Act of 1945) since all recent reforms maintain the universal banking model.

approach will make us pioneers and provide a clear response to the debates that may be held at the European level [...].” (Hearing of the Finance Committee, 6 February 2013). Nevertheless, the impact of the reform is minor: only Société Générale and BNP Paribas created subsidiaries of limited size in order to separate certain banking activities (around 1% of the activities of the corporate and investment banking division) (Bergala, 2015; National Assembly, 2015).³ From a conceptual point of view, the French reform can be regarded as one of the mildest reforms in comparison to other structural banking reforms (House of Lords, 2013). These assessments seem to be in contrast to the radical change in the financial sector that had been promised by French officials. Secondly, from a methodological perspective, the policy-making process in the French parliament represents an interesting topic of research, since the policy-makers are confronted with specific critiques in the form of amendments to the bill.⁴ The policy-makers need to convince the members of parliament that their decisions are valuable, appropriate, useful, and correct (e.g. Masocha and Weetman, 2007; Young, 2003) since their decisions are subject to vote by the members of parliament. This effect is heightened as members of parliament are at that time aware of the limited impact of the proposed reform (as shown below) which may require even more efforts by the policy-makers. Furthermore, the justifications put forward by policy-makers in support of their decisions on the different amendments, each of which addresses details of the proposed reform, are expected to be more specific than announcements published in press articles or made during a campaign or at other media events. Thirdly, the French case is of interest because its banking sector is highly concentrated and possesses the highest level of systemic risk in terms of total numbers as well as of ratio to GDP in Europe.⁵ The Financial Stability Board assigned four French banks⁶ the status of global and regional systemically important banks, meaning that their distress or disorderly failure would cause significant damage to the wider financial system and economic activity. Structural banking reforms are aimed at these large, systemic banks in particular.

³ The French supervisory authority ACPR (Autorité de Contrôle Prudentiel et de Résolution) initially identified twelve banks that could have been within the scope of regulation (National Assembly, 2015). However, these banks (except Société Générale and BNP Paribas) managed to reduce the activities affected by the separation in order to escape regulation (Bergala, 2015). As regards BNP Paribas, the activities transferred to the subsidiary comprise around 1% of the activities of the corporate and investment banking division (in terms of net banking income) (National Assembly, 2015, p. 21). Regarding Société Générale, the activities transferred to the subsidiary amount to less than 1% of the activities of the corporate and investment banking division (National Assembly, 2015, p. 22).

⁴ The policy-makers are the Finance Minister, Pierre Moscovici, representing the Government’s opinion and a legal representative, either at the National Assembly (Karine Berger) or at the Senate (Richard Yung).

⁵ According to estimates (as of October 2013) by the Volatility Institute (VLAB, 2013). The Volatility Institute was created at the New York University Stern School of Business in 2009 under the direction of Nobel Laureate Professor Robert Engle.

⁶ BNP Paribas, BPCE, Crédit Agricole and Société Générale.

The case study in this paper does not offer a solution to the question of whether the separation of banking activities is desirable or not.⁷ Instead, the present paper aims to contribute to a deeper understanding of regulatory rule-making processes in the aftermath of the financial crisis by focusing on the policy-makers' discourse and decisions during the policy-making process, starting with the bill up to the adoption of the law that took place in the French parliament and the affiliated committees. It lies at the intersection of discursive work (Greenwood and Suddaby, 2005; Patriotta et al., 2011; Whittle et al., 2014), institutional logics (Friedland and Alford, 1991; Thornton et al., 2012) and French pragmatist sociology (Boltanski and Thévenot, 1991, 2006). Research on discourses sheds light on actors' rhetorical strategies and institutional factors during organizational change processes or maintenance work (Greenwood and Suddaby, 2005; Patriotta et al., 2011; Whittle et al., 2014). For instance, Greenwood and Suddaby (2005) show the discursive strategies employed by opponents and proponents of a new organizational form. They identify a distinct set of vocabularies of practices which is related to a struggle between two institutional logics, one based on a trustee model and the other based on a model of expertise.

Institutional logics represent principles that shape the ways of viewing and interpreting the world and provide a framework in which reasoning takes place (Friedland and Alford, 1991; Greenwood and Suddaby, 2005). With respect to financial market regulation, two opposing institutional logics exist: the regulatory logic (or state logic) associated with a command and control style of regulation, on the one hand, and the market logic promoting the belief in the invisible hand (Smith, 1976) which provides the foundation for a laissez-faire style of regulation, on the other hand. Lounsbury (2002) describes the Glass-Steagall Act which introduced for the first time a separation of banking activities in the US in 1933 as a prolific example of the regulatory logic.⁸ Conversely, in the spirit of the market logic, Zhao and He (2014) describe the repeal of the Glass-Steagall Act in 1999 as the "de jure climax in the deregulation of financial markets" (Zhao and He, 2014, p. 450). The severity of the financial crisis of 2007/2008 revealed the inefficiencies of the prevailing regulatory framework and provided a challenge to the market logic. This raises the question of what logic dominated the policy-making process of the French structural banking reform.

However, from an analytical standpoint, it seems to be reductive to consider only whether the reform is more or less market or state focused (logics perspective). Therefore, this paper goes beyond this classification by further exploring how policy-makers manage to maintain and

⁷ A detailed comparison of the pros and cons can, for instance, be found in Benston (1994).

⁸ Similarly, a separation of banks had existed from 1945 until 1984 in France.

defend the dominant logic. To this end, it analyses the justifications provided by policy-makers in the rule-making process by drawing on French pragmatist sociology (Boltanski and Thévenot, 1991, 2006). Boltanski and Thévenot's (1991, 2006) theoretical model relates to "the problem of ranking people and things in relation to conceptions of the common good within a public regime of critique and justification" (Thévenot, 2001, p. 58). Their theoretical model represents a framework for the analysis of processes of justification that are particularly relevant in public disputes in which action is confronted with critique. In these situations, according to the model, uncertainty exists about what matters, i.e. what has "worth" in society. Boltanski and Thévenot (1991, 2006) introduce six orders of worth (i.e. the market, civic, industrial, inspired and domestic order and the order of fame) which refer to higher common principles reflecting the degree of legitimacy of certain rules, values and actions (Patriotta et al., 2011). In the case of the French structural banking reform, the policy-makers must justify whether they are favourable or unfavourable towards the amendments put forward by members of parliament. Their justifications must be convincing because their decisions are subject to vote by the members of parliament. Thus, this situation represents an ideal situation of public dispute as described in Boltanski and Thévenot (1991, 2006). The following research questions are raised: How do policy-makers mobilize orders of worth to justify the logic that guides their regulatory rule-making process? How do they succeed in reconciling incompatible orders of worth in a situation of public controversy?

Although the French structural banking reform is presented to the public as belonging to the regulatory logic (e.g. a profound change reshaping the financial landscape over the next 20 years (Council of Ministers, 2012)), this study shows that the structural measures proposed by the reform refer to the market logic. The findings illustrate how policy-makers actively mobilize a multitude of orders of worth in a strategic and situation-specific way to support the dominant logic. Complex mechanisms of searching for reconciliation between orders led to a prioritization of orders where the competing order, the civic order, attains a symbolic character. The technique of balancing measures makes it possible to maintain a so-called "intelligent equilibrium" between both competing orders, the market and the civic order. The civic order thus still plays a role in the justification work, but it is established through the acceptance of measures with a passive nature and a limited impact on the banking sector. These mechanisms enable the policy-makers to maintain and defend the market logic. Overall, the study broadens our understanding of the dynamics of regulatory discourse and rule-making in the context of a national financial market reform in the aftermath of the financial crisis.

The paper proceeds as follows: The next section delineates the theoretical framework. In the third section, the data and methodology are presented. The fourth section introduces the case and illustrates the results. Section five discusses the major findings and presents the conclusion.

2. Theoretical framework

The present section is divided into three subsections: The first two subsections introduce the theoretical frameworks of institutional logics (Friedland and Alford, 1991) and French pragmatist sociology (Boltanski and Thévenot, 1991, 2006). The third and final subsection addresses the differences and similarities between both frameworks and explains the reasons for combining them.

2.1. Institutional logics and their application in the field of financial market regulation

The theoretical framework of institutional logics was introduced by Roger Friedland and Robert Alford in 1991 (Friedland and Alford, 1991). Institutional logics represent principles that shape the ways of viewing and interpreting the world and provide a framework in which reasoning takes place (Friedland and Alford, 1991; Greenwood and Suddaby, 2005). They are defined as “socially constructed, historical patterns of material practices, assumptions, values, beliefs and rules by which individuals produce and reproduce their material subsistence, organize time and space, and provide meaning to their social reality” (Thornton and Ocasio, 2008, p. 101). Important precursors to the institutional logics perspective are the works on logics and practice (Bourdieu, 1977), corporate institutional logics (Jackall, 1988), interpretative schemes (Greenwood and Hinings, 1988), conceptions of control (Fligstein, 1985, 1990) and dominant logics as filters on attention (Prahalad and Bettis, 1986).

Thornton et al. (2012) further elaborated on the conceptualization proposed by Friedland and Alford (1991) by proposing six institutional logics decomposed into a set of nine categories.⁹ With respect to financial market regulation, two opposed institutional logics exist: the regulatory logic (or state logic) being associated with a command and control style of regulation, on the one hand, and the market logic promoting the belief in the invisible hand (Smith, 1976) which provides the foundation for a laissez-faire style of regulation, on the other hand (e.g. Lounsbury, 2002; Zhao and He, 2014). However, financial market regulation may not always be a binary variable which is either 1 (a regulatory or “state” logic entailing a command and control style of regulation) or 0 (a market logic comprising the absence of any

⁹ The general classifications of these logics – which are not limited to the domain of financial market regulation - provided by Thornton et al. (2012) are presented in the Appendix.

regulation). Indeed, although numerous financial market reforms have been implemented in the decades preceding the financial crisis, this period is often described as a period of deregulation (Dewatripont et al., 2010) which appears to be paradoxical at first glance.

Without explicitly referring to institutional logics, Baud and Chiapello (2016) refer to a neoliberal logic of regulation where regulation takes the form of “meta-control” (Parker, 2002) or “meta principles”. In contrast to the market logic which promotes the withdrawal of the state, the neoliberal logic of regulation views state intervention in economic affairs as beneficial insofar as it creates a “framework in which competition can develop and markets can operate efficiently” (Baud and Chiapello, 2016, p. 7; see also Foucault, 2008). Compared to the regulatory logic, the neoliberal logic of regulation is described as “softer” by relying on cooperative relationships between regulators and the regulated (Ayres and Braithwaite, 1995). Accordingly, neoliberal regulation is achieved through control of self-regulation or “enforced self-regulation” (Power, 2007, p. 106). Thus, although the neoliberal logic of regulation acknowledges that regulation may be – at least to some extent – beneficial, it shares characteristics with the market logic, such as its basis of strategy (increase in profit) or its basis of attention (status in the market) (compare table A in the appendix). Regulation is only implemented in so far as it is compatible with these criteria. Despite its subtle differences to the market logic about the means through which the objectives are achieved (“control of control”/ “meta principles” instead of the withdrawal of the state), the neoliberal logic of regulation might be understood as belonging to the market logic. That is the reason why, in the following sections, the paper refers to the market logic as a generic term.

2.2 Justifications, tests and reconciliation of orders of worth

The French pragmatic sociology¹⁰ which was initiated by Luc Boltanski and Laurent Thévenot at the beginning of the 1990’s in France, proposed an alternative to Bourdieu’s critical sociology, the latter being regarded as ignoring or underestimating actors’ competency. Instead of explaining actions by reference to the internalization of dominant norms as in Bourdieu’s critical theory, French pragmatic sociology regards actors as being active, not passive, while contending that social structures are not the dominant explaining principle for social reality which should rather be understood as a space intersected by a multitude of disputes, critiques, disagreements and attempts to produce fragile local

¹⁰ Different labels of this theoretical concept are used in the literature, such as economies of worth-perspective (Cloutier and Langley, 2013; Ramirez, 2013), economics of convention (Diaz-Bone, 2011) or French institutional theory (Wagner, 1994).

arrangements (Diaz-Bone, 2011, p. 54; Jagd, 2011, p. 345).¹¹ One basic idea of French pragmatic sociology is the assumption that actors are subject to an imperative of justification (Boltanski and Thévenot, 2006, p. 360). Since actions are susceptible to criticism, actors behave in a way that will withstand the test of justification (Boltanski and Thévenot, 2006, p. 37). In other words, actors behave in a manner that is justifiable and which renders their actions comprehensible and legitimate to themselves and to other actors they are engaging with. To this end, actors interpret the situation and the actions of others by appealing to higher common principles. These higher common principles provide normative schemes of evaluation and classification which serve as the basis for determining the relative worth of people and things. Boltanski and Thévenot (1991, 2006) identified six higher common principles (or legitimating principles) by taking inspiration from six major works of political philosophy¹² as well as from action-orientated manuals written for managers in business organizations. In this way, they developed six orders of worth which are presented in table 1.

[Insert Table 1 around here]

French pragmatic sociology assumes that actors qualify objects or beings and test their worth according to any of these orders of worth to justify their actions and beliefs or to convince others of what is considered to be legitimate in a given situation (Cloutier and Langley, 2013, p. 367). To determine and test the worthiness of a new product, for example, experts may assess the efficiency of the related production processes (industrial world) or the company could hire a celebrity to promote it in a TV spot in order to increase its popularity (world of fame). Each order of worth assumes a different conception of the common good and is incompatible with, and standing in a critical relation to, the others. Therefore, while the popularity of the product promoted in the TV spot would qualify as test of worth in the world of fame, it would be meaningless if used as test in the industrial world.

¹¹ In this regard, the French pragmatic sociology emphasizes the instrumentations and dispositions present in situations which depend mainly on conventions and capacities and thus renounces Bourdieu's notion of habitus (Diaz-Bone, 2011, p. 54).

¹² Namely Rousseau's "The Social Contract", Bossuet's "Politics", Adam Smith's "The Wealth of Nations", St Augustine's "De civitate Dei", Saint Simon's "Industrial System" and Hobbes' "Leviathan".

In his more recent work, Boltanski (2009, 2011) introduces, amongst others, truth tests as a further mode of testing.¹³ Truth tests are employed by instances of confirmation and aim to preserve the status quo. They operate within a single modality (either “ought to be” or “be”) by relying on “the work of confirmation, whose main operator is tautology” (Boltanski, 2011, p. 72) or, in other words, a self-confirmation of reality. As such, they reduce uncertainty regarding the worth of persons or objects “by confirming that what is Is in the sense of really Is – as it were, ‘in the absolute’” (Boltanski, 2011, p. 61). Furthermore, this mode of testing is supposed to sustain official assumptions and those assumptions that are contained in the expressions of what is called common sense¹⁴ (Boltanski, 2011, p. 61). Consequently, truth tests deal “with what does not give rise to controversy” (Boltanski, 2011, p. 73). Examples include the affirmation that a system is designed appropriately (Taupin, 2012, p. 540) or the demand for actions to be realistic.

However, there are situations where persons and things may be identified in relation to different orders of worth at the same time.¹⁵ One way of reconciling competing orders of worth is to reach a compromise. In a compromise, social actors reach an agreement by referring to a common good which transcends several forms of worth at the same time. Formally incompatible orders of worth are thus reconciled without privileging any of them exclusively. Compromise is characterized by ambiguity and actors do not attempt to clarify the principle of their agreement (Boltanski and Thévenot, 2006, pp. 277-281). But if the parties involved move towards clarification, the compromise will not hold (Boltanski and Thévenot, 2006, p. 336). In this case, the attempts to achieve a general interest may lead to a private arrangement, in which people make concessions to each other. This agreement cannot be justified publicly and can be challenged at any moment. The notion “private” refers to something that ignores the common good and which implies the mutual satisfaction of the parties involved: “You do this, which is good for me; I do that, which is good for you” (Boltanski and Thévenot, 2006, p. 336). Cloutier and Langley (2013) and Jagd (2011) refer to a further type of reconciliation which is called clarification (resolution) in one world. Here,

¹³ Further modes of testing are reality tests and existential tests. Reality tests are moments which are deliberately open to critique and detect a distance between “ought to be” and “be” modes by looking at “what is” through the lens of what “ought to be” (Thévenot, 2014; Boltanski, 2009). Different from truth tests, the outcome of reality tests is not clear as they may either enforce or weaken the compromise. Existential tests are the most radical tests and rely on lived experiences, such as injustice or humiliation, and are said to be “subjective”.

¹⁴ Common sense relates to the “set of generally shared self-evident truths’ serving as basis for agreements” (Boltanski, 2011, p. 54).

¹⁵ Worlds and orders of worth have the same meaning within the theoretical framework of Boltanski and Thévenot (2006).

the views of one world apply, at the expense of other worlds. Views from other worlds are silenced (Cloutier and Langley, 2013, p. 368; Jagd, 2011, p. 347).¹⁶

Only a few studies focus on the complex processes involved in this kind of agreement-reaching (Jagd, 2011). Patriotta et al. (2011) study justifications put forward by stakeholders in order to maintain legitimacy in the field of nuclear power. They find that social actors are not bound to their own professional or institutional sphere, but rather are able to engage strategically with a plurality of orders when defending their decisions. This finding is confirmed by Oldenhof et al. (2014) who analyse the justification work of public managers in situations of value conflict. Investigating justification work in the field of the credit rating industry, Taupin (2012) reveals how actors place the debate in a particular world (as defined in Boltanski and Thévenot, 1991, 2006) which allows them to avoid criticism. Taupin (2012) labels this strategy “qualification work depending on the test format”. While analysing an institutional change in the British audit profession in the 1980s, Ramirez (2013) highlights the importance of compromising to restore a sense of worth in the professional community. Van Bommel (2014) shows that the justification work of defending integrated reporting as legitimate practice involves elements of several orders of worth but that the compromise between these orders is not durable. Social actors do not succeed in identifying a common interest, avoiding clarification and maintaining ambiguity which are the principle mechanisms for a durable legitimate compromise. The author suggests that the agreement resembles rather a local private arrangement. This theoretical finding is quite close to the findings of Huault and Rainelli-Weiss (2011) who analyse the commensuration process by which promoters try to create a market for weather derivatives in Europe. The case illustrates the difficulty in constructing a common interest which yields agreements in the form of private arrangements and composite set-ups. As in Van Bommel (2014), the importance of clarification avoidance and ambiguity as mechanisms for finding a compromise is highlighted.

2.3. Bridging institutional logics and orders of worth in the context of financial market regulation in the aftermath of the financial crisis

By combining the theoretical framework of French pragmatist sociology with institutional logics, this paper responds to conceptual papers (Boxenbaum, 2014; Cloutier and Langley, 2013; Dequech, 2008; Pernkopf-Konhäuser, 2014; Westenholz, 2017) advocating the

¹⁶ Further figures of reconciliation of orders presented in Boltanski and Thévenot (1991, 2006) are relativization where persons escape from a clash over what matters by agreeing that nothing matters in reality; or relativism where the constraints of an order of worth are put into parentheses and the parties involved adopt a position which is subordinated to a general equivalent which is not the common good but qualified as a force, power, interest, or strength (Boltanski and Thévenot, 2006, pp. 337- 343).

complementarities of both frameworks. Although both theoretical frameworks refer to higher common principles reflecting the degree of legitimacy of certain rules and values and define appropriate forms of conduct (Patriotta et al. 2011), they differ in several respects (Cloutier and Langley, 2013, pp. 369-373). One important difference between both frameworks is that the French pragmatist sociology confers more agency to social actors. Whereas according to the French pragmatist sociology, orders of worth are conceptualized as cultural toolkits available at all times in any situation, the institutional logic perspective assumes that logics are specific to domains and not equally available to actors. Therefore, instead of being governed by a dominant institutional logic, French pragmatist sociology presumes that actors have critical-reflexive capacities and can draw on a multitude of orders of worth strategically to suit their purpose. Consequently, social structures at the macro level are not seen as the dominant explaining principle for social action (Diaz-Bone, 2011, p. 54). The framework of French pragmatist sociology tends thus to ignore institutional concepts such as institutional constraint or isomorphism and neglects more routine, taken-for-granted behaviour (Cloutier and Langley, 2013, p. 374). However, one may reasonably assume that institutional realities have at least a minimal impact on the range of options that social actors possess and that actors may not be entirely free to draw from the entire pool of regimes of justifications.¹⁷

Combining both theoretical frameworks makes it possible to offer a more balanced perspective on agency by considering the institutional constraints on the one hand, and accounting for the actors' cognitive flexibility and reflexivity to engage with different orders of worth, on the other hand (see also Cloutier and Langley, 2013, Gond and Leca, 2012, and Pernkopf-Konhäusner, 2014, for a similar argument). More precisely, this paper takes into account the institutional constraints in the form of institutional logics in so far as it shows how the dominant institutional logic takes effect through the way in which policy-makers mobilize orders of worth. They may draw indeed on any of the different orders of worth but the different mechanisms employed enable them to defend the dominating institutional logic and to maintain the status quo. As such, this study attempts to reach a balance between the consideration of institutional constraints and the freedom provided to social actors to draw on the full range of discursive and material resources in a situation of controversy.

A further difference lies in the level of analysis. Although recent studies have opened the "black box" of the workings of institutional logics on the ground (McPherson and Sauder, 2013; Pache and Santos, 2013), the vast majority of the institutional logics literature has

¹⁷ According to Cloutier and Langley (2013, p. 374), this would explain why in some sectors or fields, certain worlds usually tend to prevail.

focused on the sectoral, field or global level (e.g. Lounsbury, 2007; Lok, 2010; Rao et al., 2003; Thornton, 2002). The French pragmatic sociology emphasizes micro-level processes by analysing how social actors draw upon different orders of worth in everyday interactions. The unit of analysis is the situation, which is characterized by uncertainty about the outcomes of the interactive process (Diaz-Bone, 2011, p. 49). In these situations, and especially in cases of crises or criticism, there is uncertainty about what matters and divergences may arise regarding what, in moral terms, is perceived to be more or less worthy. Compared to the institutional logics perspective, French pragmatic sociology thus explicitly recognizes the actors' moral sense as higher common principles have an explicit moral grounding and refer to different conceptions of the common good.

The French structural banking reform represents a particularly appropriate case for combining both frameworks. In the years following the crisis, financial market regulation is a field experiencing tensions between two logics, namely the market and the regulatory logic. In a pre-crisis context, the agenda of financial market regulation is one of market liberalization where "regulation of any kind is considered to distort market operation and prevent actors from maximizing shareholder value" (Baud and Chiapello, 2016, p. 14). This agenda relating to the market logic differs from the post-crisis period where the belief in deregulation, insufficient supervisory mechanisms and illusory self-regulation is accused (National Assembly, 2008). From an institutional logics perspective, the situation is much more controversial than at the beginning of the 2000s, making it necessary to go beyond the classification of whether a reform is more or less market or state focused (logics perspective). In this situation of controversy, the French pragmatist sociology represents a highly suitable lens for studying the dynamics of the policy-making processes. It reveals, for example, insights into the different conceptions of the common good that policy-makers are referring to, as well as into the actions they consider to be just. Although policy-makers may engage with any of the orders of worth to justify their decisions, the effect of the historically dominant institutional logic becomes visible through the mechanisms employed by policy-makers to settle the controversy which enable them to maintain the status quo.

To sum up, the previous sections have illustrated the similarities and differences between both theoretical frameworks. Both theories refer to higher common principles and aim to explain collective action. They differ in how they deal with the agency of actors, the level of analysis as well as in aspects of morality. Despite these differences, this paper advocates the potential in bridging both frameworks as emphasized in several conceptual papers (e.g. Boxenbaum, 2014; Cloutier and Langley, 2013; Dequech, 2008; Pernkopf-Konhäsner, 2014; Westenholz,

2017). The combination of both theoretical frameworks in this paper aims to enhance the institutional logics perspective by elaborating “what is considered to be just” by policy-makers (and thus the moral aspects), by going beyond the dichotomy of more or less state focused aspects and by analysing the underlying processes of reconciling orders of worth in a situation of controversy. On the other hand, French pragmatist sociology benefits in this paper from the institutional logics perspective, as institutional constraints are taken into account without, however, neglecting the freedom of actors to draw on a multitude of orders of worth. Therefore, this study investigates how policy-makers base justifications on different orders of worth and sheds light on how the mechanisms employed by policy-makers support the historically dominant logic in the field of financial market regulation.

3. Background, data and methodology

Unlike past structural banking reforms such as the US Glass-Steagall Act of 1933 and the French Banking Act of 1945, all recent reforms maintain the universal banking system and require a much less “extensive” separation compared to the reforms of the Depression-era. Deposit-taking banks are still allowed to continue investment banking activities and to provide a wide range of financial services; however, certain investment banking activities must be either transferred to a newly created trading entity (also called a subsidiary) which is legally separate from the rest of the group, or else are simply forbidden. The transfer of certain investment banking activities to the trading entity is also called compartmentalization (in the Belgian, German and French reform) or ring-fence (in the UK reform). To summarise, these reforms aim to disentangle “activities that are considered long-term and relationship-oriented from those that are short-term, transaction-oriented, and the most prone to rapid change” (European Commission, 2014a, p. 78), while maintaining the universal banking model.

As regards the French structural banking reform, the newly created trading entity (i.e. subsidiary) is not allowed to receive deposits or to provide payment services and has to comply with capital adequacy and liquidity rules on an individual basis. Transfer of risk and funds between the deposit entity (i.e. the parent company) and the trading entity (i.e. the subsidiary) is restricted as stipulated by the large exposure rule.¹⁸ Any subscription by the deposit entity for an increase in capital of the trading entity requires prior authorisation by the

¹⁸ Large exposure rules aim to limit the maximum loss a bank could face due to a sudden counterparty failure to protect the bank’s solvency. They also apply to interbank exposures. Referring to national structural measures, the EU regulation on prudential requirements of 26 June 2013 sets the large exposure limit at 10% of the institution’s eligible capital from 1 July 2015 onwards.

supervisory authority. Furthermore, the name of the trading entity should be different from the deposit entity to avoid any confusion. According to the legal text, the government is not allowed to own or guarantee shares of the trading entity. The activities affected by compartmentalization are proprietary trading activities and uncollateralized transactions with hedge funds. In addition, the Finance Minister has the possibility to require the compartmentalization of market making activities if thresholds set by decree by the Minister after having consulted the French supervisory authority ACPR are exceeded. Moreover, the law introduces a ban on agricultural commodity derivatives if they are executed on the bank's own account, as well as a ban on high frequency trading activities if they are executed on the bank's own account. High frequency trading is exempted from the ban if it is practiced under market-making agreements or if cancelled/modified orders executed within an interval of 0.5 seconds are below 80% of the sum of orders of the day.

This study focuses on the policy-making process of the reform. In France, two chambers of the French parliament are involved in this process: the National Assembly and the Senate. Both chambers comprise several committees: seven committees in the Senate, eight committees in the National Assembly (National Assembly, 2017a). One committee in each chamber is actively involved in the legislative process of the French structural banking reform, namely the Finance Committees of both chambers. Each Finance Committee appoints its own legal representative: Karine Berger was appointed by the National Assembly and Richard Yung by the Senate. The bill is examined by the respective committee before being discussed at a public session of the chamber.

In the case of the French structural banking reform the examination begins at the Finance Committee of the National Assembly.¹⁹ Once the National Assembly has finished examining the law, the revised bill is handed over to the Senate where the same procedure is followed. In the next step, once the bill has been revised by the Senate it is handed back for the same procedure first to the National Assembly and then back to the Senate. This is called the “shuttle” process (“navette” in French) describing the to and fro between both chambers. Indeed, there may be several “shuttles” between both chambers until they agree on a common text. Alternatively, a conciliation committee comprising seven deputies and seven senators may find a compromise for all remaining articles where no common agreement has been found after two readings in each chamber (National Assembly, 2017a). As regards the articles of the law dealing with the separation of banking activities, both chambers agreed on a

¹⁹ With some exceptions, the examination of a law may either begin at the National Assembly or at the Senate (National Assembly, 2017a).

common text at the second “shuttle”: no amendments relating to the separation of banking activities were discussed from the second reading at the Senate onwards.²⁰

Discussions regarding the amendments at the National Assembly, the Senate and the affiliated committees are usually held as follows. First, the author of the amendment introduces her/his amendment and explains her/his reasons. In some cases, the other members of parliament give their opinion on the amendment concerned. The respective legal representative then explains her/his view on the amendment and decides whether she/he is favourable to the amendment or not. Then, the Minister representing the Government’s position (here: the Finance Minister) expresses his view on the amendment and decides on it. The Minister and/or the respective legal representative may also ask for the withdrawal of the amendment.²¹ Finally, deputies at the National Assembly and senators at the Senate vote on the different amendments and once all amendments referring to an article of the law have been discussed they vote on the article of the law. In addition, at the end of the examination of a law at one chamber, they vote on the entire legislative proposal. According to the normal procedure, the voting takes place by the show of hands and the distribution of votes is not documented (National Assembly, 2017b).²² The policy-makers’ justifications in support of their decisions on amendments must be convincing because their decisions are subject to vote by the members of parliament. This paper does not explicitly differentiate between the policy-makers (i.e. the Minister and the respective legal representatives) because they are following the same line of reasoning, and therefore there is no disagreement. Table 2 illustrates the timeline of the legislative process.

[Insert Table 2 around here]

²⁰ The French ‘separation and regulation of banking activities’ reform consists of 12 chapters comprising 86 articles, while the present study solely focuses on the first chapter dealing with the separation of banking activities which includes five articles. The other chapters comprise the establishment of a macro-prudential supervisory authority, the Financial Stability Board (CSF), strengthening of the powers of the supervisory authority ACPR (Autorité de Contrôle Prudentiel et de Résolution), enhancement of the rights of bank customers (e.g. right to a bank account, limitation of banking fees), regulation of financial derivatives (e.g. tax havens), regulation of wages in the banking industry and the introduction of bail-in instruments and preventive recovery plans (bank testament).

²¹ In the case under review, the request for withdrawal of the amendment leads to a non-adoption of the amendment. Either the author of the amendment agrees to withdraw the amendment or he maintains it which leads to an unfavourable assessment and ultimately to the rejection of the amendment.

²² Alternatively, the Government, the legal representative, the political groups’ chairperson (their representatives), the session’s chairperson or the committee’s chairperson have the possibility to ask for an open vote (National Assembly, 2017b). In this case, the distribution of votes is published. As regards the French structural banking reform, only the votes on the entire bill at the first “shuttle” at the National Assembly and the Senate were open. At the National Assembly, during the first “shuttle”, 315 deputies voted in favour, 161 voted against the entire bill and 63 abstained from the vote. At the Senate, during the first “shuttle”, 158 senators voted in favour of the entire bill and 188 abstained from the vote.

Data analysis took place in two stages. Firstly, different documents were examined to contextualise the case. For this purpose, post-crisis structural banking reforms in the UK, US and Germany, and EU proposals were analysed to identify any differences with the French proposal. I then reviewed those EU reforms that concern elements of the reform, such as the AIFM directive²³ or MiFID II²⁴.

In addition, the media database Factiva was used to obtain additional information on discussions in the context of the French reform process in general. Finally, all documents regarding the reform available on the official website of the National Assembly and the Senate were examined. These documents comprise transcriptions of the debates and hearings that took place in parliament and its affiliated committees, the reports issued during the parliamentary discussions, the impact study as well as the bill itself in its preliminary and its final version. These steps improved the understanding of the research issue and enabled an assessment of different actors' positions and power relations. Furthermore, I was able to identify those topics that required a particular effort of persuasion and justification during the legislative process, e.g. those that differ from other structural banking reforms. Table 3 gives an overview of the documents examined.

[Insert Table 3 around here]

In the second stage of data analysis, I analysed the justifications put forward by policy-makers during the Readings in the French Parliament.²⁵ No interviews were conducted because the focus of this paper is on the justification work of policy-makers in the public sphere which is in line with the theoretical framework provided by Boltanski and Thévenot (1991, 2006).

Using the qualitative data analysis software NVivo 10, content analysis comprised thematic and analytical coding. Thematic coding enabled the classification of amendments into categories reflecting the characteristics of the respective amendment, while analytical coding implied an assignment of policy-makers' justifications in support of their decisions on the amendments based on a list of semantic descriptors (as described below). This paper focuses on those amendments which concern the scope of activities because the scope represents a distinguishing feature among the different proposals. The need for legitimacy is much less

²³ Directive on Alternative Investment Fund Managers (AIFM).

²⁴ Directive on Markets in Financial Instruments (MiFID II).

²⁵ The author translated quotes cited in this paper that were originally in French and a professional interpreter verified the translations.

pronounced for amendments dealing with the type of separation since all European proposals follow the same separation approach, i.e. the transfer of certain investment banking activities to a newly created trading entity. The main difference among these proposals is thus the scope of activities that are either prohibited for deposit-taking banks or have to be transferred to the trading entity. Moreover, the impact of the law is particularly affected by the scope of the activities. Consequently, the discussions concerning the scope require particular efforts of persuasion since the French government needs to explain that its choice is rational and appropriate. Here, policy-makers have for example to justify why the legislative proposal differs from other regulatory initiatives.

The provisions on the scope of activities are specified in the 1st article of the bill²⁶ that also deals with other topics regarding the separation of banking activities which are not in the focus of the analysis, e.g. legal and governance issues. Among the 201 amendments that were presented in both chambers and aimed at modifying the 1st article of the bill, 123 refer to the scope of activities. Among these 123 amendments, 19 were supported by the policy-makers and adopted, 104 obtained a negative assessment by the policy-makers and were either rejected (50 amendments) or withdrawn (54 amendments). The subjects of these 123 amendments comprise the compartmentalization (or non-compartmentalization) of hedge funds, market making, high frequency trading, agricultural derivatives, investment banking²⁷, hedging activities and investment services. Amendments dealing with the scope of activities were thus also coded with respect to these different activities.

Finally, the amendments regarding the scope of activities were classified into three different types. The first type comprises all amendments that require an enlargement of the scope of activities. The second type of amendments refers to amendments dealing with the right of intervention of the Finance Minister to require the compartmentalization of market making activities in individual cases. The third type of amendments comprises the so-called “soft amendments”. These amendments introduce supervisory or reporting/disclosure requirements, the possibility for the supervisory authority to sanction financial actors in cases of market manipulation and editorial specifications.

Each type of amendment differs in its potential impact on French banks. Thus, it is expected that the pattern and extent of justifications may differ. The first type of amendments directly

²⁶ This article proposes the addition of four articles to the French Monetary and Financial Code (L.511-47 to L.511-50).

²⁷ The term investment banking encompasses the amendments that request the compartmentalization of all investment banking activities as well as those that comprise a significant extension of compartmentalised activities of more than one activity at the same time, e.g. the compartmentalization of all forms of high frequency trading, transactions with hedge funds and market making within one amendment.

addresses the activities affected by the reform. Its potential impact on banks is expected to be higher than for amendments of the third type that do not directly affect the banks' business. The impact of amendments regarding the right of intervention of the Finance Minister is uncertain because it depends on the intention of the Minister to intervene in a flexible and situational manner. Thus, an amendment is assigned to a type of activity, such as hedge funds for example, and a classification code, for example the first type (enlargement of the scope of activity). Table 4 gives an overview of the different amendments referring to the scope of activities.

[Insert Table 4 around here]

I conducted analytical coding of the justifications put forward by policy-makers regarding the amendments concerning the scope of activities. Justifications were coded based on a list of semantic descriptors referring to the different “common worlds” or “orders of worth” according to the theoretical framework of Boltanski and Thévenot (1991, 2006). The original list of semantic descriptors was complemented by synonyms or other terms that were systemically employed by policy-makers and refer to a “common world”. Table 5 shows the list of semantic descriptors; additions are in italics.²⁸ Data analysis was iterative and special attention was paid to ambiguous utterances. If an utterance referred to multiple worlds, it was attributed to more than one code, e.g. justifications based on the competitiveness of the French banking sector were assigned to the market and the domestic order.

[Insert Table 5 around here]

4. Case study

4.1. Investigating the logic of the French structural banking reform

In France, the Banking Act of 1945 led to the nationalization of several large French banks and introduced a separation between depository banks, investment banks and credit banks

²⁸ Unlike some papers that use a list of semantic descriptors for the common worlds, recurrences of different orders were not counted. This is mainly because the civic and market orders appear in each justification because each justification includes either the regulation (civic order) or the financial industry (market order) as an argument.

dealing with medium and long-term loans.²⁹ The Glass-Steagall-Act of 1933 representing the American counterpart of the French Banking Act is described as a prolific example of the regulatory logic (Lounsbury, 2002). About twenty years later, in 1966 and 1977, Michel Debré, Finance Minister at that time, established competition between commercial and investment banks and allowed banks to broaden their network of subsidiaries (Senate, 2009). Finally, in 1984, Jaques Delors, then Minister of Finance and Economic Affairs, abolished the separation between the three banking categories. From 1986 onwards, numerous public banks have been privatized.³⁰ In 1987, credit supply limits were removed and in 1989 exchange controls disappeared. On an international level, the Basel Committee introduced minimum capital requirements, namely Basel I of 1988, Basel II of 2005 and Basel III of 2011. Basel II represented a shift towards a regulatory model which was based on banks' internal credit risk models. The main assumption of this regulatory approach was that "banks themselves possess a comparative advantage over supervisors in terms of the resources, expertise, and experience necessary for sophisticated assessment of credit risks" (Tarullo, 2008, p. 151). These developments from the 1970s onwards are associated with a *laissez-faire* approach (e.g. Dewatripont et al., 2010) and have given prominence to the market logic (Lounsbury, 2002).

The financial crisis revealed the inefficiencies of the regulatory framework and has led several academics, regulators and policymakers to call for a global and comprehensive change in financial market regulation (e.g. Acharya and Richardson, 2009; European Commission, 2011; G20, 2009; Tirole, 2010). In September 2008, Nicolas Sarkozy, French President at that time, affirmed for example: "I am convinced [...] that we have to redesign the entire financial and monetary system, as was done in Bretton Woods after the Second World War [...]" (Le Monde, 2008). In the aftermath of the financial crisis, numerous financial market reforms have been implemented at the national and international level. Hence, financial markets regulation is regarded as a field experiencing tensions between two logics, namely the market logic and the regulatory logic.

When the French structural reform bill was first published on 19 December 2012, Finance Minister Pierre Moscovici announced: "I designed this reform to change the sector profoundly, to act as a model in Europe and reshape our financial landscape over the next 20 years [...]" (Council of Ministers, 2012). The idea of "improving the ethics of the financial industry" is repeatedly put forward. While listening to these ambitious statements that

²⁹ The French Banking Act of 1945 partially took up regulations enacted under the Vichy regime in 1941.

³⁰ In 2007, out of a total of 747 banks, as well as 19 mutual savings banks, the following three banks were public: Oseo financement, Banque Solfea and Banque Postale (Senate, 2009).

accompanied the publication of the French structural reform bill, one gets the impression that the regulatory logic dominated the regulatory process. However, as outlined above, the reform's actual impact on banks' structure is minor (see also Bergala, 2015, and National Assembly, 2015).

Indeed, the bill which was presented on 19 December 2012 distinguished between market making and trading on own account, and required only the latter to be transferred to a legally separated trading entity. Although market making can – at least theoretically – be distinguished from proprietary trading (Liikanen report, 2012), in practice, the distinction between proprietary trading and market making proves to be difficult.³¹ In this regard, the bill differs for example from the Liikanen report published in October 2012 which recommended that the EU structural banking reform should require the separation of both market making and trading on own account to avoid the risk that banks circumvent the compartmentalization by engaging in hidden proprietary trading activities. By requiring the compartmentalization of proprietary trading and uncollateralized transactions with hedge funds³², the reform allows French banks to keep the majority of trading activities in the same entity as deposit-taking and lending. In this regard, the French bill differs from the Liikanen report and the Vickers reform and leads to a limited impact for banks whose magnitude was, at the time of the publication of the bill, officially unknown.

In France, any bill has to be accompanied by an impact study, which should make it possible - prior to the discussions in the Parliament - to evaluate the economic, financial, social and environmental impact of any reform project.³³ Interestingly, the impact study for the French structural reform bill did not specify any quantitative numbers regarding the impact of the separation of banking activities: “In the framework of this impact assessment, it is unfortunately impossible to give an order of magnitude denoting the size of the activities to be compartmentalized, due to the very small number of banks concerned and out of respect for business confidentiality.” (Impact Study, 2012, p. 9).

The numbers were finally revealed during one of the first hearings in the legislative process a few weeks later on 30 January 2013. In the morning session, bankers confirmed that many things had already changed in recent years regarding capital, liquidity and resolution issues. According to Jean Paul Chifflet, President of the French banking federation and CEO of Crédit Agricole, in the context of the numerous reforms currently being discussed, this legal

³¹ The US Congress introduced numerous revenue-based and inventory-based metrics in order to be able to distinguish both activities, which contributes to the growing complexity of the legal text (Stewart, 2011).

³² In practice, these transactions are typically collateralized (Spangler, 2013).

³³ Organic Law No. 2009-403, article 8.

text seems “neither urgent nor a matter of priority.” However, the CEO of Société Générale, Frédéric Oudéa, affirmed: “This bill therefore creates a welcome change in the [banking] model. The reason it troubles us is that it outstrips European regulation, forcing us to add the project of compartmentalization to our already crowded agendas during a period marked by economic difficulties. However, by endorsing one direction without penalising our core customer activities, the bill protects the essential. In this way, it meets our common objective: to reassure customers.” Moreover, he explains that the law should be seen “as primarily preventative” and that he “believe[s], given developments, that business activities with no direct links to our customers represent a relatively modest share of the business only, and that this share will not grow in future.”³⁴ Finally, he reveals that less than 1% of Société Générale’s revenue is going to be affected by the separation.

In reaction to the statements of the three bankers, legal representative Karine Berger argues: “Your three statements imply that you are not really troubled by this bill – I am both surprised and delighted to hear it.” In the following session, Christian Noyer, Governor of Banque de France and Chairman of the French supervisory authority ACPR (Autorité de Contrôle Prudentiel et de Résolution), agrees with this assessment by emphasizing the preventative role of the bill and declaring that “If the activities targeted by the reform represent only a minor share of the activities of French banks, I am glad.”³⁵ Furthermore, he acknowledges that the legal text proposes a “good balance” between the necessary depositor protection, the financing of the real economy and the contribution to economic growth. Already at the beginning of the legislative process and before the discussions concerning the amendments to the bill began, policy-makers were thus aware of the limited impact on the banking system and did not seem to be concerned about it.

Compared to the bill, the final version of the reform entitled “separation and regulation of banking activities”, which was voted on 26 July 2013, did not extend the scope of activities affected by the reform. Once implemented, on 1 July 2015, only Société Générale and BNP Paribas transferred activities to a subsidiary (“trading entity”) representing around 1% of their respective corporate and investment banking division (National Assembly, 2015, pp. 21-22). However, the final version introduces a right of intervention for the Finance Minister, which

³⁴ Proprietary trading activities have decreased since the financial crisis. According to Frédéric Oudéa, in 2006, the share of proprietary trading was around four to six times higher than in 2013.

³⁵ University professors Jean-Paul Pollin and Laurence Scialom as well as Thierry Philipponnat, CEO of Finance Watch, were less satisfied with the proposed legal text. Professor Laurence Scialom stated, for example, that “[...], from my point of view, the legal text is insufficient.” Interestingly, whereas 61 Members of Parliament attended the hearing of the top bankers in the morning, only 8 Members of Parliament attended the hearing of the two university professors at the end of day.

was not part of the initial bill. This right of intervention allows the Minister to require the compartmentalization of market making activities in individual cases if certain thresholds are exceeded. These thresholds can be determined at any time individually for each bank or for the entire banking industry by decree after a consultation of the French supervisory authority ACPR. As emphasized by the Minister, Pierre Moscovici, this intervention right is not about fixing a quantitative threshold *ex ante* but about providing for the possibility of intervening (Public Session at the Senate, 20 March 2013). The right of intervention thus represents a flexible means of intervention in view of the specific context but it remains to be seen whether and, if so, how the right of intervention will be used in the future. Even two years after the enactment of the law, the implementation decree regarding the right of intervention of the Minister has not been issued (National Assembly, 2015) and is therefore not operational. Further modifications to the reform dealing with the scope of activities comprise new disclosure/reporting requirements, supervisory requirements, the possibility for the supervisory authority to sanction financial actors in cases of market manipulation and editorial specifications. The possibility for the supervisory authority to sanction financial actors in cases of market manipulation relates, however, to the regulatory logic. This finding is similar to Baud and Chiapello (2016) who highlight the coercive rules inherent in the Basel II framework, which goes hand in hand with a neoliberal-inspired reform.³⁶

Overall, despite the public announcements referring to the regulatory logic, the content of the reform dealing with the separation of banking activities refers (in its preliminary as well as in its final version) to the market logic. During the Reading at the French parliament, amendments to the bill are proposed and French policy-makers explain their decisions concerning the amendments to convince the audience that their decisions are “valuable, appropriate, useful, and correct” (Young, 2003, p. 622) because their decisions are subject to vote by the members of parliament. Thus, they need to find formulations, which are acceptable to all (Boltanski and Thévenot, 2006, p. 281). This case provides an opportunity to analyse a situation where the policy-makers have to justify their logic of rule-making in a situation of public controversy. But what are the justifications used to argue against all amendments calling for an extension of the scope of activities? How do they justify the acceptance of the right of intervention of the Finance Minister and the acceptance of some “soft” amendments? Which regulatory actions are considered to be “just”, and which are not?

³⁶ Nevertheless, it should be noted that these amendments reflect the proposed revisions of the EU Market Abuse Directive (MAD II) published by the European Commission in 2011, and, as regards high frequency trading, were implemented in a similar manner in the same time frame in Germany through the “Hochfrequenzhandelsgesetz” (high frequency trading law; adopted in May 2013).

Drawing on the theoretical framework of Boltanski and Thévenot (1991, 2006), these issues are analysed in the following sections. More precisely, I examine how policy-makers mobilize orders of worth to maintain and defend the dominant institutional logic. The maintenance of the institutional logic should not be seen as taken-for-granted, which would leave only a limited role for agency. Instead, especially in a situation where uncertainty arises about what has worth, actors provide justifications to render their actions comprehensible and legitimate to themselves and to the others they are engaging with. By investigating how policy-makers select and strategically mobilize orders of worth, the study aims to go beyond a classification of whether the reform is more or less market or state focused (logics perspective) and a mere categorization of justifications according to orders of worth. Overall, this examination broadens our understanding of national regulatory rule-making in a national context in the aftermath of the financial crisis.

4.2. Justification process

4.2.1. Situation-specific qualification work

The analysis of utterances of policy-makers in order to justify their decisions on amendments reveals the dilemma involved in the decision-making process for regulating the financial industry at the national level. This dilemma is for example expressed in the following statement:

“Senators, these are the thoughts I wanted to share with you, and they should be set against the wider context: through this bill, we must aim to find an intelligent equilibrium which enables us to make the financial industry more ethical, to fight against moral risks, and to control, regulate and prevent individual and systemic risks. However, our aim should never be to limit our companies’ access to funding: they need it more than ever!”

(Finance Minister, 1SenPS76/77)³⁷

On the one hand, there is an apparent need to regulate the financial industry. The notions of ‘improve ethics’, ‘combat moral hazard’, ‘control’, ‘regulate’ and ‘prevent risks’ refer to the civic order. In the civic world, people who belong to or represent collectives are worthy. People subordinate their own will to the general will while embodying a general (collective) interest. Objects are rules, decrees, laws, etc. (Boltanski and Thévenot, 2006, pp. 185-193).

³⁷ The identifier of the amendments comprises four parts: The first element describes whether the discussion of the amendment took place within the first (=1) or the second (=2) round of the legal process. Then the place of discussion is specified. ‘Sen’ or ‘Na’ stand for the Senate or the National Assembly. PS means public session while FiCo is the abbreviation of finance committee. Finally, the number of the amendment is indicated. 1NaFiCo307 is for example an amendment that was discussed at the finance committee of the National Assembly during the first round of the legal process.

On the other hand, it is argued that one should not penalize companies' access to funding. This argument is assigned to the market order. In the market world, actions are motivated by the desire of individuals and the principle of coordination is competition. These individuals are customers, competitors, buyers and sellers who are seeking to engage in a transaction (Boltanski and Thévenot, 2006, pp. 193-203). Policy-makers highlight that between these two competing orders an (intelligent) equilibrium has to be found.

In a similar vein, the policy-makers seek a balance several times between what is necessary and what is excessive, or between what is useful and what is risky for the economy. The boundary between what is excessive and what is necessary remains a rather subjective one, which may be difficult to distinguish.

While referring to an equilibrium solution, policy-makers are able to argue against any amendment which is, in their judgment, inappropriate:

“Nevertheless, your amendment would upset the proposed equilibrium [...]” (Legal representative at the National Assembly, 1NaFiCo159)

“I too am unable to agree with these three amendments which upset the very equilibrium of the bill. [...] We have already improved the bill together and it has a logic, a backbone and a balance that I do not want us to abandon.” (Finance Minister, 1NaPS142/178/343)

“I reiterate the fact that we have found a balance between the necessary and the excessive.” (Legal representative at the National Assembly, 1NaPS202)

“[...] let us refrain from destabilizing our bill for the moment.” (Legal representative at the National Assembly, 2NaPS18)

While using the notion of equilibrium, policy-makers are able to signal to members of parliament that concessions have been made. This facilitates the justification process, the policy-makers are in a more comfortable position because they do not represent an “extreme” position and signal a certain degree of flexibility and compromise. The analysis shown so far highlights the trade-off between the civic order (e.g. “improving ethics” or “combating moral hazard”) and the market order (e.g. “companies' funding access”) to which the policy-makers refer. The notion of a balanced solution as a rhetorical device supports the policy-makers in increasing the legitimacy of their decisions which can be assigned – as shown in the previous section – to the market logic. It is more difficult to argue against a balanced solution than against a clearly defined position.

In order to reach a consensus as to the adequate term and to find “a formulation acceptable to all - one that ‘sounds right’” (Boltanski and Thévenot, 2006, p. 281), policy-makers employ

“auxiliary” orders of worth: the domestic order is for example used several times in order to support the market order. In the domestic world, worth is related to the local and the proximal. Order is established through reference to generation, tradition and hierarchy (Boltanski and Thévenot, 2006, pp. 164-178). The bond between social actors is built upon belonging to the same household, as a territory in which the relation of domestic dependence is inscribed (Boltanski and Thévenot, 2006, p. 90). Policy-makers repeatedly refer to the French territory (domestic order) while calling for the protection of ‘French’ banks, ‘our’ economy or ‘French’ companies, e.g.:

“[...] the compartmentalization of all trading carried out with hedge funds would, in practice, prevent French banks from dealing with such counterparties. [...] I am forced to recognize, with a sense of regret, that French banks must continue to deal with hedge funds if they want to play their role in financing of our companies.” (Finance Minister, 1SenPS75)

“We would thus weaken our own economy, our own banking system. That is why I too am not in favour of these amendments.” (Finance Minister, 1NaPS179, 1NaPS289)

The main idea behind the protection of French banks or the French economy is that in the context of a globalized financial industry where French banks compete with banks from all over the world, any competitive disadvantage should be avoided. Although policy-makers refer to the domestic order (‘French’ banks, ‘our’ economy, etc.), the relevant order of worth is the market order. Policy-makers do not want to risk a competitive disadvantage for the French banking system. A justification which is built on a reference to French territory may be perceived as more appropriate or convincing than simply stating that, in a globalized financial world, one should not regulate the financial sector in order to avoid competitive disadvantages. In this example, the domestic and the market order complement each other well, which may be due to an “already-worked-out-compromise” (Boltanski and Thévenot, 2006, p. 282).³⁸

Moreover, the argument that a national reform is not desirable in the context of a globalized financial industry is presented by disguising the civic order. The policy-makers point to another arena of regulation (civic order), the European (or international) arena, as the most appropriate one:

“I believe that we must move forward while bearing in mind that the right arena for regulation is Europe.” (Finance Minister, 2NaPS59)

³⁸ “Already-worked-out compromises” refer to complex figures where at least two worlds are in play (Boltanski and Thévenot, 2006, p. 282).

“If we want better regulation of hedge funds, it is not at national level, and it is not by penalising French banks that we will achieve it.” (Finance Minister, 1NaPS179, 1NaPS259)

“If a European agreement cannot be reached on the matter, we really truly be incapable of regulating the mechanism unilaterally. [...] We must unfortunately wait for a European agreement to be signed.” (Legal representative at the National Assembly, 1NaPS275)

As in the previous example, the argument based on competition which refers to the market order is disguised. These statements give the impression that regulation would actually be desirable but – unfortunately – not at the national level. Responsibility is passed on to the international level. Both examples highlight the strategic use of different orders of worth by the policy-makers. Interestingly, the use of orders of worth depends on the context, more precisely on the type of amendment. The aforementioned justifications are only employed for amendments that require an extension of the scope of activities (first type of amendments). As regards the second type of amendments dealing with the “flexible” right to intervene of the Finance Minister, the order of fame plays an important role. In the world of fame, worth comes exclusively from the opinion of others. Individuals have a common desire to be recognized (Boltanski and Thévenot, 2006, pp. 178-185). The policy-makers explain:

“From this point of view, I reiterate that I completely agree with Karine Berger: As I said myself, we are dealing with a visionary text. But it is only going to be visionary if it can inspire our partners; otherwise it will not be visionary, but isolated. This bill addresses a living, evolving matter. It has a flexible logic [...]” (Finance Minister, 1NaPS108 rect, 1NaPS127)

“This intelligent approach will make us pioneers and provide a clear response to debates that may be held at European level on whether market activities are speculative in nature or not and on the definitions of what is useful and what is not useful for financing the economy. It is an excellent amendment and I support it wholeheartedly.” (Finance Minister, 1NaFiCo181)

Indeed, the pioneering character is confirmed by the EU legislative proposal as of January 2014 which introduced a similar right of intervention at the EU level.³⁹

The order of fame is not used in the justification work regarding the third type of amendments. This type of amendments introduces disclosure/reporting requirements,

³⁹ The European bill proposed by the European Commission recommended, like the French law, the possibility of imposing the compartmentalization of market making (and other trading activities) for individual banks if a certain threshold is exceeded (European Commission, 2014b, Article 10). However, in October 2017, the European Commission decided to withdraw its legislative proposal from its 2018 Working Programme.

supervisory requirements, the possibility for the supervisory authority to sanction in cases of market manipulation and editorial specifications which have overall only a limited direct impact on the banking sector. Furthermore, some of the amendments are part of regulatory discussions taking place at the European level. The reference to the order of fame would be misplaced here. However, the order of fame appears once with respect to the first type of amendment, i.e. regarding an amendment that calls for the compartmentalization of market making. The legal representative at the National Assembly affirms that it is an “honour for France to be the first country to implement such a regulatory measure” (1NaFiCo159). But in the following sentence, she acknowledges: “However, this amendment would destabilize the equilibrium achieved [...]”. Here, the policy-maker points indirectly to the early implementation date of the French structural banking reform which is set before the implementation dates of other post-crisis structural reforms. Contrary to the justifications given for the second type of amendments, the claim of being a pioneer is ultimately counterbalanced by the argument that an equilibrium has to be respected. This example highlights the strategic use of orders of worth depending on the context.

To sum up, this section has shown that policy-makers draw on a multitude of orders of worth and employ them strategically depending on the context. As shown by Patriotta et al. (2011) and Taupin (2012), they place the debate consciously in a particular “world”, which is called qualification work. This qualification work serves as a basis for further mechanisms, i.e. the symbolization of the competing order and the technique of balancing the measures, which enable the policy-makers to maintain and defend the dominating institutional logic and reveal what actions they consider to be just.

4.2.2. Symbolization of the competing order and balancing of measures

Policy-makers often begin their justification work for the first type of amendments by affirming the need for regulation. It is said that hedge funds frighten or represent a danger, that one has to combat pure speculation, or it is claimed that high frequency trading is harmful. Furthermore, the policy-makers argue that the financial industry must be made more ethical. In this sense, they present themselves as representatives pursuing a moral cause. These statements point to the civic order and form the basis for tougher regulation. The civic order is then confronted with truth tests (Boltanski, 2009, 2011) where tautological discourse is used to defend justifications against inquiries from critique. Truth tests are supposed to sustain official assumptions and those assumptions that are contained in the expressions of

what is called common sense⁴⁰ (Boltanski, 2011, p. 61). Consequently, they deal “with what does not give rise to controversy” (Boltanski, 2011, p. 73). Here, policy-makers appeal for example to realism and pragmatism:

“I know that hedge funds are often seen – and this is certainly the motivation behind these amendments – as major actors in speculation on financial markets. I would like to qualify this somewhat: we must be realistic and pragmatic, because, as I have stated from the start of our discussion, my concern is avoiding punishing the French banks.” (Finance Minister, 1NaPS179, 1NaPS289)

“What more can we do? The response must be pragmatic and realistic.” (Finance Minister, 1NaFiCo131)

These truth tests are used to argue against the adoption of the amendments belonging to the first type of amendments. This reasoning implies that, in order to be realistic, these amendments cannot be adopted. Other truth tests involve the reference to essential, reasonable, useful and legitimate activities, e.g.:

“Despite the limitations emphasized in our debates, [market making] does indeed provide liquidity; it can be perfectly useful and legitimate. [...] However, your amendment broadens the scope of prohibition to cover the crux of trading activities, and that was never the desired outcome and threatens to go much too far. Yet, as regards the prohibition [of certain banking activities] we should limit ourselves to prohibiting what is harmful: that is the principle that we affirm in this bill.” (Finance Minister, 1NaPS275)

“It [the spirit of the bill] is about making a clear distinction between what is useful for the economy and what is risky for the economy. What you, my esteemed colleague, have just asserted boils down saying that investment services are not useful for the economy. We may as well go the whole hog and say that banks are not useful to the economy.” (Legal representative at the National Assembly, 1NaPS73)

“We have to ensure that very large international companies’ investment activities can be carried out by the parent company. It is an essential function of a universal bank and we are protecting it in this bill.” (Legal representative at the National Assembly, 1NaPS79)

As before, this implies that the amendments cannot be adopted because they affect useful, legitimate or essential activities.⁴¹ As these attributes suppose a certain objectivity or sort of universality, it is difficult to argue against them. Consequently, they support the policy-

⁴⁰ Common sense relates to the “‘set of generally shared self-evident truths’ serving as basis for agreements” (Boltanski, 2011, p. 54).

⁴¹ In particular, the notion of usefulness is repeatedly employed: in general, policy-makers refer to activities being useful for the economy, for employment or for customers.

makers in preserving the status quo. None of the amendments calling for an extension of the scope of activities were accepted. However, a few activities, the “useless” ones, must be compartmentalized according to the bill.⁴² Therefore, policy-makers point out:

“Thus, we will have taken a step forward without leaping too far ahead. That, fellow Members of Parliament, is what I am asking you to agree to.” (Finance Minister, 1NaPS179, 1NaPS289, 1NaPS290)

“One cannot argue, that the bill neglects the question [of regulating hedge funds].” (Finance Minister, 1NaFiCo131)

To conclude, as regards the first type of amendments the justifications are mainly based on the market order. Although the civic order plays a role in the justificatory work, the market order dominates the discourse and the arrangement is sustained by truth tests. By supposing a certain objectivity, truth tests aim to reduce uncertainty regarding the worth of persons or objects by confirming what is (Boltanski, 2011, p. 72). They deal with “what does not give rise to controversy” (Boltanski, 2011, p. 61) and are used in this paper to argue against the adoption of the 86 amendments aimed at an enlargement of the scope of activities. These justifications imply that because one “must be” realistic, these amendments cannot be adopted. In addition, the reform should not affect useful, essential, or legitimate activities. This reasoning enables the policy-makers to defend their decisions against inquiries from critique⁴³ and consequently to preserve the status quo.

The second type of amendments deals with the right of the Finance Minister to intervene and impose an obligation to separate market making in extreme cases if a threshold is exceeded. The right of intervention is intentionally given to the Finance Minister and not to the regulator:

“In fact, we intend to give new rights to the Finance Minister and not to the regulator. Primacy has to remain in the political sphere!” (Legal representative at the Senate, 1SenPS110)

Since the Minister can decide at any time to require the separation of banking activities in individual cases without disclosing his decision criteria he has considerable scope to intervene (or not to intervene). Discretionary measures are particularly prone to the exercise of influence, e.g. from lobbyists, and probably even more in the political sphere. Furthermore, discretionary rules entail the risk that the Minister will be reluctant to intervene due to fear

⁴² According to the legal text, useful activities are executed on the customers’ account whereas useless activities have a speculative nature and are usually executed on the bank’s own account.

⁴³ See also Young, 2003, p. 637, for a similar argument regarding the notion of usefulness.

that his action will be misinterpreted as insufficient supervision (regulatory forbearance). Moreover, he may try to hide deficiencies in the banking industry in anticipation of an improvement in circumstances until the end of his mandate (regulatory gambling) (Hartmann-Wendels et al., 2010, p. 411). It is not possible to predict whether and, if so, how this right will be used in the future. In view of this uncertainty or “flexible logic” in the words of the policy-makers, it is argued that this “intelligent approach” enables them to be pioneers (order of fame) and protects them from European developments (1NaPS108rect; 1NaFiCo181). In order to maintain this “flexible logic”, twelve out of thirteen further amendments which aimed to modify or specify the intervention right were not supported by the policy-makers and were either withdrawn or rejected (e.g. announcement of the threshold, publication in an annual report, one threshold for all banks, obligation to fix a threshold in order to avoid arbitrary discretion, a priori consultation of the Financial Stability Board (FSB)).

The impact of this measure on the banking industry depends on the intention of the Finance Minister to intervene. The Finance Minister affirms in this regard:

“I am not an adversary of banks, any more than I am a friend of bankers; rather, I am their partner.” (Finance Minister, 1NaFiCo307)

The notion of partner may be either assigned to the domestic order (in the sense of a trustworthy relationship) or to the market order (in the sense of (business) partners engaging in transactions). In both cases, it presupposes a relation on equal terms where confrontations are avoided and both work together to find solutions. This proximity to the regulated industry is in accordance with the market order.

The need for justificatory work regarding the amendments comprising disclosure/reporting requirements, supervisory requirements, the possibility for the supervisory authority to sanction in cases of market manipulation and editorial specifications (type 3 amendments) is low. Although certain measures, such as reporting requirements for example, cause compliance costs for banks, the business activity of banks is not directly affected. The impact of these amendments on the banking system is thus minor. Besides, some of the measures are part of regulatory discussions taking place at the European level. The civic order dominates the discourse (regulate, control the risks, reinforce sanctions, tightening of control, etc.) and is associated with the industrial order (traceability of orders, numbers, precise rules, lists, exact

numbers, efficiency etc.). Eighteen out of twenty-three amendments were supported by the policy-makers and adopted.⁴⁴ They declare:

“I say again that this excellent amendment empowers the [French supervisory authority] ACPR [Autorité de Contrôle Prudentiel et de Résolution] to control the quality, quantity and disposability of the collateral. This measure is both pragmatic and realistic!” (Finance Minister, 1SenPS138rect)

“I believe that in taking these steps, we are trading a fine line but it is the right line to take; we are creating a bill that regulates, moralizes and controls, while also giving the French economy breathing space and enabling it to deal with financial actors who, it is fair to say, have a double-sided rather than unequivocal role.” (Finance Minister, 1AnPS290)

In the first extract, the policy-makers make use of the same truth tests as before but, now, these truth tests are affirmed and employed to justify the acceptance of amendments. Whereas the aforementioned measures aimed at an enlargement of the scope of activities are not supported on the grounds that one “has to be” realistic and pragmatic, most of the amendments proposed here are accepted because they “are” realistic and pragmatic.

The differentiated use of truth tests depending on the type of amendments provides insights into the perception of policy-makers of the role of post-crisis financial market regulation in a national context. The third type of amendments assigns rather passive functions to financial market regulation which comprise the control and supervision of the banks’ business activity and the possibility to sanction in cases of market manipulation. Measures that directly affect a banks’ business activity are not supported and the bill addresses “useless” activities only. This technique of balancing different measures makes it possible to maintain a so-called “intelligent equilibrium” between both competing orders. The civic order still plays a role in the justification work, but it is established through the acceptance of measures with a passive nature and limited impact on the banking sector: it becomes symbolized.

The symbolization of the competing order is different from mechanisms for reconciling competing orders of worth previously discussed in the academic literature (e.g. Jagd, 2011, for an overview). It neither represents a compromise, since the market order is privileged in the policy-making process (which is not compatible with a compromise in the sense of Boltanski and Thévenot, 1991, 2006) nor a clarification in one world since the civic order is

⁴⁴ Four out of five concerning disclosure/reporting requirements, eight out of eleven regarding supervisory requirements, two out of two concerning market manipulation sanctions and four out of five regarding editorial specifications.

not neglected and still plays a role in the justification process (e.g. Cloutier and Langley, 2013; Jagd, 2011). Therefore, the figure of symbolization may be regarded as being located somewhere in between these strategies of reconciliation: The competing (civic) order is neither neglected nor reconciled in an equal way with the market order.

It should be noted that the symbolization is not officially “sold” to the public as a symbolic reconciliation between orders: the symbolization results from the strategic and situation-dependent qualification work which is sustained by truth tests and combined with the strategy of balancing different measures. These dynamics enable the policy-makers to refer to an equilibrium solution between the dominating market order and the competing civic order (in which the equilibrium should not be understood as an equal weighting of both orders). Consequently, the possibilities for debate and criticism are significantly reduced and the policy-makers’ decisions pointing to the market logic are rendered more legitimate. Overall, these dynamics prove to be powerful in defending and maintaining the market logic of a national financial market reform adopted in the aftermath of the financial crisis.

5. Discussion and conclusion

Drawing on the theoretical frameworks of French pragmatist sociology (Boltanski and Thévenot, 1991, 2006) and institutional logics (Friedland and Alford, 1991), this study has analysed the policy-makers’ justifications in support of their decisions on amendments dealing with structural measures for the French banking system. As such, this study aims to broaden the understanding of the “inner life” (Black, 2002) of the process of regulatory rule-making in a national post-crisis context.

In the first part, this study has shown that the French regulation on structural measures refers to the market logic. However, this paper attempts to go beyond this rather simple classification by revealing insights into how the policy-makers managed to defend and maintain the dominating institutional logic in a situation of controversy by actively mobilizing different orders of worth. This approach seems to be suitable for analysing the field of financial market regulation in the years following the financial crisis which was experiencing tensions between institutional logics. In the second part, the findings illustrate how policy-makers drew on a multitude of orders and employed them strategically and in specific situations. Complex mechanisms of reconciliation between orders led to the prioritization of orders where the competing order, the civic order, acquires a symbolic nature. Nonetheless, this competing order is not neglected in the justification work. Actions that can be attributed to the competing order, but with little impact, are pursued. Therefore, policy-makers may

refer to an equilibrium solution between the dominating and the competing order which shields their actions against criticism. Focusing on the justificatory work of policy-makers, the study identifies ‘apparent’ adherence to the competing order whereas, overall, the dominating order is prioritized. These mechanisms enable the policy-makers to maintain the dominating logic. The compromise identified through symbolization of the competing order represents the major contribution to the body of literature that applies the theoretical framework of Boltanski and Thévenot (1991; 2006) (e.g. Huault and Rainelli-Weiss, 2011; Patriotta et al., 2011; Taupin, 2012).

One might argue that the discrepancy between the announcements that accompanied the reform and the actual impact of the reform represents the typical situation in any policy-making process and is not surprising. But the case of the French structural banking reform is different as the discrepancy does not evolve over time as an expression of a negotiation or a compromise among the parties involved: the discrepancy exists from the beginning of the policy-making process and is maintained over time.⁴⁵ The situation during the policy-making process which is analysed in this paper shows how this discrepancy as well as the adherence to the dominating logic are maintained despite the critiques that have emerged from the financial crisis in general, and the numerous amendments to the bill in particular. In this regard, this paper may be compared to different papers examining the apparent inability of crises and scandals to lead to a change of political direction (e.g. Guénin-Paracini et al., 2014; Merino et al., 2010). Gendron and Smith-Lacroix (2015) explain, for example, that post-regulatory changes seem to sustain the status quo. In a similar vein, Boone and Johnson (2010), Reinhart and Rogoff (2008) as well as Gendron (2013) claim that the financial crisis was not a unique event and emerged due to the inability to learn from former mistakes and crises. Dean (2014) argues that neoliberalism which was born of crisis during the 1930s and 1940s has flexibly mutated and adapted through each subsequent crisis and Chiapello (2003) suggests that this happens through a “taking over” of its own critics. Guénin-Paracini et al. (2014) conclude that actors rather than the system itself are accused when things go wrong, which hinders any substantive change following a crisis and make neoliberal governance resilient to crisis.

In the case under review, the employment of truth tests (Boltanski, 2009, 2011) played an important element in the justification work of policy-makers. Policy-makers affirmed

⁴⁵ This ultimately raises the question of whether this reform is desirable from a cost-benefit perspective, which is difficult to answer in the absence of a quantitative impact assessment. As mentioned above, the impact study did not provide any figures for the impact of the reform due to the very small number of banks concerned and out of respect for business confidentiality.

repeatedly that they have to be realistic and that the reform should not affect useful, essential, or legitimate activities. By supposing a certain objectivity or sort of universality, these truth tests defend policy-makers' decisions from inquiries from critique as it is, for example, difficult to argue against realistic decisions. However, this reasoning challenges the reach of national financial market regulation in a globalized environment and seems to set a limit to how far financial market regulation at the national level can go.

In addition, this study further highlights several pertinent arguments that are already discussed in the academic literature. Tirole (2010) explains for example that competition among regulators to be the “most accommodating” regulator emerges due to the fact that financial institutions can choose in which country their head office is registered (Tirole, 2010, p. 30). Hence, regulators strive to maintain a national competitive advantage and regulatory competition arises. In extreme cases, this may lead to a race to the bottom between different nations (Boone and Johnson, 2010, p. 249). Carmassi and Micossi (2012) acknowledge the strong incentives for politicians and regulators to protect their “national champions”. Referring to the French context, Jabko (2012) uses the example of the multi-billion dollar loss of Société Générale in 2008 to illustrate that French officials (here, the Prime Minister François Fillion) would have preferred a merger of two French banks to the loss of a national champion to a European peer, despite the fact that such a merger would increase the already very high concentration of the French banking sector and aggravate the too-big-to-fail problem (Jabko, 2012, p. 114). The argument that more regulation would lead to a restriction on loans to households is also widely used in debates on capital regulation (Admati and Hellwig, 2013).⁴⁶

The present study contributes to this stream of literature by revealing how these arguments are employed in the regulatory discourse and how they affect regulatory decisions. Policy-makers assign passive functions to financial market regulation through the acceptance of measures improving the control and supervision of banks' business activity and the possibility to sanction in cases of market manipulation. Measures that directly affect the banks' business activity are not supported and the bill concerns so-called “useless” activities only. The right of intervention for the Finance Minister to require the compartmentalization of market making activities in individual cases represents a flexible tool and policy-makers promoted it as a

⁴⁶ In its impact assessment of 2014, the European Commission challenges this argument claiming that the borrowing conditions for SMEs and households should not be affected by structural banking reforms because households and SMEs are mainly clients of the deposit entity. Moreover, smaller competitors or new entrants that are not subject to mandatory separation may pick up some activities which may benefit the customers (European Commission, 2014a, pp. 64-65).

visionary text and an intelligent approach enabling them to be pioneers (1NaPS108, rect, 1NaPS1277, 1NaFiCo181). However, even two years after the enactment of the law, the implementation decree regarding the right of intervention of the Minister had still not been issued (National Assembly, 2015). The technique of balancing different measures makes it possible to maintain a so-called “intelligent equilibrium” where the civic order is established through the acceptance of measures with a passive nature and limited impact on the banking sector: it has become symbolized. Overall, these mechanisms supported the policy-makers in maintaining and defending the dominant market logic in a situation of controversy in the context of a national post-crisis financial market reform.

Finally, I acknowledge the limits of this study. The present study deliberately focuses on the official part of the decision-making process which is in line with Boltanski and Thévenot (1991, 2006) who propose a theoretical framework particularly relevant in situations of public disputes in which action is confronted with criticism. However, as acknowledged by Munir (2014) with regard to institutional scholarship in general, this study is not able to comprehend the influence of powerful actors in the decision-making process. Financial actors engage continuously in lobbying work to defend their interests in matters of financial markets regulation. In this setting, the policy-makers’ initial position before the lobbying effort is not measurable because lobbying work is often hidden and persistent. Moreover, as regards the French setting, education and career profiles among French officials and top French bankers are quite uniform⁴⁷ (Jabko and Massoc, 2012) rendering the analysis of power relations and their impact on regulatory actions more difficult. Further research could investigate more systemically the effect of corporate power and influence on regulatory post-crisis decision-making. Moreover, in line with the methodological stance of Boltanski and Thévenot (1991, 2006), conceptions of the common good may evolve over time and depend on the situation under review. An opportunity for further research may lie in the application of the theoretical framework to other contexts to assess the transferability of the findings presented here.

⁴⁷ The authors emphasize the importance of the Ecole Nationale d’Administration (ENA), the Ecole Polytechnique and the Inspection Générale des Finances, an elite corps of the French public service. They show that out of 19 executive directors of the four biggest French bank networks in October 2008, ten were ENA alumni (including eight Inspecteurs des Finances), six were alumni of Ecole Polytechnique, and two were alumni of both schools. Only five out of the 19 were neither at ENA nor Polytechnique and four of these worked for Credit Agricole.

Appendix

TABLE A:

Ideal Types of Institutional Logics

Y-Axis:	X-Axis: Institutional Orders					
Categories:	Family	Religion	State	Market	Profession	Corporation
Root Metaphor	Family as a firm	Temple as a bank	Redistribution mechanism	Transaction	Relational network	Hierarchy
Sources of Legitimacy	Unconditional loyalty	Sacredness in society	Democratic participation	Share price	Personal expertise	Market position of firm
Sources of Authority	Patriarchal domination	Priesthood charisma	Bureaucratic domination	Shareholder activism	Professional association	Top management
Sources of Identity	Family reputation	Association with deities	Social and economic class	Faceless	Association with quality of craft Personal Reputation	Bureaucratic roles
Basis of Norms	Household membership	Congregational membership	Citizenship membership	Self-interest	Associational membership	Firm employment
Basis of Attention	Status in Household	Relation to supernatural	Status of interest group	Status in market	Status in profession	Status in hierarchy
Basis of Strategy	Increase family honor	Increase religious symbolism of natural events	Increase community good	Increase profit	Increase personal reputation	Increase size of firm
Informal Control Mechanisms	Family politics	Worship of calling	Backroom politics	Industry analysts	Celebrity professionals	Organization culture
Economic System	Family capitalism	Occidental capitalism	Welfare capitalism	Market capitalism	Personal capitalism	Managerial capitalism

Source: Thornton et al. (2012), p. 56.

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TABLE 1:

The six orders of worth in the theoretical framework of Boltanski and Thévenot

'Common worlds'	Market	Industrial	Civic	Domestic	Inspired	Fame
Mode of evaluation (worth)	Price, cost	Technical efficiency	Collective welfare	Esteem, reputation	Grace, singularity, creativeness	Renown, fame
Test	Market competitiveness	Competence, reliability, planning	Equality and solidarity	Trust-worthiness	Passion, enthusiasm	Popularity, audience, recognition
Form of relevant proof	Monetary	Measurable: criteria, statistics	Formal, official	Oral, exemplary, personally warranted	Emotional involvement and expression	Semiotic
Qualified objects	Freely circulating market good or service	Infrastructure, project, technical object, method, plan	Rules and regulations, fundamental rights, welfare policies	Patrimony, locale, heritage	Emotionally invested body or item, the sublime	Sign, media
Qualified human beings	Customer, consumer, merchant, seller	Engineer, professional, expert	Equal citizens, solidarity unions	Authority	Creative Beings, artists	Celebrity

Source: adapted from Thévenot et al. (2000, p. 241).

TABLE 2:

Timeline of the legislative process for the 86 articles of the law “séparation et régulation des activités bancaires”

(Events dealing with the separation of banking activities are marked with an asterisk)

22 Jan 2012	The separation of banking activities represented promise no. 7 of President François Hollande’s campaign pledge*
19 Dec 2012	Presentation of the Bill to the Council of Ministers*
23, 30 Jan 2013, 6, 12-14, 19 Feb 2013	1 st Reading, National Assembly*
26 Feb 2013, 12-13, 20-22 Mar 2013	1 st Reading, Senate*
4-5 June 2013	2 nd Reading, National Assembly*
19, 26 June 2013	2 nd Reading, Senate
11, 18 July 2013	Conciliation Committee
26 July 2013	Promulgation of the law*

TABLE 3:

Overview of the documents examined

<ul style="list-style-type: none"> - French policy-making process “séparation et régulation des activités bancaires”: • Preliminary and final version of the bill dealing with the separation of banking activities • Readings in the National Assembly, the Senate and affiliated committees dealing with the separation of banking activities, in particular transcriptions of the debates on 123 amendments concerning the scope of activities • Impact Study • Hearings at the National Assembly, the Senate and affiliated committees: <ul style="list-style-type: none"> Jean-Paul Chifflet (CEO Fédération bancaire française, CEO Crédit Agricole SA) ; Frédéric Oudéa (CEO Société Générale) ; Jean-Laurent Bonnafé (CEO BNP Paribas) Christian Noyer (Governor of the Banque de France, Chairman of the Autorité de Contrôle Prudentiel et de Résolution); Danièle Nouy (Secretary General of the Autorité de Contrôle Prudentiel et de Résolution) Pierre Moscovici (Finance Minister) Jean-Paul Pollin (university professor in economics, University of Orleans); Laurence Scialom (university professor in economics, University of Nanterre) Thierry Philipponnat (Secretary General of Finance Watch) Sir John Vickers (Chairman of the Independent Commission on Banking, UK) • Reports of legal representatives and rapporteurs of the committees: <ul style="list-style-type: none"> Karine Berger (legal representative at the National Assembly, Finance Committee.) Richard Yung (legal representative at the Senate, Finance Committee) Philippe Kemel (rapporteur of the Economic Affairs Committee, National Assembly) Axelle Lemaire (rapporteur of the Legal Affairs Committee, National Assembly) Yannick Vaugrenard (rapporteur of the Economic Affairs Committee, Senate) Thani Mohamed Soilihi (rapporteur of the Legal Affairs Committee, Senate) - Currently discussed proposals regarding the separation of banking activities: <ul style="list-style-type: none"> • Volcker Rule (US reform) • Financial Services (Banking Reform) Act (UK reform) • Proposals discussed at EU level (provided by the High Level Expert Group, the European Commission, the European Parliament and the European Council) • “Gesetz zur Abschirmung von Risiken und zur Planung der Sanierung und Abwicklung von Kreditinstituten und Finanzgruppen” (German reform) - Related EU regulations: <ul style="list-style-type: none"> • Markets in Financial Instruments Directive (MiFID II) • European Market Infrastructure Regulation (EMIR) • Alternative Investment Fund Managers Directive (AIFM) • EU Market Abuse Directive (MAD) - Press articles relating to the French structural banking reform obtained via the Factiva database

TABLE 4:

Overview of amendments dealing with the scope of activities

Type of amendment \ Activities	Hedge funds	Market making	High frequency trading	Agricultural commodities	Investment banking	Hedging activities	Investment services	Total
Type 1: Enlargement of the scope of activities	16	13	18	11	20	2	6	86
Type 2: "Flexible" right of intervention (market making)	-	14	-	-	-	-	-	14
Type 3: "Soft" amendments	7	9	2	1	-	1	3	23
Total	23	36	20	12	20	3	9	<u>123</u>

TABLE 5:

Semantic descriptors for common worlds⁴⁸

Market	Competition, competitor, competitiveness, benefit, customer, price, market, finance, economy, demand, sell, buy, <i>speculation, speculative activities, investment banks, (financial) actors, offer services, useful for the economy/the customer/employment, investments, interests of the customer, issuer, access to financial markets, derivatives, international groups, sophisticated financial products, investors, risk hedging, market manipulation, customer account, transactions, price volatility, banking system, securitization, asset management, hedge funds, liquidity of the market, volatility of prices, traders, intermediaries between investors and issuers, economic relations, arbitrage strategies, execution orders, stock markets, shares, debt issue, well-functioning of the market, bankers, partner (of banks), positions on the market, bets on prices.</i>
Civic	Legal, rule, official, representative, legislation, legal text, rules, law, assembly, election, moral beings, gathering for collective action, democratically, <i>Government, bill, reform, Minister, protection of depositors, financial stability, moralise the financial industry, survival of populations, directives, control, forbid, ban, debates, prevent risks, authorize, intervene, power to sanction, international norms, sovereignty, prudential norms, supervision, supervisory authorities, European Commission, Basel III, European Union, G20, International Monetary Fund, European Securities and Market Authority, European Central Bank, Parliament, supervisor, political power, criminal judge, initiatives, power, reinforce sanctions, reinforce control.</i>
Industrial	Efficiency, experts, process, measure, analyse, <i>instruments, criteria, threshold, analysis, competences, ratios (prudential, capital, liquidity), expertise, unit, precise information, progress, precise numbers/rules, lists, define, indicators, evaluation, formula, limits.</i>
Domestic	Trust, authority, responsibility, <i>wisdom, French (banks, economy), our (country, banks, economy), place of Paris, partner (of banks).</i>
Inspirational	Idea, spirit, affective relationships, feeling, <i>afraid, worry, concern, unfortunate, sensible, danger, imagine, fragility, scandalous, panic, combat/fight (speculation), kill (the place of Paris).</i>
Fame	Desire to be recognized, <i>pioneer, forefront (“avant-garde”), precursor, honour, we are the first.</i>

⁴⁸ Semantic descriptors used to assign utterances to “common worlds”. Italicized terms represent additions to the original terms provided by Boltanski and Thévenot (1991, 2006).