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Abstract approved:

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Though research on EU law compliance is extensive, the question as to why some policy entrepreneurs are more successful than others, and why some countries comply better than others, remains largely disputed. Using a case study design of France, this thesis focuses on the type of domestic institutions that make EU member-states policy entrepreneurs successful in implementing the Late Payment EU Directive included in the finance component of the Small Business Act. I argue that, despite the fact that its president, Nicolas Sarkozy, was an active policy entrepreneur in crafting the EU Late Payment Directive, France’s semi-presidential system, which has strong checks and balances and therefore multiple veto players in the legislative process, limited the speed at which the President could adopt his own EU proposed policies. My results suggest that the structure of a country’s democratic system has important implication for the capacity of policy entrepreneurs to implement their own proposals.
The role of domestic institutions in making policy entrepreneurs successful: an analysis of the transposition of the EU Late Payment Directive into French national law

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I. Introduction

What types of domestic institutions make policy entrepreneurs successful in implementing the policies they advocate? This thesis focuses on this question from the context of France’s experience in adopting the Late Payments Directive (2011/7/EU) of the European Union’s (EU) Small Business Act (SBA). Realizing the potential of small and medium sized enterprises (SMEs) for its economic growth and innovation capacity agendas, the European Union formally placed SMEs at the core of its business policies in its 2008 Small Business Act (European Commission, 2008). French President, Nicolas Sarkozy, was a strong supporter of the Small Business Act, not only advocating its adoption among all EU member-states, but also drafting portions of it in the image of French SME policies. Despite his advocacy, however, France was a laggard in adopting a major finance directive of the act, 2011/7/EU, designed to protect SMEs from problems associated with late payments. France completed the transposition of the EU Late Payment Directive into national law by March 2014, a year late from the date decreed by the European Commission. The entire transposition process took three years to complete.

In this thesis, I explain why Nicolas Sarkozy was so slow in incorporating an EU policy into French law that he was strongly involved in shaping at the European level. I employ Lijphart’s Patterns of Democracy theoretical framework, focusing on veto players within France’s majoritarian presidential system and its bicameral legislature. I argue that Sarkozy’s capability of punctually adopting this directive was limited because France’s strong system of checks and balances introduced a significant number of veto players through which the EU law had to pass. Using a process-tracing research methodology design, I analyze who the key players were in
the legislative process that stalled the adoption the EU Late Payment Directive (or the Law Warsmann, as it became in France once it was adopted), during the three years of its transposition. While President Sarkozy’s party (Union of a Popular Movement – UMP) controlled the lower house of the French Parliament – the National Assembly, also the most powerful house - France’s transposition was delayed because of the veto power of the Sénat, which was controlled by the rival Socialist party. Though the Sénat’s power is comparatively weak to that of the National Assembly, the process of shuttling laws and directives between the two, enabled the Socialists to significantly delay the adoption of the EU directive.

The next section discusses the motivation behind the Small Business Act. Section III then discusses conundrum France faces. Section IV reviews the European law compliance literature, as well as the framework I use. Section V focuses on the methodology of a process-tracing case study used to assess the different veto players in the French legislative process. At last, Section VI provides concluding remarks about the political constraints that policy entrepreneurs face in implementing policy.
II. Background Context: The Motivation Behind the EU Small Business Act

SMEs\(^1\) are crucial for the health and success of the EU economy. 99% of all European businesses are SMEs, producing more than half of the EU added value (European Union, 2015). They provide two thirds of total private-sector employment and represent 80% of the total job creation, with creation rates much higher than larger enterprises (Kohlmann, 2012).

Despite their economic importance, small and medium businesses frequently face difficulties obtaining financing because of their size. This means that they have lower fixed to total assets ratios, a higher proportion trade debt in total assets, a much higher proportion of current liabilities to total assets and a much greater reliance on short term bank loans to finance their assets. They are heavily reliant on retained profits to fund investment flows, they obtain the majority of additional finance from banks, and they are financially more risky (Cressy and Olofsson, 1997). Consequently, SMEs have a lower creditworthiness and their access to financial market instruments is more limited than for large enterprises (Ayadi et al., 2009). These problems in credit access have intensified since the 2008 global financial crisis, where banks have become more reluctant to extend credit to risky borrowers, including SMEs.

Darvas (2013) argues that banks face difficulties in assessing the creditworthiness of SMEs, especially start-ups. Their reporting requirements are more rigorous due to their young age and short credit history. For example, SMEs are less likely than larger enterprises to enter into contracts that are publicly visible and reported (Avadi et al., 2009). Moreover, Avadi et al. (2009) find that SMEs do not

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\(^1\) The European Commission defines SMEs as companies with fewer than 250 employees, or a turnover equal to or lower than €50 million (European Commission).

\(^2\) This situation, however, has only risen for about 10% of laws introduced since 1958, year of the
have audited financial statements that can be shared with loan providers of outside finance (i.e. third-party providers such as microcredit associations), and some SMEs are reluctant to provide strategic information such as business structure, making them unable to build and convey their credibility as a high quality borrower. Darvas (2013) also points out that another reason for the deterioration of SMEs' access to finance, especially with changing lending practices since the 2008 financial crisis, is the greater demand for collateral by banks, which do not lend based on assessments of expected returns. SMEs are thus held back because of their nature, but also because of external factors they cannot control or amend.

The European Council realized that addressing late payment would be an important step to improving financing for SMEs. In its 2009 proposal for a Directive on combating late payment in commercial transactions, the European Parliament identified several reasons as to why better regulation on late payments was needed. SMEs face serious pressure on their cash flow and a lack of liquidity when invoices are paid late (European Parliament, 2009). This can create complications along the supply chain, since businesses pass on the delays to the next one in line (European Payment Index Report, 2014). Late payments can be responsible for bankruptcies of otherwise viable businesses, with the potential to trigger a series of bankruptcies across the supply chain in the worse case scenario. It also has a negative effect on intra-community commercial transactions. These risks increase in periods of economic downturn, such as brought on by the economic crisis of 2008, when access to finance has been particularly difficult (European Parliament, 2009).

The late payment directive 2011/7/EU is one of three elements of the access to finance component of the SBA. 2011/7/EU replaced Directive 2000/35/EC. It was
designed to strengthen businesses’ rights to timely payments, thus reducing their costs. The directive’s four major provisions were: 1.) public authorities have to pay for the goods and services that they procure within 30 days or, in very exceptional circumstances, within 60 days (Article 4); 2.) enterprises have to pay their invoices within 60 days, unless they expressly agree otherwise and it is not grossly unfair (Article 3); 3.) businesses are automatically entitled to claim interest for late payment, and able to obtain a minimum fixed amount of €40 as a compensation for recovery costs (Article 6), and; 4.) the statutory interest rate for late payment in the member-states should be increased to at least 8 percentage points above the European Central Bank’s reference. In many industries, large companies have all the big contracts, leaving smaller companies little choice but to deal with them (Lobel, 2014). This means that they have the advantage in negotiations, making it easier to abuse their power (Lobel, 2014). For many SMEs, if they want to deal with larger companies, they have to accept their payment terms, which are typically 60 to 90 days (Lobel, 2014). Small businesses rarely terrorize unscrupulous bigger companies (Thuillier, 2015). In France, the average late payment is 12 days, meaning that about €15 billion are potentially missing in SMEs’ treasury (Thuillier, 2015). Even though the directive changes the law for all businesses, SMEs benefit from larger entreprises having to respect stricter delays, making easier for SMEs to in turn pay their own invoices in time. EU member-states had the freedom to decide how they would revise their own laws to comply with Directive 2011/7/EU, but were subject to a strict transposition deadline, where failure to adopt the law would subjugate them to infringement procedures (European Parliament, 2011). The time limit for transposition of the Late Payment EU Directive was March 16th, 2013 (Article 12).
III. France’s compliance with the EU Late Payment Directive: An EU Adoption Puzzle

Compared to other European member-states, France was particularly proactive at the national level in promoting legislation to assist SMEs with credit access and managing late payments. Sarkozy was also instrumental in bringing to life the idea that a more comprehensive Late Payment Directive was needed at European level. On July 11th 2007, French President Nicolas Sarkozy sent a mission letter to Finance Minister Christine Lagarde about full employment and increasing purchasing power (DGCIS, 2009). It required Christine Lagarde to implement economic reforms, which included developing and facilitating SMEs’ access to finance, with the aim to prepare the economy for a French version of the American Small Business Act (Sarkozy, 2007).

Sarkozy asked for the following measures to be implemented: setting aside a percentage of public procurement for SMEs and more specifically for innovative SMEs, improve banking finance, for instance by allowing people to pay the solidarity tax on wealth (Impôt sur la Fortune, ISF) via investing in an SMEs, simplifying administrative regulations, improving legislation on late payments, reforming regulations on bankruptcy, encouraging SMEs to invest in R&D and innovation by using the Research Tax Credit, and finally aligning taxes on SMEs to the European average (Sarkozy, 2007)

Nicolas Sarkozy, however, saw that the Small Business Act could be developed on a grander scale beyond France (Finyear, 2008). At the end of 2007, he personally demanded that additional means be given to SMEs at the European level to help them grow on both internal and external markets. Sarkozy addressed this demand directly to José Manuel Barroso, President of the European Commission (Finyear,
2008). In response to this request, the European Commission presented the Small Business Act on June 25th 2008. It encompassed ten key principles, or policy areas, as well as ninety-two measures that the European Commission and member-states have to implement. The Small Business Act was intended to make EU member-states better attuned to the challenges that SMEs face by putting these firms at the core of the EU’s policies (Lopriore, 2009). Its function is to coordinate action of member-states, to suggest good practices, to monitor member-states’ performances, to ensure EU policies offer better regulation, and to provide support to SMEs (Lopriore, 2009).

Through a set of ten policy areas, the Small Business Act aimed at creating a general political framework for SMEs at European level (European Commission, 2008). One of the ten policy areas focuses on access to finance, urging member-states to “facilitate SMEs’ access to finance, in particular to risk capital, micro-credit and mezzanine finance and develop a legal and business environment supportive to timely payment in commercial transactions” (European Commission, 2008). Competition Ministers then further discussed these measures in July and September, finally adopting the Small Business Act in the conclusions of the Competitiveness Council of December 1st and 2nd 2008 (European Commission, 2008).

France was very active on all fronts in lobbying the European Commission to negotiate a far-reaching Act. There were two reasons for this show of support (Maillet, 2008, Visot, 2008). First, the fact that France was the member-state that made the proposition of a Small Business Act to the José Manuel Barroso meant the government needed to demonstrate its willingness to see it through (Maillet, 2008). Secondly, France held the Presidency of the Council of the European Union from July
to December 2008 (Visot, 2008). Sarkozy intended to push an ambitious agenda, with the goal of having key French SME measures adopted into EU law.

France perceived the regulation and improvement of legislation regarding late payments as a priority of the Small Business Act access-to-finance component. Former Secretary of State Lionel Stoléru, in a report written to the French President in December 2007, perceived that “factoring” was the solution to late payments (Rapport Stoléru, 2007). Factoring is a financial transaction in which a business sells its invoices to a third party at a discount, usually to meet its immediate cash needs (Investopedia). The French 2006 Code of Public Markets allows maximum 45 days for invoices to be paid, with automatic fees beyond that period. However, SMEs that demand payment from a late-paying customer are more likely to be shunned from future transactions. Stoléru thus advised to reduce the payment window to 30 days, increase the rate of default interest from the 2.95% rate that is to be paid if a customer defaults, set a €1000 late payment penalty on the first day to be paid by the customer, and increase from 5 to 10% the advance for procurement. During the discussions in the EU’s Competitiveness Council, Hervé Novelli, France’s Minister for Business, Trade, SMEs, Tourism and Services and, at the time, the president of the EU’s Competitiveness Council, advocated for late payment legislation to be harmonized at European level, with harsher late payment penalties. This would be done by revising and making up for the failures of the Late Payment Directive 200/35/EC of June 29th 2000 (CCI Bourgogne, 2008).

All in all, France pushed hard for progressive legislation on late payments at EU level. Sarkozy and the government were ahead of the European Union on this matter, having passed the Loi de Modernisation de l’Economie (LME) regulating
payment delays in August 2008. It held many of the provisions that the future European Directive 2011/7/EU would have. However, France failed to quickly adopt the EU Late Payment Directive that Sarkozy had such an important role in shaping. France did not fully transpose the EU Late Payment Directive into law until March 2014, a full year after the deadline (the transposition process took three years to complete). The clause in the LME law that allowed for intra-branch agreements caused major problems in 2011 when it was time for France to transpose the Directive into national law. This raises an important research question: why did it take so long for France to modify its national levels in line with an EU Directive that it was such an active policy entrepreneur for? In order to answer this question, I first turn to the general compliance literature that explains why some EU member-states better, and more quickly, comply with EU law than others.
IV. The EU Compliance Literature and Theoretical Framework

1. EU Compliance Literature

In the compliance literature, Mastenbroek (2005) outlines a number of legal factors that can explain why governments are not able to comply with EU policy laws and directives, or at least why they are not able to do so immediately. One factor that can help explain the paradox of non-compliance among member-states is their constitutional position regarding the implementation of (supranational) laws (Krislov et al., 1986). To facilitate their explanation, they compare the systems in the U.K., Italy, and France. In Italy, the Parliament itself must enact every implementing measure. Italy tends to have very short legislatures. Added to this, the increase in the number of directives and a lack of interest toward Community output as a result of the pre-adoptive elements create long-term delays. In the U.K., the initial constitutional arrangement on British accession enables the cabinet (i.e. the executive, which due to the nature of a parliamentary system controls the “confidence” of parliament) to adopt many implementing measures by statutory instruments rather quickly and en masse (Krislov et al., 1986). The British mechanism thus avoids delays associated with Italy’s full-fledged Parliamentary adoption, where implementation problems, that otherwise could have been solved during the decision-making process, are scrutinized. France’s semi-presidential system, where legal implementation powers are divided between parliament and a separate executive (the president) has a mixed allocation of legislative competences, which makes it stand somewhere in between the Italian and British systems (Krislov et al., 1986).

Ciavarini Azzi (2000), on the contrary, argues that the role of the national parliament in the implementation of directives is not automatically a cause of delays.
He explains that despite the delays and unforeseen contingencies inherent in the parliamentary process, they do participate fully in the implementation of legislation when they are called upon to act (Ciavarini Azzi, 2000). A study by Siedentopf and Ziller (1988) further showed that parliamentary procedures are not the main cause of delays in the implementation of European laws, but rather they are due to the failure of executives to present bills to amend domestic legislation in time.

Collins and Earnshaw (1992) see the range and complexity of existing national laws as a second reason for the difficulty member-states have in adapting to the requirements of Community law. Some directives require member-states to not only adopt numerous items of legislation, but also to “cut across conventional boundaries of administrative and legal responsibilities” (Macrory, 1992). This means that some governments may need to have the same national legislation be adopted in different sectoral and jurisdictional areas, thus having to deal with and adapting to the specificities of each area (Collins and Earnshaw, 1992).

Collins and Earnshaw (1992) remark that member-states’ legislative culture may delay compliance with Community law. They point out that some member-states have a tradition of lengthy consultations aimed at building consensus. Other member-states are concerned with respecting constitutional norms, which requires time-consuming review of legislative proposals, or they put more emphasis on legal certainty encouraging highly detailed legislation. The legal culture that prevails in each member-state may be a good indicator of the potential lag in implementation.

A second category in the compliance literature focuses on the role of domestic veto players. Dimitrova and Steunenberg (2000) model transposition as a decision by the government taking into account of the preferences of at least two domestic
political groups; in France the Socialists and the UMP. Political parties, parliamentary committees, interest groups, and regional and local governments also have interests that may be separate from the implementation preferences of the (federal-level) executive (Dimitrova and Steunenberg, 2000). In order to transpose and implement European legislation, these groups need to cooperate, as conflict between them can slow or stop the transposition process. The possibility of veto players, therefore, can strongly influence the likelihood of consensus: if one participant disagrees, it can block the transposition or refuse to implement the policy (Tsebelis, 1995; Dimitrova and Steunenberg, 2000).

Steunenberg (2006) also links the national constitutional characteristics of a country to its veto players. He argues that knowing whom the relevant domestic players are helps understand how and why implementation occurs. The answer, he says, depends on the national legal system and the extent to which this system gives policy-making power to different political and administrative actors, either through constitutional provisions, or through existing legislative delegations. Different decision-making procedures mean that different players can be involved in the transposition processes, whether it be a statutory law or act, a general authorization law, or a list of directives (Steunenberg, 2006). Some need to be approved by parliament, while others give non-parliamentary actors, such as administrative actors within national ministries, the authority to adopt implementing measures in some policy areas (Steunenberg, 2006).

2. Patterns of Democracy framework

Different states have different democratic decision making structures, which influence not only the number of veto players in the decision making process, but also
their power to block legislation and transposition. These structures can help us understand why some governments are quicker to transpose EU laws than others. The structure of decision making, and the number of veto points within it, is important because it determines the speed at which a European directive or law will be transposed.

In *Patterns of Democracy*, Arend Lijphart (1999) develops what he calls a two-dimensional map of democracy. He finds that democracies can take two forms: majoritarian systems, where the executive branch (cabinet) is dominated by one-party majorities and/or where its power is centralized due to minimal checks and balances between different branches of government (the UK’s parliamentary system is the archetype), and consensus systems, where the cabinet is composed of multiple parties and/or where its power is shared, and decision-making competencies separated, between different government branches (the latter typical of presidential systems). In a majoritarian democracy, a simple majority elects the legislature/Parliament and (in the case of presidential systems) the executive, and policy making is more decisive due to the prominence of one-party executives. In a consensus democracy, multi-party systems are the norm, which requires far greater compromise in order for laws to be passed and adopted (Lijphart, 1999).

Lijphart (1999) further highlights that the separation of power between the executive and legislative has its importance for veto players. In (semi-)presidential systems, such as France’s, the constitution clearly defines separate roles for each branch, and establishes them as independent units. In a parliamentary system, executive and legislative powers are fused (Lijphart, 1999). Presidential systems have stronger checks and balance whereby the executive must obtain agreement from the
legislative branch. The legislative branch, in turn, has the power to push their own preferences, or veto other initiatives from the president. Such a separation of powers thus influences how certain parties make their decisions to pass their policy preferences, or in this case, adopt EU policies.

I use Lijphart’s theoretical framework, and focus specifically on his theoretical predictions of how presidential systems with clear checks and balances, and the special interests which influence decision making in the executive and legislative branch, perform in regards to EU legislation adoption. I analyze how the power of the executive (the French presidency) depends on the number of veto players in France’s legislative system, which are in turn influenced by the lobby power of special interests, and how much influence the executive has vis-à-vis the legislature determines its capability to be a policy entrepreneur. Lijphart’s theoretical framework features two main components that help understand how many veto points an executive is exposed to in crafting legislation.

The first component looks at the relationship between the executive and legislative branches. A parliamentary system is one of executive dominance, while a presidential model is characterized by a more balanced executive-legislative relationship (Lijphart, 1999). The systems have two crucial differences (Lijphart, 1999). First, in a presidential system, the head of the government is elected for a constitutionally prescribed term and stays in power until its end – five years in France. In a parliamentary system, the head of the government is dependent on the legislature’s continued confidence. Secondly, presidents are popularly elected, either directly or via a popularly elected presidential electoral college, and consequently can belong to a different party than that which controls the legislative branch. In contrast,
prime ministers in a parliamentary system dominate both the executive and legislative branch (Lijphart, 1999). His analysis shows that in France, the president is constitutionally fairly weak, but has considerable partisan powers. Indeed, the president’s power depends on having majority or near-majority support in the National Assembly, which is most likely when his own political party dominates the National Assembly (Lijphart, 1999). If it is not (this is known as cohabitation), this creates veto points for the president. The opposition parties in the National Assembly and in the Senate are likely to prevent the executive from passing its policy agenda, pushing their own instead. While the French president also has an agenda-setting role (he can introduce a bill to either house), the ultimate fate of his agenda lies within a separate branch of government, which he may not directly control (Tsebelis and Rasch, 1995).

The second component analyzes the distribution of power in the legislature. In the majoritarian model, the concentration of power is in a single chamber, usually the lower house. In a consensus model, on the other hand, the power is divided equally between two differently constituted houses. Lijphart (1999) determines that three variables are at play to classify legislatures. First, he makes a distinction between bicameralism and unicameralism. Some of the features of bicameralism are that the second chambers tend to be smaller than the first, legislative terms of office tend to be longer in the second chamber, and they have staggered elections; one third of the French Senate is renewed every three years, as opposed to the National Assembly that is renewed entirely every five years (Lijphart, 1999). The second variable assesses whether the chambers are strong or weak, through two features:
- their formal constitutional powers – second chambers may be subordinate to first chambers, and the first (lower) chamber may have the capacity to override their decisions on proposed legislation
- their symmetry or asymmetry - that is if the two chambers have equal or only moderately unequal constitutional powers and democratic legitimacy, or are they highly unequal in these respects

The third variable looks at the chambers’ congruence or incongruence – whether the two chambers represent the same population or differ in their composition. The French Senate is considered incongruent; it is elected by a electoral college in which the small communes have more than half the votes, while the National Assembly is elected by direct universal suffrage with a two-round system by constituency (Lijphart, 1999).

Lijphart uses these distinctions to formulate a classification of the division of power in the legislation: strong (symmetrical and incongruent), medium-strength (symmetry or incongruence is missing), weak (asymmetrical and congruent), and unicameralism. His analysis shows that France is classified as medium-strength bicameralism, but investigation shows that it has a much stronger bicameralism than expected in spite of their unitary and centralized systems (Lijphart, 1999). The National Assembly and the Senate do not represent the same population. While the National Assembly represents a majority of the people, the Senate mostly speaks for local and regional governments (the goal is that it has an array of interests represented in the Parliament). Consequently, France’s medium-strength bicameralism, which encompasses different arrays of interest, increases the number of veto points in its legislature. As I will argue below, the fact that different parties controlled both of
these chambers during the debate over the transposition of the Late Payment Directive (the Socialists held the Senate and UMP held the National Assembly), created significant roadblocks for its progression.

3. The structure of France’s Semi-Presidential system: Locating veto players in policy decision making

The Constitution of the Fifth Republic defines the President as the Head of State (Assemblée Nationale, 2014). He is directly elected using a two-ballot run-off system (Huber, 1996). The Constitution devotes extensive space to outlining the powers of the president (Articles 5-19), but there are four major powers that he has over policymaking:

- He can dissolve the National Assembly (Article 12)
- He names the prime minister (Article 8)
- He can invoke emergency powers that give him wide authority to take measures necessary to resolve a crisis (Article 16)
- He can call for a referendum on a proposition of the government or of both houses of parliament (Article 11) (Huber, 1996).

Although the President names the prime minister, it permits only little influence over policy outcomes (Huber, 1996). Indeed, the prime minister heads the government and is responsible for guiding the law-making process (including the transposition of EU laws) through the Parliament (Conley, 2007). The President thus cannot name a prime minister who does not command the support of a majority in parliament (Huber, 1996). He would have little influence over policy outcomes if the majority in the National Assembly did not support him (Huber, 1996). The survival of the French government therefore depends on its ability to secure a working majority.
in the National Assembly (King, 1976). In the case where the President and the prime minister are from different parties, the President abandons his power to the prime minister, losing his ability to pass his legislative agenda. Bringing this into the context of the EU Late Payment Directive, this implies that timely transposition and compliance with EU law ultimately depends on whether the interests of the president and prime minister are aligned.

Once a bill is introduced, it is forwarded by the originating house to the second house in a process called a “navette”, or shuttle (Brouard, 2011). The number of rounds can be indefinite, and the government decides when to stop the shuttle and whether the lower house has the final word (Tsebelis and Rasch, 1995). During the shuttle, if the second house amends the bill, it returns to the first house for repassage, where discussion is limited to those articles of legislation remaining in dispute (Luchaire and Conac, 1987). If the lower and upper house are controlled by rival political parties, the length of delay can be significant – I will argue below that the shuttle between the UMP dominated National Assembly and Socialist dominated Sénat was the main source of delay for the Late Payment Law’s transposition. The president can intervene in the shuttle only after each house has reviewed the legislation twice (Tsebelis and Money, 1995). It can intervene after only one reading if it declares a bill to be a matter of urgency (Sénat, 2015). In this case, a joint parliamentary commission is formed, composed of equal representation by 7 members of the National Assembly and 7 senators. The commission can be formed at the initiative of the prime minister, or if the Presidents of both assemblies demand it (Sénat, 2015). This scenario is what happened with the Law Warsmann, where the prime minister declared the bill to be a matter of urgency, thus automatically calling
for only one reading and a joint parliamentary commission. It takes place when both assemblies cannot reach an agreement (Sénat, 2015). Its role is to attempt to frame the EU Directive in a manner that is acceptable to both houses; if compromise is reached, the transposition is resubmitted to both houses for approval, if compromise cannot be negotiated or if they both reject the commission’s version, the government can ask the National Assembly to vote in last resort (Brouard, 2011). The National Assembly thus has the power to have the definitive vote on the transposition of an EU Directive (Assemblée Nationale, 2014).

The National Assembly and the Senate are two of the major veto players that decrease the president’s power to see to the adoption of any legislation. Due to how the legislative process is structured, opposition parties in both houses use their capability to put a damper on the majority’s or the executive’s legislative initiatives. As I argue below, the lengthy processes of revisions in the shuttle allowed the Socialists, who controlled the Sénat, to substantially delay the transposition of EU law into French law.

A third veto party plays a major role in hinder the president’s goals: sectoral lobbies. In France, they usually take the form of federations representing specific sectors of the economy, such as the construction industry, the bock industry, etc. Even though they are not represented in the National Assembly and the Senate, they still have great influence over the policies adopted, given their economic power. They lobby both the National Assembly and the Senate equally, to see their policy goals taken into account when bills are amended (or EU Directives are transposed) during the shuttle. Deputies and senators both craft bills and file amendments that reflect

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2 This situation, however, has only risen for about 10% of laws introduced since 1958, year of the creation of the Fifth Republic (Sénat, Processus législatif).
some of these positions. Sectoral lobbies thus use the revision process to their advantage, adding a layer to the number of veto points at play. Hence, while Sarkozy proved to an effective policy entrepreneur at European level, the number of checks in France’s democratic system slowed down his fervor, reducing his capacity to be a policy entrepreneur at home.
V. **Methodology**

1. **Process-tracing within a case study**

I employ process tracing methodology of a case study (France’s experience with the Late Payment Directive) to document how veto points slowed France’s adoption of an EU Directive that was heavily crafted by Sarkozy. Case studies are the study of a single instance of a decision, policy, institution, event, process, etc., in which the case is differentiated from other cases by having a single value in terms of either the outcome or the explanation (Hancké, 2009). Through the process-tracing of a case study, researchers examine a number of histories, archival documents, interview transcripts, and other similar sources connected to their specific case in order to determine whether a proposed theoretical hypothesis is event in the sequence of a case (George and Bennett, 2004). This methodology is useful in that it helps evaluate the intermediate steps that constitute the link between causal elements (Hancké, 2009). This involves going down the causal chain, reconstructing the steps in the chain, and then demonstrating how, at particular critical junctures, the decisions or choices that were made confirmed or disconfirmed the basic mechanisms that the argument is exploring (Hancké, 2009).

This particular case study uses the process-tracing case design to examine the French legislative process to explicitly qualify the mechanisms by which veto points caused the slow adoption of the Late Payment EU Directive by the executive. It tests Lijphart’s theoretical predictions as to how presidential systems with clear checks and balances perform in regards to legislation adoption. It examines material that document the various steps and stages of France’s transposition of the EU Late Payment Directive: amendments filed by different political parties, minutes of both
National Assembly and Senate meetings discussing these amendments and the law in general, and reports on the votes for the adoption of the different versions of the law during the shuttle. This allowed identifying which veto players exactly slowed down the transposition process, and to better understand of how Sarkozy’s power as a policy entrepreneur was diminished.

1. Veto points and the constraints on policy entrepreneurs

The Late Payment EU Directive was transposed into French law through three main laws, and one decree. It took three years to completely transpose the directive into French law, making France a year late as the transposition deadline was March 16th, 2013. The laws and decree each modify the appropriate articles of the Commercial Code. The government adopted the Loi de Modernisation de l’Economie (LME) in August 2008. Article 21 sets out the terms of payments: 45 calendar days end of the month, or 60 calendar days net following the date the invoice is issued where the parties have agreed to a contractual period of payment (Code du Commerce, L.441-6 I § 9); or where the parties have not agreed to a specific period of payment in the contract, such payment shall be made at the latest 30 calendar days following the date on which the goods were received or the services were performed (Code du Commerce, L.441-6 I § 8). It also doubled the minimum applicable interest rate, from 1.5 to 3 times the legal interest rate (2.12% in 2012, 0.04% in 2013 and 2014) (Gloden, 2014).

The Warsmann Law (Loi n°2012-387), adopted in March 2012, further transposed the conditions for compensation for recovery costs (Article 6 of the Directive). These costs are charged by the creditor, without the necessity of a reminder, in addition to any interest rates charged on late payments. The amount must
be stated in the creditor’s general terms and conditions and on invoices. The law provides that a decree would later set the amount for recovery costs. This was done in Décret n°2012-115 from October 2012, whereby the creditor would owe a minimum fixed sum of 40 euros. Finally, the law clarified the interest rates charged on late payments, adding that where parties have not provided rules to apply the minimum French legal interest rate, they would use the ECB reference rate increased by 10 percentage points (Gloden, 2014).

The Hamon Law (Loi n°2014-344), adopted in March 2014, transposed the remaining measures of the European Directive regarding sanctions. It defined offenses that could be punished by an administrative fine of up to €75,000 for individuals, and €375,000 for legal entities. The maximum fine is doubled for offenses repeated within two years as of the day on which the first decision has become final. Offenses are: failure to respect the maximum period of payment mentioned in article L.441 I § 8, § 9, § 11, or L.443-1 of the French commercial code, the failure to respect the computation of the payment period agreed between the parties (L.441-6 I § 9), any provision or practices which have the effect to unreasonably delay periods of payment (L.441-6), the absence of a provision in a seller’s general terms and conditions of the interest rates charged or conditions in which the debt is due that do not confirm with article L.441-6 § 12, and the absence of indication of the fixed sum for recovery costs.

Sarkozy did not wish a sudden application of the new payment deadlines. To give to sectors that would suffer the most from this time to adapt (distribution, books, wood, construction, toys, etc.), the LME included provisions whereby sectors could negotiate decrees to conclude intra-branch agreements to decide to reduce the period
of payment, or if the period of payment starts either as of the date of receipt of the goods, or the date of performance of the services (L.441-6 I §10). It also allowed the professionals of a sector to choose which deadline they would abide to: 45 days end of the month, or 60 days net following the date the invoice is issued. This was a response for sectors that have a long renewal of stock, which prevents them from paying their suppliers quickly, or sectors that are bound by seasonality (Grigliatti and Leloup, 2008). The LME provided that intra-branch agreements would not go beyond January 1st 2012, granting plenty of time for sectors to switch to the new payment dates (L. 441-6 III § 3).

Sarkozy did not intend for these two provisions to continue in future laws regulating late payments. December 31st 2011 should have marked the end of the discussion on these intra-branch agreements, but it was far from over as it was the main contention in the Warsmann Laws. Several veto players were involved in the conversation, with varying interests.

First, the parties that controlled the National Assembly and the Senate will be outlined, as they are the chambers where the laws were voted. From 2007 to 2012, the UMP and the right had a majority, with 55,5% of the seats. During the 2012 legislative elections, the parties of the presidential majority (Socialists) together provided François Hollande with an absolute parliamentary majority, with 55,97% of seats (Assemblée Nationale).

**Figure 1. National Assembly composition in 2007 (left) and 2012 (right)**

Before the senatorial elections in September 2008, the UMP and parties of the right had a majority in the Senate. This was still true after the elections, although the UMP lost some seats (France-Politique, 2008). A big change came in the 2011 elections. For the first time in the 5th Republic, the Senate changed majority. The Socialists and associated left parties obtained the majority with 177 seats out of 338 (France-Politique, 2011). The UMP and other right parties (Front National and Union des démocrates indépendants) regained it in the following election in September 2014.

Figure 2: Senate composition in 2004 (left) and 2008 (right)
The Socialists were firmly against the Law Warsmann, whereas the UMP/right-bloc were in its favor. In particular, the Socialists declared Article 90’s prolonging intra-branch agreements unacceptable, as it would increase the financial burden for SMEs (Groupe Socialiste du Sénat, 2012). This provision of the Law Warsman on late payment is the only one the Socialists did not approve, while the right pushed to keep it included. The Socialists maintained their position on intra-branch agreements all throughout the process surrounding the adoption of the Law Warsmann, expressing their dissatisfaction and disapproval of such a provision.

The draft bill (Loi n°2012-387) of deputy Warsmann (UMP) was filed at the National Assembly July 28th 2011, and discussions of amendments started in September 2011 in the National Assembly. Before amendments were voted during the commissions, several industrial federations lobbied their deputies and senators from both parties regarding the intra-branch agreements. The Fédération Française du Bâtiment (FFB) – the construction industry federation – was the strongest and most vocal player advocating for the removal of the possibility to strike intra-branch agreements (Beideler, 2011). Its president, Didier Ridoret, argued that the agreement
for the construction industry hurt it more than any other. He stated that the delay
given by the exemption is less beneficial to the client than the legal delay (Beideler, 2011). Some suppliers, both traders and factories, were inflexible when it came to
respecting the exemption, forcing some SMEs to stop paying according to the
agreements before their official end date of January 1st 2012 (Charles, 2011). On the
other hand, the Fédération des Négociants des Bois et Matériaux de construction
(FNBM) – the French Construction Materials Industry – which highly benefits from
intra-branch agreement, involved the General Direction for Competition (DGCCRF)
and the Competitive Practices Commission (CEPC) to decide which practice to use
(Beideler, 2011). They voted in favor of the FNBM, confirming the pre-eminence of
the intra-branch agreement. To the FNBM president, Géraud Spire, this decision
ended the debate and was a good sign that it would prevail in the discussions that
were to take place on the matter in the Parliament (Charles, 2011).

Didier Ridoret did not simply accept this position. He went further and wrote
to the State Secretary for SMEs Frédéric Lefèbvre (UMP) to formally contest the
decision of the DGCCRF and CEPC. He stated that late payments were delayed for
construction suppliers, but increased for clients, thus putting pressure on SMEs’ cash
flows (Beideler, 2011). Frédéric Lefèbvre also ruled in favor of the FNBM (Charles,
2011). Still unhappy with this decision, Ridoret lobbied senator Martial Bourquin
(PS), rapporteur at the Senate Economic Affairs Commission and from the opposition,
to see the agreement voted off the new law (Commission des lois, 2011).

In addition to Didier Ridoret and the FFB, other players advocated
suppressing the possibility to strike exemption agreements. Senator Martin Bourquin
(PS) met with the Médiateur du Crédit (Credit Mediator) that held similar views. The
Observatoire des délais de paiement (Observatory for late payments) also advised the government, and more specifically Frédéric Lefèebvre, to stop the renewal of the exemption agreements when they come to their end date in January 2012, without providing for additional extensions (Lalanne, 2011). Outside of the Parliament, the FFB, the Observatory for late payments, and the Credit Mediator were the veto players against intra-branch agreements for delay exemptions. The FNBM, the DGCCRF, the CEPC, and the State Secretary for SMEs were clearly in favor of such agreements. They all made these positions known to the parties that would be voting in their favor.

The UMP was against revising the LME, opting to keep the intra-branch exemptions. The Socialists, on the contrary, wanted to remove this possibility in the Law Warsmann. During the first reading of the draft bill at the National Assembly, deputy Catherine Vautrin (UMP) proposed amendment CL107 that would renew the possibility to sign intra-branch exemptions after the initial expiration date of December 31st 2011 (Vautrin, 2011). She argued that sectors subjected to extreme seasonality had not had sufficient time to apply the LME. She further explained that this fell under the rules set out in Article 7 of the European Directive to deviate from the compulsory period of payment. The amendment was adopted without modification on this section when the Assembly voted the draft bill in October 2011. The left parties did not put forward any amendments for this first reading. The UMP and right parties also had the advantage of holding the majority in the Assembly, which would have made it easy for them to squash any objection from the left at this point.
After the vote at the National Assembly, the text went over to the Senate. Senators, and specifically the Socialists and left parties through their majority, decided to use the procedure whereby they moved the inadmissibility of the text send over by the National Assembly. This motion is equivalent to rejecting the entire text, as any deliberations over its content would be useless (Sénat, 2013). The commission of laws asked for its opinion concluded in their report that after analysis, several dispositions of the text do not constitute measures of simplification of the law, but are instead full reforms that would require a parliamentary debate in their own right (Commission des lois, 2012). This argument pertained to the entirety of the text.

During the commission’s debate over moving the inadmissibility, senator Martial Bourquin (PS) pointed out article 90, among others, as the reason for his agreement with the Senate’s procedure. He argued that the article regulates commercial transactions based on seasonality, especially for the construction industry. He mentioned reports he received from the Credit Mediator, and industrial federations, showing their hostility to this measure. He stated that this would be an unfair measure, notably for SMEs, as anyone could start invoking seasonality to delay payments (Commission des lois, 2011). The government’s use of the “accelerated procedure” was further said to exacerbate the difficulties associated with the examination of the text. Using the inadmissibility procedure was the Senate’s way to show its unhappiness with this law that it deemed too heterogeneous and complicated (Commission des lois, 2011).

Because the President required the Parliament to use the “accelerated procedure”, a joint parliamentary commission was formed immediately after the first reading, instead of waiting for two rounds of reading in the normal procedure. They
were not able to find an agreement. Its president, Jean-Luc Warsmann (UMP) reported that the commission was in situation where the National Assembly and the Senate held opposite views, in light of the recent refusal of the Senate to debate the law (Rapport n°266, 2012). The commission found it impossible to elaborate a text in common.

In the event that the joint parliamentary commission does find common ground and builds a text, it goes to both the National Assembly and the Senate to be voted, but does not go through a second reading and no amendments are added. For the Warsmann Law, the failure of the joint parliamentary commission meant that the text had to be brought up for a second reading in both chambers. In this second round, two amendments were filed and adopted in favor of sectoral exemptions. The government first filed amendment n°87, which provides the construction industry with the possibility to suspend the fulfillment of a contract if they have not been paid within 15 days after which payment was due. This is to help SMEs in the construction industry that face longer payment delays from their clients, and to counteract the decrease in delays from suppliers (Amendement Gouvernement, 2012). Although it had the construction industry in mind, this amendment did not in fact delete the exemption possibility, as the FFB director, Didier Ridoret, firmly advocated for to State Secretary Frédéric Lefèvre. The pressure that was put on the government did not work as well hope. Secondly, amendment CL94 specified the maximum duration of sectoral exemption, changing it from “a limited duration” to three years (Amendement Gouvernement, 2012). The government here again deviates form its first intentions to have sectoral exemptions as a temporary measure, further moving away from the spirit of the law.
Unlike in the first reading, the Socialists and left parties filed two amendments that were against sectoral exemptions. Jean-Michel Clément (SRC) and members of SRCD GROUP wrote both. The goal of amendment n°45 was to delete Catherine Vautrin’s amendment CL107 voted in the first reading, that renewed sectoral agreements. It was promptly rejected. The second amendment, CL92, was more minimal in what it aimed to change. It concentrated on the seasonality criteria rather than on eliminating the whole paragraph on sectoral agreements. It shared the same fate as the other amendment and was rejected.

After the National Assembly voted, the text went back to the Senate for a second reading. Its position had however not changed. The same reasons for moving the inadmissibility in the first place were given in this round as well. The commission of laws argued once again that the use of the accelerated procedure did not give enough time to the Parliament to fully examine each disposition, going so far as to call the parliamentary discussion “artificial” (Commission des lois, 2012). Given the Senate’s position, the government asked the National Assembly give a definitive ruling on the text as per the last paragraph of Article 45 of the Constitution. This article states that the Assembly cannot examine any more amendments, and must rule on the same text as the one adopted during the second hearing (Blanc, 2012). The Assembly thus voted in favor of the text on February 29th 2012, effectively paving the way for the law to be promulgated by the President in March 2012.

It is clearly apparent that the UMP and right parties used their majority in the National Assembly to their advantage to push their amendments in favor of sectoral agreements and to have them adopted. It also made the most of the Senate’s motion to move the inadmissibility. By refusing to analyze the text voted by the National
Assembly, the Senate gave away their power to put forth changes, granting the Assembly more chances to pass amendments. This would not have been the case if the Senate had found itself adopting the text in the first reading and then in the joint parliamentary commission that would have followed.

On the other hand, the Socialists and left parties decided to move the inadmissibility as their means to show their objection to the draft bill. They could have used their majority in the Senate to pass amendments that would have been in their favor, and had an impact on the bill. Instead, because of the government's call to declare the bill a matter of urgency, they went with the option they thought would best reflect their disapproval of a draft bill they saw as unfair. They, however, managed to slow down the process by forcing a second reading round on the Assembly. This roughly added a month and a half to the process, when the government wanted this law to be passed rapidly.
VI. Conclusion

The President and the government’s ability to conduct policy depend on how the policymaking process is structured. In the case of the transposition of the Late Payment Directive 2011/7/EU, its capability to do so on time relied on the willingness of the Senate. Although the President and the government showed their executive dominance over the Parliament by declaring the bill a matter of urgency, the Senate acted as a veto power, delaying the lawmaking process. The fact that the President was relying on having the majority in the National Assembly did not help pass the law faster. Since the beginning of the Fifth Republic in 1958, the government has had to go through two readings less than 10% of the time when declaring a bill a matter of urgency (Sénat, 2015). I believe that had the President had the majority in the Senate as well as with the National Assembly, he would have been able to pass legislation somewhat faster, and certainly without having to resort to calling on the National Assembly to have the last vote. However, in a scenario where the President had the majority in both houses, sectoral lobbyists against intra-branch agreements could still have caused some delays, by pushing their respective representatives to file amendments in their favor. Both houses would still have looked at these amendments, increasing the time for the revision process. The power of sectoral lobbyists lies in their ability to compel both deputies and senators to file as many amendments as possible supporting their policy goals to lengthen the duration of revision in the shuttle. The lack of cooperation from the Senate obstructed the President’s capacity to act as a policy entrepreneur.

The findings of this case study also speak to institutional theory and the political constraints that policy entrepreneurs face when implementing policy.
Institutional theorists argue that different interest groups affect the policy environment and how they are implemented. This thesis shows that the structure of the government’s veto players is potentially a factor influencing the success of policy entrepreneurs. The numerous veto players that took part in the French legislative process likely contributed to Sarkozy’s failure to implement an ambitious law. Indeed, were it not for the Sénat with a leftist majority and sectoral lobbyists, Sarkozy may have been a successful policy entrepreneur. Instead, they derailed his initiatives and derailed the adoption of the Directive.
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