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Anti-Money Laundering: the conditions for global governance and harmonisation

Inês Sofia de Oliveira
ABSTRACT

This thesis advances global governance literature by focusing on the conditions under which procedural harmonisation occurs and how it is characterised. It suggests that the existence of a network of intergovernmental organisations (IGOs) complements great powers’ action and acts as a force for harmonisation in the making of international anti-money laundering (AML) standards.

Procedural harmonisation is identified firstly, through a discussion on great power coalitions and how their interests set international agendas and impose compliance. Secondly, it is also recognised as an outcome of the IGOs’ network action through shared preferences, resource exchanges and stable relationships. Ultimately, the analysis determines that great powers are a necessary but not sufficient condition for procedural harmonisation, which is moreover favoured when legitimacy, expertise, and the need to achieve compliance are present.

In sum, the thesis discusses the impact of international actors’ interactions in the making of international AML standards from 1989 to 2014, particularly the development of FATF Recommendations on ‘Customer Due Diligence’. The analysis identifies that the United States and the European Union, as great powers and members to the G-7, are the most influential actors. However, it adds that the IGOs network structure created between the Financial Action Task Force (FATF), the International Monetary Fund, the World Bank, the United Nations, and the Committee of Experts on the Evaluation of Anti-Money Laundering Measures and the Financing of Terrorism is also a necessary actor to the achievement of procedural harmonisation.

Data analysis is carried out through process-tracing, which triangulates elite interviews and non-participant observation with primary and secondary documents of legal, policy and expert nature. This thesis concludes that: a) procedural harmonisation is a product of international cooperation; b) IGOs gain influence in standard-making through network structures; and, c) procedural harmonisation may be an example to future global governance strategies if complemented with levels of legitimacy, expertise and the need to achieve compliance.
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Three extraordinary women! My Mother, Laura and Aia.

Kenneth Page, for what appears to be a million years of unconditional patience, support, and oddly speculative (yet resilient) positive thinking.

My Grandmother, the strongest and wisest person I know.
DECLARATION

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Signature:
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<th>Description</th>
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<tr>
<td><strong>AML</strong></td>
<td>Anti-Money Laundering</td>
</tr>
<tr>
<td><strong>AFSJ</strong></td>
<td>Area of Freedom Security and Justice</td>
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<tr>
<td><strong>CFT</strong></td>
<td>Combating the Financing of Terrorism</td>
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<td><strong>CoE</strong></td>
<td>Council of Europe</td>
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<tr>
<td><strong>CDD</strong></td>
<td>Customer Due Diligence</td>
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<tr>
<td><strong>CFT</strong></td>
<td>Combating the Financing of Terrorism</td>
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<tr>
<td><strong>DNFBPs</strong></td>
<td>Designated Non-Financial Business or Professions</td>
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<td><strong>EU</strong></td>
<td>European Union</td>
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<td><strong>EP</strong></td>
<td>European Parliament</td>
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<td><strong>EC</strong></td>
<td>European Community</td>
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<td><strong>FATF</strong></td>
<td>Financial Action Task Force</td>
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<td><strong>FSAPs</strong></td>
<td>Financial Sector Assessment Program</td>
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<td><strong>FSRBs</strong></td>
<td>FATF-style regional bodies</td>
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<td><strong>GPML</strong></td>
<td>Global Programme against Money Laundering</td>
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<td><strong>JHA</strong></td>
<td>Justice and Home Affairs</td>
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<tr>
<td><strong>KYC</strong></td>
<td>Know Your Customer</td>
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<td><strong>IAIS</strong></td>
<td>International Association of Insurance Supervisors</td>
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<td><strong>ICRG</strong></td>
<td>International Co-operation Review Group</td>
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<td><strong>IFIs</strong></td>
<td>International Financial Institutions</td>
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<td><strong>IGOs</strong></td>
<td>Intergovernmental Organisations</td>
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<td><strong>IMF</strong></td>
<td>International Monetary Fund</td>
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<td><strong>IMoLIN</strong></td>
<td>International Money Laundering Information Network</td>
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<tr>
<td><strong>MEPs</strong></td>
<td>Members of the European Parliament</td>
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<td><strong>MER</strong></td>
<td>Mutual Evaluation Reports</td>
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<tr>
<td><strong>MONEYVAL</strong></td>
<td>Council of Europe Committee of Experts on the Evaluation of Anti-Money Laundering</td>
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<tr>
<td><strong>NCCT</strong></td>
<td>Non-Co-operative Countries and Territories Initiative</td>
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<tr>
<td><strong>NGOs</strong></td>
<td>Non-governmental Organisations</td>
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<tr>
<td><strong>PC-R-EV</strong></td>
<td>MONEYVAL</td>
</tr>
<tr>
<td><strong>OECD</strong></td>
<td>Organisation for Economic Co-operation and Development</td>
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<tr>
<td><strong>RBA</strong></td>
<td>Risk-Based Approach</td>
</tr>
<tr>
<td>Abbreviation</td>
<td>Full Form</td>
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<tr>
<td>ROSCs</td>
<td>Reports on the Observance of Standards and Codes</td>
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<tr>
<td>UN</td>
<td>United Nations</td>
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<tr>
<td>UNDCCP</td>
<td>United Nations Office for Drug Control and Crime Prevention</td>
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<td>UNGA</td>
<td>United Nations General Assembly</td>
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<tr>
<td>UNODC</td>
<td>United Nations Office for Drugs and Crime</td>
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<tr>
<td>UNSC</td>
<td>United Nations Security Council</td>
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<td>UNTOC</td>
<td>United Nations Convention of Transnational Organised Crime</td>
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<td>UK</td>
<td>United Kingdom</td>
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<td>US</td>
<td>United States of America</td>
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<tr>
<td>WB</td>
<td>World Bank</td>
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<td>WGEI</td>
<td>Working Group on Evaluations and Implementation</td>
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<td>WGTMM</td>
<td>Working Group on Money Laundering and Terrorist Financing</td>
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<td>WTO</td>
<td>World Trade Organisation</td>
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CHAPTER 1

INTRODUCTION

“Research is formalized curiosity. It is poking and prying with a purpose. It is a seeking that he who wishes may know the cosmic secrets of the world and they that dwell therein” (Hurston 1996, p.143).

1.1 Introduction

Global governance meets challenges originating from existing and emerging transnational threats as much as it does from the changing interactions between international actors. Within it, there are examples of divergent and convergent behaviour that influence the processes of making international policies.

The objective of this thesis is to identify the main actors participating in global governance and the conditions under which the harmonisation of transnational policy-making processes occurs. In order to do so, it begins with an overview of the international system and its constraints, priorities and structures as to better contextualise the discussion of international anti-money laundering (AML) standards as an example of a global governance challenge that produced harmonisation.

The chapter thus offers a brief review of select policy areas indicating that a combination of economic and security interests promote compliance-oriented policies, the resort to peer-review processes, and subsequently harmonisation. This outcome is particularly evident in AML and the discussion thereby acknowledges the relevant literature and the need for further research under the guise of the defined research questions.

It further offers a debate on the important role that state interests and interdependence hold in the process of globalisation and how they cause harmonisation. The latter is described as a consequence of interdependence which merits further attention in virtue of its significance to global governance and the possibilities that may arise from its generalisation to other policy areas.
1.2 Under which conditions does the harmonisation of international policy-making processes occur?

The main question guiding this thesis stems from the acknowledgement that most international initiatives are seen to have “no real authority that binds members to agreed actions over time” (Forman & Segaar 2006, p.214). However, existing examples of international policy making illustrate a significant degree of success in achieving political commitment and the harmonisation of instruments used in its implementation.

International agreements and strategies to combat bribery, anti-money laundering, corruption, and regulation of insurance policies, the proliferation of weapons of mass destruction and climate change have in common the need to provide stakeholders and citizens with policies that can be understood and implemented across borders. These examples suggest an increasing trend in global governance to have standards developed, by a few, based on their potential for achieving compliance and through the use of peer-review mechanisms that favour harmonised practices. It is demonstrated that whilst this model of governance, based on multilateral surveillance, originated at the Organisation for Economic Cooperation and Development (OECD), similar tendencies and developments of the basic strategy can also be found in other areas as identified here.1

The OECD’s ‘Convention on Combating Bribery of Foreign Public Officials in International Business Transactions’ was signed in 1997 and puts in place a two-tier mechanism for standard revision.2 Although work for it began in 1989 there was no agreement earlier and the document only has 41 parties.3 Nonetheless, the effects of this convention spread even through non-participants and currently similar provisions are included in international agreements against corruption, money laundering and others (Miller 2000; Pacini et al. 2002).

1 Anja Jakobi develops the work of the OECD in this field further analysing the similarities of action adopted in bribery, money laundering and organised crime areas in Chapter 7 of Common Goods and Evils in Jakobi 2013; Jakobi 2010. See also, Martens & Jakobi 2010; Schäfer 2006, p.80; Mahon & McBride 2009, p.86.

2 The process through which this convention developed is similar to that of AML in terms of great power (US) influence. See Gelemerova 2011.

3 See, OECD 2014.
The United Nations Convention against Corruption was signed in 2003 and gathers 171 parties committed to fighting corruption within their jurisdictions. Similarly, as it is perhaps a ‘democratic’ improvement on the OECD Bribery Convention, the UN set up an ‘implementation review mechanism’ which operates in two review cycles over a period of five years. Whereas the United Nations (UN) background is somewhat ‘more representative of the majority of states’ views’ than the OECD’s, the degree of participation of states confirms a niche policy that attempts to ensure compliance through peer review and harmonisation thus somehow interfering with normal standard adoption (Webb 2005; Michael 2007).

International control of weapons of mass destruction is perhaps amongst the most politicised and controversial international policies, which nonetheless achieves high levels of compliance. Indeed, while a wide range of treaties and agreements regulate the control of weapons of mass destruction, inspections by the International Atomic Energy Agency are amongst the most invasive international regulation instruments available to the international community, and yet rarely interfered with (For more on these issues, Lysobey 2000; Byman 2000; Pilat & Busch 2011). Once more, a small group of states (in this case the UN Security Council) selected peer-review and expert procedures to pursue international objectives of weapons control.\(^4\)

From a regulatory perspective, the International Association of Insurance Supervisors (IAIS) established in 1994, regulates more than 200 jurisdictions and is responsible for their respective regulation of insurance policies. Similarly to other frameworks the IAIS promotes a self-assessment mechanism and a peer review process conducted between the members in order to ensure adequate compliance strategies are in place and among the most functional international harmonised structures.\(^5\)

Altogether, the sum of these examples raises questions concerning the conditions under which these structures proliferate and whether there are

---


\(^5\) See IAIS Fact Sheet in IAIS 2014.
commonalities relevant for analysis. For example, a study on the management of environmental standards harmonisation claimed the incentives for it were competitive advantage, flexibility and stakeholder investment (Delmas 2005). However, environmental protection holds no claim to an international agreement that ensures peer review or compliance system with harmonised practices. So, is this sort of strategy limited to economically or security important areas with immediate consequences? What conditions lead to its realisation in one sphere but not in others?

The global governance puzzle that is identified from the brief overview of different international policies suggests that “an examination of the actual operation of new regulatory forms” (Lobel 2012, p.6), here to be ‘personified’ by the AML international standards and relevant players, is necessary.

Indeed, international cooperation suffered changes across time “in response to a perceived lack of effectiveness of existing multilateral institutions, notably the United Nations and the Bretton Woods institutions, in dealing with transnational and global problems” (Forman & Segaar 2006, p.209). However, the emergence and role of new actors has been widely written on (Rosenau 2003; Reinicke 1998; Held 1995; Gerspacher & Dupont 2007; Martin & Sinclair 1999). Accordingly, recognising that the protection of economic stability and international security is threatened by an unstable political system, and in an effort to contribute to global governance, this thesis develops knowledge on the conditions under which specific policy preferences (i.e. harmonisation) occur, and what are their characteristics, policy impact and generalizable potential.

In virtue of material and time restrictions this research is not comparative or able to discuss all possible examples of international harmonisation. Nevertheless, this thesis suggests the case of international AML standards, due to its seniority and similar mechanisms to those mentioned above, is an illustration of the current global governance trends and a possible source of answers to the research questions.

Similar to the other policy areas described and in accordance with great power strategic behaviour, money laundering is a recent phenomenon that grew hand-in-hand with globalisation and core state interests of economic and security protection.
The AML standards were created by a small group of states (great powers) due to their interdependence and interests, and are currently maintained by intergovernmental organisations (IGOs). International regulation of anti-money laundering measures began around 1989 with the formation of the Financial Action Task Force (FATF). A few years later, IMF official Vito Tanzi (1996, pp.1–2) notably recognised that capital markets favoured money laundering, amongst other types of financial crime, posed a threat to the economy thus creating the need to tackle all, and reinforcing the maintenance and development of international efforts in this regard. International efforts are centred around the FATF’s ‘International Standards on Combating Money Laundering and the Financing of Terrorism & Proliferation’ (FATF 2012e) (hereinafter, ‘the Recommendations /AML standards’) which, comprise numerous recommendations, some directed at preventive actions to protect the international financial system, others at the enforcement of regulations that ensure prohibition, mutual legal assistance and international cooperation more broadly. The AML standards, similar to the above-mentioned examples, rely on peer review processes and self-evaluations that help maintain cooperation and compliance in this area.⁶

Altogether, the interconnection of national economies and interlinked financial services is identified as the departure point for this discussion. In this sense, the construction of the AML international standards corroborates the literature reviewed above through which economic and security concerns promote cooperation (Keohane & Nye 2001; Keohane & Milner 1996; Avgouleas 2012). More than other policy areas, the AML standards reflect commitment corroborated by mechanisms of peer review, which as shown by the data analysis, harmonise the policy-making process.

It must be clarified that, it is not this thesis’ objective to discuss money laundering as a crime or issue in itself. International studies have concluded that whereas the amounts of money laundered every year is around 2.7% of global GDP, the amount seized by authorities is normally closer to 1% of that total sum.⁷ In

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⁶ A more in-depth background review of AML standards is provided in Chapter II.
addition, whilst efforts to combat the rising numbers of money laundering offences are multiplying, the adequacy of the measures adopted and the levels to which they create additional costs are often a matter for debate as money laundering is intrinsically connected to its predicate offences and the combat strategies associated to them specifically (Gelemerova 2011). In light of this, a challenging first point to the data and discussion suggested here could very well be: why focus on the process of harmonising AML if effectiveness levels achieved in stopping money laundering are low? Or, why assess policy-making bureaucratic processes rather than the policies and threats themselves? How can efforts in AML be generalised to other policies if their effectiveness is poor?

This thesis offers a debate on actors and how policy processes develop because, in an interdependent system ruled by economic and security priorities, the process through which these may be attained is something which can be generalizable. The thesis argues that while great power politics continue to be crucial, recent developments augur emerging global governance strategies originating from the need to uphold similar standards across borders. It is not certain whether those changes are desirable but it might be relevant to discuss them in light of transnational challenges. Determining whether the adopted standards and practices are effective or whether the debate of conditions contributes to the improvement of the combat against criminality is beyond the focus of this analysis.

Therefore the thesis’ non-focus on policy effectiveness or money laundering per se is justified because: a) outcomes depend on the thematic policy development (i.e. what creates interests/preferences/technical requirements); b) outcomes do not always relate to the content the form of the policy-making processes; c) the evaluation of framework effectiveness is the object of many other studies to which the thesis trusts the debate with (Halliday et al. 2014; Reuter & Truman 2004; Sharman 2011, pp.37–68; ECOLEF 2012).

Overall, this thesis recognises that the appropriateness of regulations depends on their success and the means used to achieve it. However, the functional nature of terrorist financing and Proposal for a Regulation of the European Parliament and of the Council on information accompanying transfers of funds’, SWD(2013)22.
the elements that shape the AML standards can still be recognised without implying a belief in their pertinence. Generally, plenty has been written regarding AML regimes under different research focuses, namely as global norms (Andreas & Nadelman 2006), in regulatory terms (Sharman 2011), and regarding its legal basis (Savona 1997). Existing literature generally offers further insight into the topic, but also validates the need for further research.

Of special relevance to this thesis’ argument, Anja Jakobi’s (2013) analysis of global crime focuses on policy diffusion and changes to global governance from an actor centred perspective. The theory and assumptions in ‘Common Goods and Evils’ are close to those in this thesis as Jakobi’s premises develop the argument that stronger actors, rather than normative arguments are more successful in achieving global crime governance. Nevertheless, the views on world society and sociological institutionalism differ from those presented here and, therefore, the analysis, as provided by the in-depth analysis of the evolution of AML standards, adds to the literature by offering a greater focus on specific actor formations, types of policy diffusion, and preferences.

This thesis more closely develops from Levi with Gilmore and Pieth’s assumption that processes of policy transfer are significant in the implementation of AML standards and that mutual evaluations are a possible “mode of future governance” (Levi et al. 2005, p.28). As a result, the thesis builds from the authors’ discussion of policy transfers in AML, albeit according to different definitions and assumptions. The analysis of AML standards proposed thereby debates the ‘policy transfer’ practices within the context of current global governance, assumptions of great power rule, and IGOs networks. As a contribution to knowledge, the analysis of actors’ interests and of harmonisation argues, essentially, that the identification and assessment of the tools used in the making of AML standards may become an added value to future global governance strategies and literature.

Altogether, the literature in this policy area benefits from further research on the conditions through which standards are developed, new elements and actors that emerge from it, their characteristics and potential impact for future policy making strategies.
1.3 Does harmonisation reflect changes in global governance and its main actors?

Following this thesis’ premise that globalisation and the interdependence that exists among states fosters the occurrence of harmonisation in virtue of states’ concerns with their economic and security interests, and subsequent policy preferences; The argument relies on current debates regarding the role of the state in the international system and the ways in which its priorities are reflected in the different policy areas. In this context, this thesis looks at who currently sets international agendas and how are policy priorities being pursued. Is the harmonisation of policy-making processes ‘the’ outcome of responses to common threats?

Research departs from the idea that global governance is an adaptation of traditional forms of governance to international relations. Anne-Marie Slaughter defined a ‘new world order’ as:

“a system of global governance that institutionalises cooperation and sufficiently contains conflict such that all nations and their peoples may achieve greater peace and prosperity, improve their stewardship of the earth, and reach minimum standards of human dignity” (2005, p.15).

Slaughter’s ‘world order’ is filled with assumptions on the ‘disaggregation of the state’ and the growing importance of other actors which, although this research agrees is taking place, does not yet offer a full substitution of the role of great powers and the influence of their core interests into global governance. Therefore, the ‘order’ as interpreted here takes into consideration Slaughter’s arguments but shifts towards a world where states with larger economic interests (hereinafter, great powers) lead but also adjust their strategies to on-going challenges, and adopt the best strategies to support collective interests. Whether or not the disaggregated state is an outcome of global governance is an issue for debate in a different context.

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8 The definition, role and position of ‘great powers’ are discussed in-depth in Chapter III.
Following from the recognition that some kind of change is occurring in global governance, this thesis offers a discussion of the conditions under which harmonising practices become an outcome of transnational policy making, and how inter-state cooperation and intergovernmental organisations shape global governance and indicate a type of ‘new world order’. Indeed, while writings on harmonisation recognise private actors and their role in the globalisation and harmonisation process, this thesis is more concerned with the actions taken by governmental actors and their management of the problem as highlighted by existing literature (Pincus 2009; Wiener 1999; Harrison & Mungall 1990). The basis for this decision is the overarching belief that international relations, particularly economic interests and the maintenance of security, remain a matter of states’ capacity to preserve their position as the subjects of international law (Cox 1981; Sinclair 1999). Naturally, collaboration with private actors in these areas is essential but although the state economy might depend, in part, on multinational corporations, economic and security options remain de jure state competences.

As the primary subjects of international law, more than developing an international society in order to protect their interests, states are interpreted as working towards maintaining their status and established practices. In this effort, the thesis suggests that interacting economies create a global system of economic exchanges that allow for the identification of interdependence and subsequently harmonisation as the main characterising elements of global governance.

A second research question is thus whether the conditions for harmonisation indicate emerging changes in global governance strategies and actors? In this context this thesis looks into the changes in relationships between the varied international organisations and the ways in which these influence or offer specific characteristics to the harmonisation of international policy-making processes. As Reichert and Jungblut affirmed “governance is collective action, and collective action necessarily implies organization, which in turn implies delegated authority” (Reichert & Jungblut 2007, p.397). In the investigation of harmonisation processes there is an underlying requirement to research the role of actors, their common actions, relevant tools used, and the way in which their actions and power influenced the adoption of specific strategies and standard harmonisation. In this context, the concepts of
interdependence, globalisation, and harmonisation are the ontological basis for this
research and data analysis.

**Interdependence and globalisation**

Interdependence is a freestanding concept with multiple sources of interpretation (Youngs 1999, p.23; Keohane & Milner 1996). It is argued that it is the glue holding current international relations together and that “a rise in the level of economic interdependence in the world system is apt to lead to a rise in the level of political interdependence” (Young 1969, p.732; See also, Vogel & Kagan 2005; Keohane & Nye 2001).

The phenomenon described here as ‘globalisation’ “refers to global economic integrations of many formerly national economies into one global economy” (Daly 1999, p.31) which while allowing for the “widening, deepening and speeding up of global interconnectedness” (Held et al. 1999, p.14) is primarily viewed as an economically motivated event. It is thought to emerge as a consequence and part of the interdependence existing between states through economic exchanges.

Globalisation commonly touches upon topics across the board ranging from social, political and economic issues (Youngs 1999, p.1). However, it mostly “transported existing theories to new issue areas of the global political economy” (Drezner 2001a, p.55) leading to the International Monetary Fund’s (IMF) definition of globalisation as “the increasing integration of economies around the world, particularly through trade and financial flows” (IMF Staff 2000). So while the former pushes enterprises and financial services into the world of transnational exchanges and, what was for a long time, mostly deregulated financial practices, the latter creates significant advantages for states in the shape of prosperous and well-adjusted economies. Generally, globalisation is characterised by the liberalisation of the markets and the global security issues that stem from it.

Therefore, as it produces evidence of systemic weaknesses illustrated by transnational economic operations becoming evermore vulnerable to cross-border financial crime, globalisation additionally generates three important consequences for global governance: (1) primacy of state interests (competition or otherwise
driven) in maintaining stable economies and participation in the international capital markets; (2) a system of interdependent economies coming from the financial exchanges beyond borders, and; (3) a derivative security threat stemming from market instability and the interdependence of modern international relations. Altogether, as an essentially economic phenomenon, globalisation suggests a world of state economic and security interests where interdependence is an intrinsic consequence and security threats are a natural derivative.

Global interdependence is best illustrated by the international financial system and how it promotes globalisation through the removal of capital controls and the integration of global markets. Chiefly, its reliance on constant interconnectedness, political cooperation and security also reflects the conflicts that arise in the setting up of the necessary international policies. Its protection and stability, as a result, come as a natural concern for those involved in the process of globalisation. Therefore, as threats made against the financial system are common to all participating nations, smaller states and great powers alike are increasingly troubled by the real or perceived nature of those made against financial integrity, including systemic financial crisis, money laundering and other types of financial crime with security implications (Scott 1995).

Following the 2008 financial crisis, for example, the importance of security was highlighted as regards its impact for economies as across-the-board research suggested a direct link between economic stress, increased security concerns and vice-versa establishing that economics alone do not determine policy direction (Bernstein & Cashore 2000, p.73; Galbraith 2008; NATO 2009). Although the concept was not new, global security was reinforced as a secondary but important element of globalisation linked to market liberalisation and economic exchanges through the emergent need to protect the functioning of the system.

In this context, world system theorists, for example, connect markets and security through the birth and expansion of neoliberalism and the exploitation of the periphery by the centre (Wallerstein 2004). As far as this literature in concerned, maintaining security is a way to preserve the neoliberal system and therefore very much connected to the market structure preferred by states.
From a realist and neorealist perspective the security of the state and the containment of threats of war and sovereignty infringement are priorities. To these authors, state supremacy is the priority and the state’s role is to uphold security before economy, although alas that has not been made easy by globalisation (e.g., Waltz 1988, p.216). Following from this assumption, Keohane and Nye conciliate the realist preoccupation with security and state saying that while “[r]educing one’s vulnerability to external events can be part of a neo isolationist strategy […] it can also be one element in a strategy of policy coordination and international leadership” and so, both security and market priorities are included in state interests (Keohane & Nye 2001, p.208). As a result of these authors’ reflections, the ‘multilateralisation’ of security concerns is in many ways intrinsically connected to the economy and its globalisation. Gourevitch too contends that “[e]conomic relations and military pressures constrain an entire range of domestic behaviours” and therefore should be looked at together (Gourevitch 1978, p.911). Ultimately, the acknowledgement that market liberalisation promotes shared security concerns and that these are similarly generated from fear of economic instability, corroborate the assumption that interdependence is globalisation’s most important consequence.

Gilpin, however, looks at the financial system through the hegemonic stability lens and so determines that the system is a consequence of otherwise established political relations among great powers. To illustrate this premise, the author affirms that the United States of America (US) has often shown a different positioning than that of its partners in what regards additional regulation and controls (Gilpin 2001, pp.261–277). In effect, the American international financial strategy’s reliance on international financial institutions and low regulation as discussed by Gilpin, suggests that interdependence may promote not only globalisation but also the harmonisation of practices transnationally when that best fits the markets and domestic interests of great powers. For example, disagreements between Group of Seven (G-7) partners never “augur well for the future stability of the global economy” suggesting or justifying the premise that when a great power opts for regulation, all must follow or risk disrupting the interdependent system (Gilpin 2001, p.276).
In sum, according to the literature discussed above, this thesis theorises that interdependence and globalisation trigger the occurrence of harmonisation of transnational policies and/or their processes through state action to protect their interests, regulatory competition, transnational communication and policy imposition. It recognises that the international system is interdependent and essentially based on economic and security concerns of actors emerging from globalisation and subsequent need to cooperate within a simplified system of similar goals and contents.

**Harmonisation**

Whilst the concept of ‘harmonisation’ is further discussed in the following chapters of this thesis, it is here understood as, a process leading to adoption of harmonised strategies and tools in the making and development of international policies. Specifically, it is the national adoption of the same mechanisms, goals, and review procedures across borders even when maintaining independent legislative instruments. In this context, the harmonisation of transnational practices occurring as a consequence of interdependence, economic and security interests is of particular interest as it contributes to the development of the debates on global governance and the ways in which it is occurring.

Events occurring within the realm of the international financial system provide some of the best examples. Actions concerning the international financial system suggest that “most regulatory issues start out as domestic problems before globalisation makes them international issues” driven by the recognition of interdependence and economic necessity (Drezner 2008, p.40). In 1988 Mervyn King affirmed, regarding harmonisation in financial services practices, that “[o]nly an approach based on the functions carried out by a regulatory entity can hope to avoid the distortions created by the incentive to engage in regulatory arbitrage” (1988, p.3). Similarly, Simmons and others coupled policy diffusion to market expansion through coercion, competition, learning and emulation concluding that material incentives for

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9 These four concepts are further developed in Chapter II as the causes for harmonisation.
it will continue to shape international policy and economic decisions towards some kind of approximation (Simmons et al. 2008).

The process of policy harmonisation is key to understanding global governance of specific policy areas emerging from the recognition that one single state is unfit to counter threats and maintain a stable and growing economy given the obvious territorial, legal and other constraints (Rees 2011, p.233). In addition, the harmonisation of processes is thought to be a solution to collective problems brought about by globalisation because, among other things, “[t]he dark side of globalization has meant that illegal activities are increasingly being conducted across borders rather than just in the territories of vulnerable states” (Rees 2011, p.227; See also, Reuter & Truman 2004, p.171). In other words, similar counter-threat systems facilitate global governance as suggested above by the measures carried out regarding corruption, weapons of mass destruction and the environment. Harmonisation is, in fact, not a new issue to international politics but one which has been present in international debates for sometime, however, one which has been focused on ‘function’ rather than actors due to calls for efficiency and consistency as argued by King (1988; See also, Helleiner 2000; Alldridge 2008; Cohen 2008). Accordingly, it is argued that “insufficient attention has been paid to the questions of the nature of the international agenda and who sets and implements it” with many authors discussing the consequences of who defines international priorities and how these priorities are followed up on (e.g., Alston 1997, p.447).

In conclusion, while the need for harmonisation stemming from the international financial system requirements has been widely debated, the conditions under which it occurs, actors’ influence in it, and its presence in the policy-making processes still need further research.

1.4 Thesis summary

This thesis is structured in order to facilitate answering the research questions through a methodologically rigorous process-tracing analysis.
It begins by introducing money laundering as a perceived threat and the implications this has had for global governance. A short review of its main characteristics is offered as well as its links to the concept of harmonisation in theory and its application in practice. Chapter II carries out the literature review on harmonisation defining the ways in which it occurs, what are the conditions for harmonisation theorised at present, and how these may become an outcome of global governance. The concept of procedural harmonisation (i.e. similar international policy strategies) is identified as of specific relevance to the research questions.

Guided by the objective to uncover actor interests and preferences Chapter III introduces the research’s theoretical framework contextualising it within the literature debates on global governance, the debate on actors’ roles, actions and relevance to outcomes. It introduces great powers and networks of IGOs as the main, and distinctive, players of global governance developing them according to the existing theories. The theoretical framework focuses attention on which actors are considered to have more impact in the international standard-making procedures and how these actors’ interactions may change throughout time depending on preferences and emerging threats. It further suggests that the analysis of the interaction between actors is generalizable to other international policy areas due to the nature of the challenges and cross-border threats, evolving political structures and varied players involved in the process.

Chapter IV develops the methodology according to which the case study has been selected and is analysed. It introduces the issue of AML and its political development since 1989 as central, as well as the issue of ‘customer due diligence’ as its main element. The European Union (EU), the US and the G-7 as an expression of great powers, are introduced as the relevant state actors, while the FATF, the IMF, the World Bank (WB), the UN, and the Committee of Experts on the Evaluation of Anti-Money Laundering Measures and the Financing of Terrorism (MONEYVAL) are defined as representative of IGOs. The process-tracing exercise is further clarified in light of primary and secondary data to be included in the research.

Chapter V analyses the participation of great powers and their actions, individually and through the G-7, in the making of international AML standards.
Moreover, it assesses in what ways their interests, agenda-setting skills and stride for compliance contributed to the emergence of harmonised processes. This chapter aims at illustrating how the urge to protect interests leads to cooperation and coalitions between great powers, which facilitate the setting up and development of harmonised regulatory practices. In addition, the analysis of great powers discusses that by acting in coalition there is recognition of strength in unity and the need to delegate to other international actors (including the private sector) in order to keep control of the agenda through a legitimacy umbrella. The assessment of great power actions furthermore corroborates the need to focus on IGOs and their growing importance to global governance due to the recognition that great power input is a necessary but not sufficient condition to generate procedural harmonisation.

Chapter VI is key to completing the reasoning behind this thesis and its main added value as it looks at the levels of cooperation between IGOs and their policy network formation skills. The role of IGOs as networked actors is thought to impact procedural harmonisation other than through delegation or agenda setting. This chapter argues that IGOs’ policy networks hold more information and control over the process of compliance and peer review than great powers due to their transnational reach and expert management. In this sense the IGOs formation of a network is thought to award them with autonomy of action and influence in the harmonisation of policy-making processes. Broadly, Chapter VI demonstrates the complementarity that has been developed between great power coalitions and the IGOs network structure suggesting a new form of world governance through resource exchanges, shared preferences and stable relationships promoted by IGOs. A closer look at the work developed by IGOs also further uncovers the importance of legitimacy, expertise and compliance as part of the development and maintenance of procedural harmonisation.

The empirical research points to the need for a re-thinking of global strategies to deal with common threats. The analysis shows how great powers delegate to protect their interests and the legitimacy of collective action. As a result, IGOs emerge as a policy network with the capacity to generate independent preferences. Additionally, within the empirical debates on great powers and IGOs networks certain issues are constant, namely legitimacy concerns, compliance objectives and,
the presence of expertise. Chapter VII works to bring these issues together with the broader discussion on harmonised practices arguing that the presence of these three elements is key, not only to successful harmonisation but also to future global governance strategies, and the development of a great power moderated international system. As such, Chapter VII complements the thesis’ analysis of the conditions for harmonisation by addressing additional conditions emerging from the AML standards policy-making process, acknowledging their significance and potential for future research.

In fact, whereas the presence of harmonisation elements in AML was recognised a priori, the identification of specific elements that lead to its procedural aspect constitute a useful contribution to future research in similar processes. This last chapter also elaborates on the concept of expertise taking into consideration recent moves towards inclusive policy-making and improved policies that achieve a real reduction of money laundering. Broadly, Chapter VII confirms that a global governance system as illustrated by the AML standards is based upon the presence of specific conditions that shape and characterise procedural harmonisation as an emerging form of international cooperation.

Finally, the conclusion chapter discusses that this thesis contributes to the better understanding of global governance debates, the role of participating great powers and IGOs. In addition, it summarises the research findings and analysis determining that, although great powers continue to be a necessary presence in the making of procedural harmonisation, there is also a demand for IGOs’ presence and their networked contribution. Procedural harmonisation is ultimately defined as requiring additional conditions such as legitimacy, the search for compliance and the presence of expertise which, should be further researched and discussed in light of present and future global governance challenges and gaps.
CHAPTER 2

ANTI-MONEY LAUNDERING AND THE HARMONISATION OF INTERNATIONAL PRACTICES

2.1 Introduction

This chapter follows from the defined research questions and discusses the conditions under which the making of international AML standards is a good example of harmonisation in global governance. It begins with a description of the AML historical development and context within international relations. The issue of Customer Due Diligence (CDD) is highlighted as the core and most relevant element to the research questions due to its central role in AML.

The second section continues with the introduction of harmonisation within the context of the main areas where it has been applied and in relation to the concepts of convergence, mutual recognition and approximation of laws. It is defined as an output of modern policy making assuming that a preference for harmonisation is linked to the nature of the policies but also, one which can vary in degrees and have more or less impact in policy implementation. The literature additionally identifies that procedural harmonisation occurs in the selected case study through informal and formal processes of policy-making, cross-pollination and the consistent interpretation of principles. Its analysis should contribute to deciphering answers to the research questions.

Finally, the chapter offers a brief review of the literature’s discussion of harmonisation and AML, highlighting the need for continued research.

In sum, the chapter identifies what the tools for procedural harmonisation are, and discusses how their identification within the AML standards may be significant to the future of global governance.
2.2 Money laundering as an international problem

The 1992 Clinton Presidential campaign coined the phrase “the economy, stupid” (Galoozis 2012) and while this quote has been repeated in relation to social and political crisis, never has it been more accurate than when talking about why money laundering is considered a global threat.

The introduction of illegal funds into the ordinary financial services and legal economies through money laundering is believed to create a clear distortion in public and private financial structure by, for example, influencing international credit ratings, financial integrity and economic stability more generally. Additionally, because the proceeds of crime are not accurately measurable, countries lose control of how much money is or should be in circulation and become vulnerable to hyperinflation phenomena and general drops of purchasing power. The perceived presence of illegal capital in formal economy systems ultimately implies lack of market confidence, fewer foreign investment and trade opportunities, suspicions of corruption and consequent political instability. Sharman (2011) explains, for example, how Nauru went from thriving economically to being pushed into transferring its capital on boats across to Australia for the lack of a credible financial system once this was associated to money laundering practices. This small island, in reality, is almost a ‘cartoon like’ illustration of what can happen to an economy in which there is no confidence as understood by international actors. Therefore, money laundering is the perfect example of an international threat that undermines the basic state interest of maintaining economic stability and the security that derives from it.

Its development into an international regulatory issue may, however, depend on elements that currently characterise global governance such as the changes to the role of states, marketised institutions, infrastructural technologies associated with the emerging ‘knowledge economy’ \(^1\) and an epistemic authority associated with

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\(^1\) The ‘knowledge based economy’ is an expression coined to describe trends in advanced economies towards greater dependence on knowledge, information and high skill levels, and the increasing need for ready access to all of these by the business and public sectors. See in OECD 2005.
professional expertise (Martin & Sinclair 1999, p.18). Any analysis of the AML standards, consequently, must firstly take into consideration relevant actors and their influence in the policy making structure.

The initial global concern with money laundering, in fact, came out of a “growing concern with the world community about the problems of drug abuse and illicit trafficking” (Gilmore 2011, p.53) as well as terrorism and the new paradigm of security (Mitsilegas 2003). Indeed, the 11 September 2001 attacks (hereinafter, 9/11) reflected the perils of market liberalisation on a social (inequalities), political (democracy) and economic (illicit profits) level. The IMF estimates that between 600 and 1.800 billion dollars are laundered each year” (Tavares et al. 2012, p.9) and, as illustrated in Figure 2.1, codified the threats of money laundering to society in 25 social, political and economic consequences (See Annex 3, IMF 2011, p.63).

Nevertheless, only as the international circulation of drug trafficking profits began having a negative impact on US banks was money laundering transformed into a “global problem requiring a global solution” and cooperation (Hülsse 2007, p.155; Gilmore 2011, pp.53–90; Doyle 2002, p.312). 2 Its pivotal utility to criminal organisations and its blatant disregard for political and jurisdictional borders meant that soon after it had been criminalised in the US, money laundering became a fully recognised international offence. As a result, following the money trails and finding the many paths and institutions criminals use to launder the

\[\text{Figure 2.1 – IMF 25 Social, Political and Economic Consequences}\]

1) Losses to the victims and gains to the perpetrator
2) Distortion of consumption
3) Distortion of investment and savings
4) Artificial increases in prices
5) Unfair competition
6) Changes in imports and exports
7) Effects on growth rates
8) Effects on output, income, and employment
9) Lowers public sector revenues
10) Threatens privatization
11) Changes in demand for money, exchange rates, and interest rates
12) Increases in exchange- and interest-rate volatility
13) Greater availability of credit
14) Higher capital inflows and outflows
15) Changes in FDI
16) Risks for financial sector solvency and liquidity
17) Effects on financial sector profits
18) Effects on financial sector reputation
19) Illegal business contaminates legal
20) Distorts economic statistics
21) Corruption and bribery
22) Increases in crime
23) Undermines political institutions
24) Undermines foreign policy goals
25) Increases terrorism

The proceeds of their activities became an international priority in virtue of the transnational nature of the financial transactions (Savona & Manzoni 1999). In effect what began as a concern derived from the severity of predicate offences soon became a threat in itself.

The 1988 UN ‘Narcotic Drugs and Psychotropic Substances’ Convention (hereinafter, Drugs Convention) was the first international document to illustrate the intention of states to counter money laundering as an offence. It introduced the global determination to “deprive persons engaged in illicit traffic of the proceeds of their criminal activities and thereby eliminate their main incentive”.³

This Convention reiterated how countries were “[a]ware that illicit traffic generates large financial profits and wealth enabling transnational criminal organizations to penetrate, contaminate and corrupt the structures of government, legitimate commercial and financial business, and society at all its levels.”⁴ Its landmark declarations were of significant importance and were later followed by the ‘Convention against Transnational Organised Crime’ ⁵ (UNTOC), and the ‘Convention against Corruption.’⁶ Indeed, the UNTOC criminalises the act of money laundering in Article 6, defining it as:

“The conversion or transfer of property, knowing that such property is the proceeds of crime, for the purpose of concealing or disguising the illicit origin of the property or of helping any person who is involved in the commission of the predicate offence to evade the legal consequences of his or her action; (ii) The concealment or disguise of the true nature, source, location, disposition, movement or ownership of or rights with respect to property, knowing that such property is the proceeds of crime” (Emphasis added).

As a reflection of international pressure, the Basel Committee on Banking Regulations and Supervisory Practices published in 1988 a statement of principles on

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⁴ Ibid.
the “prevention of criminal use of the banking system for the purpose of money laundering” whereby financial regulators recognised the need for banking supervision and other institutions to become involved (Bank for International Settlements 1988). The Basel Committee continued to be involved in the AML development process updating its guidelines, with special focus on Customer Due Diligence, for international banking in 1997 and 2001 (Schott et al. 2006, pp.III12 – III15).

Instruments to complement the international response altogether multiplied. Within the UN system, the creation of the Global Programme against Money Laundering (GPML) at the United Nations Office for Drugs and Crime (UNODC) had specific goals to provide training and expertise as well as raise awareness on the topic. In addition, the Council of Europe demonstrated some avant-garde activity with the drafting of the Convention on Laundering, Search, Seizure and Confiscation of the Proceeds of Crime (ETS 141) in 1990, not to mention the creation of MONEYVAL (as is further explained in Chapter IV).

Thanks to the increased involvement of the UN Security Council and the recognition of AML as an international security issue, after 9/11 any resistance to anti-money laundering strategies became futile as the perception of money laundering threat shifted from an essentially financial problem to a process that allows for a hiding ground for terrorists (Johnson 2003, p.129). Several international instruments followed these events in order to update the framework with special focus on the 2005 Council of Europe Convention on laundering, search, seizure and confiscation of the proceeds from crime and on the financing of terrorism (CETS 198), the Wolfsberg Principles, the revision of the EU AML Directives, the United Nations Security Council (UNSC) Resolution 1373 on the financing of terrorism. Moreover, these events triggered and strengthened the participation of the international financial institutions (IFIs), the WB and the IMF in the AML framework, awarding them with a significant input capacity into the standards negotiations meetings and fora. This participation consists essentially of involvement

7 “The Basel Committee is the primary global standard-setter for the prudential regulation of banks and provides a forum for cooperation on banking supervisory matters.” See, Basel Committee on Banking Supervision 2014.
in the training programmes, Financial Sector Assessment Programmes (FSAPs), the reports on the Observance of Standards and Codes (ROSC) and the contribution to the FATF peer reviews.8

Lastly, the issue of tax evasion has caused a recent re-emergence of AML standards into the high-level political agenda with its inclusion in the 2012 revision of FATF Recommendations and frequent calls from G-7 and G-20 meetings to see the issue addressed at the international level. This issue is definitely reminiscent of the links between AML and capital controls, and of the financial crisis of 2008 as its main driving force.

As can be seen in the discussion above, a particularity of money laundering, evident from the definition, is the requirement of a predicate offence e.g. drug trafficking, corruption, tax evasion. In other words, the crime of money laundering is normally linked to a criminal activity and it is not possible to launder funds that have been legitimately acquired.9 Tackling money laundering is therefore an action with consequences to several policy and professional areas which all share the common threat of being affected by dirty money.

AML standards rely on collaboration with numerous IGOs,10 cooperation with Non-Governmental Organisations (NGOs), but also financial institutions, and the relevant non-financial businesses. Nevertheless, the international framework was created and developed by governments in an international setting constrained by international law and political preferences. For example, the International Association of Insurance Supervisors and the International Organization of Securities

8 FSAPs are in-depth analysis of countries’ financial sectors to gauge their stability and positions in the international economic growth and development. ROSC exercises aim to develop the architecture of financial systems, provide policy recommendations etc. Both are of the responsibility of the IMF and the WB.
9 The inclusion of the financing of terrorism in the framework is usually referred to as ‘reverse laundering’ seeing as it is possible to use legitimate funds for that purpose.
10 Among others: Asian Development Bank, African Development Bank, Organization of American States, OECD, and World Customs Organisation etc. The majority include AML standards in the context of financial, trade and capital transfer agreements but also anti-corruption and tax evasion tools and, measures to combat organised crime. For a full list of IGOs involved see FATF 2014d.
Anti-Money Laundering: the conditions for global governance and harmonization

Commissions, the Basel Committee and the Wolfsberg Group, as well as the Egmont Group although participating in the policy-making process of AML are not discussed further in this research. Their absence from this thesis does not deny their contributions to the policy-making and advancement process but, from a global governance perspective these organisations’ contributions are not ‘practice or standard changing’ enough to be able to contribute to the research questions.

The instruments and dates mentioned above, although important to understanding the concept, have no mention of specific AML bodies or measures. The first and most important actor in AML, and its instruments, was created at the beginning of the 1990’s as a result of the international events in motion. The FATF was founded, as the AML standard setter, following a proposal from the US and growing concern that transnational drug trafficking was promoting the laundering of the proceeds of crime, and negatively affecting formal economies (Martens & Jakobi 2010). The organisation holds a permanent office in Paris within the OECD since 1989 (G-7 1989). FATF membership is essentially a state privilege (34 members) but also includes the European Commission and the Gulf Co-operation Council as full members bringing the total to 36. Additionally, FATF currently gathers, in its circle of influence, about 193 participant jurisdictions through membership to the FATF Style Regional Bodies (FSRBs). It also includes 26 Observers composed mainly of IGOs and, 8 Associate Members known as FSRBs.

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12 In 1989 countries present at the G-7 meeting agreed to create the Financial Action Task Force, the body currently responsible for the anti-money laundering international standards. G-7 members in 1989 were: UK, USA, Italy, France, Germany, Japan and Canada.
13 Current FATF members are: Argentina, Australia, Austria, Belgium, Brazil, Canada, China, Denmark, Finland, France, Germany, Greece, Hong Kong, China, Iceland, India, Ireland, Italy, Japan, Republic of Korea, Luxembourg, Mexico, the Netherlands, New Zealand, Norway, Portugal, Russian Federation, Singapore, South Africa, Spain, Sweden, Switzerland, Turkey, United Kingdom, and the United States.
14 FSRBs are FATF like organisations that operate at regional level. Currently, 8 FSRBs are in operation: the Asia/Pacific Group on Money Laundering (APG); the Caribbean Financial Action Task Force (CFATF); the Council of Europe Committee of Experts on the Evaluation of Anti-Money Laundering Measures and the Financing of Terrorism (MONEYVAL); the Eurasian Group (EAG); the Eastern and Southern Africa Anti-Money Laundering Group (ESAAMLG); Financial Action Task Force on Money Laundering in South America (GAFISUD); Inter Governmental Action Group against Money Laundering in West Africa (GIABA) and; the Middle East and North Africa Financial
Broadly, in 1990 money laundering was already an offence in several developed countries, namely Australia, Canada, France, Italy, Luxemburg, United Kingdom (UK), and the US. Pending legislation existed in Belgium, Germany, Sweden and Switzerland meaning that only four of the countries originally involved in the process lacked in measures (Gilmore 1992). The process quickly expanded to other nations and currently the list of countries that completely do not comply, or attempt to comply, with regulations is a total of two (Democratic People’s Republic of Korea and Iran). Ultimately, although “[t]he FATF is not and has no pretensions to become the United Nations of the anti-money laundering world” its importance in the global reach of AML standards is indisputable (Griffiths 1993, p.1827).

Nonetheless, more important than its international status is FATF’s role in the emergence of the 40 Recommendations first published in 1990 (revised 4 times since in 1996/2001/2003/2012). These guidelines are the leading international AML standards and now include the financing of terrorism and provisions on the financing of proliferation of weapons of mass destruction. The FATF Recommendations (hereinafter interchangeably ‘AML standards’) inspired the creation of a network of actors cooperating to develop and expand the AML provisions globally. These are essentially measures that all countries must have in place to:

- identify the risks, and develop policies and domestic coordination;
  
- apply preventive measures for the financial sector and other designated sectors;
- establish powers and responsibilities for the competent authorities (e.g., investigative, law enforcement and supervisory authorities) and other institutional measures;
  
- and - facilitate international cooperation” (FATF 2012e).

The FATF standards are dependent on peer review mechanisms, known as mutual evaluations, conducted by teams of independent international experts at the action task force (MENAFATF). Their aim is to spread FATF standards to their areas of focus. FSRBs are free to participate in FATF plenary sessions but are not members and cannot vote. A timeline of their inception is provided in Annex V.

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15 Among the 26 are: the OECD, Europol, Interpol, the OSCE and the European Central Bank. More on FATF’s structure and functioning is discussed in Chapter IV, page 91 and following; Observers must be IGOs with a stated role in AML/CFT, endorse FATF standards, contribute to their work and afford FATF the same rights as those afforded.
service of the FATF or other AML relevant IGOs. These procedures assess the implementation of AML standards and provide an analysis of each country’s actions to prevent abuse of the financial system. If countries are determined to have adequate levels of compliance a new evaluation takes place in the following round (i.e. when standards are reviewed again). In cases of insufficient compliance determined during the peer-review, for example with the CDD requirements, states are subjected to a monitoring and follow-up process whereby reports and visits are made to the territory in order to assess progress. Moreover, in cases of serious non-compliance with important FATF Recommendations there is the possibility to resort to a blacklisting process as a result of the decrease of members’ confidence levels in the territory due to money laundering concerns. The use of blacklisting, or what was known as the ‘Non-Cooperative Countries and Territories’ (NCCT) process and has now become the International Co-operation and Review (ICRG) process, began as an initiative to reinforce the need for compliance at the international level and beyond the FATF membership. In practice, this process can be initiated following a mutual evaluation report and its assessment that a significant number of important measures adopted to combat AML are not adequate. Following these evaluations, provided the follow-up reports and bi-annual updates do not reflect change, the blacklisting and/or sanctioning occurs, normally comprising of enhanced surveillance and reporting on financial transactions to and from blacklisted countries, and the issuing of warnings to businesses wanting to operate within these jurisdictions.

The FATF standards and process, as introduced above, rotate around the criminalisation of the money laundering offence but more specifically the requirement to identify the persons or legal entities involved in the crime. Therefore, the overview provided below and the core of this research regards essentially the preventive FATF measures and CDD as its principal embodiment.

16 A more in-depth discussion on the mutual evaluation procedures takes place in Chapter VI, page 180 and following.
17 The NCCT and ICRG processes are discussed further in Chapter V and IV, particularly page 195 and following.
18 The precise process and consequences of the peer review process is available for clarification in FATF 2014d.
19 See the annual NCCT reports in FATF 2012a.
FATF Recommendations divide into preventive and enforcement elements of action expressed and complemented through international cooperation. While the enforcement pillar focuses on confiscation, prosecution and punishment, investigation, and predicate crimes; the former relates to regulation and supervision, reporting and sanctions (Reuter & Truman 2004, p.47). The preventive pillar is thought to best show evidence of harmonisation as it includes measures to identify the persons involved (known as CDD) in the offences, which set the tone for the remaining AML policy developments.

Within AML standards, the necessity to identify customers ahead of any financial transaction is the essential preventative measure. As such, the evolution of CDD\textsuperscript{20} or ‘know your customer’ became the core principle of the standards for combating money laundering because “financial abuse (…) can undermine the stability of a country’s financial system or its broader economy” (IMF 2011, p.27). The emergence of AML standards has, overall, transformed the maintenance of CDD into an international priority.

**Customer Due Diligence or the importance of knowing your customer**

The study of AML standards could be divided into areas of focus following the determination of specific predicate offences or threats e.g. financing of terrorism, proliferation finance, tax evasion, drug trafficking and financial crime more broadly. The analysis of CDD, defined as the core of the standards, however, offers a steady basis from which generalisations and research can better develop.

Defined under the FATF’s Recommendation 10,\textsuperscript{21} CDD requires relevant institutions to identify their customers (persons and institutions), and make sure that no business is carried out without obtaining some form of adequate identification. Although it has evolved and changed through the years, CDD generally defines a basic requirement for financial and non-financial businesses to identify their customers as well as the beneficial owners of those transactions through a set of

\textsuperscript{20}“Customer due diligence means taking steps to identify your customers and checking they are who they say they are.” HM Revenue and Customs 2013.

\textsuperscript{21}“Financial institutions should be prohibited from keeping anonymous accounts or accounts in obviously fictitious names….​”
defined procedures suggested by FATF. Whilst the first AML standards were directed at financial institutions (e.g. banks and insurance companies) the scope of CDD has significantly increased and currently includes lawyers, real estate agents, casinos, trust and company service providers, and dealers in precious metals. Altogether CDD requirements imply that no monetary transaction (digital or otherwise) should take place without a clear point of origin and final destination. If such transactions occur or the persons or institutions are suspected of a criminal offence there is an obligation to report the act to authorities under what is called a ‘suspicious transaction report’ (however this fall under a different FATF Recommendation).

Recommendation 10 is important to the AML standards in general because firstly, CDD establishes a direct link between markets and criminality. Secondly, it is a precondition to all other AML standards to develop, as without CDD there would be no ‘following the money.’ Finally, CDD, as the cornerstone of AML standards provides a good example of the framework’s impact and the role of different actors involved.

As a result, focusing this analysis on CDD, as the main element of the AML standards, is justified threefold: 1) the relation to harmonisation, if any, is likely to be more obvious in this section of the AML regime. It is widely recognised that the preventative side of AML is the strongest and, moreover, that the homogenous control of financial transactions is key to an effective AML regime; 2) CDD has suffered significant variation throughout the years than other standards. Given its far-reaching nature it is one of the only standards which is shared by multiple IGOs, private sector and public concerns; and 3) CDD is intrinsically related to economic interdependence, the maintenance of financial stability and subsequently the prevalent state interests as it ensures the identities of account holders and participants in the system are always clear and accessible to law enforcement if needed.

More on the reasoning behind CDD’s selection and definition as case study focus is given in Chapter IV, page 99. The topic of CDD and its development is further addressed in Chapter VI, page 189 and following.
Initially, branded as ‘know-your customer’ (KYC), CDD was essentially the first measure (following the prohibition of money laundering) foreseen in international regulations as it was the preferred option by banking regulators (Levi et al. 2005, p.12). It was developed from provisions in Swiss law and UK guidance notes but eventually materialised with US support and the intentions being expressed in the UN Convention of 1988 (Pieth & Aiolfi 2003, p.360). More than setting an international standard this provision is also essential in what is called the ‘privatisation’ of control and the passing of responsibility to the private sector and financial institutions more generally. Naturally the obligation to follow, record and report suspicious transactions originates in the requirement to identify the customers and beneficiaries of accounts but also brings to institutions significant additional pressure and obligation to be aware of the current standard-making procedures.

A 2008-2009 House of Lords report defines CDD as:

“identifying the customer and verifying his identity on the basis of reliable independent data; identifying the beneficial owner and verifying his identity, and being satisfied of the ownership and control structure of the customer; obtaining information on the purpose and intended nature of the business relationship; ongoing monitoring of the business relationship including scrutiny of transactions to ensure that they are conducted in a manner consistent with the institution’s knowledge of the customer, the business and risk profile including, where necessary, the source of funds” (House of Lords 2009, p.31).

The 2012 FATF Recommendation 10 is the culmination of years of CDD development as an international standard. In essence, it determines that financial institutions ‘must’ (because ‘should’ is to be interpreted as ‘must’ following the FATF Interpretive Notes) (FATF 2012e, p.59) not keep anonymous accounts, either from individual persons or legal entities. Recommendation 10 further defines that institutions ‘must’ carry out CDD measures when establishing business relations, carrying out occasional transactions, if suspecting of money laundering or terrorist financing and in cases of doubts regarding the customers’ identity and intentions. Recommendations 11 to 17 improve CDD provisions by establishing specific provisions regarding record-keeping, politically exposed persons and wire transfers.
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30 (FATF 2012e, p.118). These latter complement the basic requirements with specific guidelines regarding situations of higher risk.

Another important element that originates from the CDD policy strand, and is an integral element of the AML preventive pillar, is the promotion of what is known as Risk-Based Approach (RBA). This approach establishes the ability of institutions to adjust CDD according to the level of perceived risk coming from the financial transaction at hand. It implies that “legislators and policymakers adopt detailed norms on what the addressees of those norms must do and what they must abstain from” (Broek 2011, p.171) in terms of reporting to the competent authorities.

The RBA replaced what was the ‘rule-based approach’ or the need to follow specific requirements and procedures ahead of conducting any kind of financial transaction. These guidelines were thought to be too restrictive and unaccepting of the financial systems’ realities and needs for fast decision-making. These ‘restrictive’ requirements were also not accommodating of the different jurisdictional realities and the fact that not all suffer from massive flows of illegal capital or the presence of terrorist financiers. Specifically, the FATF guidance on the topic clarifies that countries and financial institutions (including designated non-financial bodies and professions [DNFBPs]) should adopt this approach as the guideline for the Recommendations more generally. The FATF upholds “[t]he general principle of a RBA is that, where there are higher risks, countries should require financial institutions and DNFBPs to take enhanced measures to manage and mitigate those risks; and that, correspondingly, where the risks are lower, simplified measures may be permitted” (FATF 2012e, p.31). The risk assessment procedure for both is then divided into assessing risk, defining higher or lower risk, risk management and mitigation and, exemptions. For example, a country previously ‘blacklisted’ would be considered worthy of enhanced CDD, whereas a one-off transaction between private EU-based persons would not.

In this sense, the RBA represented a welcome change from the former rule-based approach that denied practitioners the freedom to assess risk according to their

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23 Politically Exposed Persons may be domestic or foreign individuals with prominent public functions.
own reality (Herlin-Karnell 2011, pp.79–80). In some ways, the passage from rule to risk-based approach is a confirmation that AML actors privilege the focus on process rather than equal standards, as well as recognise that tackling money laundering according to specific risks is a more functional international strategy.

This thesis’ analysis takes into account the actions of actors in relation to Recommendation 10 but occasionally also the associated Recommendations and their guidance. In effect, in recent years, the emphasis on enhanced transparency of legal persons (beneficial ownership) has increased and become one of the most politically and technically debate issues within AML and CDD procedures.

Finally, it is too early to determine whether the RBA to CDD improves the AML standards, but part and parcel of the argument is that the RBA reflects: a) greater harmonisation of practices and process across jurisdictions; and b) greater participation of IGOs and non-state actors into the policy-making process. Overall, as mentioned in the thesis’ introduction, other issues of international concern and stretch have developed within the same principles as CDD. Nevertheless, none has demonstrated such a significant reach outside of their own membership; such upward change throughout time (in terms of institutionalisation); such capacity to favour the harmonisation of international practices and; such functional peer review procedures. The assessment of the evolution of CDD, as the main constituent of AML, should clarify the conditions under which procedural harmonisation occurs.

The next section defines and clarifies the concept of harmonisation and how it may be useful for research into global governance.

2.3 Convergence as the esprit de corps of global governance

As AML standards are good illustrations of the research questions it is necessary to recall that globalisation had significant consequences to the state’s role

\footnote{As is illustrated in Chapter V, page 137 and following.}

\footnote{Meaning (FR) ‘group moral’ or the feeling of unity and solidarity, common preferences shared by members of a group.}
in international relations, the delegation to international institutions and therefore, the introduction of new actors to global policy making (Katzenstein et al. 1998, p.684). Globalisation not only influenced policy outcomes, but altered the rational and structuring behind new international minded policies with the reasoning that divergent practices and dissent would not be considered positive for the good functioning of global governance (Raab 2011; Carver 2003; Gelemerova 2011).

However, as Rosenau affirmed “fragmentation points to a redistribution of authority and not to its deterioration” (1999, p.294) a fact that is additionally agreed upon by Slaughter who believes the ‘disaggregation’ of the state can, in reality, increase its power (Slaughter 2004, p.189). Consequently, thinking about the development of harmonisation in global governance is not aimed at a negative conceptualisation of the state but, to the contrary, at its evolution as an international actor. In describing global governance Kagan affirms “there is little doubt that globalization has impinged on the autonomy of national governments, pushing the legal systems of economically advanced democracies toward convergence in significant ways” (Kagan 2007, p.99; See also, Young 1969). Therefore, what is most obvious from global governance is the passage from “government” to “governance” as states realise current risks and threats are not solvable individually (Picciotto 1997, p.1018). As mentioned, while global governance is a compensating system for the challenges brought about by globalisation, interdependence is increased, and security and economic concerns are further made dependent on the international system. Moreover, global governance is seen as mounting as international institutions develop their powers, and states gain new tools to influence and shape each other’s preferences (Cao 2012, p.382).

These changes are ultimately demonstrated by the phenomenon of convergence, which as more than a consequence of globalisation, finds its original conceptualisation in the strongest and most active actors. Nevertheless, before going into more depth on the phenomenon of convergence, the use of terminology between: ‘convergence’, ‘mutual recognition,’ ‘harmonisation’ and ‘approximation of laws’ calls for clarification. Indeed, there are differences in outcome and process that, for the clarification of what procedural harmonisation consists of, need to be distinguished.
Policy convergence is the first and most complex as it is used as both outcome and process. It is often defined as the “tendency of states to become more similar over time” which does not necessarily mean they adopt exactly the same rules and procedures but the same approaches and tactics in a concerted and coordinated fashion (Jakobi 2013, p.29; Kerr 1983, p.3).

Broadly speaking, inspired by Bennett’s (1991) definition of convergence by emulation, elite networking, harmonisation and penetration, Christoph Knill and others defined and developed the concept of policy convergence further as “the increase in similarity between one or more characteristics of a certain policy” (Holzinger et al. 2008, p.556) and an alternative process to isomorphism, policy transfer and diffusion. It is argued that while policy convergence focuses on explaining “changes in policy similarity over time” (Knill 2005, pp.767–768), the transfer and diffusion processes look more at content, process and adoption of patterns respectively. Therefore, while convergence could be an outcome in itself, focusing solely on this definition would not go as far as to explain the intrinsic nature of AML standards and more importantly the changes in the process and conditions that contribute to answering the research questions. Furthermore, the concept of policy diffusion on its own implies an “increase of policy homogeneity among countries” but not necessarily that these policies are harmonised or converge (Holzinger et al. 2008, p.555). Alternative literature would also place diffusion based on coercion, normative pressure and replication. Albeit relevant, this conception neglects the element of states’ interests in maintaining the integrity of their financial systems, their ability to contribute to the regulatory framework and their expert contributions to institutional fora (Radaelli 2007, p.925).

Indeed, convergence can be understood both as an encompassing concept i.e. the “tendency of policies to grow more alike, in the form of increasing similarity in structures, processes, and performances” (Drezner 2001a, p.54; See also, Holzinger & Knill 2005), thus including mutual recognition, approximation and harmonisation as different degrees of consequence. Legal convergence (Kagan 2007), for example, is the source for a multitude of readings namely in relation to the EU (Thompson 1965), trade (Morawetz 1972), financial systems (Chey 2007), family law (Antokolskaia 2006), contract law (López Rodríguez 2003), among others issues
(Maletić 2013). It concerns what is understood broadly as the reduction of differences between state laws in order to make them more compatible on issues deemed to be of common concern. Nevertheless, convergence can also be seen as a degree in itself between mutual recognition and harmonisation, the latter being its highest stage.

For the purpose of this research, convergence is adopted as a broad conceptualisation of policies and laws becoming similar across different jurisdictions recognising that, in this process, it is possible to distinguish moments of mutual recognition, approximation of laws and harmonisation. Bennett describes convergence as the process of “‘becoming’ rather than a condition of ‘being’ more alike” defining it as possible of occurring in one of five elements of policy-making: goals, content, instruments, outcomes and style (Bennett 1991, pp.218–219). Accordingly, this thesis accepts this view and defines harmonisation as an element of convergence as illustrated in Figure 2.1. As such, harmonisation is the highest level of convergence and is evident in national policies that not only have the same goals but also the remaining four elements as described above. ‘Mutual recognition’ is generally known as the lowest form of convergence whereby states merely recognise provisions of other jurisdictions (therefore being restricted to the same goal), respecting them but not adopting the same rules or instruments. Nicolaidis and Schaffer define it as part of a regime of global administrative law whose existence is dependent on mutual recognition and a regime of global subsidiarity. According to the authors, mutual recognition consists in “intermingling domestic laws in order to constitute the global,” or the laws that exist between domestic and international laws (Nicolaidis & Shaffer 2004, p.266). The principle of mutual recognition distinguishes itself from other forms of international coordination by “instead of requiring others to assimilate dominant national norms, mutual recognition arrangements promote the acceptance of difference” (Nicolaidis & Shaffer 2004, p.317) while at the same time...
acknowledging that there is a need to coordinate (Pincus 2009, p.34). Unlike the other forms of convergence mutual recognition does not imply agreement on strategies but the simple acknowledgement that interdependence systems require acceptance of different jurisdictions and legal provisions.

The same is true for the approximation of laws (Thompson 1965, p.304). EU Directives, for example, are a case for legal approximation because they promote similar principles under different forms of harmonisation. In these cases, policy content is also made more similar. The approximation of laws occurs when threat/risk assessments or actors determine mutual recognition is no longer fitting or ensuring enough advantages to their interests. It is in many ways a step above the sole agreement on objectives that occurs in mutual recognition, including an agreement of strategy and terms. Nevertheless, both these definitions are far from what happens in cases of harmonisation where the agreement and its requirement relates to objectives, strategy terms, and enforcement mechanisms therefore making it the ‘higher’ form of convergence.

In spite of the panoply of definitional options, this thesis focuses on the ways in which policy convergence may be described as harmonisation rather than approximation or mutual recognition. The reason for this is that more than policies coming together or becoming similar through their legal structure, the development of AML is closer to the ‘transfer of policy’ concept focusing on content and, especially, process rather than the simple diffusion or sharing of objectives. Harmonisation, as is shown below, implies a process in itself inclusive of mutual recognition and approximation, but goes further to include practices and actor strategies that translate into implementation tools. This research, in effect demonstrates, that AML policies have achieved a degree of similarity in goals, instruments, content, outcome and style which confirms the presence of harmonisation and is able to link it to the political conditions that best favour it. As a result, for purposes of connecting the policy outcomes to the actors that shape them, convergence is not a sufficient explanation, as it constitutes a normal response to collective threats without showing intentions of going further. Mutual recognition, similarly, would imply that states merely recognise similar practices but have no other interest or mechanism in place to peer-review each other’s threat defence
mechanisms. And finally, approximation of laws is perhaps too great of a stretch for a global phenomenon that, moreover, would require a degree of inter-jurisdictional legal analysis to which this research is not suited for or aiming at. Harmonisation is, as a result, the term which best describes the convergence demonstrated in the process surrounding the implementation of AML standards and the peer-review instruments that derive from it.

By placing it at the centre of this debate, it is argued that harmonisation is not necessarily a symptom of power loss by states but, on the contrary, the result of preferences and change in actors’ participation. In other words, harmonisation may be a common outcome in processes of regulatory coordination and interstate cooperation, which albeit not translating into precise laws, translate into precise processes. This should not be seen in the same light as policy transfer in that it is more elaborate. Dolowitz’s work on policy transfer defines it as “the occurrence of, and processes involved in, the development of programmes, policies, institutions, etc. within one political and/or social system which are based upon the ideas, institutions, programmes and policies emanating from other and/or social systems” (Dolowitz 2000, p.3); As analysed here, harmonisation relies on economic priorities more than ideas and, is centred around specific international relations interactions dependent on great power relations and networks of a transnational character rather than on how national policies come to be implemented or the ‘rationality’ behind them. Policy transfer is, in addition, not necessarily just one of the possible styles/umbrella of convergence, as seen above-mentioned literature, but a process in itself that helps justify the focus on function required by the international financial system, the focus on tools of harmonisation, as explanatory of the process, and the ways in which actors have specific roles in its formulation and implementation. In sum, literature on policy convergence and its varied types is vast and concepts are generated from varied perspectives.

Common to most formulations, however, are the causal mechanisms; The causes of harmonisation can be found in five elements (Knill 2005, pp.769–770): a response to shared problems; policy imposition (Simmons 2001, p.607); harmonisation through international law (Mitsilegas 2003); regulatory competition (Drezner 2001a; Wiener 1999; Drezner 2005) and; transnational communication
(Jakobi 2013). Therefore, while this thesis contends that the process of harmonisation stems from policy convergence, it is seen as occurring through its own process involving exchanges between actors and policy-making bodies but not necessarily an analysis of the outcomes of the specific policies adopted.

AML standards, as developed upon above, are identified in light of all causal elements thus confirming its suitability for analysis in relation to harmonisation. Its historical review confirms how harmonisation was prompted on the majority of states through economic and peer pressure of larger economies (policy imposition) but also through international law and measures adopted by the UNSC. It further demonstrates how protecting the markets and maintaining their effective functioning and competitiveness (regulatory competition) served as an important incentive for increased transnational communications and action. Accordingly, the occurrence of harmonisation per se in AML is palpable and requires little further research.

Moreover, before moving on to the next sections, it should be said that harmonisation, including in AML, does not only stem from external factors as domestic affairs can also have an important impact. However, this thesis is prompted by challenges to global governance and thus is essentially transnational in focus. Harmonisation at a domestic level is thought to be less puzzling as national jurisdictional systems have strict and democratically accountable processes of creating and implementing laws and practices. As described in the thesis introductory chapter, the puzzle lies in the conditions under which some international policies gain harmonisation characteristics while others do not.

**Harmonisation as the outcome of global governance**

As this research’s objective consists of determining ‘conditions’, harmonisation must firstly be discussed and its instruments identified in order for the analysis to take place. As defined above, this thesis views harmonisation as the last step of policy convergence including the harmonisation of content, goals, outcomes and style. In the AML standards context this is visible through the peer review process and its consequences, but also the coordination that exists between great powers and IGOs, as is demonstrated in the empirical chapters below.
Harmonisation is normally referred to within discussions of legal concepts and, within the international debate, relating to the bringing closer together of municipal laws. Therefore, the majority of literature addressed here is of a legal background. However, this thesis interprets harmonisation as having primarily economic motivations, being driven by political decisions and, working towards convergence defined as “a specific outcome of international co-operation, namely to constellations in which national governments are legally required to adopt similar policies and programmes as part of their obligations as members of international institutions” (Holzinger & Knill 2005, p.781; See also, Windholz 2012, p.326; Drezner 2001a, p.57). It is a type of convergence but includes not just policies coming together or laws being approximated, but the processes used in making practices equal across jurisdictions.

Regardless, the concept of harmonisation is difficult to define and conflicting literature exists on this matter. Some argue, in fact, that it might be an ‘exercise in futility’ to try and define it seeing as its interpretation will always be dependent on the kind of policy and area in which it is adopted (Windholz 2012, p.326). For example, similar literature exists regarding standardisation or harmonisation of accounting standards which albeit popular is not too relevant to this research (See for reference, Tay & Parker 1990; McLeay et al. 1999). Overall, while precise definitions of harmonisation might remain ambiguous, the literature seems to agree that when benefits, preferences and costs align the ‘harmonisation’ of regulations across borders is the most probable outcome (Drezner 2008, p.72). As a result, within the context of internationalisation described above and following from Groom and Heraclides’ defined modes of integration, harmonisation is the outcome of shared preferences and concerns expressed as “institutionalised policy adjustments and alignments, often on the basis of some superordinate norm or standard [and] compatible parallel legislation or practices are separately instituted by different actors in order to reduce the impact of boundaries” (Groom & Heraclides 1986, p.177).

Moreover, the term is used to describe the need “for new international regulatory regimes” with which come warnings on the consequences of subsidiarity and external interference into one nation’s affairs (McGinnis 2000, p.393). Within
the same debate, Jarrod Weiner’s thoughts on harmonisation as an element of domestication of laws concluded that on some occasions (e.g. AML) the increasing harmonisation of municipal law could raise real concerns regarding the democratic nature of the law making procedure and the freedom that it leaves citizens to develop legal structures as a consequence of their own interactions (1999, pp.196–197). However, the concept of ‘international harmonisation’ developed by Holzinger refers to situations where “national governments are required to adopt policies that are in line with international requirements” and are not contrary to the state but function as a tool of its objectives (Holzinger et al. 2008, p.556). This concept largely serves as the basis for the AML focused proposed research, as it also encompasses the assumption that the state evolves through harmonisation rather than disaggregates and, furthermore, global governance is an adaptation of state interests and how these translate into preferences.

Despite questionings of its democratic and sometimes coercive nature, harmonisation at international levels illustrates state coordination (and therefore validity of action), support building, political strength, a way to ease government and, risk avoidance to national governments (Windholz 2012, p.328). Harmonising practices can facilitate business by removing controls and diminishing costly regulatory differences. It can make policies more accountable because as centralised systems are, in theory, easier to report on. Harmonisation is also associated with the quest for effectiveness in international policy making in so far as different processes and laws can sometimes mean transnational regulation is more difficult and time consuming.

As a result, solving common problems through harmonisation may bring further concerns regarding the ‘levelling down’ of public policies (Holzinger & Sommerer 2011). Some contend that by harmonising laws states function on minimum common denominators and therefore do not take policies to their full

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26 Note the authors see harmonisation as a tool for convergence and not a self-standing concept as seen here.
27 This research distinguishes between interests and preferences. Accordingly, “Actors’ interests are primordial; from these they derive their policy preferences for different issues” in Milner 1997, p.241; See also, da Conceição-Heldt 2011, p.404; Moravcsik 1993. Further elaboration on this issue continues in page Chapter III, page 58.
potential (Slaughter 2004, p.166). Whilst this might be so for several policy areas, this research will demonstrate that the global AML standards have evolved in an upward trend, which mainly raised standards across international and national jurisdictions.

Furthermore, the reasoning behind harmonisation as an outcome of international policy making relates to the acknowledgement that standards in this area are more integrationist and specific than would be expected leading to the lowering of variation amongst domestic laws or the irrelevance of existing variation to policy outcomes. Certainly, while the ‘race to the bottom’ issue is definitely a threat of harmonisation, it is not one that applies if the policies include peer review mechanisms. In fact, expert papers have suggested that common laws and conduct are useful, for example, to reduce money laundering at the international level especially following market concerns because, on some occasions, even the lowest level of safety net is better than having no standard recognition at all (Tanzi 1996, p.14).

In sum, as regards the AML standards evolution, harmonisation is established as an accurate term as the global framework illustrates a “complex interrelationship between formal international agreements, trans-governmental interaction, and domestic regulation - a relationship that may often produce unintended consequences” (Slaughter 2005, p.59). In this sense, the main difference between mutual recognition and harmonisation, for example, is that the transfer of sovereignty is horizontal and not vertical as is the case of the AML framework. Mutual recognition is, on this reading, almost not a mechanism for convergence but a regulatory option that may lead to divergent outputs (Holzinger & Knill 2005, p.794). Accordingly, more than the approximation of laws, global governance deals with the convergence of strategies and institutions in order to be able, at a national level, to see laws and practices recognised. Within the global AML framework, harmonisation is present in the processes through which states formulate domestic legislation to suit international standards and then amend international standards to reflect domestic experiences. Finally, what distinguishes it from other processes of

28 From a EU Internal Market perspective see Thomson 1965, p.14.
convergence or mutual recognition referred to above is, however, not the wording of the standards but how their processes evolve.

Overall, this thesis offers an analysis of the phenomenon from a perspective of positive engagement with new forms of governance and collective problem solving. Whether the data suggests that the presence of harmonisation leads to additional problems is a matter to be discussed in light of different research questions.

**Implementing harmonisation**

The following section defines how this thesis interprets harmonisation and its implementation as a distinct process in global governance. The process of harmonisation that is evidenced in the making of international regulations is not thought to be illustrative of the formation of a global government. Rather, it is thought to be indicative of the existence of coordinated practices and strategies to deal with transnational governance under certain favourable conditions. In what regards AML, it is thought demonstrated by the international definition of outcomes, goals, policy content and style in which it is implemented.

Normally, harmonisation is a term associated with the EU’s integration process and the establishment of the internal market, which has required more abdication of sovereignty than that which is being dealt with here (Howell 2005; Ehlermann 1995). As mentioned earlier the process of harmonisation in the EU is linked to the provisions of Article 114 TFEU and the particulars of European integration that are not contemplated in this thesis (Pelkmans 1987; Egan 2002; Givens & Luedtke 2004; Threlfall 2003).

To the contrary, as developed by Harrisson and Mungall and supported by this thesis, “[h]armonization suggests itself where the discussion between national policy-makers may discover value consensus which can be the ground for a wide range of agreements” (1990, p.58). A closer example to this statement and the debate proposed here is the discussion concerning environmental law (Smedt 2004; Holzinger & Sommerer 2011; Faure 1998; Hunter 1991; For a non-European focus

see, Howlett 2000). The harmonisation of environmental issues is, as hinted at in Chapter I, reminiscent of the process of AML harmonisation seeing as it is brought to the international agenda as a collective problem and threat to the global eco-system by developed countries (shared problems), implies economic sacrifices by developing states but is often imposed on them through third party agreements (policy imposition). As with AML, international efforts to combat climate change are based on transnational communication and on the balancing of its impact on competitiveness. Unfortunately, the environmental framework does not present an immediate threat as money laundering does (arguably), and the harmonising instruments created for it lack the compliance instruments such as the peer review processes and its consequences to global governance.

From a legal perspective, Windholz defines the process of harmonisation as having three stages: breadth, depth and standards within a three-stage cycle of policy, programme, and political instrumentalisation. Focus on harmonisation is centred on the outputs it generated but especially on the processes and tools used to achieve it (Windholz 2012). More specifically, emphasis on harmonisation can be twofold with either a focus on outcomes and objectives of policies where it is assumed to be ‘consequential’ or, when it has a focus on the process of cooperation that occurs between states called ‘procedural harmonisation’ (not to be confused with procedural law) not unlike the focus on ‘function’ argued by King (1988). Similarly, Mads Andenas, Camilla Baasch Andersen and R. Ashcroft (2012) extensively review the main elements of harmonisation, mostly referring to legal processes, under the different alternatives for analysis. This research and its analysis of AML adopt their interpretation of harmonisation as a phenomenon and adjust it to political phenomenon as well as legal ones. It is argued that if harmonisation is directed at objectives, the focus of analysis should be on what is wanted from the policy i.e. the prevention of money laundering. But where the objectives are clear, the focus on harmonisation from an international perspective is of higher empirical and theoretical relevance if it is focused on the processes.

Mads Andenas, Camilla Baasch Andersen and R. Ashcroft define ‘procedural harmonisation’ as “the manner in which the process is undertaken, and relates substantially to the techniques used for adoption of harmonised law or adaptation
Towards a harmonised law” (Andenas et al. 2012, p.583). Procedural harmonisation “as conceived, not only concerns the processes of harmonisation but indeed aims at adopting the process likely to achieve the ‘best solutions’” (Andenas et al. 2012, p.583).

Specific tools constitute procedural harmonisation, namely: comparative law, informal and formal processes, cross-pollination and the consistent interpretation principle (Andenas et al. 2012, pp.583–586). Broadly comparative law is the process through which countries take into account the frameworks in place in different jurisdictions, through dialogue, in order to create similar and informed domestic applications that make cross-border relations smoother. Formal and informal processes are either the adoption of model rules set by intergovernmental fora or the “informal engagement by non-governmental organisations be they lobby groups or business” (Andenas et al. 2012, p.584). Informal contacts and information exchanges may, additionally, be considered informal processes leading to harmonisation. Altogether the presence of this tool may provide states with the legitimacy and recognition of appropriateness, which often can assist in the pursuit of its material interests and international power. The presence of cross-pollination is similarly, the interpretation of national legislation according to international requirements using national or regional enforcement mechanisms (e.g. courts) on non-applied rules as predominant. This tool is often the most problematic as the credibility of international decision directly transposed into domestic scenarios is debatable. Finally, procedural harmonisation is favoured by the existence of guidance providing a common interpretation of what principles mean and how they should be implemented (consistent interpretation principle). Normally, this occurs through advisory opinions given by expert or judicial bodies, including IGOs.

Depending on actors’ actions, all of the above are present in the process of AML harmonisation with a special emphasis on the principle of consistent interpretation of international standards and the influence of formal and informal processes. In sum, this thesis discusses how procedural harmonisation occurs as a result of the causes identified above and can be made evident through the listed tools.
The main objective of this thesis is therefore to determine whether specific conditions influencing the making of international AML standards, and the participation of specific actors was relevant to the proliferation of these standards through harmonisation processes. In this sense, research acknowledges that procedural harmonisation raises questions regarding the type of language being promoted, the kind of states and institutions supporting the process and the degree to which harmonising a process undermines domestic legal systems (Andenas et al. 2012, p.590). These elements are broadly considered along the analysis throughout and best discussed in Chapter VI amongst the thesis’ contribution to this literature.

The next section therefore determines that while having fixed causes, specific tools of procedural harmonisation are associated to specific actors/conditions and may therefore become relevant to future policy-making strategies in the context of global governance.

### 2.4 The tools for procedural harmonisation

The harmonisation of AML is thought to depend on:

> “not only a coherent group of transnational actors, a broad consonance of motivation and concern and regular opportunities for interaction; they also require authoritative action by responsible intergovernmental organizations.” (Bennett 1991, p.225 Emphasis added.)

As established above, the AML framework was developed in accordance with harmonisation causes, in order “to safeguard the soundness, integrity and stability of the financial system” (European Commission 2012a) and as an effect of its regulatory competition demands for harmonisation (recognition of shared problems). In this sense, the state and the relevant institutions have established a sphere of authority (imposition of laws), which operates globally to protect the economy. In this sense, its presence in AML is thought of as established. The ‘marketisation’ of these institutions is illustrated by their primary concerns with the markets and the health of the financial systems. In fact, although money laundering is an offence with social impact, these factors have not been the core focus of the global AML strategy.
Financially interested institutions govern the AML framework because money laundering is essentially perceived as a threat to the financial system. In doing so they form a network (transnational communities) which may be the key to understanding harmonisation through international law as they entrust “many important choices to technical expertise and can allow network members to bolster one another in domestic bureaucratic struggles” (Slaughter 2005, p.63). In addition, harmonisation requires an existing degree of convergence, i.e.: similar state interests, shared preferences, a network of institutions to uphold it and, recognised expertise to legitimise it. Nevertheless, some states, see the costs associated with harmonisation as higher than the benefits (Simmons 2001, p.591). Similarly, many institutions have been reluctant to contribute to an area outside of their original mandate, and often experts are disregarded on behalf of different preferences (Sharman 2011, p.139).

As a result, this research uses the tools identified above to determine, in Chapters V and VI, which conditions were most favourable for procedural harmonisation. The thesis thus uses the identification of these tools in the AML policy-making process as confirmation that procedural harmonisation occurs and is linked to specific circumstances, such as the preferences of the relevant actors.

In so far as AML is concerned, out of the four tools of procedural harmonisation mentioned-above, three are of particular importance (in addition to the causes of harmonisation itself). The process of comparative law is not something that this research is able to confirm, as it would imply a lengthy comparative process of national legislation and knowledge of domestic legislative realities. Therefore, the thesis focuses on the three remaining conditions for procedural harmonisation and attempts to identify their occurrence in the making, development, and peer review of CDD and AML more generally. Briefly outlined:

*Informal or formal processes*, in this context, represent the adoption of model rules through intergovernmental relations or the input of NGOs and businesses to the policy making process. In other words, the making of the AML standards through the G-7 structure offers some evidence of a formal process at hand, as does the delegation to IGOs. Procedural harmonisation may, in addition, be identified through the FATF membership expansion and the creation of regional bodies. Moreover,
states are likely to receive input from the private sector and NGOs at domestic levels, although that is not greatly debated here.

On the other hand, formal and informal processes are also evident in the increase of exchanges and relationship building between IGOs, particularly as regards mutual evaluations. The input that NGOs and the private sector is thought to offer the FATF, for example, further illustrates that informal processes may also have a significant impact.

Altogether, these processes inform the standard-making procedures and the adoption of specific municipal laws and regulations. From a formal perspective the effects of actions within intergovernmental institutions are more direct but there is the opportunity for ‘forum shopping’ (Jupille & Snidal 2006, p.32; Drezner 2001b, p.329) that the US, for example, has exploited in the making of the AML framework. This means that often the international fora may not be representative of the majority of countries although the adopted rules have a quasi-universal implementation. The complement that the informal processes provide to the AML standards is then that of added rationality and information conferring model rules with some expertise and legitimacy as is further explored by the empirical research.

Cross-pollination is defined as the referencing of international law in the adoption of domestic measures (Andenas et al. 2012, p.585). The problem with cross-pollination is the lack of understanding of whether the use of international decisions in national applications of law is legitimate or correct. For example, although only broadly related to AML, the Court of Justice of the EU (ECJ) and the Council of the EU engaged in an exchange reminiscent of this element in the context of the ECJ’s Kadi case. Moreover, within the AML framework more specifically, the existence of the NCCT/ICRG processes as tools to ensure international compliance comes close to a strategy of interpretation of ‘foreign obligations’ to ensure AML harmonisation and the FATF enforcement procedures.

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Consequently, cross-pollination in AML mainly has the potential to emerge from the ‘blacklisting’ process and concerns with the financing of terrorism as demonstrated post-2001. International efforts to this end hold the support of larger economies and international institutions, including the UNSC (with its binding nature) and appear readily willing to act on international guidelines at the domestic level. Therefore, this phenomenon occurs due to, the implementation mechanisms that can be set in motion, and the imperative needs to have a consistently protected financial system from terrorist financiers and transnational crime.

**Consistent Interpretation** relies on the advisory opinions of internationally recognised expert bodies or through intergovernmental cooperation. In the development of the AML standards the FATF Interpretive Notes, produced to accompany and be read simultaneously, are the most likely illustration of this instrument. In fact, the fact that the Notes are updated along with international standards also implies that little doubt should remain during the national elaboration of the laws. Consistent interpretation is further assured by the peer-review mechanisms (or mutual evaluations) and actors, which through the production of reports and standard implementation analysis, determine the levels of compliance of the varied jurisdictions with AML standards and ensure their consistency with the international requirements.

Altogether, the tools defined above are used by this thesis to illustrate the conditions under which procedural harmonisation occurs and how it relates to the interactions between actors analysed in Chapters V and VI.

**AML and harmonisation**

Whereas agent based theories will interpret harmonisation more as a coordination process rather than complete homogeneous policies, structural theories, as those followed here, interpret procedural harmonisation as an outcome of actors’ interactions (Drezner 2001a, p.57). In other words, procedural harmonisation is seen as dependent on the preferences of actors and the relations established between them.

The evolution of the AML standards, and the institutional developments that surround it, demonstrate that an effort to go beyond mutual recognition has existed.
since 1989. This acknowledgement is corroborated by the reading of the available international legal documents in conjunction with the typology reports and Interpretive Notes on implementation and interpretation of standards carried out in the empirical chapters.

However, literature on the causes of harmonisation focuses too much on regulatory competition as the main source and failed to take a holistic approach to the causes which, if combined might offer a better overview of the events (See for example, Pincus 2009; Ogus 2005; McGinnis 2000; Vogel & Kagan 2005). In fact, Murphy found that regulatory competition led to, either higher common denominator or, the heterogeneity of outcomes (Murphy 2005). This thesis, therefore, contributes to these findings by developing a debate of the conditions behind procedural harmonisation and suggesting actor interests and preferences may be key to the policy outcome. Moreover, it is suggested that communication plays a bigger role than market demands which informs the assumption that networks of IGOS may also have a significant impact (Holzinger et al. 2008, p.584).

Select previous works on the issue of harmonisation and AML are worth revising in relation to the argument proposed by this thesis’ research questions.

Jarrod Wiener’s book on ‘Globalization and the Harmonization of the Law’ stresses the fact that ‘harmonisation’ often refers to “results rather than obligation of means” (1999, p.35. Emphasis as original), and while both can be identified in specific policy processes, the occurrence of the latter would deserve further investigation. Wiener (1999, p.188), despite the similar research focus, organises his thought process from a fundamentally different perspective arguing that the harmonisation of municipal laws, albeit sometimes influenced by external actors, reinforces the states’ power to control their own territory and sovereignty. Evidence presented demonstrates the cause for such an assumption is the absence of international mechanisms; This is, in its totality, contrary to the argument developed in the empirical chapters below regarding the role of actors and the international enforcement mechanisms created within the occurrence of procedural harmonisation. Interestingly, the book has similar premises, as those proposed here, in what concerns the effectiveness of harmonisation and its links to generalised international
compliance, although the reliance on private actors as main drivers of harmonisation and domestic policies seems, in light of this thesis’ findings, somewhat misguided, albeit not unique as shown by Singer (2007).

Daniel Drezner further debates the role of harmonisation in AML. Drezner’s distinction of international standards as: harmonised, club, rival, and sham standards, relies on institutional structural characteristics to define the outcomes. However regardless of the value of the discussion in “All Politics is Global”, the conditions under which harmonisation occurs are not addressed, and the author places anti-money laundering rules under the ‘imposed’ international harmonisation label without looking into its historical development or specific contexts (Drezner 2008; Drezner 2005, pp.850–853).

A closer fit to the harmonisation concept proposed here and the issue of AML is Sharman’s (2011) idea of power as the ultimate trigger of policy diffusion in AML that occurs through three elements (blacklisting, socialisation and private sector/competition incentives). Sharman’s discussion on small and bigger states is based on the same recognition of input into international standards as that proposed by this thesis. The identification of blacklisting and general incentives as important for policy development are also common premises taken as a given. Nevertheless, sharing the same global governance framework does not always lead to similar processes, regardless, of how close the outcomes are. The given definition of ‘policy diffusion’ is poor and whereas the effects of harmonisation are relevant, this thesis would rather focus on the process. Furthermore, because this thesis adopts an interest based perspective on international relations, stemming from the financial and power conceptions, the issue of socialisation might be relevant but not definitive. As is evident in, for example, the attempts to harmonise environmental protection, socialisation without enforcing compliance is not too successful and so, although it definitely influences international agendas, it is not thought of as a strong determinant of policy outcomes. This latter debate confirms that while, for example, the belief in the environmental cause is present, it does not materialise in the same way as AML policies and others, thereby generating the need for additional research on the conditions for procedural harmonisation.
Lastly, Sharman’s book is conceptually constructed against a background of world society influence focused on specific policies and their impact on developing states. This thesis, however, focused on the conditions under which the tools for procedural harmonisation developed and in what ways empirical findings may be of use to other global governance policy fields.

2.5 Conclusion

This chapter discussed the evolution of the AML standards and ways in which its background is a good example of global governance. It began with a review of the evolution of AML standards and of its main instruments in the context in international relations. The development of CDD measures emerge as central to the AML developments, and a policy area that may benefit from further analysis in the context of current global governance debates.

In this sense, the concept of convergence, its varied definitions and degrees, was discussed in order to determine that harmonisation, as a degree of convergence, is the most relevant for the analysis at hand. This chapter, therefore, defined harmonisation as an outcome of global governance that may be analysed through a focus on its procedural nature and the identification of the tools through which it occurs, namely, the consistent interpretation of principles, cross-pollination, and formal and informal processes.

The chapter introduced the ways in which procedural harmonisation is identified as regards the AML standards, and the contribution that this analysis may hold in the assessment of the conditions that influence the process. The thesis will therefore demonstrate how these tools connect to global governance and its actors, specifically great powers and IGOs.

31 For simplification of writing, ‘procedural harmonisation’ may be referred to hereinafter, interchangeably, as ‘harmonisation’. The focus of the research is, nonetheless, the process (or a series of actions or steps taken in order to achieve a particular end) interpreted as an outcome.
CHAPTER 3

GLOBAL GOVERNANCE: A FRAMEWORK FOR ANALYSIS

3.1 Introduction

From the assumptions built-upon above regarding the evolution of AML standards and procedural harmonisation, this discussion contextualises the research questions within the global governance, great powers and policy networks literature.

As observed earlier in this thesis, economic and security concerns are the starting point for global governance as delegation from states to IGOs is encouraged. This chapter introduces great powers and IGOs as the main actors in global governance and establishes the background for harmonisation through a debate on how these actors operate in international settings and ultimately influence the national implementation of specific policies.

The chapter argues that, as the link to interdependence and globalisation is stronger with larger economies, great powers are the best illustration of the actions of states in global governance. Their role in setting international agendas, delegating to IGOs (as a shared preference), and ensuring compliance as part of a ‘grand strategy’ for global governance are identified as possible conditions for procedural harmonisation. The chapter discusses, nevertheless, how global governance gaps might not be tackled by great powers alone and so introduces IGOs as independent actors with the ability to provide an alternative form of governance. The acknowledgement that IGOs share preferences, exchange resources, and establish relations with each other suggests the capacity to form a policy network. Consequently the conceptualisation of a network of IGOs is introduced as a complement to the actions of great powers and a contribution to the understanding of the conditions behind harmonisation. The link between IGOs as network forming actors and more than an instrument of state action is the key premise leading this chapter.
In sum, this chapter reviews the available and relevant literature in order to identify which actors must be analysed in the making of AML standards and in relation to evidence of procedural harmonisation.

3.2 Global governance

The framework for analysis developed through reviewing literature on global governance clarifies the positioning of different international actors in the making of AML standards. From the debate presented here, this thesis is able to identify and distinguish actors’ input into the case study and whether any change in the pattern of interaction as occurred. This theoretical framework provides the basis for the empirical research and the assumptions that are developed throughout the analysis.

Following what has been discussed in Chapter I, interdependence matters but it might not indicate more than a ‘house of cards’ system, which on its own establishes a weak causal mechanism for harmonisation. The analysis of the concept must therefore include the elements that characterise it and the relevant participants. This section describes the interdependence of states and inter-state cooperation defining the latter as leading to global governance through the institutionalisation of transnational activities. In this manner it opens the door for the development of ‘new’ global governance based on states’ delegation to IGOs and procedural harmonisation as a main outcome.

From a liberal intergovernmentalist perspective, it is argued that “national preferences are primarily determined by the constraints and opportunities imposed by economic interdependence” (Moravcsik 1993, p.517) thus showing how states find inspiration in economic priorities in order to cooperate. If, on the other hand, we adopt Keohane and Nye’s take on combining security and economic concerns the cycle of interdependence is complete as both are among the essential state functions. Axelrod and Keohane (1986) moreover defined cooperation as innate to state actions and an essential element of modern international relations while Drezner stated “more globalization could potentially mean more coordination” (Drezner 2008,
p.217) seeing as in a globalised world ‘no man is an island’ and state interests are not able to be achieved without it.

Generally, states recognise the need to cooperate as an economic and security imperative and therefore establish a system of inter-state relations responsible for governing matters beyond the realm of traditional state action. The recognition of the need for global governance has meant that, “[w]orld politics is not a homogeneous state of war” (Axelrod & Keohane 1986, p.226) and power is not the only legitimate political instrument (Morgenthau et al. 2005). So, currently, the role of the state and domestic government is more accurately defined as “to enable socio-political interactions” (Rhodes 1996, p.657) rather than to govern international relations as is assumed occurs in the making of AML standards.

The shift in state importance to the management of global problems is mainly reflected in the development and growing importance of IGOs defined as “sets of rules that stipulate the ways in which states should cooperate and compete with each other” (Mearsheimer 2001, p.17). Naturally, because they are constituted by states these bodies are not completely autonomous or independent from state interests. In this sense, IGOs are not “necessarily a reflection of globally shared norms” (Rosenau 1990, p.422) but of cooperation as means to achieve actor defined objectives. As a result, the concept of interdependence has led to the institutionalisation of cooperation and the emergence of relevant international actors other than the state as is demonstrated in the analysis of the AML standards.

States and IGOs come together in this thesis through what is known as the ‘process of delegation’. Delegation is the instrument through which most collective action problems are solved on the global stage and the reason behind the creation of IGOs and international fora. It is the process through which power and responsibility are passed on to solve or carry out a task, which would otherwise be too expensive. Delegation is thus the formal act through which the government of any given state ‘gives away’ or, to all effects, nominates another actor or legal person to act on its behalf and in relation to any given topic.

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1 John Donne, Meditation XVII, (1624).
Majone (2001) offers a straightforward, rational choice-based, view of delegation whereby principals assign away responsibility in order to achieve credible commitments. Majone’s simplification favours the process of clarifying the conditions for harmonisation in that it establishes a link between actors and defines the type of interactions that should be expected. Reflections on global governance, ultimately, require the consideration of different levels of analysis which hints at the importance of credible commitments occurring between actors but also at the thesis of interdependence (Majone 1996). So, where delegation contributes to the development of relationships between actors, the degrees of that relation depend on the interests at stake and how committed states are to upholding them.

If interests are, as defined in Chapter I, mainly attached to the global economy and financial stability, then Gilardi is correct in saying “that no less than economic growth and a healthy economy depend on the capacity of the government to make credible commitments” (Gilardi 2002, p.875). Although it is worth noting that Gilardi (2002, p.889) concluded that economic interdependence is not a relevant explanation for making credible commitments and that the economic nature of the regulatory system is a better explanation.

In any case, if on the one hand economic interdependence might not be the explanatory element for delegation and outcomes, Gilardi’s findings corroborate the importance of the process of delegation and the role of actors in influencing the outcomes of cooperation, in line with Majone’s thinking and the empirical data analysed in Chapter V.

Therefore, the ability of IGOs to work and develop international standards is determined in consequence of a formal act of delegation that states have signed in order to solve collective problems. To all intents and purposes, “[a] provision delegates power if it requires member states or their authorities to adopt measures that may alter the status quo” (Franchino 2001, p.173) or if it clearly illustrates a shift in competences. As a result, from a context of interdependence where economic interests rule delegation strategies and within the AML standards case study, the thesis identifies different types of intergovernmental organisations selected to accomplish state defined objectives. Bodies with universal membership and targets,
like the UN, are often difficult to control and gear in the ‘right direction’ giving rise to criticism whereby “international organizations increasingly resemble slow-moving dinosaurs” (Slaughter 2001, p.179). Smaller groupings of states, sharing specific goals or geographic location are often more successful in achieving compliance and effectiveness (Zagaris 2004, p.142). So, the interests at stake and the perception of outcome shape the delegation strategies selected by states.

This chapter begins by establishing that the path to global governance began with the acknowledgement of interdependence, inter-state cooperation and the delegation to IGOs as a result. The next section therefore clarifies the concept of global governance, how actors fit into it and, what are the main gaps existing in the literature.

**Global governance as a response mechanism**

The concept of global governance was born with Rosenau and Czempiel’s ‘Governance without Government’ (1992) and the work of the UN Commission on Global Governance (Weiss & Thakur 1995). In this context it is defined as:

“[t]he sum of laws, norms, policies, and institutions that define, constitute, and mediate trans-border relations between states, cultures, citizens, intergovernmental and nongovernmental organizations, and the market. It embraces the totality of institutions, policies, rules, practices, norms, procedures, and initiatives by which states and their citizens (indeed, humanity as a whole) try to bring more predictability, stability, and order to their responses to transnational challenges—such as climate change and environmental degradation, nuclear proliferation, and terrorism - which go beyond the capacity of a single state to solve” (Weiss 2009, p.2 Emphasis added).

Sammy Finer also defined governance as “the activity or process of governing or governance (...) the manner, method or system by which a particular society is governed” (Rhodes 1996, p.652) and therefore any form of authority or enforceable system that determines the strategies and conduct of daily economical, political and social life. Broadly, global governance relates to all politics and coordination efforts happening outside of the traditional state realm of action although it can still be characterised as a “continuation of domestic politics by other means” (Milner 1997,
In this context, as mentioned in the previous section, it is in the interests of states to cooperate, specifically through law-making; it is intrinsic to success in a globalised world and normally serves to reduce transaction costs, problems of incomplete contracting, strengthen the credibility of commitments and the protection of citizens (Abbott & Snidal 2000, p.422). Essentially, global governance is a product of states’ recognition that in a globalised world “rules and procedures shape outcomes” (Gourevitch 1999, p.137) even if more distanced from state power than normal. In its very essence, it is a consequence of globalisation and therefore aims to generate mechanisms and response strategies to deal with transnational economic, security, and interdependence-generated problems.

Global governance also refers to non-state bodies and organisations as long as the objective pursued has a bearing on “transnational rule and authority systems” (Held et al. 1999, p.50). In this sense, the concept is more about practical solutions, about rationality, to face international problems like money laundering and similar ones (Neumann & Sending 2010, p.174). The conditions leading to it can be found by looking at the consequences of globalisation but have more specifically been linked to: the return to economic austerity (after the Second World War boom), the perceived failure of state activism, everyday hyper competitiveness and, the absence of an elite agreement (Sinclair 1999, p.159). As argued by Bach “broad observable patterns of global governance are produced by interaction of specific configurations of domestic regulatory institutions with the forces of market globalisation” (2010, p.562) defining the international governance system as a necessity to maintain and survive in the current world. In addition, while Reichert and Jungblut define governance as “the process by which society rules itself” (2007, p.397), Rosenau offers a more specific definition where governance is composed of “mechanisms for steering social systems toward their goals” (1999, p.296).

Like what is found at domestic levels, the ‘government of the world’ is also made by agency and aiming to protect citizens, however what changes are the chains of authority and decision-making processes. In essence, when governments realise matching or similar interests, international systems or regimes of governance are formed to accomplish them. Global governance is therefore filled with regulations and regulatory systems focused on shaping behaviours and addressing collective
problems “usually through a combination of rules or norms and some other means for their implementation and enforcement, which can be legal or non-legal” (Black 2008, p.139). The formation of regulatory regimes and their boundaries are defined by what motivates them but also the fact that there is continuity in practice and ad hoc actions would not suffice (Black 2008, p.139). As suggested by the background review of AML standards the developments in this policy area were a necessity of transnational nature which relies on governments’ shared preferences and collective action.

Altogether, the vast body of literature connected to the concept of global governance is essentially divided into two distinct streams of thought. The first is concerned with the concept of international regimes and regime change (Ruggie 1998; Young 1969; Haas 1982). The second focuses on concepts of interdependence and actors’ roles as well as the premise of economic determinism in shaping global policy-making strategies (Rosenau 1999; Martin & Sinclair 1999; Held 1995). Consequently, as suggested by the research questions the focus should be on the process and instruments. Moreover, the latter is more relevant in its consideration of the role of actors and what influence they hold than on the regime created. The AML standards constitute, in many ways, a ‘regime’ but because that terminology leads to assumptions of civil society participation, norm building and governmentality, there is a distinct attempt to avoid the term and focus on interest based actions.

Generally, global governance, as a supranational theory, is thought to be able to explain variations in harmonisation across time but is less useful to explain variations across countries providing a low basis for comparison with other situations (Givens & Luedtke 2004, p.149). Nevertheless, the clarification of the conditions that either most favours or harms it within a global governance setting is still possible and may contribute to future policy making.

In order to achieve this, given that economic interests are prevalent, the role of great powers is analysed as regards the research questions and Drezner’s argument of “bringing the powers back in” (Drezner 2008). Their input is analysed considering Torfings’ claim that the state can also benefit from governance networks but also, that IGOs share the same regulatory interests and advantages (2012, pp.100–101). In
this context, the concept of global governance “provides us with a proper theoretical terminology to describe and analyse the complex of systems of rule-making, political coordination, and problem-solving that transcends states and societies, constructing new political realities and reconstructing old ones” (Kacowicz 2012, p.687). The global governance framework therefore provides a background for analysing the occurrence of harmonisation against the influences that great powers and IGOs are thought to have in the AML context.

Accordingly Weiss and Thakur claim that global governance exists to solve collective problems but that challenges exist in the operationalization of practices. The authors identified five elements of global governance gaps: knowledge, normative, policy, institutional, and compliance (Weiss & Thakur 1995).

It is argued these challenges are shared between IGOs and states alike starting with the problem of information exchange and access that interferes with knowledge gathering and its adequate reflection on the policy-making processes. The normative reflection on morals and social control should not be particularly obvious in the analysis of the AML standards as this thesis’ argument emerges from economic interests and relies on the observance of the regulatory process. Indeed, whilst having an impact on society AML is not a moral issue beyond its connection to the various predicate offences and as such, it is addressed only at the point of AML criminalisation and how it emerged. The policy gap issue, and the implication that a state-centred system is not as effective, definitely appears in the debate on the making of AML standards as a consequence of delegation to IGOs. Moreover, the ‘informal’ authority by institutions, alongside the alleged hyper-activity of great powers can explain the importance of the AML ‘blacklisting process’ and justify how the lack of institutional presence in global governance is tackled within the AML case study. Finally, the compliance governance gap is divided into ‘implementation’, ‘monitoring’ and ‘enforcement’, best evidence by the FATF mutual evaluations, and relates to the ambiguity that exists regarding the enacting of these measures at an international level. In effect, efforts towards tackling the knowledge, policy, institutional and compliance gaps are present throughout the discussion on the role of great powers and IGOs. The analysis of the AML standards evolution is thought to clarify the ways in which procedural harmonisation helps
tackle these gaps. It is assumed that, knowledge, institutional and policy gaps directly influence the process of tackling compliance, and that the efforts to manage them in the AML context result in a global governance system with fewer gaps.

In the following sections great powers and IGOs are defined as the relevant participants in global governance. Their status, influence, power, and relationship are defined according to global governance literature and the thesis’ argument. The core of the argument thus develops the extent to which great powers may be involved in evolving governance structures, and secondly, it introduces IGOs and their network formation capabilities as a complement to state preferences but also an independent force in global governance.

3.3 The state: a discussion of authority and power

The thesis’ argument regarding great powers develops from the premise that the more these states share the same preferences the higher the likelihood for procedural harmonisation.\(^2\)

In order to determine this, the thesis takes into consideration the degree of consensus assumed to exist around AML and reads states’ preferences as ‘collective’ and the “end result of choices made by human communities that apply to the community as a whole” (Charnovitz 2005). Furthermore, following Drezner’s writings on great powers, the primacy of economically powerful states is considered to be decisive to the occurrence of harmonisation and thus deserving of special research focus.

This section of the chapter consists of, at a first stage, defining that for the purpose of this research great powers represent prevailing state interests and functions in global governance. Secondly, it identifies the nature of preferences and

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\(^2\) As defined in op cit n27, Chapter II, “This research distinguishes between interests and preferences. Accordingly, “Actors’ interests are primordial; from these they derive their policy preferences for different issues” in Milner 1997, p.241; See also, da Conceição-Heldt 2011, p.404; Moravcsik 1993”. States interests are the protection of economy and security. State preferences are the measures selected to safeguard the interests.
how they are formed. Thirdly, it establishes how great powers decide for collective action and influence procedural harmonisation.

It is argued that while states remain individual and primary actors, efforts to harmonise are taken jointly and under the expression of similar preferences. The ontological conceptualisation of world politics as organised around a process of global governance means that states must cooperate between themselves and organise strategies in the most functional way. This implies, among other things, the inclusion of other actors in the international policy-making scheme. It does not, however, mean that great powers lost their central position within that scheme, only that the centre is now shared. Therefore, unlike what might be imagined, the process of global governance does not imply a distortion of authority centres, on the contrary, as Rosenau contends “a fine line needs to be drawn between treating states as the only players on the global stage and as unimportant and aged players that have long since passed their prime” (1999, p.292). The state, remaining the main actor in international relations, has its interests recognised as being primordial and generating policy preferences, which once established will impact domestic policies and ultimately the international setting (Milner 1997, p.241).

Rosenau establishes, as a new global governance ontology, that authority lies with states but that interstate relations and the participation of institutions in global governance generate spheres of authority, which are relational in character gathering strength from interactions between actors. Spheres of authority are “analytical units (…) distinguished by the presence of actors who can evoke compliance when exercising authority as they engage in the activities that delineate the sphere” (Rosenau 1999, p.295). Consequently, whilst the state continues to hold the ultimate decision-making power via sovereignty, its relations to institutions are the key to making global governance work and establish centres of power as demonstrated by the networked nature of the AML standards.

The state as the centre of power but not authority raises a debate regarding the process of international convergence. From a liberal point of view, Anne-Marie Slaughter, discusses the concept of disaggregated sovereignty and asymmetries of power as important elements in what she calls ‘government networks’ (2004, p.169).
However, this research will not attempt to make judgements of such a macro character, rather it contextualises Rosenau’s spheres of authority and explains the degree of influence states achieve in relation to the AML standards. To this effect, global governance is interpreted as a multilateral system where states rule through cooperation and by belonging to spheres of authority (although some states have more authority than others). In this context, the issue of state power is relevant to the analysis of actors’ input and is further discussed below.

The preoccupation with state primacy is not new to international relations theories. Some international political economy, realist and world systems theorists agree that the state is at the centre of policy making and that IGOs are a mere agent or servant of state desires. Nevertheless, the process of global governance emergence as a concept has meant an “increasing diffusion of authority and a corresponding diminution of hierarchy” (Rosenau 1999, p.292) for states. As a result, in order to fight money laundering, for example, states have created a framework, together with other actors, whereby objectives are not as short-term as global governance literature suggests. This thesis defines that in the context of global governance and the AML framework states are mainly characterised by: (1) sharing preferences; (2) setting international agendas; (3) ensuring compliance to the adopted measures, often through delegation.

State preferences in international politics are formed at the domestic level and basically “rank the outcomes possible” (Frieden 1999, p.41). As determining how state preferences are set is not the purpose of this thesis, it assumes that preferences are vulnerable to a “bounded rationality” (Faber 1990) consideration of risk and power relations. In this sense, preferences come from the internal need to coordinate policies and cooperate internationally, as suggested by the interdependence and cooperation literature already discussed. It is argued that, the ‘closer’ the status of states, the more similar the preferences. Therefore while preferences may reflect endogenous priorities they are also the product of what is imposed by external factors as “[e]xternalities generate demand for cooperation” (Milner 1997, p.44). Moreover if different preferences take place then the outcome depends on power and possible arrangements with long-term considerations, which usually involve institutions (Jupille & Snidal 2006, p.20). In the end, the states’ role in global
governance depends on the degree to which they have power to act in relation to others and express their preferences successfully either through agenda setting or delegation.

On the one hand, cooperating with other countries is an effective response to externalities (such as the AML threat) and is carried out under considerations of risk and, perhaps, lack of viable alternatives. However, cooperation can bring significant costs to domestic structures, which are materially or ideationally unprepared to enact changes in domestic legislation and practices. For example, the idea that “[a] great power concert is a necessary and sufficient condition for effective global governance” (Drezner 2008, p.204) suggests that delegating and cooperating can be conducted to suit domestic interests without too many adjustment costs. Liberals too would argue that the more powerful states coordinate their preferences, the more international policies will be in accordance with those preferences (Drezner 2001a). Divergent preferences “are linked to actual or perceived distributional costs or benefits of a particular regime” and because of it, actors with similar preferences will “venue shop” in order to “achieve their greatest expected utility” (De Bièvre et al. 2013, p.5; See also, Olson 1965, p.52) as is suggested by the setting up of the FATF and the neglect of UN like bodies in the context of AML standards (Forman & Segaar 2006, pp.207–210). Preference formation in the AML context suggests that as a way to combat global governance gaps: more regulation is better, credible commitments move away from states onto IGOs, and states are not solely responsible for setting international agendas. This topic is confirmed in Chapter V through the recognition of great powers delegation to IGOs, contribution to international AML standards development and the importance of the G-7 in setting agendas.

The next section of this chapter clarifies the nature and role of great powers as the group of states with relevance to the proposed research. It is argued that there is actually little incentive for great powers to cooperate and coordinate preferences (Abbott & Snidal 2000, p.448; Drezner 2008, p.213). However, in virtue of the assumption that the more homogenous their preferences, the clearer the instruments for harmonisation, and considering that states with more authority and interests
should be more successful in countering global governance gaps, this thesis shows that a coalition of great powers is a balance between control and cooperation.

This thesis discusses that the more great powers agree and share the same strategies the more likely it is that harmonisation of standards will be reached because great powers too acknowledge the need for common practices, as exemplified by the regulation of the financial system. Additionally, the premise becomes valid for other actors as well, seeing as the common explanatory element is “cooperation”. The more actors cooperate the more approximation of practices is likely. In so far as the AML standards have developed through cooperation, the establishment of IGOs in this policy area reflects the similar objectives and the subsequent approximation of practices. Naturally, “[w]hen actors are similarly situated in terms of preferences and capabilities, we should expect them to follow similar decisional processes”, (Jupille & Snidal 2006, p.23) however, observing the precise process, triggers, and instruments that contribute to harmonisation could shed a light on future global governance projects and the reasons why, in other areas, the phenomenon does not occur.

Great powers in international relations

The question of identifying the conditions under which procedural harmonisation occurs in global governance suggest a focus on the evolution of international finance regulations and the derived transnational threats as the most developed policy areas. In this context, the ability of states to influence others and show economic power is key to determining who has greater influence (Drezner 2008, pp.35–39). Therefore, a great power is defined as any state with the ability to influence others, lead and demonstrate a higher degree of economic or military power. Broadly speaking, to be a great power is to be, at least, a serious candidate for the position of hegemon (Mearsheimer 2001). The status is normally associated with the exercise of power and with the authority held over the remaining members of society but, essentially, a state’s military and economic capacities.

3 As the author claims to be a great power includes the military ability to "put up a serious fight" research defines the EU as a 'dependent' great power as far as the military realm is concerned.
What then are great powers? Hedley Bull claims that a great power is simply one which is recognised by its peers, exhibits significant military strength and is “conceived by their own leaders and peoples to have, certain special rights and duties” (Bull 2012, pp.194–196). Joseph Nye (2011, p.12) goes further to say that more than having the power to influence other states, great powers have the ability to rig the game in their favour in order to not lose ground in negotiations. From a constructivist perspective, Neumann and Sending affirm that not only resources matter in the defining moments of great powers but also the type of regime in which they exist will have an impact on the type of conceptualisation that is generated around a specific state (Neumann & Sending 2010, p.75), a point which in effect is also supported by Ikenberry and others (Ahrari 2011; Ikenberry 2004). In fact, the only certainty that looks to come from literature on great powers is then the fact that “[t]he great powers advance their own self-interests, including that of global stability, through the rules that govern international regimes” (Bailin 2005, p.2). Their position and actions are geared towards collective stability through common preferences but their interests remain individual.

In fact, while “great powers are in the business of threatening, rather than being threatened” (Luttwak 1994, p.26) history shows that more and more these states focus on ‘soft’ approaches to defend their interests and that the effectiveness with which this is achieved is the key to the personification of power. Ultimately, “great powers may be thought to contribute to international order by agreeing, not upon a division of the world into spheres of influence, interest or responsibility, but to join forces in promoting common policies throughout the international system as a whole” (Bull 2012, p.218), e.g. by setting international agendas. That is the underlying premise of Clark’s (2009, pp.31–36) conceptualisation of the US, but can also be inferred from Nye’s (2011) definition of the three aspects of power; commanding change, controlling agendas and establishing preferences and the preference outcomes of states referred to above. In this sense, power and authority can be shared thus confirming Rosenau’s sphere of authority debate, and the state functions, discussed above.

Within the discipline of international relations, power is “the production, in and through social relations, of effects that shape the capacities of actors to determine
their own circumstances and fate” (M. N. Barnett & Duvall 2005, p.8). Others have defined it as the ability to influence decision-making, ensure that policies are formulated according to the right interests and shaping perceptions of others as to transform interests to their favour (Steven Lukes in, Barnes 1993, pp.199–200). Power is often seen as the capacity to shape the environment in order to reflect ones’ values and, more broadly, international relations theories focus on the management, promotion of common interest and mediation of difference that stems from power (Huntington 1993, p.70; Hurrell 2005, p.35).

Power is thus an essential tool for the ‘ruling’ states of the world to hold and manipulate as needed and, whereas for some power is an end in itself, (Morgenthau 1973) for others it is an instrument for obtaining security (Waltz 1988, p.616). More recently, some literature distinguishes between hard and soft power but also conceptualises a fraction of it as ‘smart power’ or “the ability to combine hard and soft power resources into effective strategies” (Nye 2011, pp.22–23). ‘Soft power’ is “the ability to obtain preferred outcomes through attraction”, ‘hard power’ is the “use of coercion and payment” (Nye 2009, p.160). For the purposes of the present project, more than the traditional uses of soft and hard power, the recognition of coalitional powers acting in AML demonstrates ‘smart power’ as the tool of choice. More than exercising power and strength, the AML standards depend on political strategies and the support of its varied stakeholders. There have been few demonstrations of hard power in the making of these policies, with the exception of some of the anti-financing of terrorism legislation and its implementation through UNSC resolutions. Generally, the actors’ contributions to the AML standards are a good illustration of the combination of different types of power at stake.

**Collective action problems and great powers**

States with power would, in theory, be less dependent on cooperation to protect their interests. However, collective action problems have a tendency to lead to common solutions and common action as a product of interdependence and common economic interests.
In this context, Olson (1965) has argued that it is not enough to have a common interest in order to be able to cooperate. In fact, the analysis of great power action demonstrated that great powers would most likely not have constant preferences that are similar to other states. The similarities, albeit existent, are normally linked to specific issues in time and are rarely part of a long-term strategy as that would conflict with individual power ambitions. Olson further demonstrates, although not referring to states, that small groups when endowed with incentives to succeed have a privileged position in relation to other collectives. As a result, the collaboration of one great power with another is unlikely to take place in settings that include other (low-power) states but rather would be favoured by a small organisation and limited participation.

The international AML standards as a G-7\textsuperscript{4} formulation are thus a good example of such efforts and great power cooperation. In them, great powers have not only recognised each other but also who their closest allies are. G-7 action is characterised by consensus and the recognition of financial integrity as paramount.

In sum, “[t]he G7, as an institution, solidifies such a pattern of great power relationships” (Bailin 2005, p.33) based on economic incentives and power to achieve compliance with their preferences. Items that come from it, like common interest and preference statements are thus not more than a form of “institutionalised group hegemony” contributing to the continuity of the liberal strategy (Bailin 2005, p.33). Collective action referent to great powers is therefore a form of great power legitimation (Bull 2012, p.222) that simultaneously ensures global governance of certain issues without the risk of conflict. In this instance not only the G-7 but also the international financial institutions become crucial actors as they have been set up to maintain the status of the great powers that designed them. It is argued by some that while great powers establish alliances to balance out the rising powers, that

\textsuperscript{4} ‘The Group of Seven (G-7) is an informal forum of countries representing around half of global economic output. It has met regularly since 1976 to discuss key issues related to global economic stability. The G-7 comprises Finance Ministers and Central Bank Governors of 7 countries: Canada, France, Germany, Italy, Japan, the United Kingdom and the United States of America. Representatives of the European Union, including the EU Presidency and European Central Bank, as well as heads of international financial institutions also regularly attend’ (UK Government 2012). A more in-depth introduction and discussion regarding the role of the G-7 takes place in Chapter IV and V, pages 89 and 131 respectively.
balance is not always effective and other mechanisms must be put in place to counter rising military powers, or in this case, economic and financial ones (Levy & Thompson 2005, p.30).

Therefore, while the G-7 works as a political alliance with the important power of agenda setting, the IMF and WB can be seen to work on shaping the environment to suit the preferences of those who are in control. Gruber (2000), among others, has discussed the institutionalisation of power politics and its reflection on voting structures of international financial institutions, the IMF and WB as an expression of group authority (Kahler 1992, p.687; Bailin 2005). Together, these institutions are able to command the outcomes of international policies on a specific number of areas without the burden of unilateral behaviour. Ultimately, “[m]ultilateral cooperation helps states further their common interests” (Gruber 2000, p.27) and, even if competition continues in the background, the balance and common ground found in the making of AML standards evidences the existence of common preferences and coordination amongst great powers. In the end, power and governance must be seen together as they affect the design and selection of institutions but also the interactions between states in the process of pursuing collective interests (Hurrell 2005; Jupille & Snidal 2006).

The ‘grand strategy’

Great powers will always want more, that is the prerogative underlying their success. Ahrari (2011), Mearsheimer (2001) and Huntington (1993) have all discussed the need to compete in the international system in order to obtain power, authority and control over existing interests. The main assumption behind this is the fact that power is relational and not absolute, in other words, great powers cannot exercise power alone because it is always reflected onto others that in their own right might feel the need to contradict the order at stake. As a result, this research will analyse the impact of great powers based on their individual actions but essentially as expressed at G-7 level, identified as a great power ‘grand strategy coalition’.

Hurrell reflects precisely on this aspect and the need of the US to cooperate and acquire the recognition of others as a power. To this author, the “stability of the
hegemonic power depends on consensus as well as coercion and on the capacity to engender collaboration” (2005, p.51). The making and implementation of the AML standards is no exception. As suggested by the above-debate this research identifies a great power coalition led by the US and the EU through the G-7 in order to protect similar interests i.e. the stability of the financial system and their large economies. Therefore, by eliminating the ghost of competition and possible war, as predicted by Mearsheimer, the research opens the ground to a more collaborative take on the actions of great powers that, in this case, are found to work together towards common goals and the elimination of common threats. In itself, this is a reflection of the interdependence problem and of the existence of transnational issues and of multiple actors.

Similarly, Ikenberry (2004) supports the liberal institutionalist grand strategy whereby great powers work through international institutions in order to exert their power and authority, and achieve their interests. Generally, it is a common choice to work through intergovernmental bodies that represent and carry out national interests without coming across as hegemonic (Ahrari 2011, p.14). As a result the status of emerging economies (i.e. Russia, Brazil, China) is described as ‘bandwagon’ and often the only available option to those outside of the main power core (Wohlforth 1999; Wohlforth 2009; Kahler 1992; M. Barnett & Duvall 2005; Schmidt 2005).

Ultimately, the collaboration that has been achieved among great powers in the making of AML reflects the unipolar status of the US in the early 1990’s but also its evolution into a coalitional player that must make space not only for other ‘friendly’ great powers like the EU. It further demonstrates that whereas the perception of US power changed and questions over its undisputed power arise, the status of the G-7 remains mostly unchallenged thus justifying the great power’s choice to cooperate with each other, and this thesis’ acknowledgement of the G-7 (Bailin 2005, p.147).

Naturally different approaches to leadership exist between G-7 members, specifically, the EU being more multilaterally oriented, while the US very often sees these choices as mere tools of national interest (Smith 2010, p.103). Nevertheless,

5 Chapter IV further elaborates on the position of the US and the EU as great powers.
6 A discussion on the rise and significance of the G20 takes place in Chapter V.
where difference or small differences in interests exist between the EU and the US, preferences as regards the AML standards are shared and this research shall make note of it.

Overall, the proposed empirical research into great power actions within AML addresses common criticisms of global governance. It focuses on the absence of research into the relations among actors as a process, and the lack of analysis of how they engage in the process of governing (Neumann & Sending 2010, pp.113–114) therefore contributing to the clarification of the global governance gaps. Indeed, within the AML framework there is certainly evidence to support major powers influencing the policies but often AML negotiations also indicate a great degree of dependence on institutional networks and certain types of information (Reinicke 1998). Here, while power and authority remain under state influences, the AML standards suggest, that it might more and more depend on actual policy input rather than a position of power (Rosenau 1999, p.295). Authority, for ensuring compliance for example, could arguably be identified in the AML IGOs to which great powers have delegated responsibility.

Therefore, in the development of the AML standards and the procedural harmonisation that emerges, great powers’ functions alone may be an insufficient explanation and additional conditions must be investigated. The transformation brought about by market and financial services liberalisation meant that more and more regulatory power was passed on from the state to international institutions, and as Carr said “[p]ower is an indispensable instrument of government. To internationalise government in any real sense means to internationalise power” (Carr 1964, pp.106–107; See also, Bach 2010, p.587; Drezner 2008). In effect, IGOs prominence in this area demonstrates that state power is sometimes found in the subjects of their delegation and what these actors do with it (e.g. form a network), rather than directly within the state.

As a result, the following section develops this framework further for understanding the role of IGOs in global governance, as a policy network and a condition for procedural harmonisation.
3.4 Intergovernmental Organisations: an emerging force

IGOs received new powers and tasks as a consequence of globalisation and the elements that surround it. With the ‘disaggregation’ of the state, IGOs gained prominence in international politics providing the space that was missing to structure inter-state discussions. However, there are still pressing questions regarding what is the structure, rationale and impact that these organisms may have in modern international politics. In this thesis, research therefore demonstrates the ways in which IGOs have received additional delegation from great powers to address the AML issue, but also the manner in which these bodies have taken delegation one step forward and formed IGOs networks that promote inter-IGO collaboration and independent action.

Consequently, the growing importance of IGOs to global governance is the starting point of a debate concerning the extent to which these institutions are able to be autonomous from states and accomplish broader governance objectives as, for example, to foster harmonisation.

As discussed here the concept of authority is adjusted to a formation reminiscent of ‘policy networks’ for IGOs and challenges Drezner’s (2008) theory of great powers. It develops from the assumption that when IGOs gain importance as actors they also become able to reinforce each other and construct their own relations creating a ‘sphere of authority’ (Kirchner 2010, p.17). Furthermore, because policy networks admittedly have an impact on policy outcomes (Marsh 1998, p.10), their existence within the AML standards necessarily impacts harmonisation and thus deserves further attention. Therefore, the role of policy networks is thought to influence procedural harmonisation depending on the functions the network is able to perform away from state power. In other words, although a product of delegation, the network function is regarded separately and as able to influence the policy-making processes.

7 The concept of policy network is discussed in-depth in Chapter VI.
In order to develop an analysis that is able to identify IGOs as significant conditions for harmonisation as regards AML standards, IGOs must firstly, be defined and their purposes, preferences, and interaction capacity discussed. Research must, moreover, establish the concept of a policy network and its characteristics in order to assess the ways in which these actors generate responses to global governance threats, express their preferences, and relate to great power action.

**Intergovernmental Organisations: a network in the making**

Broadly, IGOs are “rules used by individuals for determining who and what are included in decision situations, how information is structured, what action can be taken and in what sequence, and how individual actions will be aggregated into collective decisions” (Kiser and Ostrom in, Peters 2005, p.59). They are means to shape individual action within a collective choice setting (Diermeier & Krehbiel 2003, p.125), which whilst mainly generated by functional demands, can become permanent and change throughout time into something different from that originally planned by states (Krasner 1984, p.240). The purpose of these bodies is normally to advance common interests which means the main rational behind state delegation relates to the need to cooperate, exchange information, lower transaction costs from international politics and increase control over other state actions (Gourevitch 1999, p.141; Olson 1965, p.7). Abbott and Snidal summarise the statement in these words:

> “IOs allow for the centralization of collective activities through a concrete and stable organizational structure and supportive administrative apparatus. These increase the efficiency of collective activities and enhance the organization’s ability to affect understandings, environment and interests of states.”

(1998, p.6 Emphasis added.)

Therefore, the act of state delegation to IGOs is the defining moment of the IGOs nature as it is when mandates are awarded restricting functions and competences. Institutions are created to serve state interests and it is essential they keep them flexible on the one hand and under control, on the other, in case

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8 The authors refer to IOs as international organisations, not 'intergovernmental organisations'. However for the sake of this argument the concept can be considered interchangeable.
preferences change (Koremenos et al. 2001, p.318). As “[a]ctors pick the institution that gives them what they want” they must make sure they hold all relevant information about motives and restrictions that might come with it (Gourevitch 1999, p.155; See also, Hurrell 2005). This means that an assessment of mandates against institutional activities needs to be made in order to determine whether state preferences are the key to the outcomes or, alternatively, if actions by institutions lead to procedural harmonisation.

As suggested above the choice of institution matters and depends on state objectives and power. Because power can influence the way institutional processes evolve, smaller states “are likely to see government networks as simply the latest effort to insulate the decisions of the powerful from the input of the weak” (Slaughter 2001, p.180; See also, Klijn E. H. & Koppenjan J. F. M. 2000, p.146). So, before going into the network capability of IGOs, these organisations must be defined as individual actors with their own characteristics and capacity to set policies.

Flexibility and control are two main characteristics of institutions as both bestow permanence and the ability to change without dismantling what was created by states e.g. threatening their interests (Koremenos et al. 2001, p.301). Moreover, delegating flexibly to institutions is not only profitable but comes with additional advantages (i.e. electoral gains, domestic approval) provided that states remain in control. Therefore, keeping institutions both flexible and under control means that states are able to shape IGOs’ actions without harming the nature of the standards that is being supported whilst ensuring a sufficient degree of credibility. IGOs are also, in line with this, recognised providers of legitimacy to decisions in addition to credibility and the more functional advantages of delegation (Black 2008, p.138).

In spite of this, in cases of transnational necessity, “multilateral institutions are created to enhance political pressure” (Simmons 2001, pp.591–592) on weaker jurisdictions and while “[a]ctors’ preferences determine the range within which feasible outcomes are possible; the institutions determine where in that range policy will actually be” (Milner 1997, p.242). For some countries, the existence of IGOs and their increasing power helps counterbalance the inequality of state powers. Consequently, in terms of policy convergence and harmonisation this can mean non-
great powers will be more accepting of IGOs policies than great powers and that, for example, when starting cooperation within new areas, institutions can play an important role of administrator and information facilitator regarding parties’ record for compliance and the inclusion of states into the proposed process (Gruber 2000, p.67).

Institutional action is, however, difficult to distinguish because state preferences would have to be assured as being equal and institutional preferences as being different which is not always the case. Moreover, state dissent from IGOs action is tempered by costs and credible commitments so the only way to determine whether states are unhappy with the IGOs is when mandates are lessened or membership retracted. As a result opinions on the nature and function of institutions diverge.

For neorealists and their reductionist approach, institutions are constraints to state action rather than agents and “conditions of possibility” for action (Wendt 1987, p.342). IGOs are a product of interdependence and collective action problems that have made it impossible for state actors to survive alone and increased the level of interactions among them (Young 1969, p.745). In this sense, the main purpose of IGO’s is to act when and where it would be too costly for states to act alone i.e. filling in global governance gaps of institutional, knowledge and compliance.

On the other hand, from a constructivist perspective, Martha Finnemore defines international organisations (for this purpose equal to IGOs) as political structures able to “influence outcomes by manipulating information, creating transparency, monitoring compliance, and enforcing rules in ways that change incentives for state action […] IO’s regulate through creating incentives for states to change behavior [therefore setting] the agenda for global governance” (Barnett & Finnemore 2004, pp.6–7). Although this definition does not follow the perspective adopted in this research, which is closer to the realist view, there is some truth to Finnemore’s recognition of IGOs influence and the research will for the most part attempt to combine both interpretations. Constructivists argue that international organisations, in general, are more than just state agents and take delegation to a higher level of problem solving independent from states (Barnett & Finnemore
2004). For these theorists IGOs don’t restrict state action, they expand its limits, as they are in effect a state construction, regulating through incentives and setting “the agenda for global governance” (Barnett & Finnemore 2004, p.7). The increased role that it is argued IGOs hold is such, in this sense, that national governments must organise themselves around “business generated by international organisations” (Keohane & Nye 2001, p.30) rather than have institutions organised around them.

The literature discussed above is an added value to the understanding of IGOs nature but misses the point of analysing their impact on everyday policy making. Despite competing definitions regarding the role of IGOs their main added value is the acceleration of the process of convergence by the “expansion of the UN system” (Drezner 2001a, p.62) and the proliferation of international organisms more generally. Therefore, as institutions multiply and interact, convergence is thought to increase and the AML standards to reflect procedural harmonisation. How can this be determined?

Crucially, evidence presented in the following chapters suggests that as IGOs became international actors preferences are generated which affect the making of international regulations and possibly shape the outcomes of decisions (Diermeier & Krehbiel 2003, p.126). States delegate to individual institutions, membership of those institutions increases, collective action problems multiply, institutions themselves need to cooperate and thus institutional preferences appear. In the context of defining the conditions under which harmonisation occurs institutional preferences are thought to be exogenous and stable as predicted by rational choice (Koremenos et al. 2001, p.312). This means institutions are essentially informed by the external environment, namely state preferences and technical input, generating their own preferences based on that input. Depending on their membership IGOs’ influence is stronger or weaker as state delegation is more or less homogenous. Accordingly, the number of members and their heterogeneity, next to delegation, is also an important factor to determine the institutions potential for harmonisation and their role as actors on the international scene (Koremenos et al. 2001, p.314). As far as AML is concerned the prevalence of homogeneity of IGO’s members is ultimately a strong determinant of the role these institutions will play.
IGOs are, for the purpose of this research, essentially independent actors in global governance of rational design and purpose that serve a much greater role than merely collecting and transmitting information (Gruber 2000, p.69). Their preferences correlate to state interests and, although some distortion from delegation might occur, mandates and treaties rarely suffer from major deviation. Nevertheless, whilst all IGOs are state controlled creations, the networks they form leads to convergence through the proximity created between bodies (Cao 2012, p.376). It is assumed here, the very existence of these networks and inter-state cooperation may be the basis for global governance and may also prove to be essential to the understanding of subsequent policy convergence and the presence of harmonisation (Holzinger & Knill 2005, p.782).

The key to understanding institutional preference formation may lie deeper than state preferences and delegation in the sense that the cooperation established between organisations may not have been predicted in the first place. Therefore, the research questions focus on how this interaction translates into outcomes as it may clarify assumptions regarding preference formation and open paths to further research on the importance of ‘networks’ in international relations. Accordingly, while more sceptical views might see IGOs as “out of control” (Keohane & Nye 2001, p.288) it is argued that the existence of institutional networks, as a form of institutional coalition may, not only promote convergence in an effective way but also allow states to reduce costs, present credible commitments through bodies “independent of government” (Majone 1997, p.270), and ensure policy continuity (Marsh & Rhodes 1992, p.268). The main contribution of this thesis is then not that IGOs, as an expression of great power interests, produce independent preferences but that their inter-institutional interactions may do so having an effect on the outcomes.

Policy networks as institutional expression

This thesis, as suggested above, explores the ways in which the existence of a network of IGOs influences the conditions under which harmonisation of policy-making processes occurs. The network effect is suggested as a supplement to the role of great powers and as having an important part to play in global governance.
Therefore, looking at IGOs networks as alternatives to great power action focuses on how interactions between these bodies work and influence policy outcomes.

Policy networks have been defined and discussed in existing literature. Consequently this thesis follows the ‘Rhodes model’ whereby networks are structures of resource dependency, affect policy outcomes and are subjected to exogenous factors that may lead to change to the system (Bomberg 1998; Rhodes & Marsh 1992; Peterson 2003, p.4; Marsh 1998, p.11; Thatcher 1998). The empirical reflections on networks will focus on these elements as constitutive of the network model between IGOs proposed here, demonstrating in what ways it is present within the relevant AML policy-making bodies.

Policy networks are most often theorised to refer to the relationships between governments and firms, in business settings and especially in public-private relations (Thorelli 1986; Katz & Shapiro 1985; Marsh & Rhodes 1992). Often these networks appear as a product of changes to global governance or even the development of modern government to include the private and other non-governmental sectors. However, in this research, the concept of policy networks is applied to the network of international governmental institutions as they exist and participate in the AML regime and, specifically, in the making of CDD standards. Similar to what has been said regarding harmonisation and the relevance of analysing it from its international perspective, policy networks are deemed to be equally translatable from a domestic to an international setting. As a result, the concept of policy network is here interpreted and inspired by more recent contributions to the literature namely the work of Börzel (1997) Sissenich, (2008) Compston (2009) and the broad acceptance that a ‘network’ constitutes:

“…a set of relatively stable relationships which are of non-hierarchical and interdependent nature linking a variety of actors, who share common interests with regard to a policy and who exchange resources to pursue these shared interests acknowledging that cooperation is the best way to achieve common goals.” (Börzel 1997, p.1 Emphasis added.)

This thesis proposes international policy networks of IGOs as a potential basis for global governance and to this degree essential to understanding the subsequent
procedural harmonisation. Although the concept of policy network has been around since the 1970’s, Kenis and Schneider (1991, p.34) trace its origin to the emergence of an organised society, the proliferation of state intervention targets, the sectoralisation of policy making, state fragmentation, blurring of boundaries between public and private, the transnationalisation of domestic politics, interdependence and complexity of political affairs, as well as the growing importance of access to information.

Additionally, wide-ranging literature has attempted to tackle the concept of policy networks throughout the years detailing varied explanations and causes for the manifestation of these networks. Numerous definitions and categories have been delimitated in this context with Van Waarden (1992) naming seven dimensions to policy networks and Marsh (1998), Thatcher (1998) and others keeping to more restricted definitions. Whereas Benson and others favour the resource dependency explanation (Benson 1982; Klijn E. H. & Koppenjan J. F. M. 2000) as a cause, others attribute it to the issue of interdependence (Warden 1992), internationalisation (Hay & Richards 2000) and power (Smith 1993).

Hugh Compston’s understanding of it is, nevertheless, the most complete providing this research with instruments to develop and adapt the concept to this research. The author sees policy networks as political decisions taken by individuals or groups acting together and exchanging resources. The networks established stem from the existence of common problems with common solutions reached through actor built strategies and their incentives to regulate interactions (Compston 2009, pp.12–17).

Consequently, the creation of policy networks depends on “the actor’s perception that certain goals can be more easily reached through exchange rather than acting alone; the similarity of actor’s preferences; and the extent to which the international context favours such relations” (Blanco et al. 2011, p.302). Originally conceptualised within a domestic perspective the realm of policy networks was rather traditional i.e. targeted agricultural policy and other domestic boundaries. However, in virtue of globalisation and interdependence this thesis sees former domestic boundaries expanded beyond borders and with them policy networks.
Finally, the concept of network, similar to the great power assumption, is part of a “power dependence framework” (Blanco et al. 2011, p.304) whereby only certain actors take part and are restricted by the network arrangements and given resources. This is an important element for the definition of main network actors that is conducted in Chapter IV. Furthermore, it is interesting to note that the concept of government networks developed by Slaughter may apply too in that IGO networks also “simultaneously strengthen the power of the State and equip State actors to interact meaningfully and innovatively with a host of other actors” (2001, p.193).

**A policy network of IGOs**

As seen here, networks composed of IGOs look to increase their institutional presence as much as effectively tackle the tasks to which they have been mandated. The existence of a network is not a ‘slippage’ moment but an expression of autonomy that while remaining under state control it is able to control certain elements of the policy-making process leading to procedural harmonisation. Moreover, it does not equal ‘immediate crisis response’ but unlike what Zaring has claimed the thesis assumes oversight of policies and weaknesses detection does exist in the framework and is something states (even great powers) would be unable to do individually (Zaring 2012, p.714). In this sense, as an alternative to great powers influence, it is thought that the closer (i.e. in preferences) the network actors are, the more likely procedural harmonisation is to emerge from it.

Amongst the varied interpretations of what a policy network is, this research’s focus is closest to Rhodes’ and Marsh’s view of it as a “meso-level concept” (Marsh & Rhodes 1992, p.2) of mediation as opposed to Wilks and Wright’s take which is known for paying less attention to structural dependencies (Wilks & Wright 1987). Rhodes and March focus on structural dependencies like those implied here by the dependence on great power mandates and interests and, the maxim whereby interests dominate decision-making. Additionally, “[p]ublic policy making in networks is about cooperation and consensus building” (Marsh 1998, p.10) which naturally has an effect on policy outcomes thereby justifying looking at the network structure in order to understand its outcomes.
In order to define a network of IGOs, ‘issue networks’, as defined by the ‘Rhodes model’, are the closest to this thesis’ elaboration of a network actor in the making of AML standards. Rhodes and Marsh describe them as large in membership, encompassing different interests, characterised by fluctuating contacts and access levels, the presence of conflict amongst members, being consultative in nature and being composed of members with unequal powers and resources. Other types of non-mutually exclusive networks exist e.g. policy communities, professional networks, producer networks and intergovernmental networks (Rhodes & Marsh 1992, p.45).

Generally, the ‘Rhodes model’ of policy networks influences the adopted understanding of an IGOs policy network and consists of the acknowledgement that networks are relatively insulated from issues that do not concern them; they are relatively stable and rely on resource dependency. More importantly, this model recognised the ability of networks to change and be fluid according to their own needs and structural definitions (Bomberg 1998, p.180). Nevertheless, the suggested IGOs network, albeit similar in many ways, cannot constitute an issue network in full as the authors awarded this concept a degree of instability incompatible with the assumptions regarding great power interests and the reliance on shared resources by IGOs. Furthermore, because the ‘Rhodes model’ is not consistent with an IGOs only formation, the network structure proposed here is only inspired in the ‘issue networks’ definition as it offers the closest theoretical ground.⁹

In fact, whereas plenty of literature is available in relation to policy networks, few or none apply the concept to IGOs as proposed by the AML standards analysis. Attempts have been made regarding the conceptualisation of ‘IGOs coalitions’ and ‘multitaskholder arrangements’ but the concepts proposed here are more guided towards extrapolations taken from the domestic policy network debate into the international sphere. With this research, the thesis not only develops the theoretical concept, provides additional explanations for the AML standards development, but also introduces new debates to the global governance literature (Forman & Segaar 2006).

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⁹ Chapter VI begins with further elaboration on the available literature and conceptualisation of policy and issue networks.
As the objective of the research is to establish the ways in which the existence of a policy network favours procedural harmonisation, the argument begins with the premise that mandated institutions follow the delegated powers and are thus restricted by it (Moe 1990, p.240). States are able to “pick the institution that gives them what they want” (Gourevitch 1999, p.155) and maintain control over its mandate by voting systems and oversight of secretariats and boards thus shaping institutional preferences. On a mandate basis alone it is difficult to establish the existence of institutional preferences as distinct from states’. However, the analysis of inter-institutional interaction and the nature of the policies adopted allows for the distinction between state and institutional preference by identifying exchanges occurring between players on specific issues, sharing of information, practices and tasks. So, networks may “not directly serve for decision-making but for the information, communication and exercise of influence in the preparation of decisions” (Börzel 1997, p.5). Thus when proposing that the closer the network the more the convergence, this research refers to the network’s ability to shape preferences and influence decision-makers into accepting procedural harmonisation.

The recognition of IGOs as policy making actors takes into consideration their design as individual actors but also the ways in which their existence in a collective setting in itself generates externalities relevant to state preferences. IGOs are thus deemed important to global governance, not individually, but as networks. For example, while the attendance of the IMF and the WB at FATF plenaries (and other IGOs) has been described as requested by states themselves (Halliday et al. 2013, p.9); the exchanges of information and resources is not directly requested by states and, therefore there is more to this network building than state delegation. The key to understanding network preference formation may, indeed, lie deeper than delegation and institutional preferences in the sense that the cooperation established between institutions does not necessarily need to come from the state or mandates but from the need to accomplish individual mandates, ensure policy continuity, institutional stability and compliance. In fact, the internationalisation of certain domestic concerns into IGOs realm of action is suggested as a contribution towards convergence seeing as the less differences across jurisdictions, the more efficient IGOs job to regulate becomes. Moreover, the inter-relations between institutions
have also been suggested to play a role in the shaping of institutional behaviour (Graham 2013), but this is perhaps beyond the realm of this research.

In order to determine whether IGOs have influenced procedural harmonisation, Chapter VI defines the institutional preferences and the ways in which these may be expressed through the network and inter-institutional interactions. Table 3.1, based on Rhodes and Marsh (1992) own definitions of policy networks, provides a summary of the elements to be identified in IGOs policy networks as suggested by the literature reviewed. It is through their presence in the policy-making process of AML standards that the network influence may be established.

Therefore, Chapter VI on the IGOs network follows some of these elements in line with their impact on harmonisation and the instruments being used to implement it. Power, membership and objectives are interpreted as deductible from individual IGOs mandates. These characteristics are present as a consequence of IGOs autonomy and of transnational challenges, and so this thesis does not allow them too much significance. Nonetheless, as Marsh and Rhodes have affirmed that, “the concept of policy networks can be used in conjunction with both different models of the distribution of power and different theories of the state” (1992, p.268), the existence of an institutional network that promotes harmonisation is analysed as dependent on the presence of harmonised practices throughout time as a result of IGOs shared preferences, resource exchanges, and stable relationships.

### Table 3.1 – IGOs Policy Network characteristics

<table>
<thead>
<tr>
<th>Membership</th>
<th>Open (dependent on resources)</th>
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</thead>
<tbody>
<tr>
<td>Objectives</td>
<td>Shared</td>
</tr>
<tr>
<td>Resources</td>
<td>Exchanged</td>
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<tr>
<td>Power</td>
<td>Dependent (on states)</td>
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<tr>
<td>Interactions</td>
<td>Stable</td>
</tr>
<tr>
<td>Information</td>
<td>Exchanged</td>
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</table>

3.5 Conclusion

This chapter discussed the global governance literature contribution to the understanding of procedural harmonisation as regards the AML standards and its main actors. The debate of existing literature emphasised how great powers are
brought back into focus with the AML standards but, simultaneously, demonstrates that there is a need to develop the discussion of the IGOs contribution to the process. Therefore, in light of the current debates it established the base concepts that guide and shape the empirical research.

Advanced through the need to further harmonise and manage global threats “[g]lobal governance is the big winner in the effort to regulate money laundering” (Serrano & Kenny 2003, p.435). Certainly, as an expression of great powers and IGOs network own independent actions the AML standards suggest change in international relations and the processes through which international policies are made.

The chapter therefore developed from the acknowledgement that the making of international standards is increasingly becoming negotiated “between states and not within them” (Reich 2000, p.517). The premises put forward following the acknowledgement of interdependence indicate that new actors enter the negotiation process and so their interactions must be considered in relation to harmonisation as an outcome of global governance and a way to combat existing gaps.

The chapter suggested that great powers are at the centre of global policy making as is consistent with most realist and some rationalist approaches. As a whole, a great power effort towards harmonisation is thought to emerge from similar economic and security interests and shared preferences for collaboration, the ability to set international agendas and achieving compliance. Nevertheless, as literature on this issue is insufficient to explain AML standards’ developments IGOs surfaced, by bringing institutionalist approaches into the debate, as a complement to great power action through their network formation capacity and subsequent actions. In this context, IGOs share preferences, exchange resources and information as well as establish stable relationships that ultimately also favour harmonisation.

In sum, this chapter defined the background and guiding assumptions of the analysis into the presence of procedural harmonisation in AML standards. The following chapter builds from the discussions introduced thus far and clarifies the research’s methodological structure, challenges and participants.
CHAPTER 4

RESEARCH DESIGN

4.1 Introduction

The developments that occur within the negotiation of AML standards are suggested as a good illustration of procedural harmonisation, the relationships between great powers, and IGOs networks in the context of global governance.

In order to carry out internally and externally valid research this chapter refines the methodological tools used to provide answers to the research questions. It begins by defining the relevant actors within global governance and what their preferences are. It identifies the US and the EU as great powers influencing the policy-making processes of AML standards. It also identifies the FATF, the UN, the IMF, the WB and MONEYVAL as the most relevant IGOs in the construction of the network theorised in the previous chapter.

The chapter further elaborates on the importance of CDD in the AML standard-making process as a case study highlighting the reasons why its outcomes may become influential to global governance debates. The case study presentation clarifies why CDD is representative of the wider AML framework, how it relates to each of the selected actors, and why the case study method is useful. At this stage, the omission of some IGOs and other states from research is placed in context in relation to the case study selection and defined research questions.

Ultimately, this chapter begins with the identification of the relevant actors. Secondly, it presents the case study and its units of analysis. Thirdly, it elaborates on the process of methods selection and data collection within a process-tracing approach to research.
4.2 The AML standards and its actors

To determine the conditions for procedural harmonisation requires a focus on policy making that naturally determines the selection of relevant actors. As a result, having a transnational nature in common, actors identified with sufficient weight to influence AML standards at the policy-making and discussion stage are: the US, the EU (as great powers), the FATF, international financial institutions such as the WB and the IMF, the UNODC as the relevant UN body, and lastly MONEYVAL (as IGOs to which global governance tasks are delegated to and expanded from).

From the premise that interdependence leads to cooperation global governance literature discussed above suggests that actors operate within coalition structures and so the analysis focused on their joint output rather than from individual perspectives. So, where great powers create coalitions in order to pursue shared interests, set agendas and pursue compliance from an authoritative perspective, IGOs are also thought to share preferences, exchange resources and information within a network structure in order to successfully achieve compliance with international guidelines. In this sense, the focus of the analysis is on the interactions and structures that have been formed throughout the standard-making exercises not by individual preferences but through their most audible expression and collective action within a global governance perspective.

Great powers

In this research, the choice of great powers as the major expression of state preferences relates to the identification of economic and security powers as the most influential in global governance. In this sense and following from the previous chapters’ discussion, states with higher degrees of economic power and international position have stronger interests to protect and so naturally become interested parties of any measure to combat given threats.

Around 2003 the United States and the European Union combined represented roughly “40 percent of global output, 41 percent of world inputs 59 percent of inward foreign direct investment, 78 percent of outward foreign direct investment
and 88 percent of global mergers and acquisitions” (Drezner 2008, p.36). Although these numbers may have somewhat changed post the 2007-2008 financial crisis it is hard to see a significant shift in economic power that contests the international significance of both markets and the political weight associated with it. Furthermore, “[a] closer look at recent developments in international law suggests that the biggest promoters of international law, in both its treaty and customary form are the United States and the EU countries” (Drezner 2001b, p.335). This is due to the “shared political and economic values” (Huntington 1993, p.71) that continue to justify the alliances and shared preferences.

Altogether, the US and the EU have greater stakes in the success of international cooperation and therefore act to protect those interests in a more active manner than others. In so far as AML is concerned, the economic and security nature of the topic further promotes engagement in policy-making strategies and practices. Naturally, although smaller states may suffer higher consequences from AML standards than great powers, their influence in the standard-making process is not significant enough to consider in light of the identified research questions. In the research design process, nonetheless, empirical research investigated the role of other nations in the process but concluded that the research questions were best answered through the analysis of great power actions and their expression as the G-7 coalition.

**US – A coalitional hegemon at work**

The US is the first great power to be included in the coalition framework as there is sufficient evidence to demonstrate its initial promotion and continued support for AML measures internationally (Sinha 2013; Levi & Reuter 2006; Doyle 2002; Gouvin 2003; Zagaris 2004). Therefore, in addition to its political and military power the US is here especially recognised as an economic power with serious interests in the protection of its financial system.

It is introduced as a ‘coalition’ power seeing as it has been furthering its interests through cooperation and coalition building with other like-minded states or those it considers are able to support its preferences. Indeed, it has “promoted a diversity of institutions, spanning the political, economic and security fields, a
Anti-Money Laundering: the conditions for global governance and harmonization

project that has been described as ‘remarkable and unprecedented’” (Clark 2009, p.34) but that often is found to be contradictory in terms seeing as, on the one hand the US is a liberal power with the free market as its main priority but on the other hand, it promotes a panoply of regulatory measures that in effect delay the conduct of competitive and quick financial transactions. The role of the US leading AML standard-making increasingly put the liberal versus great power agenda into conflict. The US is obliged to gather support at the same time as it pushes forth its own objectives without too much support for alternative agendas laid in collective discussions (Ikenberry 2004, p.624). In the pressuring of the G-7 to “support tougher world-wide money laundering standards” (Gouv 2003, p.959; Hülsse 2008, p.460) as in the struggle against the financing of terrorism the US followed its domestic politics and existing legislative measures to shape the internationally adopted approach (Arnone & Padoan 2008, p.362). At first glance, this suggests that the AML standards would exist only for as long as the US so desires and, more importantly, that all instruments adopted thus face lack of commitment if national interests surface (Smith 2010, p.99). But is that what the US AML strategy has been all about?

Succinctly stated, the US strategy regarding AML was firstly based on the combating of international drug cartels (particularly from Mexico and Colombia) but also targeted tax evasion and the use of offshores by criminals to launder money and enter the formal banking system. More recently it entered the realm of international security with the inclusion of concerns regarding the financing of terrorism into the main policy priorities list.

After President Nixon and President Reagan’s war on drugs, it was the Clinton administration that first recognised that when it comes to AML and drug trafficking “any strategy had to be global and multilateral” (Wechsler 2001, p.49) if it was to be efficient and applicable across borders. As a result, the US set out to promote agreements with international partners, in particular those with which it is closest, in order to create the right conditions for it to “exercise its power and achieve its national interests but to do so in a way that helped the fabric of the international community” (Ikenberry 2004, p.622). In order to do this the US has not only bet on political tools but also on significantly increasing its expertise and participation in
international fora of relevance namely, at the institutions it officially belongs to but also as an observer to the FATF regional bodies, the Basel Committee and, the Council of Europe’s MONEYVAL meetings. This participation places the US on an advantage point in comparison to developing nations and even other great powers, which do not possess enough know-how and tools on financial or organised crime to contribute at the same level.¹ However, it is important to see that the Clinton administration and all those that followed probably view these networks as an “optimal organizational form only in so far as a United States institution remains the central node” (Slaughter 2001, p.205) thus corroborating its great power positioning and the fact that ‘collaborating’ has recently shown to be the best path to get results.

The terrorist attacks to the World Trade Centre on 9/11 are evidence of how far the US will go internationally to pursue its national interest and, to what extent, its national interest can overlap or collide with international law. What is interesting is that reports, prior to 9/11, stated that President Bush was an unlikely actor to show interest in multilateral approaches and that moreover, his economic adviser had “long opposed the legislative foundations of the U.S. anti-money laundering regime” (Wechsler 2001, p.55). In addition, US history of compliance is not consistent and as the framework is being challenged internally, the external actors question also whether there is “willingness of FATF to apply consistent principles to more powerful nations” (Levi & Gilmore 2002, p.351) like the US or its allies.

However, post-9/11 efforts to enforce and reinforce basic and new AML provisions were efficiently carried out by the 2001 PATRIOT ACT² and its amendments (Pieth 2002, p.374). The opposition that was felt by previous governments was silent and the administration was able to approve measures as it saw fit.

Regardless, the main effect and consequence of the US leading the main policy developments in this policy area is the fact that if and when it begins to lose control, the framework in place becomes at risk, and generalised non-compliance becomes more likely. However, presently, the US has a definite position as a great power in

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¹ Information confirmed by the majority of interviews carried out for this research.
the international development of AML standards as it illustrates internal and foreign policy as well as changes in its international status and key security interests. Whether or not the US will be able to maintain its rule over AML standards and provisions on the financing of terrorism will greatly depend on the stability of the international system and whether it is strong enough to resist political change and external preferences.

**The European Union: great power-in-waiting**

The EU is identified as a great power due to its history of collective action, its participation in intergovernmental organisations and coalition with the US (Maull 2005; Toje 2011; Ahrari 2011; For a contrary view see, Hodge 1998). As such the research questions do not prompt focus on whether the EU should be seen as a single actor but more on the conditions under which the EU exercises its great power status, and how it influences the making and development of international standards. In addition, the role of the EU is especially relevant in the context of its coalition with the US as it reinforces its position globally.

Firstly, the EU’s power is not the same in every area and embodiment of great power is highly dependent on its economic strength as a whole and its political capacity to influence international relations. In fact, some authors would say that its political role is even less significant than its “economic weight” at the international scale (Entin 2012, p.103). Likewise, the EU’s capacity to mobilize efforts “is most significant where the EU’s core assets come into play” (Maull 2005, p.787) such as the stability of the internal market. So whereas some authors would claim the EU is a small power that is mainly related to its position in foreign and security policy and from a military perspective (Toje 2011). In fact, in so far as the economy is concerned the EU is a very important international player and one that through the size of its internal market is also able to shape international decision-making (Damro 2012).

Secondly, the EU works on two levels: internally it witnesses the compromise of great powers with their closest regional partners in the making and implementation of regional measures; externally, the EU participates in G-7/8/20
meetings as well as FATF plenary sessions represented by the President of the Council and the European Commission respectively. The essential characteristic of any EU analysis is, however, that its “presence in a given organization will be shaped by a mixture of internal and external forces” (Smith 2010, p.107) and often represents a compromise that is the result of lengthy internal institutional procedures. “As an entity, the EU is neither a state nor an international organization” (Verdun 2011, p.248) which means the EU essentially reflects the need for further integration on behalf of the internal market and the security of its own international status. Consequently, because the EU is, in itself, a coalition of quasi-powers, its decisions are not normally as strong and consistent as those of US affording the latter with an element of advantage over ‘shared preferences’. Indeed, literature has developed on the EU/US relationship on how “the US is the EU’s most significant other in the global political economy” (Smith 2010, pp.96–97) corroborating the long-lasting relationship and pattern of coalition in international policy making but also the preferences that are identified in the making of AML.

Thirdly, following the great power coalition strategy the EU has been known to stand by the US in most international negotiations. The relationship is beneficial for both as a certain degree of coordination means that a common ground is struck when “challenged by ‘emerging economies’” (Smith 2010, p.106). As a result, the EU cooperates with the US and as such benefits from “traditional great power politics, with their greater flexibility to initiate new policies, provide crisis management and impose authority, if necessary by force” (Maull 2005, p.797). The EU is recognised as an important, albeit regional, actor in the making of international AML standards for the simple reason of the sheer size of its market and the influence of some of its members as the world’s greatest economies. Whether, in this context, what happens within its internal debates is the same as what happens in international discussion is uncertain, yet internal market priorities appear to be on top of the decision-making process of the bigger EU member states at all times (Maull 2005, p.790). Similarly, while the EU members (especially those with G-7 seat i.e. Germany, UK, France and Italy) mandate the EU to develop the AML standards, the European Commission’s presence in international fora is geared towards the protection of the internal market. In this sense, rather than to satisfy individual power struggles the EU’s presence in
international negotiations holds a clearly economy oriented mandate. In the end, the role of the EU in influencing procedural harmonisation is greatly related to the role of the European Commission and the EU’s relation to the US as great power coalition partner with strong economic interests.

As developed in Chapter III regarding the importance of maintaining great power status through institutions, the EU’s position benefits from great power concerts like the G-7 and the G-20 in which it is able to create a “sophisticated system for European influence on G20 debates and outcomes” (Larionova & Renard 2012, p.121).

The G-7 is a good illustration of the alliance between the EU and the US with particular impact to AML developments. Consequently, this research focuses attention of G-7 actions as a collective which expresses great power preferences and through which these states are able to build and develop common strategies. Although a wider discussion on the relationship between the EU and the ‘G groups’ has been had elsewhere the fluidity of both agenda setting and objectives that paves the way for the interaction between EU bodies and G-7 representations is highlighted in the AML framework analysis (Larionova & Renard 2012). In reality, the G-7 is mainly a EU-US body that this thesis assumes influences the majority of international policy guidelines through the expression of great powers coordinated action and shared preferences. There is, naturally, the proviso that EU member states belonging to the G-7 have an obvious advantage point in setting international agendas although it is not certain whether they are able to use it.

The Group of Seven – a coalition of great powers

In line with the great power role defined in Chapter III, the G-7 is interpreted as the ultimate symbol of state influence on AML standards and a good example of the role of bigger states in leading international politics. Its activities are an illustration of great powers’ similar economic and security interests as well as a shared preference of acting through intergovernmental organisations. The analysis of
this coalition, additionally, assists in explaining why countries,\(^3\) which have been frequently mentioned as rising powers capable of replacing the US and the EU, are not identified as relevant for the making of the AML standards (at least not from the beginning). More than others, this group, with the EU and the US as its main members work together to achieve their priorities thus building a structure for great power work and collective problem solving.

The group of industrialised nations is widely recognised as the original promoter of the AML regime and of the organisations that were delegated to work on this issue. As such, its inclusion in this thesis’ analysis is essential. More importantly, the G-7 illustrates that the larger world economies share similar interests (either economic or security based) and, more often than not, preferences. The question is, nonetheless, how these preferences are translated into action and to what extent harmonisation was, in particular, promoted as a strategy by this group of states.

In Chapter V, research follows the G-7 meetings and preparatory works since 1989 in order to establish its preferences and policy guidelines. It identifies links to other international bodies and whether the presidency of the group influences the international agenda setting. The objective is to determine whether great power influence is always felt through the G-7 in concert or whether a specific state holds particular power over the decisions of the group. Ultimately, the G-7 sets international agendas and is an expression of the great power coalition that is defined in order to answer the research questions. The G-7 does not, however, develop policy strategies and limits itself to define and disseminate the homogenous preferences of great powers as a result of similar interests. Further investigation on the role of other actors is thus justified.

**Intergovernmental organisations**

Since the 1990s the making and development of international AML standards has been in its majority tasked to intergovernmental organisations. Therefore, the

\(^3\) Such as India, Brazil, China, and Russia.
IGOs network concept is composed of the organisations identified as currently contributing to the AML standards as a global policy. As elaborated in Chapters II and III the presence of strong IGOs is one of the defining traits of the AML network as it is through their rule creation and enforcement mechanisms that standards have been developed.

Rules play an important role from the start in that they enable “actors to depart from minimal institutional agreements in their interaction. This reduces transaction costs and simplifies collaboration” (Klijn E. H. & Koppenjan J. F. M. 2000, p.144) among actors that, as cost oriented actors, permanently look for strategies that allow them to delegate and redirect responsibility. Additionally the more these organisations are able to establish patterns of behaviour amongst network participants and state practices the more it can be said IGOs are effective in achieving set goals. A final characteristic of IGOs dealing with AML is their ability to exchange resources amongst each other in order to improve the implementation, discussion and bargaining that occurs during the standard negotiations process. In this sense, IGOs are considered to show their independence if they are able to construct individual bureaucratic relations to other similar bodies as part of a wider strategy of international or regional policy making. IGOs motivational source to act lies in the will to maintain the ‘environment’ in which they operate and simultaneously increase that environment by “obtaining needed resources or support from other systems and subsystems” (Rosenau 1990, p.258).

In the end, recognising the official IGO mandate is only the first step in understanding the true functioning of organisations. The network perspective, as explained in Chapter III, chiefly considers IGOs’ influence on the policies in relation to the contribution of the network in terms of information and resources exchanges, shared objectives and relationship effects. Much like the analysis of great powers, the thesis looks at the product of joint activities rather than individual ones thus confirming ‘network influence’ as a significant condition for harmonisation.
The Financial Action Task Force

FATF is the AML standard-setter and policy forum and therefore the network construction reflects this core. As a task-force, this organisation is not an intergovernmental organisation but an instrument of intergovernmental cooperation. However, in so far as it is the recognised AML standard setter, the FATF carries out functions similar to IGOs as defined in the previous chapter.

FATF is the main body delegated to by states to fight money laundering across borders. It currently gathers in its circle of influence approximately 193 jurisdictions in addition to 24 Observer Members and 8 Associate Members. FATF’s membership is not universal (its composition is mainly western and particularly European (20 out of 34 members)) and, it could be argued that its ability to structure non-members activities is thus limited. In terms of budget, FATF has seen a constant increase since its formation and although previous data is not readily available, information shows that it currently amounts to 3,371,848 euros (FATF 2012b) a little above initial claims in 1990 that its “size and cost (…) should be extremely limited, probably in the range of 2 to 4 million francs each year” (FATF 1991, p.19). This progress is equally reflected in numbers of staff, which at its lowest consisted of 3 permanent policy officers in 1990 but currently maintains 12 permanent policy staff.4

The small, Paris based, secretariat is structured around rotating year long member-state Presidencies, tri-annual plenary meetings (of consensus voting), and four working groups to which observers can be a part of but not lead. The working groups are centred in: evaluations and implementation (WGEI); money laundering and terrorist financing (WGTM); typologies; and the international co-operation and review group (ICRG). The job of the working groups is to carry out functions as determined by the Plenary with the assistance of the secretariat. Quite often, the working groups are responsible for proposing reports on new assessed threats and challenges, the revision of specific measures and in the case of the ICRG, the listing and monitoring of compliance among member and non-member jurisdictions through the ICRG process of listing jurisdictions with insufficient levels of compliance.

FATF is based on an enduring set of rules defined by its renewable mandate but lacks, what some might say are, essential characteristics to an international organisation, like a charter or due process. According to its current Executive Secretary, the FATF, is “a very peculiar creature because although it has no legal powers, although it has no international instruments that can be mandated by itself, it has far more power than other bodies that are so mandated” (Rick McDonell 2012). States’ choice of a ‘task force’ status reflected their awareness that “[t]ime spent on transacting is time unavailable for play” (Shepsle 1989, p.144) and so FATF epitomises an international tool of cooperation without too many legal bonds and few resources. Regardless of its apparently simple structure, FATF has seen continued member state commitment and continued mandate renewal and extension. FATF mandate renewals have not always followed a trend and so far occurred in-between different time periods namely in 1991 (for three years); at this point members were focused on their own evaluations, promoting coordination between non-members and serving as a forum (FATF 1991). In 1994 the mandate was renewed for four years; at this point concerns had solidified and the focus was mainly on monitoring activities as the implementation of the 40 Recommendations by members as well as the promotion of the “widest possible international action against money laundering” (FATF 1994). These objectives to a great extent remained stable in the 1998 renewal (FATF 1998) (for 6 additional years).

The 2004 renewal was heavily influenced by the 2001 events and greatly extended FATF objectives to focus on international and inter-institutional cooperation, to include terrorist financing and to intensify work on topic specific guidelines and risk assessment (FATF 2004b). From this moment onwards the international implementation of FATF standards became additionally concerned with the financing of terrorism and related activities.

In 2012 the mandate was once again renewed, this time until 2020. The FATF’s current mandate includes many of the constant objectives, e.g. the combat of money laundering while adding timely ones, e.g. related to ‘proliferation finance’. FATF’s objectives remain directed at setting “standards and to promote effective

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5 Interview T, July 2012.
implementation of legal, regulatory and operational measures for combating money laundering, terrorist financing and other related threats to the integrity of the international financial system” (FATF 2012d). This goal is supported by nine different functions and tasks awarded to FATF stretching from the usual ‘peer-review rounds’ to contacts with the private sector and “undertaking new tasks agreed by Members in the course of its activities” (FATF 2012d).

Overall, FATF has managed to keep an enduring set of rules and norms that positively and constantly evolved. It is above all a task-force, a standard setter whose “main quality is the ability to respond to new issues”. Its development as an institution and continued mandate renewal and expansion is evidence of the growing importance awarded to the topic and the continued, if not increased, reliance on this and other international bodies to organise and maintain the policy-making process. In some instances, FATF’s capacity to influence, create rules and generate patterns formation has been interpreted as creating “vested interests” but as a whole, FATF has benefited from its ‘task force’ nature and what could have originally been considered a weakness revealed itself as strength.

The adequateness and impact of the Recommendations can lead to an extensive debate as these have often been described as a “highly technocratic and largely unaccountable set of decisions” (Hayes 2012). Nevertheless, FATF’s stability and influence capacity is real and discussions surrounding its work are normally more related to the organisation’s (ex)inclusive nature. So, whether some authors have regarded FATF as a transnational regulatory agency (Zaring 2012, pp.690–691), this thesis identifies it as more than just a group of regulators bringing it to IGO status in virtue of the functions it carries out, its stability and its growth as an institution.

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6 Interview D, March 2013.
7 Interview J, September 2012.
The International Financial Institutions: the International Monetary Fund and the World Bank

The IMF’s and WB’s importance to the development of AML standards and the presence of harmonisation relates to these institutions link to great powers and the role they play in maintaining their economic interests globally.

The IMF has 188 members organised through a Board of Governors and a voting quota system. Its objective is to pursue monetary cooperation, exchange rate stability, trade growth and adequate financial tools aimed at promoting poverty reduction. As a body designed primarily to ensure financial stability the IMF was not an expected participant of the AML regime. From early on the IMF rejected suggestions that it should be more involved and it was not until 2000/2001 that its position changed due to pressure from main members and FATF’s inability (or the perception of by great powers) to ensure compliance without assistance and, especially following pressures 9/11 (Hayes 2012). As a result the AML section of the IMF’s mandate is thus established within its Articles of Agreement, Article IV on ‘Obligations regarding exchange arrangements’. In it states have agreed to provide “orderly underlying conditions that are necessary for financial and economic stability” (Article IV, IMF 2008).

Similarly, the World Bank, a group of five financial institutions,8 works towards the elimination of extreme poverty and the promotion of economic prosperity. The WB’s link to AML is part of a broader objective to fighting corruption and promoting good governance practices that favour economic growth through training and technical assistance. Its involvement in the framework developed roughly around the same time as the IMF’s and is essentially based on expert publications and on-the-ground knowledge of developing economies.

Currently, both IGOs have managed to establish themselves as organisations of unparalleled influence in the AML regime. However, given early reluctance, how

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8 The World Bank Group is composed by: the International Centre for Settlement of Investment Disputes (ICSID), Multilateral Investment Guarantee Agency (MIGA); the International Finance Corporation (IFC); the International Development Association (IDA); and the International Bank for Reconstruction and Development (IBRD).
have these institutions become important contributors to AML? What is their role in the production of knowledge and influence standard making and why is that their focus? In line with the premises of global governance on economic interdependence and desire for financial stability, the work of these institutions provides an example of great power concern but also of inter-organisational cooperation and exchanges capable of policy influence.

The IMF’s and World Bank’s interactions are widely explored in Chapter VI where their institutional preferences, information exchange capacity and resource exchanges are further developed. So, whereas it is already known that these institutions “set up research departments or hold conferences and consultations to advocate the ‘scientific’ validity of their objectives” (Stone 2004, p.554), the data collected for this thesis’ analysis considers their mandates along with staff, AML relevant budgets and research publications in order to establish the institutions’ role as experts and decision-makers within the IGOs network and the broader AML framework. In particular, the analysis focuses on these institutions’ role in the mutual evaluation processes and their contributions to procedural harmonisation.

Generally, the IFIs are interpreted as being essentially resisting network participants as is clear in varied statements (IMF 2001; IMF 2011). Nevertheless, their role in monitoring the implementation of standards, technical assistance and liaison with other network participants awards them the status of active participants (Para. 12 FATF Secretariat 2009).

The United Nations Office on Drugs and Crime (UNODC)

The UNODC was set up as the Office for Drug Control and Crime Prevention in 1997. It was renamed to its current form in 2002. This Vienna based office works on numerous international crime related areas, managing the main international UN system instruments, in particular, the three Conventions on illicit narcotic drugs and psychotropic substances (1961, 1971 and 1988 respectively), and the Convention against Corruption, the Convention against Organised Crime and its protocols. In

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regards to money laundering the UNODC mainly occupies itself with the Global Programme against Money Laundering (GPML), which focuses on the training and support of jurisdictions with deficiencies in this sphere, as well as developing countries with fewer resources and lack of expertise.

It functions as a balancing force that helps countries to achieve compliance with FATF standards when it would be difficult for them to do so and, in this sense, contributes to the network through resource and information exchange.

In addition, the UNODC maintains and develops the International Money Laundering Information Network (IMoLIN), a network that provides states and IGOs alike with information on assistance, on loopholes that exist in national legislations, on relevant events in the field and existing policy documents. It furthermore disseminates and consolidates useful AML national and international legislative information but also, scientific publications (in English and French) on the issues of money laundering and financing of terrorism such as reports on virtual currencies, financial havens and the importance of international countermeasures.¹⁰

Unlike the other IGOs selected as subjects of this research, the UNODC has a wider, almost universal, membership as subsidiary of the United Nations. In this capacity, it holds greater democratic legitimacy (awarded by membership and General Assembly resolutions) but also a lesser sense of individual states interests being reflected through its actions. In reality, the UNODC’s lack of funding is suggested in the chapters below as a consequence of great powers’ ‘forum shopping’ tendencies that led to the UNODC’s diminished role in the peer review and standard making processes.

¹⁰ For more information on IMOLIN see UNODC 2014.


10 For more information on IMOLIN see UNODC 2014.
Committee of Experts on the Evaluation of Anti-Money Laundering Measures and the Financing of Terrorism (MONEYVAL)

MONEYVAL is an FSRB representing 30 countries of Europe amongst which only Russia is also a member of FATF.\textsuperscript{11} Several are members of the EU. The Council of Europe created the body in 1997 to “ensure that its member states have in place effective systems to counter money laundering and terrorist financing and comply with the relevant international standards in these fields.”\textsuperscript{12} Currently, MONEYVAL is composed by a Secretariat provided by the Council of Europe, which responds directly to the Committee of Ministers and otherwise works with the Committee’s mandated ‘Bureau’. Its activities are essentially centred on conducting evaluations of member states and advising on measures to improve the AML regime in countries within its jurisdiction in addition to, “conducting regular thematic typologies research”, “working closely with other key international partners” and “propose recommendations (…) which would improve the international fight against money laundering and the financing of terrorism” (MONEYVAL 2014).

MONEYVAL’s role in this research is relevant essentially because of its evidenced technical expertise, as the name suggests, and the role it has played throughout time exchanging information with the FATF for standard making and revision purposes. As far as this research is concerned, the inclusion of MONEYVAL into the network is justified by its origin within the Council of Europe’s concern with financial crime, the input it is shown to have into the FATF standards, the assistance it provides other FSRBs, its larger capacity to act in financial terms, and its role in the peer review procedures. It may be argued that, as an FSRB, MONEYVAL’s influence is equivalent to any other FSRB and thus to

\textsuperscript{11} Albania, Andorra, Armenia, Azerbaijan, Bosnia and Herzegovina, Bulgaria, Georgia, Croatia, Cyprus, Czech Republic, Estonia, Israel (since January 2006), Latvia, Liechtenstein, Lithuania, Holy See (since April 2011), Hungary, Malta, Moldova, Monaco, Montenegro, Poland, Romania, Russian Federation (also FATF member since 2003), San Marino, Serbia, Slovak Republic, Slovenia, “The former Yugoslav Republic of Macedonia” and, Ukraine. Worth noting, France and Austria participate in MONEYVAL as requested by the FATF’s Presidency as FATF representatives (this is a rotating position among FATF members).

include one should include all. However, data and experts\textsuperscript{13} confirm MONEYVAL’s exceptionalism. Its closeness to and funding from great powers awards it with a special position from the start but, additionally, MONEYVAL’s contributions to the process throughout time demonstrate how IGO autonomy matters, how network membership is open and not dependent on mandates alone and, how power relations between IGOs rely more on input and collaboration than power stratification. Its activities and on-the-field missions award it with a significant and in-depth knowledge of countries realities and everyday difficulties. More than states, which are too often named as sources of expertise, MONEYVAL holds politically independent knowledge of varied jurisdictions. In this way, it holds a great comparative capacity and ability to look at problems from a macro perspective, one that other FSRBs hold less of for institutional and budgetary concerns. Only recently, one of FATF’s Presidents affirmed “I look forward to MONEYVAL’s continued active presence in this initiative, as it is only through the participation of the stronger parts of the global AML/CFT network that we will be able to help all to play their respective part” (Bufalo 2011). MONEYVAL is in this manner the last actor to be identified as relevant to this research’s analysis.

Altogether, this section introduced the actors included in the analysis, briefly reviewing the rationale for their inclusion in the research. The thesis continues below with the contextualization of their actions within the policy-making process in order to select the appropriate methods and offer answers to the research questions.

### 4.3 Customer Due Diligence: a case study

“A case study’s unique strength is its ability to deal with a full variety of evidence- documents, artefacts, interviews and observations” (Yin 2003, p.8).

The selection of the AML regime as an example of international policy making and global governance is related to its ability to provide evidence of the theory of

\textsuperscript{13} McClean refers to MONEYVAL as ‘a specialist committee’ of a regional organisation (McClean 2007, p.73).
global governance but also states and great powers’ preferences and, the importance of institutional networks input into policy-making processes.

International AML standards constitute a case study for global governance as its characteristics and challenges closely fit the constitutive elements and debates present in global governance theory. In his discussion of the specific nature of crucial case studies, Gerring argues that “the crucial case is a most difficult test for an argument (…) [but] the strongest sort of evidence possible in a nonexperimental, single-case setting” (Gerring 2007, p.232). Its precise objective is to confirm or disconfirm theoretical assumptions, as confirmed by Eckstein: “[t]he essential abstract characteristic of a crucial case can be deducted from its function as a test of theory” (1975, p.118). Accordingly, the AML and CDD oriented case study in this research looks to develop the premises set by global governance literature and question them in contrast with the observed reality. In spite of this, as a problem driven exercise, the proposed analysis is also reminiscent of case studies with a more exploratory nature in virtue of its focus on regulatory procedures (Yin 2003, pp.27–71). Its definition as a crucial case, however, remains applicable as what the overall analysis suggests is a more developed global governance inclusive of harmonised processes and IGOs network structures as opposed to state interests and great power governance.

Lastly, while the case study is the AML standards, the thesis explicitly looks at CDD, as a sub-unit, due to its representativeness of the general standards’ evolution process and AML guiding element. Therefore, the study of CDD constitutes the selected sub-unit for analysis that will guide this research and, in relation to which, the theory informed assumptions emerge. Chapters V and VI thus focus on the evolution of AML from 1989 until 2014 guided by the FATF standard revision processes and calendar.

What is presented in this thesis is hence a single embedded case study14 which in Campbell’s words, as discussed in Collier and Mahoney, overcomes some

14 An embedded case-study has multiple units of analysis and is best suited when the objective of the research is to provide the details, features and process surrounding the single case. See, (Yin 2003, pp.38–45).
variance issues and simultaneously permits the researcher to focus on the process and the case at hand (1996, p.70). CDD is, more than others, the essence of the AML framework. Its development throughout the years is a clear-cut example of how these international standards develop and are adopted by the many levels of policy-making. It is the main structural element of the standards and also the section of the regime where most variance can be determined. Therefore, the case study focuses on the evolution of these CDD measures within global and regional instruments, more specifically where larger states play a bigger role. Focus on the EU and the US is thus confirmed as only they “have capital markets larger than $50 trillion – more than double the next largest market” (Drezner 2008, p.123).

There is, in the proposed study of the AML standards, some bias in the case study selection seeing as the participation of non-EU countries and developing nations is not considered in great detail. However, as the AML standards have been primarily developed by the G-7 and G-7 ‘backed’ international institutions, the selection is in line with the research questions’ focus and the acknowledgement that even if considered the contribution of said actors would likely not achieve significance. To attempt a wider analysis of the policy-making area would most probably lead to the conclusion that the regime is essentially ‘Western’ and a dominium of the major financial centres as can be deduced by ready available literature (Sharman 2011, p.5). Furthermore, although the analysis of CDD might not be representative of all international policy-making, it constitutes a subject representative of policy areas where interdependence, security and financial stability interact and therefore awards research with external validity. In the end, following Weiss’s suggestion that research focused on problem solving “will have direct and immediate applicability” (Weiss 1979, p.428) the focus on CDD is justified both by its ability to elucidate how harmonisation occurs under specific conditions and also, in virtue of the questions raised in terms of policy outcomes (Bryman 2008, p.88).

Case study research is, indeed, not without concerns and there are obvious advantages and disadvantages to this choice. A common problem for rational-choice and case study theorists, for example, is that researchers are normally biased not only in their selection of cases but also when defining points of analysis and interpreting the significance of the outcomes (Green 1996, p.42). A clear disadvantage is also that
conclusions are arguably not as transferable as other quantitative methods or even multiple case types, but merely indicative of a singular case. On the other hand, one advantage is the lesser chance to commit measurement errors given its intensive outlook on each aspect, which in this case as there are no measurements, is compensated with process-tracing and triangulation.

Truncation, a variant of selection bias is another important factor that afflicts most researchers and to which solutions are scarce. It reflects, normally, “the deliberate selection of cases that have extreme values on the dependent variable” meaning that the selection of the case study is automatically leaning towards an expected or desired result (Collier & Mahoney 1996, p.60). In the selection of AML and CDD as a case study there is the prior recognition, as described in Chapter I, that procedural harmonisation is present and, moreover, that the conditions for it require further research. Therefore, the evolution of the AML regime in the context of the conditions that influence harmonisation somewhat hints at this particular obstacle. A quick look at the status of the standards indicates its positive evolution and that, unlike others, it has increased in membership, relevance and funding throughout the years. However, whilst it is likely that harmonisation is stronger in what regards to AML standards than in other international policy areas this is not unique to its case. Furthermore, if at first truncation appears to be a shortcoming of the selected case, a closer look at the research question demonstrates that the focus is on the conditions that lead to procedural harmonisation and not on harmonisation of standards itself. In addition, primary data gathering, as may be seen in Annex I, was not geared towards a specific result or influences.

In sum, the selection of AML standards as the case study is based on its alignment of interdependence, economic, security and global governance consequences that are thought to be under-researched.

4.4 Methods

The nature of the topic selected for analysis means that the research is essentially qualitative and does not involve any quantification of data or mix-method
research. This choice is justified by the fact that regardless of the reasonably long timeline focus, the research questions call for a manageable quantity of data to be analysed without requiring resort to quantification or comparative tools.

The selection of the case study as a research method is justified by the general purpose to “elucidate features of a larger class of similar phenomena” (Gerring 2004, p.341) in order to support existing theories and contribute to the scientific process. In accordance with the premise that “[t]he most challenging themes and theoretically exciting questions are not reached by the logico-deductive scientific method” (Ryan n.d., p.17), having a single case study fits the objective to understand a specific issue in-depth and throughout time without too many financial and commitment constraints. As a result, research is not too concerned with epistemological considerations on paradigms or their effects on qualitative or quantitative research decisions. Whereas that debate is an important one for the understanding of research design, research takes it as granted that conclusions on the validity of each of these matters and their relationship are clear elsewhere while choices of specific methods used for this case study analysis are explained below (Creswell 1994; Lincoln & Guba 1985; Ryan n.d.; King et al. 1994).

The case study and qualitative research done here stem from the nature of the main research question, which is concerned with understanding why and how procedural harmonisation occurs in relation to the relevant actors and the choices they make. Hence, this research takes the view that actors’ actions through time can have an effect on the outcomes but that these outcomes can vary according to actor preferences and objectives. Along this line, the case study analysis is promoted by the identification of the growing tendency in global governance to create mechanisms that ensure compliance and promote harmonisation tendencies. In this sense, it follows a deductive approach in that it gathers theoretical assumptions and prepositions on a broader phenomena ahead of exploring, corroborating, supporting or invalidating theory led assumptions with collected data (For a good overview of the main choices behind qualitative research design see, Hesse-Biber & Leavy 2010; Bryman 2008). The use of theory in this case study is informative of the problem at hand and literature reviews are essential to identifying the main concepts in need of further research and analysis through a process-tracing review of the case study.
Generally, the single case study approach relates to George and Bennett’s argument that it provides a significant level of conceptual validity, fosters new theories, closely examines causal mechanisms and adequately addresses causal complexity (2005, p.19). Case study literature is vast and most authors agree that whilst this type of research helps the level of insight on a particular topic, the selection process of methods still needs to be guided by strong and strict methodological principles in order to avoid biases (Platt 1988; Collier & Mahoney 1996; Miller & Salkind 2002). The choice of the case study as a method is thus justified by the topic’s particular agglomeration of the constitutive elements within the general context of the development of procedural harmonisation.\textsuperscript{15} Furthermore, a strong point of this research design is that both the case study and its unit of analysis are looked at throughout time through a process-tracing mechanism of gathering varied evidence and documentation.

The thesis relies on data gathered and triangulated in the name of internal and external validation. Assumptions are pursued by looking at publicly available (and some not publicly available) policy documents, by reviewing available literature and finally, by confirming secondary data through elite and expert interviews, as well as non-participatory observation. Data collection is carried out in relation to the time period determined by the research structure and question following a method of process-tracing aided by the normal principles of data collection \textit{i.e.} using multiple sources of evidence, creating a database and maintaining a chain of evidence (Yin 2003, pp.95–103). The added value of process-tracing is reflected not in what it can add to other topics but in the added value it brings to this particular research as an “indispensable tool for theory testing and theory development” (George & Bennett 2005, p.207). The use of this technique, effectively, requires a reflection on which aspects of the case study relate to a particular theory and in what way they come together to form the outcome shape of events (George & Bennett 2005, p.206). Among other advantages, process-tracing:

\textsuperscript{15} As the author stated before “…the single-case design is eminently justifiable under certain conditions where the case represents a critical test of existing theory, where the case is rare or unique.” (Yin 2003, p.44)
“forces the investigator to take equifinality into account, that is, to consider the alternative paths through which the outcome could have occurred, and it offers the possibility of mapping out one or more potential causal paths that are consistent with the outcome and the process-tracing evidence in a single case” (George & Bennett 2005, p.207 Emphasis added.).

Additionally, in case study research process-tracing offers significant advantages as it provides the opportunity to analyse data in great detail and reconstruct all the relevant steps of the process and form a structure for data analysis. A predictable problem with this approach is the possible deficiencies in available data, which can represent a problem to the validity of the research (George & Bennett 2005, p.223). However, rather than avoid them this thesis mitigates the disadvantages of the method by means of multiple and varied sources of information triangulated to assure reliability and also, by including a solid theoretical framework which joins methods and design to confer construct validity.

Hence, data collected originates from diverse sources mainly focusing on documents analysis, elite interviews and non-participant observation (the latter, mainly for background information and understanding actors’ behaviour) as well as the use of secondary data. In order to achieve a quality research design, data converges and ultimately leads to the same conclusions or what is known as ‘triangulation’ process, awarding the study with the required internal validity (Yin 2003, p.92). Triangulation can be understood as an “epistemological claim” where the use of more than one method can corroborate findings (Moran-Ellis et al. 2006, p.47; Bryman 2008, p.635). However, it may also constitute the premise that gathering multiple sources of data will ultimately lead to the same conclusion (Mathison 1988). The triangulation of secondary sources with primary material contributes to the internal validation of data but also to its construct validity “because the multiple sources of evidence essentially provide multiple measures of the same phenomenon” (Yin 2003, p.92). In the words of Mahoney and Rueschemeyer: “[t]he idea of triangulating data, then, is that while each observation is prone to error, taking the three together will provide a more accurate observation” (2003, p.57).

Data analysing is carried out in stages divided, policy and primary legal documents analysis, secondary data analysis and interviews and non-participant
observation with states’ and IGOs officials, and relevant stakeholders. The fact that the study is longitudinal, naturally, benefited from secondary and desk-based research “because of finance and time commitments” (Dale et al. 1988, pp.51–54) but also because it allows for the analysis of larger amounts of data across time, especially regarding meetings and events that occurred too long ago to be registered in interviewees memories or, where events would have been too high-level to allow for primary research i.e. G-7 meetings.

Document analysis is divided into primary and secondary data. Primary data is defined as original policy reports, meeting minutes, IGOs and state official publications. The analysis of primary data is possibly the most crucial as it is fully conducted with specific research questions in mind and taking into account the evolution of all defined institutions and instruments. Essential primary data consists of: the 40 FATF Recommendations (or ‘AML standards’) (including the Interpretive Notes), FATF Guidelines and Methodology; EU Directives, European Council and Commission documents; MONEYVAL annual reports, evaluations and publications; IMF publications, evaluations and reports; G-7 summit statements, preparatory works and news articles, inter alia. Other relevant documents include media coverage of institutional and state actions, and policy documents produced by the private sector in the policy-making context. Their role is evaluated not only in content but also as information shared from institution to expert to state in order to “coordinate common practices” (Brown & Duguid 1996).

Secondary data is built of reports and data found in relevant literature, which have already been subjected to analysis and interpretation. Amongst these are e.g. academic papers on the subject, media publications, and existing studies or reports from, or commissioned by, any of the relevant actors. Secondary data and documents contribute to this research’s ability to ‘visualise networks’ and identify links between different sources and events that might prove essential to the research question (Prior 2008, p.830).

Data gathered from documents is corroborated with interviews conducted with all relevant actors and also some degree of non-participant observation where possible (Bryman 2008, p.167; O’Leary 2004, p.172). Attending IGOs and state
meetings on the issues was not possible (or feasible) given the longitudinal character of the case study. Therefore this latter form of data gathering occurred only on three occasions where private and public stakeholders met to discuss the AML standards and the many issues that surround it.\textsuperscript{16} Observation of events was, naturally, non-participatory and notes taken are of an essentially background and informative nature which allowed for the improvement of the interview process and research guidance.

In so far as interviews are concerned, the decision to request the contribution of specific individuals is naturally linked to the existing assumptions, research question and the expected level of contribution that one particular individual can give to the project.

The primary empirical research, mostly consisting of interviews, was carried out from April 2012 to April 2014 including visits to Brussels, London, Paris, Strasbourg, Amsterdam, Lisbon and Vienna as well as phone interviews with officials in the US, France, Austria and The Netherlands. Out of 60 identified persons of interest 37 accepted the invitation to participate in the research. All of the relevant IGOs and great powers representatives were given the opportunity to contribute to this research. The final sample includes high-level experts, IGOs/government/private sector and civil-society representatives as specified in Annex II. The interviewee list includes former and current high-level officials from the European Union (European Parliament, Commission and Council), the World Bank, IMF, MONEYVAL, and FATF, the Egmont Group, the United Nations Office for Drugs and Crime (UNODC) and, government officials from the UK, Portugal, the Netherlands and Germany. Complementary information was gathered also through interviews with three international NGOs, private business umbrella associations representing the banking sector (retail and savings), insurance and investment sectors, gaming, accounting, e-money services and others.

Interviews were conducted through a semi-structured format in order to provide significant results to this research and simultaneously allow for some flexibility to the responses and data facilitated. Some interviews, nonetheless, are of

\textsuperscript{16} See Annex I for a full account of the fieldwork process.
a more background nature or limited to the official position. In all cases and for purposes of consistency the anonymity of participants is ensured but in accordance with good research practices, the interviewees themselves should be able to recognise their statements in the text (Grinyer 2002, p.2). In reality, there is no best way to conduct an interview, whether that is an elite or a normal interviewee (Dexter 2006, p.23). The best strategy always “depends upon the situation” (Dexter 2006, p.31), namely on the clash or compatibility of personalities, the time frame, the seriousness or insightfulness of the questionnaire and the profit that both intervenient actors retrieve from the interview. In what concerns elite interviewing, as that is the majority of cases here, special care was taken in terms of confidentiality agreements, recording and the degree of information and clearance that is required. “Elites are considered to be influential, the prominent and the well-informed people in an organization or community” (Marshall & Rossman 1989, p.94) and thus questioning them about their topics and professional activity implied significant preparation on the topics at hand but also a significant degree of diplomatic awareness about what they could and could not share in their statements. All responses are looked at carefully and undergo a plausibility check to make sure their character is mainly informative and not so much an expression of egos.

Nevertheless, interviews as a method are not without trouble. Known problems regarding the use of interviews as sources include the existence of ulterior motives, the fact that pre-set questionnaire structures bans spontaneity, the desire to please both from the interviewer and interviewee side, and the idiosyncratic factor (Dexter 2006, p.102). In order to overcome most of these obstacles the interviewer position should, according to Dexter, be objective and neutral in all its reactions, statements and presence while conducting the interviews (2006, p.119). As such, all interviews were conducted in a neutral fashion that allowed the interviewer to pay attention whilst keeping the interviewee talking and simultaneously conduct a plausibility check on each answer.

Overall, the methods selected for analysis fit the requirements of the research question and identified players. Similar research on networks and global governance corroborates the validity of the methods selected and their relevance for the intended research (Blanco et al. 2011, p.305). While Thatcher affirms that both rational choice
and sociological institutionalism have been used to demonstrate the reasoning behind networks and how in both the concept is related to interdependence; the author also warns against not being able to measure network impact and providing blurry definitions of what networks are and how they differ from institutions (Thatcher 1998, pp.407–409). However, this chapter and those that precede it have clarified what IGOs networks mean and the analysis’ inclusion of the role of great powers should facilitate the distinction between what is meant as network outcomes and what is not. In addition, Drezner’s own work on great powers highlights the importance of selecting the right case study and how that can “strengthen the empirical claims to be made” (Drezner 2008, p.26). In this sense, the analysis of the network and great powers in relation to their role and effect on CDD and instruments for harmonisation is key to determining the impact of both, whether or not changes has affected the actors and what the consequences for harmonisation of AML have been.

Finally, the external validity of this case study is somewhat dependent on its capacity to generalise findings, in particular, those regarding the concept of harmonisation as a policy outcome of international negotiations under certain conditions. Whereas there are predictable ‘path-dependent’ limitations that might occur from the replicating of the specific findings gathered in the AML case study; there is, however, no impediment to the replication of the methods and assumptions as used here and applied to the conditions for harmonisation of other issues under international regulation. Moreover, the concept of generalisation in itself is thought of as highly debatable and so it does not seriously compromise this case study’s reliability and methodological soundness (Gomm et al. 2000, pp.27–115; Mason & Dale 2011, pp.24–25).

4.5 Conclusion

This chapter identified the specific actors, highlighted the reasons behind the selection of the case study, and described the methods that make this thesis and assist research in finding answers to the defined questions.
The discussion above implemented the theoretical premises and defined their place into a process-tracing analysis of data in order to facilitate the gathering of evidence on actors’ influence and the presence of harmonisation in the AML standards framework. In this sense the application of the methods and premises set here in the coming chapters should allow for an illustration of how international standards are built and maintained throughout time, as well as determine whether new trends in global governance are evolving and how.

Generally, the methods and data collection process described here aims to: a) facilitate the understanding of the development of CDD in relation to the identified participants; b) highlight in which conditions procedural harmonisation is most present; and c) contribute to future policy making and theorising on global governance and its gaps.

Chapters V and VI therefore develop along the AML timeline, stretching from 1989 until 2014 and are guided by FATF standard revision scheduling. The debates developed in them apply the process-tracing exercise described to the theorised premises regarding the actions of great powers in their setting of international agendas, shared preferences and striving for compliance. From the IGOs network perspective, also the shared preferences, the stable relationships, and resources exchange are the focus of the data gathering exercise in order to confirm the network influence as independent from the formal great power delegation act.
CHAPTER 5

GREAT POWERS AND AML: AN UNLIKELY UNION OR A GRAND STRATEGY?

5.1 Introduction

This chapter analyses and elaborates on the role of great powers within the international policy-making process of AML standards. Following from the definitions provided in the previous chapters, research focuses on the US’s and the EU’s actions throughout the AML standards’ revision cycles. It establishes the ways in which great powers influence and lead to procedural harmonisation through their shared preferences, agenda-setting capabilities, and search for compliance.

Based on the theoretical framework set out in Chapter III, it is assumed that the closer the policy preferences of the US and the EU the more likely it is for CDD standards to be implemented through a process of procedural harmonisation and thus suffer less resistance. As per the theorisation of procedural harmonisation then, the chapter observes whether great powers exert influence through formal mechanisms, by favouring consistent interpretation of AML standards, and through cross-pollination.

It demonstrates through the process-tracing analysis of the evolution of AML and CDD that the US and the EU remain important players in the making of international AML standards. Evidence suggests, however, that the great power framework relies on inter-state cooperation through the G-7 and delegation to IGOs. Additionally, tools such as expertise are behind the policy-making activities and indicate further research is required in order to fully understand compliance gaps. Overall, the analysis of great power input into AML illustrates that procedural harmonisation depends on great powers through cross-pollination and mainly formal processes but that delegation to IGOs is also necessary.
5.2 Shared preferences and coalition building

Great powers are thought to have shared preferences due to similar domestic conditions. In effect, the characteristics held by great powers are a mere reflection of what occurs at the domestic level in terms of economic development, power and stability. Therefore, it seems only natural that as quickly as they may become competitors, similar preferences arise to protect the status quo that favours them internationally.

The first section of this chapter offers a brief review of the development of AML standards in both the US and the EU. It clarifies the reasoning behind the development of legislation in each actor and acknowledges that the surfacing of similar preferences favour procedural harmonisation.

AML standards in the US

The US involvement in the making of international AML standards is based on a combination of security and economic interests complemented with pressure from its industry and private sector actors. The discussion below places the governmental actions under scrutiny along side the AML standards revision timeline and in relation to the strategies used through the years to implement AML measures within the US.

Federal criminal money laundering statutes stand on Sections 1956 known as the ‘Laundering of Monetary Instruments’¹ and 1857² on ‘Engaging in monetary transactions in property derived from specified unlawful activity’ part of the US criminal code, title 18, chapter 95 in effect since 3 January 2012. This body of laws summarises and codifies previous and general US provisions regarding money laundering and related offences offering a clear view of where US priorities lie and what the general guidelines are. Section 1956 comprises four kinds of money laundering, specifically: “promotional, concealment, structuring and tax evasion laundering of the proceeds generated by the designated federal state, and foreign underlying crimes” (Summary, Doyle 2012). Its counterpart, Section 1957 covers the

¹ 18 U.S. Code § 1956.
² 18 U.S. Code § 1957.
prohibition of engaging in a monetary transaction as defined (more than $10,000). It provides elements and additional definitions to complement the previous section and specifically target acts of conspiracy, and aiding and abetting. Together, these provisions are the culmination of years of American legal and political developments.

The defining and evolving of AML legislation at the US national level suggests that this country was among the first to be concerned with the issue and its tackling in relation, firstly, to drug trafficking and the effects that money laundering activities have on its banks, and more recently terrorism (Doyle 2002; See also, Ryder 2012). US contributions to the development of CDD, required since 1979, are essentially innovative as is their implementation strategy which has also become more sophisticated and complex with the internationalisation of the issue and the need to cooperate with other states and their jurisdictional demands (Zagaris & Castilla 1993, p.964).

The Bank Secrecy Act (BSA), also known as the ‘Currency and Foreign Transactions Reporting Act’ was passed by the US Congress in 1970 and “requires financial institutions to maintain appropriate records and file certain reports involving currency transactions and a financial institution’s customer relationships” (Federal Deposit Insurance Corporation 2005). In its reasoning the US Congress found that “microfilm or other reproductions and other records made by banks of checks, as well as records kept by banks of the identity of persons maintaining or authorized to act with respect to accounts therein, have been of particular value in this respect”. As a result, this body of the law is mainly geared to record keeping and to report suspicious activity that might signify money laundering, tax evasion, or other criminal activities. Overall, the BSA was the first US law to tackle money laundering and include financial institutions, individuals and banks in its provisions.

In 1986 the Congress enacted, in its 99th session, the ‘Money Laundering Control Act’ to ‘strengthen Federal efforts to encourage foreign cooperation in eradicating illicit drug crops and in halting international drug traffic, to improve

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enforcement of Federal drug laws and enhance interdiction of illicit drug shipments, to provide strong Federal leadership in establishing effective drug abuse prevention and education programs, to expand Federal support for drug abuse treatment and rehabilitation efforts, and for other purposes.

As indicated by its name, this law was directed at curbing drug trafficking and was the first to amend Section 1956 by adding specific provisions on unlawful activities. As a result, the criminalisation of money laundering was achieved in the US before any other in virtue of “the nature of non-compliance with the reporting provisions of the BSA 1970, the use of structured payments to avoid the financial reporting thresholds and the acceleration of the drug trade and the large amount of money associated with it” (Ryder 2012, p.55).

Similarly, the ‘Anti-Drug Abuse Act’ of 1988, in subsection E, amends the criminal code inter alia to:

“to include within the definition of ‘financial institution’ a number of entities engaging in activities similar to those usual to financial institutions, including vehicle sales businesses, persons involved in real estate closings and settlements, and any other businesses designated by the Secretary of the Treasury as having cash transactions with a high degree of usefulness in criminal, tax, or regulatory matters”.

At the end of the nineties the US had already requested the creation of the ‘Financial Crimes Enforcement Network’ (hereinafter, FinCEN), which to this day is the responsible body for, among others, providing “a government wide, multisource intelligence and analytical network in support of the detection, investigation, and prosecution of domestic international money laundering and other financial crimes.” FinCEN is responsible for AML control and revision at the federal level and is the international equivalent of a Financial Intelligence Unit as

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7 Ibid. Emphasis added.
8 “FinCEN’s mission is to safeguard the financial system from illicit use and combat money laundering and promote national security through the collection, analysis, and dissemination of financial intelligence and strategic use of financial authorities.” See FinCEN 2014b.
shown by its founding membership to the Egmont Group. To this extent, also at the reporting mechanisms level, the US demonstrated it was ahead of its peers.

Following from the work developed internally, the ‘Annunzio-Wylie Anti-Money Laundering Act’\(^\text{11}\) of 1992 reflected a solid AML framework as confirmed by FATF’s Annual Report. In it, the FATF described the US as “very substantially in compliance [and] there is a generally commendable legal framework for dealing with money laundering” (FATF 1992, p.9). In this new document the focus is essentially on sanctions against financial institutions that fail to conduct appropriate CDD compliance procedures and, on record keeping for wire transfers.\(^\text{12}\) Moreover, the ‘Annunzio-Wylie Act’ introduced the concept of the ‘suspicious activity report,’ commonly known as SARs following which financial institutions are required to report to regulators if and when they suspect criminal activities thus setting the watermark for what came to be the international suspicious transaction reports (STRs) system. In fact, this latter decision is important as it recalls the ‘Right to Financial Privacy Act’\(^\text{13}\) of 1978 whereby individuals had their financial records protected against financial institutions’ reporting practices.

Finally, the ‘Money Laundering Suppression Act’ of 1994\(^\text{14}\) did not develop provisions per se but focused on training and examinations procedures to improve the identification of money laundering schemes involving depository institutions and procedures for referring cases to appropriate law enforcement agencies.

\(^{10}\) “FinCEN continues its work in the Egmont Group to promote effective information sharing and networking. FinCEN sponsors new FIUs for membership in the Group, and has played a key role on projects relating to cross-border, enterprise-wide suspicious transaction information sharing within the financial sector, compiling best practices in FIU security, and advising counterparts on FIU issues relating to FATF recommendations and mutual evaluations” (FinCEN 2014a). For more information on the Egmont Group see, The Egmont Group 2014. FIU’s are Financial Intelligence Units, in charge of receiving and investigating reports on money laundering activities.


\(^{12}\) Wire transfers are a method of transferring money through electronic means between people or institutions.


Most US AML developments were carried out during the 1980’s and 1990’s. As illustrated in Table 5.1,15 1998 saw the birth of another US AML advance with the ‘Money Laundering and Financial Crimes Strategy Act’16 (hereinafter, ‘Strategy Act’). The Strategy Act was, perhaps, one of the most relevant pieces of legislation as it requested the preparation and deliverance of the ‘National Money Laundering Strategies,’ originally called ‘Treasury and Justice Money Laundering Strategy (hereinafter, ‘National Strategies’) (Ryder 2012, p.42). It requested that future National Strategies include specific objectives amongst which the development of research based goals, objectives and priorities aimed at the prevention, detection and prosecution of AML crimes; the enhancement of intergovernmental cooperation and; the enhancement of the role of the private financial sector in prevention measures.

Six National Strategies have been published with the first three (1999, 2000 and 2001) being a continuation of work carried out by FinCEN and the Department of Treasury and responding to what had been requested in the 1998 Strategy Act. It is useful to note, the 1999 strategy’s emphasis on cooperation between the public and private sector but especially some objectives that clarify many consequential international developments. Specifically, the US agreed to “seek the expansion of FATF membership to other appropriate countries and work toward the universal implementation of the FATF 40 Recommendations” (Treasury & Justice Departments 1999, p.51). It further commits to: negotiate strong anti-money laundering provisions at the UNTOC of 2000; to promote the development of FATF Regional Style bodies; and, include counter money laundering issues on the

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**Table 5.1 – US Anti-Money Laundering Laws Summary**

<table>
<thead>
<tr>
<th>Period</th>
<th>Law Title</th>
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<tbody>
<tr>
<td></td>
<td>Right to Financial Privacy Act - 1978</td>
</tr>
<tr>
<td>1980’s</td>
<td>Money Laundering Control Act - 1984</td>
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<tr>
<td></td>
<td>Anti-Drug Abuse Act - 1988</td>
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<td>1990’s</td>
<td>Amarojo-Wyllie AML Act - 1992</td>
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<td>Money Laundering Suppression Act - 1994</td>
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<td>2000’s</td>
<td>PATRIOT ACT - 2001</td>
</tr>
<tr>
<td></td>
<td>Intelligence Reform and Terrorism Prevention Act - 2004</td>
</tr>
</tbody>
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15 For a more complete overview of US developments see Annex III.
international financial agenda by, among other things, conveying this message at “the Economic Summits, the meetings of G-7 Finance Ministers and Central Bank Governors and the annual meetings of the IMF and the World Bank” (Treasury & Justice Departments 1999, p.54).

The 1999 National Strategy clearly confirms the “USA was also pushing strongly for global standards” (Hayes 2012) and the promotion of joint actions in its AML framework.

The National Strategies that followed notably: highlighted the importance of ‘risk’ as an essential element in supervisory agencies’ examination of procedures, extended the powers of the Secretary of Treasury to act on foreign jurisdictions identified as a money laundering peril, requested two studies on the role of gatekeepers to the global financial system and followed-up on the discussion with international financial institutions regarding “how to better focus on money laundering in the context of financial reform programs” (Treasury & Justice Departments 2000). These priorities, although, subtle have become part of EU legislation and later FATF Recommendations. Along the same line, the 2001 National Strategy focuses on ‘effectiveness’ (Treasury & Justice Departments 2001, p.16) and the issue of its measurement, which is currently high on the policy makers’ table as a consequence of its inclusion in the 2012 FATF Recommendations and the 2013 mutual evaluation methodology.17

2001 was a crucial year for US AML standards. The events of 9/11 culminated in one very important and comprehensive legislative act that “dramatically amended” (Ryder 2012, p.43) existing legislation on the issue, i.e. the Bank Secrecy Act of 1970 and the Money Laundering Control Act of 1986. In effect, the ‘uniting and strengthening America by providing appropriate tools required to intercept and obstruct terrorism act of 2001 (known as, PATRIOT ACT)18 aimed to deter ‘and punish terrorist acts in the United States and around the world, to enhance law enforcement investigatory tools, and for other purposes’. It has “an extra-territorial effect and applies to any financial institution, from any jurisdiction that conducted

17 Chapter VI, section 6.3 discusses the importance of the mutual evaluation methodology.
business either in the US or with a US-based institution” (Ryder 2012, p.43). Overall the PATRIOT ACT refined CDD provisions\(^{19}\) but essentially developed its implementation and compliance mechanisms.

As complemented by the ‘Intelligence Reform and Terrorism Prevention Act’\(^{20}\) of 2004, the PATRIOT ACT was the last big change in US AML legislation. The recommendations of the 9/11 Commission are implemented in Title VII, Section 701 on ‘Money Laundering and Terrorist Financing’ and mainly focused on enhancing preventive and detection technology and FinCEN funding. As would be expected the trend to mix together AML and terrorist financing was not fleeting despite attempts by other bodies to highlight the differences. For example in 2004 the Bureau of International Narcotics and Law Enforcement Affairs published its ‘International Narcotics Strategy Report’ where it noted that “[m]ost crime is committed for financial gain. The primary motivation for terrorism [unlike AML], however, is not financial” (Department Of State 2004).

President George Bush, nonetheless, defended that this kind of “reversed money laundering” was and even “bigger threat” (Ryder 2012, p.3) than the normal money laundering offence. As a result of the President’s position the AML regulations and the financing of terrorism continued to be part of a single framework at national and international level, best known as AML/CFT. This strategy is, in fact, illustrated by the 2003 National Strategy, which comes across as more sophisticated, outward facing and targeted than its predecessors. For example, whereas international cooperation was formerly one section at the end of each national approach, with this document international cooperation appears spread out through the three defined goals. In many ways, this strategy is not as specific having eliminated the ‘goal-action framework’ but still sets aims to: safeguard the international financial system from money laundering and terrorist financing; enhance the US government’s ability to identify, investigate, and prosecute major money laundering organizations and systems; and ensure effective regulation (U.S. Departments of Treasury, Justice, and Homeland Security 2003, p.4).

In sum, the instruments described above are the main constituents of the AML framework within the US. The PATRIOT ACT is of particular importance to the US’s influence on global governance through the setting of compliance mechanisms but more is discussed in this regard later in the chapter. Overall, this section demonstrates how the US’s preferences in the development of AML measures are characterised by the urge to protect the financial and banking system from criminal interference and security concerns showing little consideration for global governance issues before 9/11.

**AML standards in the EU**

Similarly the EU has been one of the keenest AML players since 1989. The EU’s legal basis to act in this area of action begins with Article 114.1 TFEU that affirms it shall “adopt measures for the approximation of the provisions laid down by law, regulation or administrative action in Member States which have as their object the establishment and functioning of the internal market.” EU actions against money laundering are then not only limited to the AML Directives but also complemented by regulations on ‘information on the payer accompanying transfers of funds’\(^{21}\) and ‘controls of cash entering or leaving the Community’\(^{22}\). Furthermore the EU carries out an important service to the AML global standard implementation by including measures of an AML nature in the *acquis communautaire*\(^{23}\) to be adopted by EU candidate countries thus widening the governance spectrum (Levi 2007, p.168).

The ‘Directive’\(^{24}\) was the instrument selected for AML standards application thus allowing the EU to determine what, but not how, results must be achieved. The

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\(^{23}\) “The Community *acquis* is the body of common rights and obligations which bind all the Member States together within the European Union” EUROPA 2014.

\(^{24}\) “EU directives lay down certain end results that must be achieved in every Member State. National authorities have to adapt their laws to meet these goals, but are free to decide how to do so. Directives may concern one or more Member States, or all of them (…) particularly common in matters affecting the operation of the single market” European Commission 2012c.
Lisbon Treaty and Article 83 further increased community competence on serious crimes, including money laundering, developing the EU’s response mechanisms to the varied areas of transnational crime. Article 83 was innovative in that it mentioned specific crimes that fall under this field of action, e.g. money laundering, reaffirming “[i]f the approximation of criminal laws and regulations of the Member States proves essential to ensure the effective implementation (...) directives may establish minimum rules with regard to the definition of criminal offences”,However it was not too revolutionary in that it is followed by Article 84 that specifically excludes ‘harmonisation’ of the criminal law as being part of European Parliament (EP) and Council competence.

A particularity of the EU Directives is their updating and revision in a similar timeline to FATF standards. Therefore, following from the first FATF Recommendations of 1990 the European Commission (hereinafter, the Commission) began drafting the 1991 EU AML Directive as a consequence of its function as EU administrator. In its proposal the Commission relied on the basis that “Community legislation must ensure the integrity and cleanliness of the financial system”. It went further requesting that the act of money laundering be criminalised as it “is not only a necessary repressive means of combating money laundering, but also a previous prerequisite for cooperation between financial institutions and judicial law enforcement authorities.” The requirement to criminalise was, nevertheless, not translated into the final document as member states decided that it was not within Community competence to interfere with national criminal legislation albeit only in regards to EU format legislation.

25 Article 83 TFEU.
26 Article 83.2 TFEU.
29 As demonstrated in Chapter I most FATF original members criminalised money laundering as an offence in the 1990’s.
The adoption and implementation of the 1991 EU AML Directive was successful, firstly because most the then EU countries were FATF members but also because the EU’s economic structure meant that the associated nations were further pushed to comply. The Standing Committee of the EFTA States affirmed, “no major difficulties have so far been identified either from a legal or practical point of view. The financial undertakings respond efficiently to the competent authorities’ goals and measures which have had to be taken.”

The first AML Directive was, however, “not as stringent as United States anti-money-laundering legislation since the latter relies heavily on routine collection of information” (Zagaris & Castilla 1993, p.898) of institutions and others who fall under its legal requirements. The 1991 Directive did not ban financial institutions from having anonymous accounts and as far as CDD requirements go focused on opening an account or savings account. In its focus, furthermore, it did not refer to persons rather institutions and had no requirement to stop business relationships in case adequate identification could not be provided. It was in its own right, however, a EU member state compromise following the FATF requirements of the time aimed to bring the internal market under the same level of protection that was being afforded to domestic markets.

The revision of FATF standards in 1996 led to the update of the EU AML Directive in 2001. The EP, at this stage, demonstrated its preference towards a risk-based approach (or RBA) that would develop more globally in time, as well as the drawing up of ‘clean banks’ lists which, to date have not occurred. The EP was in full agreement with the extension of relevant professions to be included in the Directive and, in fact, proposed those alterations itself in March 1999.

amendments however were not always adopted and as can be seen in the procedural documents there was often disagreement between the Commission and the EP mostly regarding technical issues and prominently regarding the inclusion of the legal profession and other non-financial institutions into the realm of the EU AML Directives.

In a 1998 a report of the ‘informal Money Laundering Experts Group’ refers to the ‘extensive’ discussion that was carried out during that time regarding international cooperation, predicate offences, reporting obligations etc. Regardless, by the end of the negotiations and start of the implementation process most countries began to “see the benefit of covering all serious predicates” (Griffiths 1993, p.1826), which was in line with the mainly British experts’ contributions and the fact that the group only gained a wider audience in subsequent follow-up meetings.

The second EU AML Directive of 2001 was a consequence of work being carried out in the EU for internal market reasons but also the 1996 FATF review. In many ways it was pre-emptive in defining criteria that FATF would implement in the 2003 revision, namely provisions on wire transfers, showing the advantage point of EU G-7 members. Amongst other things the Commission proposal for a new Directive already included focus on other professions and non-financial institutions, as well as the identification of customers in non face-to-face transactions and as far

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34 See Amendments 15, 16, 18 on wording (not adopted). Ibid.  
as CDD is concerned included an additional paragraph on the responsibility of states with direct supervision over casinos. 39 Whereas the exceeding of FATF Recommendations was part of the Commission and EU member states intentions these were firmly supported by other EU bodies, namely the Economic and Social Committee, 40 which noted nonetheless, that the Commission was conducting “unnecessary and unjustified interference” in regards to the “actual organisation of monitoring procedures by financial institutions” 41 The FATF Annual Report of 1996 (FATF 1996a, p.6) hinted at member state intentions to extend provisions to non-financial bodies which at the international level that did not materialise but was possible at the regional thanks to the EU.

Ultimately, the negotiation of second EU AML Directive was a long process where many EU bodies took part and had the opportunity to contribute to the debate. The outcome, nevertheless, suggests that the FATF reports and the Council documents were key in determining both wording and guidance of the new CDD, and other, provisions. 42 Moreover, a closer analysis of Council procedural documents suggests that the wording of articles was influenced by larger states while amendments by others were not as successfully received. Coalitions between the UK, France, Sweden, and the Netherlands were frequent. For example the UK’s suggestion on extending CDD to credit and financial institutions was successful, suggestions by Austria and Denmark regarding the inclusion of casinos and specific

41 Ibid, p. 10.
42 Particularly suggestions by the UK, FR and NL were frequent and successful. A and SE also contributed to discussion, the former given its recent FATF presidency and SE as it is also a constant participant in these discussions. For concrete examples see, Council of the European Union, Working Party on Financial Services (money laundering) Report, Interinstitutional File 99/0152 (COD), Document Nr 6194/00, 22 February 2000.
thresholds were not. Overall the requirements on CDD foreseen in Article 3 of the Directive were essentially extended to include provisions on casinos and to prevent duplication of efforts within the common market.

Broadly, the adoption of the second Directive was difficult and the Council and EP ultimately entered a ‘conciliation procedure’ due to divergent views over the legal profession reporting requirements (Mitsilegas 2003, pp.86–102). In this process, as can be seen in internal document exchanges and notes there was constant participation by the UK, France, Germany, The Netherlands, Sweden, Belgium and Portugal (motivated by its FATF presidency).

The FATF standards renewal of 2003 naturally led to the progression of a third EU AML Directive. Here the EU had a closer look at its own standards and issues that had evolved since the second Directive, notably the inclusion of legal professionals, into the list of relevant professions under CDD (For more on this issue see, Gilmore 2011, pp.231–233). In any case, CDD provisions were significantly enhanced in the third Directive following international calls for stricter provisions. At the start of negotiations, one Council document refers to the second Directive recalling:

“[T]he outcome was fraught with compromise and ambiguous drafting, and has proved difficult to implement in some countries... The Commission, the Presidency and most Member States attach importance to the third directive (...) and would favour speedy progress (...) Although the new scope has cause some difficulties... there have been little resistance in the Council Working Party (...) after all, the composition of the Working Party has been similar to the rest of FATF”.

46 Council of the European Union, Brief for the President, 2628th Council (ECOFIN), (CAB FINAL), (7 December 2004). Emphasis added.
Subsequently the Commission set up a Committee on the Prevention of Money Laundering and Terrorist Financing (*hereinafter*, the committee) where it is able to better communicate with member states. In this context, many member state delegations presented proposals and preferences. A common point of agreement was the need to separate anti-money laundering from the financing of terrorism as being different offences, an item especially defended by France.\(^{47}\) Taking into consideration that CDD was one, if not the most, developed area in the third Directive it is worth noting the UK’s support for the new risk based approach affirming it is “particularly appropriate” and “key to the wider UK structures to counter money laundering and terrorist financing”.\(^{48}\)

The first element worth noting is the affirmation in the new Directive’s preamble stating “[t]he measures adopted by the Community in this field should therefore be consistent with other action undertaken in international fora.”\(^{49}\) This call for harmonisation of international standards is partly a consequence of the events of 9/11, and partly the result of private sector complaints regarding how the different implementations of AML standards across the world complicated and harmed business.\(^{50}\) Compared to the previous Directive developments illustrate an awareness of existing political preferences but also the beginning of the inclusion of private sector stakeholders as having expertise otherwise not present in negotiations. In this sense the provisions on CDD are expanded to the size of a full chapter (II) including 14 articles from article 6 to 19. Provisions are divided into general, simplified CDD and enhanced CDD illustrating the evolution of this policy theme within the Directives, as well as the awarding of specific requirements to relevant financial and non-financial institutions. These measures largely follow from the FATF 2003 Recommendations that CDD should be applied following risk assessments and in relation to the position that “supervisory authorities take in monitoring the businesses” (Herlin-Karnell 2011, p.85; See, Recommendation 5, FATF 2004a).

\(^{50}\) “Obviously we have committed ourselves to a very expensive activity and efforts (...) we have to believe in this field, but we do not necessarily need to be optimistic”. Interview I1, July 2012.
The evolution of the Directive can be traced from the original Commission proposal\textsuperscript{51} to the final document, but in that process one element that appears clear is the increased interaction with the private sector and other stakeholders. Nonetheless there was little overall doubt in the minds of states regarding what action was needed, “[o]nly 144 amendments were tackled this time around which means that whilst there was something to be discussed, it did not end up being a problem”.\textsuperscript{52} The EP too seems to have had a greater influence than before in the policy-making process with some of its amendments being adopted although mainly relative to phrasing and political statements. Amongst the CDD related EP amendments are the inclusion of ‘domestic public authorities’ in the simplified version of CDD, assessment of identity ‘before’ business takes place, provisions regarding the legal profession and beneficial ownership.\textsuperscript{53} In addition to the normal co-decision procedure just before the Directive was approved the Commission invited the public to comment\textsuperscript{54} on a working document regarding the Directive in the making. Amongst other things it requested information on CDD, general orientation and even posed specific questions. The responses to this would not only be made public but taken into consideration at the newly established Commission committee. Nevertheless, the Council was still a decisive actor as can be seen by its amendments


\textsuperscript{52} Interview G1, July 2012. See also, Council of the European Union, Communication, General Secretariat, Document Nr CM 1238/05, (7 April 2005).


on CDD concerning beneficial ownership and politically exposed persons.\textsuperscript{55} In effect, although the committee is for member states, research interviews have found that most states do not attend the meetings and when they do, do not come prepared (with the exceptions of the UK, France, and the Netherlands).\textsuperscript{56} The Committee meetings thus result in being about states informing the Commission of what they are doing and vice-versa\textsuperscript{57} whereas Council Working Group meetings are much better planned and attended by national experts, perhaps because in them, great powers are putting forward their preferences.\textsuperscript{58}

Overall, the implementation of the third AML Directive was positive and although in December 2008 Belgium, Ireland, Spain and Sweden had not completed the process, many of these countries were considered to be compliant in the third round of FATF mutual evaluations meaning their legislation is broadly in order (Philipson 2008). Indeed, a superseding objective exists to be compliant with AML standards as FATF members although the Commission’s actions demonstrate how it still seeks to achieve consensus and support from its partners and stakeholders\textsuperscript{59} in order to facilitate common market exchanges.

The fourth AML Directive is currently underway at the European institutions following the 2012 FATF revision and the ordinary legislative procedure.\textsuperscript{60} The Commission highlighted, in the impact assessment, that the fact that the ‘existing rules (…) differently interpreted across Member States’\textsuperscript{61} is not desirable for EU law. As such, amongst other foreseen updates is the clarification of simplified due

\textsuperscript{56} Interview L, November 2012.
\textsuperscript{57} “Committee meetings are more about the MS informing the Commission of what they are up to, where they stand” in Interview L, November 2012.
\textsuperscript{58} “The Directives are much guided by Finance Ministers (…) the discussions are very political” in Interview R, July 2012.
\textsuperscript{60} The ordinary legislative procedure gives the same weight to the European Parliament and the Council of the European Union.
diligence, expanding provisions on politically exposed persons and improving provisions on the gambling sector (European Commission 2013a). Unlike its predecessors, the fourth Directive has been negotiated under the Lisbon Treaty and in light of the increasing EP powers. In this context, although innovative changes in content are few the increase of EP means that the position of the Members of the European Parliament (MEPs) in relation to the Directives matters more than before. MEPs have affirmed “[a]s far as the EU is concerned, we need to review the money laundering problem and implement law within EU competency and its democratic process (...) by a Parliament (...) which FATF does not have”.

The EP has recently published its ‘first reading’ of the Commission proposal for a fourth EU AML Directive. As expected, it focused on beneficial ownership and tax crimes as the main issues, as well as the common criminalisation of the money laundering offence. Developments relevant to the evolution of CDD and the role of all involved actors are expected in the fourth Directive, which further clarifies whether EU states will continue to harmonise standards in the directive format and how.

The new Directive proposes tightened rules on CDD according to risk considerations, new guidelines on beneficial ownership and data retention, and provisions regarding electronic money (ER/EUROPA 2014).

The most significant contribution of the EP as regards this paper’s focus is its fierce resistance to FATF while the Commission and the Council appear ‘happy to oblige’. One MEP contends: “FATF is not the Holy Grail. They are just guidelines that we have to review and implement into law (...) they are technocrats with no democratic mandate”. Nevertheless, while these are strong words from the EP, the evolution of AML standards, including within the fourth Directive, demonstrate FATF and ‘great powers’ input corroborating the argument that the AML standards are a successful coalition output.

62 Interview M1, April 2014.
63 “A ‘directive’ is a legislative act that sets out a goal that all EU countries must achieve. However, it is up to the individual countries to decide how” Europa 2012. The European Commission clarified the fourth Directive priorities in, European Commission 2012a.
64 Interview M1, April 2014.
In sum, the EU’s creation and implementation of AML Directives is mostly in line with the US and international cooperation strategy, illustrating simultaneously member states’ concerns with the internal market and broad economic priorities.

**A union for security and economics**

The analysis above demonstrates that while the expressed US interests are heavy on security concerns as well as economic ones, the EU’s preoccupation and action is mostly internal market based. Documents and interviews analysed above demonstrate that the publicly available motivations of the analysed state actors confirm the theoretical assumptions regarding their desire to cooperate. As a result, while similar, yet not equal interests prompt the EU and the US to cooperate in the making of AML, the preferences expressed by these nations in relation to the measures to be implemented are shared.

The EU AML framework “is based, to a large extent, on the international standards adopted by the FATF of which the European Commission is a founder member” (European Commission 2013c), and on the EU’s decision to carry out a preventive approach within the first pillar rather than a more controversial criminal law option (Tavares et al. 2012, p.5). As a great power expression, the EU Directives are guided by the constant concern with the internal market competitiveness and organised crime interferences. However, these documents express a strong link to the international standards suggesting more than an internal manifestation of interests fosters the Directives’ development.

In fact, whereas documents’ content can sometimes be questioned for its authentic representation of motivations, some occasions have highlighted this preference cooperation as demonstrated by actors particularly on the EU side. For example, despite the slow response by the EU to update the 1991 AML Directive in 1996, the EP specifically referred to “working in close liaison with the USA” saying this was the only way to tackle money laundering effectively as well as

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ensuring that this supervision across Europe was to be “exercised in accordance to uniform criteria.”

The effect of 9/11 was also significantly felt in the process of EU AML negotiations with the EP noting, “[o]n the substance, the events of 11 September in the USA changed dramatically the point of view on the issue because from that date on the money laundering Directive was widely considered as part of the fight against terrorism.” In addition, only 10 days after 9/11 the Council had met and reaffirmed its solidarity to the US as well as the desire to significantly expand the EU’s AML framework, although it was too late for the 2001 AML Directive to do so properly.

The analysis of the AML history carried out above demonstrates both actors hold strong links to the international system and the tools it offers. It confirmed a shared preference for action through FATF and in consonance with great power partners. In sum, the origin and development of CDD standards across the US and the EU is a good first example of shared preferences and the subsequent emergence of the consistent interpretation principle leading to procedural harmonisation. However, preference sharing is not enough to promote or significantly illustrate harmonisation seeing as within great powers there are also internal politics’ divisions, may they be intergovernmental or at a federal level. The following section analyses the great power capacity to set international agendas and in this process provide for more evidence of AML harmonisation.

5.3 Great powers and international agenda setting

The occurrence of strategic coordination towards harmonisation through formal mechanisms, as suggested in Chapter II, is particularly evident in great powers’ interactions within the G-7 Group as it confirms the “stabilization of the global economy and financial markets remains (our) highest priority” (G-7 2009a).

66 Para.14, Ibid.
At the time of its creation “the United States was a driving force behind the FATF" (Gardner 2007, p.339) at G-7 level seeing as it had a significantly established and promising legislative framework regarding money laundering long before FATF materialised. A senior AML expert confirms, the US still “guides the FATF a lot” but its influence was especially felt in the making of the first 40 Recommendations, in the FATF start-up activities and the original FATF working groups where the US alternated between contributing to legal matters and external relations.

US internationally extended efforts had been in the works since the UN Drugs Convention of 1988 where mention to money laundering activities was first made in an international document. Here, the US Delegation to the UN Conference prior to the UN Drugs Convention affirms, in relation to Article 3 of the 1988 Convention, that as far as the: “obligation on parties to criminalize illegal drug related money laundering (…) Much of the language is derived from the US statutes on money laundering see, e.g. 18 U.S.C. sections 1956/7”. Likewise, CDD provisions from the 1990 FATF Recommendations are significantly based on the existing US laws, as are record keeping provisions and financial institutions’ requirements. As would be predicted, because the US had one of the most developed legal frameworks it had a significant influence in providing examples for international standards.

Nevertheless, US action and preference coordination appears to have been assisted or inclusive of political participation and cooperation with partners in the G-7 and other groups of developed nations, specifically the Group of 20 (G-20).

**The role of the Group of 7**

The G-7 is a forum for great powers with similar interests to meet and coordinate preferences in order to present consistent views in wider fora. Of

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69 Interview R, July 2012.
70 See FATF Annual Reports from 1990-1994. After this date the working group leadership ceased to be available.
relevance, a representative of the European Commission, the President of the Eurogroup and a representative of the European Central Bank participate in the meetings thus reinforcing the coalition strategy suggested (European Commission 2012b).

The G-7 operates as a coordination tool, communicator and great power agenda-setter across time guiding the actions of the FATF, a body it is responsible for creating. One of the G-7’s initial priorities was the combat of drug related money laundering in order to protect the international banking system from holding and transferring criminal funds into the international financial system. It was furthermore decided that “a regular assessment of progress […] would stimulate countries to give these issues high priority” (Foreign and Commonwealth Office 1992, p.24) and thus the G-7 became an important AML actor (Zagaris & Castilla 1993, p.886).

The dominance of G-7 members in early FATF working groups and current ones translates, according to a great power representative and AML expert, that these states hold the interests, preference coordination, and the expertise to develop standards (See, for example, para. 13, FATF 1992). Meeting records confirm that both the US and the EU (through its members and representatives) discuss matters of common concern in this forum and thus set the agenda for future international AML standards (G-7 2014a). Among others, in 1998 the G-7 encouraged FATF’s expansion in membership, while in 2000 there was a clear support of FATF involvement in the struggle against harmful tax competition, and in 2001 Finance Ministers issued an Action Plan to Combat the Financing of Terrorism (G-7 2002b; G-7 1998; G-7 2009a). Interestingly, before mandating FATF the G-7 rarely mentioned concern with customer identification with brief exceptions in the context of the financing of terrorism and drug trafficking (G-7 1986; G-7 1987). Broadly, evidence of G-7 guidance to FATF and international priority setting is widely available and matching AML standard development and innovation. FATF Presidencies to date match G-7 membership in 50% of the cases, and matches G-20 membership fully as is illustrated in Annex III.

73 Interview D, March 2013.
In this sense, to some degree it is noticeable that great powers try to expand and not control the process, as indicated from the US’s one and only Presidency in 25 years, it can also be seen that some repetition has occurred namely, France, the UK and the Netherlands have all held the Presidency more than once corroborating the presumed influence.

G-7 Finance Ministers preparatory meetings often indicate, as reflected *a posteriori* in FATF Presidency programmes, what the priorities originating from larger meetings will be confirming the importance of agenda-setting powers and formal mechanisms leading towards harmonisation. After establishing FATF in 1989 the G-7 refers to the attention that should be given to financial crime perhaps to coincide with the UN works against transnational organised crime and corruption, the setting up of the UN’s GPML and the revision of FATF standards in 1996. In the 1998 meeting conclusions Finance Ministers stated:

“*We support FATF’s intention to expand its own membership to a limited number of countries meeting the agreed criteria and to encourage the further development of regional anti-money laundering bodies. (...). We also consider it essential that the FATF continues to monitor money laundering trends and techniques and to ensure that its Recommendations keep pace with new developments*” (G-7 1998 Emphasis added).

Naturally, the most significant outcome from this meeting was the extension of FATF membership from 28 members in 1998 to a current membership of 36 but also the landmark year for increased G-7 focus on AML as can be seen by Rudich (2005) and its analysis confirming an increase in ‘money laundering’ incidence in G-7 documentation including declarations, communiqués, ministerial recommendations and conclusions.

Following the financial crises of the late 1990’s was an important year as Finance Ministers and Central Bank Governors defined that a wider group should be established “for informal dialogue in the framework of the Bretton Woods institutional system, to broaden the dialogue on key economic and financial policy

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Anti-Money Laundering: the conditions for global governance and harmonization

issues among systemically significant economies” (Para. 19, G-7 1999b) and thus set-up the G-20 forum (Larionova 2012, p.5). In the same meeting, Ministers reinforced their concern regarding the growth in illicit international financial transactions, welcoming FATF’s work on tax evasion and avoidance as a reflection of objectives to stabilise the economy and the most recent US developments of the time. In 1999 the focus was also on FATF action in offshore accounts in order to prevent instability to the financial system in line with the G-7 efforts to restore the global economy post-cold war and the desire to bring Russia into the global financial market (Kirton 2012a, pp.173–174; Para. 27, G-7 1999a).

As a result, in 2001 G-7 Finance Ministers requested Russia to remedy the deficiencies pointed out by FATF, continued its support for the NCCT – blacklisting – programme and additionally requested the speedy incorporation of the IMF and WB into the AML system (Para. 19, G-7 2001c). Similarly the inclusion of terrorist financing into FATF’s realm was requested by the G-7 after the events of 9/11, as was the inclusion of the financing the proliferation of weapons of mass destruction (G-7 2001e; G-7 2001a; G-7 2002a; G-7 2002b).75

In 2000 the IMF and the WB were brought into play and urged to “also strengthen governance and anti-money laundering measures in programs with member countries” (Para. 10, G-7 2000c) in line with FATF’s NCCT list which, as is further developed across the thesis, was a source of stress and institutional disagreement but that, nevertheless, the G-7 insisted in promoting and supporting (G-7 2000b; G-7 2000a; G-7 2001d; G-7 2000d).

Throughout the years there has been some conflict regarding the input that the G-7 has had on FATF and its relations to other institutions e.g. the IMF. As mentioned above, at the start of the negotiations between FATF and the IMF “there was a lot of tension coming from that [IMF interference]”76 which, although resolved

75 Proliferation financing became part of FATF’s work following a United Nations Security Council Resolution S/RES/1540 (2004) requesting FATF to look into the issue and identify countering options. The FATF’s proliferation finance report, as expected was ‘great power’ led with the following jurisdictions participating in its making: Belgium; Canada; Denmark; France; Germany; Hong Kong, China; Italy; The Netherlands; Switzerland; United Kingdom; United Nations and United States. See, FATF 2012i.
76 Interview E, April 2013.
in compromise did not help the perception that other nations had of the AML institutional closeness to the G-7. But the G-7 did not always win its battles and where the general FATF structure is guided by its recommendations, compromise is also achieved which suggests great powers are not always 100% dominant. For example, one former IGO senior official affirmed, “I think the G-7 would have liked more involvement by the IMF. For example they wanted more surveillance to be in place”. Another AML expert confirmed: “I don’t think it is fair to say the G-7 control the agenda because the IMF and the WB have input on their agenda too. It is a mix of influences in the end.”

Activities continued following G-7 preferences and, following the preference for inclusion of IFIs, the G-7 called FATF to:

“identify countries for follow-up assessment and technical assistance, by the IMF, the World Bank, and the United Nations. We urge the IMF and World Bank to begin conducting integrated and comprehensive assessments of standards to combat money laundering and financing of terrorism” (G-7 2002c Emphasis added).

This evidence suggests, as argued by Levi, that the calls to broaden the system to include the IFIs was not more than an attempt to “routinize, professionalize and to some extent depoliticise” (2007, p.172) the international AML system. In effect, following the formalisation of collaboration with IFIs in the combat of money laundering it becomes interesting to notice how the wording of G-7 statements on this topic becomes more technical and specific, mentioning FSAPs, ROSC modules and training programmes, and ultimately requesting that cooperation between the IFIs became permanent (Snow 2004; G-7 2005). As a result, increasing G-7 confidence in IGOs is a defining moment in great power action that initially reflects the need to go beyond a purely state controlled approach.

References to financial crime were slim after the G-7 revision of ‘Actions to Combat Money Laundering and Terrorist Financing’ (2005) and the 2003 FATF standards review. However, in 2008 the Finance Ministers reiterated concerns back in to mentioning the need for enhanced scrutiny of transactions with Iran, the

77 Ibid.
78 Interview G, March 2013.
inclusion of the issues of proliferation finance in 2004 and its results, as well as the renewal of the FATF mandate (G-7 2008). The 2007-2008 financial crisis naturally led to other priorities taking the lead in G-7 agendas for a while, but in 2009 the G-20 Pittsburgh summit asked “the FATF to help detect and deter the proceeds of corruption by prioritizing work to strengthen standards on customer due diligence, beneficial ownership and transparency” (Para. 42, G-20 2009b) while the G-7 requested as well that countries “strengthen international standards on taxation” (G-7 2009b).

Efforts and mentioning of FATF, however, is no longer a G-7 exclusivity and recently the G-20 has further issued its concerns and priorities for action. As suggested by the great power coalition strategy, the G-20 has been embracing the G-7’s role in terms of AML agenda setting, including additional priorities and further discussing future elements of action. In 2009 the G-20 asked FATF to “revise and reinvigorate the review process for assessing compliance by jurisdictions with AML/CFT standards, using agreed evaluation reports where available” (G-20 2009a). This shift of leadership does not seem to have created much stress among ‘original seven’ perhaps because the concerns expressed so far have not ‘fallen far from the tree’.

The triggering rationale for great power selection was economic strength and might, therefore it is only fair to assume that the more nations share economic power, the more their interests and preferences, in this field, will match. Therefore, seeing as the international AML system was built to protect the integrity of financial systems and economies it is only natural that the reach of the interest has expanded with the size of economies. The acceptance of India, China, Mexico, Brazil and Russia79 into FATF membership illustrates the opening of membership by great powers to the ‘emerging powers’. An interview with FATF’s Secretariat also confirmed that “the G-7 has always contributed to the discussion with their common interests [but] the G-20 also plays an important role now.”80

79 See op cit n74.
80 Interview A, January 2013.
Nevertheless, there seems to be a continued G-7 guidance to G-20 meetings, especially in financially sensitive areas, seeing as the Finance Ministers of the G-7 meet separately and in those meetings prepare the agendas and priorities of further big economies gatherings. In fact, at these meetings ministers prepare EU Council meetings as well as G-7 and G-20 meetings (G-7 2013). Consequently what can be said of the group’s expansion is that the ‘outgoing’ great powers are “seeking new compromises with the emerging economies” (Woods 2010, p.60) while at the same time not giving up control of global agenda settings priorities or the IFIs, as shared preferences.

What can be seen is a transfer, with the exception of financial matters, of political concerns from the G-7 to the G-20. G-7 meeting notes suggest a delegation to IFIs and emerging great power fora in order to be able to focus on its original economic concerns rather than broad global governance. In this sense, while G-7 statements on financial crime have been diminishing since 2005, there has been an increase of the mentioning of this issue and similar topics in the G-20 and IFIs documents. Particularly in G-20 statements it is possible to trace the origin of international concerns with: financial inclusion and corruption (G-20 2013), transparency (Para. 9, G-20 2012), and tax matters (G-20 2011). The agenda for 2014 appears to focus on tax avoidance and international tax transparency as well as corruption (G-20 2014). It is expected that 2014’s G-20 declarations refer to FATF for these purposes that, in CDD terms, will most likely translate in developments regarding beneficial ownership and politically exposed persons. In effect, the G-7 meeting that took place in Brussels on 4-5 June 2014 highlighted the commitment to FATF and the prevention of misuse of “companies and other legal arrangements (...) to hide financial flows stemming from corruption, tax evasion, money laundering [etc]” (Para. 19, G-7 2014b).

The issue of ‘beneficial ownership,’ is a good example of G-7 and great power guidance of AML/CDD requirements. The matter was debated in the Lough Erne Summit in 2013 in virtue of the UK’s interest in the subject (UK Presidency 2013, pp.40–46). Therefore, stemming from the preoccupation with tax avoidance and how beneficial ownership provides a safeguard for it, it was consequently discussed at length, at international and regional levels, and finds reflection in the Commissions’
most recent EU Directive proposal. The Commission proposed Article 11\(^81\) thereby significantly developed this concern by including information on the beneficial owner within CDD requirements. The EP further elaborated on this in its first reading suggestions in light exchanges of information with the private sector and NGOs.\(^82\) The Council’s (and therefore large EU economies) position on the fourth AML Directive is awaited at the beginning of September 2014 with some expectation that EP amendments won’t pass. This document may be the first, post-FATF 2012 standards revision, indicator of great power shared preferences and agenda setting input into the AML international standards’ development.\(^83\) and therefore merits the attention of future research.

**The G-7 and agenda setting**

The analysis above established that great powers shared preferences find application through the position of the G-7 and agenda-setters, not least because the FATF depends on them. Looking back, progress achieved on tax, offshore financial centres, gatekeepers, corporate vehicles, the NCCT process and, more importantly, the involvement of IFIs is, to a great extent, inscribed in G-7 statements (G-7 2001b).

G-7 countries have been involved in setting AML standards at all levels. Within the group, nonetheless, there are some countries with greater input than others as can be seen in the EU and US analysis above but also from the evidence emerging from of broader policy-making analysis. For example, Article 7 of the United Nations Convention against Transnational Organised Crime\(^84\) was essentially drafted by the UK but had to be adjusted given other countries perception that a

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\(^83\) “The Council will absolutely not be happy with the amendments (…) Germany is against public registers. The UK and France are for it and the NL is not sure about it yet. I think Member States have not found a common ground yet and they need to find one before we begin negotiations.” Interview L1, April 2014.

double reference to FATF was a G-7 conceptualisation and therefore “too much for some delegations” (McClean 2007, pp.93–94). Moreover, “[i]n a relatively short period of time the international organizations, pushed on by a small group of countries (especially the US, France and the UK), managed to broaden the discussion on money laundering from a limited effort to reduce drug-trafficking to a generalized concept to tackle serious crime” (Pieth 2002, p.370) and so not only convinced other G-7 members to shift the agenda in this manner, but also the international community more broadly.

The global AML standard making system is a lot about “states and their ambition to build a global network” and looks to have evolved in the same way as globalisation, with actor multiplication, preference diversification and dialogue even when great powers are involved.

In sum, the G-7 is interpreted mainly, and for the purposes of this research, as an expression of great powers’ preferences, especially of the US, within the international political scene aiming at protecting the international economic system and its main players (Bayne 1997). The work carried out at group level shows, and is confirmed by a senior IGO official that “we cannot talk about institutions (...) as they are still driven by countries themselves”. As a result of collective coordination the G-7 has been able to set international AML standards’ agenda “because of the cooperative behaviour exhibited by its members” (Rudich 2005, p.25) and the fact that “[a]lthough it is the FATF leading the way in what concerns international AML standards you can see from the size of delegations that the USA and the G-7 have an important weight” and control the discussion by simply being ‘more present’ than others. Accordingly, “[m]aintaining the integrity of the financial system also requires the ability to respond actively and in a timely manner to significant new threats as identified by the international community, including the United Nations Security Council, the G-20 and the FATF itself” (Declaration of the Ministers and Representatives of the Financial Action Task Force, FATF 2012h, p.10). The G-7 is, therefore, a clear indication of great power recognition of strength in numbers and

85 Interview F, April 2013.
86 Interview H, September 2012.
87 Interview Z, March 2013.
the necessity to justify its preferences through international bodies of wider membership. In this context, the promotion of FSRBs as a tool to increase compliance beyond FATF borders is another example of a measure strongly supported by great powers as further elaborated by Jakobi (2013) in ‘Common Goods and Evils’.

Finally, if on the one hand there is no ‘need’ for the group to alter its constitution, especially as its economic power has not diminished since inception (Kirton 2012b, p.46); on the other hand, in addition to creating FATF, the group has maintained contact with the essential international financial institutions and others in order to build a coherent and consistent working strategy and operationalize its strategy in an efficient way (Kirton 2012b, pp.55–62). In addition, these ‘democratically limited’ guidelines are unexpectedly well received by state policymakers who sometimes believe: “- [y]ou see, there are these policies, corruption, proliferation, etc, that come from the G-7/20, they give FATF new life. The shell is not very strong but if they manage to achieve something in AML then it is valuable”. As a result, criticism of this type of agenda setting often comes from outsiders, like NGOs and, mainly, the private sector who, unlike those present or represented at negotiations do not get a chance to be heard and contribute with their expert input. Great power agenda setting, nonetheless, continues as normal.

This section demonstrated how the general direction of international AML standards is guided by G-7 coordinated shared preferences. Essentially, it established the importance of formal processes of cooperation such as, agenda setting and, how these favour similar international standards’ (model rules) adoption. However, while great power agenda setting through the G-7 is an important instrument towards harmonisation, the allusions at the need for collaboration with IFIs and G-20 suggests that setting the agenda is not enough to ensure the desired outcomes. Before further developing this point, the final section of the chapter looks into the preferences of great powers to achieve compliance and whether any other tools for

88 Kirton offers a good set of tables on G-7(8) collaboration with civil society and institutions created through time.
89 Interview L, November 2012.
procedural harmonisation, other than formal process, are available as originating from great powers’ actions.

5.4 The conditions for harmonisation: US and EU efforts towards compliance

The analysis of great power influence is based on its capacity to share common preferences, become agenda-setters and achieve compliance therefore favouring procedural harmonisation. This chapter demonstrated this far, how the actions of great powers favoured procedural harmonisation through establishing formal processes with shared preferences and agenda setting skills as shown through the varied documents, interviews and public records analysed above. The last section of the chapter therefore clarifies the ways in which the great powers’ coalition also favour conditions for harmonisation through striving for compliance, therefore promoting the consistent interpretation of principles.

US influence

The US’s efforts towards achieving compliance are especially felt with the actions deriving from the PATRIOT ACT and the CDD developments that followed.

The PATRIOT ACT dedicates a section\(^{91}\) to improve customer identification measures and provide for special due diligence for correspondent and private banking accounts, focuses on foreign jurisdictions of possible concern, on record keeping and suspicious transactions reporting, information relating to beneficial ownership, among others. Section 326, especially focuses on verification of identification and “prescribes regulations establishing minimum standards for financial institutions and their customers regarding the identity of a customer”\(^{92}\) thus creating a specific framework for domestic and international CDD standards (Sahr & Morales 2002, pp.589–594). The consequences of the passing of the PATRIOT ACT


\(^{92}\) Ibid.
were quickly felt by the international AML standards as it clearly shaped the policy agenda. The first effects were felt at home with the presentation of the 2002 National Strategy, which for the first time included the financing of terrorism.

The revision of FATF Recommendations in 2002 and 2003 was also closely monitored by the US which participated in the working groups set up for this purpose and centred their efforts in ‘customer identification requirements for financial institutions, identification of beneficial owners, the treatment of corporate vehicles and trusts, and the extension of anti-money laundering requirements beyond financial institutions” (U.S. Departments of Treasury, Justice, and Homeland Security 2002, p.56). The US aimed, as an action plan for 2002 to “[b]egin drafting the revised Recommendations during fall 2002 with an anticipated completion date of spring 2003” (Ibid, p.56). Additionally, in this 2002 document the US congratulates itself, and the G-7, on the accomplishment of “significant progress with the IFIs in fostering inclusion of the FATF 40 and FATF 8 Special Recommendations on Terrorism Financing in the operations of the IFIs” (U.S. Departments of Treasury, Justice, and Homeland Security 2002, p.58).

The FATF 2003 developments on CDD are interpreted as an extension of the PATRIOT ACT provisions to the same effect, as well as, for example, the writing of Recommendation 2 and the ‘mental state’ element or the assessment of “‘wilful blindness,’ already included in U.S. anti-money laundering statutes” (Krauland & Hutman 2004, p.514).

Enhanced CDD provisions as predicted by the PATRIOT ACT are reinforced by the 2003 National Strategy and ‘trickled down’ to the 2005 EU AML Directive and the 2012 FATF Recommendations. In fact, the Strategy clearly affirms:

“In many important respects, anti-money laundering regulations issued pursuant to the USA PATRIOT Act raise the international regulatory bar. But if the rest of the world does not follow our lead, our goals will be undermined. Not only will tainted funds find other ways into the financial system, but the U.S. financial services industry may find itself at a competitive disadvantage if it insists on rigorous due diligence and anti-money laundering procedures where others do not. (...) it bears emphasizing that the Federal government must aggressively seek to encourage all jurisdictions to adopt similar controls” (U.S. Departments of Treasury, Justice, and Homeland Security 2003, p.28. Emphasis added).
The highlighted quote section is confirmed by an AML expert as the reason behind the public and private sector general perception that the “USA is driving the process and moreover attempting to harmonise it. You can hear that from the compliance officers. The evolution itself is because of the industry”. Therefore, whereas security has definitely been a driving force, the US is also constantly concerned with the competitiveness of its financial and industry sectors.

At this point the international focus of US attention was curbing the financing of terrorism through collaboration with the IFIs and the G-7 but also by contributing and supporting the NCCT process, regardless of its branding as “extraterritorial bullying” (Doyle 2002, p.281), and the revision of the 2003 FATF Recommendations. The controversial nature of the provisions laid out here did not go completely unnoticed in the US however, while criticism and financial privacy concerns were vast and although “many others shared this opinion, (…) no one spoke out against the money laundering provisions” (Roberts 2003, p.585) in virtue of the devastating effects of 9/11.

In addition, whereas FATF began analysing and researching the issue of wire transfers in 1992, its formalisation within Recommendation 5 on CDD was not officially present before 2003 other than in the Interpretive Notes or briefly in Special Recommendation VII on the Financing of Terrorism (Zagaris & Castilla 1993, p.890). The US had already included wire transfer requirements in domestic legislation with the Annunzzio-Wylie Act.

At the international level there is, furthermore, evidence that the US pushed FATF negotiations to promote the requirement to report illicit transactions directly to government authorities, something which was not, at this point, supported by all countries (Zagaris & Castilla 1993, p.910). The FATF standard revision of 1996 reflected some of the work that had been conducted at US level especially Recommendation 8 on ‘non-bank financial institutions’ and Recommendation 19 on the need to ‘develop programs against money laundering’. Furthermore the Annex to

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93 Interview Y, March 2013.
94 Wire transfer is a form of electronic money or credit transfer.
Recommendation 9, ‘defining non-bank institutions’ lists financial activities undertaken by relevant business or professions that albeit very differently phrased are close, content wise, to the 1970 Bank Secrecy Act.\textsuperscript{95}

The 2007 National Strategy also reflects the tendency to act abroad set by the PATRIOT ACT. It sets as an international objective the promotion of transparency in ownership of legal entities, the enhancement of transparency in money service businesses and attacking trade-based laundering at home and abroad (U.S. Departments of Treasury, Justice, and Homeland Security 2007). The US thereby reaffirmed its preference for collaboration with the IMF, the World Bank and, notably, the UN’s GPML to provide training and technical assistance to jurisdictions in need (U.S. Departments of Treasury, Justice, and Homeland Security 2007, pp.11–12). In effect, the UN’s GPML was and still remains much supported by the US Homeland Security Department, which despite the UNODC’s best efforts to diversify, can add up to 75%\textsuperscript{96} of total income. The US has, here as with other institutions, ensured that its influence is determinant in defining priorities.

Overall the global AML framework borrows much from US domestic developments as can be best analysed in Annex IV and V which address the motivation behind US development of AML laws across time, and illustrate the timeline and the comparison of US laws with international advances in the area respectively. At times where the US is not fully behind AML developments, as seen in the ‘gatekeeper-lawyer’ debate, the issue tends to remain controversial in nature and inconstant in practice at the international level (Krauland & Hutman 2004, p.516; Healy et al. 2009). The issue of CDD, however, is not one of these controversial matters and has been on the agenda since 1970. Moreover, American concerns regarding, although not exclusively, financial and non-financial institutions, beneficial ownership, reporting and record keeping and, the effects of ‘non-cooperative’ jurisdictions have been the main driving elements of AML and thus evidence of great power influence. The role of the IFIs as well as the growing

\textsuperscript{95} Paragraph § 203.

\textsuperscript{96} Interview H, September 2012. See, for example, the most recent UNODC report on ‘virtual currencies’ “produced with the financial support of the U.S. Department of State, Bureau for International Narcotics and Law Enforcement Affairs” (UNODC/GPML 2014).
importance awarded to FATF and the G-7 after 9/11 is further evidence of a US outward facing strategy and the recognition that institutions matter and are a more efficient tool to achieve national AML objectives.

In sum, the US “started the fight against money laundering” (Kerwer & Hülsse 2011, p.52) but as is evident from the US’s AML history analysis the current supported framework relies not only on US guidance but on the work of the IMF, the World Bank, the UN, and its great power counterparts as reinforcement. The US influence this far is then interpreted as a supported of the consistent interpretation principle in order to combat the compliance gap, although clearly, one which requires external support.

**EU influence**

The EU’s actions towards achieving compliance are mainly felt through the work of the Commission as the EU’s representative at FATF and its work as the ‘guardian of the Treaties’ and the internal market and the Commission’s efforts to ‘approximate laws’. Unlike the US, the EU’s influence is not as felt internationally; its internal adoption procedures, however, are still an expression of how the urge to achieve compliance may lead to procedural harmonisation within the AML standards.

The majority of the Commission’s successes in achieving compliance with AML standards are guided by the concern to protect the internal market. For example, in the 2012 FATF standards revision the Commission included a caveat within Recommendation 16 (relating to wire transfers and the identification requirements) whereby ‘domestic wire transfers’ are simplified if taking place entirely within the internal market (FATF 2012e, p.74). As an official of the European Commission stated: “[w]hat we [the Commission] all want is a clear, credible and stable financial market. That is in everybody’s interest.” Therefore, in

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97 Article 17.1 of TFEU establishes “The Commission shall promote the general interest of the Union and take appropriate initiatives to that end. It shall ensure the application of Treaties, and of measures adopted by the institutions”.
99 Interview K, November 2012.
its actions, the Commission mainly favours procedural harmonisation through the consistent interpretation of international standards through EU law-making, as well as sharing of information in varied fora and contribution to agenda setting at FATF and G-7 level.

In its role as a FATF member the Commission mainly proposes amendments to suit the internal market and it is considered, by Commission officials, that it does “not really have a role” unless measures to be adopted will be likely to have “a negative impact on the European project”.\textsuperscript{100} Nevertheless, evidence presented suggests that EU AML events and legislation have been mainly guided by the bigger states, which coincide with G-7 membership. As a senior FATF official affirms “the thing to remember [is that while] countries have strategies, not all have agendas”\textsuperscript{101} and so, when one member state does have control of the agenda “if one does not take charge, another one will”.\textsuperscript{102} However, most of the Commission’s work, as expressed by Commission officials, takes the view that “dialogues between institutions and member states are very fruitful”.\textsuperscript{103} To some extent, while member states “try to convince”\textsuperscript{104} the Commission of what is best for them, most of the time the dialogue is a compromise, even in the promotion of harmonisation which “from an internal market perspective can be quite interesting”.\textsuperscript{105} The Commission’s role is thus to find a balance between different preferences so as to ensure similar compliance practices within the EU. The UK, France and Italy (Germany not as often) are identified as the leading powers when it comes to standard development with the Netherlands making an occasional presence, mostly justified by its own individual interest in protecting the national financial services and the Dutch Presidency of FATF’s timing as shown in Annex III. Some authors go further to say “England has led Europe in enacting anti-money laundering legislation” (Zagaris & Castilla 1993, p.934) in virtue of its pre-emptive FATF standard adoption. Accordingly, within the standard-making process it is the member states that demonstrate great input capacity and decisive

\textsuperscript{100} Interview L, November 2012.
\textsuperscript{101} Interview B, January 2013.
\textsuperscript{102} Interview G, March 2013.
\textsuperscript{103} Interview S, July 2012.
\textsuperscript{104} Interview K, November 2012.
\textsuperscript{105} Interview M, March 2013.
action. This reality, confirmed by state and private sector representatives alike, stems from the fact that “[S]tates contribute a lot more at FATF level than at EU level”\textsuperscript{106} and that “the loudest voices are with the Member States”\textsuperscript{107} when it comes to preference setting and influencing the mechanisms of compliance early on.

Regardless, because the Commission leads the struggle for compliance (as it monitors implementation), it also gains knowledge of needs and other member’s requirements and works towards an EU wide compromise on how to implement AML standards.

For example, Commission suggestions (during the 1991 negotiations) concerning CDD were actually more developed than the FATF Recommendations and in some ways followed existing legislation coming from the US Bank Secrecy and Money Laundering Control Acts where specific thresholds existed. They followed also UK preferences in order to protect the functioning of its own financial system (Cullen 1993, pp.41–42; Foreign and Commonwealth Office 1992, p.13).

Article 3 of the 1991 Directive foresees the extension of CDD to any transaction above ECU 15,000 or if carried out in a single operation. In line with Commission preferences, in a report from February 1990, the UK’s Foreign and Commonwealth Office stated, prior to the Directive and in comment on the FATF’s Recommendations, that:

“[A]ny discrepancy between national measures to fight money laundering can be used potentially by traffickers, who would move their laundering channels to the countries and financial systems where no or weak regulations exist (...) To avoid such risk, these national measures, particularly those concerning the diligence of financial institutions, have to be conceived in a way that builds upon and enhances the Basel Statement of Principles, and to be harmonized in their most practical aspects” (Foreign and Commonwealth Office 1992, p.15 Emphasis added).\textsuperscript{108}

The evolution of CDD practices in the EU, from simple identification to enhanced diligence to rule-based and risk-based was, in addition, accompanied by an

\textsuperscript{106} Interview Q, July 2012.
\textsuperscript{107} Interview C1, November 2012.
\textsuperscript{108} The UK, for all purposes, was also the EU country with the most developed provisions in this area, namely the 1986 Drug Trafficking Offenses Act and the Criminal Justice Act of Scotland in 1987 with provisions on confiscating the proceeds of crime.
evolution in the participation of actors.\textsuperscript{109} Indeed, whereas the 1991 Directive was an essentially state controlled process following FATF, the Directives that followed appear to have developed more fluidly with the European being able to take the lead, represent EU preferences and ensure compliance.

As a full member of FATF the Commission also works towards compliance at the international level. However, opinions on this matter divide with some AML experts and private sector representatives reporting that the Commission “is very active on FATF”\textsuperscript{110} while others claim that “sometimes they are very active, sometimes they don’t say anything”\textsuperscript{111} depending on the personality of who is responsible for the files and what the issue is. It is also sometimes suggested that regardless of Commission efforts to make its position at FATF significant what is happening is that “the most powerful states in the system create and shape institutions so that they can maintain, if not increase, their own share of world power” (Mearsheimer 2001, p.364). The EU’s great powers, namely the UK, France and Germany will only act through the Commission, in a multilateral fashion, for as long as it helps them “further their common interests” (Gruber 2000, p.27). Therefore, the Commission’s role continues to be ambiguous although, in practice, it is the best example of EU unitary action in the AML standards context contributing significantly to the consistent interpretation of FATF guidelines.

Consequently, because of its pro-active great power members and the focused work carried out by the Commission the EU law framework is not always noted although often anticipatory of future FATF guidance (Mitsilegas & Gilmore 2007, p.123). The role of the Commission is thus relegated to the possibility of becoming an important international donor rather than a prominent player, as shown by the international perception of its actions.\textsuperscript{112}

\textsuperscript{109} For a good example of the distinctions between rule-based/risk-based CDD see, (Broek 2011, pp.171–175).
\textsuperscript{110} Interview F1, July 2012.
\textsuperscript{111} Interview U and T, July 2012.
\textsuperscript{112} Interview I, September 2012.
Eric Ducoulombier,\textsuperscript{113} at a Federation of European Accountants conference in Brussels, summarised the Commission’s take on the whole AML process by saying “[w]e do not want to be seen as the black sheep of FATF” (Ducoulombier 2012) and therefore work towards achieving a high degree of compliance within the internal market borders. Generally all interviewees, especially Commission officials, agreed that when it comes to protecting the internal market the Commission is present and constantly struggles to “make FATF understand what the EU is”\textsuperscript{114} working towards Union wide implementation and the harmonisation of EU-wide AML practices through the Directives (and in cooperation with the US). Altogether, the EU AML Directives have contributed towards the harmonisation of CDD practices throughout Europe mainly thanks to the work of the Commission translating member states’ preferences into EU law and monitoring the implementation processes. The Commission’s actions meant for example that in 2001 the EU was ahead of FATF developments as relating to new professions included in the AML standards, corroborating the willingness of the major powers to implement and develop standards quicker than is possible at the broader international level.

In sum, the EU’s influence, in this case through the European Commission’s participation in FATF, in intergovernmental negotiations is mostly relevant in matters of internal market priority and in promoting consistent interpretation of the AML standards.

\textbf{Beyond great power influence}

Great powers influence the tools for procedural harmonisation through shared preferences, agenda setting and efforts towards compliance. The analysis above demonstrated CDD was adopted from national to international settings in a ‘consistent interpretation’ manner and through formal processes as a result of great power action.

\textsuperscript{113} Former Deputy Head of Unit, Company Law, Corporate Governance and Financial Crime at the European Commission.

\textsuperscript{114} Interview Q, July 2012.
This section continues the discussion of great power dominance within the context of their efforts to achieve compliance. In this sense, the analysis demonstrates how great powers act in relation to the mutual evaluation processes, and whether these instruments influence their own implementation of AML standards. In addition, the chapter considers the efforts surrounding the NCCT and ICRG process in order to briefly highlight the emergence of cross-pollination and some legitimacy problems that arise. Finally, the work of great powers to achieve compliance is significantly linked to the degree of knowledge of technical requirements and the relation to expert actors i.e. the private and NGOs sector. Overall, the chapter concludes with the recognition that, if in sharing preferences and setting international agendas great powers control of AML standards, the issue of compliance encompasses challenges that must be further researched.

An overview of the results obtained by great powers in the most recent peer-review exercise demonstrates that great powers obtain average results as regards CDD. Table 5.2 shows that from a possible result of non-compliant to a compliant ideal, great powers have not yet reached the maximum compliance levels, with France achieving the best ranking of the lot. Whilst the obtained ranking is sufficient to maintain financial integrity, this result which is in effect a fail, leads to some questioning of great power authority to enforce these measures in other jurisdictions. In effect, a ‘partially compliant’ result reflects that not even great powers are able to ensure complete implementation of

<table>
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<th>US and EU countries compliance rating with FATF CDD Recommendation 5 (as per 2003 FATF standards)</th>
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Table 5.2 – US/EU compliance with CDD

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116 An analysis of the compliance annexes of these countries’ MERs reflects that CDD shortcomings come from lack or insufficient compliance with beneficial ownership requirements, insurance sector shortcomings, poor risk assessment, lack of obligation to terminate business relationships suspicious transactions are identified and lack of ongoing monitoring. This means CDD standards are in place, however under slow development. Table sourced from Countries FATF Mutual Evaluation Reports (3rd Round) FATF 2014a.
AML standards.

It is considered that the mutual evaluations are important mechanisms to achieve compliance that must be supported as the opposite would lead to lack of convergence and endangers great power interests.\(^\text{117}\)

However, this assessment neglects that great powers, because of their contribution to the development of standards, participate in mutual evaluations from an advantage point. This is due to, as confirmed by EU and international IGOs’ officials, the fact that these “states have developed their expertise from people who know”.\(^\text{118}\) A Commission official asserted that, “Americans, for example, have a very strong input into FATF”\(^\text{119}\), which is essentially due to the groundwork that is done at the domestic level and the input that is gathered from national agencies in the making of internal legislation.

In this sense, why are great powers not obtaining better compliance ratings with CDD? And, if complying is admittedly difficult, why are great powers so keen to apply them on others? Another important characteristic of great power influence is the lack of democratic legitimacy that emerges from the ways in which results from mutual evaluations are used. The NCCT process (currently ICRG) as well as the financing of terrorism focused standards, were “almost certainly drafted by the U.S. government (…) then passed quickly down through regional bodies such as the Financial Action Task Force (FATF) (and regional FATF groupings) and regional multilateral development banks, before being transposed into binding regulations, laws, and practices in nation states” (Hayes 2012; See also, Levi & Gilmore 2002, p.353; Bayne 2001). The US 1999 National Money Laundering Strategy explicitly states in one of its ‘action items’ “support FATF formulation of criteria for and identification of non-cooperative jurisdiction” (The Department of Treasury 1999, p.81).

\(^{118}\) Interview M, March 2013.
\(^{119}\) Ibid.
Moreover, in 1999 the G-7 Ministers expressed their concern with financial crime urging FATF to “identify countries or territories, including offshore financial centers as appropriate, that fail to cooperate in the fight against money laundering and take action as necessary to remedy these obstacles” (Para. 16G-7 1999b). The result, was the NCCT process implementation one year later with strong criticism from non-G-7 nations. Accordingly, a great power AML expert confirmed that while “countries feel like they have G-20 standards (…) [that] is mainly [attributed to] the NCCT list” but that standards would not be dramatically different if constructed from a technical and more democratic perspective.

As achieving compliance is concerned, the NCCT list, which the G-7 helped create and strongly support through FATF, is ultimately a display of power that achieves results (Para. 19, G-7 2001e). However, the assumption that “power works” (Levi 2007, p.176) taken from great powers’ successful building of the AML framework does not fully compute with the work of IGOs and the acknowledgement that while, as stated by the FATF Executive Secretary: “some countries will not have as much enthusiasm (…) once the FATF reaches a decision everybody will be bound by it.”

Therefore, although the NCCT process is a significant great power instrument, the CDD ranking of great powers and the development and change of the NCCT process throughout time suggests IGOs have may be more than just a power tool. Evidence shown suggests that IGOs hold control over the monitoring and measures to be taken by states in case of insufficient compliance thus limiting the action and preferences of great powers.

Similar to the NCCT/ICRG process, the (in)famous ECJ’s Kadi case further illustrates great powers in action, within the broader AML concerns, is not always successful. Although not directly part of the AML standards structure this case-law originated from the binding UNSC requirement to ‘follow the money’ and freeze terrorist financiers’ funds. In this sense, measures adopted to enforce the UNSC

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120 Interview D, March 2013.
121 Interview A, January 2013.
decision used the same instruments as the AML standards and demonstrate the impact that sharing preferences in this policy area may have. Ultimately, this case not only highlights the importance of the AML standards’ requirements at work but also, reinforces the idea of differences between great powers and other actors.

Brought to the ECJ the case concerns the freezing of funds of Kadi who stood accused of financing Al-Qaida by the UNSC. The issue at hand concerned the application in EU law of an international (binding) decision, which violated the regional fundamental rights provisions. The EU decided it would carry out UNSC measures to freeze financial assets held within European financial institutions. However, without due process and evidence there was little to justify this decision other than EU commitment to its partners and the binding status of UNSC decisions. In 2008 the ECJ decided in favour of Mr Kadi affirming that EU law was protected from international jurisdiction and all measures required internal review prior to implementation. In July 2013 the ECJ also dismissed an appeal by the Commission and the UK to have the 2008 decision overturned saying:

“since no information or evidence has been produced to substantiate the allegations, roundly refuted by Mr Kadi, of his being involved in activities linked to international terrorism, those allegations are not such as to justify the adoption, at European Union level, of restrictive measures against him”.

123

Literature has discussed the legal and political implications of this judgement and that shall not be the concern of the thesis. Nevertheless, the Kadi case exemplifies a situation where international decisions in the AML’s broad realm are pushed forward by great powers with little consideration of other principles. Naturally, the binding nature of the UNSC resolutions has a determinant role to play in this interaction but, as illustrated by the ECJ, there is often more to be said about the ways in which resolutions are implemented than regarding the authority of those who command the implementation. Therefore, this analysis identifies the Kadi case as an example of cross-pollination generated by the enforcement of a UNSC decision


124 See, for example, discussions in Wessel 2008; Zagaris 2002; Ziegler 2009.
by the EU, as a reflection of great power cooperation in the policy area. The Kadi case and the NCCT/ICRG process are the two most clear examples of great power desire to achieve compliance and the obstacles faced in the process.

Finally, the closing element that emerges from the analysis of great powers, and is in line with the global governance gaps identified at the start of the thesis, is that great powers rely on knowledge. The importance of ‘knowing more’ than others as an added value in the making of AML standards has been hinted at throughout this chapter in terms of US and EU internal developments but also indirectly as regards the actions of delegation to IFIs by the G-7. Expertise as coming from great powers is suggested from their closer relation to reality and perceived threats but also from their connection and exchanges to the private sector and others stakeholders.125 Therefore, in the process, while little evidence of private sector participation occurred during the nineties is available, after the second AML Directive and, especially, the British presidency of FATF in 2007/2008, private sector participation in the pre-negotiations (as expert contributors) increased.126

The making of the RBA was, for example, an issue that seemingly emerged from the process of combining great powers with institutions and additional expertise. The adoption of the RBA into the PATRIOT Act and FinCEN’s work occurred following FATF’s guidance (Ryder 2012, pp.45–71). Both the EP127 and US National Strategies had mentioned the concept of risk; FATF’s 2003 Recommendations also hint at the need to consider the issue in the formulation of Recommendation 5 on CDD. However, the first FATF guidance on the purpose of using a RBA to CDD came from a report written by FATF’s Working Group on

125 Chapter VII expands on the meaning and significance of expertise.
Evaluations and Implementation chaired by a UK and US representatives.\(^{128}\) Although this process also reflected the UK’s enactment of its own risk-based legislation in 2007,\(^{129}\) the report is particularly important because it was the “first occasion that the FATF has developed guidance using a public-private sector partnership approach” (FATF 2007c) reflecting the US above stated objectives of public-private cooperation and concern with the industry. The concerns expressed by the Working Group were related to the industry but also the need to improve effectiveness and consistency of implementation and thus led to the global adoption of the RBA as the strategy to adopt. As Sir James Sassoon, former UK President of FATF, has confirmed:

“At the time we took over the presidency in 2007 I would say that the engagement with the private sector was patchy (…) so we kicked off typology work with the private sector and there is now an agreement that all future typology work that the FATF does will be run past the private sector” (Volume II: Evidence, House of Lords 2009, p.169).

In this context, the former FATF President also confirmed the role of Canada, Brazil and the Netherlands in supporting this policy and corroborating the assumptions proposed by the thesis regarding great power collaboration.

This particular development promoted further collaboration with stakeholders and non-state participants towards better AML standards. The Commission, in this regard, has since then participated in umbrella organisations’ meetings, it has organised private sector hearings, and furthermore met representatives of several professional and private associations in Europe.\(^{130}\)

Ahead of the current AML Directive revision, the Commission contracted a study on the application of the 2005 Directive to Deloitte (Deloitte 2011) to gather intelligence from the public and private sectors in relation to perceptions and degree of AML implementation across the internal market. Special attention was paid to

\(^{128}\) “(...) the FATF Working Group on Evaluations and Implementation (WGEI) was set up in March 2006, and was chaired by Mr. Philip Robinson (Financial Services Authority, United Kingdom) and Mr. Rick Small (GE Money, United States)” (Para. 1.1, FATF 2007c).

\(^{129}\) See provisions on CDD within the UK’s Money Laundering Regulations 2007, No 2157 (into force 15 December 2007).

\(^{130}\) As confirmed by author interviews. See also, European Commission 2013d; Ducoulombier 2012.
CDD and both the simplified and enhanced versions with the conclusions being positive in terms of implementation but less so regarding the private sector acceptance and recognition of effectiveness. A similar process is thought to have occurred at the US level as evident by the above-mentioned concerns regarding the inclusion of the legal profession into the domestic system. Altogether, these state led tendencies to include stakeholder input through informal processes led to a greater involvement of the private sector in FATFs 2012 standards’ revision as is further described in Chapter VII.

In sum, what appears evident from the compliance efforts briefly described in this last section is that great powers are not as ‘independent’ in achieving compliance as in their other defined functions. The multiplication of actors at the international scale has “sharply reduced the possibility that any single collective can dominate global politics” (Rosenau 1990, p.288) corroborating global governance literature and the assumptions regarding IGOs developed in Chapter III.

5.5 Conclusion

The analysis of great powers influence over the AML standard-making process leads to the recognition that great powers are a necessary condition for procedural harmonisation; their actions produce formal processes of model rules adoption and through them the consistent interpretation of principles is promoted.

The chapter demonstrated how the evolution of AML standards within the US and the EU is characterised by the actors’ shared preferences, agenda setting capacity and actions towards compliance. In this process research identified formal processes of international policy making as regards AML standards are a consequence of great power interaction and G-7 action. It further acknowledged that EU AML Directives, and EU collaboration with the US generally, support the consistent interpretation of principles. Some degree of cross-pollination is seen as occurring but not in a significant manner.

As a result, the chapter concluded that procedural harmonisation is initially promoted by great powers and that those actions and preferences were determinant in
the creation and evolution of AML standards. Nonetheless, the chapter highlighted that, the development of AML standards is also characterised by acts of state delegation to IGOs that implement the standards and hold an important role in the achievement of compliance by developing their own preferences through network coordination efforts. In order to determine the degree of great power influence research must therefore assess the actions of IGOs as autonomous and network actors previously defined in this thesis.

The next chapter builds from the analysis of the IGOs, to which great powers have delegated AML responsibility, in order to assess their influence in the making of AML standards, and whether, in accordance with global governance theories, great powers continue to be at the centre of global governance.
CHAPTER 6

THE AML NETWORK: STRENGTH IN NUMBERS

6.1 Introduction

Chapter III determined that IGOs are independent actors with the ability to define and pursue preferences, and construct policy networks. As a result, this chapter analyses how the actions of the FATF, the IMF, the UNODC, the WB and MONEYVAL, provide evidence of procedural harmonisation in CDD through the maintenance of shared preferences, stable relationships and the exchange of resources. As such, evidence presented suggests that in addition to the great power input, a IGOs network is in itself a condition to influence harmonisation in AML.

This chapter provides an alternative to Drezner’s conceptualisation of ‘great powers’ and the state as a sufficient condition for procedural harmonisation. Although recognising that “[g]overnments have unique resources at their disposal and work to achieve unique goals [this chapter departs from] the network approach [which] assumes that policy is made in complex interaction processes between a large number of actors which takes place within networks of interdependent actors” (Klijn E. H. & Koppenjan J. F. M. 2000, p.138). This approach is somewhat supported by the acknowledgements in Chapter V that great powers are reliant on institutions and cooperation to achieve their objectives, particularly as regards achieving compliance. So, the argument developed here indicates that procedural harmonisation may be linked to an IGOs network and its influence rather than great powers input alone. It suggests that the network is able to shape policy making and influence the occurrence of harmonisation through the use of its combined resources and concerted activities.

This chapter discusses that the influence of the IGOs network on the conditions that lead to procedural harmonisation in the AML standards occurs through shared preferences, stable relationships and, especially, sharing resources. The role of the network in the management of the FATF mutual evaluations is thereby highlighted
as evidence of informal processes and as promoting the consistent interpretation of principles.

6.2 A policy network emerges

This chapter develops the definition of policy network and applies it to global governance in order to clarify what is increasingly a non-state context of political and actor complexity.

To start off the debate on whether international AML standards reflect the existence of a policy network, this research follows Rhodes’ claim, in reference to Rosenaau, that governance without government is achieved when “there are ‘regulatory mechanisms’ in a sphere of activity which function effectively even though they are not endowed with formal authority” (Rhodes 1996, p.658). The network concept adopted here thus departs from the acknowledged need to look for the sphere of authority away from the state. Its purpose is to serve as a complement to the previous empirical chapter and global governance’s literature. In addition, the defining of an IGOs AML network (hereinafter, AML Network) should allow this research to establish whether IGOs are able to generate a ‘collective identity’ through which it is empowered and developed (Harlow & Rawlings 2007, p.560).

This chapter thus broadly illustrates how actors involved in international policy making are engaging in network-oriented strategies, and how the identification of an international IGOs network may influence the emergence of harmonised international practices. In order to determine the network’s contribution to harmonisation research follows the Rhodes model and applies the existing definitions to policy-making settings of global reach not limiting it to public-private actors but to all those with an impact in the making of global governance.

The concept of policy network was originally developed to translate the relationship between state or government actors with the private sector. In fact, the majority of literature in this field is still focused on the nature of private-public relations (Wilkinson et al. 2010; Van Waarden 1992; Kirst et al. 1984). However, definitions broadly suggest similarities exist between these relations and those under
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focus here. There is, for example, a similar exchange of resources (including information), as well as stability in relationships and preferences towards specific outcomes. Several authors developed the idea of policy networks more generally as strategies for decision-making and collective action. Namely, Ostrom in her analysis of the governing of the commons illustrates how the idea of public policy coordination amongst the interested parties has been present for some time (Ostrom 1995); Rhodes and Marsh through the discussion of British government networks present alternatives to traditional policy making (Rhodes 1990); Klijn and Koppenjan by addressing criticism being conducted to the network approach and its relation to the role of states reflect on the advantages of such approach (Klijn E. H. & Koppenjan J. F. M. 2000); whereas Sharpf’s review of governance and the role of institutions is an educated analysis of this reality as are Haas’ contributions to the discussion, through the conceptualisation of the role of the expert (within a community) in policy-making networks (Haas 1992; Scharpf 1993). Overall, the concept has been largely applied, although, normally directed at national policy-making settings and involving actors and policies of domestic dimensions. In this context, as the focus of this thesis is to determine the conditions for harmonisation of international policy making, the domestic sphere is of little interest to the analysis. The reason for this being that the research questions are based on a global governance issue that developed through international relations between great powers in their struggle to achieve economic stability and security in the context of globalisation.

Therefore, literature on transnational regulatory networks also approximates this research’s approach, in that it claims national regulators “created informal networks to exchange ideas, coordinate their enforcement efforts, and negotiate common standards” (Verdier 2009, p.167). However, these networks are said to be composed of regulators and regulatory agencies, which in the AML Network case is not entirely accurate given the selection of the FATF, IMF, WB, the UNODC and MONEYVAL.

In order to discuss the AML Network this thesis adopts a broad interpretation of the policy network concepts developed in the literature and applies it to the AML global policy-making process. In this context, while the FATF network is normally
referred to in literature as being composed of FATF and FSRBs, this thesis steps away from formal connections and bases the definition on recognition of influence, competences and effect (Jakobi 2013; IMF and WB 2004).

Accordingly, for the purpose of answering the research questions regarding the conditions for harmonisation, ‘issue network’ definitions are particularly relevant because the AML Network relates to a specific policy area of international policy making, relies on interdependence but not too much integration and is composed of a significant number of participants. Different categories of ‘networks’ have been conceptualised through time. March and Rhodes have further developed the different types of policy networks that can be formed by policy actors and act within different areas. The authors conceptualise policy communities, as the highest integrated networks with territorial basis; professional networks, as the name indicates, constituted by people with the same professional background and focus; intergovernmental networks, or networks of different governmental bodies interacting and sharing ideas although not responsibilities; producer networks, characterised by economic interest sharing; and finally, issue networks, whose main trait is the focus on a specific thematic goal (Rhodes & Marsh 1992, p.183).

Heclo was one of the first authors to develop the term ‘issue network’, which as defined is the closest to this chapter’s conceptualisation of the ‘AML Network’. Within a national federal context Heclo described how modernity has altered the relationship between state and non-state actors as well as state agencies and dependent sectors. He argues that policy is no longer made by one single entity but by the relationship of many through debate and bargaining exercises within a newly established network. As such, the main target of its writings are the so-called ‘issue networks’ defined as networks comprising a large number of participants with variable degrees of dependency and no hierarchical authority system, brought together by common interests in a subject but not necessarily material interests (Heclo 1978, p.102).

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1 For more on the impact of IGOs on the AML framework see Halliday et al. 2014.
Issue networks can be transnational and are similar to interest groups in that the objective relates to an issue rather than a process. This chapter, following this definition, and Table 3.1 in Chapter III, defines the AML Network as characterised by: sharing preferences (common preferences), stable relations (with no power structure and open membership) and, exchanging of resources. The following discussion demonstrates through document analysis and expert interviews, how these constitute the tools for procedural harmonisation, become visible, and confirm the AML Network’s impact in the origin of standards. Overall, the objective of this chapter is to illustrate how great powers rely on IGOs to carry out global governance policies but, in that process, allow for IGOs to develop their own instruments and strategies for international action according to their own institutional preferences and network collaboration.

Shared preferences

The recognition of interdependence as the source of international cooperation means acknowledging that “the success of policy games is partially determined by the degree to which indispensable resources, and the actors who own them, are involved” (Klijn E. H. & Koppenjan J. F. M. 2000, p.143). So, states recognised that it is necessary to have reliable institutions with sufficient resources during the policy-making process. The concept of IGO governance as referring to “‘self-organizing, interorganisational networks’ that are typically interdependent while enjoying significant autonomy from the state” (Marinetto 2003, p.594) fosters this analysis and the recognition that the ‘shared preferences’ constitute the starting point to the AML Network. Theory assumes that “[p]olicy networks have vertical components - cutting through various layers of government - and horizontal components - tapping into the traditional iron triangle but also extending outside of government” (Kirst et al. 1984, p.249). In other words participation in network structures is based on the willingness to pursue preferences shared among actors.

FATF was created on the basis that an international system whereby rules, patterns and influence are shared is a more effective system to ensure compliance with international standards. The AML Network is thereby united by shared
preference for the functioning of the AML standards and the path of ‘following the money’ through institutional formulations and practices.

In addition, while actors may join the network with different individual interests (linked to their mandate), as was the case of the WB and the IMF, their expected contribution to the network is still oriented towards the more specific objectives of the issue like network. This does not mean that contact is permanently multilateral, just that in order to fulfil the AML standards IGOs are dependent on each other.

In the context of building the network, interviewees agree that “FATF needs to lead” the network as the AML standard setter and because the AML Network’s shared interest is the fight against money laundering. However, it should not ‘lead’ alone. In fact, the network’s existence does not preclude network IGOs from having other priorities in relation to issues included in their original mandates and delegated capacities. One IGO can be a party to more than one network and membership is not only open but also not restrictive in that sense.

The maintenance of the AML Network by the FATF is dependent on state support and preferences towards this task-force; nevertheless in day-to-day activities IGOs are able to act on those as institutions and not just state tools. For example, while IGOs individual structures are different in nature and purpose, the number of staff focusing on AML specific issues is approximately the same across IGOs, indicating similar levels of commitments from all parts. IGOs personify state preferences awarded by mandates and further develop them according to their own institutional ones. As illustrated by Figure 6.1, FATF became the policy centre (as standard setter, not authority) to several bureaucracies working together and constructing the AML network bringing together institutions with similar preferences regarding the policy outcomes of the AML standards.

2 Interview B, January 2013.
3 Interview V, July 2012.
4 Referring to different IGOs. “There are about 15 to 16 people working at the (…) world wide and we depend a lot on extraordinary funding” in Interview H, September 2012; “there are about 15 people working here at present, it has increased” in Interview C, January 2013; “we have 12 permanent staff members” in Interview B, January 2013; “There are about 20 to 25 people working in this area […]” in Interview G, March 2013.
While specific policy making occasions could be mentioned, IGOs shared preferences are more obvious in their inter-organisational statements of support and through actual participation in policy implementation processes. Naturally, support statements often reflect the IGOs own priorities, membership and rhetoric but evidence shows that there is an element of institutional connection weaving through and shared preferences are a reality.

IGOs’ mandates, official public statements and inter-cooperation confirm a shared preference for the combat of money laundering with the successful implementation of the AML standards and the use of institutional means. While some of the network’s motivations were discussed in Chapter III, this section confirms them through the emphasis on collected secondary material and its interpretation along with interviews of IGOs representatives.

The work of the UNODC finds reflection in the AML Network through shared concerns regarding transnational organised crime. In fact, the recognition of the UN’s work by FATF and vice-versa has been constant throughout the years, e.g. in 1998 the UN’s draft UNTOC\(^5\) called for the criminalisation of AML and for compliance with FATF standards. FATF replied by ‘strongly endorsing’ draft Article 4 of the UNTOC (Para. 172, FATF 1999). The negotiation of Articles 6 and 7 of the UNTOC show how significant consideration was given to FATF work. In this negotiation, the UK included requirements to adhere to FATF standards but other states (i.e. Iran, South Africa and China) prepared a revised text with no such mention which was ultimately the adopted version (McClean 2007, p.93). The outcome of the UN Convention against Corruption also significantly

develops AML provisions (although no referencing to FATF is made here either) within UN documents with a very clear Article 14 on ‘measures to prevent money-laundering’ and emphasised mention to CDD, beneficial ownership and associated topics. Moreover, the UN has “[s]trongly urge[d] all Member States to implement the comprehensive, international standards embodied in the Financial Action Task Force’s Forty Recommendations on Money Laundering and the FATF Nine Special Recommendations on Terrorist Financing”.

In this way, it continues to corroborate its interest in supporting FATF by including the terrorist financing concern in the GPML Programme objectives as well as in its collaboration with other IGOs.

The GPML’s support from FATF states has, nonetheless, decreased throughout the years mainly because it was not a priority to have a ‘global organisation’ like the UN, leading on AML. Whereas the GPML team is equivalent to FATF’s they have been awarded a much less permanent character (dependent on extra-budgetary funding) and have no real political delegation focusing on training and technical assistance. Despite this, the UNODC and GPML staff still work towards AML standards, albeit at a smaller scale, focusing on the “convincing power” it still holds, through training exercises and information sharing in developing countries, confirming its continued preference for having a function in the development of AML standards.

More generally, UN documents are a good example of an IGO that reflects its membership’s concerns. After 2001, in virtue of the financing of terrorism priorities, which have imposed themselves on FATF, the UN became more involved as an organisation beyond the UNODC. Resolution 1617 is proof that whilst mentioning FATF in UN documents is restricted to GPML and UNODC work, the issue of terrorism finds greater support in the General Assembly and notably, the UNSC.

The UN’s ‘closeness’ to AML Network preferences is, however, not unique.

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8 Interview E, April 2013.
9 Interview J, September 2012.
In 1998, while unofficially representing the IFIs, Michel Camdessus of the IMF declared, “there is no conflict between free, competitive markets and anti-money laundering regulations. On the contrary, there is considerable synergism between the two (...) It need hardly be said that the quality of our cooperation will only add to the strength of our common message!” (Camdessus 1998).

This statement was the precursor to the cooperation between the IMF and the WB with the FATF. In fact, more than with the UN, the IFIs have an obvious shared interest on the network as both institutions’ main objective is the achievement of financial integrity. In this sense, “cooperative approaches among many international bodies” (World Bank 2011) are called for in order to achieve set objectives. In fact, the role of IFI’s was recognised by FATF in 1992 through their participation in FATF meetings but highlighted their specific contribution in 2000 “[d]ue to the wide scope of their activities” (FATF 1992, p.5; FATF 2001, p.7). Both organisations became observers to FATF in 2002, while in 2004 the IMF agreed to make AML part of its regular work (along with the WB) (IMF and WB 2004).

In addition, the IGOs need to be validated through state supported mandates corroborates the idea, perhaps more than other explanations, that shared preferences amongst the identified members of the network exists. As confirmed by the FATF Executive Secretary, “[t]he G7 has common interests that are discussed and are a good added value for discussion” in all network settings. In this sense, the existence of an AML Network is also made clear by the significant increase of G-7 statements (sometimes as G-8), publications, reports and decisions on the issue of money laundering and terrorist financing that ultimately led to the expansion of many IGOs mandates and the reinforcement of the need for inter-organisational cooperation (Rudich 2005, p.9). Altogether, the AML Network is formed through the continued and extended delegation of state matters to IGOs.

In addition to demonstrating a shared preference for pursuing AML standards through cooperation and the following the money strategy, the UNODC, IFIs, MONEYVAL and FATF all share an urge to collaborate and receive input from the

11 Interview A, January 2013.
private sector and recognised experts more generally. As a mechanism to improve their knowledge of AML consequences to their own activities the AML Network often includes private sector dialogue into their decision-making process and practices. Especially within FATF annual reports the mention to “take[ing] advantage of the expertise of its participants” (FATF 1991) is a constant and expert meetings are often referred too. In addition, the quest for knowledge is further corroborated by the preference of the secretariat that “the private sector should be able to participate at certain stages of the process” (FATF Secretariat 2001a). In this sense, both the mention of ‘expertise’ as important to decisions on standard development as well as the recognition, post 2001 essentially, that the private sector input could be favourable for CDD implementation is something all IGOs agree on (the WB and UNDOC particularly) in terms of providing training sessions and capacity building. A senior IGO official confirms this notion saying: “[w]e work in a way that staff brings knowledge with it. It is not acquired here and therefore comes from a multitude of sources contributing in this manner to the good level of knowledge of the institution.”12 The practice of getting expertise through hiring is further reflected in the admission of former-private sector employees, as long as the expertise is present.13 FATF has from early on supported the view that ‘expertise’ should be present aiming to put together “a register of expertise and technical assistance that each member can provide (…) also exploring with relevant organisations what assistance they could offer in this area” (FATF 1992, p.19).

MONEYVAL is, within this context, the expert institution *par excellence* and similar to what is shown above requires a team of experts to complete its tasks. Its staff represents the areas of focus namely, legal issues, law enforcement, the banking sector and regulatory or similar bodies (e.g. financial intelligence units). A MONEYVAL official has confirmed, that in order to fulfill its duties one should

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12 Interview H, September 2012.
13 “In the IMF expertise on AML resides within the legal department. Some people are lawyers, some are financial sector experts and one is an economist. We need people from all backgrounds….some come from the private sector” in Interview F, April 2013.
recall MONEYVAL’s secretariat “does not do the evaluations, the experts do, [and] it is the evaluators that ‘make it’!”

The role of MONEYVAL in contributing to the AML Network was not as recent as that of other FSRBs for example, the Caribbean FSRB. However, the Council of Europe, the institution MONEYVAL ‘belongs too’ participated in FATF meetings and events since 1992 and in many ways carried out MONEYVAL functions before its creation. The preference sharing between MONEYVAL and the rest of the network is suggested in FATFs 1992 Annual Report of collaboration with the Council of Europe; but it but essentially evident throughout the years as MONEYVAL became a monitoring body that participates in several other IGOs and FSRBs in order to pursue the broad AML objectives through technical expertise.  

FATF’s reliance on MONEYVAL, more than on other FSRBs, can also be confirmed by the recent expert exchange following the departure of Vladimir Nechaev as MONEYVAL chairman to become FATF President (on behalf of Russia). In a speech, Mr Nechaev highlighted “the critical role that MONEYVAL plays (...) [and that it is an] indispensable partner of the FATF in the Global AML/CFT Network” (Nechaev 2013c).

Moreover, the IMF, the WB and the UN directly endorse the FATF standards with MONEYVAL, as a *sui generis* network member reinforcing them with its own mandate (Para. 4, FATF 2007b).

Overall, the preference sharing by IGOs operating in the international combat of AML is a good start to the set up of a network structure that may also be a condition for procedural harmonisation. However, as is perceived in the analysis of great powers, the AML Network also requires more than shared preferences to employ procedural harmonisation.

14 Interview C, January 2013.
15 “MONEYVAL shall contribute actively to the global fight against money laundering and the financing of terrorism by working closely with other key international partners, including the FATF, the IMF, the World Bank, the United Nations, the European Union and other FATF-Style Regional Bodies (FSRBs) in the global network of AML/CFT assessment bodies.” In Paragraph 9 of Council of Europe, Committee of Ministers, 1095th Meeting, Resolution CM/Res(2010)12 on the Statute of the Committee of Experts on the Evaluation of Anti-Money Laundering Measures and the Financing of Terrorism (MONEYVAL), 10 October 2010.
The importance of stable relationships

No policy network achieves significant change or meaning if it’s unstable through time. As a result, institutions must show they have stable relationships and regular interactions throughout time in order to qualify as being in a network.

In this sense, Heclo discusses the formation of networks for specific time periods i.e. before a law is adopted (Heclo 1978). Scharpf too discusses the effects of policy collaboration at set times, nonetheless, even though such is possible and often instability in network composition occurs given the high membership, a network is stronger if it manages to exist through time and pressures (Scharpf & Mohr 1994). “Durable dependency relations do not necessarily mean that no conflict will emerge over the distributions of costs and the benefits in concrete policy processes” (Klijn E. H. & Koppenjan J. F. M. 2000, p.145). However, it endows the network with the perception of stability and the belief that even though disputes over preferences and strategies may arise, the interdependence between members is sufficient to achieve compromise and policy continuity.

The number of participants in an issue network also matters to its definition because it reflects the representative character of the network. The more participants, the more the network is in ‘control’ of a specific issue and the less dissent and/or resistance can be expected. In this context, the review of FATF’s formation, for example, indicates that while membership is able to grow, it is preferred small. Does the same principle apply to the number of IGOs with significant roles in the AML Network?

As far as FATF is concerned, the external dimension of its relations, i.e. beyond third-state contacts, there was a constant concern regarding which organisations to be in contact with. In fact, while the number of IGOs FATF is in contact with has increased throughout time (currently 26 observers), in its early reports only the UN and the Council of Europe were included in Plenary discussions (FATF 1991). The extension of observer status to all AML Network IGOs (and MONEYVAL as an Associate Member) is defined in the mandate but normally evolves naturally in accordance with specific needs. The requirements for observer
status are clearly set out by FATF and candidates must be inter-governmental, have a stated role relating to AML/CFT, endorse FATF standards, contribute to FATF’s work and offer reciprocity (FATF 2008). In general, these criteria show that “FATF is a worker like organisation” and thus most of the measures reflect agenda issues rather than political planning.\(^\text{16}\) The observer status, in this sense, de facto awards bodies the right to participate in discussions freely and to influence. Interviews with FATF experts have confirmed that participation is only limited in terms of the working groups and voting rights.\(^\text{17}\) Consequently, if on the one hand IGOs active involvement is still low (only IFIs, UNODC and MONEYVAL as relevant policy makers) the total number of IGO participation is 26, approximately the total number of actual members, thus demonstrating how important IGO participation in terms of FATF Plenary attendance. In addition, FATF collaboration with IGOs confirms that, to be part of the AML Network, IGOs must be included in FATF debates. However, this inclusion does not award them with automatic ‘network status’ and that continues to be dependent on the two remaining characteristics of resource exchanges and stable relationships.

Therefore, participation in the AML Network depends on function and contribution as well as the degree of expertise. For example, many of the observer members are regulatory bodies with specific preferences in specific Recommendations but not the whole framework as it is. In so far as the AML connections are concerned this is evident as membership of the network is far from automatic, for both states and IGOs mostly depend on what the added value to the AML standards can be. Membership and representation is dependent on the FATF’s plenary acceptance and debate as promoted normally by the secretariat, which due to its nature and “informal power”\(^\text{18}\) is responsible for the organisation of work and identifying organisational needs.

A second element that contributes to the identification of stable relations in a policy (issue oriented) network is the presence of authority among its members. Heclo’s original conceptualisation of the number of participants in an issue network

\(^{16}\) Interview A, January 2013.


\(^{18}\) Interview Z, March 2013.
established that it must be high and the system of authority loose. Authority is, in fact, the main trait of any network system, depending on the authority structure the issue network will be more or less horizontal. In line with this, Van Waarden develops the authority concept affirming that “a principal characteristic of these issue networks is that it is difficult to trace the locus of decision making. Hence the dependencies and power relations are diffuse. Insofar as anyone dominates, it is a collective but rather unorganized technocracy” (Van Waarden 1992, p.46) and therefore the absence of a clear authority structure characterises the development of the AML Network by shaping participants’ perception and interactions.

The AML Network has no authority between members but all members are indeed dependent on state/great power authority. This later point is valid for states and IGOs alike as Abbott and Snidal further commented, where “powerful member states exercise substantial, often disproportionate influence over IGOs: this undermines their representativeness, independence and global public interest orientation” (Abbott & Snidal 2009, p.26). An interesting issue to distil from the analysis of the relationships between network members is then their relation to great powers and whether actions illustrate this bond and the effect it has on the favouring of harmonisation practices. The case of GPML’s slight dismissal from AML political importance has already been mentioned as an example.

Regardless, this debate illustrates how the maintenance of stable relationships between IGOs not only amounts to the existence of a type of issue network but also favours informal processes that can be used for policy making beyond mandates. The added value of these processes is the assumption that it is harder for great powers to control informal communication between IGOs and their international secretariat structures (as it goes beyond mandate stretch) than it is to influence through great power discretion (as in the ECJ’s Kadi case).

The AML Network, as conceptualised here, developed through time and relied on the participation of some IGOs over others at different moments. In other words, this explanation is based on individual contributions to AML standards in a consistent, yet broad, manner rather than mandates indicating specific contributions to procedural harmonisation.
The relationship between IGOs in AML can be identified early on and in 1991 FATF’s External Relations Action Plan included the ‘drafting’ of the IMF, WB and the UNDCP (currently UNODC) (Annex III FATF 1992, p.33). The same is verified in early GPML documents and in most documents referring to AML/CFT at IMF and WB level. By 1993 the UNODC and the Council of Europe, along with INTERPOL and a few others, were already significantly engaged in exchanging information and being present at FATF meetings and vice-versa (FATF 1993, p.39). As a result initial cooperation between FATF and other IGOs consisted of informal exchanges of information and participation in mutual fora.

An initial clue to the start of stable relationships among IGOs is without a doubt the fact that the FATF Recommendations have “become the universally accepted standard by which a country’s anti-money laundering stance is measured” (Johnson 2003, p.128). IGOs cooperation has become the cornerstone of the framework with one IGO official stating: “International institutions in this area really form a community, we are a global community!”.\(^{19}\) Indeed, as network practices became regular, mechanisms for the enforcement of AML standards became stronger as a consequence of political debate and cooperation. FATF thus created an informal system of cooperation between observers that solidified the network. These developments contributed, among other things, to the perception that the AML Network is not just a great power tool but also a forum for international dialogue and exchanges. As described by a senior official at one of the IGOs: “10 years ago I would have agreed that FATF was not inclusive but now I think it transpires global rather than group views”,\(^{20}\) FATF has grown in instruments and collaboration and that is what awards it strength and continuity. Furthermore the FATF inclusion of other IGOs in their plenary sessions, at the discretion of the Presidency, supported the stability of the relationship between IGOs, which now often share meetings (FATF 1991, p.19).

Around 1991 “the UN Vienna office was probably the most present IGO in virtue of its own priorities in relation to transnational crime. The UN was a body that

\(^{19}\) Interview F, April 2013.
\(^{20}\) Interview H, September 2012.
had already shown concerns with the AML problem in 1988, with Article 3.1b paragraph 1, where the criminalisation of proceeds of crime is foreseen. However, as mentioned previously, the importance of the UN’s participation in this area diminished through time mainly due to lack of resources and priority dispersion on the part of great powers. The UN is still an active network member, especially in counter-terrorism financing, although not as present in policy making as would be expected given its historical role.

In 1998, nevertheless, the FATF Annual report read “the necessary development of in-depth international co-operation in combating money laundering was clearly demonstrated at the highest level” with the visit of the IMF and UNODC directors to FATF (FATF 1998, p.5).

In an inverse trend, although not fully participating from the start, the IMF intensified its influence and relationship with other AML IGOs. The IMF was involved with FATF from the early 1990’s whereas the WB only started attending FATF plenaries after 2001. In fact, 2000 was the so called ‘year of cooperation’ with FATF’s Annual Report reaffirming this call, and efforts to accomplish it, by promoting “a high-level mission led by the FATF President [that] visited the IMF headquarters in Washington, D.C. to assess common areas of interest and possible projects” (FATF 2001, pp.7, para.35). However, as a senior AML expert recalls, at the start, “FATF was not very keen on the IMF involvement because they had no need to negotiate and FATF did”. The IMF has always had a clear mandate to protect financial stability backed by a very strong membership and so, in the beginning, it posed a threat to what FATF saw as its realm of action. Yet in time that changed and everyone found a place in the network. In fact, “[t]he IMF was very influential in the way standards developed” and currently both the IMF and the WB are amongst the IGOs that FATF (“we have a very effective working relationship with the WB and IMF and we are formally committed to that”) and the UNODC

22 Interview E, April 2013.
23 Ibid.
24 Interview A, January 2013.
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(“among the institutions we work with more frequently”)\textsuperscript{25} claims to have more connection with. In fact, “[i]ncreasingly, the IFIs work collaboratively with FSRBs on assessments of jurisdictions’ AML/CFT systems” (FATF 2009b, p.21) and therefore their participation in all meetings is essential for adequate information sharing.

The desire for inter-organisational cooperation was such that even disagreements, as with the ‘blacklist’ process, became a compromise story for IGOs cooperation record. As is known, in the early 2000’s FATF promoted the blacklisting (under the NCCT framework) of some nations deemed to be uncooperative with the standards creating controversy regarding the true impact on economic systems that were deemed ‘unsafe’ for economies (FATF 2012a). The system was in fact developed by more than one institution and involved the quasi-simultaneous issuing of blacklists aimed at curbing both financial crime and terrorist financing. It was perhaps one of the first attempts to join these two issues together and confer “on soft laws a greater status in international law and politics” (Zagaris 2004, p.137). At the time, the threat of being blacklisted was such an efficient enforcement mechanism that many countries were quick to reform at the sound of the threat. The IFIs however, were not fond of the system that they considered was unfair to developing nations and other countries. Officials from both organisations defended the “desire to focus on capacity building rather than “naming and shaming” (Gardner 2007, p.339).

In fact, they made the suspension of the blacklisting a precondition to their engagement. FATF, in light of the desire to cooperate had to give in and therefore abandoned the idea of a new round of NCCT, a considerably effective mechanism, for the sake of the improvement and continued stability of the AML/CFT framework (Kerwer & Hülsse 2011, p.63). This decision is generally agreed to by AML experts to have been for the best as the “WB and the IMF are both extremely active”\textsuperscript{26} members of the network and active contributors to its development.\textsuperscript{27}

Time has shown, nonetheless, that although the NCCT process was terminated, its function was revived shortly after through the work of the IRCG. This strategic

\textsuperscript{25} Interview H, September 2012.

\textsuperscript{26} Interview O, July 2012.

\textsuperscript{27} For a short summary of the IMF’s involvement see in IMF Staff 2014.
move to continue FATF’s enforcement list may constitute strong evidence that network action is still moderated by great powers preferences. The G-7 was, as seen in the chapter above, a strong supporter of the NCCT process indicating that as IGOs attempted to negotiate the AML Network structure conditions that suited their preferences more, great powers were able to compromise but not concede. In this case, the informal processes constituted by IGOs are thus somewhat defeated in the face of great power confirming that “the harmonization of money laundering rules depends on political pressure from the dominant financial centres” (Simmons 2001, p.609). The ICRG process is, nevertheless, a more sophisticated system with a stronger engagement and permanent working group to advocate its reasoning. Altogether, evidence continues to point towards a mixed system of global governance where great powers lead but IGOs are able to exercise some authority when the issue comes into their sphere of influence. The ICRG process is therefore a good example of alternating IGOs and great power preferences in the context of maintaining stable IGOs relationships.

Ultimately, as articulated by an AML expert, IGOs became “increasingly important and the FATF meetings got bigger and bigger to the dislike of those who must organize it.” 28 The FATF’s desire to establish a world-wide anti-money laundering network was not a surprise as the 1997/1998 Annual Report described the desire, inter alia, for “close co-operation with the relevant international organisations, in particular the United Nations bodies and the International Financial Institutions” (FATF 1998, p.8, para. 17). Since then FATF has worked towards the establishment and maintenance of stable IGO relationships on which it can count on for preference dissemination. In fact, in July 2013 the FATF’s Russian President, Vladimir Nechaev affirmed, albeit at an Egmont Group meeting, that:

“[P]articipating in the discussions of other bodies especially – when the decisions are being made – helps ensure that those decisions are fully informed by all views. Open meetings and access to documentation on a reciprocal basis are a sign of maturity, confidence and recognition that there are indeed stakeholders with interest in our work beyond the immediate membership. Hearing the views of others

28 Interview V, July 2012
does not mean losing independence but enriches the process of decision-making” (Nechaev 2013a Emphasis added).

In sum, establishing, maintaining and developing relationships among international organisations working within this area appears to be a clear objective of the standard setter. MONEYVAL’s relationship, for example, is a development from the Council of Europe’s participation in FATF Plenaries from early on.

Finally, Roger Wilkins, the current FATF President, defined as one of the objectives for 2015 the promotion of quality and consistency in mutual evaluation reports across the global network suggesting that collaboration with other IGOs will continue (Wilkins 2014). Stable relationships between IGOs are however also not sufficient to influence harmonisation practices. Throughout time there is some evidence that IGOs working together facilitates similar approaches. However, shared preferences and stable relations are still dependent on great power delegation. The role of the UN as a policy maker in AML and its ‘disappearance’ from a larger role is evidence of this. The UN’s diminishing role is justified by budgetary concerns but, greatly, by the decision of states to centre the AML framework within the FATF/IFIs relationship. Arguably, the UN is an important player in terms of training assessors and country teams, but nothing that compensates for its lack of influence over the mutual evaluation procedures, as these are the main enforcement and basis for standard revision. The lack of UN presence is, in effect, justified by the fact that “government networks can be seen as a way of avoiding the universality of international organizations and the cumbersome formality of their procedures that is typically designed to ensure some measure of equality of participation” (Slaughter 2001, p.199). In other words, on behalf of great power interests the role of the UN was deemed “unworkable” for AML purposes illustrating the continued role of these states over IGOs, or at least, the network structure per se. In the end, the network input is real but the networks expression continues to be linked to states’ delegation preferences.

29 From July 2014 until July 2015 Australia holds the FATF Presidency and Korea provides the Vice-President.
30 Interview D, March 2013.
As network characteristics, stable relationships and shared preferences favour informal processes of policy making, albeit not very significant ones. However, the NCCT and ICRG discussion suggests that the peer review processes may provide further answers to this debate as functioning AML Network enforcement mechanisms. This thesis considers that, as the above discussion regarding shared preferences and stable relations showed few examples of influence into procedural harmonisation, the resource exchanges, that occur as a consequence of the IGOs’ relationships, must hold the key to the AML Networks’ input into procedural harmonisation.

**Resource Exchanges**

Zaring (2012) and Slaughter (2001) discuss the concept of transnational regulatory networks and define them as voluntary, ad hoc, having limited budgets, and no strong supranational character. This description is very close to that adopted here particularly given the acknowledgement of stable relationships. However, the authors see these bodies as having no effective compliance mechanism and at best holding “informal oversight” (Slaughter 2001, p.189). Contrary to this assumption, the global AML Network defined as having shared preferences and a stable relationship created a follow-up system to the FATF’s 40 Recommendations that comprises all network participants and ensures states comply with the approved standards. Indeed, more than an oversight mechanism, the peer review processes created and maintained through the resource exchanges that occur are effective compliance instruments that owe much of their success to the network’s existence. Further elaborated upon below, the peer review processes suggest potential in tackling the global governance compliance and institutional gap, as well as demonstrate elements of promoting the consistent interpretation of AML standards and informal processes of policy making. In addition, the confirmation that peer reviews are network based and influence the conditions for procedural harmonisation successfully questions the literature reviewed in Chapter III claiming that networks have no real enforcement mechanisms. Indeed, the peer review system offers IGOs the entitlement to manage AML resources amongst themselves in the manner and strategy that best suits their functioning.
Resource exchanges within the AML Network can be particularly obvious when looking at the levels of collaboration among IGOs in order to protect their interests. The level of resource exchange can be determined initially by the assumption that, although “institutions serve a limited number of general purposes (...) institutions that appear different on the surface often are similar in what they accomplish” (Fiorina 1995, p.113) and thus it makes sense to establish a mechanism of cooperation and exchange. FATF was always curved towards cooperation rather than individual action. In one of its earlier reports it stated:

“FATF is not an international organisation, but a group of governments that has agreed to adopt and to implement a comprehensive set of recommendations with the aim of combating money laundering. While the overall centre of gravity of the FATF is to be the cooperation among member governments, it is clear that such an aim cannot be achieved in isolation” (Para 83, FATF 1992, p.17 Emphasis added).

The UNODC, the WB, the IMF, MONEYVAL and the FATF work together towards, among others, the provision of technical assistance and training sessions given at identified locations of concern or as part of a wider regional support programme. Note that while FATF is the AML standard setter, the remaining network participants are specialized ‘on the field’ actors concerned with training and resource tools.31 For example, an IGO official recalls that, during the last (third) mutual round of evaluations “[t]he WB has trained (along with the Egmont Group) over 100 experts”.32 In addition, “[t]he Bank and the Fund conducted 27 AML/CTF assessments from January to December 2003. The Bank was involved as a technical assistance provider in 5 of the 15 FATF/FATF-Style Regional Body (FSRB) mutual evaluations in 2003” (Department Of State 2004). Moreover, the IFIs’ involvement was particularly noticeable through their development of new peer-review assessment methodologies and the pilot assessments conducted between 2002 and 2003. The results of this 12 month exercise informed changes made to the standards evaluation instruments and techniques based on the IFIs’ experience and expertise (IMF and WB 2004).

31 Interview I, September 2012.
The UN, in particular, through the work of the GPML and its aim to provide training and technical assistance (FATF 1998, pp.28, para.114) looks “[t]o equip States with the necessary knowledge, means and expertise to implement national legislation and the provisions contained in the measures for countering money laundering adopted by the General Assembly” (UNODC 2013b). The GPML, in its training sessions, also works with the IMF and WB with a common focus on “sharing expertise and passing on information and skills [and occasionally even] sharing resources, namely regarding salaries and other expenses”.  

Moreover, the UN’s creation of the IMoLIN network established in 1998 is of special relevance to this section as it has allowed for the sharing of research between many FSRBs, FATF and others but also gathers knowledge on the AML/CFT network which is condensed and made available to all (UNODC 2013a). Exchange of resources goes further into the promotion of studies on estimates of the money laundering burden and real value, which recently, have been mainly conducted by the IMF. However, FATF also had a working group, chaired by the US, on the matter where additional work by the UK and the EU on the proceeds of crime was considered, in a truly resource pooling exercise (FATF 1998, pp.27, para. 108–109). 

There is also interplay of topics covered by FATF guidance papers namely in issues like ‘financial inclusion’ and others that are of particular importance to some of the IGOs individual interests. The case of financial inclusion, for example, is a success story of an issue that did not originate in FATF but is now often a plenary session matter and issue of collective concern (de Koker 2012; Queen Maxima of the Netherlands 2013; Tarazi & Pesme 2010). 

Nonetheless, in spite of other network contribution exercises that can be taken forth, resource exchange is further, and perhaps more importantly, witnessed by the mutual evaluation exercises in the context of the peer-review obligations. In line with the international tendency to target compliance effective strategies that sparked the thesis’s questioning of the conditions for harmonisation, “[m]utual evaluations are the cornerstone of the assessment process” (Gardner 2007, p.333) in AML and

33 Interview H, September 2012.
became an IGOs practice early on in the standards development cycle. Griffiths confirms that:

“When the Recommendations were drawn up there was no clear consensus in favour of requiring countries to do this and so the Recommendation was not drafted in mandatory terms (…) However, most countries - even those such as the United Kingdom who were originally strongly in favour of a narrow money laundering offence - now see the benefit of covering all serious predicates. (…) The mutual evaluation process we have established is the main method we have for doing this. The process has proven to be very valuable monitoring mechanism, ensuring that there is a detailed and thorough scrutiny of the measures taken against money laundering and, more important, indicating what still needs to be done.” (Griffiths 1993, p.1826 Emphasis added).

Compliance is thus achieved by the mutual evaluation reports (MERs), by following the requirements of the AML standards but also, through the use of the adopted methodology and guidance papers, as approved by the FATF Plenary. Indeed, whereas the exchange of resources between network members is accomplished by sharing funds, technical assistance, representation, information and staff; and, whereas shared preferences and stable relationships stem from the objective of combating money laundering; the bond that permits these kinds of exchanges is based on the on-going work of the network to improve the standards and develop them according to new threats. This process is also key to the inclusion of MONEYVAL as an important network member albeit only an FSRB.

The basis for the mutual evaluations is, as predicted, the AML Network. For example, note that amongst the many documents used for these exercises is the FATF’s published National Money Laundering and Terrorist Financing Risk Assessment (FATF 2013c). In it FATF requests the IMF and WB specific risk assessment methodologies as those to be of conducive to best practice.

34 The “Methodology is designed to assist assessors when they are conducting an assessment of a country’s compliance with the international AML/CFT standards. It reflects the requirements set out in the FATF Recommendations and Interpretive Notes, (…), but does not amend or override them. It will assist assessors in identifying the systems and mechanisms developed by countries with diverse legal, regulatory and financial frameworks in order to implement effective AML/CFT systems; and is also useful for countries that are reviewing their own systems, including in relation to technical assistance needs. This Methodology is also informed by the experience of the FATF, the FATF-style regional bodies (FSRBs), the International Monetary Fund and the World Bank (…). See in, FATF 2013b, pp.4–5. Guidance papers are less formal and usually refer to a specific topic within AML.
In sum, resource exchange in this field has become the cement of the AML Network. As confirmed by a senior AML expert “[t]he reason why the network works so well is because it is more integrated […] the follow-up procedures are crucial in all this.”35 Certainly, in the words of an IGO official, what has been built with resource exchanges and practice is a FATF “peer pressure model”36 whereby part of the policy-making process includes provisions for assessing the implementation of standards with real consequences. In this sense, more attention is due to the impact of these instruments on the fulfilment of the network and the concretisation of procedural harmonisation. As was hinted at by the IGO official above, the level of network integration occurring in AML and, particularly, the resource exchange that is visible in the compliance assessment procedures contributes to the effectiveness of the process across jurisdictions. Nonetheless, in order to confirm the AML Network influence in harmonisation, research must provide additional evidence of significant network activity towards that goal.

From the above-provided examples of cooperation and interaction it is demonstrated that an AML Network exists in the terms defined and it works closely together to accomplish interests and maintain its autonomy. The extent to which, however, the network promotes specific tools for procedural harmonisation is more convincingly demonstrated by the analysis of the mutual evaluation process as an expression of resource exchange.

6.3 Mutual Evaluations the AML Network in play

The mutual evaluation procedures are the tangible path to the occurrence of procedural harmonisation as an AML Network consequence. The resource exchanges, the agglomeration of information within the network but, more importantly, the enforcement and monitoring of AML standards that occurs leads to the promotion of the consistent interpretation, as well as the emergence of informal processes of policy making.

35 Interview F, April 2013.
36 Interview O, July 2012.
These procedures have become a central characteristic of the AML Network as it is essentially an IGOs led exercise. Indeed, the essential nature of mutual evaluations, as defined by FATF, relates to the need to “assure the global community that the major financial centre countries are truly determined to adopt and implement effective countermeasures against money laundering” (FATF 1991, p.3). Like other elements of the AML standards, the mutual evaluations have no legally binding nature but achieve an important authority level as they constitute the first step to the ICRG procedure as the FATF’s enforcement mechanism.

The mutual evaluations are peer-review processes conducted in rounds of four to five years by the AML network. In each round evaluators take into consideration the current FATF methodology, Interpretive Notes, and any additional guidance in order to determine the level of compliance by individual countries to the AML standards (the FATF’s 40 Recommendations). This assessment is carried out through questionnaires and on-the-ground teams of different nationalities experts (normally four) with legal, law enforcement, financial, and regulatory expertise (FATF 2009a, p.6). An essential element is that “evaluations must be conducted by experts in whom all the parties can trust (…) The monitoring of the procedure by a trustworthy, neutral and experienced secretariat is more than of great help in this respect” (Sansonetti 2000, p.224. Emphasis as original). In spite of this, the choice of evaluators, carried out by the FATF Secretariat, is not always representative of all members (Levi & Gilmore 2002, p.347). The mutual evaluations are carried out by independent experts, which are not always representative in terms of nationality but always linked to the network and either FATF, an FSRB or the IFIs.

MERs are produced as a result of these evaluations and perfectly illustrate how, in a network, “the relations between the actors are horizontal in the sense that no one actor has the power and authority to resolve, single-handedly, the disputes that emerge” (Torfing 2012, p.101).

To date there have been 3 rounds of mutual evaluations in line with FATF standards revision. During the period of 2000-2001 FATF carried out an in-depth

37 The selection of experts requires the assurance of impartiality and independence from the countries under evaluation.
assessment of the first 2 rounds where it was determined that since this format for evaluation and monitoring began the levels of members’ compliance increased. These first rounds’ review notably set the scene for future developments and FATF focus as it noted that:

“The various classes of non-financial businesses, such as casinos, company formation agents, lawyers and accountants are largely unregulated and unsupervised (…) customer identification and record keeping have been generally well implemented, and the only common problem is the practical difficulty of identifying beneficial ownership” (Para. 57-62, FATF 2001).

A new round, the fourth of FATF, has started in 2013 following the publication of the new methodology and aiming to assess countries’ implementation of the 2012 standards. The third round evaluation process indicates that member countries strengthen their frameworks by enhancing the powers of financial supervisory authorities, implementing relevant international conventions and UNSC resolutions, as well as more robust CDD and suspicious transaction reporting requirements. Consequently the fourth round will focus on the effectiveness of these measures and their technical consistency and quality (FATF Secretariat 2014).

Accordingly, the responsibility for conducting and drafting MERs started as a unique FATF procedure (therefore reliant on G-7 support) but is nowadays divided amongst the FATF, WB, IMF and FSRBs depending on regional membership and scheduling issues as decided by the FATF plenary (in case of its members) or following other considerations.\textsuperscript{38} MONEYVAL, for example, gained its influence through this process and its responsibility for EU neighbouring jurisdictions in 2004, when it became an Associate Member of FATF, and the IFIs recognised its evaluations in the FSAP assessments and in line with their methodologies.\textsuperscript{39}

The analysis of the mutual evaluations is interesting as it indicates that sometimes the evaluations are carried out by a specific IGO given its specific

\textsuperscript{38} For example, “[a]ssessments carried out by IFIs rather than by the FATF were expected to find greater acceptance in non-FATF countries” (Hülse 2008, p.470).

characteristics. It is also possible that IGOs share evaluations in cases where the evaluated country is a member to FATF and an FSRB, if the Financial Sector Assessment Programmes (FSAP’s) report coincides with the timing of evaluation (FATF 2009c) or if the FATF plenary decides that a special mission is required.

If an IFI produces a mutual evaluation report, it will not be recognised as such until approved by the FATF plenary (if related to one of its members) and includes a note reaffirming that an assessment team, not the IFI conducted the evaluation (FATF 2009c, p.18). At any rate, the IFIs have demonstrated quite significant activity in this area, particularly, in so far as the development of methodologies and of the Recommendations themselves. Both institutions have been “quite vocal” during the FATF plenary sessions (despite their lack of voting rights) with the objective to maintain some of its own priorities intact and having them inscribed in guidance papers.\footnote{Interview D, March 2013.} To ensure that the methodologies adopted are compatible with those used by IFIs and that evaluators use them consistently, the FATF secretariat produces ‘process and procedures’ reference documents ahead of each mutual evaluation round. These documents define the underlying scope of the exercise, the evaluation schedule, steps to be followed, procedures for joint-evaluations and how co-ordination with the FSAP process should take place (See for example, FATF 2009c; FATF 2014e).

As a requirement to becoming part of the organisation, the mutual evaluation exercises originate in FATF’s original annual report where self-reporting and mutual assessment was the number one task of the organisation (FATF 1991). At this stage ‘lack of harmonisation’ was pointed out as an element of subjectivity to the self-evaluation process that was on going. Consequently, the first round of FATF evaluations was initiated in 1991 within FATF III\footnote{“III” refers to the year of FATF operations. Currently, the denomination is FATF XXVI.} and focused on volunteer countries, the UK, Sweden, France and Australia (FATF 1992). It was completed in 1994 at which time most members had gone through the same evaluation procedure and new Recommendations were being prepared with the evaluation results in mind. Later, members agreed that all are to be subject of such evaluation three years after
endorsing the Recommendations, committing to at least two rounds of evaluations (See Para. 150, FATF 1999).

Whereas nowadays MERs all follow FATF methodology this was not always the case and, in fact, it was not until 1992 that a revised questionnaire was agreed upon. Only in 1993 did the draft questionnaire reach the FATF plenary and was adopted for evaluators’ consideration (FATF 1993, p.32). FATF methodology for assessing compliance with the FATF 40 Recommendations and the FATF 9 Special Recommendations was revised and adopted its current format in 2004, again in 2009 and constituted the main source of guidance for mutual evaluations. In line with inter-institutional cooperation practices, FATF Plenary, all FSRB’s and the Executive Boards of the IMF and WB endorsed the 2004 methodology (Annex 2, FATF 2004c) and contributed to its preparatory discussions as established in the IFI’s mandate to enhance their contributions in the combat against money laundering (IMF and WB 2001, pp.20–21).

The third round of evaluations, as demonstrated in Table 5.2 attached compliance ratings to the process determining states may be ‘compliant’, ‘largely compliant’, ‘partially compliant’, ‘non-compliant’, and ‘not applicable’ in relation to each of the FATF Recommendations and following the 2004 Methodology as revised in 2009. A new methodology was adopted in February 2013 and added ‘the effectiveness of the AML/CFT systems’ to its general purposes to reflect the Recommendations update but also the new technical compliance and effectiveness requirements that have been developed in the last few years by the network members (FATF 2013b).

The FATF peer review system and standards had been under effectiveness-led criticism for some time. Most comments were sourced in expert studies, private sector and civil society concerns with the global character of these ‘great power defined standards’ and their limited implications for crime reduction (ECOLEF 2012; IMF 2011; FATF 2013a; Halliday et al. 2014; Reuter & Truman 2004).

42 Compliant equals “the Recommendation is fully observed”; Largely Compliant – “There are only minor shortcomings”; Partially Compliant – “The country has taken some substantive action and complies with some of the essential criteria”; Non-Compliant – “There are major shortcomings”; Non-Applicable – “does not apply”. See in MONEYVAL 2010b.
response, recent developments in the standard review process therefore place greater relevance on the effectiveness of measures implemented and the extent to which these are able to decrease money laundering offences. Moreover, attention given to issues of technical compliance should highlight the degree to which AML technically compliant countries do or do not show results in reducing money laundering. The new methodology, unlike the previous ones, is divided between technical compliance, keeping the same rating system and, the rating of ‘effectiveness’, now defined as ‘high’, ‘substantial’, ‘moderate’, and ‘low’, with no overall rating for effectiveness being predicted so far. This adjustment, although data on its results is not yet available, coincides with the development of the RBA and the recognition of differences among jurisdictions and levels of risk. What is interesting is the fact that whereas the implementation of specific measures might have loosened, the process of consistent interpretation may even be deepened. More on this development can be discussed after the fourth round of evaluations is complete (shortly after 2020) (FATF 2014c).

Ultimately, the rating system works as a frame of reference for follow-up reports and biennial updates which depend on the level of lack of compliance and serve as a strategy to monitor the improvement of national legislations in the areas. To date, the awarding of any rating other than ‘compliant’, and the rarely used non-applicable, has meant that progress is expected from states.43 The effects of the mutual evaluation exercises are, in fact, the key to determining whether the networks enforcement system is working. Nevertheless, according to the discussion so far, the new methodology suggests greater network input and less great power input therefore reflecting change in the AML standard making process.

MERs, showing evidence of network input, are available from the FATF (FATF 2009c), MONEYVAL and other FSRBs’ websites. MONEYVAL, nevertheless, has condensed the results for each round in horizontal review reports, which facilitates this research’s analysis of the outcomes.44 In them, MONEYVAL

43 It also means that future evaluators will look into such developments before awarding a new rating.
44 MONEYVAL reports are highlighted given this body’s identified importance in the AML network.
assessors show how effective the process of AML implementation is being and in what ways MERs (and therefore the AML Network) have assisted in improving it. Accordingly, MONEYVAL’s first horizontal review of its members’ implementation procedures showed that:

“[t]he process has clearly produced results. As the programme has developed, and as the progress reports show, PC-R-EV has seen conventions being ratified by its members, anti-money laundering legislation being passed where none previously existed, laws being amended, and guidance being put into place or revised, in response to PC-R-EV reports” (Para. 302, Ringguth 2002, p.41 Emphasis added).

In 2007 the MONEYVAL horizontal review report, of the second round of evaluations, stated “[m]ember countries generally responded positively and constructively to the first round reports and (...) [t]here was also commendable willingness on the part of many to formulate and give effect to policies which went beyond the requirements established” (Para. 112, Gilmore 2007). In contrast, the 2010 Horizontal Review, of the third round, reported “Moneyval countries did not obtain good overall results for compliance” (MONEYVAL 2010a).

Overall, these documents exemplify how the mutual evaluation processes can have positive and integrative effects on standards but also depend on institutional support and guidance. MONEYVAL’s horizontal reviews are also a good indication that progress is not achieved by one jurisdiction alone but often reinforcing events, such as the finalisation of an EU AML Directive, can have a positive effect on implementation levels among all members (Para. 244, MONEYVAL 2010b). Finally, whereas this body represents only a small number of states, this research uses its reports to demonstrate the effectiveness of the evaluations in general as it has been identified as the most prominent of FSRBs and a specialist body in this policy area. Generally, “patterns [in evaluations] appear to be quite similar to that in FATF countries” (MONEYVAL 2010b) and therefore the assessment derived from them should lead to very similar results. The FATF evaluations of the US and EU G-7 countries in fact, lead to similar conclusions and point out to the same deficiencies occurring as mentioned in the footnote to Table 5.2 regarding beneficial ownership, particularly, in cases of legal persons (Compare with, MONEYVAL 2010b, p.54; Gilmore 2007, p.11; Ringguth 2002, p.42).
Conclusions emerging from the evaluation rounds, regardless of geography, are the first step towards standard revision, in their own way, an agenda-setting mechanism. The compliance ratings attributed influence the beginning of an ICRG procedure, the need for biennial updates or normal follow-up procedures. More than enforcement mechanisms, MERs are forces of standard development beyond great power input. In 2011 FATF released a first public consultation document where, based on preliminary results for third round MERs, that the priorities for revised Recommendations were, inter alia, CDD, tax crimes, beneficial ownership etc., as these had been the source of weakness of most AML systems (FATF 2010c). Equally, amongst the many issues that the third MONEYVAL horizontal review reported on was the overall weakness in CDD measures namely issues such as the non-obligation to apply identification checks to existing clients, insufficient legal prohibition on anonymous or bearer accounts and ambiguity in the definition of beneficial owners (Para. 239, MONEYVAL 2010a, p.55).

The practice of considering mutual evaluation assessments in the preparation of new standards is a continuation of what has been in place since the reviews themselves. In 2001 the FATF Annual Report equally confirmed the importance of evaluations in clarifying “areas of weakness (…) and to address in priority the five “issues of particular concern”” (Para. 84, FATF 2001, p.17), among others, CDD and suspicious transaction reporting. Consequently the recommendations emerging from the third round were considered in the making of the 2012 40 Recommendations. In fact, the opening of the 2011/2012 FATF Annual Report reaffirms that FATF will continue to work closely with FSRBs, the IMF and the WB to “refine evaluation procedures, the common assessment methodology and other processes for assessing compliance” (FATF 2012b, p.11).

MERs have become central to the monitoring and enforcement of standards as the usefulness of evaluation rounds was reaffirmed in 2010. FATF plenary participants (including observers) pointed out that the advice coming from the MERs is meant to be used “by the private sector and other stakeholders, as well as the FATF and its members, as a key source of information and analysis about national AML/CFT systems and their implementation” (Para. 54, FATF 2010b). The mutual evaluation rounds therefore represent the peak of network functioning and action, as
it is the space where all, resources, preferences and interactions come together to counter common and perceived threats. It is also a space characterised by institutional, rather than state, action as even experts seconded from a specific state must keep impartiality and follow guidelines on their contributions as experts. Rounds of evaluation are, in essence, AML Network exercises that lead to procedural harmonisation through a centralised methodology and assessment system that promotes the consistent interpretation of AML standards across borders.

Finally, the mutual evaluations and their assessments also highlight the role of expertise and, particularly the private sector. Note in 2004, FATF affirmed its intention to publish all mutual evaluation reports in order to best inform the private sector and improve relations and information between all actors (Para. 31-34 FATF 2005, p.11).

Consequently, whereas the 40 Recommendations (and related Interpretive Notes), and guidance papers inform debates, it is the mutual evaluation exercises that provide the evidence which the FATF plenary reflects upon. It is also the mutual evaluation exercises that best establish specific country realities and challenges. In some ways, it is where domestic and international expertise meets to develop standards. In a sort of perpetual movement: standards influence MERs that influence papers that influence methodologies that influence MERs that influence standards.

Ultimately, the mutual evaluation system and the accountability and resources that are mobilised around it reflect not only that the FATF, and the FATF secretariat are an “expert source” when it comes to standard review, but also that collaboration and exchanges amongst the many organisations has been essential to the construction of that expertise. It has been established that “cooperation between institutions is very good” and that when the interpretation of standards diverges, then the peer pressure mechanisms kick in enforcing the principle of consistent interpretation.47

John Carlson, FATF Secretariat, summarised the FATF compliance system saying:

46 Interview F, April 2013.
“[I]f international standards are important then having an effective system to assess compliance and peer pressure to ensure that states comply and enhance their systems is something which was just as important. This is something that FATF has been doing for the last twenty years.”48

Altogether, the shared resources that occur during the peer review process demonstrate how through what are essentially soft law procedures “world-wide mobilisation against money laundering” (FATF 1994) was achieved. Additionally, these practices suggest that there may be a call for legitimacy and the recognition that “without legitimacy securing compliance is costly” (Hülsse 2008, p.465) particularly when great powers are hinted at being in control of operations. Legitimacy is, therefore, achieved through increased participation of relevant international actors and stakeholders, and transformed into an object of great power preference.

Overall, the network’s contribution to harmonisation stems from its efforts in producing “increasingly precise recommendations” (Gardner 2007, p.342) therefore confirming the consistent interpretation principle as an AML Network consequence.

6.4 Harmonising CDD: a network consequence?

The identification of procedural harmonisation as emerging from network action, derived but independent from great power influence, benefits from the occurrence of the formal and informal processes generated by the interactions between IGOs but, especially, through the enforcing of the consistent interpretation principle with MERs. In this sense, this chapter has shown how, while not in control or able to replace great power influence, the AML network does function, increasingly so through time, as a restraining force of exclusive great power input. In this sense, the CDD developments translate a more precise network input than great

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power influence indicating that procedural harmonisation, may not have started out as one, but is currently also a network consequence.

Therefore, whereas the preceding analysis of CDD’s evolution demonstrated great power input, as a condition for procedural harmonisation, is insufficient, the analysis of the network input into CDD provides additional information on the subject and helps to confirm that the AML Network is also a condition for procedural harmonisation. As defined in Chapters II and IV, CDD is the essential AML standard as the identification of the source of money laundering is the basis for prosecution. CDD developed following the relationship between FATF and other IGOs but also thanks to the knowledge provided to IGOs by the private sector and experts more broadly. In this sense, the established network has significantly influenced it, particularly in so far as it concerns the harmonisation of its processes.

Originally known as customer identification or ‘know your customer’ principle, CDD was initially foreseen in FATF Recommendation 12 and 13 of the 1990 document, Recommendation 10 and 11 in 1996, Recommendation 5 of the 2003 40 Recommendations and, Recommendation 10 in the 2012 revised standards. In 1990 relevant provisions were limited to defining measures to be taken by states, mainly the prohibition of anonymous accounts and the identification of the true identity of customers through the requirement of adequate documents (Para. 12 and 13, FATF 1990). In 1996 the requirement to identify customers was extended with a special comment on how to obtain identification from legal entities. In addition to minor alterations, the FATF plenary’s highlighting of ‘sovereignty’ in the introduction to the Recommendations is worth noting, as it affirms, “[R]ecommendations are therefore principles for action in this field” but the measures are to be constructed in such manner as to allow “countries a measure of flexibility rather than prescribing every detail” (FATF 1996b).

The most significant development came in 2003, mainly as a reflection of the 2001 events, but also as a consequence of the ‘crystallisation’ of the network 12 years on, and the presumed participation of varied stakeholders and the private sector in the AML standards’ preparatory consultations (FATF 2002b). The making of the 2003 40 Recommendations was indeed already informed by the results of the NCCT
process, the EU AML Directives of 1991 and 2001 and the work of the Basel Committee (FATF Secretariat 2001b, pp.8–10).

Moreover the introduction to the new standards affirmed that the Recommendations “therefore set minimum standards for action for countries to implement the detail according to their particular circumstances and constitutional frameworks” (FATF 2004d). Overall, it would appear that whereas FATF continued to be aware of its own limitations regarding the imposition of standards, the 2003 40 Recommendations left less space for ‘particular circumstances’ than those allowed for before and evolved from ‘principles’ to ‘minimum standards’.

Recommendation 5 on ‘customer due diligence and record-keeping’ further developed the requirements of identification defining the situations in which such measures are required, *i.e.* establishing business relations, occasional transactions, suspicion of money laundering or terrorist financing or, the financial institution has doubts regarding the veracity of information. It continued on to define how measures should be taken and further elaborate on the type of customer, guidelines as provided by competent authorities, reduced or simplified measures of implementation and reasonable timeframe for conducting all verifications. In 2003, the 40 Recommendations also specifically approached the issue of beneficial ownership and the applicability of the norms to new and existing customers alike. Recommendation 5 was much more specific in terms of providing clear direction to financial institutions as well providing guidelines regarding ‘how’ identification should occur. The Interpretive Notes to this Recommendation (to be read jointly) further define designated thresholds for transactions and the instances in which they become relevant.

In reality, the ‘Interpretive Notes’ to the AML standards are key to the implementation of standards and the subsequent methodology adopted for the MERs as well as good translators of the consistent interpretation principle. The function of the Interpretive Notes is to assist countries in their individual implementation, ensuring however, that such implementation does not interfere with the defined
requirements. As far as Recommendation 5 is concerned that includes: guidance on customer due diligence and tipping off; CDD for legal persons and arrangements; reliance on verification already performed; timing of verification; requirements for existing customers; simplified or reduced CDD measures (and examples of when these apply); simplified measures for beneficial owners; simplified measures for different products (i.e. life insurance policies and pensions); simplified measures and finally, cases when simplified measures do not apply.

In 2012 the FATF standards were revised once more. The tendency present in the former revisions is corroborated in the 2012 introductory statement affirming, “the FATF Recommendations, therefore, set an international standard” (not a minimum). Although this may be ‘institutional rhetoric’ it illustrates a reduced care for ‘different constitutional frameworks.’ Rather the advice is that Recommendations should be implemented “through measures adapted to their particular circumstances” thus removing any optional nature that was present before.

CDD became Recommendation 10 and among many developments and additions to the original writing there are elements of the past Interpretive Notes now present in the actual text, namely the specific thresholds definition. The 2012 CDD wording is overall stronger and more decisive than previously. There are distinct calls for ‘prohibition’ of keeping anonymous accounts and a statement that this must be inscribed in law. Financial institutions, in addition to obtaining information regarding the purpose of a transaction must now also ‘understand’ it (FATF 2012c). Moreover the requirement to apply CDD is now linked to the provisions and guidance regarding the application of the RBA paper (FATF 2012c) and the Interpretive Notes (FATF 2012c). The risk of terrorist financing is also added to the text in relation to the evaluation or risk. The Interpretive Notes generally follow the same headings as in 2003 but add, or highlight, provisions regarding CDD for persons acting on behalf of a customer, beneficiaries of life insurance policies, enhanced due diligence and, most importantly, provisions regarding the application of RBA, particularly, high/low risks and risk variables. The examples provided in the

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49 FATF has affirmed, “Interpretative Notes (which) are designed to clarify the application of specific Recommendations and to provide additional guidance”. They are elaborated along with the standards by the AML network and approved by consensus in FATF Plenary sessions. See in FATF 2004d.
Interpretive Notes regarding CDD and risk assessment are indicators of what is expected and how different levels of risk mean different levels of CDD assessment while defined thresholds and on-going monitoring remain mandatory for all transactions.

In effect, throughout the years the many institutional, network, technical and priority advances are visible in the writing up and interpretation of CDD; provisions regarding the identification of customers becomes more explicit but also expands its scope to include specific types of customers and measures to adopt accordingly. In this context, the adoption and stress on the RBA similarly indicates the AML network’s recognition of jurisdictional and risk differences, nevertheless continuing to stress the primacy of the requirement of consistent interpretation of standards and guidelines in the implementation of AML standards’ processes.

Consequently, whereas many advances can be noted from the latest developments the most interesting is illustrated, once more, by the Interpretive Notes. In them the FATF Plenary approves, in the 2012 Recommendations Glossary, that for “purposes of assessing compliance with FATF Recommendations, the word should has the same meaning as must” (FATF 2012e, p.120) as had already been hinted at in the 2009 review of the 2004 FATF methodology (FATF 2004c). The substitution of ‘should’ by a de facto ‘must’ is evidence of the diminishing ‘space’ given to states in relation to the implementation of guidelines.

An interesting ‘note’ circulated by the FATF Secretariat in 2001, before the 2003 review, indicates how FATF was keen to have the new Recommendations and Interpretive Notes “set out in a clear and logical way, the essential requirements of an anti-money laundering system for all countries” (FATF Secretariat 2001b, p.2). As such, among other measures, the secretariat recommended that the obligation to conduct CDD be inscribed in law as a consequence of data gathered regarding the non-compliance in this field. The measure was included in the 2003 Recommendations, albeit the FATF plenary chose to add it as an alternative to self-regulatory agreements showing less desire to harmonise by states than what the secretary had suggested was workable from “the higher and stricter standards that have been implemented by FATF members” (FATF Secretariat 2001b, p.8) and the
general network preference. In the 2012 Recommendations, however the ‘or’ is dropped from Recommendation 10 and it currently reads “[t]he principle that financial institutions should conduct CDD should be set out in law”.

Accordingly, in what ways does the development of CDD standards in the manner described above exemplify network input and not great power input?

Firstly, it can be argued that CDD has indeed developed towards a harmonised stance. Great powers saw their ‘differences’ targeted by a less tolerant and wider FATF plenary that relies on IGOs for knowledge, and approved more elaborate standards throughout the years. A significant part of this phenomenon is clear in reading the Interpretive Notes but also from guidance papers, for instance take the paper on risk assessment (FATF 2013c). In effect, the ‘introduction’ to the 2012 Recommendations highlighted the importance of “Guidance, Best Practice Papers, and other advice to assist countries with the implementation” (FATF 2012e) process. It officially stated that the “FATF Standards comprise the Recommendations themselves and their Interpretive Notes, together with the applicable definitions in the Glossary” (FATF 2012e). It further reinforced that the “revision of the Recommendations has involved extensive consultation, and has benefited from comments and suggestions from these stakeholders” (FATF 2012e) namely, private sector, civil society and others.

In 2012 it was evident that FATF had been consulting other actors for some time, including during the 2003 revision. As can be seen in the 2002 the FATF Consultation Report “the issuance by the Basel Committee on Banking Supervision of its Guidance on Customer Due Diligence for Banks, have shown that the wording of the current Recommendation 10-12 could be developed and refined” (FATF 2002b, p.i).

In addition, typology exercises, for example, have been a constant since the FATF’s inception and especially used as instruments to assess ‘methods and trends associated with money laundering. The most widely covered issues, in typology exercises, cover numerous strategies of financing terrorism, new payment methods,

50 For examples see, FATF 2012f.
guidance for specific sectors, and reports on the abuse on non-profit organisations. Others include, topics e.g. illicit tobacco trade, fraud, laundering through the football sector, inter alia. The objective of these expert exercises is to inform the AML standards and gather knowledge from across jurisdictions and expertise to inform and shape international standards according to new threats or technological requirements. Moreover, while state representatives, participate in the typology meetings, they are not alone; the exercises reflect the joint work of network participants (not necessarily great powers) and many other stakeholders. In this sense, measures coming to the FATF plenary and introduced in the final products are, in themselves, a reflection of the network. Network output is not just a consequence of great power delegation but of AML Network participants’ contributions. Therefore, the development of CDD towards a more harmonised system of implementation (if not the same measures) is a consequence of the AML Network as well as great powers.

Secondly, by analysing great power compliance throughout the years and identifying a trend of implementation (as shown in Chapter V, table 5.2, p.150) it can be seen that the leading states are not necessarily in top-compliance levels (as far as CDD is concerned). Of course, low-compliance does not indicate the absence of commitment or that measures are network induced. It does however suggest that great powers are not in complete control of the network either in terms of ensuring implementation or generating standards they are able to fully comply with. Therefore, taking into consideration the FATF’s ‘larger’ members, either parties to the G-7 or determined by interviewees to be relevant in the global policy-making process, this research indicates that compliance with CDD requirements is on going but not ideal. In fact, the conclusions from FATF’s third round of MERs presented in Plenary showed that out of G-7 countries only Italy and the United Kingdom required more frequent reporting than the normal biennial update required by mutual evaluations for countries with significant AML deficiencies (FATF 2010a, p.20).51 Therefore, research assumes that ‘MERs pushed’ CDD compliance (especially

51 Recall the procedure explained in page 25-26 Chapter II, regarding the peer review processes. Although, as suggested above the compliance rating of the third round does not distinguish technical compliance from effectiveness which may, in due time, reflect quite opposite results.
technical compliance) shows evidence of network input and assistance in implementation.

Thirdly, the NCCT blacklisting exercise, supported by great powers, that took place between 2000 and 2006 included countries like Russia and reflects that when a significant lack of compliance is determined, the return to compliance is tasked to the AML Network. During the NCCT process 47 countries were examined with no less than 23 being listed as ‘non-cooperative’ (FATF 2007a).\(^52\) Whereas this process met with great disapproval from smaller states and IGOs, it demonstrated itself as an effective tool, in particular, as regards to Russia, which “enacted significant legislation over the summer so the FATF withdraws its call for members to initiate additional counter-measures with respect to this jurisdiction” (OECD 2001). Nevertheless, the frequent ‘fail’ that many states receive under NCCT process, particularly by small economies, led to calls of unfairness, and in 2007, the creation of the ICRG.

The process for assessing countries’ compliance and listing non-compliant jurisdictions was thereby reinvigorated in 2009, after a G-20 declaration calling for its identification by February 2010 (Para. 15, G-20 2009b). Currently the ICRG analyses high-risk jurisdictions and others based on their MERs in order to recommend specific measures, assess progress and reflect on the best compliance ensuring strategies (See, FATF 2012g). It may still be argued that such process offers an institutional outlet to great power preferences but, to its credit, decisions are based on network conclusions and FATF working group discussions, rather than great power deliberation thereby affording them with greater legitimacy. The NCCT process and the ICRG suggest how the network, although mandated by great powers, is necessary to the functioning of the process as is, at least, moderates the perception of imposition.

The case of Austria’s passbooks (prior to NCCT)\(^53\) and that of Turkey’s non-compliance risk (under ICRG) are perhaps the two biggest examples of the success

\(^{52}\) See also, Figure 7.2 ‘NCCT Listing and Delisting 2000-2007’ in Jakobi 2010.

\(^{53}\) Prior to the NCCT process the enforcement of FATF standards was made through the provisions of recommendation 21 establishing that “Financial institutions should give special attention to business
of the ‘FATF/great power threat’ on relatively economically significant countries (Sharman 2011, p.70; Gilmore 2011, pp.142–145; Stessens 2000). The FATF decided in 2000 to revoke Austria’s membership if it did not comply and it was under such extreme peer pressure from evaluation teams that FATF ultimately won.54 The case of Turkey is similar although this country is still under ICRG monitoring and frequently ‘entertains’ network experts.

Both nations were deemed to be non-compliant with important FATF standards and suffered IGOs, peer and economic pressure to adjust their AML procedures accordingly through what is, effectively, the AML Network enforcement mechanism. As affirmed by Sharman “[b]acklisting by international organisations is not just cheap talk or signalling, but it is a stick that can be used to beat small tax havens and much larger states into regulatory reform” (2009, p.593). In some ways it resembles cross-pollination, or the direct adoption of international measures (including soft-law) into national legislation, although not clearly enough to justify further discussion.

In sum, the input the AML Network has on CDD is a consequence of the way in which standards are reviewed and developed by the IGOs working together and collaborating beyond the original great power delegation act. As demonstrated, the AML standards are linked to the Interpretive Notes, which are informed by the AML Network during the review processes. While FATF Recommendations are now seen as “the principal international anti-money laundering” (FATF Secretariat 2001b, p.2) standards, of increasing political importance, according to its Executive Secretary, FATF remains “a bit of both the politics and the technical radar”55 characterised mainly by its renewable mandate and flexible character, by its ability to shape patterns of action, influence others and, generate international policy.

relations and transactions with persons, including companies and financial institutions, from countries which do not or insufficiently apply these Recommendations. Whenever these transactions have no apparent economic or visible lawful purpose, their background and purpose should, as far as possible, be examined, the findings established in writing, and be available to help supervisors, auditors and law enforcement agencies” (FATF 1996b, p.5) In practice this implied delayed transactions, longer waiting times for businesses and general drop in competitiveness.

54 See in FATF 2000, p.4.
55 Interview A, January 2013.
Moreover, as the FATF plenary affirmed, in order to prevent “overlap and duplication” FATF draws “strength from collective action” (Para. 105, FATF 1993) and thus will “continue to work with the relevant international organisations to foster the establishment of a world-wide anti-money laundering network” (Para. 176, FATF 1999). However “FATF does not equal AML, [and] there is a broader framework to take into analysis”.56 The AML standards, as they exist today, are part of an exercise “based on cooperation and experience and that is what can make a good framework”.57 CDD, through its constant redefinition and increasingly detailed nature shows that in more detail.

The mutual evaluation rounds are the key to the network input into procedural harmonisation seeing as the general impression gathered from policy makers is that “there are still legal impediments within some countries that must be removed”.58 Therefore, informal processes as well as the consistent interpretation of AML standards emerge as a way to combat this perception, and as confirmation of resource exchanges as an essential characteristic of the AML Network.

6.5 Conclusion

This chapter established that IGOs influence the occurrence of procedural harmonisation through the promotion of informal processes of policy making (i.e. exchanges of resources, collaboration, staff) and the consistent interpretation of AML standards (i.e. the adoption of the same methods for AML evaluation). These actions occur through the formation of inter-institutional relations between the IGOs that great powers have delegated international AML responsibilities to. In this sense, the research suggests an additional level of analysis within global governance therefore contributing to future research and literature.

56 Interview F, April 2013.
58 Interview H, September 2012.
The analysis carried out of the network’s development and input into AML standards, and CDD more specifically, found that IGOs share a preference for the combat of money laundering through inter-institutional cooperation. This preference brings them together establishing interactions that have become stable practices favouring informal policy-making processes. In this context, resource exchanges between participants in the AML Network provide the strongest evidence of a functioning network, which moreover, has increased and become more visible in AML standards throughout time. Consistent interpretation (and very briefly, cross-pollination) is favoured by the exchanges that occur between IGOs and states during the mutual evaluations.

In the end, this chapter’s main contribution is the recognition of the AML Network as a condition for procedural harmonisation through the peer review processes. The chapter showed that great powers had a crucial role in the AML standards inception and still maintain some of it through delegation. However, the IGOs’ networked nature offers an added value which more and more finds echo in the AML standards’ reality, maintenance and future. The AML Network, as a condition for procedural harmonisation, is therefore perhaps not necessary, as that of great powers, but definitely a real counterpart. In the context of global governance this is, arguably, a positive outcome as it affords policies with more than authority.

The next chapter builds from the empirical data analysed so far. It considers the research questions and, in light of the empirical findings on great powers and the AML Network input, identifies constant elements that are present and influence the evolution of CDD as shown. As a discussion chapter, it develops and contextualises them in the broader global governance framework and AML standards in order to contribute to future research and literature advancement.
CHAPTER 7

GLOBAL GOVERNANCE: AN INTERNATIONAL ‘FAUTE DE MIEUX’

7.1 Introduction

The debate of great powers’ and the AML Network’s contribution towards procedural harmonisation suggests that: a) states adjust their preferences in order to provide policies with legitimacy and achieve compliance; b) IGOs constitute a condition for procedural harmonisation as compliance achieving actors; and, c) knowledge and expertise are a constant of increasing worth in international policy making.

Empirical findings suggest that AML global governance may be what Weiss “would call a ‘faute de mieux’” (Weiss 2009, p.6). In other words, the AML standards are here for want of something better and the policy-making strategies should not be expected to reflect much sophistication or structural thought. This thesis has identified consistent interpretation of principles, the presence of formal and informal processes, and the occurrence of cross-pollination as confirming procedural harmonisation under conditions of great power shared preferences and a network of IGOs. However, in order to further elaborate on these findings, a discussion on the changes in actors’ preferences throughout time is necessary.

Therefore, in order to advance future global governance strategies this chapter begins by addressing the preferences of the great powers and the ways in which the delegation represents a call for legitimacy or support of other states. Secondly, the delegation to IGOs appears to be the materialisation of this great power acknowledgement, but also a quest for compliance. Finally, the discussion shifts to the ways in which calls for expertise and expert input have been present in the policy-making process, including their expression in the private sector, IGOs network and state form. Altogether, these elements contribute to the conditions under which procedural harmonisation occurs and may be generalised.
7.2 Great powers and the legitimacy requirement

This research interprets legitimacy broadly as a policy requirement that contributes to governmental justifications of state preferences to citizens therefore following in line with Thomas Franck’s definition. According to the author, legitimacy is “a rule which derives from a perception on the part of those whom it is addressed that it has come into being in accordance with the right process” (Franck 1988, p.706 Emphasis as original). Consequently, one of the main issues that stems from the process-tracing review of the AML standards-making process is precisely the great power struggle to achieve the perception that the AML standards, as adopted, are the ‘right strategy’, either through ensuring increased state participation (democratically), increasing FATF membership, or IGOs input.

Addressing the issue of legitimacy may appear odd given the interest-based action that this thesis departs from. In fact, most authors would rather discuss issues of actors’ credibility (Abbott & Snidal 2000, p.422; Gilardi 2002, p.875; Majone 1997, p.265; Reinicke 1998, p.169 Inter alia.). However, globalisation has introduced a certain degree of power to civil society that has become relevant at the international stage given its influence in domestic politics and government action. Moreover, this research distinguishes between the credibility of commitments made to combat terrorist financing, which few would question and, the ‘legitimacy’ of said actions and the instruments selected to do so. Therefore, whereas the data analysis demonstrates that great powers continue to control policy making internationally above other influences, it also indicates some willingness to adjust strategies and opt for the path of least resistance and greater acceptance by the broad majority of states. In other words, examples of climate change, disarmament and others have illustrated that states’ resources may not be enough to build successful transnational policies and so whereas the issue of economic and security interests are beyond debate, there is an element of civil (and international) society appeasement reflected in the making of transnational policies (Falk & Strauss 2000).

1 For a normative perspective on ‘legitimacy’ see Okafor 1997.
Furthermore, existing debates on legitimacy mention its relation to compliance and the ways in which forces of legitimisation become essential to state action (Falk & Strauss 2000; Franck 1988; Milner 1991; Walt 2005). Therefore, this thesis looks to complement the discussion by confirming that achieving the perception that AML standards are on the right track towards reducing the level of threats to the financial system is an important element influencing global governance and the conditions for procedural harmonisation. As affirmed by Milner, “an order that appears to be legitimate is far more likely to be obeyed than one that appeals only to self-interest or habit” (Milner 1991, p.74) and hence this section of the debate shows how this is illustrated by the AML standards.

Due to their recognition of interdependence and common threats, great powers form coalitions aimed at pursuing their AML related preferences (Drezner 2005, p.842). Therefore, while empirical data confirms that the closer the preferences of great powers are the more likely it is that procedural harmonisation will occur, the “international community cannot be entirely satisfied yet” (Moulette 2012) as AML standards have still a long way to go. In addition, research has demonstrated that while the input of great powers is necessary, it is not sufficient to ensure procedural harmonisation, especially in so far as compliance is concerned.

Money laundering threats, to the integrity of the financial system, appear to generate greater fear in developed economies given that none is able to tackle the issue independently and in an effective manner. So, among other strategies, IGOs contribute to “resolve the tension between efficiency in decision making and the legitimacy conveyed by wider participation” (Kahler 1992, p.703). The decisions to delegate are still interest based but the legitimacy requirement has increased through time as the AML standards were internationalised.

Empirical data has shown that in developing AML standards the role to be played by IGOs is growing from the belief that the current mixture between soft and hard laws (i.e. smart power) or ‘voluntary standards’ with ‘real’ enforcement mechanisms is not ideal (Zagaris 2004, p.154). In addition, the US’s superior investment in the AML standards is being questioned, in light of the few successes in terms of effectiveness, and as many other countries do not have the electoral ability
to commit in the same manner and fear losing control over the framework. Calls for legitimisation of the current framework by non-great powers is not surprising.

As a result, while great powers are in control, their motivation to pursue a ‘legitimate common strategy’ resides in the apparent benefits of efficiency and wider acceptance by other states.

**US: a great power struggle to support AML standards**

As shown in Chapter V, the maintenance of security and a stable economy are the main reasons why the US works towards implementing AML. But, how do those interests illustrate a preference for a more a globally state supported strategy?

The US’s position as ‘the’ great power and leader in AML standards is evident from the historical overview of measures implemented at national level assessed in the chapters above. Available literature and AML interviews confirm that the “Americans play an important role” in influencing international AML policies and FATF more than others, although that ultimately says little of their own compliance.

The US is often described, even by the private sector, as “very double standard” as regards implementation (Zagaris 2004; Arnone & Padoan 2008, p.362; Helleiner 2000, p.10; Levi 2002, p.186). For example, the American Treasury Department has engaged in a battle regarding the lowering of certain standards on the reporting of specific amounts of money transfers and “Paul O'Neill, the US Treasury Secretary, has worried international regulators by seeming to favour offshore tax havens, even if he does not favour their money-laundering activities” (The Economist 2001), illustrating how the US fights its own financial sector priorities within the development of AML.

As the analysis has demonstrated, the most pronounced motivation for the US to enact AML legislation was the recognition that the proceeds of international drug trafficking were having a massive impact on the US banking industry (Mulligan

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2 Interview H, September 2012.
4 Interview K1, April 2013.
5 Literature was furthermore confirmed with the great majority of author expert interviews.
1999; Rider 2002). The measures that followed this realisation, around the 1970’s, were characterised by economic concerns and the “Global War on Drugs [that] has been the central theme since the beginning” (Levi 2007, p.169) effectively shaping and naming many of the earlier international AML instruments. The general idea behind the creation of an AML system in the US was hence to generate ‘serious liquidity problems’ (Rider 2002, p.145) for criminals in order to reduce the profitability of operations. As a result, the impulse behind US action was the protection of the financial system under the assumption that “[y]ou simply cannot curtail the drug trade without curtailing drug money” (Raymond Baker, GFI Director in, Gascoigne 2013).

The first obstacle to the American interests appeared at the end of the 1990’s when there was some resistance from the private sector in implementing measures namely those focused on identification of customers, beneficial ownership and reporting obligations that sparked the international cooperation (Roberts 2003; Sahr & Morales 2002). In addition, at this state one of the greatest challenges faced by the US was the degree to which the “international community is willing to commit to and cooperate” (Zagaris 2004, p.147) with it and its leadership in this area.

The PATRIOT ACT, with the introduction of domestic and external securitisation of policies that followed 9/11 was an easy solution to overcome some of these obstacles. Its subset of AML laws was “the most significant package of anti-money laundering measures in more than a decade” (Sahr & Morales 2002, p.584) and probably the largest incentive for the US to internationalise the AML process and to prosecute AML offences more aggressively than any other (Levi & Reuter 2006, p.346). At this stage, the establishment of AML and terrorist financing policies internationally therefore became an integral part of a US strategy committed to a “great effort into tracking terrorist funds” (Comras 2005) seeing as divergent standard adoption was not thought to be enough (Doyle 2002, pp.288–293). Moreover, “American leadership on the international financial enforcement front peaked in 2001” (Zagaris 2004, p.128) when enforcement mechanisms were strengthened and the US Department of Treasury began to act extraterritorially.

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translating the American belief that international cooperation was necessary (For more on this issue see, Zagaris 2004).

As defined earlier in the thesis the US had a significant interest in creating an international framework as otherwise its own laws would fail. However, it realised that doing so without the recognition of legitimacy would be less than desirable. As a result, in their pursuit of alternative international cooperation Americans became “less interested in ruling the world than they are in a world of rules” (Ikenberry 2004, p.630) as is corroborated by their endorsement of the 40 Recommendation and the continued presence of “considerations of US ‘grand strategy’ [in the] largely instrumental position within the conduct of US international policies” (Smith 2010, p.105). Of relevance, it should be recalled that in 1989 the US delegation to FATF had “no desire to promote KYC (…) and their primary interest was to create worldwide control mechanisms over money flows” (Pieth & Aiolfi 2003, p.359). However, the US realised if the system did not appear ‘legitimate’ it would not work and so it currently maintains a practice of international cooperation and reliance on partner states and IGOs in order to pursue its own objectives.

Ultimately, the actions of the US to achieve international support of AML standards suggest, as demonstrated by research, that the perception of an international effort to combat common threat with a ‘right strategy’ (i.e. legitimate) is also a requirement of procedural harmonisation and therefore a relevant condition.

**The EU: harmonising as a condition for the internal market’s success**

The EU’s need to justify its actions in AML is much alike that of the US with an added preoccupation of internal market specificity. More than at nation-state level “[p]ressures for AML consistency are particularly strong in the European Union” (Levi & Reuter 2006, p.307) as a result of integration and shared territorial, economic and political space.

Since the 1950/60’s “[e]conomic cooperation, as opposed to, let us say, defence cooperation was less politically controversial and promised to create recognizable returns in the form of economies of scale and scope over the medium
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term” (Verdun 2011, p.262). Therefore, from an early stage the EU was more economically oriented than security focused and so, not surprisingly, more prone to developments at the economic level than in the criminal law sphere. The rational for the development of AML within the EU is its transnational nature and “to have a more harmonised and integrated preventive AML/CFT legislation (…) to protect the integrity of the financial systems as a whole” (Broek 2011, p.180). The strategy adopted more generally is one of ‘communitisation’ (EUROPA 2012) or, the passing of intergovernmental powers to supranational bodies, namely the Commission, the Council of the European Union and the EP.

The EU’s action, nevertheless, extends beyond the internal market and includes criminal law and justice and home affairs provisions within internal and external relations. On the external dimension of the Area of Freedom, Security and Justice (AFSJ) “[c]ountering illegal immigration, drug trafficking, and cross-border crime requires members to work closely together” (Rees 2011, p.227) and in this sense there has been a clear development of criminal law through the EU’s integration (Monar 2012a; Monar 2012b). Moreover, “[t]he adoption of common positions on fundamental AFSJ issues also offers the EU and its Member States a better chance to defend common interests (…) even against powerful external pressures like those of the US in the context of counter-terrorism cooperation” (Monar 2012b, p.70). Some of the relevant tools that can be identified are: the proposed establishment of a European Public Prosecutor’s Office (European Commission 2013b) a framework for identifying, tracing, freezing, seizing and confiscation of instrumentalities and proceeds of crime, promoting cooperation and coordination among Financial Intelligence Units, and additional measures to cover confiscation and asset

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7 Following the Community Method principles, to communitarise, from the French "communautarisation," mean to transfer a policy from the intergovernmental realm to the former first pillar or community method.


In addition, the EU’s strategy for control of organised crime of 2000 “calls for highest possible priority to be given to the strengthening of the mutual evaluation process and its utilisation for the most important issues concerned with the prevention and control of organized crime” (Levi & Gilmore 2002, p.355) confirming a direct link to FATF strategies and the importance of international cooperation.

In sum, the EU has expanded its approach to the AML policy area and those surrounding it in order to present a consistent and strong framework of action that builds on itself and therefore appears legitimised.

Criticism of the EU’s approach to AML, regardless, has been present although not for the same reasons as with the US. Mitsilegas argues, “[t]he largely uncritical adoption by the EU, in the form of binding legislation, of global standards raises questions of both the legitimacy of EU action and the compatibility of the new legislation with fundamental rights and EU constitutional principles” (Mitsilegas & Gilmore 2007, p.140). Whereas, some international officials believe the “EU has given significant steps forward in re-dimensioning sovereignty and expanding JHA”11 this issue has been further criticised by other authors claiming that the EU’s adoption of international standards into or close to criminal law provisions means that this area is becoming “something of a ‘prima ratio’ rather than ‘ultima ratio’” (Herlin-Karnell 2011, p.96). However state representatives suggest, “most countries just want to transpose the FATF Recommendations and that creates problems when discussing the Directives, especially bigger states like UK and France”.12 The EU is in this way a reflection of its memberships interests and preferences, as seen, mostly influenced by EU great powers in line with their coalition with the US.

Altogether, the EU has attempted to contribute to the recognition of the procedural harmonisation of AML standards almost as much as the US in light of its own concerns with the internal market stability. The main EU struggle, as opposed to that of the US, is nevertheless, not justifying AML standards before states outside the

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11 Interview J, September 2012.
12 Interview L, November 2012.
EU, but also in such a way that EU members can agree to develop the laws further and add new safeguards to the internal market.

**A great power quest for international support**

As regards the identified quest for legitimacy and support of other states by great powers, three conditions for harmonisation discussed in the chapters above are identified: the broadening of FATF membership; the extension of debate from G-7 to G-20; and, the inclusion of private sector stakeholders in the negotiations.

Firstly, as FATF is a restricted club of wealthy nations, its members are well aware that the “power to control admission to membership in any particular regime or ‘club’ is a powerful weapon” (Slaughter 2005, p.201). FATF has clearly defined as a membership condition being a “strategically important country” (Para. 150, FATF 1999) and therefore membership was only slowly increased to extend geographic representation and counter lack of representativeness claims. It started out with 16 members expanded to 28 in 1992 and then again to 33 members in 2003, reaching the highest membership of 36 in 2010. These enlargements were not always positively viewed as it is considered by some\(^\text{13}\) that newer members were not ready to implement all Recommendations, as they do not have the necessary instruments or practices in place to ensure their full use of FATF membership.

At the 2013 February plenary the FATF set up a procedure to consider “the case for/whether to undertake a limited expansion of its membership with the aim of ensuring it has an optimal membership” (FATF 2013d) and results on this are awaited with considerable expectation. The organisation and those who work with it have little desire to see it expand in fears of loss of efficiency and control. On the other hand, an extended membership could signify even more influence stemming from increased democratic participation. Despite the outcome, in 25 years of existence FATF has mainly gained from its restricted membership and from the

\(^{13}\) Interview D, March 2013.
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‘membership carrot’ as a tool to achieve compliance and participation as illustrated by the Russian example.\(^\text{14}\)

Secondly, the empirical findings identify the extension of the standards debate to non-FATF states as one of the main reasons behind cooperation. Ultimately, not all countries have become members of FATF, nor is membership in the pipeline.\(^\text{15}\) At the same time, participation in FSRBs is often too restricted and ‘down’ the policy making pipe to be consequential. Therefore, the partial shift of international agenda setting powers from the G-7 to the G-20 suggests that the great power coalition found it harder to maintain their interests on top of international priorities in situations where democratic participation is in question. As a result, a consequence appears to be the inclusion of more states into the process (e.g. the G-20 and FSRBs) while keeping FATF as a manageable club in terms of membership numbers.\(^\text{16}\)

The impact of the quest for ‘legitimacy’, here understood as a form of peer validation, by great powers confirms that whereas these states continue to set international agendas, the existing calls for support of great power decisions to ‘harmonisation’ corroborates this thesis’ the sense that global governance policies require wide backing (Hülsse 2008, p.460). Therefore, as an explanatory variable the role of great powers, even within a coalition, is not sufficient to justify the changes in policy throughout time. Admittedly, the increased reliance on the IGO network as well as the permitted increase of membership to club organisations like FATF, the broadening of decisions from G-7 to the G-20, and the inclusion of other stakeholders into international governmental fora are evidence of the gradual recognition by great powers that the AML standards require legitimacy and international participation.\(^\text{17}\)

In some ways the process of international decision making that is described in this research may be seen as an international version of the ‘regulatory state’ or the

\(^{14}\) Russia was targeted by FATF sanctions as a non-member but joined FATF shortly afterwards.

\(^{15}\) Although most economic powers are members of FATF. Of the G-20 only Indonesia is not a member. Saudi Arabia is represented by the Gulf Cooperation Council.

\(^{16}\) Whilst FATF Plenaries have significantly increased in number, only FATF members can vote and are ultimately responsible for achieving consensus.

\(^{17}\) Yet, it may be argued a truly legitimate participation is far from happening as membership is still very connected to economic and financial significance.
distancing from the “direct provision of public services (…) towards oversight of provision of public services by others” (Scott 2000, p.44). This interpretation is in line with the acknowledged interdependence and new strategies to wield power referred to in the introductory chapter. In other words, the making of AML standards and the evidence of procedural harmonisation that arises from it is also a consequence of the multiplicity of actors that work towards the standards’ development.

Great power decisions are, nevertheless, only representative of a minority ruling and therefore stripped of legitimacy. In this sense, the sustainable maintenance of the current AML standards will depend on the added perception of legitimacy that great powers and their partner states are able to confer it with. Reich has argued that the birth and development of a global norm, as he would describe AML, is dependent on many factors, like the support of great powers (especially the US), the involvement of IGOs but also its institutional codification (Reich 2010, p.4). Although not committed to the definition of AML as a norm, the process as analysed in this thesis includes all of the above in addition to attempts to legitimise the practices that surround it.

Ultimately, this research has shown that AML suggests mainly empirical and substantive legitimacy coming from the mutual evaluation processes and the acceptance of said (institutional) process by most states (Take 2012, p.220). From this rationale, while great powers are able and willing to deal with challenges themselves, the realisation that institutions may, not only solve common problems, but also “entrench power hierarchies and the interests of powerful states” (Hurrell 2005, p.48) confers them with the certainty that there is a gain in giving up control.

The summary above reaffirms the preferences at stake in the making of standards and what the motivations of great powers are to develop the AML standards. Nevertheless, what derived from this and what was demonstrated in the empirical chapters is that if international cooperation is to be secured, legitimacy is necessary (through adding more states and IGOs to the discussion). The quest for legitimacy has not, in any case, driven great powers to completely delegate powers of decision-making and it should be highlighted that the IGOs involved mostly
decide by consensus (FATF), restricted membership and weighted voting rights (IMF and WB) and according to funders (UNODC). Therefore, while smaller states’ calls for legitimacy promoted delegation, extension of FATF membership and the involvement of IGOs there is still an important element of control exerted by great powers hinting at more ‘window dressing’ than reality (Sharman 2011; Sharman 2008).\footnote{Literature confirmed by, Interview D, March 2013.} Because, as even IGOs officials accept, “the world is inevitably dominated by powers which are bigger than nation states (...) we cannot always hide behind sovereignty to avoid solving problems.”\footnote{Interview J, April 2013.} In this case, it is confirmed that regardless of the level of control that great powers continue to exert over international policy-making, there is evermore the recognition that successful measures are achieved through cooperative mechanisms and the inclusion of ‘smaller states’ (through FATF membership or IGOs representativeness) into the process.

Finally, with their technical nature, the mutual evaluation process creates the basis for the decision-making and escape of great power control.\footnote{Although this has arguably not happened seeing as the biggest countries to be under FATF’s sanctions threat were Turkey, Austria and Russia (for short periods).} In this sense, the peer review system, as the outcome of harmonisation, is maintained by great powers’ need to provide legitimacy to their actions and broaden the policies to a global level. This requirement has led to a state preference for stakeholder involvement in consultation fora as well as private meetings, and participation in calls for evidence thereby expanding on the idea of being on the right policy track through the gathering of information from relevant stakeholders.

Ultimately, the AML standards indicate that great powers’ actions are necessary conditions for procedural harmonisation but in themselves not sufficient.

## 7.3 The AML network and the importance of being compliant

This section suggests that the requirement for compliance is, as a policy characteristic, a strong element that influences the nature and preferences of actors.
This section therefore focuses on clarifying the role of the FATF and AML Network in maintaining the instruments for harmonisation and achieving global compliance with AML standards.

Chapter V demonstrated how the evolution of CDD standards is shaped by great powers but complemented by their delegation to IGOs and their own subsequent contribution to the process. The role that IGOs play in the harmonisation process is hence reminiscent of debates on global norms formation but, as proposed here, their action appears to be connected to calls for legitimacy and the urge to achieve compliance. For the purpose of this discussion, the proposition that global standards are close to ‘global norms’ and evolve through shared understandings and construction of shared issues is thought of being just as overstated as the claims that great power politics is biased towards coercion.

Therefore, whereas Hülsse (2007, pp.168–177) elaborates on ‘normative persuasion’ and the role of FATF in the ‘problematisation’ of money-laundering as a collective problem; this thesis does not follow the constructivist take on norms in virtue of: a) the neoliberal institutionalist assumption regarding the role of the state and its interests in shaping global governance (see Chapter III); b) the interest of great powers in maintaining economic interests and the financial blackmail generated by some of the AML enforcement mechanisms (see Chapter V); c) the fact that the process of harmonisation through informal and formal processes, cross-pollination and the principle of consistent interpretation varies according to great power political priorities and the AML Network actions. As a result, the role of IGOs in the standards making process is not normative because it is seen as a practical complement to state interests as expressed by its influence in the context of mutual evaluations. It is a debate about process not origin.

The degree of economic and security interests that have been identified as well as the institutional preferences through which procedural harmonisation occurred therefore hinder the idea of international AML standards developing through a normative process. As a result, for territorial and legal restrictions states are not able to enforce AML standards individually. So whereas great powers delegate to IGOs in order to afford the policies with legitimacy and the perception of wide support and
adequateness, the underlying objective is to achieve compliance. IGOs are therefore mandated to use their international reach and coordination capacities to ensure policies are complied with and developed as needed.

**FATF’s global governance: constructing globally representative policies**

An IGO official and AML expert has described the making and implementation of AML standards is “a mutually supportive effort”\(^{21}\) which must be analysed in light of the main international actors. As a result, this thesis analysis of data suggests that the role of FATF is increasingly to ensure global support for the policies being proposed, either through showing strong supporting evidence, or through increased membership.

The AML framework, whilst crucial to the struggle against crime and the funding of terrorism is often questioned regarding its consequences to developing financial systems, and as far as concerns their adequacy to combat organised crime\(^{22}\) and other forms of criminal action (Mitchell 2012). The FATF (as AML Network leader), being too close to its ‘club’ members, is often criticised for applying double standards meaning that ensuring compliance can be challenging (Hülßse 2008, p.465). As a result, how has FATF fulfilled great power objectives and built from IGOs participation?

As demonstrated earlier in this thesis FATF’s role was key to the start of the process of harmonisation through the mutual evaluation mechanism and the varied tools that support the AML standards. In essence, FATF owes its success to its institutional delineation and task-force structure that creates space for action and some strategic independence.

However, the fact that FATF is a ‘club organisation’ does not speak highly of its legitimising capacity and effective nature without resorting to coercion or a

\(^{21}\) Interview J, September 2012.

\(^{22}\) Strategies to combat organise crime have long been caught between enforcement and prevention debates. The reality is FATF has built a ‘firewall’ but has no crime prevention programme (or the likes of) attached to it, making it an essentially incomplete body.
significant normative influence. On the one hand it demonstrates that “[s]tates often favour informal agreements in areas where uncertainty is high because they retain more flexibility to modify the agreement” (Verdier 2009, p.167). However, on the other hand it demonstrates that high degrees of enforcement are possible within small groups with similar domestic principles (De Bièvre et al. 2013, p.17). As such, some claim “FATF is the product of its governments garbage bin” (Jeremy Carver, European Commission 2013d) and it must tackle the issues states are unable to address. So, although having a strong mandate, FATF is not able to achieve harmonisation or legitimacy alone and is driven into relationships with other IGOs as part of an effort to consolidate great power delegation with practical requirements and self-validation.

Once established, the AML Network is defined as characterised by shared preferences, stable relations and exchange of resources that occur on behalf of compliance. FATF’s 2011-2012 annual report re-stated its commitment to “engaging with its stakeholders and partners throughout the world to successfully fight against money laundering and terrorist financing” (FATF 2012b, p.34). As a result FATF uses much of the secretariat’s time working towards better relations with external parties, in particular the private and non-profit sector. However, in addition to outreach efforts like the ‘private-sector consultative forum’ (which will be addressed below) FATF’s influence is particularly obvious in its work with other IGOs. As suggested by the empirical chapters, FATF does not operate on its own, and that definitely provides a binding element in the AML world, partly because it is state mandated to do so, but also because it identifies itself as a regulator and guardian of AML standards that connects the majority. It may be argued that the FATF is as legitimate and influential as the states that support it and the institutions it collaborates with, which in this case confers it with a significant breath of power (Black 2008, p.142).

Ultimately, as the centre of the AML Network, FATF’s role is that of facilitator of procedural harmonisation but not its champion. Harmonisation is more evident through network action as illustrated by the work of the peer review processes and the fact that 73 per cent of “jurisdictions altered their laws in direct response to the FATF threat of economic coercion” (Drezner 2008, p.145) thus
yielding to the AML Network pressure and efforts towards compliance. These actions among others leave a distinct perception that “FATF has real power”\textsuperscript{23} and definitely promoted the forward movement of international AML standards. An AML campaigner declared, “FATF is really quite powerful, without any legal framework, it has real impact”.\textsuperscript{24} In sum, FATF’s activities and leadership of the AML network suggests that when faced with global threats, great powers (and perhaps other states) may prefer compliance before external validation, but that both are favoured by network cooperation.

The AML network and the path to compliance

The AML Network is an expression of FATF’s leading role in global governance but also of international institutional efforts to demonstrate strength beyond great power delegation. Therefore, this section begins by discussing the degrees of support and validation that the AML network has been able to offer great powers and the ways in which this facilitates the objective of compliance.

A significant contribution of this thesis to global governance literature is the elaboration of the AML Network concept, and its ability for crisis response, implementation, and establishing compliance. Firstly, as FATF is a task-force, the AML standards have a faster response mechanism at their disposal than would exist within a UN-like system. Secondly, as the AML Network relies on stable relationships and exchanging resources, its ability to respond to crises is normally a targeted act by the network participant most suited for the task. Finally, compliance is favoured by the AML Network’s activities as it built and constantly develops the peer review mechanism and its methodology, tools and ranking system. Unlike what Zaring (2012, p.714) affirmed regarding the inability of networks in global financial regulation to have enforcement mechanisms, the defined network is not only able to provide daily oversight but that appears to be its most consequential contribution.

\textsuperscript{23} Interview Q, July 2012.
\textsuperscript{24} Interview Z, March 2013.
From the analysis conducted in Chapter VI, it is noticeable that there was a “substantial, often disproportionate influence” (Abbott & Snidal 2009, p.26) of great powers over IGOs. Nevertheless, what emerges from the analysis of the AML Network is the ability of IGOs to mitigate this influence through institutional partnerships. The outcome of policies, harmonised or not, should be interpreted as a consequence of IGOs partnership and the varied preferences as expressed by actors within their interactions independent from great power control (Klijn E. H. & Koppenjan J. F. M. 2000, p.147). In this context, however, how does the AML Network provide the legitimacy, and ultimately compliance, that is absent from great power input? And is the network development favoured by the need for compliance?

At the start of the AML policy-making process, and especially in 1994, around the preparation conference for the UNTOC “most states were not keen on the FATF standards because they had not helped develop them. FATF was a closed group belonging to the G-7, very much a Western organisation”.25 In line with this, the building of the network through time reflects its constant questioning by the international society indicating that great power delegation to IGOs might not be sufficient to satisfy cries for legitimacy. Regardless, while doubts regarding the need for global AML standards persist, the framework has become more accepted by states worldwide and grown in thematic stretch (e.g. to include the financing of terrorism and proliferation of the financing of weapons of mass destruction).

This debate on FATF suitability has been tackled in different ways. Some argue that if “FATF had not put money-laundering on the list of global evils, financial systems could not become accomplices of criminal action” and therefore there is a constructivist understanding of the call for global governance through AML which is based on the ‘idea’ of a threat being constructed (Hülsse 2007, p.174). To date, statements like that of the AML system being a Potemkin Village support this vision and call for a system where rules are translated into crime reduction (Millman 2014b).

25 Interview J, September 2012.
Conversely, this analysis and Rick McDonell’s response to criticism offers a significant contribution to global governance whereby the AML system and its conditions lead to a functional harmonised process of AML combat (with some effectiveness deficiencies). The FATF’s Executive Secretary affirms that the outcomes of the policy-making process so far is a consensus between states which have agreed to “do something” about money laundering (Millman 2014a). The AML network has been a reflection of interdependence, cooperation and shift in power from states to institutions as attested by official documents and expert reflections advising: “FATF should lead international efforts not only to articulate international standards relating to anti–money laundering and counterterrorist financing (AML/CTF), but also to monitor and assess implementation and compliance with those standards” (Wechsler & Wolosky 2004, p.30). Increased reliance on FATF and its network illustrates not only the acceptance of relative degrees of legitimacy but essentially its usefulness towards achieving standard implementation and compliance. Ultimately, while a degree of global representativeness exists in the network sourced in membership and participation, there is also a significant distancing from IGO actions to the democratic core of voters, which may be one of the network’s weaknesses.

The FATF, as a result of these mixed opinions on its nature, suffers from a form of ‘structural depression’ that leads its architects to claim that they “certainly want to avoid institutionalising” (Griffiths 1993, p.1829) themselves and achieve permanence. Moreover, its staff has been known to “deny anything comes from the secretariat until their faces turns blue”26 even though the majority of interviews27 collected for this research show a high degree of recognition to the secretariats’ work. Findings confirmed that that “a lot of work is done earlier (ahead of FATF plenaries) at working group level” and, particularly, that the secretariats’ expertise and contribution to FATF reports, typologies and guidelines is essential.

Evidence presented in chapters above suggests that the alleged AML standards legitimacy shortcomings are often a consequence of great power preferences as

illustrated mainly in the NCCT/ICRG process, the effects of the PATRIOT Act, and to a lesser extent in the ECJ’s Kadi case debate. Moreover, the issue of effectiveness appears somewhat more related to the process of evolution of international law and the establishing of custom than to the AML Network’s actions. In spite of this, the FATF’s criticism is here to stay.

Regardless, from a theoretical point of view, and as suggested in Chapter VI, the AML Network represents an important contribution to global governance strategies in dealing with common threats and, furthermore, one that has changed throughout time to ensure increased accountability and representativeness (Forman & Segaar 2006; Hülsse 2007; Woods 2010). Naturally if the AML Network is to be generalised, the criticism above needs to be addressed. However, it should be further considered that in some cases ‘effectiveness’ “refers to the capacity of the club to solve the problems at hand, ideally in the most efficient and desirable way” (Kirton 2012b, p.43) while legitimacy may be retrieved indirectly although neither is final.

States, particularly great powers, will continue to have control over IGOs in the sense that the “more resources (...) the more effective institutions” (Gardner 2007, p.329). However what evidence here shows is a tendency for change that does not necessarily threaten state power or its sovereign supremacy but allows it to exist within a different context. Whilst some debate has been had on the matter, the analysis of the AML Network suggests that issues of asymmetrical power relations, appropriateness of fora and impact of network action in international relations requires further consideration in light of changes that have been demonstrated as occurring in global governance and the importance of compliance as a network development tool (Forman & Segaar 2006, p.208).

Mostly, the thesis’ research finds that the network provides legitimacy to great power actions through the recognition of interdependence and the acknowledgement of the need to achieve results (Scott 2000, p.59). Milner contributed to this premise affirming, interdependence “does not imply either that actors’ interests are in harmony or that power relations are unimportant” (Milner 1991, p.82) simply that functioning through a network system provides better results and greater chances to ensure compliance. The IGO network is thus not a perfect construction for global
governance but it does seem to offer a better response to criticism than transnational regulatory networks (e.g. IAIS), state dominated and dependent systems (e.g. UNODC), purely non-governmental strategies (e.g. NGOs networks), or single-institution governance systems (e.g. WTO).

Overall, the AML framework is an on-going process that the great majority of policy-makers interviewed for this research see as unfinished. Issues of effectiveness and legitimacy are attributed to the early stages of development in which global governance finds itself and do not represent such a structural deficiency of the AML Network. The broad analysis of the standards development process and the increasing role of IGOs in its development across time indicate a greater willingness to accept this action in which the AML standards are ‘leading navigators’ as it is promoted by the urge to comply.

Note that, as Kathryn Gardner so succinctly wrote:

“In its initial years, the FATF’s recommendations were purposively imprecise to allow for wider interpretation in order to accommodate different legal systems and institutional environments. As the organization has learned more about the nature and practice of money laundering as well as what measures work, the nonbinding norms have become increasingly more precise, enhancing both the legitimacy of the norms and the organization” (Gardner 2007, p.331).

Therefore, this debate on the importance of the AML Network towards achieving compliance, and vice-versa, indicates that it has benefited from an increasingly stable growth since 1989. It has complemented great power action in what concerns legitimacy (as interpreted here) and compliance, and in this process developed knowledge on money laundering specific issues.

This section presented arguments for the recognition of the search for compliance as an element that facilitated the AML Network’s development and its responsibility for awarding the AML standards with internal and external validation.

28 Additional literature on the contribution of IGOs to effectiveness, the development of the AML framework and FATF more generally can be found (as indicated earlier in the thesis) in, Halliday et al. 2014; Jakobi 2013.
29 As confirmed by author interviews of former-FATF Plenary participants. See Interview U, July 2012; Interview V, November 2012.
The compliance objective suggests that the role of the network is crucial not only through its participation in mutual evaluation processes but also through the maintenance of stable relations, common interests and resource exchange as shown in Chapter VI.

Data gathered shows that domestic and international politics interact with each other on behalf of an integrated economy and markets that require predictability and available information at all times (Lloyd 2010, p.85). In these policy areas compliance appears to gain a prominent positions and become intrinsic to delegation to IGOs and their role in the regulatory space (Reich 2000, p.506). As Jean Monnet put it “[n]othing is possible without men and women, but nothing is lasting without institutions” (Cohen 2011. Emphasis as original). However, what this section highlights is the possibility that institutional success depends on the need for compliance and the degree to which it shapes state preferences.

The next section contemplates expertise as the third element originating from the analysis and a complement to the conditions for procedural harmonisation. Great powers’ response to calls for legitimacy and the AML Network’s struggle to achieve compliance has indicated that an additional form of policy-input is present and in itself may influence the actors involved towards procedural harmonisation.

7.4 Expertise: a constant in global governance

In light of the evidence collected throughout this research and its suggestions that achieving harmonisation in global governance is a multifactor process, the concept of ‘expertise’ emerges as a constant in the making of AML standards. Within the analysis of great power and the AML Network action research suggests that policy inputs often derive from knowledge (here to mean the same as ‘information’) gathered through research, empirical observation of money laundering characteristics by policy-makers, as well as from input originated in specialised stakeholder sectors.

As a result, this section defines expertise as well identifies its use and purpose as present in the making of AML standards. The recognition that the AML network
evolved and provides great powers with the support needed to implement the standards globally suggests that a certain reliance on expertise may be an additional condition for procedural harmonisation. As a result, research proposes that in order to achieve global acceptance of AML standards and, for the AML network to achieve compliance, some sort of ‘expert input’ is normally present. In other words, gathered data suggested that in the process of decision making within great power circles, like the G-7, or within IGOs network collaborations, there is a constant and increasing need to base policies on evidence and information collected within sources of recognised authority. Varied entities fall under this premise, particularly IGOs’ policy officers, private sector stakeholders and researchers collaborating in the process through consultant status, secondments or similar. Therefore, the objective of the following section is to provide an initial conceptualisation of expertise and its role in global governance processes.

While the issue of expertise has been addressed in literature it has not been contextualised along a specific issue and global governance more broadly (Marcussen 2005; Nelkin 1975; Radaelli 1999; Levi-Faur 2005). Its presence in transnational regulatory network descriptions has not been assessed in depth, as it is difficult to define and assign specific sources of expertise. This research thus looks to ‘kick-start’ the discussion and influence future research taking into account the findings within its assessment of the AML standards reality.

Some define expertise as “an authoritative claim to policy relevant knowledge” (Jong & Mentzel 2001) expressed through written or oral evidence backed by research or professional experience and constituting all informed opinions that contribute to the adequacy and relevance of new measures and instruments proposed for specific policies. Indeed, “this emphasis on expertise is reminiscent of the constructivist paradigm in international relations, which identifies experts as important in shaping or creating the world view of co-operating states” (Hülsse & Kerwer 2007, p.631). The findings in this thesis, accordingly, reflect this definition and suggest that this influence exists in the making of AML standards and in line with the conditions for harmonisation assessed so far.
On the other hand, Peterson (1995, p.79) also defined experts as those “who can define problems, identify compromises and supply ‘expert’ arguments to justify political choices” indicating a more utilitarian vision of expertise which has also been present in AML, for example, in the implementation of the NCCT lists discussed in Chapters V and VI.

Broadly, expertise, to the extent recognised by this research, is based on empirical evidence and carried out with broad impartiality ambitions, mostly free of political links, influence or bias. It is, in its majority, authoritative knowledge used to make international policies. Indeed, whereas states and government officials may be one of the sources of expertise, this thesis has identified a more ‘internationally-oriented’ expert input, which unlike government officials, is focused on global governance rather than domestic problems and therefore requires ‘experts’ with a broader knowledge scope (For a rough definition see, Heclo 1978, p.103).

In spite of which definition one subscribes to experts are, broadly speaking, and as far as AML is concerned, “widely regarded as a source of power” (Nelkin 1975, p.36) because they represent an important legitimisation instrument to most international policies; particularly, as in the case of AML standards, those with high sovereignty costs. In reality, where citizens lack in influence over decisions, “professionals exert much more” (Dahl 2005, p.305) given that they have evidence to present in favour of a specific solution to a collective problem. Moreover, in order to influence or inform more effectively, experts outline quasi-communities and inform policy-makers together by “making negotiations easier and more likely to lead to a harmonization of policies” (Drezner 2001a, p.63). They form the so called ‘informational elites’ that appear to be “organising in a globalized fashion” (Martin & Sinclair 1999, p.10) and working to “provide orientation to “actors struggling to understand their interest in extremely delicate issues” (Radaelli 1999, p.764).

As a result, expertise is here understood following Kerwer and Hülsse as:

30 The majority of what is here understood as ‘international experts’ are persons employed by IGOs e.g. those participating in mutual evaluation procedures, employees of multinational financial institutions, international NGO advocates and contributors. In some exceptions, persons on secondment from states to IGOs may be considered ‘international experts’ given the focus and orientation of their present occupation.
“knowledge produced and administered by specialists and can only be challenged by specialists, whose ‘competence is considered so advanced (...) that it cannot be evaluated or controlled by persons without the same education and the same access to research.’”(2011, p.59).

Expertise is highlighted as having an impact on the AML outcomes by the empirical chapters and the discussion above on legitimacy and compliance. Expertise is closely related to the issue of legitimacy of ‘club policy’ rules and the capability of IGOs to achieve compliance. Consequently, how has expertise influenced the varied conditions of harmonisation? Is expertise a condition under which the procedural harmonisation of CDD occurred? How may this finding impact future global governance research?

Knowledge and information exchanges have been a constant since the creation of FATF with mention of ‘expert meetings’ being present in almost all FATF annual reports; The assessed IGOs depend on expert knowledge to carry out technical assistance requests, mutual evaluation reports, typology exercises and standard revision exercises, most of which are carried out by people whose authority in the areas is widely recognised by the IGO, state or private sector entity.31 As such, in the context of global governance, expertise is suggested as having a growing importance in transnational policy-making by informing the documents that guide policy making.

With great power coalitions and the increasing role of IGOs as international actors becoming more common the facilitation of knowledge transfer became essential to avoid further power inequalities and having some member states with more control over the network than others. Majone, discussing the role of EU agencies, affirmed that international regulations rely heavily on this exchange and on the cooperation behind it (Majone 1997, p.274). Firstly, ‘information’ can comprise anything from procedural papers to setting meetings, agreeing on membership to institutions and political exchanges. Technically specific information or expertise is normally encountered in issue specific reports, papers based on research and

31 Evidence confirmed by the majority of interviews, in particular: A1 January 2013, B1 January 2013 and E, April 2013.
contributions from experienced professionals. Majone’s concept of regulation through information is central to the growing role of experts as actors in global governance and the recognition of ‘indirect regulation’ as that which changes behaviour through informing all actors with “suitable information” (Majone 1997, p.265). Therefore, if on the one hand the need for information and expert input is a requirement of global governance, the acceptance of that input appears to be dependent on additional factors linked to more traditional power sharing. In the AML standards there is a great need for technical knowledge and information exchange to happen especially through actors with a transnational character.

IGOs working in AML are, in effect, emerging as “particularly important centres of expertise” (Abbott & Snidal 2009, p.26) whose secretariats’ work in organising and disseminating information is crucial to policy advancement. An international IGO official confirms that building AML standards “is a lot about sharing expertise and passing on information and skills”.32 In fact, some of the criticism to the network can be mitigated by the recognition that these fora constitute knowledge centres and that “expert knowledge can lend authority to particular policy positions” (Boswell 2008, p.472).33

Kerver and Hülsse have, for example, discussed FATF’s ‘expertisation’ and how the inclusion of private actors contributed to its rule making capacity. The authors claim that “[a]lthough a number of international organizations have started ruling the world through standards, their importance is seldom acknowledged” (Kerwer & Hülsse 2011, pp.50–56), and literature rarely addresses how global governance takes place. Nevertheless, the analysis of empirical data in the previous chapters suggests that CDD standards rely on the technical and specific information gathered in the process of defining the best policy course (i.e. the role of the private sector forum at FATF, the NGO influences within the G-7, and the experience of state officials). An example of this practice is the acknowledged and increasing participation of the above-mentioned, and other, contributors invited to the policy-making arena due to the recognition of their input’s added value to the discussion.

32 Interview H, September 2012.
33 The uses of expert knowledge are more often referred to within organisational theory and the uses that institutions make of it as discussed in Boswell 2008.
Amongst the examples of expertise producing institutions are those that more often produce reports and studies that inform policy making. Milner affirmed, for example, that in light of interdependence “control over communication becomes imperative” (Milner 1991, p.84) as the more policy-makers know the more influence they have over the outcomes. In this sense, the IMF, the World Bank and MONEYVAL contribute to the expert input that goes into policy making along with states’ official representatives in international meetings. More interestingly though, the private sector is identified by gathered data as an important expert player which demonstrates increased participation throughout time and in relation to great powers and the AML Network alike.34 The first big input of expertise into international policy-making and harmonisation processes is thus its capacity to influence the preference formation stage of states and IGOs by offering specific evidence that would otherwise not be present.

Knowledge, ultimately, reaches an important status in new strategies for global governance (Levi-Faur 2005, p.955). “Knowledge is produced – not only reproduced – through the interaction in the policy process” (Radaelli 1999, p.769) leading to preference formation processes to be exogenous and informed.

Nevertheless, studies have demonstrated that without power to support it, expert input is not necessarily adopted and may risk being ignored altogether (Black 2008, p.146). Mattli and Büthe concluded in their study that while politicians must justify policies with technical knowledge, realists are correct in stating, “most economically powerful states are the major players in international standards games” (2003, p.40) and often disregard that requirement. Expertise could not, in this way, be a main actor in this thesis’ broader analysis but merits acknowledgement within a discussion of additional conditions for procedural harmonisation in a global governance context.

The remaining of this section identifies expertise as present in the AML Network and great powers’ contributions to procedural harmonisation claiming that: a) states are not contributing to expert input as much as they did at the start of the

34 The private sector is interpreted as a source of ‘practical information’ that is otherwise unavailable to transnational policies.
process; b) IGOs hold significant expert input given their transnational focus and resource exchanges, and c) the private sector is becoming an actor in itself due to its expertise. These two latter points suggest that global governance strategies can be gathered from research on AML standards.

This section’s objective is, in essence, to complement this thesis’ analysis of the conditions under which the procedural harmonisation of international policy-making occurs with the element of expertise as an important source of information, support and corroboration. According to empirical data collection, the development of expertise by great powers or the AML Network is arguably a successful strategy towards influencing global governance by shaping preferences into favouring procedural harmonisation.

**States and expertise**

The ‘great power-dominated’ FATF creation, the inclusion of the IMF and WB into the AML network and, the prominent role of the G-7 discussions in international agenda setting are an expression of state expertise (and power). Interviews of member state officials further reflect this belief and confirm “states have the expertise” or they would not have been able to create the structure and identify the issues in the first place. Ultimately, evidence of state-based expertise emerges from the fact that AML standards are built through state cooperation expressing preferences for financial system protection, avoiding transnational crime and terrorism and maintaining market stability.

Interviewees that participated in the standard-making process at its inception, corroborate this view more than those further down the line and, especially, those that took part in the process post-2001. The fact that great powers “had people from the ministries that know what is going on” was definitive for resolutions at a time when stakeholder participation was low and the IGO network had not been

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36 Interview U, July 2012.
developed. The overwhelming majority of interviewees, however, confirmed the higher degree of expertise present at IGO level as well as their capacity to operate at the international level, unlike even great power countries.

As a result, the data gathered from this research indicates that the national-based expertise is valuable in the context of Slaughter’s (2005, p.51) transnational governmental networks. However, the complementary roles performed by each, not only governmental, actors in AML exhibit interdependence in their cooperative strategies and in the pursuit of similar objectives. Ultimately, the states’ current control over the policy-making process is decisive but not as clearly translated into what is assumed by the ‘disaggregated state’ theory. The role of great powers in setting up the policy-making conditions for CDD harmonisation is crucial but the increased IGOs participation suggests standards are influenced by more than state preferences.

The conditions under which AML illustrates procedural harmonisation is therefore less a consequence of either great powers or the AML Network, and more a system of global governance where preferences from varied actors achieve similar space for debate, input and expression through knowledge and information. Accordingly, the analysis in Chapter VI suggest that the increased IGO participation and the reduced great power control could be a consequence of the technical and information-need nature of the issue and its calls for internationally relevant expertise which is best found in IGOs’ reporting, reviews and monitoring work.

**IGOs and expertise**

Expert input into regulations is being adopted as the ‘go-to tool’ in IGOs work because, ultimately, it is much harder to argue against informed data (Marcussen 2005). Within global governance and because the international settings often are characterised by an authority gap, the certainty offered by expertise is of high value.

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and most actors use it at the domestic level to justify changes in national laws and policies (Nelkin 1975, p.40; Radaelli 1999).

The AML Network may be an “important mechanism[s] for the delivery of global public goods” (Stone 2003, p.49) and AML standards are often presented as such (Tsingou 2005, p.102). Additionally, “information in and of itself is meaningless” (Comor 1999, pp.119–120) without a structure to support it and so IGOs become the most relevant structures through which it is disseminated and produced. The AML Network, in particular, possesses the infrastructure, the resources and the channels necessary to both gather expertise and exchange it with interested parties. Furthermore, selected IGOs, identified as sources of expertise, have even been called to become a part of the institutional network because of that expertise (Wechsler 2001, p.53; Reinicke 1998, p.169).

Developments in the global AML framework highlight the ways in which these institutions use expertise to derive legitimacy, efficacy (Nye 2001, p.6) and power (Barnett & Finnemore 2004, p.29). Furthermore, they use it to shape states and their own preferences seeing as they have a clear informational advantage in relation to the non-expertise producers (Gourevitch 1999, p.163). Some authors argue that there is a certain ‘scientisation’ of global governance implying that “public agencies are being endowed with scientific authority” (Marcussen 2005, p.3) and leading to the ‘apoliticisation’ of international politics and instruments through the promotion of ‘information-based’ policies. To a certain extent the evidence gathered from the mutual evaluation process suggests that this is occurring as the network of IGOs coordinates experts into a peer-review process of domestic laws without state supervision. It is assumed that in order to maintain independence and impartiality, independent evaluators are essential so that the information produced is accepted and validated as apolitical. The acceptance of this system by states therefore confirms their recognition of IGO authority to manage peer-review processes.

Overall, this thesis builds from the identification of the so-called “AML regime” (Kerwer & Hülsse 2011, p.55) and its transnational expert network but goes further and contextualises it within what it believes to be still a great power structure. Mostly what has been determined is that states, in the development of CDD and the
procedural harmonisation than emerges from it, seek expertise “as a means of supporting particular policy programmes” and the strategies implemented by the different IGOs (Nelkin 1975, p.40; Schmidt 2000), expertise subsequently feedbacks into the preference formation stages and revision of the AML standards at the FATF plenary sessions contributing to the wider involvement of AML Network participants. Consequently, the concentration of expertise between the AML network and those that participate in it either as seconded officials, consultants, contributors or researchers, may be assumed as being “above the fray of domestic politics” and so are able to present data as ‘scientific evidence’ (Bennett 1991, p.225). It is distinguished from ordinary information through its lack of politicisation and relation to great power preferences.

This realisation is exemplified, for example, in the recognition of the G-7’s work along with the AML Network, particularly the international financial institutions and their ability to “quickly address new issues swiftly” (Rudich 2005, p.17). As one interviewer confirmed “the one who writes is the one who decides”38 and in this sense, the WB, for example, has been referred to as an “engine of principles, guidelines, codes, standards, and best practices” (Slaughter 2005, pp.178–9), while the Council of Europe (and therefore MONEYVAL) was early on identified as one of the main bodies to include as a FATF partner because of its expert resources (FATF 1991). Similarly, the IMF has been identified as being a “truly expert institution”39 along with the UNODC, whose main concern is the “sustainability”40 of compliance and the insurance that mutual evaluations are not damaging to countries’ development. Moreover, the Commission, although not technically part of the AML Network, is another recognised institutional source of described as “taking the lead on expertise”.41

In line with these assumptions, permanent IGOs secretariats have the potential to win the race for ‘who has the most expertise’ as their ability to constantly exchange information is higher than states’ and their international reach means that

38 Interview L, November 2012.
39 Interview V, March 2013.
40 Interview J, September 2012.
41 Interview S, July 2012.
the information produced is more far reaching. A strong example of this is suggested, in Chapter VI, by the performance of MONEYVAL and its inclusion as a ‘first class FSRB’ in the AML Network by virtue of its contributions to the typologies and mutual evaluations methodology.\textsuperscript{42}

Altogether, the process of delegation from great powers to IGOs is not new to the theory that recently highlights how expert contributions are becoming even preferred to actual delegation (Kahler 1992, p.706). While this thesis maintains the concept of network as crucial to the development of standards, the experts appear to be free from institutional restrictions.

In this sense, Héclo has posited that the “true experts in the networks are those who are issue skilled [and] who know each other through the issues” (Heclo 1978, p.103) meaning that knowledge informing policy-making is essentially reproduced by those with more experience in the field, rather than political positions and power. The acknowledgement that most interviewees knew each other and had similar backgrounds, collaborated in reports and even exchanged employment positions suggests precisely that the ‘informed’ nature of international policy making goes beyond the disaggregated state concept, the great power control evidence and the institutional bias that social scientists often refer to as transgovernmental networks (Eberlein & Newman 2008; Bach & Newman 2010; Slaughter 2005, p.51). Most experts are sensitive to the fact that “FATF is a government of the world through technocrats”\textsuperscript{43} and from early on it was acknowledged that the AML standards “has helped to create a “network” of money laundering experts in each of the FATF members, improving co-operation and the flow of information, both at domestic level and internationally” (FATF 1998, pp.7, para.15).

In this thesis, there is recognition that the inclusion of expertise allows additional actors to contribute to the AML Network. In this sense, there is a “degree of movement towards a shared scientific culture” (Rosenau 1990, p.425) which corroborates great power’s need for global support and the AML Network’s efforts for compliance.

\textsuperscript{42} Interview G, March 2013.
\textsuperscript{43} Interview T, July 2012.
Finally, previous research into the topic concluded that the “fight against money laundering cannot be the sole responsibility of government and enforcement agencies [and] it will require the collective will and commitment of the public and private sector working together” (Sherman 1993, p.16). In accordance to this, the final section of this chapter focuses on the private sector as the source of valuable input for mutual evaluations, standards revision and a possible auxiliary condition for procedural harmonisation through the valuable information it offers policy-makers and knowledge gathering exercises (e.g. impact assessments, MERs).

The private sector and expertise

In the realm of global governance and in identifying relevant actors there is an underlying notion that information and knowledge are important to holding influence over the policy-making processes. In this context, this section does not add an ‘actor’ to the policy-making process described and analysed above, rather it adds a discussion of a ‘condition’ which merits further research.

The concept of ‘knowledge economy’ and the need for technical or expert input are identified as constant in a globalised society. Sharing and acquiring new information is essential to policy making but also to keeping ahead of policy trends and criminal threats. As a result, AML standard makers have engaged with stakeholders and attempted to construct dialogue platforms with those upon which the FATF Recommendations fall. This has progressively led to the inclusion of the private sector into the policy-making process and, as far as technically specific knowledge is concerned, allowing for its inclusion and consideration alongside other actors. In this context, whereas it may be assumed that private sector entities have a biased production of knowledge, evidence and interviews suggest that, nonetheless, these bodies carry out an important knowledge gathering exercise which benefits from ‘on the ground’ experience and in-depth analysis.

The data presented in the empirical chapters indicates a tendency for the ‘privatisation of control’ that has favoured the participation of financial institutions in the making of standards (Likosky 2005, p.204; Gilsinan et al. 2008). Participation
stems from the need to achieve compliance but also from its dependence on expert input into the feasibility of standard implementation.

Private sector groups are identified as independent businesses that are “interested in being involved in the formulation and eventually the implementation of public policy, because it allows them direct access to and impact on the authorities, which reach binding decisions for society as a whole” (Warntjen & Wonka 2004, p.18). It is found that private actors including non-governmental organisations (such as Global Witness and Transparency International) are building a constant relationship with FATF or establishing contacts with network IGOs on these issues. However, their participation in FATF’s Private Sector Forum is limited to few representatives and focus on specific topics such as corruption or beneficial ownership (Global Witness 2012; Transparency International 2014). Therefore, ‘private sector’ references in this section are mostly limited to financial institutions in order to dismiss all other AML related private business.

The FATF has committed to engaging with the private sector from early on as it recognises that it “relies on the input from the private sector in order to remain informed about the latest developments” (FATF 2012b, p.34). Meetings of the ‘Private Sector Forum began in 1996 as a consequence of great power preference (American presidency of FATF) and the pressure domestic executives were facing regarding the cost-benefit impact of CDD measures on private organisations. The 1995/1996 FATF annual report marked the first meeting with private sector representatives and the expert input that these bodies provided to the typology exercises (Para. 28-30, FATF 1996a, p.9). From here onwards mention of private sector collaboration became a constant in FATF annual reports with meetings regularly occurring once per year. Within the FATFs 2003 standard revision process it was noted that in the 2002 public consultation “FATF believes that it is particularly important for the private sector to be involved [and it] plans to hold a forum with representatives of the financial sector in the autumn of 2002” (FATF 2002a).

44 For a more precise definition see, ‘Financial institutions’, FATF 2012e, p.116.
45 Other private sector organisations defined by FATF as relevant include: lawyers, accountants, real-estate managers, insurance companies, luxury art dealers and other known gatekeepers.
46 The author was unable to find written register of the meeting or its conclusions.
However there is little evidence of significant consequences arising from these meetings and a senior private sector official confirmed, “at the beginning it was all very informal (...) but things have improved”. 47 In 2009, Sir James Sassoon, former FATF UK President, stated that prior engagement with the private sector was patchy and that “there was very much a view that the FATF was a public sector group of people [that] told the private sector down the chain what they had to do” (House of Lords 2009, p.169). Since then, FATF has arranged for a private forum consultation (around 2009) in preparation for the 4th round of mutual evaluations after having met with organisations in 2007 with the last meeting taking place on 24-25 March, Brussels 2014 (FATF 2014b; FATF Secretariat 2011b; Para. 40, FATF Secretariat 2009). The Private Sector Forum is currently an institutionalised practice although private sector interviewees complain about their recommendations often not being adopted, thereby, confirming the thesis’ non-identification of the private sector as a significant international actor. 48

Additionally, the G-7 has corroborated the importance of including financial institutions into the negotiations or, at least, receiving their input as a way to draft standards closer to the realities of the institutions that have to implement them (Nechaev 2013b; G-8 2013). Likewise the IMF and the WB often collaborate with the private sector in the context of financial integrity activities automatically gathering an elevated understanding of the financial sector reality and its place in the global financial system (World Bank 2013). This acknowledgement speaks to the calls for democratic legitimacy referred to above as carried out by great powers, but also to the IGO’s need for compliance.

Interviews and private sector generated documents demonstrate how more than international experts working for IGOs or government officials the financial institutions understand the metier in which money launderers operate and therefore can offer realistic solutions to the standard requirements. 49 Among the major contributions by the private sector is, in effect, the evolution of CDD in terms of its

48 Interview E1, March 2013; Interview I1, July 2012; Interview W, November 2012.
49 See the private sectors responses to FATF consultations in the wakening of standard revisions. See, FATF 2002b; FATF Secretariat 2011a.
simplified and enhanced techniques. In addition, the passage from rule-based to RBA is another (shared) consequence of private sector input into the negotiations and evaluation processes. Often stakeholders mention that the private sector commitment to a “very expensive activity”\textsuperscript{50} in the name of compliance is excessive taking into consideration the actual degree of effectiveness that is achieved. In the early days, AML was not more than a box ticking exercise for many of these institutions but currently significant amounts of funds go into high-end software, compliance officers and procedures.

Nevertheless, whilst the debate on costs, effectiveness and the privatisation of control is on-going, data and author interviews with private, public and international officials confirm that the input received is extremely important to the revision of AML standards. The importance of their contribution is thought to be increasing, with one of the main financial umbrella representatives confirming, “there has been a difference in attitude lately”\textsuperscript{51} as the FATF focus leans towards technical compliance and effectiveness. For example, ahead of the 2012 standards revision the FATFs consultation of the private sector included questions on CDD. In response to private sector concerns, expressed during the consultation, regarding costs and burdens, identifying beneficial owners, and the difficulties of DNFBPs, FATF committed to give the issues “considerable attention” (FATF Secretariat 2012) during the revision. To some extent, the 2012 AML standards reflect these concerns by including more specific guidelines in the Interpretive Notes, allowing for simplified procedures to be implemented, and clarifying, with examples, issues of CDD level of risk assessment.

NGOs have also become more active throughout time although participation is closely linked to the expansion of agenda setting to the G-20 and the more politically visible issues such as matters of corruption, tax laws and the beneficial ownership of companies. In this sense, Transparency International enters into dialogue and public debate regarding the AML standards being adopted but, with few exceptions (on Political Exposed Persons)\textsuperscript{52} has not contributed with expert input into the making of

\textsuperscript{50} Corroborated by Interview 11, July 2012. See more on this topic in, Alford 1993.
\textsuperscript{51} Interview W, November 2012.
\textsuperscript{52} Transparency International’s ‘Corruption Perceptions Index’ is still one of the main international tools in the combat against corruption.
FATF Recommendations. The same applies to Global Witness and EURODAD as organisations focusing on tackling corruption and tax evasion. There is wide evidence of dialogue, political pressure and even amendments introduced by these NGOs representatives into legislative texts, but the extent to which they contribute with new evidence/information to the discussion is debatable and perhaps an issue for future research.53

Generally, the issue of CDD has been of great interest to financial institutions and NGOs alike that have either seen it as an essential or burdensome standard. Some would argue that “[n]ot only can the due-diligence be a costly and time-consuming undertaking, but without substantial prohibitive measures in place, the incentive for banks to chase down information about wealthy clients is sometimes missing” (Wikstroem & Roovers 2014). Overall, the input from the private sector illustrates how procedural harmonisation as an outcome “involves costs and consequences” (Windholz 2012, p.337) as is, perhaps, evident by the AML standards shift to a risk-based approach and the greater focus on effectiveness and technical compliance.

In other words, the procedural harmonisation that is illustrated by the making and development of CDD standards has been achieved by coordinating private sector (profit and non-profit alike) taking into account their expert input but not necessarily their preferences on what the AML standards should say. In general, disagreements are not felt in terms of content or direction of standards but as concerns costs and public-private coordination of actions. Most private sector and NGOs’ interviews confirm similar interests in reducing corruption, tax evasion, abuse of the financial system and especially their support for the RBA, technical compliance, and effectiveness. As a result, their work is mostly directed at generating knowledge in these areas rather than in the general AML framework. That is not to question the knowledge produced, as it can only focus on the private sector’s areas or expertise. The procedural harmonisation of AML standards is hence something which most private sector experts and NGOs alike find desirable. Largely, as it paves the way for

a simpler system across borders, allows for the maintenance of domestic differences yet ensuring an equal degree of protection, procedural harmonisation is favoured in virtue of the mutual evaluation processes and the expert and legitimate recognition that is given to it across borders.54

As summarised by a senior IGO official: “[y]ou cannot combat transnational organised crime without having common standards, so to me it is all about being fair and honest”.55 Another AML expert stated, in the end, if “the follow the money strategy is an effective one, why not use it?”56 Ultimately, expertise may be the key to informed future global governance which relies on varied actors according to their contributions rather than power and place in the international system.

Expertise is a form of authority that surpasses political, structural and time constraints and is, moreover, present across actors as confirmed by the research data and literature (Abbott & Snidal 2009, p.20). Ultimately, the recognition that expert input influences actors’ preferences contributes to the understanding of the conditions leading to procedural harmonisation and, moreover, the fact that a system of informed regulatory networks as that evidenced by the AML standards is “preferable to amorphous and unaccountable ‘global policy networks’” (Verdier 2009, p.120).

7.5 Conclusion

This chapter discussed how, in addition to the great powers’ and network’s action, procedural harmonisation is favoured by expert input, the need for compliance and, the requirement of global support for the AML standards. It suggested that these elements contribute to the procedural harmonisation of transnational policy making, and that they are mutually reinforcing. It confirmed the findings of Chapters V and VI and summarised great power motivations to delegate

54 Interview Z, March 2013; Interview W, November 2012; Interview II, July 2012; Interview C1, November 2012; Interview D1, November 2012; Interview W, March 2013; Interview H1, July 2012; Interview F1, July 2012; Interview J1, April 2013; Interview E1, March 2013; Interview K1, April 2013.
55 Interview I, September 2012.
56 Interview F, April 2013.
to IGOs as being sourced in the need to broaden AML standards’ reach by achieving additional support and acceptance amongst other states. The increasing role of IGOs and their subsequent ability to act independently through a network structure is interpreted as a consequence of this claim but also of the need to ensure compliance in a democratically acceptable and functional manner.

Overall, the debate on the presence of legitimacy, the need for compliance and expertise as additional conditions for harmonisation contributes to the answering of the research questions and the development of future global governance strategies. This acknowledgement leads to the confirmation of global governance theories that suggest the emergence of new actors in the regulatory processes, adding that there is a complementarity between actor preferences and the specific policy needs. Furthermore, the recognition that procedural harmonisation is not only dependent on great powers but on the AML Network is further confirmed by this discussion.

This chapter further confirms that the relationship between great powers and the AML Network is strengthened by the AML requirements of legitimacy, compliance and expertise. It is assumed that without these requirements the outcomes of the AML standards would, perhaps, have been different. Therefore, in the making and assessment of future global governance strategies it is worth considering their effect on the condition for procedural harmonisation, in addition, to those tested for here.

Finally, this debate identified and emphasised the role of experts and IGOs networks while reaffirming the role of great powers thus contradicting recent writings on their demise. Generally, the different actor contributions to the process throughout time are seen as an indicator of refinement of global governance not to be dismissed as simple political ingenuity.
CHAPTER 8

CONCLUSION

8.1 Introduction

This thesis investigated evidence of procedural harmonisation in global governance as suggested by the emergence of peer-review processes. It analysed the role of the relevant players involved in the making of AML standards in order to determine which conditions favoured the global governance strategies in place, and whether these may be generalizable to other areas.

As a contribution to global governance and existing literature on AML, this thesis developed a framework for analysis of international actors within the policy-making process of AML and CDD standards between 1989 and 2014. In this context, it searched for further clarification regarding the ways in which the main international actors have developed and are characterised, cooperated, and responded to governance challenges.

This chapter offers a review of the thesis highlighting the conditions identified as necessary for procedural harmonisation to occur. It reiterates that great power behaviour is the main condition influencing procedural harmonisation. Nevertheless, it also recalls how IGOs making of an AML Network significantly complement great power action by providing legitimacy and ensuring compliance, thereby becoming an additional condition for procedural harmonisation and tackling some of the global governance gaps.

Accordingly, the research findings are summarised in light of their implications for global governance theory and application, emphasising the creation and evolution of a IGOs policy network and the discussion of change in global great power functions.

Finally, the summary of the findings and implications uncover the limitations of this study and the need for further research.
8.2 The conditions for harmonisation

A coalition of great powers with shared preferences and the existence of an AML Network constitute the main conditions for procedural harmonisation.

It is argued that IGOs networks are a moderating force to great power dominance of global politics, through the expression of their own preferences, and one which has the potential for success due to its shared preferences, resource exchange and stable relationships. The thesis argues that procedural harmonisation is conditioned by the actions of preference sharing great powers, which is necessary, but ultimately relies on network action as well. In this context, it benefits from greater representativeness, capacity to wield legitimacy and the ability to ensure compliance and thus may be an element for future consideration in policy making for global governance.

In order to determine this, research focused on the actors, elements and strategies behind the international AML policy-making processes and how harmonisation (and its identified tools) appeared to proliferate as a threat response mechanism. Empirical research into the international AML standards demonstrated the coexistence of interdependence, economic interests and security concerns in this framework. The AML standards and the development of CDD offered the perspective for an insightful journey into the world of global governance and particularly, the interactions between actors. As a result, this thesis observed policy developments and interactions in this area throughout the years in order to identify the conditions for harmonisation and how they occur.

The thesis assumed states operate in a context of interdependence and globalisation built from economic interests that prefer harmonisation to differences detrimental to the good functioning of the international financial system. It began by showing the ways in which states must cooperate as a consequence of economic and security interests, and how that cooperation favours policy convergence and often the creation of peer-review processes. The issues of corruption, weapons of mass destruction, bribery and international taxation rules were suggested as global
governance strategies focused on ensuring compliance and creating sanctions for outsiders.

The research questions were defined accordingly, in order to investigate the causes of tendencies for harmonisation in international policy-making. In this context, the questions suggested that the analysis of AML standards could allow for the identification of the elements of procedural harmonisation and therefore determine which conditions are conducive to its emergence. Therefore, while the main research question refers to the assessment of the conditions under which procedural harmonisation occurs, this research is also concerned with who sets international agendas? How are priorities being pursued? Whether harmonisation is the outcome for all collective threats and whether a global governance strategy may emerge from the analysis of the case study?

The concept of procedural harmonisation, as one of the elements of policy convergence, was defined as dependent on the specific tools namely, the cross-pollination of decisions, the existence of formal and informal processes of policy making and the consistent interpretation of principles across jurisdictions. The element of comparative law, as an additional condition of harmonisation, was not part of this analysis due to time and resource constraints. Overall it was assumed that the identification of the actors and motivations behind these elements should provide sufficient evidence of which conditions are significant for the case study. The analysis suggested that the harmonisation that has taken place in AML is not definitional but procedural. In other words, it is not definitions that have been harmonised but how they must be interpreted and applied.

Global governance literature and its assumptions helped to frame the research questions. The recognition that great powers, with similar but not equal interests, build coalitions to express their preferences, and that IGOs exist with sufficient autonomy to form a type of policy network, inform the theorising of AML standards’ development. The argument contends that while great powers may continue to control the agenda-setting procedures, the increasing participation of IGOs and their formation as networks in the global governance system is indicative of an emerging force through coordinated action and as a result of delegation.
The evaluation of great power input into the AML standards has led to the realisation that these actors are in control of the political and institutional AML framework as it exists. The analysis of great powers confirms their position as agenda setters and coalition builders when sharing the same preferences regarding institutional delegation and use. Regardless, there are elements of change emerging from great power actions which reveal openness for dialogue with stakeholders (not only from domestic backgrounds) and further delegation to IGOs as representatives, authority and compliance tools. Great power input into harmonisation is especially visible when time for debate is short, for example after the events of 9/11 or the 2007-2008 financial crisis.

Nevertheless the role of great powers is determined as being an insufficient condition for the occurrence of procedural harmonisation although indicating some input into cross-pollination, and formal processes of policy making. The sum finding from this analysis is the suggestion that great powers, having shared preferences, tend to delegate functions, including the control of tools for compliance because that favours legitimacy and compliance. Therefore, the analysis continues and acknowledges that IGOs are autonomous actors building their sphere of influence in the same manner as states, albeit constrained by mandates.

IGOs are not interpreted as acting alone in the making of AML standards but as a kind of policy network operating through the sharing of preferences, maintaining stable relationships and exchanging resources. This analysis leads to the acknowledgement that while IGO preferences and relationships with each other may be dependent on great powers, their interaction and exchange of resources produces the ability to moderate great power control and influence by defining their own patterns of action as regards procedural harmonisation. The AML Network is considered to be particularly influential in what concerns informal processes, and especially the consistent interpretation principle. It is suggested that while cross-pollination is strongly associated to great powers support and agenda-setting capacity, the IGOs network has a more sustainable effect on the procedural harmonisation as reflected by formal and informal processes and the propagation of the consistent interpretation of principles. The mutual evaluation rounds, of almost exclusive network competence, are ultimately responsible for the adoption of the
principle of consistent interpretation and the increase of informal processes of policy making that characterise the AML standards.

Additionally, as predicted by the research questions, the peer-review processes are of relevance to the harmonisation of practices. Although they do not facilitate the implementation of equal wordings, these processes are an embodiment of procedural harmonisation, as they have led to the propagation of the same mechanisms for AML standards, the same interpretation of FATF guidelines, and similar systems of reporting (guided by the same objectives) following suspicions in keeping with CDD.

Altogether, the analysis also determined that while the actors mentioned above hold specific preferences, those are moderated by the need to achieve compliance, legitimacy and expertise in the making of international standards. The thesis argument, based on the fact that procedural harmonisation is favoured by the influence of IGOs in addition to that of great powers, is thusly confirmed by the great power recognition, through delegation, that a network of IGOs is better equipped to carry out their preferences and ensure compliance. As a result, the identification of the conditions for harmonisation and the role that specific actors play in that process is attached to the needs of global governance in terms of its legitimacy, functionality (or successful compliance) and the degree of expertise upon which it is based. Without it, global governance is left to the discretion of those wielding power and finds little support and stability.

Ultimately, procedural harmonisation, as demonstrated by CDD, was only possible through the participation of varied actors in the negotiations and standards’ revision processes. Interviews carried out generally support this view and justify the outcomes as a consequence of multiple inputs into the standard making procedure, confirming the AML Network argument. Whereas great powers remain in control of the policy processes, the thesis demonstrated that in their interactions, IGOs promote knowledge exchange and dialogue in a manner consistent with the struggle to legitimise policies and generating functioning peer-review processes that ensure compliance. It is assumed that in time, these practices and outcomes should become
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more difficult to change as such a contradiction endangers the international system as a whole.

Altogether, the analysis determines that: procedural harmonisation is a product of international cooperation and shared preferences; IGOs gain influence in standard-making through network building; and procedural harmonisation, as illustrated by peer review mechanisms, may be an example to future global governance strategies if complemented with legitimacy, expertise and the need to achieve compliance.

8.3 Implications of the study

This thesis accomplishes its crucial case study objective of questioning global governance literature and advancing research. Research contributions to global governance literature consist of the advancement of five main issues, which roughly address the tackling of the compliance, knowledge, policy and institutional global governance gaps. The first, directed at the policy gap, relates to great power functions as agenda-setters, coalition builders (through shared preferences) and compliance seekers. In the fulfilment of these three notions great powers have demonstrated the ability to adjust practices and change throughout time. Although their persistence and power over issues closest to security are still under strong protection, it can be seen that even great powers are ‘giving in’ to global governance unlike what is argued by traditional international relations theory (Cox 1981). In this sense, whereas Slaughter’s concepts of disaggregated state might be ahead of time, there is a debate to be had regarding the translation of realist interests into cooperation mechanisms forced upon great powers through interdependence. Nowhere in this thesis do great powers appear disinterested in the combat of transnational crime (e.g. money laundering) through cooperation. In the same manner, nowhere was it denied that the construction of the AML framework was more than an attempt to protect the perception of integrity of financial institutions and systems. Drezner’s idea of great powers continued predominance is, in this manner, questioned.
Secondly, the thesis advances research on the compliance gap as it develops the elements of procedural harmonisation to include, methods that ensure compliance, legitimacy providing bodies, and expertise. While more research is definitely needed to confirm this proposition, the analysis shows that the elements identifies by Andenas and others (2012) are not sufficient for global governance in the long-term.

Thirdly, the thesis’ contributions to the policy network literature consist of two important additions to established concepts that may contribute to the institutional gap. To begin, the Rhodes model is developed by attempting a stretch of the model to the international setting and the configuration of a network of IGOs with different mandates rather than interest groups and iron triangle-like formulations. In some ways the concept of a IGOs network is very different from the conceptualisation of Rhodes but in others, for example, in terms of objective, relations, resources, membership and power, the IGOs network imagined here is a simple continuation of the concept that deserves further attention.

Furthermore, as the AML Network finds its basis on expertise and contributions on an international scale and not just from non-governmental actors, contributions to Heclo’s issue network is also an important element of this research’s analysis. The stability of IGOs interactions is an additional added value that nevertheless, might be difficult to identify in other policy areas due to the recent nature of the AML Network itself. Overall, the major difference between traditional policy network formulations and that proposed here is the distance between this and the simple state-private sector group interactions traditionally known as the ‘iron triangle’.

Fourthly, the role of the private sector, as defined above, enters the debate from an information and knowledge gap providing perspective, as holding expertise relevant for decision-making, but so far not much else. As the data analysis indicates, the private sector’s best chance at influencing the international ‘AML regime’ is by influencing great powers domestically, however, its position as an expert contributor is seen as increasing internationally and is worth further consideration.
Similarly, the thesis’ award to MONEYVAL of a special place in the making of AML standards and the development of CDD is also due to its participation in the methodology and peer reviews as an entity of recognised expertise. This recognition is based, firstly, on institutional belonging, as it obviously benefits from being close to great powers through the Council of Europe, but more importantly in virtue of the expert input and “work” that MONEYVAL has produced over time. In this sense, one significant implication for further reflections on global governance is the importance of privilege and knowledge in shaping the status of an international body. The example set out by AML shows that it is possible for an organisation to stand out and become more influential depending on its input rather than mandate or nature.

Finally, this research opted to focus on AML as a case study in order to carry out an in-depth analysis of the relevant actors, their choices throughout time and in relation to policy challenges and decisions as they occurred. Nevertheless, as a crucial case study to global governance, the main contribution of the analysis is still the ability to carry out future policy advice that accounts for a broad understanding of macro political realities, with the possibility to provide specific and functional outcomes.

8.4. Limitation and areas of future research

Although grounded on a solid theory base, research method and data gathering exercise, this thesis has limitations that may be further explored in future research.

Firstly, the fact that small groups of states are able to make and propel global policy-making trends has not been sufficiently discussed in this thesis. The focus of the research was determining conditions for policy making but there was a review element missing from the analysis that might contribute to the determining of whether or not these conditions are desirable seeing as they appear mainly as a consequence of great power action. Furthermore, where research showed that an IGOs network is able to counter or moderate great power action, it does not demonstrate whether the IGOs have the ability to start and mobilise towards an issue
that is outside of great power interests. On the other hand it might be too early in the IGOs network system to see such change. The IGOs capacity to become international agenda-setters would be the ultimate confirmation of the argument put forward by this thesis.

Secondly, from a compliance focused perspective the issue of whether or not the harmonisation of practices is desirable and where it is sourced might be irrelevant for the fulfilling of great power security and even stability oriented goals. Even fundamental rights have limitations in cases of extreme necessity. From the collected data there is some evidence to suggest that ensuring compliance is not something that can be achieved at the international level from a truly democratic and transparent procedure, at least not yet, due to time and resources limitations. It was demonstrated that the mutual evaluation processes are not only intrusive but also biased to favour those who create and define the goals given their pre-emptive knowledge and understanding of measures that must be taken. On the other hand, the expert nature of these provisions and the recent involvement of additional stakeholders into the policy-making process is inspiring of new developments in global governance and of new elements of harmonisation to be considered in future research. Perhaps this sort of research is actually best discussed within Foucault’s governmentality framework. Should global governance developments be rational and interest based or more focused on norms and values?

Thirdly, the thesis also does not offer answers to those concerned with the effectiveness of the standards being produced. However, it is shown by recent FATF and network efforts that this issue has made its way on to the agenda and efforts to tackle it are in place. The thesis suggests that lack of effectiveness may be a consequence of the input and nature of the process itself. In other words, if international decisions are taken without sufficient participation from relevant bodies and without receiving sufficient input the outcomes will reflect the process and the priorities that have gone into it. Therefore, reflections on how to guide standard development towards more effective practices should focus on actor participation and influencing their interests and preferences as much as on content. In the context of global governance analyses policy analysis must be considerate of underlying actor preferences.
Fourthly, the basis for assessing the presence of harmonisation in AML standards and their policy-making process was designed under the premise that certain organisations due to their distance from great powers, restrictive mandates and less relevant size were not worthy of inclusion into the discussion. As an exploratory study into the conditions of harmonisation there is no identified consequence coming from this actor delimitation that was, additionally, confirmed by primary data gathering. A further analysis into the IGOs that have been left out of this analysis, however, would be a good complement and confirmation of the ideas put forward here as well as the assumptions regarding the conditions under which harmonisation occurs. Other research into the harmonisation of standards would also benefit both from a comparative analysis of domestic jurisdictions to include great powers and non-FATF members alike.

The final and main recommendation of this thesis concerns the role of expertise in international regulatory networks and in policy fora more generally. Previous studies, as mentioned in the chapters above, have either included experts within a community of transnational regulatory networks of professionals, as part of the state and institutions, or private-sector based. However difficulties in defining the concept, its origins and its relation to knowledge and information exchanges have largely left it outside of global governance debates. Whilst this thesis’ debate of global governance emphasises that state preferences are weaved through IGOs thus allowing multiple actors to participate in the international decision-making processes, its analysis of expertise also suggests that main seat in negotiations is up for grabs and ‘knowledge’ may very well be the new ‘great power’. If so, its origins, elements and conditions for success require our attention.
ANNEXES

ANNEX I – RESEARCH NOTES

The fieldwork carried out in the context of this research constitutes an essential part of the data collection process and the subsequent analysis.

Interviewees who accepted to participate to this research were generally happy to contribute with their insights and institutional perspectives (as well as personal views) although the great majority did not agree to be directly quoted. Interviews were carried out in a semi-structured format with space for free discourse and comments. Fixed questions focused on the impact of the institution closest to the interviewee, the processes of harmonisation and the role of mutual evaluations, the role of experts and expert input, the role of IGOs and states (particularly great powers) and the evolution of CDD.

Generally meeting practitioners and visiting their work environment contributed to my understanding of their own perceptions and how some opinions are formed. The anti-money laundering world, through the eyes of its actors, is a work in progress with many gaps in knowledge, resources and participation. Whereas some are more critical of the process than others, all agree that the AML framework must exist at the international level and that there is no going back. However, shortcomings are widely accepted and reform of the framework is openly discussed, in particular, the issues of effectiveness and technical compliance (as has been transcribed through FATF actions).

The chief assessment gathered from the process was the division (organisational but also imaginary) between government, IGOs and others’ perspectives regarding the role of each actor. FATF secretariat interviews remain the exception where mandates were uttered almost word-by-word with little divergence from the official line. Interviews with retired or former officials/experts (as would be expected) were of exceptional impartiality in this regard.
Interviews were conducted in a semi-structured format that included fixed questions regarding the variables under investigation but also allowed for interviewees to discuss their functions within the institutions and their own personal views on the global and European AML standards.

An added valued to the interviewing process was the opportunity to carry out, where possible, a sample of non-participatory observation. From early on I was able to obtain access to the European Parliament and attend relevant EP Committee meetings (ECON, CRIM, LIBE) in person (in addition to following the process through EuroparlTV). This permitted a closer look at the on-going discussions but also at the interaction between EU and international institutions, taking place on a less macro setting (attested by attendance of FATF, MONEYVAL, WB, IMF, e.g. USA representatives to the meetings). I also attended two ACAMS (Association of Certified Anti-Money Laundering Specialists) Web Seminars on “Understanding the Impact of the FATF Revised Recommendations on Local AML Regulations,” 6 September 2012; “The Rise of Organized Financial Crime: The New Mafia” on the 2 April 2013, and; “Key Changes in the AML Regulatory Landscape” on 11 March 2014.

In addition to the interviews, and fieldwork mentioned above, preliminary findings include data gathered in 3 professional conferences on Anti-Money Laundering and the revised FATF standards and the fourth EU AML Directive. The first was hosted by a EU umbrella organisation representing the private sector. Over 19 organisations from 27 EU member states participated in an open discussion with representatives from the European Commission, the FATF and MONEYVAL. The added value of this conference was its contribution to a more coherent understanding of what the consequences of standards are and how harmonisation is perceived at the grassroots’ level.

The second conference consisted of the presentation of a European Commission funded project on ‘effectiveness’ and anti-money laundering. The Amsterdam based event gathered representatives from varied member states and their official governmental experts on the subject (i.e. UK’s Financial Services Authority, the Portuguese Government, French Ministry of Finance, academics and
private sector experts). It also included Europol and Eurojust officials, European Commission representatives amongst varied civil society and private sector interested parties. Here, the most significant outcome was the realisation of how expert-policy makers interact and what the focus of discussion is.

The third event was organised by the European Commission and included a high-level speaker line-up including two European Commissioners, representatives from the private sector, NGOs, academia, international organisations and civil society. Attendance was equally varied and numerous. This conference was, by far, the most profitable as 80% of actors included in research analysis were present and interacting. I managed to gather interesting statements but also had a chance to observe informal interactions and networking.

Overall, the interviews and fieldwork greatly contributed to the triangulation process essential to ensure the research’s internal and external validity.
ANNEX II – LIST OF INTERVIEWS

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<td>B</td>
<td>Senior Policy Analyst, FATF</td>
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<td>J</td>
<td>Chief Officer, Corruption and Economic Crime, UNODC</td>
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<td>11</td>
<td>K</td>
<td>Head of Unit, DG MARKT, European Commission</td>
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<td>Adviser, European Commission/Moneyval</td>
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<td>Head of the Division of Fundamental Rights and Criminal Justice, Council of the European Union</td>
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<td>Director, Bank of Portugal</td>
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<td>24</td>
<td>Y</td>
<td>Compliance Investigator, Nardello &amp; Co</td>
<td>March 2013</td>
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<td>25</td>
<td>Z</td>
<td>Policy Analyst, Global Witness</td>
<td>March 2013</td>
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<td>26</td>
<td>A1</td>
<td>Senior Policy Analyst, FATF</td>
<td>January 2013</td>
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<td>27</td>
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<td>Policy Analyst, FATF</td>
<td>January 2013</td>
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<td>28</td>
<td>C1</td>
<td>Senior Adviser, Transparency International</td>
<td>November 2012</td>
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<td>29</td>
<td>D1</td>
<td>EU Policy Officer, Transparency International</td>
<td>November 2012</td>
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<td>30</td>
<td>E1</td>
<td>Secretary General, Remote Gambling Association</td>
<td>March 2013</td>
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<td>31</td>
<td>F1</td>
<td>Advocacy Officer, Anti-Money Laundering Europe</td>
<td>July 2012</td>
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<td>32</td>
<td>G1</td>
<td>Legal Service Officer, Council of EU</td>
<td>July 2012</td>
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<td>33</td>
<td>H1</td>
<td>Member of Secretariat, Federation of European Accountants</td>
<td>July 2012</td>
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<tr>
<td>34</td>
<td>I1</td>
<td>Vice-President, European Savings Banks Group</td>
<td>July 2012</td>
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<tr>
<td>35</td>
<td>J1</td>
<td>Policy Officer, EURODAD</td>
<td>April 2013</td>
</tr>
<tr>
<td>36</td>
<td>K1</td>
<td>Director, JP Funds</td>
<td>April 2013</td>
</tr>
<tr>
<td>37</td>
<td>L1</td>
<td>Member, European Parliament</td>
<td>April 2014</td>
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# ANNEX III - FATF PRESIDENCY HISTORY

<table>
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<tr>
<th>FATF Presidency</th>
<th>Country</th>
<th>G-7 Membership</th>
<th>G-20 Membership</th>
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<td>1990-1991</td>
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<td>1994-1995</td>
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<td>2004-2005</td>
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<td>2005-2006</td>
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<td>2006-2007</td>
<td>South Africa</td>
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<td>2009-2010</td>
<td>Brazil</td>
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<tr>
<td>2010-2011</td>
<td>Kingdom of the Netherlands</td>
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<tr>
<td>2011-2012</td>
<td>Mexico</td>
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<tr>
<td>2012-2013</td>
<td>Norway</td>
<td></td>
<td></td>
<td>✓</td>
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<tr>
<td>2013-2014</td>
<td>Russia</td>
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<td></td>
<td></td>
</tr>
<tr>
<td>2014-2015</td>
<td>Australia</td>
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</table>

*Data retrieved from [www.fatf-gafi.org](http://www.fatf-gafi.org)*
### TIMELINE 1970 - Present

<table>
<thead>
<tr>
<th>Year</th>
<th>Event</th>
<th>Result</th>
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</thead>
<tbody>
<tr>
<td>1970</td>
<td>Large currency deposits of illicit profits</td>
<td>Bank Secrecy Act (BSA) enacted</td>
</tr>
<tr>
<td>1974</td>
<td>Constitutionality of Bank Secrecy Act questioned</td>
<td>U.S. Supreme Court holds BSA to be constitutional</td>
</tr>
<tr>
<td>1986</td>
<td>Law Enforcement looks for new weapons to combat drug trafficking</td>
<td>Enact Money Laundering Control Act</td>
</tr>
<tr>
<td>1990</td>
<td>Insufficient intelligence analysis and resources to support financial investigations</td>
<td>Create Financial Crimes Enforcement Network (FinCEN)</td>
</tr>
<tr>
<td>1992</td>
<td>Law enforcement needs more information on suspicious transactions to support financial investigations</td>
<td>Enact Annunzio-Wylie Money Laundering Suppression Act - Suspicious activity reporting required</td>
</tr>
<tr>
<td>1994</td>
<td>Law enforcement focuses on criminal abuse of MSBs CTR exemption process is a burden for financial community</td>
<td>Enact Money Laundering Suppression Act - MSB registration CTR filing required</td>
</tr>
<tr>
<td>1994</td>
<td>Improve cooperation and coordination between regulatory, financial and law enforcement communities</td>
<td>Merge Treasury's Office of Financial Enforcement with FinCEN - FinCEN's Mission expanded to include regulatory authority</td>
</tr>
<tr>
<td>1998</td>
<td>Improve coordination of federal, state and local efforts and resources to combat financial crimes</td>
<td>Enact Money Laundering &amp; Financial Crimes Strategy Act - National Money Laundering strategy established - HIFCA system created</td>
</tr>
<tr>
<td>2000</td>
<td>Law enforcement needs more information on money transmitters, and issuers, sellers and redeemers of money</td>
<td>MSBs required to file suspicious Activity Reports (SARs)</td>
</tr>
<tr>
<td>2001</td>
<td>Terrorists attack the World Trade Center &amp; Pentagon; President announces Financial War on Terror at FinCEN</td>
<td>Enact PATRIOT Act Information Sharing Registration requirements for underground money transmitters</td>
</tr>
<tr>
<td>2002</td>
<td>Institutions are front line against money laundering and terrorist financing</td>
<td>Most financial institutions receive a new or amended AML Program requirement</td>
</tr>
<tr>
<td>2002</td>
<td>Law enforcement needs more information on casinos</td>
<td>Casinos required to file SARs</td>
</tr>
<tr>
<td>2002</td>
<td>Importance of information sharing recognized</td>
<td>Sharing between institutions is protected, and between institutions and government is required</td>
</tr>
<tr>
<td>2002</td>
<td>Foreign shell banks recognized as threat</td>
<td>Termination of accounts for shell banks and certification by foreign correspondents required</td>
</tr>
<tr>
<td>2002</td>
<td>Financial institutions seek to expedite reporting process, reduce costs in</td>
<td>PATRIOT Act Communications System (PACS) launched - Financial institutions can</td>
</tr>
</tbody>
</table>
Anti-Money Laundering: the conditions for global governance and harmonization

<table>
<thead>
<tr>
<th>Year</th>
<th>Event</th>
<th>Description</th>
</tr>
</thead>
<tbody>
<tr>
<td>2002</td>
<td>complying with BSA requirements</td>
<td>PATRIOT Act expands regulatory definition of &quot;financial institution&quot;</td>
</tr>
<tr>
<td>2003</td>
<td>Need to protect more MSBs from financial crimes</td>
<td>File BSA reports electronically</td>
</tr>
<tr>
<td>2003</td>
<td>Identification requirement strengthened</td>
<td>Currency Dealers and Exchangers required to file SARs</td>
</tr>
<tr>
<td>2003</td>
<td>Need to protect casinos from money launderers</td>
<td>Customer Identification Programs required for most financial institutions</td>
</tr>
<tr>
<td>2003</td>
<td>FinCEN expands regulatory definition of &quot;financial institution&quot;</td>
<td>Casinos and card clubs required to file SARs - includes those operated on tribal lands</td>
</tr>
<tr>
<td>2004</td>
<td>U.S. financial system needs additional protection from risks of financial crime posed by foreign agents</td>
<td>Futures commission merchants, introducing brokers in commodities required to report suspicious transactions</td>
</tr>
<tr>
<td>2005</td>
<td>Certain account services need greater scrutiny</td>
<td>MSBs receive guidance for dealing with foreign agents and foreign counterparts</td>
</tr>
<tr>
<td>2005</td>
<td>Improve management of BSA data, from filing and storage to retrieval and analysis</td>
<td>Due diligence requirements for private banking and foreign correspondent</td>
</tr>
<tr>
<td>2005</td>
<td>Improve collaboration and information sharing between federal and state agencies</td>
<td>PACS renamed as BSA E-Filing - 25% of BSA filings and 40% of SARs are e-filed as of March 2005</td>
</tr>
<tr>
<td>2005</td>
<td>Jewellery industry needs protection against financial crime</td>
<td>FinCEN, 29 states sign Memoranda of Understanding (MOU) - established information sharing agreements</td>
</tr>
<tr>
<td>2005</td>
<td>Increased international effort to combat money laundering, terrorist financing</td>
<td>Jeweler, dealers in precious metals and stones required to establish anti-money laundering (AML) programs</td>
</tr>
<tr>
<td>2005</td>
<td>Need to ensure consistent application of BSA to all banking organizations</td>
<td>Egmont Group of financial intelligence units exceeds 100-member mark</td>
</tr>
<tr>
<td>2005</td>
<td>Need to protect insurance industry from financial crimes</td>
<td>Federal banking agencies release BSA/AML Examination Manual</td>
</tr>
<tr>
<td>2005</td>
<td>Need to protect mutual funds from financial crimes</td>
<td>Certain insurance companies required to establish AML programs, file SARs</td>
</tr>
<tr>
<td>2006</td>
<td>Certain account services need greater scrutiny</td>
<td>Mutual funds required to file SARs</td>
</tr>
<tr>
<td>2007</td>
<td>Need to enhance efficiency and effectiveness</td>
<td>Enhanced due diligence is required for certain foreign correspondent banks</td>
</tr>
<tr>
<td>2011</td>
<td></td>
<td>Transfer of FinCEN's regulations to 31 CFR Chapter X</td>
</tr>
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</table>

Source: [www.fincen.gov/statutes_regs/bsa/bsa_timeline.html](http://www.fincen.gov/statutes_regs/bsa/bsa_timeline.html)
## ANNEX V – US/EU AND INTERNATIONAL INSTRUMENTS AGAINST MONEY LAUNDERING

<table>
<thead>
<tr>
<th>Date</th>
<th>US</th>
<th>European Union</th>
<th>Global</th>
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<tbody>
<tr>
<td>1970</td>
<td>Bank Secrecy Act</td>
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<td></td>
</tr>
<tr>
<td>1977</td>
<td>Foreign Corrupt Practices Act</td>
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<tr>
<td>1980</td>
<td></td>
<td>- Measures Against the Transfer and Safekeeping of Funds of Criminal Origin (CoE)</td>
<td>- Offshore Group of Banking Supervisors (OGBS)</td>
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<tr>
<td>1986</td>
<td>Money Laundering Control Act</td>
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<tr>
<td>1988</td>
<td>Anti-Drug Abuse Act</td>
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<td>- Statement of Principles (Basel Committee) - UN Convention Against Illicit Traffic in Narcotic Drugs and Psychotropic Substances</td>
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<td>1989</td>
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<td>FATF 40 Recommendations</td>
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<tr>
<td>1992</td>
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<td>1st Round of FATF Mutual Evaluations (start)</td>
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1 Table inspired by, Reuter & Truman 2004, pp.50–53 Updated and edited by author.
<table>
<thead>
<tr>
<th>Year</th>
<th>Events</th>
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</table>
| 1994 | - Regulation of Funds Transfers  
- Revision of Currency Transaction Report (CTR) |
| 1995 | - Simplified SARs, tribal casinos regulated, exemptions to CTR reporting |
| 1996 | - FATF Recommendations  
- Creation of IMoLIN  
- 2nd Round of FATF Mutual Evaluations |
| 1997 | Proposed rules for money service businesses  
CoE establishes MONEYVAL (as PC-R-EV) |
| 1998 | - Money Laundering and Financial Crime Strategy Act  
- SARs for casinos and card clubs |
| 1999 | - Joint Action on Corruption in the Private Sector (98/742/JHA)  
- UN Political Declaration and Action Plan against Money Laundering  
- OECD report on Harmful Tax Practices  
- Asia/Pacific Group on Money Laundering |
| 2000 | Treasury & Justice Money Laundering Strategy  
- 2nd Round of FATF Mutual Evaluations  
- Eastern and Southern Africa Anti-Money Laundering Group  
- Inter-Governmental Action Group against Money Laundering in West Africa |
| 2001 | Treasury & Justice Money Laundering Strategy  
- Wolfsberg Global Anti-Money Laundering Guidelines for Private Banking  
- FATF Report on NCCT  
- UN Convention against Transnational Organized Crime and the Protocols Thereto  
- Regional Task Force on Money Laundering in South America |

- FATF 8 Special Recommendations on Terrorist Financing  
- Second AML Directive (2001/97/EC)
<table>
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<th>Year</th>
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<th>Description</th>
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<td>2002</td>
<td>National Money Laundering Strategy</td>
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<tr>
<td>2006</td>
<td></td>
<td>Regulation (EC) No 1781/2006 on information on the payer accompanying transfers of funds</td>
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<tr>
<td>2007</td>
<td>National Money Laundering Strategy</td>
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<tr>
<td>2012</td>
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<td>FATF Recommendations (revised)</td>
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<tr>
<td>2013</td>
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<tr>
<td>2014</td>
<td></td>
<td>Proposal for a Regulation on information accompanying transfers of funds (COM/2013/044 final)</td>
</tr>
</tbody>
</table>


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**Council of Europe**

Council of Europe, Recommendation of the Committee of Ministers on Measures against the Transfer and Safeguarding of the Funds of Criminal Origin, Rec(80) 10, (27 June 1980).


Council of Europe, Council of Europe Convention on Laundering, Search, Seizure and Confiscation of the Proceeds from Crime and on the Financing of Terrorism (CETS No 198), (2005)


**United States of America**


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**United Kingdom**


Criminal Justice (Scotland) Act, 1987, ch41.