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COMPLIANCE AND NON-COMPLIANCE WITH THE FATF RECOMMENDATIONS:

POLICY TRANSFER IN AREAS OF LIMITED STATEHOOD

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Dedicated to my parents.

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Abbreviations

ABANSA	Asociación Bancaria de El Salvador
ABM	Asociación de Bancos de México
AML	Anti-money laundering
ALD	Antilavadodedinero.com
APG	Asia Pacific Group
AMFE	Asociación Mexicana de Entidades Financieras Especializadas
AMIB	Asociación Mexicana de Instituciones Bursátiles
AMIS	Asociación Mexicana de Instituciones de Seguros
ARENA	Alianza Republicana Nacionalista
Banxico	Banco de México
BBVA	Banco Bilbao Vizcaya Argentaria
CABEI	Central American Bank for Economic Integration
BCR	Banco Central de Reserva
BSA	Bank Secrecy Act
CARSI	Central American Regional Security Initiative
CASC	Central American Security Commission
CCC	Comités de Comunicación y Control
CCE	Consejo Coordinador Empresarial
CFF	Código Fiscal de la Federación
CFATF	Caribbean Financial Action Task Force
CFT	Countering the financing of terrorism
CICAD	Inter-American Drug Abuse Commission
CPF	Código Penal Federal
CNBV	Comisión Nacional Bancaria y de Valores
CNSF	Comisión Nacional de Seguros y Finanzas
CoE	Council of Europe
CONDUSEF	Comisión Nacional para la Protección y Defensa de los Usarios de Servicios Financieros
CTR	Currency Transaction Report
DEA	Drug Enforcement Administration
DGAIO	Dirección General Adjunta de Investigación de Operaciones
DNFBP	Denominated non-financial businesses and professions

DOF	Diario Oficial de la Federación
DPA	Deferred Prosecution Agreement
ECJ	European Court of Justice
EUR	Euro
FATF	Financial Action Task Force
FBI	Federal Bureau of Investigation
Fed	Federal Reserve System
FELABAN	Federación Latinoamericana de Bancos
FGR	Fiscalía General de la República
FinCEN	Financial Crimes Enforcement Network
FMLN	Frente Farabundo Martí para la Liberación Nacional
FI	Financial Institution
FIU	Financial Intelligence Unit
FSRB	FATF Style Regional Body
FT	Financing of terrorism
GAFILAT	Grupo de Acción Financiera de Latinamérica
GAFISUD	Grupo de Acción Financiera de Sudamérica
GDP	Gross domestic product
HSBC	Hong Kong and Shanghai Banking Corporation Limited
IDB	Inter-American Development Bank
IIC	Inter-institutional Committee for Money Laundering Prevention
IMF	International Monetary Fund
INL	Bureau of International Narcotics and Law Enforcement Affairs
INTERPOL	International Criminal Police Organization
IRS	Internal Revenue Service
JMLC	Journal of Money Laundering Control
LDO	Ley Federal contra la Delincuencia Organizada
LED	Ley de Extinción de Dominio
LPF	Ley de la Policía Federal
MCC	Millennium Challenge Corporation
MER	Mutual Evaluation Report
MINGOB	Ministerio de Gobernación[1]
ML	Money laundering
MLA	Mutual legal assistance
MoU	Memorandum of Understanding
MP	Ministerio Público
MSB	Money services business

[1] From June 2014: "Ministerio de Gobernación y Desarollo Territorial"

MXN	Mexican Peso
NAFTA	North American Free Trade Agreement
OAS	Organisation of American States
OCC	Office of the Comptroller of the Currency
OFAC	Office of Foreign Assets Control
OTA	Office of Technical Assistance
PGR	Procuraduría General de la República
PLI	Placement-Layering-Integration
PNC	Policía Nacional Civil
SAR	Suspicious Activity Report
SAT	Servicio de Administración Tributaria
SEGOB	Secretaría de Gobernación
SSF	Superintendencia del Sistema Financiero
SP	Superintendencia de Pensiones
SV	Superintendencia de Valores
SHCP	Secretaría de Hacienda y Crédito Público
SIEDO	Subprocuraduría Especializada en Delincuencia Organizada
SOFOL	Sociedad Financieras de Objeto Limitado
SOFOM	Sociedad Financieras de Objeto Multiple
SOM	Superintendencia de Operaciones Mercantiles
STR	Suspicious Transaction Report
SSP	Secretaría de Seguridad Pública
TBML	Trade based money laundering
TOC	Transnational Organised Crime
UEAF	Unidad Especializada en Análisis Financieros
UIF	Unidad de Inteligencia Financiera (FIU of México) / Unidad de Investigación Financiera (FIU of El Saldavor)
USD	United States Dollar
UNDCP	United Nations Drug Control Programme
UNEP	United Nations Environmental Programme
UNODC	United Nations Office on Drugs and Crime
UNTOC	United Nations Convention against Transnational Organised Crime
US / USA	United States / United States of America
USSC	United States Supreme Court
UTR	Unusual Transaction Report

1. Introduction

After setting the general context of this work, the first part of this research provides an introduction to basic concepts of the thesis like money laundering and anti-money laundering (AML) policies. Special emphasis will be given to the Financial Action Task Force (FATF) and its Recommendations that have defined the global AML policy standard over the last decades (section 1.1). Following this conceptual overview, the introduction will move on to briefly present the relevance of the research subject, research question and a glimpse at core theoretical and methodological considerations (section 1.2), before outlining the structure of the thesis (section 1.3). The generated common understanding is a necessary basis for the detailed development of the analyses and arguments.

1.1 Money laundering and Anti-Money Laundering Policies

Crime pays. The main motivator for most kind of crimes is financial gain. Illegal trafficking and sales of humans, narcotics, weapons or wildlife are some of the main sources of illegal proceeds. The United Nations Office on Drugs and Crime (UNODC) estimated the total global amount of criminal proceeds for 2009 at about 2.1 trillion US dollars (USD), equivalent to 3.6% of global gross domestic product (GDP) (UNODC, 2011, p. 9). The illegal narcotics market accounted for the largest portion of this amount with 20% of total proceeds (ibid., p. 7). The United Nations Environmental Programme (UNEP) and the International Criminal Police Organization (INTERPOL) estimated environmental crime, as a growth industry of the last decade, at an annual value of up to USD 258 billion in 2016 (UNEP, 2016). Such large amounts of money are not only a blessing but also a problem for criminals. Unexplained income might generate suspicion of law enforcement agencies. Before spending their newly acquired wealth on luxury goods or investment items, criminals try to create a convincing front that would justify their wealth through legal income. They launder their money.

What is money laundering? Most available definitions share a common understanding of the purpose of money laundering: Through money laundering operations, criminals avoid raising suspicion of law enforcement agencies and make it more difficult for investigators to connect money flows to predicate offences that generated financial resources and assets. Money launderers use financial transfers, front companies and other economic operations to disguise the illegal origins of funds. This allows criminals to use their income generated by narcotics trafficking or other illegal activities with reduced fear of criminal prosecution or asset seizure. The historical development of the concept was closely linked to the proceeds of illegal narcotics trade and can trace its origins back to the United States' prohibition era. An often quoted anecdote about the origin of the term relates it to Al Capone's use of laundromats in which he mixed legal cash flows with the proceeds of illegal alcohol sales and income generated by prostitution and extortion rings.

Beyond this phenomenological basis, the precise legal definition of the term varies between different actors and jurisdictions. INTERPOL for example applies a wide definition of money laundering as "any act or attempt to conceal or disguise the identity of illegally obtained proceeds so that they appear to have originated from legitimate sources" (INTERPOL, 2016). Initially limited exclusively to narcotics trafficking, other approaches define money laundering as the concealment of proceeds of a list of specific crimes (e.g. trafficking of arms or humans, fraud, corruption, tax evasion and others; for Germany cf. Krais, 2018, pp. 11-13) or applied it to all serious crimes (cf. Busuioc, 2007, pp. 16-18). Unless stated otherwise, this thesis applies a wide understanding of money laundering following the INTERPOL definition. Such a purpose and process centred understanding allows capturing the phenomenon within different normative contexts without the need to introduce a level of legal complexity unnecessary for the purpose of this research.

While simpler money laundering operations and self-laundering might be carried out by smaller scale criminals within a national or even local context, complex money laundering operations following a three stage Placement-Layering-Integration (PLI) model are usually associated with organised crime. This widely applied model divides money laundering it in three distinct phases. Money earned through illegal activities is transferred in cash and via cable to destinations outside the country of origin (placement phase), circulated through complex networks of international transactions (layering phase) and later reintroduced through purchases or investments into the legal economy (integration phase) (Reuter & Truman, 2004). Once money laundering operations span across international borders, they become part of transnational organised crime (TOC) (cf. Behrens & Brombacher, 2015, pp. 140-141).

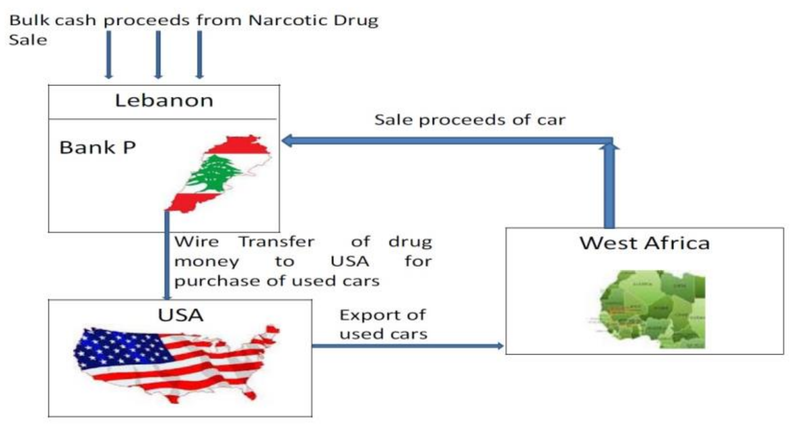
Examples of prominent international drug related money laundering operations are large circular value transfers between the United States (US) and Mexico. Amongst others, criminals made use of balk cash smuggling and exchange houses (placement) as well as international banking services (layering) to repatriate illicit funds to the US for their use in the legal economy (introduction). Two major cases following this model implicated international banks such as Wachovia and the Hongkong and Shanghai Banking Corporation (HSBC)[2] who entered deferred prosecution agreements involving forfeiture and fines in 2010 and 2012 respectively. In the HSBC case, forfeiture and fines reached a then record total amount of USD 1.9 billion (United States Department of Justice, 2012).

[2] The HSBC case offers a rare opportunity to access an in depth case study produced by the United States Senate's Permanent Subcommittee on Investigations: "U.S. Vulnerabilities to Money Laundering, Drugs, and Terrorist Financing: HSBC Case History" (US Senate, 2012)

Despite the prominence of the PLI-model, money laundering is a constantly changing and developing field, where practices potentially span every conceivable value transfer and are by no means limited to the formal financial system. Operations may include simple bulk cash smuggling, the use of virtual currencies like bitcoins and convertible values of online games (Financial Times, 2020), or the commodities and arts trade. To better understand laundering mechanisms in practice and stay up to date with recent money laundering trends and methods, institutions dedicated to preventing and combating money laundering frequently produce typologies. In such a publication on trade based money laundering (TBML), the Asia/Pacific Group on Money Laundering (APG) gave the example of a scheme for laundering the proceeds of cocaine sales reproduced here for illustrative purposes. In this case, narcotic shipments originated from South America. Sales in Europe and the Middle East generate up to USD 200 million per month. One laundering scheme applied by "individual Q" for the generated proceeds was detailed as follows:

"Proceeds of drug trafficking were moved and laundered through- 1. Bulk cash smuggling (cash couriers); use of exchange houses including one owned by Q; use of accounts of family members of 'Q' in several branches of Bank P. Bulk cash deposits were made by Q and his associates in exchange houses which in turn deposited the money into several accounts maintained in Bank P. In fact Q owned and controlled one of the exchange houses located in the same building as a branch of Bank P. Certain employees of Bank P were in league with Q. […]

(W)ire transfers from Bank P were sent to banks in the U.S. for purchase of used cars in the U.S. The car dealerships were operated by individuals who had been separately identified in drug-related investigations. The recipients of these funds purchased vehicles in the United States, which were then shipped to countries in West Africa and elsewhere. The proceeds generated from sales of used cars were ultimately repatriated back to Lebanon. The money generated from illicit drug trade was thus fully integrated into the financial system through TBML scheme involving trade in used cars." (APG, 2012, p. 56)



Grafic 1: TBML scheme (APG, 2012, p. 57)

With regard to how much money is laundered globally, early figures of a “consensus range” like the widely quoted 2-5% of global gross domestic product (GDP), brought into circulation by the then Managing Director of the International Monetary Fund (IMF) in 1998 (Camdessus, 1998), later turned out to have no basis that could be traced back to documentation (UNODC / The World Bank, 2007, p. 9). The Financial Action Task Force´s (FATF), the leading international standard setting body in AML policy, own “sustained efforts between 1996 and 2000 […] failed” (Reuter & Truman, 2004, p. 9) to produce reliable estimates, as a participant of the process noted. In early assessments, both macro- and microeconomic estimates were seen as failures to produce “numbers that meet minimal standards for policy guidance” (Reuter & Truman, 2004, p. 23). Others held that the produced estimates “are for the large part little more than an informed guess” (Harvey, 2004, p. 343). Later observers shared this view, stating with regard to the question of how much money is laundered, that “the most straightforward answer is that no one knows” (Sharman, 2011, p. 18). Beyond the technical difficulties of estimating money laundering amounts, the issue is further complicated by the differences in legal definitions of what constitutes money laundering already mentioned above.

Despite these challenges, the United Nations Office on Drugs and Crime (UNODC) took stock of a number of attempts in a “study-of-studies” (UNODC, 2011, p. 5) to finally produce an estimate for the global magnitude of money laundering. It concluded that the phenomenon amounted to USD 1.6 trillion in 2009, representing 2.7% of global GDP (UNODC, 2011, p. 7). However, the study is based on third party studies whose methodologies by themselves created uncertain results. Thus, despite these prolonged efforts, measures of global money laundering amounts have so far remained inconclusive. The FATF therefore retained its position that “[…] it is […] impossible to produce a definitive estimate of the amount of money that is globally laundered every year” (FATF, 2016a). Alternative routes have started to apply promising qualitative methods like interviewing offenders to assess the effectiveness which seem to indicate a deterrence effect of asset confiscations (rather than prison sentences) on smaller scale cash-based criminals that engage in money laundering (Sittlington & Harvey, 2018, p. 438). Yet almost 50 years after the US passed the Bank Secrecy Act (BSA) as the first AML law in 1970, quantitative indicators of AML policy impact on money laundering remain elusive (Levi, et al., 2018).

Even though precise estimates are impossible, all reviewed studies indicate that the magnitude of laundered funds is a considerable portion of global GDP. International money laundering operations profited from reduced regulation of international financial flows and growing cross-border trade volumes in recent decades. This contextual development facilitated the transaction of illegally accumulated wealth across borders, be it as wire transfer, bulk cash smuggling or in other forms of stored and easily transformable valuables. Money launderers can thus more easily target jurisdictions in which regulation and oversight are weakest, allowing them to choose countries best suited for the distinct phases of the money laundering process. Economic globalisation, as one of its effects, substantially facilitated transnational money laundering and contributed to challenging nation states' capacity to confront transnational organised crime (cf. Eldridge, 1986, p. 685; Strange, 1996; Naim, 2005; UNODC, 2010, p. 29).

Responding to the rational of a growing transnational organised crime threat, the international community concluded that to fight money laundering effectively, mere national efforts would fall short in achieving the desired results. In the form of international treaties, the United Nations drove the establishment of money laundering as a criminal conduct that was to be confronted on a global level by three consecutive Conventions related to different organised crime threats. The first international legally binding AML framework was the 1988 United Nations Convention against Illicit Trafficking in Narcotic Drugs and Psychotropic Substances (Vienna Convention). In its article 3, the Vienna Convention calls upon its State Parties to criminalise the laundering of funds generated by narcotics trafficking. In other articles, it details specificities of confiscation regimes and international cooperation in the investigation and prosecution of narcotics related money laundering (United Nations, 2001).

The 2003 United Nations Convention against Transnational Organized Crime (UNTOC; Palermo Convention) expanded the narrow focus on narcotics related money laundering of the Vienna Convention to include other crimes. Under Article 6 of the UNTOC, State Parties shall criminalise money laundering related to "the widest range of predicate offences" (United Nations, 2004). Article 7 establishes that State Parties shall institute domestic regulatory regimes and cooperate with each other against money laundering. The UNTOC also somewhat vaguely calls upon State Parties to "use as a guideline the relevant initiatives of regional, interregional and multilateral organizations against money-laundering" – a first reference at this level of international policy making to the more detailed policy standards of the Financial Action Task Force and related bodies which will be detailed later.

The United Nations Convention against Corruption (UNCAC) of 2005 reinforced the tendency to widen the application of AML to other crimes beyond the illegal narcotics trade. Under its article 14, State

Parties are to establish "comprehensive regulatory and supervisory regimes […] in order to deter and to detect *all* forms of money laundering" [emphasis added by the author] (United Nations, 2007, p. 153). Another focus of the UNCAC lies in fostering international cooperation between states to combat money laundering (ibid., p. 154), amongst others through information exchange between relevant administrative authorities. The UNCAC, similarly to the UNTOC, calls upon State Parties to "use as a guideline the relevant initiatives of regional, interregional and multilateral organizations against money laundering" (ibid.).

1.1.1 The Financial Action Task Force and its Recommendations

Even if not explicitly mentioned in both documents, the call of both the UNTOC and UNCAC to use as policy guidelines relevant initiatives points to the policy standard defined by the Financial Action Task Force and its affiliated regional organisations. Since its establishment in 1989, the FATF has become the global standard setter in AML policy making. The organisation had 35 member countries in 2016. In the same year, with additional countries and jurisdictions organised in nine formally independent FATF Style Regional Bodies (FSRB) and according to their respective websites, over 200 parties formally signed up to the implementation of the FATF policy standards and procedures. This level of formal endorsement even surpasses the 193 member states of the United Nations and also its three international treaties with the highest number of parties that amounted to 197 by July 2017. Notably, all of these three treaties deal with environmental issues of global importance as the protection of the ozone layer and climate change which underlines the global significance of the FATF.

The FATF's central instruments are the FATF Recommendations. They are a series of concrete policy proposals for states and private actors like banks to prevent, detect and prosecute money laundering. Although not legally binding, their mention in the outcome document of the United Nations General Assembly's Special Session 2016 on the world drug problem alongside the relevant UN conventions underlined the practical salience of the FATF Recommendations in AML policy development. The document recommends states to "[c]ontinue to foster international cooperation by implementing the provisions against money-laundering contained in all relevant international and multilateral instruments, such as the 1988 Convention, the Organized Crime Convention and the Convention against Corruption and, in accordance with national legislation, the Financial Action Task Force Recommendations on money laundering" (United Nations, 2016, p. 11).

Since their first publication in 1990, the FATF revised its Recommendations in 1996, 2003 (amended in 2004) and 2012. The FATF Recommendations spanning the empirical focus of this research (2007-2014) were promoted globally through the FATF and the FSRBs between 2004 and 2012. They were separated into subsections A-D as presented below in a simplified manner[3] (cf. FATF, 2004, pp. 3-14):

Overview of the FATF Recommendations against money laundering between 2004-2012	
A. Legal systems	
Recommendations 1-2	Scope of the criminal offence of money laundering
Recommendation 3	Provisional measures and confiscation
B. Measures to be taken by Financial Institutions and Non-Financial Businesses and Professions to prevent Money Laundering and Terrorist Financing	
Recommendation 4	Limitation of financial institutions secrecy laws[4]
Recommendations 5-12	Customer due diligence and record keeping
Recommendations 13-16	Reporting of suspicious transactions and compliance
Recommendations 17-20	Other measures to deter money laundering and terrorist financing
Recommendations 21-22	Measures to be taken with respect to countries that do not or insufficiently comply with the FATF Recommendations
Recommendations 23-25	Regulation and supervision
C. Institutional and other measures necessary in systems for combating Money Laundering and Terrorist Financing	
Recommendations 26-32	Competent authorities, their powers and resources
Recommendations 33-34	Transparency of legal persons and arrangements
D. International Co-operation	
Recommendation 35	Implementation of international conventions
Recommendations 36-39	Mutual legal assistance and extradition
Recommendation 40	Other forms of co-operation

The basic AML system envisioned by the FATF Recommendations works as follows: At its core lies a system of customer due diligence, record keeping and reporting standards. If the 2004 Recommendations were implemented in national law, financial institutions, such as banks and insurance companies, as well as denominated non-financial businesses and professions (DNFBP), such as casinos and dealers in used cars or precious metals and other businesses and professions according to their money laundering risk, were obliged to collect and verify identity information of their respective customers – so called know your customer (KYC) procedures. As part of their customer due diligence (CDD), they were also to collect

[3] The FATF Recommendations in their version of 2004 also included 9 Special Recommendations on Terrorist Financing, which are not reflected in this study due to conceptual considerations. The reasons are outlined further in section 3.4.

[4] Author´s own formulation. The original overview only mentions this as "Recommendation 4" without summarising its content.

information on the origin of funds which their customers sought to deposit or invest and continuously evaluate the proposed business relationship and its associated criminal risk level. Compliance with these requirements was to be supervised by the respective market supervisory authorities.

Based on this information, regulated financial institutions and DNFBPs were to apply risk mitigation and management techniques when dealing with high risk clients, leading up to not entering into business relationships with potential clients. In case a business relationship was established, these organisations were to file Suspicious Transaction Reports (STR)[5] if they detected transactions that were incoherent with the information provided by their customers or the underlying business activity. Equally, routine reports were to be filed, if transactions surpassed an amount of USD 10,000. Under the FATF model, these reports were to be received and analysed for potential money laundering by a single national state entity, commonly denominated Financial Intelligence Unit (FIU). With money laundering defined as a crime under national law, FIUs would then notify law enforcement agencies in cases where money laundering suspicions were substantiated and pass along relevant information. The corresponding criminal investigation and potential prosecution would be carried out by the respective law enforcement and judicial agencies. To effectively engage with money laundering schemes which transcend the national environment, mechanisms for international cooperation, information sharing and legal assistance were to be established.

To combat money laundering and the connected predicated offences that created illicit funds, the FATF's recommended anti-money laundering policies serve as a preventive as well as an investigative and prosecutorial tool. Reuter and Truman argued that both pillars served to direct combating money laundering via different means. *"The prevention pillar of the AML regime is designed to deter criminals from using private individuals and institutions to launder the proceeds of their crimes. Enforcement is designed to punish criminals when, despite prevention efforts, they have facilitated the successful laundering of those proceeds"* (Reuter & Truman, 2004, p. 46). The two means in this view were deterrence and punishment, each connected to specific policy subsets. Financial regulation and supervision for example served as deterrence in the prevention pillar, while prosecution and confiscation served as punishment under the enforcement pillar (cf. Reuter & Truman, 2004, p. 47). KYC and CDD procedures should protect the financial market and DNFBPs from abuse by money launderers. Following the money trail to its illegal origin through created documentation should allow prosecution agencies to investigate predicate offenses more effectively.

Beyond these direct measures, successful application of AML should also reduce the incentives of actors committing financially motivated crimes by raising costs of doing criminal business. The

[5] In practice, a variety of reports of suspicion exists with STRs being specific reports on financial transactions. The broadest term in scope is Suspicious Activity Report (SAR), which is not restricted to financial transactions. At a lower level of suspicion or money laundering relevance Unusual Transaction Reports (UTR) are sometimes used instead of STRs to permit a more nuanced reporting regime.

recommended policies aim to disrupt the ongoing financing of criminal organisations by blocking access to value transfers and thus the acquisition of investment products, for example small aircrafts for narcotics or weapons transport, on legal markets. AML thus complements strategies of public security provisions that rely primarily on the use of force, be it by the police or judicial authorities, with criminal intelligence and criminal policy seeking to damage illegal markets and taking the profits out of crime.

In order to promote and monitor the implementation of the FATF Recommendations, the FATF and FSRBs created and implement, together with the World Bank and the IMF, a peer-review mechanism for their members. Within this mechanism, an expert delegation sent by member countries of the same group regularly produces draft Mutual Evaluation Reports (MER) at intervals of about five years based on a common methodology produced by the FATF (cf. FATF, 2009a). Final MERs are published after a review and approval process in FATF/FSRB plenary sessions. In case relevant deficiencies were detected, countries could be subjected to enhanced follow-up mechanism which produced more regular reports to the plenary which were at times also published. These measures continue until a country was seen as to have made successful progress in implementing the respective FATF Recommendations. The FATF and FSRBs carried out their evaluations in rounds, with the FATF having initiated its Fourth Round of evaluations in 2014 based on the 2012 Recommendations and a revised methodology adopted in 2013. This study works primarily with results of the Third Round, which officially concluded in June 2014 and therefore provides a closed set of comparable data for this study.

1.2 Research Outline

After this brief introduction to money laundering and anti-money laundering policies, the thesis now outlines its central research characteristics. This section first presents the research interest and puzzle, the research question and value added of this work. It then proceeds to an overview of the applied theoretical and methodological framework. These points are developed in more detail in chapter 3. The section concludes with a brief summary of the results.

The success of the FATF in establishing its Recommendations as a globally accepted policy standard is highly exceptional (cf. Helleiner, 2002, p. 183). Consecutively since 1990, virtually all countries and jurisdiction in the world formally subscribed to national AML policy development and implementation based on the FATF Recommendations. At the same time, empirical observations through Mutual Evaluation Reports revealed a wide variety of countries being non-compliant, partially compliant, largely compliant or compliant with different parts of the FATF Recommendations (cf. Krais, 2018, p. 3; Verdugo, 2011). Formal norm acceptance by states and jurisdictions has therefore not translated directly to norm adherence in the form of establishing and implementing AML policies in accordance with the FATF Recommendations. The research puzzle of this thesis is, that this variance could not be easily explained by observed levels of statehood in closely related fields (cf. also Lee, et al., 2016), with statehood understood as "the ability of the state to enforce collectively binding decisions" (Börzel & Risse, 2010, p. 118). In other words, whether a state that has accepted implementing the FATF Recommendations as policy goal is able or not to overall develop and enforce its criminal laws, tells us very little about its actual compliance with the FATF Recommendations. Compliance levels must therefore be explained by referring to other or additional factors.

Standard explanatory variables that could serve as proxies for statehood have limited predictive power for compliance with the FATF Recommendations. These will be further discussed in the literature review and include for example country income levels or national governance capacity. While such variables correlate well at the extremes of their respective spectrums, results are significantly more scattered in the area of middle income countries or mid-range levels of governance capacity both in general terms (cf. Verdugo, 2011) as well as in the public security sector. While the literature holds that a minimum level of state capacity seemed necessary to implement AML policies and high income countries showed overall high compliance rates with the FATF Recommendations, a grey area existed with a large number of countries for which no clear explanation had been developed for their compliance levels that went beyond "national peculiarities" (Verdugo, 2011, p. 24).

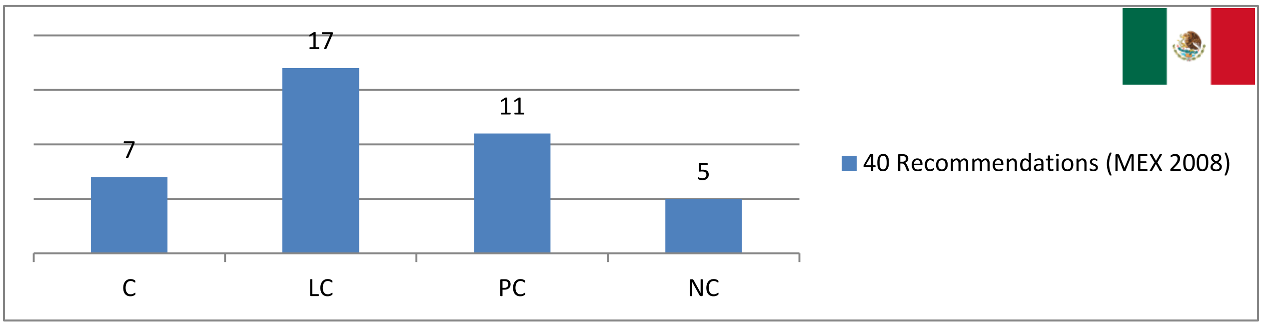
The situation of Mexico and the Central American Northern Triangle comprised of El Salvador, Guatemala and Honduras around 2010 serves to illustrate this point. All four countries faced a significant organised crime challenge during the term of the 2004 FATF Recommendations. Their position along one of the world's most important narcotics trafficking routes transporting cocaine from South America to the US contributed to deteriorating public security and rising homicide rates. These were among the highest on the planet. Both Mexico (cf. Serrano, 2009) and the countries of the Northern Triangle had in the past limited success in their attempts to implement policies targeting the activities of transnational organised crime, especially those linked to narcotics trafficking. These countries can therefore be conceptualised as "area[s] of limited statehood" with regard to public security provision, meaning that the region's "central authorities (governments) lack the ability to implement and enforce rules and decisions [...] at least temporarily" in this policy field (Börzel & Risse, 2010, p. 119).

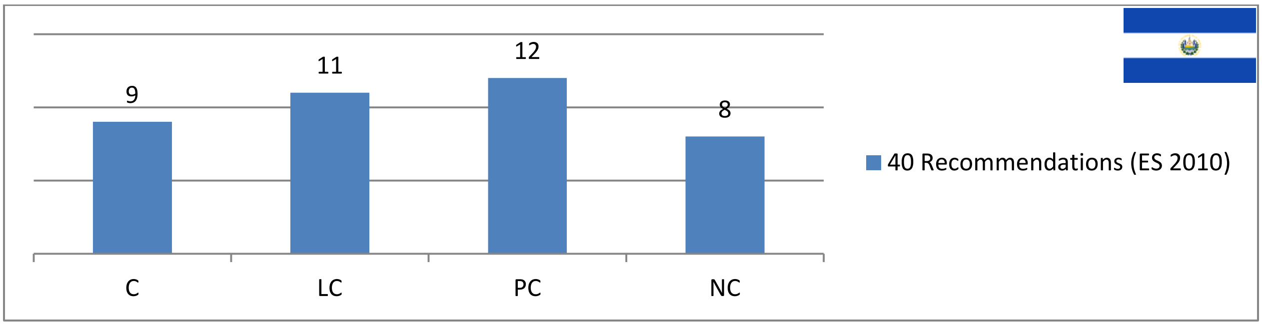
Within the spectrum of states with identified areas of limited statehood, available quantitative data shows that compared to Mexico, states of the Northern Triangle have a significantly lower capacity to enforce collectively binding decisions. This finding is stable using measures for the overall rule enforcement capacity and more specifically for the area of public security provision. A lower capacity for enforcing collectively binding decisions did however not translate into lower implementation rates of the FATF Recommendations in El Salvador and Guatemala in comparison with Mexico. Mexico is not just a state with somewhat larger areas of consolidated statehood in its governance landscape and member of the Group of

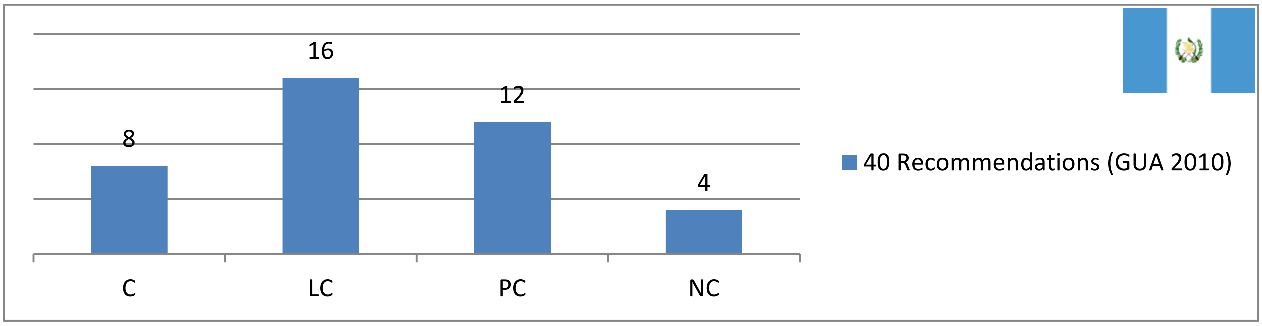
20 (G20); it is also an FATF member state which indicates an even higher level of commitment with implementing the FATF Recommendations.

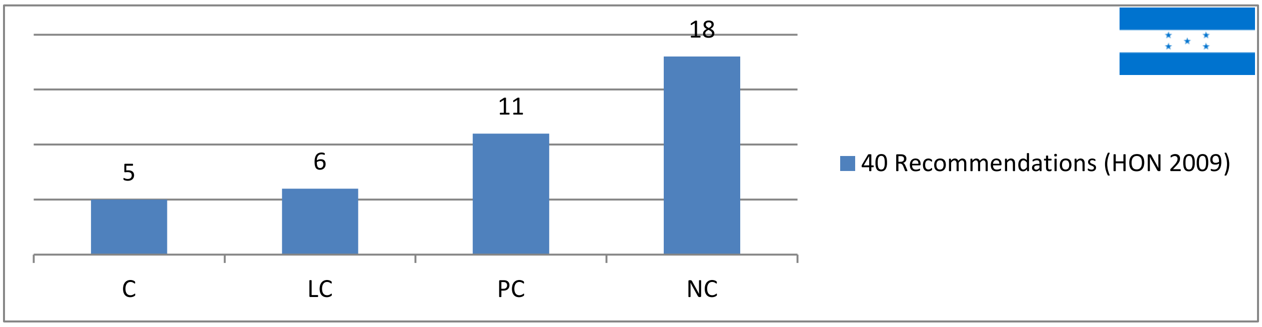
Following the work of Lee et al. (2016; for a reflection on data issues regarding governance in areas of limited statehood cf. Stollwerk, 2018), this study used the PRS Group's International Country Risk Guide's Bureaucracy Quality indicator as a proxy for the variance in overall statehood levels between Mexico and the Northern Triangle. It ranked Mexico with a score of 3 out of possible 4 points for the period 2009 – 2011. El Salvador, Guatemala and Honduras received a rating of 2 for the same period (PRS Group, 2011). Beyond this variance in their general capacity to enforce collectively binding decisions, the difference between Mexico and the Northern Triangle was even more pronounced in the area of public security provision. Using 2010 homicide rates per 100,000 inhabitants as an indicator for the capacity of public security provision by governments, El Salvador with 66, Guatemala with 41.1 and Honduras with 82.1 homicides were considerably less effective than Mexico with 18.1 homicides despite the county's recent rise in violent crime (UNODC, 2012).

As visualised below, Mexico's higher capacity to enforce collectively binding decisions, both in general and in public security provision, did not translate into a significantly higher compliance with of the FATF Recommendations in comparison with El Salvador and Guatemala. The 2008 peer review of Mexico evaluated the country as compliant (C) with 7, largely compliant (LC) with 17, partially compliant (PC) with 11 and non-compliant (NC) with 5 of the 40 Recommendations, showing a wide spread between compliance and non-compliance (FATF, 2008). The cases of El Salvador (CFATF, 2010a) and Guatemala (CFATF, 2010b) showed similar patterns of compliance and non-compliance using data from their 2010 peer review reports conducted under the Caribbean Financial Action Task Force (CFATF) which applied a similar methodology. Within the region, only Honduras displayed low compliance levels (CFATF, 2009) that could be expected for countries with a high occurrence of areas limited statehood (the country had suffered a successful coup in 2009).



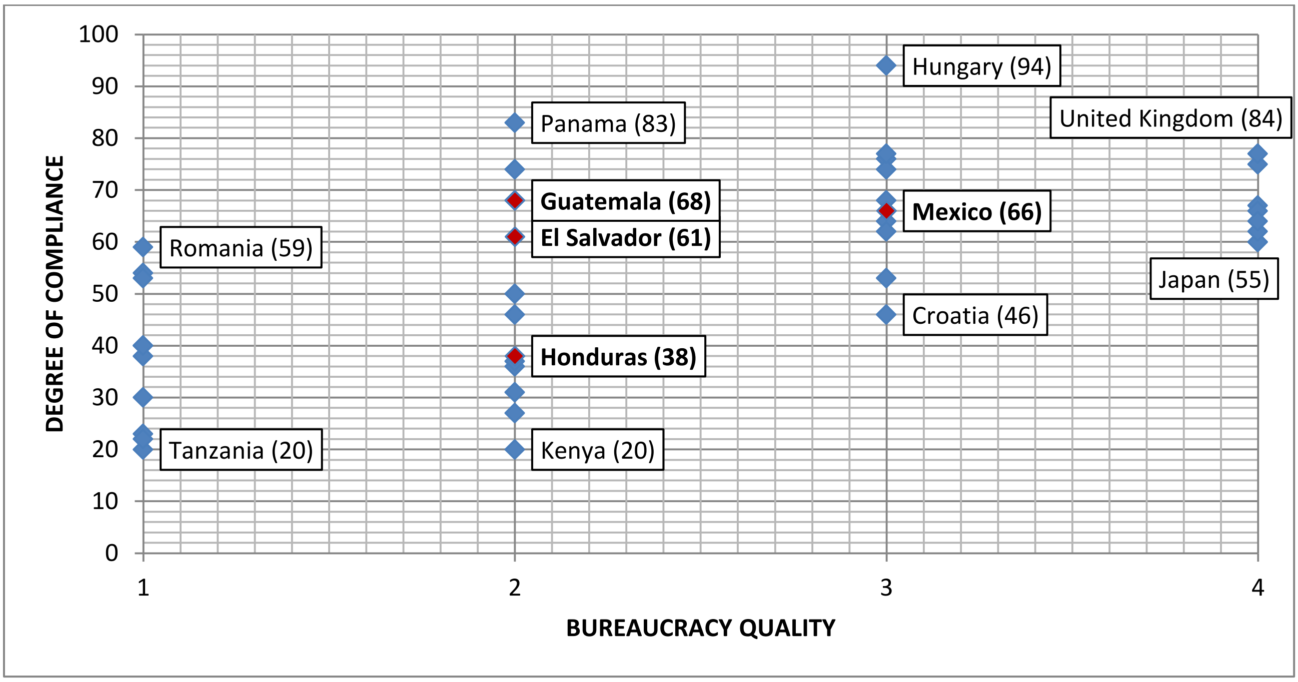






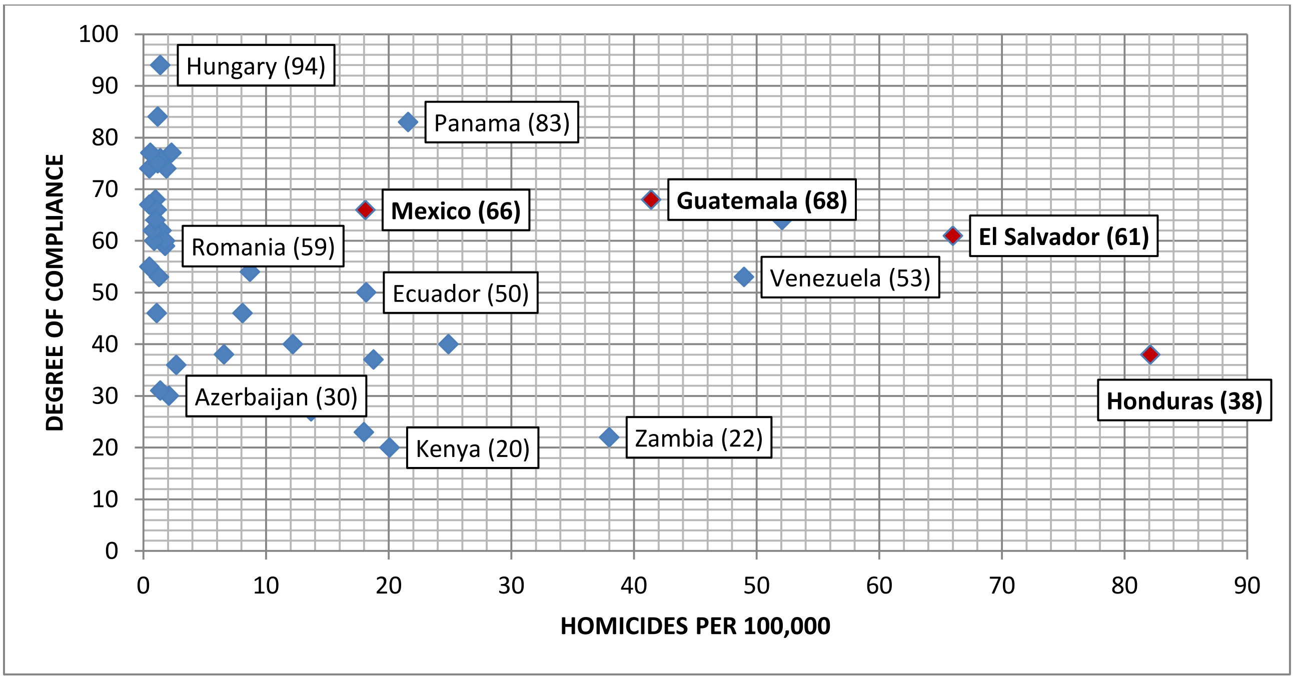
Graphics 1 – 4: FATF compliance levels of Mexico, El Salvador, Guatemala and Honduras.

The low correlation between statehood and compliance levels of the FATF Recommendations is a finding that remains stable using a wider sample of countries. Graphic 5 illustrates the relationship between FATF compliance levels and statehood in 40 countries that were randomly selected from the PRS Group's Bureaucracy Quality database. Ten countries were selected for each possible rating from one (lowest) to four (highest) quality score. Mexico and the Northern Triangle were added and highlighted. To quantify the degree of compliance, one point was awarded for a rating of partially compliant, two for largely compliant and three for compliant with the FATF Recommendations in the available 2008-2011 MERs. The numbers in brackets state the aggregated score with a potential range from 0 to 120.



Graphic 5: FATF compliance rate and PRS Group's Bureaucracy Quality indicator.

Graphic 6 shows the same country sample using national homicide rates (UNODC, 2011) as an indicator for statehood in the monopoly of the use of force, as the second aspect of statehood complementing the ability to enforce collectively binding decision (cf. Börzel, et al., 2018, pp. 6-7). These were again put in relation with the countries' compliance rates with the FATF Recommendations.



Graphic 6: FATF implementation rates and homicides per 100,000 inhabitants.

Both graphics revealed the low significance of a correlation between statehood and compliance with the FATF Recommendations. If anything, Guatemala and El Salvador showed an above average compliance level with regard to their respective measures of statehood. While severe limitation of statehood might have some effect on the implementation of the FATF Recommendations as exemplified by Honduras, the predictive power of governments' capacity to enforce decisions and the monopoly on the use of force is at least highly limited. This indicates that other factors must have existed that can offer an additional explanation for the observed compliance levels with the FATF Recommendations in areas of limited statehood. This study constructively engaged with this research interest.

The central research goal is therefore to identify factors that offer an explanation for FATF compliance of countries. It will do so by exploring two cases in depth. Mexico and El Salvador were selected as case studies to allow for a variance in statehood indicators while keeping the regional environment and transnational crime challenge mostly stable. Having two cases with differing government capacity to enforce collectively binding decisions in public security provision makes it possible to account for this factor in its potential interaction with alternative or complementary explanatory variables. The central research question of the thesis is:

What factors explain compliance and non-compliance of El Salvador and Mexico with the 2004 FATF Recommendations?

By engaging with this question, the added value of this thesis is twofold: empirical and theoretical. At the empirical level, it offers the first comprehensive analytical study of the development of anti-money laundering policies in El Salvador and Mexico. This contribution is original not only considering these concrete cases. It is also one of very few studies that have analysed the political processes behind the development of national money laundering policies of countries that are not at the centre of international financial markets. While other country studies were incrementally developed from the concrete case, the analytical framework designed by this study can serve as template for other cases. This application would facilitate comparison between different cases and contribute to a growing AML analytical toolbox.

With a limited number of available empirical studies, theoretical knowledge of the development of national anti-money laundering policies is still limited. The few existing studies are not coherent in identifying generalizable factors that influence national money laundering policy development. By a theory guided exploration of two case studies, this research generated sound hypotheses for the development of national money laundering policies that can be tested on other cases. Its result might inform policy makers interested in enhancing FATF compliance on how to more effectively promote their cause.

Beyond the realm of AML policy research, the thesis further adds to the growing literature on policy transfer and governance in areas of limited statehood by applying these theoretical frameworks to empirical cases. Its findings thus serve to reflect on and further refine both theories. While a large theoretical body of text exists on policy transfer, studies in this field have mostly focussed on areas of consolidated statehood, i.e. the US and Western Europe. Due to the limitation of the state's capacity to rule hierarchically if it wishes it is assumed that policy transfer dynamics and their results in terms of FATF compliance differ for El Salvador and Mexico if compared to areas of consolidated statehood. Combining transfer studies and governance in areas of limited statehood has proven a good theoretical fit to explore and explain these dynamics. Moreover, the governance in areas of limited statehood framework lent itself to exploratory studies as it emphasises the interaction of a wide range of contextual, institutional and actor based factors in the explanation of provision of public goods and services.

The results of this study will allow for a more differentiated approach to understanding AML policy development and implementation. Neither states not the private sector are monolithic blocks that either comply or do not comply with the FATF recommendations due to their overall capacity for rule enforcement. What emerges instead is a complex network of interests and power relationships between different actors engaged in AML policy. These actors are found at the international, transnational, bilateral and national levels both within the private and public sectors. They influence each other largely by non-hierarchical means with command and control based on enforcement of the monopoly on the use of force being the exception rather than the rule. Yet, as will be seen this exceptional expression of hierarchy has a clearly recognisable effect in the overall AML system. It is one of the main explanations driving compliance with preventive policies in the financial sector. However it falls short in other areas as it requires transnational financial markets as transmission belts for power differentials between public and private actors partially located in different states. This leads to an explanation for similarities in compliance with preventive financial sector Recommendations in countries with a strong presence of international financial groups. Beyond this policy sub-field, explanations need to systemically take account of actors' capacity to effectively engage in non-hierarchical governance if the hierarchical application of criminal AML legislation by the state is not an empirical reality.

1.3 Thesis Structure

Together with this introduction, the thesis is structured in a total of five chapters that each contains sections and sub-sections. Chapter two ("Literature Review and Typology") and three ("Theory and Methodology") are consecutive refinement steps for developing guiding hypotheses for answering the research question. In these chapters, the thesis works itself up from a presentation of the existing literature on AML policy development through its discussion and identification of potential explanatory factors towards embedding these factors in a theoretical framework that enforces the necessary rigour in the empirical case analyses. Chapter two starts out with a literature review to probe into already existing explanatory offers for compliance with the FATF Recommendations. It takes account of the literature explicitly dealing with the FATF and its policy standard but also casts a wider net on AML policy development and implementation at the national level. This wide approach allowed for capturing additional explanations that might have escaped scholars of the FATF approaching the issue mostly from an international regime perspective (e.g. Nance, 2018). As this is the first comprehensive literature on AML policy development judging by the reviewed literature, the chapter goes a step beyond recompiling and extracting insights from existing secondary literature. It also created a typology which seeks to order the debate on AML policy development into different groups of explanations. This made it possible to target the identified types of explanations at answering the research question but also required a deeper characterisation of the authors as well as the academic and practical fields from which they develop their arguments.

Going beyond the literature's immanent arguments and combining insights from different identified types of explanations, the initial propositions are further refined into a first hypotheses set in chapter three. The theoretical footing of this work is policy transfer literature. To make it more applicable to the research context, established approaches of this field are combined with emerging research on governance in areas of limited statehood. This compensates for both the bias of classic transfer studies' approach on areas of consolidated statehood as well as the still thin theoretical foundations of governance in areas of limited statehood. The combination thus gives an established theoretical framework the right set of analytical tools to probe the two selected case studies for the role of governance configurations that combine the main explanatory elements of this study: the interaction between actors and institutions based on power relationships as ingredients of the process dimension of governance. The final construction of the hypotheses set critically reflects on the explanatory types offered by the literature using the theoretical insights. On this basis, chapter three concludes by presenting the research derived methodology and transparently outlining the used data facilitating academic scrutiny of the final results.

With this solid groundwork established and the analytical tools ready, chapter four then dives into the two in-depth case studies of AML policy transfer to El Salvador and Mexico. Both sections of chapter four are structured similarly. After providing a short introduction into the national context, they take stock of the state of FATF compliance during the Third Round of mutual evaluations in 2010 (El Salvador) and 2008 (Mexico). They then consecutively apply four ideal-type governance configurations to the cases in order to probe them for their explanatory value: governance by (i) "delegation under conditions of limited statehood", (ii) "external influence", (iii) "external provision of statehood", and (iv) "competition systems". To differing degrees, all four provide useful insights to further the understanding of AML policy transfer into the national context.

The conclusion then draws together all of the above explanatory strands provided by the AML literature, theory of policy transfer, studies on governance in areas of limited statehood, and the insights of the case studies. It answers not only which factors contribute to AML policy is transfer in El Salvador and Mexico but crucially also offers explanations for causal mechanisms. Going beyond the generic ideal types, it develops an analytical model for AML governance configurations that can be applied to future case studies. Its application would allow faster access and deeper understanding of other country cases. A refined hypotheses set based on this model is also proposed which future research could use in large-n studies to test the results. The work concludes by daring a final reflection on what the results could mean for policy practitioners interested in furthering AML as well as an evaluation of validity of combing policy transfer with governance in areas of limited statehood.

The internal construction of each part of this work follows a three step pattern. In the form of short introductory summaries, the initial lines or paragraphs anticipate the results of the following paragraphs or pages. This is to orient the reader and sensitise on what to look out for in the hope not to create inefficient redundancies. After developing the analysis, arguments and evidence, intermittent summaries conclude blocks of content within the thesis.

2. Literature Review and Typology

The literature review probed the existing body of texts on anti-money laundering policy development for insights that might help answering the research question. No pre-existing systemic literature review was encountered with the specific purpose to identify factors affecting compliance with the FATF Recommendations. This chapter is therefore also a pioneering attempt at creating a typology of the AML policy development literature. This exercise served as preparation for formulating a theory guided explanation of the empirical compliance situation observed at the national level. Wider theoretical considerations are introduced in chapter 3 to create a sound explanatory framework of causal mechanisms leading to compliance or non-compliance. This makes it possible to evaluate the plausibility and consistency of the identified potential causal factors and additionally, guided by theory, "suggest causal factors that scholars might not have recognized and thus omitted from their analysis" (Mearsheimer & Walt, 2013, p. 437).

Text selection concentrated on such contributions that were most directly concerned with the emergence and development of anti-money laundering policies. Only few analytical texts could be identified that deal explicitly with factors affecting domestic AML policy development. Additionally, country case studies were too limited to confidently derive generalizable answering patterns by their analysis alone. The reviewed body of text therefore also included analyses of AML policy development at the international level and other relevant texts. Amongst others, the review worked with a broader collection of mostly empirical documents published as newspaper articles, academic journal articles, book chapters or monographies between 1972 and 2020. Recurring to newspaper articles was necessary primarily for the 1970s and 1980s as the academic literature was still in its infancy and did not provide sufficient data for this important time during which the first AML laws were passed and implemented in the US and some European countries.

In order to capture a wide variety of insights, this research did not apply a conscious selection filter with regard to explanations focussing solely on factors from specific national, regional, or international contexts, or different academic fields such as Law or Political Science. This decision also reflected the lack of academic coherence in the literature which has a strong practitioner focus and offers little in terms of debates structured along specific academic fields. A too narrow focus in such an environment would have unduly increased the risk of omitting or discarding relevant factors, without the necessary epistemological foundation. Applied case studies with legal and normative background considerations for the use in handbooks and the education of practitioners probably form the largest body of literature on AML (e.g. Howell, 2006; Madinger, 2012; Glaser, 2019). They are however often descriptive and provided few insights into the development of the underlying policies. While this certainly required background reading for anyone interested in the subject should not go without mention, due to their specific scope they rarely found their way into the literature review of this research.

Section 2.1 begins with a general characterisation of the literature, introducing different academic fields that dealt with the subject and the main strands of debate over time. This allows the reader to get a first orientation of how the subject was treated by other authors and what explanatory potential, structural biases and limitations the literature might hold. Crossing academic subject lines, the analysed literature was then ordered into four different clusters of arguments that seemed fruitful for answering the research question. Notwithstanding some overlap between them, the clusters hint towards considerations of (i) conflicts with civil liberties, (ii) cost, effectiveness and purpose, (iii) international governance, and (iv) domestic context as influencing the development and implementation of national AML policies and in turn explaining FATF compliance. Section 2.2 further synthesises the literature findings extrapolating observable factors and developing a first set of propositions.

2.1 State of Research

2.1.1. General Characteristics

The body of literature dealing with the development of money laundering policies grew alongside the policies themselves. It is driven by and reflective of policy developments on the ground rather than debating the subject matter on a more conceptual or theoretical level. While AML evolved from a specialised investigation technique in narcotics cases applied in the US since the 1970s into a global policy blueprint, it incorporated broader objectives like protecting financial markets from abuse by criminal offenders. In parallel to the expansion of policy objectives, the field attracted an increasing variety of authors and academic interests. Diversification over time was thus the most striking trend that was observed in both the setup of authors and issues areas covered by the literature. Another observation was the decreasing, overall yet high, presence of practitioners contributing to the literature. The high portion of legal practitioners in this group contributed to the salience of legal strands of debate. Descriptive presentations of money laundering policies in different jurisdictions were the most frequent topic. Criminology and other fields only gained more prominence in the late 2000s.

The literature strongly featured contributions from the US, United Kingdom (UK), Australia and The Netherlands which together formed identifiable strands of debate on different AML issues presented in the following sub-sections. The salience of Anglo-Saxon contributors was likely due to the historical development of the concept in the US and the importance of its application in the financial centres in New York and London. Complementary contributions from continental Europe, Asia, Africa and Latin America enriched these debates with views informed by distinct national and regional backgrounds with their respective legal and normative traditions.[6]

Among the earliest contributors to the AML literature were practitioners, understood as authors working in either the development or application of money laundering policies, in financial and legal professions (e.g. Time, 1972; Twight, 1977; Meyer, 1978; Eldridge, 1986; Villa, 1988; Rusch, 1988). They themselves and their clients were most directly affected by the implications for bank secrecy and privacy protection of implementing record keeping and reporting standards within financial institutions. Authors working for financial law firms were consequentially an especially well represented group. Though fewer in numbers and appearing later in the literature, other identified early contributors had a criminology background and were more interested in the crime fighting application of AML (e.g. Karchmer, 1985; Nadelmann, 1986). While a legal strand continued to be strongly represented (e.g. Stessens, 2000; Pieth & Aiolfi, 2004; Gilmore, 2004), other academic fields like criminology (e.g. Levi, 2002; Reuter & Truman, 2004), economics (e.g. Unger, 2007; Walker & Unger, 2009; Barone & Masciandaro, 2011), and political science (e.g. Tsingou, 2010; Kerwer & Hüllse, 2011; Sharman, 2011) grew in importance particularly since the 2000s.

In addition to the monographies and articles referenced above, the development of contributions to the area's leading scientific journal exemplifies this general trend. The "Journal of Money Laundering Control" (JMLC) was first published in 1997. Its publisher described it as: *"[…] the world's only quarterly, peer-reviewed journal designed to provide detailed analysis and insight on the latest issues in the law, regulation and control of money laundering and related matters. The journal's authors include not only leading scholars, but those directly involved at policy and operational levels in fighting money laundering"* (Emerald Group Publishing, 2014). By inviting such a diverse group of contributors, the journal's goal was to act as a central platform for discussions on money laundering issues. The validity of this claim was underlined by the publication's status as the official journal of the Cambridge International Symposium on Economic Crime. Through its 37 sessions till 2019, this senior level international conference has acted as a central meeting spot for money laundering practitioners and scholars, and as a focal point for debates on money laundering policy development.[7]

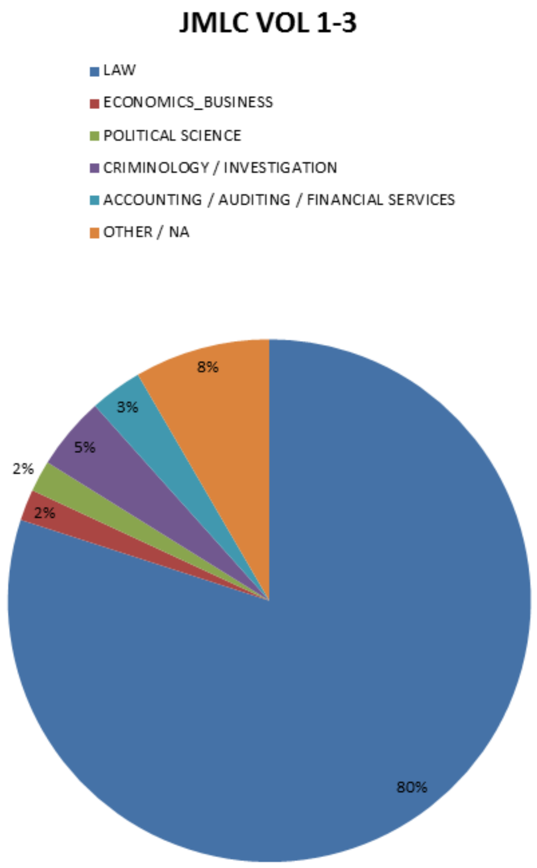
A comparison of two three-year samples illustrates the diversification in authors and issue areas. In the first three volumes of the journal, published between summer 1997 and 2000, 80% of authors had a background in law, usually an advanced university degree. 65% of the articles had contributing authors who

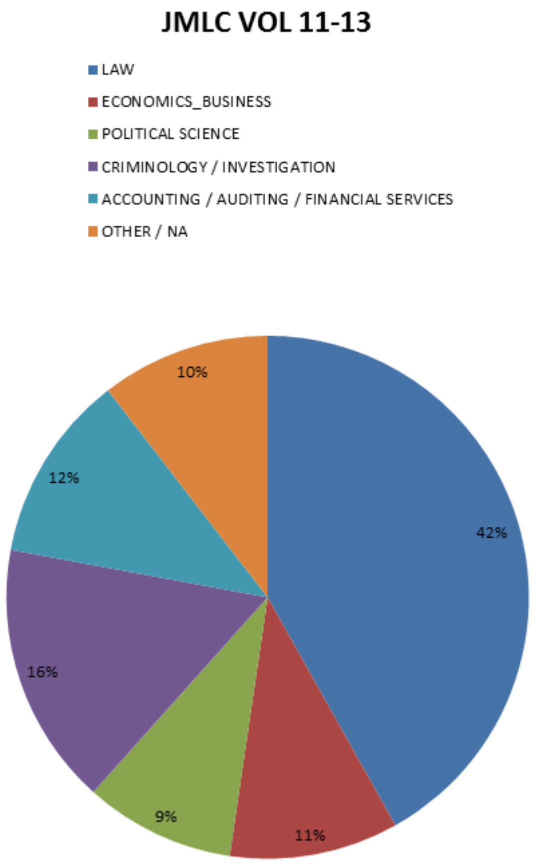
[6] An obvious caveat exists in this analysis due to language limitations of the author. During the review, particularly Italian contributions appeared to be a still untapped source of AML literature that would merit further systemic exploration and are likely to have a stronger crime fighting focus.

[7] How tightly knit this community is was observed by the author at the 29th and 34th Cambridge International Symposium on Economic Crime in 2011 and 2016. Many of the well over 1500 participants from over 90 countries were annual regulars and some represented their families in the third generation.

were money laundering practitioners. Most of these practitioners worked at financial law firms at the time of writing. In the late 1990s, debates in the leading money laundering specific publication were still quantitatively dominated by legal expertise highly specialised in financial law. Authors from other fields that might be expected to play an important role in debating AML policy, like criminology or economics, were minor contributors to the first volumes of the journal.

This composition changed over the following ten years. In 2008-2010, in volumes 11-13 of the JMLC[8], the proportion of authors with a background in law had almost halved to 42%. Authors with a formation in other academic fields saw a marked increase. About 10% of authors each had an academic background in economics, political science, as well as accounting and finance. The field whose representation grew the most during this time was criminology, including researchers and investigation practitioners, making up around 16% of the journal's authors in the latter sample. At the same time, the total share of practitioners dropped to 36%, mirroring a strong increase in academic contributors who accounted for the majority of authors in volumes 11-13.

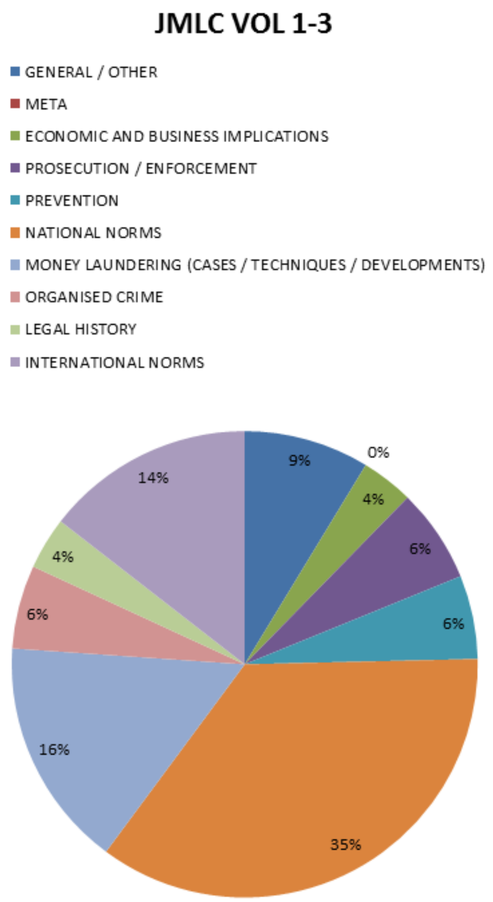


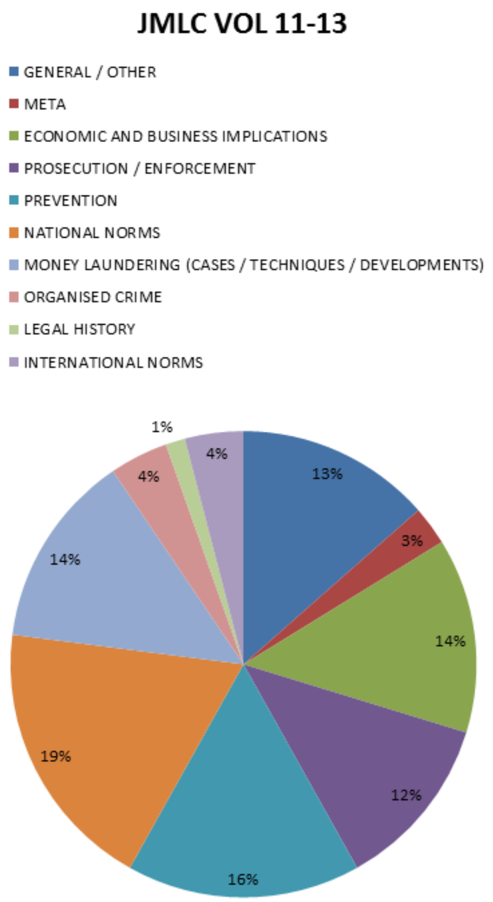


[8] The calculation excludes the journal's special issue "The Search for Crime Money" (vol. 12, no. 2).

The diversification in the academic background of authors went accompanied by a broadening of topics covered by the journal. The first three volumes were dominated by an exchange of descriptive presentations and comparisons of national (35%) and international (19%) legal norms. A typical article was for example Izic's "Turkey: Efforts to prevent money laundering", in which the then "Treasury Expert at the Prime Ministry, Treasury Undersecretariat" described the national legal framework of Turkey at the time of writing (Izic, 1998). This total share of 54% of descriptive normative texts dropped significantly over time. In volumes 11-13, such texts accounted for just 23% of total publications, with 19% covering national norms and 4% of texts concerned with international norms.

Significant growth was observed in three subject areas: (1) economic and business implications of money laundering policies (4% → 14%), (2) prosecution and enforcement (6% → 12%), and (3) money laundering prevention (6% → 16%). The articles in the younger sample generally took a more analytical perspective than the earlier presentations of legal statutes. The more recent sample also included meta-studies on money laundering policies, which were absent in volumes 1-3. An example was Biagioli's work that estimated the magnitude of money laundering to then evaluate money laundering policies' cost-effectiveness (Biagioli, 2008). The proportion of articles directly concerned with the development of money laundering markets and techniques made up a sizable share in both samples but remained relatively constant over time (14% → 16%).





2.1.2 Conflict with Civil Liberties

Expanding from these general observations, the thesis in the following presents identified clusters of debate relevant for probing factors explaining the development of money laundering policies. Among the oldest and most recurrent debates on AML policy development is discussing its inherent conflict with civil liberties. This line of thought pitched civil liberties against AML policies such as record keeping and reporting requirements of the financial sector seen as infringing privacy protection and disempowering citizens vis-à-vis the state. Maintaining bank secrecy on the other hand would be an important protective mechanism against authoritarian abuse of state power. Preiss identified this conflict as one of the two key tensions of money laundering policies, recognising the second one as national sovereignty (cf. Preiss, 1996) which is discussed in sub-section 2.1.4 as an issue of global governance. A political decision to prioritise privacy protection over the intended goals of AML policy should lead to lower compliance levels with the FATF Recommendations whose system is based on data generation, collection and analysis.

The origins of the debate between privacy rights and AML policy were identified in the earliest reviewed AML literature. Initially, authors reacted to developments in the United States, particularly to the 1970 BSA and subsequent money laundering related legislation. The BSA was globally the first explicit AML legislation. It required banks to collect data identifying their customers, keep records of financial transactions and report any transaction surpassing a specified amount to state authorities. Early contributors took a highly critical stance towards these AML policies, because of their policies' limitation of bank secrecy. An early example was a Time report titled "Secret Storm, 1984", published when the BSA came into effect in 1972 (Time, 1972, p. 71). In reference to the legislation, it foresaw an Orwellian dystopian future in which the state would systemically spy on its citizens. The Time's author observed that AML legislation initially passed almost unnoticed by the public and only received attention when its implementation yielded personal and economic effects. When the US Congress passed the law in 1970, "there was almost no opposition to and precious little interest in the law." Two years later, it was "at the center of banking's biggest brouhaha in years" as "'a total invasion of privacy'" and an economic burden on the financial sector (ibid.).

A 1977 article by Charlotte Twight, at the time of publication an attorney and teacher at the School of Business Administration at the University of Washington, picked up on the same topic (Twight, 1977). She criticised the U.S. Supreme Court's (USSC) 1974 and 1976 decisions upholding the constitutionality of the BSA (USSC, 1974; USSC, 1976). In Twight's view, the legislation represented an undue general suspicion against participants in the banking system. It would require "the entire public to sacrifice privacy and civil liberty for the remote possibility of a small improvement in law enforcement" (Twight, 1977, p. 269). Tracing US policy development through legal case analyses, Eldridge presented the argument that the BSA "is prone to first amendment challenges", infringing freedom of association rights (Eldridge, 1986, pp. 692-693). In his view, it threatened particularly the right to peaceably assemble by providing a strong investigative tool for government authorities that via financial data could gain access to organisations' constituencies and behavioural patterns. Equally in 1988, after a reform of US legislation with the goal to make the BSA' implementation more effective, Thelen Plombeck concluded that an "[a]nalysis of the Money Laundering Control Act of 1986 reveals that an era of increasing disclosure of financial information threatens us" (Thelen Plombeck, 1988, p. 98). The 1986 law criminalised money laundering for the first time as evasion of the respective record keeping and reporting procedures of the BSA.

The inherent conflict between civil liberty protection and money laundering policies was also identified in publications outside the United States. Michael Levi, as one of the most published British academic analysts of anti-money laundering policies, made similar observations about AML in the United Kingdom. After a first set of AML policies were introduced in the 1980s, he was concerned about a hollowing out of customer confidentiality in banking for the sake of fighting organised and white collar crime, especially drug trafficking. In his criminological account of changing AML laws and practices, it appeared to him “as if the foundations of the international financial police state are being laid” (Levi, 1991, p. 122). An analogous line of argument was used by other authors regarding more recent UK legislation like the 2007 Money Laundering Regulations. Andrew Haynes, law professor and former employee of the British Bankers Association and professional service company Deloitte, stated with regard to these regulations that “we now live in a society where banks, building societies, solicitors, accountants and many others are required to spy on their clients on behalf of the state.” He continued to conclude that “internal spying is introduced in a manner and on a scale attempted by neither Hitler nor Stalin” (Haynes, 2008, pp. 317-318).

Stessens, in an overview of different national attitudes towards bank secrecy, traced the origins of Swiss banking secrecy back to legislation seeking to protect the assets of German citizens held abroad during National Socialist totalitarianism in the country. To effectively protect these asset holders and its own economic and political interests, Switzerland developed a criminal rather than civil law based confidentiality regime between bankers and their customers (Stessens, 2000, p. 317). This is a particularly high barrier to cross for AML legislation seeking to create and disseminate data. Similar statements problematizing AML for its privacy protection implications were observed in many other cases where AML policies were introduced or reformed, for example in: Australia (Johnson, 2005), Austria (Rahmatian, 1999), the European Union (De Vido, 2015), Greece (Stefanou & Xanthaki, 1999, p. 168), St. Vincent and the Grenadines (Drayton, 2003), Panama (Alba, 1998), and Portugal (Mitsilegas, 1999, p. 154).

While such arguments were still observed in the more recent literature, already by 2002, scholars identified an emerging consensus, at least for policy makers and the financial sector, that money laundering policies as a whole were no longer in dispute. As Levi noted: “It is now only on tax cooperation issues that a significant constituency of bankers or politicians is prepared nowadays to assert publicly that preserving financial privacy is much more important than fighting the menace of serious crimes such as drug and human trafficking” (Levi, 2002, p. 182). If anything, this consensus has since become more established as money laundering policies took on board additional public security roles addressing terrorist, and proliferation financing under the 2004 and 2012 FATF Recommendations.

Preiss observed, if “there is no internationally recognised financial privacy right”, curbing bank secrecy laws through money laundering policies was hardly a violation of an “internationally respected human right” as some of the harsher criticisms might indicate. Instead, the introduction of money laundering policies required a “value judgement” of competing political interest (Preiss, 1996, p. 344). In the US and UK cases, this conflict has been repeatedly decided in favour of AML and against privacy rights. This general line has also been incorporated into the FATF Recommendations since its first version of 1990 which introduced in Recommendation 2 that “[f]inancial institution secrecy laws should be conceived so as not to inhibit implementation of the recommendations of this group" (FATF, 1990, p. 2). Whether this consensus also holds in areas of limited statehood and countries that are more marginal to international AML policy like El Salvador and Mexico will be probed in the empirical chapter.

2.1.3 Cost, Effectiveness and Purpose

In addition to the normative conflict of AML with civil liberties, another identified cluster of texts critically discussed AML policies' implementation cost, effectiveness and purpose. The following sub-section analyses these three issues together, as they formed an identifiable interrelated group of arguments within the AML literature: Initially, authors observed the high costs related to the establishment and continuous implementation of AML systems. They were mainly bourn by the private sector which had to implement due diligence, record keeping and reporting mechanisms while the created information primarily benefitted public prosecution agencies (cf. Harvey, 2008, p. 194). The question in how far these costs were justifiable reinforced attempts at assessing and, if possible, measuring the effectiveness of AML. Failure to measure the effect of AML on money laundering volumes presented a challenge for this line of evidence based policy justification. Parts of the literature resolved this issue by pointing towards alternative purposes of AML that did not directly aim to reduce money laundering as presented below. AML policies' costs-effectiveness and ultimately if they serve a desirable purpose are likely to influence predisposition of actors to establish and implement measures in compliance with the FATF Recommendations.

Direct costs of AML for the private sector were described as twofold: "investments in capital (physical and human) and reduction in confidentiality towards customers (strategic assets in banking activity)" (Masciandaro & Filotto, 2001, p. 144), the latter pointing at the above debate on bank secrecy. With regard to direct AML compliance costs, Saperstein et al. for example observed that "when banks spend an enormous portion of their budget on compliance, this money is no longer available for the core business of banking […]" (Saperstein, et al., 2015, p. 8). Estimates for HSBC, reproduced in the same article, stated an annual AML compliance spending of USD 750-800 million (ibid., p. 5). Even though HSBC as a private bank might have an interest in estimating high costs for its compliance activities, which calls for caution in taking the precise number at face value, authors generally agreed that AML implementation costs are high (e.g. Byrne, 1992; Cuéllar, 2003; Reuter & Truman, 2004, p. 103; Magnusson, 2009). AML implementation, by increasing transaction costs in bank transfers, was also seen as having wide ranging negative effects for the economy as a whole and running the risk of creating market distortions (cf. Geiger & Wuensch, 2007, pp. 98-99).

Taking into consideration the significant costs and economic burdens of AML policy implementation for the private sector, authors wondered how the question of AML effectiveness had "become a taboo" and pointed towards the need to first produce "a clear definition of the goals of AML" to assess its effectiveness (Pieth & Aiolfi, 2004, p. 415). Other authors calling for effectiveness assessment included Harvey (2004), Levi and Reuter (2006) as well as Geiger and Wuensch (2007). Still in 2018, Levi, Reuter and Halliday sustained that "there has been minimal effort at evaluating of how well any AML intervention does in achieving its goals" (Levi, et al., 2018, p. 307). Halliday in a 2014 study on compliance with the 2004 FATF Recommendations underlined the need to better understand and debate cost-effectiveness of AML in order to support the legitimacy of the subscribed policy standard (Halliday, et al., 2014, pp. 48-49). What purpose the policy should fulfil is a prerequisite for any kind of effectiveness assessment and remained a question with multiple answers.

One straight forward attempted for assessing AML's effectiveness understood the policy as a mean to reduce money laundering (e.g. Barone & Masciandaro, 2008; Harvey, 2008; Unger, et al., 2013). A recurrent problem for such studies was the conceptual and methodological limitations of measuring money laundering amounts. The nature of money laundering as an activity designed to impede detection complicated estimations. Multiple transactions in one laundering process for example were feared to lead to false case-based estimates, if multiple suspicious transfers were detected in the same laundering procedure (Levi, 2002, p. 184; Walker & Unger, 2009, p. 827). Another serious issue identified for quantifying money laundering amounts was that crime statistics were themselves an unreliable indicator of actual crime levels. Authors observed for the UK that even "sophisticated statistical manipulations cannot make up for the almost total unreliability of the underlying data" (Gold & Levi, 1994). For such reasons, most authors agreed that the global money laundering amount is high, but that precise estimates remained elusive and quantification attempts at best resulted in "guesstimates" (Stessens, 2000, p. 88). Harvey similarly concluded that money laundering "defies attempts to develop any accurate economic analysis of its true magnitude" (Harvey, 2008, p. 189).

With no methodology available to reliably estimate money laundering volumes (cf. Reuter & Truman, 2004, p. 9; FATF, 2016a), assessing the direct and indirect effects of AML policies on the magnitude of money laundering is not feasible. According to some observers, this limitation affected policy development in that "[i]n contrast to other regulatory areas […] benefits and costs of AML ventures were not considered" (Geiger & Wuensch, 2007, p. 92). Instead, many academic observers and practitioners discussing AML policy effectiveness relied on conceptual considerations (cf. Hüllse, 2007), "'second best' measures" (Harvey, 2008, p. 203) (proxy variables) such as amounts of STRs filed, or formal and programme compliance measuring if laws, regulations and processes were established (cf. Halliday, et al., 2014). Such views are in danger of being circular arguments. Formal and programme compliance could only serve as proxies for AML effectiveness in reducing money laundering, if there would be some kind of evidence of and in how far AML policies actually lead to this desired result.

The approach to assess policy effectiveness through measurable reductions in money laundering amounts was criticised by the literature not only on feasibility grounds but also for an overly narrow understanding of money laundering policies (Reuter, 2013). Authors observed that that “controlling money laundering is a tool directed at many, varied objectives” (Reuter & Truman, 2004, p. 24). The AML literature offered a wide range of AML purposes beyond the reduction of money laundering (cf. Karchmer, 1985; Levi, 2002; Pieth & Aiolfi, 2004; Unger, 2007; Tsingou, 2010; Durrieu, 2013; Reuter, 2013), including as the most salient (i) investigation and prosecution of predicate offences, (ii) confiscation of criminal proceeds to weaken organised crime, and (iii) protecting financial market integrity.

With the purpose to investigate and prosecute criminals committing predicate offences, AML effectiveness should be measured on the creation and usefulness of financial data and eventually the impact of money laundering legislation on overall or specific crime rates (Geiger & Wuensch, 2007). Seeing AML as a mean to combat predicate offences through providing additional information for investigators recalled the original purpose of AML when it was legally codified for the first time in the 1970 BSA. By providing data for what is today called criminal intelligence, the BSA’s principle purpose was “to enable law enforcement authorities to obtain the evidence needed to prosecute white collar criminals” (United States Senate, 1972, p. 1). The concept was further reinforced with the first criminalisation of money laundering by the US Money Laundering Control Act of 1986 (United States Congress, 1986, pp. 18-39). The legislation defined the money laundering crime as illegal circumvention of record keeping and reporting standards set in the BSA. As erosion of the state’s capacity to investigate and prosecute, the specific damage inflicted by money laundering was seen as perverting the course of justice.

AML policy was initially seen as effective domestically in the US in so far as it successfully lifted bank secrecy provisions related to criminal investigations (Eldridge, 1986, p. 696). However and despite these new investigative resources, the impact of AML on predicate offences was seen as limited at best (cf. Levi & Reuter, 2006). In some studies, the impact of AML on predicate crimes only entered considerations as a marginal factor to determine effectiveness (e.g. Unger, et al., 2014, p. 187ff). The view of AML as investigative and prosecutorial method to fight predicate offences was however reflected in the relevant UN Conventions of 1988, 2001 and 2003. In contrast to this early adoption in the US and by the UN, only in 2013 did investigating predicate crimes find its way into the Mutual Evaluation Methodology of the FATF. Somewhat timidly as sub-question under immediate outcome six “[f]inancial intelligence and all other relevant information are appropriately used by competent authorities for money laundering and terrorist financing investigations”, the Methodology guided assessors with the question: “To what extent are financial intelligence and other relevant information accessed and used in investigations to develop evidence and trace criminal proceeds related to ML, associated predicate offences and TF?” (FATF, 2013, p. 105). Halliday et al. (2014, p. 5) indicated that a reason for the late incorporation of prosecutorial AML aspect in the Methodology was likely the FATF's focus on countries' formal and programme compliance with the Recommendations during the Third Round of evaluations.

In addition to tackling organised crime directly through investigations of predicate offences, AML was seen as a means to target and confiscate criminal proceeds (Karchmer, 1985). In this view, the "primary reason to fighting money laundering is to enable law enforcement authorities to confiscate the proceeds of predicate criminal activities in those situations where confiscation might otherwise not be possible" (Stessens, 2000, p. 85). This would benefit law enforcement by removing the economic incentive to commit financial gain oriented crimes as well as by reducing the financial resources of criminals to finance their ongoing and future operations (Pieth & Aiolfi, 2004, p. 4; Sharman, 2011, pp. 20-21). Rather than following the money trail, the policies' goal was seen as "taking the profit out of crime" (Rider, 1996, p. 1) or ensuring "that 'crime does not pay'" (Busuioc, 2007, p. 15). In effect, the rationale of AML shifts from a crime-detection to a deterrence policy (Linn, 2010).

Further, confiscating laundered proceeds was seen to reduce social harm as money laundering "facilitates crime by capacitating crime groups and networks to self-finance, diversify, and grow" (Levi, 2002, p. 184). While money that remains in the illegal market, say for the purchase of illegal weapons, does not need to be laundered, the acquisition of assets on the legal market, say a small aircraft used for drug trafficking, does require laundering. AML policies were seen to target "the laundering professionals who make it easier for criminals involved in predicate offenses to launder money (thereby raising the cost of laundering and eating into the profit from predicate crime)" (Cuéllar, 2003, p. 321). Money laundering was thus conceptualised as not only a defensive crime to evade law enforcement, but also as an offensive activity to promote criminal enterprise (cf. Levi, 2013) – eventually reaching a point where organised criminal groups could become threats to democratic statehood (cf. Hüllse, 2007, p. 173). AML was seen to be able to combat these tendencies.

According to Andelman, in the US this policy shift towards confiscation significantly increased money laundering costs from 6% to 26% between 1986 and 1994 (Andelman, 1994, p. 98). Other texts were more critical on the effects of confiscation. Levi and Osofsky for example observed that "[n]o one who reviewed the current state of confiscation of the proceeds of crime in England and Wales in any detail would be likely to judge it a success" (Levi & Osofsky, 1995, p. vi). Notwithstanding the above mentioned caution that needs to be applied to money laundering estimates, UNODC's 2011 report on illicit financial flows and transnational organised crime stated that only approximately 0,2% of the proceeds of crime laundered through the financial system were intercepted in 2009 (UNODC, 2011, p. 7). Even if it were magnitudes higher, this low percentage confirmed a critical view of the literature with regard to the effectiveness of money laundering as a tool to significantly impact organised crime (cf. Levi & Reuter, 2006). With regard to AML reducing crime rates through either investigating predicate offences or confiscating proceeds, Sharman's poignant assessment of the literature's findings, and in particular the limitation posed by available data and reliable methodologies, still seemed to apply: "Answers on effectiveness range from the cautious view that it is unlikely AML rules have had a significant impact on crime to conclusions that the whole system is an expensive, and possibly even dangerous, waste of everybody's time" (Sharman, 2011, p. 41).

In 2000, Stessens observed that the "impetus for attempting to tackle money laundering operations are numerous, but they all have in common that they view money laundering not as a reprehensible activity in itself" (Stessens, 2000, pp. 84-85). This changed over time and a branch of literature became identifiable that saw money laundering in itself as problem, and indeed a threat (Unger, et al., 2014), independent from the underlying predicate offences. This line of argument saw the reduction of negative economic effects of money laundering as its purpose. These negative economic externalities of the money laundering process included market distortions as well as reputational damage to the financial sector (Unger, 2007, pp. 174-175). Involvement of private financial institutions in money laundering operations was conceptualised as an abuse of the financial sector. This abuse had to be prevented in order to safeguard the reputation of financial institutions and financial sectors as a whole (cf. Behrens, 2013, p. 179ff) – an objective known as financial integrity (Reuter & Truman, 2004, p. 130ff). The Wolfsberg Principles are a primary expression of this idea. Through it, international banks promoted voluntary internal AML policies in order to prevent money laundering and "protect the firm's reputation" (The Wolfsberg Group, 2012, p. 1)

Mitsilegas traced the origins of this rational back to initiatives by the Basel Committee on Banking Supervision that preceded and informed the first FATF Recommendations (cf. Mitsilegas, 2003, pp. 197-198). Public knowledge of such financial institutions being connected to money laundering and other criminal conduct could lead to their customers loosing trust and subsequently moving their business to competitors (cf. Hüllse, 2007, p. 173f; Sharman, 2011, p. 47). This view of money laundering policies as a mean to prevent criminal proceeds from "affecting legitimate economic activities" (FATF, 1996, p. 1) was codified in the 1996 version of the FATF Recommendations. It superseded crime fighting as the central purpose of the 2012 FATF Recommendations to which combating money laundering was *primarily* instrumental for combating a threat to financial market integrity:

> *"The mandate of the FATF is to set standards and to promote effective implementation of legal, regulatory and operational measures for combating money laundering, terrorist financing and the financing of proliferation, and other related threats to the integrity of the international financial system. In collaboration with other international stakeholders, the FATF also works to identify national-level vulnerabilities with the aim of protecting the international financial system from misuse."* (FATF, 2012a, p. 7)

Few authors pointed out that there was “an element of paradox” (Levi, 2002, p. 184) in the financial integrity approach to AML (cf. also Karchmer, 1985, pp. 43-44). The argument is that the negative effects for money laundering on financial institutions and their reputation mainly came about through the introduction of money laundering policies themselves. With regard to the international level of AML, Hülsse pointed out that “[i]t is due to the FATF’s power of definition that some states’ financial systems may lose credibility and, resulting from that, its customers may lose their confidence” (Hüllse, 2007, p. 174). Under a strong bank secrecy regime, financial institutions would run a very low risk of negative distortions if they were to be involved in money laundering operations. Money launderers would have little incentive to show a different investment pattern than average market participants, if they would not have to fear detection. At the same time, if money laundering would not be illegal or seen as morally wrong, the reputational risk of being associated with it would be low in case it were detected.

Empirically, this view is substantiated by authors pointing out that when the BSA was introduced, banks did not take much interested in their customers laundering activities. In the US case, only increased regulatory enforcement using fines (Villa, 1988, p. 492ff) paired with the criminalisation of money laundering in 1986 and law enforcement targeting of banks themselves brought about a change in attitudes of the financial sector (Andelman, 1994, p. 96). Substantiated by empirical research, authors concluded that the reputational damage feared by financial institutions came about by the threat of sanctioning rather than by being associated with money laundering (Harvey & Lau, 2009). “[S]elf-regulation by the banking sector would not lead to the same effects” (Verhage, 2008, p. 30).

2.1.4 International Governance

This chapter so far observed that the literature characterised AML as a multi-purpose policy which created high costs, both for civil liberties and in economic terms. At the same time proof for its effectiveness for neither reducing money laundering or as a crime fighting methodology through investigation and confiscation was scarce. The verdict on its usefulness for protecting financial market integrity was still pending but faces the allegation that AML policy implementation itself is what gives rise to reputational threats to financial institutions involved in money laundering. In these areas, “[d]espite all the caveats and riders, it is possible to say unequivocally that there is no clear, compelling evidence that corresponds with and explains the explosive diffusion of AML policy” (Sharman, 2011, p. 67).

To engage with this puzzle of wide adoption of the FATF Recommendation as international AML standard without proof for its effectiveness, the literature offered answers based on international governance considerations (e.g. Helleiner, 2002; Tsingou, 2010; Kerwer & Hüllse, 2011; Sharman, 2011; Verdugo, 2011). This work understands governance as “institutionalized modes of social coordination to produce and implement collectively binding rules, and/or to provide collective goods” (Börzel, et al., 2018,

p. 3). The identified argument in a nutshell is that international pressure or softer forms of influence through incentives and persuasion led countries to adopting and implementing AML policies based on the FATF Recommendations.

Despite its lack of direct sanctioning powers, authors held the FATF and within its membership particularly the US and the UK to be the central actors driving the international spread of its standards (cf. also Interview E5a, 2011, pp. 2-3). The FATF's narrow issue focus and small membership size, qualifying it as a club organisation, were seen to have enabled "great powers […] to cajole, coerce, and enforce a global anti-money laundering standard into existence" (Drezner, 2007, p. 145). De Oliveira more precisely identified the finance ministers of the G7 as the main driving actors of AML policy with special emphasis on the US and to a lesser extend the UK (de Oliveira, 2018, pp. 156-158). The FATF's coercive power was however dependent on third party enforcement (cf. Hüllse & Kerwer, 2007). About the nature of this process, Sharman stated that "if global governance means enforcing rules without recourse to traditional means of military and economic coercion, a process of 'governance without government', there is no better policy area in which to study it than AML" (Sharman, 2011, p. 4). Some authors even concluded that instead of crime fighting, "global governance is the big winner in the effort to regulate money laundering" (Serrano & Kenny, 2003, p. 435). The main factors identified in the literature on international factors explaining compliance included (i) blacklisting and related threats of coercive sanctions, (ii) incentives, as well as (iii) socialisation and discourse (cf. Helleiner, 2002; Sharman, 2011).

The coercion argument held that compliance with the FATF Recommendations was enforced through the use of international power differentials between the FATF and important member states, particularly the US (cf. Helleiner, 2002; Roberge, 2009), on the one side and developing countries on the other. Hägel for example argued that the US influenced other state's AML policies by using the centrality of its financial market to enforce evidence and intelligence data provision by threatening foreign banks with the all-out exclusion from their market in case of non-compliance (cf. Hägel, 2009, p. 362). The threat was seen as credible as already since 1988, two years prior to the publication of the first FATF Recommendations, the United States used a similar threat of market exclusion to motivate foreign governments for the application of money laundering policies (Helleiner, 2002, p. 183).

At the international level, blacklisting served a similar purpose and was identified by Sharman (2011, p. 99ff) and others (e.g. Simmons, 2001, pp. 605-609; Roberge, 2009) as the main coercive instrument used in pressuring countries into compliance with the FATF Recommendations. The FATF's initial list of Non-Cooperative Countries and Territories (NCCT) ran from 2000 to 2006. Approved by the FATF plenary, the naming of countries on a list of NCCT threatened severe economic consequences for listed jurisdictions reaching from cost increases in participating in international financial markets to practical market exclusion. Critical observers saw blacklisting as an act of “extraterritorial bullying” and its ultimate consequence as “an economic embargo of any recalcitrant state” (Doyle, 2002, p. 281).

Under the previously defined and publicised criteria, the first report of February 2000 listed as non-compliant countries: Bahamas, Cayman Islands, Cook Islands, Dominica, Israel, Lebanon, Liechtenstein, Marshall Islands, Nauru, Niue, Panama, Philippines, Russia, St. Kitts and Nevis, and St. Vincent and the Grenadines (FATF, 2000). Eight more jurisdictions were added in 2001, completing the total of twenty-three countries listed as NCCTs. By the time of the seventh review of the NCCT list in 2006, Nauru had been delisted as the last of the initial fifteen jurisdictions (FATF, 2006a, p. 9; Sharman, 2011, pp. 53-57). All of the blacklisted countries eventually subscribed to the FATF Recommendations and passed at least a minimal set of AML policies. This included countries notoriously resilient to international pressure like Myanmar, which was delisted as the last country in October 2006 (FATF, 2007, p. 4).

The FATF’s initial formal report on NCCTs referred to the need to increase money laundering regulation in then unregulated countries due to the increasing globalisation of financial markets. In the organisation’s view, a global financial market required a unified regulatory framework. Action was seen as necessary by the FATF to “ensure the stability of the international financial system and effective prevention of money laundering” (FATF, 2000, p. 2). Countries which were not in line with this view were outside the established set of rules and had to be brought into the fold. By blacklisting, the FATF was seen to question “the legitimacy of the country or jurisdiction identified and its right to conduct financial business in the global environment” (Johnson, 2003, p. 38). The initial list of NCCTs especially targeted offshore financial centres offering strong bank secrecy and not participating in the organisation’s efforts to combat money laundering through a globally unified policy approach.

The literature presented being blacklisted primarily as a reputational damage to the financial markets of the respective countries. Especially for jurisdictions dependent on international financial transactions, this threat to their reputation as a market place sufficiently well-regulated to participate in international finance was seen as cause for concern and compelling reason to take legislative action (Johnson, 2003, pp. 44-46). If investors perceived the regulatory foundations of an offshore market place as fragile or feared the risk of being associated with organised crime or terrorism, they might choose to invest in less risky jurisdictions. Especially large institutional investors like banks and investment funds took such considerations into account (Sharman, 2009, p. 582). Ultimately, blacklisting increased the probability that important global financial centres like the US or the UK would outright ban institutions based in or doing business with blacklisted jurisdictions from access to their financial markets.

Short of all-out exclusion from international financial markets, AML counter-measures against listed jurisdictions translated into higher costs and a competitive disadvantage for companies and financial firms based in them (Krämer, 2008, p. 136ff). Such counter-measures included for example heightened CDD requirements for anyone who dealt with such jurisdictions. Banks and other affected enterprises would pass these costs on to their customers engaged in such business relationships. For example, formal financial transfers of a larger quantity of smaller sums, for example in the form of remittances, would become less attractive in such a situation due to their increased relative cost. These considerations have the potential to present strong economic challenges for economically more fragile developing countries, which might depend strongly on foreign finance or remittances transfers of their expatriate citizens. With regard to the first round of blacklisting, Drezner noted that the mere threat to act was sufficient to 73% of listed countries making "major concessions prior to the implementation of any economic sanctions" (Drezner, 2007, p. 143). In addition to offshore financial centres of small island states, international pressure to adopt the FATF Recommendations was sufficient to coerce larger jurisdictions like the Philippines into compliance, where remittances made up a significant proportion of national income. Despite the resulting increased costs of remittances transfers due to the introduction of AML provisions, these were seen as the smaller cost as the country adjusted its legislation in line with the Recommendations under FATF pressure flanked by the threat of the Asian Development Bank to withhold loans (Vlcek, 2012, pp. 647-654).

Invoking FATF Recommendation 21 was identified as an important governance instrument in threatening and applying economic sanctions (cf. Helleiner, 2002, p. 186; Levi & Gilmore, 2002, pp. 350-351). It encouraged countries adhering to the FATF Recommendations to put in place measures requiring additional scrutiny for any financial transactions with NCCTs: "Financial institutions should give special attention to business relationships and transactions with persons, including companies and financial institutions, from countries which do not or insufficiently apply the FATF Recommendations" (FATF, 2004). Even before the introduction of the NCCT list, the FATF invoked Recommendation 21 for example against Turkey in 1996. The organisation also targeted its own member states like Austria which due to FATF public pressure reluctantly abolished its 24-27 million anonymous (numbered) passbook accounts which contained an estimated USD 100 billion (Sharman, 2009, p. 591ff). In 2000, Austria was additionally threatened with expulsion from the FATF (Kern, 2001, pp. 240-141; Pieth, 2004, p. 20). Nance saw Turkey and Austria as initial steps in an experimentalist development of the FATF regime which would culminate in the NCCT and ICRG processes. He was however critical of the results of the approach and observed the FATF gradually moving into the application of non-coercive means like mutual learning and promotion of risk based AML policies (Nance, 2018).

The FATF continued its review of established NCCTs till June 2007 but discontinued its evaluation of new jurisdictions in 2002. The literature most commonly attributes this discontinuation to pressure from the World Bank and IMF. This reflected concerns that blacklisting and the threat of its severe economic consequences might violate international law and especially the UN Charter protecting the sovereignty of states (cf. Doyle, 2002, pp. 299-302). In a similar direction, some opinions held that its suspension was part of a wider move to increase the FATF's legitimacy as a global standard setter by establishing more participatory and democratic institutions (Hüllse, 2008). The FATF seems to have agreed to suspending the list in exchange for the IMF adding the Recommendations to "the list of areas and associated standards and codes useful to the operational work of the Fund" (IMF, 2002, p. 1) – a step that was mirrored by the World Bank. A discontinuation of the blacklist was necessary if the Bretton Woods Institutions were to take AML assessments on board as they operate on the basis of voluntary and cooperative involvement (Holder, 2003, pp. 386-387).

Despite the strong role attributed to the FATF blacklisting process in the global spread of money laundering policies, its success was seen as depending on third party enforcement. The acceptance of the FATF Recommendations by a group of states at the core of the international financial system (Pieth, 2004, p. 21) was seen as the underlying structure that gave blacklisting its power. By acting as a club involving all major financial centres, these states were able to created market effects as "incentives to make states comply with the system" (van Aaken, 2009, p. 48). The publication of the NCCT list and strong link between declarations of the FATF and third party enforcement put in doubt the view of some authors who noted that blacklisting was "more of an informal mode of governance than a formal sanctioning regime" (Heng & McDonagh, 2008, p. 567) and that the FATF presented a "soft form of governance" (Jakobi, 2013, p. 121). In the sense that the relationship between blacklisting by the FATF, reputational damage and negative economic consequences is very direct, Sharman noted that in the case of the FATF blacklisting exercise, "[t]he bark is the bite" (Sharman, 2009).

After the suspension of the formal blacklisting process, the FATF retained most of its coercive power. Despite the strong position of blacklisting in the literature, the role to transfer FATF assessments into coercive economic consequences could also be carried out by its peer review process and the publicised MERs (Pieth, 2004, pp. 19-20). Although less explicit than naming a country on a list of non-compliant jurisdictions, a negative MER report threatened similar reputational damage and the accompanying economic consequences. Based on these reports, the FATF called on financial supervisory authorities to request additional scrutiny in dealings with counterparts from negatively evaluated jurisdictions. After the suspension of the NCCT list, the role of public identification of countries with weak compliance briefly fell back to this mechanism. Jürgen Krais for example identified "political pressure" generated by the FATF's 2010 critical mutual evaluation as instrumental for Germany adopting the "Law for the Optimisation of Money Laundering Prevention" (Krais, 2018, p. 3).

Since 2007, the FATF created the International Co-operation Review Group (ICRG). The ICRG analysed jurisdictions for deficiencies in applying the FATF Recommendations in the case that a MER gave rise to initial concerns. Starting with Iran and North Korea in 2008, the ICRG called on FATF member states to apply protective measures, also termed counter-measures, in dealing with financial counterparts from specific countries. This practice has continued at the time of writing and is, in practical terms, a revived form of the initial NCCT blacklist (cf. Sharman, 2011, pp. 104-108) which has been endorsed and promoted by the Group of 20 (G20) (FATF, 2016b). By identifying countries as “jurisdictions with strategic AML/CFT deficiencies” (FATF, 2010a) within its Public Statements, the FATF additionally introduced a ‘greylist’. This more fine grained approach has been in place since February 2010. While not directly calling for the implementation of counter-measures against such jurisdictions, the FATF encouraged additional AML risk mitigation measures in business relationships involving such jurisdictions that would effectively increase transaction costs.

If the economic consequences of market exclusion and increased costs for market participation were coined as coercive mechanisms, what remained as incentives? The literature in this regard mainly presented control over international capital flows as well as advantages in private market competition as possible answers for states. Both of these incentives were seen as externality effects of AML policies as they are not directly related to money laundering or its control. Nevertheless they presented reasons for advancing compliance with the FATF Recommendations. Sica for example observed that “[t]he anti-money laundering regime, albeit not designed to interfere with capital mobility, is nonetheless a contemporary example of Western states re-regulating financial activity” (Sica, 2000, p. 47). Pieth and Aiolfi followed a similar line of thought, starting from the observation that “it cannot be credibly argued that AML has helped phase out any of the current forms of macro-crime, be it ‘organized’, ‘corporate’ or ‘state’ crime or terrorism”. Their analysis saw the policy regime as a global governance instrument in an age of globalising financial markets, where “AML is just as much about creating instruments of global control over money flows in an attempt to abolish national currency controls and to react to the failing of national overview over capital movements” (Pieth & Aiolfi, 2004, p. 416).

The capital control argument focussed on issues of sovereignty. Despite their different approaches, countries of the EU and the USA reasserted their sovereignty over transnational financial actors in a cooperative mechanism understood as “interdependent sovereignty” (e.g. Hägel, 2009, p. 372). At the same time, weaker or less developed (cf. Mitsilegas, 2003; Hägel, 2009, pp. 365-366) states were seen as being reduced in their sovereignty, as they had to accept the FATF Recommendations due to pressure exerted on them by stronger states (cf. Hägel, 2009, pp. 365-366). Despite this strong emphasis on coercive mechanisms, FATF compliant states could benefit from receiving externally provided law enforcement capacity building and sharing of confiscated assets (cf. ibid., p. 363). Other authors went a step further and argued that while coercive compliance and direct incentive provision might have played an important role in the past, a learning process set in that also englobed some developing countries that came to understand that it was in their economic self-interest to implement AML measures. Their application not only would reduce money laundering but also protect legal businesses from being crowded out by illegal money and reduce overall domestic crime rates (cf. Rawlings & Unger, 2005, p. 13).

Tsingou (2010) concentrated on the effects of international AML rules on the financial market, arguing that AML policy created externalities which have become its raison d'être, decoupling the policy completely from predicate offences and considerations of organised crime. For her, the global AML policy regime was connected "with questions of competitive pressure from offshore centres and establishing a regulatory level playing field" (ibid., pp. 627-628). She argued that on the one hand, the FATF Recommendations served to pressure offshore financial centres into compliance with financial transparency by coercive mechanisms as discussed above. On the other, while AML implementation costs affected all private financial institutions, the effect disproportionately disadvantaged smaller institutions whose relative compliance spending was higher. Larger institutions were also able to use customer information created through AML for statistical and marketing purposes, further contributing to disequilibrium between the effect of AML on larger and smaller institutions (cf. also Verhage, 2009, p. 120). In addition, the larger private banks organised in the Wolfsberg Group actively participated and shaped private sector AML standards in line with their preferences and procedures (Tsingou, 2010, p. 626ff). In her pointed analysis, Tsingou held that international AML policies served *"[…] to relieve financial centres in member countries of the Organization for Economic Cooperation and Development (OECD) from competitive pressures from offshore finance; and, as a spin-off, to shape private sector practices in a way which can consolidate and strengthen the position of the largest global financial players"* (Tsingou, 2010, p. 618).

A concern that the implementation of the FATF Recommendations served competition purposes was also voiced by policy makers and even by FSRB representatives. Hülsse for example quoted a former executive director of the CFATF: "'Caribbean countries feel there is a second agenda (…) to claw back revenues coming to the offshore centers because of their competitiveness'" (in Hüllse, 2008, p. 465). Focussing on the central role of the US in pushing early international AML policies, Helleiner argued that the domestic decision to implement costly AML measures incentivised the US to push for the same regulations on the international level to create a level playing field for US based financial firms. Financial firms and governments that have adopted these standards would thus have an incentive to promote compliance to reduce competition (cf. Helleiner, 2002, pp. 184-185). At the same time, compliance with the FATF Recommendations permits interaction with other countries applying the same AML policy framework (Sharman, 2011, pp. 154-156). Sharman highlighted this mechanism of AML policy promotion as "[i]ntergovernmental organizations set standards, which are interpreted and utilized by private firms, which in turn create a structure of incentives that pushes governments to adopt AML policies" (ibid., p. 156). The importance of this incentive became more apparent with self-regulation initiatives by the private sector that developed its own complementary standards for private banking in the Wolfsberg Group and lobbied for their application through regulators in different jurisdictions (Pieth & Aiolfi, 2003).

A final set of arguments on international factors influencing compliance focussed on efforts of the FATF to create a general acceptance of money laundering as an issue in need of international cooperation, as well as on the effect of socialisation of domestic AML experts into a wider international community. Vlcek for example argued that "consensus opinions held among the policymakers based in the major developed economies produce a discourse leading to the production of global financial governance that results in an *unintended* structure of governmentality in the global political economy" (emphasis in original, Vlcek, 2012, p. 656). An important contribution to the literature was identified in the works of Hülsse and Kerwer (Hüllse, 2007; 2008; 2009; Hüllse & Kerwer, 2007; Kerwer & Hüllse, 2011). The two authors focussed on discursive elements in international norm diffusion, particularly the creation of legitimacy as underlying foundations of compliance with the Recommendations. Hülsse presented problematisation as an important prerequisite for the implementation and success of coercive measures, as "money laundering in itself does not make for a bad reputation, only FATF constructing money-laundering as a global problem does that" (Hüllse, 2007, p. 174), amongst others by connecting it to crime, including tax evasion.

This observation connects well with the criticism of the effectiveness debate which put in doubt the purpose of AML for protecting market integrity as a circular argument, as for example Levi argued (2002, p. 184). Detailing how this mechanism works, Tsingou observed for the financial sector that "[p]rivate actors might have inherently little interest in regulating offshore finance, but financial institutions were unlikely to question policies that were politically (and uncomfortably) close to issues of crime, but also tax evasion and tax avoidance concerns" (Tsingou, 2010, p. 630). Even arguably more positivistic authors at times stressed the socially constructed nature of AML, stating that "[i]t is the law, working its way through the fabric of the body-politics as a 'regime of truth' in Foucauldian terms, that establishes money laundering as a phenomenon, an event and a crime." (Unger, 2007, p. 188).

Hülsse and Kerwer conceded that "one cannot deny that the black-list has enhanced compliance considerably" (Hüllse & Kerwer, 2007, p. 633). Still, "the blacklist only plays a limited role in how the FATF works" and it "aims for basic acceptance, while the tricky issue of how to get states to comply with and implement AML rules is left to voluntary standard setting" (Kerwer & Hüllse, 2011, p. 63). In this context, Hülsse held that compliance by coercion entailed lower sustainability and higher costs if compared to norm internalisation. While maintaining coercive measures such as economic exclusion is costly, through persuasion and the creation of legitimacy, a deeper form of compliance termed "actual compliance" could be achieved as opposed to "formal compliance" (Hüllse, 2008). To increase legitimacy, a shared understanding of the "problem" of money laundering was to be created.

Hülsse held that money laundering is not as an objective problem but rather as a socially constructed one (Hülsse, 2009), which the FATF "talks […] into existence" (Hüllse, 2007, p. 167) for example through its publications and technical seminars. Central elements of this discourse that underlay FATF's legitimacy claims included that money laundering was: (i) a phenomenon connected to crime and the financial system which thus took place globally in every jurisdiction; (ii) a problem that facilitated crime and terrorism (cf. also Mitsilegas, 2003), thus destabilising societies, countries, as well as democratic and financial institutions; and that it (iii) could be tackled by international cooperation and the application of the FATF Recommendations (cf. Hüllse, 2007).

The FATF was seen as having used the advantage of its role as the central standard setter in a highly technical and recently emerged policy field to create legitimacy through expertise (cf. Hüllse & Kerwer, 2007). Expertise increased legitimacy by convincing states of the superiority of knowledge employed by the FATF, as well as the offer of reduced costs if states would not have to create their own policy solutions (cf. Kerwer & Hüllse, 2011, pp. 55-56). Amongst other factors, Helleiner attributed the acceptance of the FATF Recommendations in leading economies to "the extent in which policy makers in these countries find themselves working in increasingly tight transnational networks of officials who share similar world views" (2002, p. 188). These policy making networks included central bankers as well as "other financial and law enforcement officials" (ibid.). The broadening of FATF membership and the creation of FSRBs helped to increase the reach of the FATF dominated policy network (Jakobi, 2013, pp. 123-134) and increase its procedural or input legitimacy through broader participation (Hüllse & Kerwer, 2007, pp. 634-639; Kerwer & Hüllse, 2011, pp. 56-59).

Sharman notably advanced the literature's offers to understand socialisation of experts and policy makers as factor that supported norm compliance. He claimed that "diffusion has occurred not because it solves the problem of criminals abusing the financial system or related offences but because AML policy is now a symbol of what all modern, progressive states must have" (Sharman, 2011, p. 5). In conceptual terms, Sharman (2011) built on the works of Helleiner, Hülsse and Kerwer with empirical work on socialisation of specific actors within global AML policy networks. Analysing focus groups and interviews, he noted "protecting the country's international standing" as one of the most common justifications mentioned by national policy makers (Sharman, 2011, p. 131). Drawing on the works of Checkel (Checkel, 2005) he attributed the importance of this goal to "'role playing'", a soft form of socialization as "'a process of inducting actors into the norms and rules of a given community'" (Checkel, 2005 in Sharman, 2011, p. 136) and later to a concept of "mimicry" (ibid. p. 151) which emphasised formal compliance rather than problem oriented AML policy implementation. The latter point appeared to be a contradiction with the findings of Hülsse and Kerwer as Sharman observed how socialisation reinforced formal rather than actual compliance. What he saw was a "discursively mediated exercise of power" (Sharman, 2008, p. 636) subduing discursive efforts to the role of structural power elements reinforcing the coercive spread of the FATF Recommendations.

Within the AML policy network, as policy effectiveness could not be judged by impact on crime, compliance with the FATF standards by itself and the granting or withholding of professional recognition by a highly specialised international peer network became important driving forces of developing country officials. National AML policy was seen as shaped "through the desire of national regulators to avoid being seen as derelict in their duties, backward, or substandard by their [international] peers" (Sharman, 2011, p. 154). He argued that AML policy makers in developing countries were socialised towards compliance primarily during their participation in international forums, with peer-review missions as well as FATF and FSRB plenary meetings taking a central role. This position connected to Hülsse who observed the setting up of "institutions where talk can take place" (2007, p. 167), such as FATF Annual Reports (his main source), plenary meetings and trainings as important forums in which discourse took effect. Tsingou made similar observations of socialisation and professional prestige in the private sectors where compliance officers of not only developed from an "accidental profession" (Tsingou, 2018, p. 197) into important players in the financial industry. They also were also "engaging in regulatory creep, and looking to extend the scope of issue areas under their control" (ibid., p. 204).

Sharman described peer review processes as intense and time consuming endeavours which require a strong engagement of local practitioners with the FATF Recommendations. During these reviews, country officials were incentivised to adopt a culture of box-ticking to demonstrate compliance, as functional equivalents to the standard policies – which might be more in tune with local problem definitions, cultural practices and institutional structures – were dismissed by the reviewers. This generated or reinforced an attitude in which formal compliance with the international AML standard as performative demonstration of appropriate behaviour was valued over engagement with actual problems of money laundering or predicate offences.

The FATF plenary meetings were described as a tightly knit community of country representatives on a first name basis which have known and at time befriended each other over years. The self-image of participants and the meetings was observed as explicitly technical and apolitical, despite the decision being made having the potential of important political ramifications. New participants were socialised into this group through rigid formal proceedings as well as informal traditions (or rituals) like karaoke nights creating an informal interpersonal group culture. The proceedings themselves were characterised as paying little attention to country particularities and individual risk assessments. Although countries like Pakistan and the Cook Islands presented very different money laundering risks and challenges, resources devoted to their review and the final report were almost equal. Though in a less detailed account, Sharman hinted to differences between the FATF and FSRBs plenary sessions, as well as between the latter. Membership was presented as more diverse and less socially unified in the FSRBs sessions, in which FATF representatives intervened to bring the meetings in line with established FATF procedures. Socialisation was also reinforced through training and technical assistance, including the temporary placement of developing country FIU personnel at their developed country counterparts (for the above two paragraphs cf. Sharman, 2011, pp. 138-150).

2.1.5 Domestic context

While some of the literature on international factors used national country examples to substantiate and highlight how international governance affected national policy making, holistic studies examining the intrinsic workings of AML policy development at the national level were rare (e.g. Götz & Jonsson, 2009). Most reviewed country studies focused on particular aspects such as recent legislative changes, the development in the financial sector or regulation of DNFBPs. This sub-section concentrates on deriving the aspects of the literature on national level AML policy developments that shed additional light on which factors might influence compliance with the FATF Recommendations. The results put in question the strongest internationalist view that "more than 180 states, large and small, rich and poor, have adopted a standard set of anti-money laundering policies, apparently without reference to local conditions" (Sharman, 2011, p. 1). National context does seem to matter.

Verdugo (2011, cf. also 2008) contributed to the literature with a noteworthy large-n study probing data from 116 jurisdictions for factors leading to compliance with the 2004 FATF Recommendations. She deducted her variable set from the compliance literature with an emphasis on Putnam (1988) and domestic factors determining AML compliance. Her three sets of variables were grouped into cultural, institutional, and socioeconomic and financial factors. These were than run against national compliance data using a four level compliance score for each Recommendation (non-compliant / partially compliant / largely compliant / compliant) derived from the MER methodology, similar to the approach used in the introduction of this study.

Her results indicated a generally low compliance of countries with the FATF Recommendations. Higher income levels correlated positively with higher compliance scores. Other positively correlated factors included stronger domestic governance (measured by higher regulatory quality and control of corruption) and a more competitive banking system (measured by net interest margins). No correlation was found between AML compliance and "a country's involvement in the global drug economy" as an indicator for money laundering risk. Separating between different clusters of AML Recommendation, Verdugo also observed that specific factors only affect parts of AML compliance. For example, indicators for a stronger national regulatory framework correlated with FATF Recommendations clusters representing better legal as well as financial institutions and informal sector prevention measures, but not with prevention in DNFBPs, entity transparency and international cooperation. Recommendation clusters on prevention in DNFBPs and entity transparency were in turn positively correlated with higher levels of foreign direct investment (Verdugo, 2011, p. 19ff). The author gave hints at possible interpretation of these results highlighting the role of “institutional structures as both opportunities for and impediments to change” and deducting that “[b]oosting domestic governance is essential for improving compliance […]” (Verdugo, 2011, p. 22). However, she concluded that “each country displays its own peculiarities” which created “significant challenges in accurately interpreting the resulting aggregation” (ibid. p. 24).

Probing existing country studies helped to provide interpretational starting points that allowed expanding on these peculiarities. Country studies reviewed for this section included accounts for Australia, Austria, Belgium, China; Georgia, Greece, India, Italy, Mexico, Nigeria, Russia, South Africa, St. Vincent, Sweden, Switzerland, and Ukraine. The review of country studies confirmed Verdugo’s view of a large diversity of national differences that seem to affect AML policy making. Domestic factors were certainly presented as relevant in shaping national AML policies and in turn FATF compliance. While some of these factors were observed in a variety of studies, others were specific to a particular case and seemed difficult to generalise. Echoing some of the already presented factors and adding others, domestic accounts indicated an explanatory role for (i) a differentiate view on groups of actors that drive or obstruct AML policies, (ii) specific national crime threats, (iii) facilitating international cooperation, (iv) capacity constraints, (v) conflicts with civil liberties, (vi) external pressure and (vii) economic as well as reputational concerns.

A first important observation was that authors differentiated between different groups of actors at the national level. Revealing the interplay of actors in AML policy development and implementation cautioned against homogenising the national environment. While international studies in their majority treated the national level as an analytical monolithic black box, “[i]t is important to notice […] diversity of interests related to the introduction of an ever-expanding AML battle” (Verhage, 2009, p. 115). Verhage in her study of Belgium suggested the term “AML complex” (ibid.) to describe the interacting network of public and private institutions working under a division of labour on policy development and implementation. National studies often held that a variety of public and private institutions (should) cooperate but in practice at times compete over AML policy development (cf. van Zyl, 1997; Itzikowitz, 1998; Subbotina, 2008; Subbotina, 2009).

Findings for Mexico showed that these actors interact within in discernible groups in the financial, law enforcement and DNFBP sectors driving policy development in different areas covered by the FATF Recommendations (cf. Behrens, 2015). This relates well to Verdugo’s observation that certain factors only affected distinct clusters of Recommendations, related for example to the financial sector or DNFBPs. Another indication of what sectors to differentiate was also found in texts that described how particularly larger banks had become proponents of money laundering prevention while smaller banks and financial institutions, DNFBPs as well as legal professions took a more critical stance. In countries such as Panama (Alba, 1998, pp. 354-355) and Switzerland (Sansonetti, 1998, p. 87), banks developed self-regulation to prevent money laundering. In reaction to a scandal in which Credit Suisse facilitated Italian capital flight to Luxembourg, Swiss banks developed the 1977 Swiss Bankers Code of Conduct. It pioneered concepts such as KYC and CDD (Pini, 2004, p. 227) and later inspired the FATF Recommendations (Pieth, 2004, p. 6ff) as well as national legislation (Sansonetti, 1998, p. 87). At the international level, the Wolfsberg Group comprised of large international banks since 2000 equally developed private banking standards to prevent AML which in turn informed national banking practice, for example in Russia (Subbotina, 2008, p. 361). While compliance with financial sector Recommendations was usually described as higher, lower compliance levels were attested for smaller financial institutions (Subbotina, 2009, p. 26ff) and DNFBPs. With regard to the latter, political tensions often times built up on questions of customer confidentiality and privileges of legal professions like lawyers, notaries and accountants (Johnson, 2005, p. 299).

Further differentiation was made between the private and the public sector. Critically on the performance of the AML system in Russia, Subbotina referred to conflicts between Russian banks and the financial market regulator asking if there was “unwillingness or an inability of the banks to cooperate with other stakeholders of the AML regime in Russia?” (Subbotina, 2009, p. 24). Verhage’s study of Belgium concluded that while private sector activity significantly increased prevention, “in spite of a continuous global policy of anxiety on money laundering and the strains that are put on the private sector, the net law enforcement results seem rather low. In the end then, who is the actual ‘window-dresser’ … the financial sector or the authorities?” (Verhage, 2009, p. 130). In some countries like Saint Vincent and the Grenadines (Drayton, 2003, p. 171), formal AML policy advisory councils were established with the participation of the public and private sector, often represented by the banking industry. In other cases, the private sector was consulted ad hoc during legal drafting processes (Johnson, 2005, p. 297). For the identification of Politically Exposed Persons (PEPs) that present a high money laundering risk, the government was seen as the best positioned actor to develop a list of relevant persons, in effect advocating for a division of labour in this area (Johnson, 2005, p. 302). Such developments of public-private cooperation were not always welcomed in the literature. Authors analysing the Greek case for example observed that financial market regulation through criminal law allowed “financial lobbies to cross the line and enter the territory of criminology and criminal law” (Stefanou & Xanthaki, 1999, p. 163).

Some accounts hinted towards an unclear allocation of AML policy making and implementation between different branches of government. In Ukraine for example, the FIU was assisted in fulfilling its role by both the Ministry of Finance and the Ministry of Internal Affairs (Roule & Salak, 2003). In Greece, the “government found it difficult to pinpoint the ministry within whose competence it was to propose a relevant draft law" (Stefanou & Xanthaki, 1999, p. 162). As a result, the Ministry of Justice and the Ministry of National Economy worked on parallel drafts when AML was first legally established in 1993, "most probably in ignorance of each other's work" (ibid.). Equally in Russia, the role of which agency would develop legislation and the regulatory framework for the banking sector was not clearly assigned to the national FIU, controlled by the Finance Ministry, or the Central Bank creating conflicts between the national banking community and the Russian financial market regulator (Subbotina, 2008, p. 362; Subbotina, 2009). With regard to the compliance focus of institutions, an account of the Australian AML system pointed out, that the national FIU's (AUSTRAC) focus lay on the implementation of national legislation, while overall compliance with the FATF Recommendations was the domain of the Australian government (Johnson, 2000, p. 60).

Even the role of FIUs itself was not always clear. In addition to its formal role as envisioned by the FATF, its position as an "information gateway" was at times seen as its central purpose (Drayton, 2003, p. 172). While FIUs come in distinct forms (cf. IMF, 2004), in this view it served primarily as a buffer between the private sector and law enforcement. This was for example the case in Switzerland, where "[t]he core function of the Reporting Office is clearly to act as a filter between financial intermediaries and the prosecuting authorities" (Sansonetti, 1998, p. 91). Equally in the case of the Netherlands, the FIU was "deemed as an 'interpreter', speaking the languages of both the private sector and law enforcement" in order to protect privacy rights (Mitsilegas, 1999, p. 148). In Russia, where the FIU was more prosecution oriented, the Central Bank took a similar "role of some kind of an intermediary between the FIU and the financial institutions" (Subbotina, 2008, p. 368) developing AML reporting guidelines.

Despite the general critical view in the literature on AML effectiveness as a crime fighting methodology, authors of national studies presented combating domestic organised crime threats as an important driver for states to comply with the FATF Recommendations. Götz and Jonsson (2009) provided an exceptionally detailed account of factors leading to AML policy development in Georgia. They hinted towards the limitations of international pressure by pointing out that despite two previous negative evaluations of the country by MONEYVAL as the responsible FSRB, AML policy development only set in after national regime change in 2004. Within the domestic and regional context of Georgia in the mid-2000s, the authors instead identified four facilitating factors that drove AML policy development: state building efforts within the post-soviet transition framework, related anti-corruption efforts, a westward oriented foreign policy that required adoption of international standards, and a post 9/11 international environment creating momentum for AML policies that included provisions against financing of terrorism (FT; CFT is used for "countering the financing of terrorism" as analogue to AML). Among the domestic crime challenges the government sought to address were "corruption, […] crony capitalism, […] misappropriation, embezzlement, tax evasion, and abuse of power by public servants" (Götz & Jonsson, 2009, pp. 61-62).

Equally for Ukraine, who at the time was on the NCCT list, “tax fraud, abuse of power, illegal entrepreneurship and illegal banking activity” were identified as central domestic problems to be addressed by AML (Roule & Salak, 2003, p. 367) together with combating organised criminal groups involved in “narcotics and women trading networks, rampant income tax evasion by businesses, illegal banking, misappropriation of government fund, and theft of natural resources” (ibid. p. 371).

Uche in his account of Nigeria observed that AML policies were necessary to discourage launderers as the country had “all the attractions for money launderers” such as a high laundering demand created by “fraud, corruption and drug trafficking”, as well as “a corrupt and underfunded police” (Uche, 1998). Similar observations were found for South Africa, where AML regulations were originally created to combat drug trafficking. By the late 1990s, the country faced “a dramatic increase in organised crime” and “some 300 international crime syndicates operating” in the country (Itzikowitz, 1998, p. 74). In cases like Italy, money laundering policies were updated in line with international standards with the goal to increase AML effectiveness for combating organised crime but also against tax evasion (Zaccagnini, 1998). For Austria in the late 1990s, the identified threat was laundering operations by “Eastern European criminal organisations, and allegedly to some extent by the Italian Mafia” (Rahmatian, 1999, p. 267). With regard to specific crime and money laundering threats as factors for compliance with the FATF Recommendations, concrete cases and scandals like the already mentioned Credit Suisse scandal were seen to have motivated autonomous national policy developments in Switzerland as early as the 1970s (cf. Sansonetti, 1998; Pieth, 2004).

In line with observations made earlier however, some national case studies observed a low effectiveness of AML in generating prosecutions and convictions. For the Austrian case, the reasons for this unsatisfactory result were seen in an overly conceptual focus of AML rather than its practical applications as “money-laundering control is a playground for academics and a minefield for practitioners” (Rahmatian, 1999, p. 265). Subbotina went in a similar direction with her observation that “the rules are written by the theorist but implemented by the practitioners whose views vary greatly for different reasons” (Subbotina, 2009, p. 30). In some studies, authors observed a conceptual overextension. The inclusion of tax evasion as a predicate offence in Italy was seen as an obstacle to effective AML. It made it more difficult for banks to discern organised crime related money laundering from tax evasion, as transaction structuring was a common practice to avoid taxes rather than launder criminal proceeds (Zaccagnini, 1998, p. 182).

Most crime threats related to AML were seen as connected to transnational organised crime and presented money laundering equally as an international activity (e.g. Rahmatian, 1999, p. 274). As money laundering was inherently perceived as a process involving value transfers through a series of jurisdictions, countries had to pass and implement mutually compatible legislation to permit international cooperation (cf. van Zyl, 1997; Sansonetti, 1998; Ping, 2008). In many country studies therefore, compliance with international standards to facilitate international cooperation was presented as a strong motivator for legal change. Some analyses also emphasised that the respective countries had subscribed to the FATF standards and were FATF or FSRB members, stressing the voluntary nature of national compliance with the Recommendations (e.g. Uche, 1998, p. 222; Sansonetti, 1998, p. 92). While the 1988 UN Vienna Convention was frequently named as a point of reference and its ratification an important driver for AML policy development, the focus for most countries lay in compliance with the FATF Recommendations.

This cooperative outlook was emphasised for example by Subbotina in her account for Russia, stating that "[t]he key element in the fight against ML is international cooperation in creating international anti-money laundering (AML) regulations which would help to evaluate and monitor the countries' financial systems" (Subbotina, 2008, p. 358). The FATF Recommendations and derived international provisions were presented as a concrete policy guideline that provided the technical expertise facilitating national policy development (e.g. also Stefanou & Xanthaki, 1999, p. 166). For the Russian case, incomplete transpositions of these guidelines were identified as obstacles as "[t]he difference in terminology […] entails incompleteness of understanding of the international norms and, as a result, failure to comply with them" (Subbotina, 2008, p. 368). However, even for FATF member states like Australia, the inclusion of new Recommendations was at time described as something the country had "to cope with" (Johnson, 2005, p. 297).

A specific outcome of compliance with the FATF Recommendations mentioned as positive driver in country case studies was not only the passing of information and asset sharing laws but also the establishment of FIUs, at times under FATF pressure (cf. Sathye & Patel, 2007), and their membership in the Egmont Group. This membership allowed participating countries access to financial "information, relevant laws and regulations, and general analytical information" collected by other FIUs through the Egmont Secure Web (Mitsilegas, 1999, p. 156). Other international guidelines were equally used in this area as policy orientation. For example, the model laws produced and disseminated by the UN Office for Drug Control and Crime Prevention (ODCCP) also facilitated international "transfer of know-how" between FIUs (ibid.). However, even without a functioning FIU and at the time blacklisted by the FATF, Ukraine participated in information sharing with foreign government bodies on criminal investigations through its Justice Ministry (Roule & Salak, 2003, pp. 370-371).

In terms of national capacity limitations that could hinder the adoption and implementation of the FATF Recommendations, authors stressed that AML implementation required territorial control. Georgia for example lacked this characteristic for some of its border areas. The country thus did not fulfil the conditions of "control over territory and monopoly on violence [as] necessary prerequisites for satisfactorily implementing AML laws" (Götz & Jonsson, 2009, p. 69). Similar concerns were voiced for Italy, where reporting officers, particularly in smaller communities and financial institutions in areas with strong

Mafia activity, faced threats of violent retaliation if they reported money laundering suspicions (Zaccagnini, 1998, p. 182).

The already discussed high compliance costs were equally problematized by the literature on domestic factors (e.g. Alba, 1998; Magnusson, 2009). Concerns were raised in a series of country studies on the implications to regulate DNFBPs (e.g. Johnson, 2005). With regard to other DNFBPs but also some financial sector actors such as insurance companies, a limitation was identified in the economic possibilities of the respective sectors to invest the required resources into compliance. Particularly under a risk based approach, CDD was argued to be less necessary in sectors that processed their payments through the banking sector which was supposed to already have implemented CDD procedures and thus serves as protective filter (Johnson, 2005, p. 299ff). One argument, analogue to the concern that AML would present costs for the financial sector, was the significant costs to be carried by the newly regulated entities with limited proof of policy effectiveness (Magnusson, 2009, p. 111). Implementing due diligence, record keeping and reporting duties for casino, precious metal dealers or real estate agents was seen as practically little feasible. While smaller companies were seen as not in a position to employ specialised compliance personnel, the state's administrative capacity to effect compliance supervision for such a large number of actors was also perceived as highly limited in some countries (e.g. van Zyl, 1997). In addition, some authors observed the increasing amount of STRs threatened to overburden the AML system and law enforcement which was in danger to no longer produce valuable criminal intelligence (cf. Itzikowitz, 1998, p. 80; Mitsilegas, 1999, p. 153; Subbotina, 2009, p. 25).

These negative effects were to an extent balanced by a positive view on asset confiscation, forfeiture and sharing arrangements as parts of AML policy implementation that could re-finance AML enforcement efforts (e.g. van Zyl, 1997; Uche, 1998). Saint Vincent and the Grenadines for example passed legal provision foreseeing the use of confiscated funds for prevention, treatment and rehabilitation of drug addiction which is an important illegal market for the generation of laundered funds (Drayton, 2003, p. 172). This additional financing possibility for domestic crime prevention and law-enforcement institutions provided an incentive to adopt and implement the FATF Recommendations.

Beyond resource arguments, various accounts for developing and transition countries observed a bad fit between the FATF Recommendations and national money laundering risks that the policy was supposed to address. Of general concern were large cash or informal economies such as Nigeria (Uche, 1998, p. 223), which did not channel most of their financial transactions through a formal banking system. AML measures that concentrated on the formal economy as is the case for the FATF Recommendations were seen as limited in their scope. Reasons for low levels of financial inclusion and the use of the formal financial system may lay in more sinister reasons such as tax evasion or avoidance, but as well in unavailability of banking infrastructure and low trust in the reliability of the banking system (Uche, 1998, p.

224) or national currency stability. Only recently has the AML literature begun to engage with the informal economy in a more systemic manner (e.g., Vlcek, 2018). This might reflect the FATF's background in highly developed financial markets and the requirement to adapt policy recommendations to the realities of the vast majority of countries that have since adopted the FATF Recommendations.

With regard to legal professions, criticism aimed at professional privileges and confidentiality considerations, for example between attorneys or notaries and their respective clients (e.g. Itzikowitz, 1998) or in a wider context of civil liberties and customer confidentiality (e.g. Rahmatian, 1999; Drayton, 2003). This debate echoed earlier observations on banking confidentiality but is arguably more sensitive due to the dependence of defendants on legal counsel. During an AML reform process in Australia for example, a political committee overturned the technical level recommendation to include solicitors under entities with AML reporting obligations (Cotton, 1998). On the Georgian case, authors also stated that some evidence existed that the AML policy framework was used to prosecute members of the political opposition, thus providing domestic incentive for its “selective implementation” (Götz & Jonsson, 2009, p. 68).

In some country cases, the coercive nature of FATF pressure (Rahmatian, 1999, p. 267), the NCCT blacklist (Drayton, 2003, p. 170; Roule & Salak, 2003; Subbotina, 2008, p. 359) but also regional pressure, as for example infringement proceedings initiated by the European Commission (EC) against Greece before the European Court of Justice (ECJ) (Stefanou & Xanthaki, 1999, p. 163), were presented as driving factors for compliance. In the Greek case, authors made explicit that fulfilling EU obligations was the main reason for introducing AML legislation, before financial integrity and organised crime concerns (ibid. p. 168). Policy development appeared to be decoupled from actual legal proceedings with authors observing “a total lack of recorded criminal cases for money laundering brought before Greek courts”, which corresponded to a low political priority and indeed “irrelevance” of AML (ibid. p. 161). A large scandal leading to a government downfall in the 1980s did not lead to AML being discussed and promoted but rather as an issue “best left alone” (ibid.). At best, a crime fighting relevance was seen in the proximity of Greece to the Balkans' drug trafficking routes. For the authors, the passing of substantial AML legislation in 1995 was a “political non-event” (ibid. p. 170).

In a regional peculiarity, the analyses of many European countries only made passing reference to the FATF Recommendations and focussed more on anti-money laundering directives of the European Union and its predecessors or the Council of Europe (CoE). In Switzerland, the EU directive contributed to a reform of Swiss AML law which created the duty of financial intermediaries to report suspicious transaction which formerly only had the right to do so (Sansonetti, 1998, pp. 89-90). Similarly for Austria, the EC directive was named as a primary reference, with other European and international conventions as well as FATF membership taking second place (Rahmatian, 1999, p. 265). Other examples included Greece

(Stefanou & Xanthaki, 1999) and Russia (Subbotina, 2008, p. 359ff). This could point to the EU being able to exert more international influence in its region than similar organisations in other parts of the world.

Domestic studies also observed the importance of implementing the FATF Recommendations to protect national financial markets or the national economy (e.g. Alba, 1998; Zaccagnini, 1998). This rational was not solely focussed on international reputation arguments. In Russia, this reputational focus was translated into domestic relations between financial market regulators and banks, as "[m]aintaining a 'good' reputation in the eye of the regulator has become a primary task of the banks in Russia" (Subbotina, 2009, p. 28). In a similar line, the Italian AML system was seen as a mean to "protect the legal economic system against criminal infiltration" (Zaccagnini, 1998, p. 184). Another important identified economic factor was to shield national economies from instable money flows (e.g. van Zyl, 1997). Financial resources derived from money laundering were seen as particularly prone to such flows, as they do not follow a profit oriented medium to long term investment strategy. Additionally, companies that derived at least parts of their capital from money laundering were feared to crowd out legitimate businesses that could not compete with artificially low prices for products and services (cf. Uche, 1998). Alba for example followed this argument for Panama, when he identified "the problem of illegal drug trafficking and money laundering" as "the most serious threat to Panama's commerce and services", however not without locating the source of this problem in the failure of other countries to effectively combat drug production and consumption (Alba, 1998, p. 354).

For Australia, compliance with the FATF Recommendations was not only seen as based on its membership in the organisation but also on its interest "to continue to operate freely in the global financial system" (Johnson, 2005, p. 303). With reference to Greece, which did not identify a relevant crime problem to be combatted by AML, EU market integration was a central driver of legislative change. To catch up in terms of policy making and implementation as well as to preserve the country's image, Greece embarked on a reform process "even if there was little tangible evidence that abuse was widespread, the provision of relevant legislation was imperative and necessary" (Stefanou & Xanthaki, 1999, p. 162). While this financial focus was reflected in early drafts of Greek AML law, it was later removed to focus solely on incorporating "the criminal aspect of the [EEC] Directive into the Greek legal order" (ibid.)

2.2 Literature Synthesis

What did the literature review of AML policy development and implementation offer as factors that might help to explain compliance with the FATF Recommendations? A first observation was that the existing literature falls short of a common theory explaining policy development at the national level. Academic reflection on the subject is rare and only set in late, leaving the field to AML practitioners which often times stayed at the level of particular practical challenges in their respective areas of work. What seems certain is that FATF compliance generates costs, both financial and for civil liberties, and that AML policy goals changed over time to today serve a variety of purposes. The FATF Recommendations are therefore in no way a mere technocratic and politically neutral policy tool to solve a crime challenge like illegal narcotics trade. They engage public and private actors from a series of different sectors, each with their own respective cost-benefit rationales and interests. Most prominent in the literature were actors from public prosecution agencies and large private banks as proponents of the private sector. Others included specialised AML bodies like FIUs and the various DNFBPs. What also seems to be certain is that AML policy development and implementation is driven by a mix of both domestic and international factors. Maybe surprisingly for such a widely accepted international policy standard, policy development seemed to be concept rather than evidence based, leaving policy makers with little information on money laundering and policy effects on which to base their compliance relevant decisions.

Within this complex mix, one factor leading to compliance with the FATF Recommendations seemed universally shared: The almost global acceptance of the FATF Recommendations as AML policy standard was strongly advanced by coercive means, primarily blacklisting and the ICRG process, in conjuncture with a combination of Recommendation 21 and publicised MERs. Vital to this coercive process was the credible threat of third party enforcement by FATF member states central to the global financial system, in particular the US, UK, as well as the European Union and its predecessors. However, this insight only provided a limited explanation for compliance. No country would completely remain outside of the realm of the FATF Recommendations and all would need to engage with its implementation. The FATF's coercive pressure argument however did not explain much of the degree of compliance of individual countries. For example, it failed to shed light on countries that voluntarily adopted the FATF Recommendations because they were convinced of the policies validity or they tried to live up to their international obligations. Equally, countries do not universally comply or not comply with the Recommendations. The empirical reality as observed in the MERs was a range of countries being non-compliant, partial compliant, largely compliant or compliant with each of the Recommendations. If coercive pressure was applied globally, it cannot account for these differences. In this sense, analyses have to probe deeper to explain the empirically observable compliance degrees. For this deeper look, different clusters of arguments identified in the literature contributed to a patchwork of explanatory factors. In addition the apparent consensus views on the role of external pressure, the following propositions were derived from the literature for the purpose of this study:

Proposition 1: Countries need a minimum level of state capacity for rule implementation. Countries without territorial control or the monopoly over the use of violence are restricted in compliance with the FATF Recommendations. In such situations, policy makers, rule addressees as well as oversight institution are vulnerable to criminal threats of violence. The literature made the argument even for Italy which faced a strong organised crime threat that could effectively undermine AML policy making. In addition to violent or corrupting interference of criminals, countries could face softer capacity limitations in the form of understaffed investigation and prosecution agencies or a lack of available expertise to generate compliance. Even though statehood does not explain FATF compliance in and by itself, a severe lack of it, either overall or in a more specific policy area, should contribute to low compliance.

Proposition 2: Normative constraints and high implementation costs limited compliance. The literature observed and at times argued strongly that AML policies (unduly) infringed civil liberties. The debate started with limitations of bank secrecy and later spanned to client confidentiality in legal professions. While the latter was still debated in recent contributions and might slow down policy development in this area, the priority of AML over bank secrecy has been firmly established as an international consensus and key pillar of compliance with the FATF Recommendations. Countries like Switzerland, Austria or Saint Vincent and the Grenadines provided strong evidence of FATF coercive power in this issue. The expected benefits of AML were also offset against concerns for economic implementation costs for different sectors, both direct and indirect. Costs and civil liberty arguments would thus be expected to limit compliance with the FATF Recommendations.

Proposition 3: AML policy derived its legitimacy from conceptual arguments rather than evidence of effectiveness. For the FATF Recommendations and the wider idea of AML policy, the literature could not provide any viable assessment of its effectiveness. Beyond anecdotal accounts, it remained still unknown if AML reduces predicate offences, crime and organised crime or contributed positively to the development of the economy by protecting financial integrity. With lacking data, the domestic debate about AML policy development is expected to be strongly focussed on the conceptual level. Legitimacy of the policy would therefore not dependent on underlying data of the relationship between concrete policies and the domestically identified problems. Rather, it would be based on reputational concerns and the reproduction of technical expertise within the domestic policy network leading to compliance with the FATF Recommendations as the central proxy measure of AML policy effectiveness. FATF compliance is therefore influenced by the successful creation of policy legitimacy by other means than evidence of effectiveness.

Proposition 4: AML policies served a variety of political goals for different actors. The FATF Recommendations accommodated a variety of policy objectives identified in the literature which included: fighting predicate offences, combating crime and organised crime, as well as promoting economic development, in particular financial market reputation, by preventing the negative market externalities of money laundering and uncontrolled international capital flows. There is no clear hierarchy between these objectives. Countries complied with the FATF Recommendations assigning their own priorities. Before being internationalised, AML policies developed in the United States and some European countries like the UK and Switzerland. These endemic policy developments were targeted a particular crime threats perceived as relevant at the national level. While these were the fight against drug trafficking in the US, European policy pioneers focussed more on economic crime and protecting the reputation of their respective banking sectors. Such domestic reasons to develop AML were still found as drivers in a variety of country studies, usually incorporating a mix of different measures of crime and economy related problem definitions. It would therefore be expected that countries comply particularly with those Recommendations that are most closely related to their specific perceived money laundering threats. Beyond the state's public order interest, private sector entities and particularly large internationals banks had an interest in spreading AML to facilitate international financial market integration and to achieve a level playing field within the international financial system. Investigative Recommendations would matter more for countries trying to combat predicate offences, while financial market prevention should matter more for financial centres. Verdugo's findings indicated that these perceptions do not necessary correspond with actual crime threats, as she did not identify a correlation between exposure to transnational drug markets and AML compliance.

Proposition 5: AML followed a sectoral logic. As also reflected in the FATF Recommendations that addresses specific actors like the state, financial sector or DNFBPs, the literature distinguished compliance between different sectors. A first observed differentiation was between public and private actors. Central actors on the state side were Finance and Justice Ministries, police agencies, financial market regulators and FIUs. The private side featured financial market actors and DNFBPs, with banks and legal professions often seen in a special position. Cross-cutting the categories of public and private were the empirical interactions that usually took part within a specific cluster of FATF Recommendations, as evidenced by the frequent interactions of banks and financial market regulators in development of preventive AML policies. These sectors also connected with their international counterparts, for example in the Wolfsberg Group or the Egmont Group of FIUs, reinforcing a sectoral dynamic in compliance with the FATF Recommendations. Compliance will therefore be higher with those Recommendations in which the respective sector is proactively engaged in policy development and implementation.

Proposition 6: AML policy development was transnational. In stark difference to the early endemic developments in AML policy making, the FATF had standardised its Recommendations when most countries started adopting AML policies since 1990. Within this emerging policy field, the FATF Recommendations served as central policy guidance as only limited domestic expertise was available in most countries. There is therefore a very strong connection between the international standard and national policy frameworks. This link between the international and the domestic was reinforced by coercion and softer mechanisms like incentives and socialisation. On the actor level, AML was equally highly transnational, involving expert and professional networks spanning international (FATF) and regional (FSRBs), as well as national groups and coordination bodies. Particularly financial market regulators, FIUs and international banks were mentioned as highly connected and active members of these networks, at times having formed their own representative organisations like the Egmont Group or Wolfsberg Group. Compliance is expected to be higher, in those sectors where these transnational links were firmly established and served to convey the international policy standards into the national environment.

3. Theory and Methodology

How can the preliminary findings of the literature review be brought together with a theoretical and methodological framework that allows more systemically identifying factors that affect compliance with the FATF Recommendations? Still more importantly, what causal mechanisms does theory provide for, that *explain* how these factors work? To constructively engage with the research question, theory guided and disciplined the empirical case study analyses. In the words of Mearsheimer and Walt: "A theory says how […] key concepts are defined, which involves making assumptions about the key actors. […]. Most importantly, a theory explains why a particular hypothesis should be true, by identifying the causal mechanisms that produce the expected outcome(s). Those mechanisms—which are often unobservable—are supposed to reflect what is actually happening in the real world" (Mearsheimer & Walt, 2013, p. 9).

This research combined well-established theoretical work on policy transfer, particularly following the heuristics of Dolowitz and Marsh (1996; 2000), with the emerging theoretical framework of governance in areas of limited statehood (Risse, et al., 2018). The results of this combination were applied to two exploratory case studies: compliance with the 2004 FATF Recommendations in El Salvador and Mexico. This combined approach balanced the policy transfer literature's inherent bias towards European and North Atlantic – i.e. mostly areas of consolidated statehood – contexts (cf. Marsh & Sharman, 2009, p. 280) and the still emerging theoretical concepts of governance in areas of limited statehood. It took advantage of the high adaptability of policy transfer concepts with other fields and the notion that when policy transfer "is combined with other approaches an empirically grounded account of policy change can be developed" (Stone, 2012, p. 490). In this manner, this research directly approached efforts to expand policy transfer literature to new empirical contexts and particularly to examine "how policy transfer relates to differing modes of governance" (Dolowitz & Marsh, 2012, p. 342). While policy transfer is the macro-theoretical framework of this study, governance in areas of limited statehood provided analytical methods and tools more adapt to the empirical contexts.

With regard to the AML policy literature, the policy transfer and case study approach of this work specifically addressed the limitations of available large-n comparative AML compliance studies. With still limited understanding of developments at the national levels, such studies' "aggregation of cross-cultural and cross-country data limits a meaningful result" (Verdugo, 2011, p. 24) to explain compliance patterns. The policy diffusion literature of International Relations, as a research field closely related to policy transfer, strongly relies on such large-n cross-country studies. Consequentially its theoretical and methodological usefulness for exploring the influence of domestic factors, which the literature review identified as significant in AML policy development, was limited (cf. Marsh & Sharman, 2009, p. 279). The comparative element of two case studies should however help to identify patterns that have an explanatory value added beyond the single case at hand to provide sound hypotheses for further testing and theory refinement in future studies.

Section 3.1 discusses the basic definitions, concepts and assumptions on which the research based its combination of policy transfer and governance in areas of limited statehood. It then presents the concept of governance configurations in more detail. Governance configurations are the main analytical tool applied by this study. In addition to the established policy transfer literature, the central reference for this chapter are selected works from the Collaborative Research Cluster 700 (SFB700) "Governance in Areas of Limited Statehood: New Modes of Governance?". Between 2007 and 2018, members of the research cluster undertook extensive theoretical and empirical work on how "institutionalized modes of social coordination to produce and implement collectively binding rules, and/or to provide collective goods" (Börzel, et al., 2018, p. 3) (governance) yield intended results in regions or policy fields where "central authorities (governments) lack the ability to implement and enforce rules and decisions [...], at least temporarily" (Risse, 2011, p. 4) (areas of limited statehood). Within this wider definition, this study focussed on the governance service of production and implementation of AML policies as collectively binding rules that foster transfer of AML policies prescribed in the FATF Recommendations.

The construction of the research's theoretical framework is followed by an analysis of the standard transfer process prescribed by and instilled in the 2004 FATF Recommendations in section 3.2. Theoretical concepts like governance actors and governance modes are applied to the idea-type AML governance model as laid out in the FATF Recommendations and related documents. This illustrates the application of the research framework and reveals the default governance configurations. In section 3.3, these findings are critically reflected on the results of the reviewed literature to develop a first exploratory hypotheses set that brings together existing observations and the theoretical considerations. The present chapter closes with a presentation of the applied methodology and reviewed data in section 3.4.

3.1 Policy Transfer and Governance in Areas of Limited Statehood

While it is in principle conceivable that AML policies develop endemically within individual national environments as a response to domestic circumstances, the literature review showed that their development in most countries was based on the FATF Recommendations. The FATF designed the global policy standard since 1989 as an international club organisation strongly linked to the G7 and later the OECD. Most other countries adopted this standard throughout the 1990s and 2000s in a passive role. They became recipients of these policies in the sense that they did not participate in their formulation or further development and that the global AML regime did not provide for much flexibility in domestic policy design. Purely endemic policy development was historically limited to the 1970s United States and possibly parts of Western Europe in the 1980s. For the latter, scarce data availability did not allow a clear evaluation in how far AML policy developments in the US influenced domestic debates but a connection seems at least highly plausible.

Based on this observation, this research departed from the notion that domestic AML policy development in the vast majority of countries was a policy transfer processes. The FATF Recommendations were a central reference point for national AML policy makers – independent of whether they are conceptualised as an international consensus on the validity and usefulness of the standard or as a mere conduit for policy preferences of the United States in conjuncture with the UK, as for example Simmons (2001) argued. Policy transfer is understood as a process in which "knowledge about policies, administrative arrangements, institutions and ideas in one political setting (past or present) is used in development of policies, administrative arrangements, institutions and ideas in another political setting" (Dolowitz & Marsh, 2000, p. 5). With this definition, policy transfer covers finer administrative details prescribed by the FATF Recommendations as well as, through institutions and ideas, international norms like the criminalisation of money laundering as "standard of appropriate behaviour for actors with a given identity" (Finnemore & Sikkink, 1998, p. 891). Applying insights from the policy transfer literature therefore allowed this research to engage with and understand the interplay of different types of actors, institutions, policy levels and mechanisms entailed in AML policy development and implementation.

The policy transfer literature primarily engages with the role of policies developed in a country's past, at the international level or in another country as a factor in domestic policy development. Starting off from analyses of policy diffusion within the US federal system, the field created its main scientific output in a "second generation" (Stone, 2012, p. 486) within the context of comparative politics and globalisation literature (cf. Benson & Jordan, 2011, pp. 366-368; e.g. Dolowitz & Marsh, 1996; 2000; Evans & Davies, 1999; Evans, 2009; Stone, 2004). The literature identified three main contextual factors that contributed to a rise in policy transfer as an important policy development mechanism since the 1990s: (i) Easier availability of information in an age of cheaper and more effective communications infrastructure, (ii) increase in the economic interconnectedness between countries, and (iii) heightened advocacy efforts and support of standard policy solutions across different countries by intergovernmental organisations (IGOs) and other actors (cf. Dolowitz & Marsh, 1996, pp. 346-349; 2000, pp. 6-7). These contextual changes had two main effects: On the one side, easier availability of information on policies and their effect in other countries facilitated international and transnational learning. On the other side, economic interdependencies and the growing importance of international organisations in their governance increased the incentives and possibilities to use non-military coercive instruments like sanctions or reputational damage as instruments of international politics to pressure countries into adopting international policy standards (for a Marxist take on the subject cf. Robinson, 2001). These factors and their effects resonate very well with observations of the AML literature presented throughout chapter 2.

3.1.1 Policy Transfer as Dependent Variable

One of the central research questions of policy transfer studies, which is particularly relevant for this research is "[w]hat restricts or facilitates the transfer process" (Dolowitz & Marsh, 2000, p. 8). Under the assumption that observed domestic AML policy in large parts was the result of policy transfer, answering this question would contribute directly to understanding how different factors influence the production and implementation of AML policies as collectively binding rules and thus FATF compliance in El Salvador and Mexico. Related questions of policy transfer studies focus on the characteristics of transfer agents, transferred policies, and the institutional environment in which transfer takes place (cf. ibid.; Dolowitz & Marsh, 1996, p. 344). Their close examination could shed additional light on explaining the degree of transfer of the FATF Recommendations to the domestic domain.

All of the above aspects treat policy transfer as a dependent variable. Transfer is either more or less complete, depending on a series of factors identified as independent variables. While this approach to policy transfer is the most commonly applied, Dolowitz and Marsh argued that "a full analysis would treat transfer as both a dependent and an independent variable" (Dolowitz & Marsh, 2000, p. 8). When viewing policy transfer as an independent variable, scholars ask for policy effectiveness, i.e. the question whether the transferred policies contributed to reaching intended policy goals. As AML policy success or failure in terms of reduction of money laundering flows or let alone contribution to public security cannot be measured reliably with the available methodologies and data, this research limited itself to treating policy transfer as dependent variable.

This decision is also in line with the inherent logic of the 2004 FATF Recommendations as well as the data available in mutual evaluation reports. The reports of the Third Round by and large evaluated compliance as the degree of policy transfer, enquiring if the FATF Recommendations were reflected and implemented in national laws and regulations. Measurements included for example if the legal definition of money laundering conformed to the FATF's definition and whether the amount of STRs generated annually corresponded to the size of the national economy. Data closer to impact and policy effectiveness such as the amount of convictions reached was only required more prominently under the 2013 FATF Methodology (FATF, 2013). Combined with the strong indications of the literature that policy transfer is the central mechanism by which domestic AML policies were established, this study assumes that compliance as dependent variable to a large extend equals a high degree of policy transfer.

The link established by Dolowitz and Marsh "between policy transfer and policy 'success' or failure" (Dolowitz & Marsh, 2000, p. 6) was however considered by this thesis on a conceptual level. Taking up Marsh and McConnell that distinguished process, programmatic and political success dimensions (Marsh & McConnell, 2010), the political utility of policy transfer is not necessary limited to or indeed primarily their initially intended problem solving result; in the case of AML, this would be fighting crime. Inverting Marsh and McConnell to add to the independent variables of policy transfer, an underlying assumption of this work is that legitimacy of the policy transfer, and therefore its occurrence and degree, depends in part on the *perceived* utility of the policy transfer for domestic actors to reach their desired goals.[9]

This perspective takes due notice of the previous observation that AML policy development at the national level serves a multitude of purposes for different actors which extend well beyond crime fighting and public security provision, primarily into economic policy. In the absence of reliable data of AML policy impact on the occurrence and scale of money laundering and other crime rates, utility perceptions can for example be based on the conviction of actors that the basic concepts of the international policy standard are sound. Additionally, as the literature review indicated for cases like Austria, willingness of domestic actors to transfer the FATF Recommendations to national law and practices increased for example if the country had a high economic interest to interact with international financial markets. In such cases, AML policy success could be defined as maintaining the reputation of the national financial market which, amongst other factors, would be expressed by the FATF or FSRB mutual evaluation results. In the case of the 2004 FATF Recommendations, a high degree of policy transfer resulting in FATF compliance would therefore not just approximate but be equal to a success of the policy if merely viewed through an international financial market integration lens. To echo Sharman's pointed 'the bark is the bite' affirmation, for such cases the transfer is the success. This creates a serious methodological challenge by introducing a high risk of tautological reasoning which is inherent to the policy field itself.

3.1.2 Policy Transfer beyond the Shadow of Hierarchy

In the context of domestic AML policy development as a policy transfer process, the lens of governance in areas of limited statehood accounted for the empirical variance observed in the FATF peer-review data. As presented in chapter one, states grouped in four categories by their overall relative capacity to enforce collectively binding decisions showed different compliance patterns. This observation held with regard to countries' capacity to enforce the monopoly on the use of force with homicide rates being used as a proxy. These observations were however dominated by the extreme ends of the spectrum, where proxy indicators for consolidated statehood correlated strongly with high FATF compliance and very low enforcement capacity with low compliance. The pattern for states with medium levels of statehood in both issues showed a much wider spread. This observed variance suggested a systematic difference in the mechanisms and results of policy transfer of the FATF Recommendations from the international to the national level between these groups of states. Particularly for states with intermediate levels of statehood in rule

[9] For the importance of legitimacy of transferred policies for domestic actors see also a study on promotion of anti-corruption policies by the EU in the Southern Caucaus by Börzel and van Hüllen (2014).

enforcement and public security the prediction power for compliance with the FATF Recommendations was limited.

The assumption of a systemic difference between AML policy transfer in areas of limited statehood on one side and consolidated or severely limited statehood on the other side was further corroborated by the literature. Accounts for what in general terms would be called developing countries revealed the role of socialisation of public officials in international training events and international power differentials that suggested effects specific to this group (cf. e.g. Sharman, 2008; Sharman, 2011). This only vaguely defined group of countries in large parts overlaps with states with overall limited capacity to enforce collectively binding decisions. Failed and failing states would correspond to countries at the lowest end of the spectrum. Verdugo's large-n comparative compliance study identified states' capacity to establish regulatory frameworks as one important factor boosting FATF compliance. This was however intermingled with other factors and she equally concluded that "[i]n general, low income countries actual values are far from the perfect fit line" (Verdugo, 2011, p. 21).

Explaining FATF compliance in areas of limited statehood required different approaches from the state unilaterally able or not to establish and enforce rules – but which? The literature pointed to some possible answers. However, the options offered were at times contradicting and lack the necessary theoretical foundation to be generalised without further refinement. Research on governance in areas of limited statehood suggested viable ways to answer this question based on analyses of similar cases in other policy fields. While large parts of the world can be described as areas of limited statehood with regard to many different policy fields, governance services such as water supply, public security or health care are often times still effectively provided. A few of many examples include public security provision in Mexico City (Müller, 2012), provision of collective goods through transnational public-private-partnerships (Beisheim & Liese, 2014) or the provision of rule of law in Post-Roman Ostrogothic Italy and Frankish Gaul (Bothe & Grundmann, 2013). Just as in the case of FATF compliance as setting and implementing collectively binding decisions, a direct connection between proxy indicators for levels of statehood and the provision of governance services is not an empirical reality in most parts of the world. Lee et al. (2016) find that this hypothesis holds on a larger scale by applying large-n quantitative methods concluding that the correlation between statehood and the provision of public goods and services is overall weak.

These findings contrast with an eurocentric view of modern statehood, where the state as an institutionalised system of authoritative rule and the effective delivery of public goods and services are closely connected and at times have become synonymous (cf. Draude, 2012, pp. 107-128). Under this paradigm that relies on the assumption of consolidated statehood, the state either provides goods and services directly or, ultimately relying on the monopoly of the use of force, has the capacity to create an institutional environment in which other actors assume this role. The state's capacity to rule authoritatively if it chooses to, casts a shadow of hierarchy which allows it to explicitly or implicitly delegate governance service provision to other actors (cf. Scharpf, 1994, p. 41). The role of religious organisations offering core public social, health care and education services in Germany is one example. Equally, the shadow of hierarchy was argued to enable non-hierarchical modes of social coordination between actors like negotiation (cf. Börzel, 2008). This view would hold that a limitation of statehood should find its expression in reduced provision of public goods and services – both by state and non-state actors.

Theories that ultimately depend on statehood thus have difficulties *explaining* governance service provision in areas of limited statehood. They appear ignorant of governance set-ups that as functional equivalents to hierarchy and its shadow produce similar outcomes. Governance in areas of limited statehood's complementary offer is directing research at hierarchical and non-hierarchical interactions between actors, both state and non-state as well as domestic and foreign, that intend to produce governance services. To do so, the approach distinguishes between statehood as an attribute of the state and governance as the way in which collectively binding decisions are produced and implemented or public goods and services provided. The analysis does not start from the actor or institution side but rather constructs its analysis backwards from the governance service provision. This makes situations observable, in which the state is not the only or potentially not even a participant in governance. The framework is equally open to governance by, with or without the state (cf. Rosenau and Czempiel, 1992, in Brozus, 2013, p. 274).

This differentiation between statehood and governance is an important conceptual value added of this research to traditional policy transfer approaches. The latter tend to "suffer from 'methodological nationalism'" while empirically "policy transfer […] is just as likely to be achieved by mechanisms embedded in markets and networks as in the hierarchies of the state" (Stone, 2012, pp. 490-491). Transfer studies' frequent conflation of statehood and governance stems from its historical development in areas of consolidated statehood, where the state casts a shadow of hierarchy in which other actors operate. While policy transfer is open to transfer mechanisms where states being pressured and coerced into FATF compliance, as discussed below, the state still remains the central actor. Governance in areas of limited statehood goes a step further analytically by putting the state on equal footing with other actors in governance service provision. These may effectively apply their own hierarchical or non-hierarchical steering mechanisms possibly in the absence of a shadow of hierarchy cast by the state.

The applied definition of governance entails normative attributes: it is intentional and aims at the achievement of a collective benefit (Börzel, et al., 2018, p. 11). To be considered governance, the production and implementation of collectively binding decisions or provision of public goods or services cannot be an unintended consequence or non-foreseen external effect. This intentionality is neutral to the motives of the actors engaging in governance provision but it requires of them a conscious attempt to produce the beneficial result, termed here governance service, for a defined social collective. The orientation of governance for collective benefit (Ladwig, et al., 2007, p. 10) allows distinguishing the concept from normatively undesirable forms of collective action that may intend providing a collective good for a social group to the detriment of third parties. The latter would for example be the case where a state forcefully redistributes locally held land titles to benefit political elites or private companies engage in labour exploitation through debt bondage. The social collective has to be as inclusive as possible, meaning that public goods are more likely to qualify as governance than club goods (cf. Draude, 2012, pp. 135-136). Unfortunately, the evaluation is at times only possible ex-post, once the governance process has concluded and results were observed (Draude, 2012, pp. 136-137).

3.1.3 Actors and Institutions

If statehood played a role in FATF compliance but is ultimately unsatisfactory for providing explanations on its own as Verdugo's finding suggested (cf. Verdugo, 2011, p. 21), policy transfer studies would point to non-state actors and institutional factors as likely candidates to provide additional variables. These are the two main dimensions applied by this research approach to investigate transfer processes (cf. Dolowitz & Marsh, 1996, pp. 355-357). It combines elements of structure and agency, even though policy transfer studies tend to emphasise the actor component (Marsh & Sharman, 2009, pp. 274-275). Institutions are understood as the structures which "provide the context within which agents act and they constrain or facilitate the agents' actions" (Marsh & Sharman, 2009, p. 275). Hinting to the subtleties of power differentials, Dolowitz and Marsh summed up the relationship of structure and agency as actors taking strategic decisions "in a context which is mostly not of their making and which is characterized by structured inequality" (Dolowitz & Marsh, 1996, p. 355). Governance in areas of limited statehood shares policy transfers treatment of actors and institutions, emphasising institutions' two dimensions as both organisational setting as well as rules of appropriate behaviour. They are "norms, rules and procedures – both formal and informal – shaping the relationships between […] actors" (Risse, 2012, p. 10). Governance configurations as an analytical tool developed by governance in areas of limited statehood structure this relationship systematically by explicitly including power relationships as an additional analytical variable. This further sharpens the transfer analysis vis-à-vis more traditional approaches.

Policy transfer distinguishes between state and non-state actors on a definitional level. Studies on policy development in areas of limited statehood indicated that such a clear dichotomy between the state and non-state actors is an empirical exception rather than the rule. Due to the relatively limited enforcement power of the state, actor coalitions in areas of limited statehood operate on much blurrier lines between the state and non-state actors than most transfer studies would assume (cf. Stone, 2012, pp. 486-487). Instead, what was found is a co-production of governance services, including production and implementation of policies, by a mix of public and private actors in most cases or even on a purely non-state level. In such an environment of state enforcement capacity limited over time, space or policy fields, the state itself may even be negotiated between different public and private actors (Müller, 2012, pp. 32-41).

Governance in areas of limited statehood does not discriminate by state or non-state, formal or informal, domestic, transnational or foreign actors on definitional grounds but understands them as part of one governance continuum defined by their empirical role in providing governance services (cf. Draude, 2012, p. 142). For more radical proponents of the theory, the state as governance provider is conceptually completely similar to other actors like indigenous communities, private companies or international organisations. "The state and state laws or state territory are functional equivalents on equal footing with other governance phenomena"[10] (ibid.). More cautious views see the state as a kind of primus inter pares, as "state actors are not absent in areas of limited statehood" (Risse, 2011, p. 24). While governance without the state is conceivable under certain scope conditions (cf., Lederer, 2018, pp. 200-203) providing functional equivalents to the shadow of hierarchy, empirical cases of governance in areas of limited statehood showed "various forms of interactions and bargaining relationships between governments and non-state actors" (Risse, 2011, p. 24). A central argument for the prominence of states, even in areas of limited statehood, is that "even the weakest state still enjoys some benefit of the doubt when it comes to legitimacy claims" (Risse, 2012, p. 15) which may provide governance by the state with an albeit weak "horizon of legitimacy" (Börzel & Risse, 2010, p. 127).

While governance in areas of limited statehood thus also acknowledges a difference between state and non-state actors, the distinction holds no a-priori value to explaining the role of actors in governance service provision. Governance in areas of limited statehood rather relies on actor categories that are descriptive of the role of actors in governance processes. Draude (2012, pp. 144ff) distinguished between governance providers, governance addressees, governance recipients and those entitled to receive governance services. While governance providers are actors that produce and implement collectively binding rules, or collective goods, all other three are located downstream in the governance process. Governance addressees are those social collectives at which governance is directed by the provider, while governance recipients are those that empirically directly benefit from governance services. Those entitled to receive governance services are distinct from the other two as they are normatively defined as entitled to governance services but are not necessarily part of either governance addressees or governance recipients. An example could be communities within a peripheral territory that are entitled to state services

[10] The translation of this quote, as all other translations in this text, was carried out by the author unless explicitly stated otherwise. Square brackets around the original term were used in cases were no direct translation was possible.

such as formal education and health care but that the state empirically neither intends to provide in these areas and which is also not accessible to these communities by other means.

Who governs for whom is contingent on the governance service that is to be delivered and ultimately also on the empirically observed relationships between different actors. It is for example conceivable that an actor-agency problem might occur in which the normatively hierarchical relation between the state and the private sector or international organisations is reversed. In term of who actually produces compliance with the FATF Recommendations, an example would be the situation described by Subbotina (2008; 2009). In Russia, large international banks as bearers of compliance expertise at least attempted to disseminate this knowledge in the domestic sphere in order for national frameworks to be in line with the FATF Recommendations. Verhage's rhetorical question of "who is the actual 'window-dresser' … the financial sector or the authorities?" (Verhage, 2009, p. 130) also comes to mind.

Insights from the governance in areas of limited statehood literature were thus useful for the necessary expansion of the established policy transfer framework and provided methodological tools more adapt to grasping state and non-state actors in the co-production of governance services. Its view of state and non-state actors as analytically equal provider of public goods and services with different power endowments and steering modes available to them sharpened the policy transfer assessment of interactions between international and domestic actors that operate under structural-institutional constraints. Actors also rarely act alone and more often form coalitions to advocate either for policy change or maintaining the status quo. Through this conceptual opening up of analytical space, governance in areas of limited statehood emancipated policy transfer from statehood centred views of collective good provision which would be unlikely to develop explanations beyond the relative enforcement capacities of individual states. The latter might still be a factor, but it only presents one of many explanatory offers.

3.1.4 Process and Power

This research's analysis of policy transfer and governance in areas of limited statehood relates actors and institutions through a process dimension. In classical studies of the field, policy transfer is expected to occur somewhere on a spectrum between lesson drawing with voluntary adoption and coercion (Dolowitz & Marsh, 1996, p. 344). Governments might chose policies independently based on the experience of others responding to a particular problem they are trying to confront, or actors such as other states, international organisations or private entities and NGOs might pressure or force governments into adopting policies. By introducing coercive elements, policy transfer analysis is sensitive to considerations of power differentials understood as "the probability that one actor within a social relationship will be in a position to carry out his own will despite resistance, regardless of the basis on which this probability rests" (Weber, 1978, p. 53).

Relative levels of voluntary learning or coercion involved in policy transfer processes are expected to be relevant as they will affect the dominant transfer mechanism and resulting degree of transfer (cf. Dolowitz & Marsh, 2000, pp. 13-17; Holzinger & Knill, 2005). Yet, the spectrum between lesson drawing and coercion has proven difficult to subdivide as it was analytically constructed as a continuum of power relations. In their original studies, Dolowitz and Marsh roughly distinguished between direct and indirect coercive transfer in addition to voluntary lesson drawing (Dolowitz & Marsh, 1996, pp. 347-349). While voluntary lesson drawing is advanced by domestic political processes, both forms of coercion share that policy change is induced from the outside. The difference between both forms of coercive transfer is that direct coercion relies on the intentional application of pressure to bring about domestic policy change, while indirect coercion is brought about by changes in the (institutional) environment in which governments operate.

In the case of AML this rough distinction results unsatisfactory. Would the effective exclusion from participation in international financial markets already be direct coercion? Or would it count as indirect coercion through externalities of domestic regulation in the US and the UK that was adopted to protect domestic financial markets? In the end, the FATF is limited to calling on its member states to implement counter-measures against countries listed as NCCTs and does not itself command direct coercive power. The examples of Iran and North Korea, who in 2016 remained on the FATF blacklist, show the limitations of the FATF's coercive power and that it is not equal to direct foreign imposition. At the same time, the economic costs of defying the FATF have proven high enough to compel previously reluctant states into compliance with the FATF Recommendations. The effectiveness of this mechanism was pointedly presented by Sharman (2011). Ultimately, even Iran in 2016 presented an FATF Action Plan to achieve higher compliance levels in the hope to achieve a higher integration with international financial markets (Bauer, 2016).

The closely related field of policy diffusion faced similar problems to the policy transfer literature in making a distinction between voluntarism and coercion which added analytical value. It suggested a set of different solutions (cf. Marsh & Sharman, 2009, pp. 271-274), however with limited success. In the closer academic vicinity of policy transfer studies, it remained "unclear where voluntariness ends and where coercion begins" (Holzinger & Knill, 2005, p. 779). The general consensus seems to be that both direct foreign imposition and independent policy learning, absent any kind of incentive or pressure, are very rare scenarios. Real life cases mostly involve a mixture of coercive and learning elements. This brief reflection underlines the need for a fine grained approach to voluntary learning and coercion in policy transfer and in particular the roles played by different actors and the power relations between them.

Governance in areas of limited statehood accounts for this challenge by relating different actors through the process dimension of governance that emphasises modes of social coordination and steering (governance modes) (also for the following cf. Draude, et al., 2012, p. 13). Governance modes are distinguished into two main categories of hierarchical and non-hierarchical. Hierarchical governance modes are all those forms of vertical steering which rely on relationships of command and subordination which can be enforced against the will of the subordinate party (cf. ibid.). This definition is close to transfer studies direct coercion. In contrast, non-hierarchical governance modes are a residual category which encompasses all forms of steering that cannot ultimately rely on coercive power. Examples include bargaining, the use of incentives and sanctions, establishment of institutional structures that influence actors' cost-benefit calculations, as well as discourse as framing, arguing or the provision of symbols that transport meaning. The different governance modes are by no means exclusive and can be applied at times simultaneously by different governance providers.

This work will tackle the issue of different transfer mechanisms and their impact on compliance with the FATF Recommendations by employing the concept of governance configurations (cf. Beisheim, et al., 2011, pp. 254-258; Risse, 2012). The instrument has proven useful as it deals with similar questions of political steering in the specific contexts of limited statehood. Apart from providing a solution to an analytical problem of policy transfer, governance configurations are also a good fit for the wider theory as both share key analytical elements: actors and institutions. They add process dimensions of steering modes and power relations as additional analytical elements which are usually not systematically approached by transfer studies.

3.1.5 Governance Configurations

As the above first reflections on key components of policy transfer and governance in areas of limited showed, the combined theoretical framework offers much for making the complexity of compliance with the FATF Recommendations analytically accessible. Governance configurations are a highly useful analytical tool to order the enmeshed components policy transfer encountered in empirical reality. Understanding and comparing governance configurations reveal the working of explanatory factors leading to a more or less complete transfer result and in turn affect compliance with the FATF Recommendations. Amongst others, governance configurations allow understanding the interplay of different factors that may only take effect under specific conditions.

An analysis of governance under these premises focusses on two dimensions: actors and process (termed here governance modes) which together form the central components of governance configurations (Risse, 2012, p. 8). To capture the interaction between governance actors and modes in the provision of governance services, institutional environment and resource endowments that affect power relationships within governance configurations are also taken into account (cf. Risse, 2012, pp. 8-12). A simple typology of the actor dimension in governance configurations draws on established literature by distinguishing between “governance by government”, “governance with government”, and “governance without government” under hierarchical or non-hierarchical governance modes (Börzel & Risse, 2010, pp. 114-117). The three ideal types are constructed around the role of governments which aligns well with the internal state centred logic of the FATF Recommendations. In addition to governments, within governance configurations, governance actors can be found as state and non-state as well as domestic or local and external, transnational or international entities.

Governance actors		**Local / domestic**	**Trans- and international / external**
State		Government / executive Parliament / legislature / judiciary	International / inter-state organisations (IO), other states and their agencies (e.g. donor agencies)
Non-state	Civil society (not-for-profit)	Associations, non-governmental organisations (NGOs), etc.	International non-governmental organisations (INGOs), transnational social movements, etc.
	Private sector (for-profit)	Companies	Multinational companies
	“Traditional”	Clan chief, village elder	Transnational religious organisations (e.g. catholic church), transnational associations of indigenous peoples etc.

Table 1: Generic overview of governance actors in Risse 2012, p. 9

The steering modes available to different governance actors depend on the material and immaterial resources available to them that translate into power differentials, as well as institutional environment into which governance configurations are embedded. In line with the understanding of institutions in transfer studies, in this research they are conceived as “the humanly devised constraints that structure political, economic and social interaction. They consist of both informal constraints (sanctions, taboos, customs, traditions, and codes of conduct) and formal rules (constitutions, laws, property rights)” (North, 1991, p. 97). Analytically, studies on governance in areas of limited statehood constructed governance configurations from the direction of a governance service. They departed from the identification of a collective governance good that actors intend to provide. Research then constructed backwards the actors, governance modes and context variables that affected its provision. The research approach is therefore public good rather than state centred.

The default governance configuration assumed for states with consolidated statehood is hierarchical rule that generates public service provision. Governments take decisions and the state has the capacity to enforce them unilaterally within its domestic realm through command and control, ultimately relying on the monopoly of the use of force. Public service delivery by private actors under this configuration is seen as delegation under the shadow of hierarchy. When actively delegating specific governance tasks, the state becomes a primary governance provider while the actors that carry out tasks delegated to them are secondary governance providers.

Where governments lack the capacity to threaten the application of hierarchical governance modes, they can be part of governance configurations with foreign states or non-state actors to collectively deliver public goods or take and enforce decisions. In most of these cases, governance is co-produced. Hierarchical or non-hierarchical steering might be exerted by interacting governance actors within these configurations. The non-hierarchical modes of social coordination include for example the manipulation of incentive systems, provision or undermining of legitimacy, or negotiation with bargaining and arguing. Finally, if the state does not engage in governance, other actors may step into the void and assume regulative functions or steer on their own accord, sometimes in multiple parallel processes. Beyond the analytical distinction of different idea-types, governance configurations can be interlocked and combined in the provision of governance services. A typology of empirically observed governance configurations in areas of limited statehood identified seven different types (for the above, cf. Risse, 2012):

Configuration	Actors	Modes of governance	Institutional setting	Resources and power
1. Statehood provision by external state actors	Foreign governments and IOs as principal governors	Hierarchical and/or non-hierarchical embedded in "shadow of hierarchy"	Hierarchy (often embedded in international law); rule-based in the contemporary system	Very asymmetrical to ensure enforcement capacity; lack of material resources can be compensated by claims to legitimacy
2. Hierarchical steering by non-state actors	Warlords, settlers, companies as principal "governors"	Hierarchical and/or non-hierarchical "in the shadow of hierarchy"	Mostly less regulated giving rise to despotism; Sometimes embedded in external rule structures such as international law or local institutions	Very asymmetrical to ensure enforcement capacity; lack of material resources can be compensated by claims to legitimacy
3. Delegated authority to	Host states as principals, other	Delegation is hierarchical;	Usually formally regulated; sometimes	Delegating state lacks resources to enforce

other actors [under conditions of limited statehood]	actors as agents	governance is hierarchical or non-hierarchical	embedded in international regulations or domestic law of agent	contracts
4. Negotiation systems	State and non-state, domestic and international	Non-hierarchical bargaining and arguing/deliberation	Formal and informal; rules often establish formal quality of actors; Embedded in international and/or domestic institutions	Ranges from rather symmetrical distribution of resources to very asymmetrical arrangements
5. External influence	Mostly foreign states, their agencies, and IOs including regional organizations	Non-hierarchical: incentives and sanctions, but also arguing and persuasion; capacity building Linked to other governance configurations on the ground	Mostly strongly institutionalized through inter-state treaties and arrangements	Asymmetrical distribution of resources (incl. legitimacy) in favour of external actors necessary condition for effectiveness. In case of symmetrical distribution, external influence rather limited
6. Competition systems	State and non-state actors, domestic and international	Competition system: non-hierarchical; Institutional rules setting up competition: hierarchical or non-hierarchical	Effectiveness depends crucially on the institutional setting in which it is embedded	Institution regulating competition requires material or ideational resources inducing competition to produce governance
7. Parallel governance	State and non-state, domestic and international	Non-hierarchical non-cooperation (lack of) coordination among governance [actors]	Absence of or weak institutions	Resource endowment of actors varies

Table 2: Governance typologies in Risse 2012, pp. 26f

A good example for a governance configuration that constitutes a mix of transfer studies' concepts of voluntary learning and coercion are competition systems. A common competition system argument would for example claim that international capital mobility creates strong incentives to adopt specific types of regulation to foster private sector economic activities. Competition arguments emphasise the role played by private sector actors to push governments to adopt such regulations. These could result in a 'race to the bottom' where countries offer low environmental or labour standards to cut production prices, or in a 'race to the top' where countries establish high levels of regulation to increase competitiveness or be allowed participation in highly regulated international markets. In the financial sector, tax havens would be an example of competition systems leading to low regulations. The voluntary adherence to the Basel Accords on the other hand led to higher levels of regulation as they evolved into a requirement to participate in key international financial markets.

3.2 Standard Governance Configurations of the FATF Recommendations

In the context of AML, separating statehood and governance means that situations become analytically accessible in which the state is not the monopolistic driver and enforcer of compliance with the FATF Recommendations within a country. The FATF governance model as set out in the 2004 FATF Recommendations, the Methodology, and the Process and Procedures, foresees policy transfer at the international as well as the domestic level. Amongst others, the FATF provided a formal institutional framework in which states tried to influence other states to adopt and implement the global AML policy standard. Target states were member states of the FATF and FSRBs as well as non-member states through the NCCT blacklist and its successors. Other mechanisms aimed directly at the domestic level and targeted specific groups of actors in the public and private sphere to become governance providers.

When the research framework was applied to the idea-type as prescribed by the FATF Recommendations, hierarchical rule with delegation became visible as the default primary governance configuration, together with two interlocked secondary configurations – external influence and competition systems. As this section is a conceptual demonstration and serves the establishment of a baseline for the country cases, institutional structures, resource endowments and power relationships between different actors are only understood as they were normatively defined by the FATF. These findings will be critically reflected in the subsequent section.

The primary governance configuration prescribed by the FATF Recommendations is a combination of direct governance service provision by the state and delegation by the state to private actors under a shadow of hierarchy. This would be expected as *the* default configuration in areas of consolidated statehood. Finding it reflected in the FATF Recommendations is not surprising as they were originally designed for the context of core OECD states whose areas of limited statehood are usually expected to be small and/or short lived. The Recommendations identify states as the primary governance providers tasked to "take the necessary steps to bring their national systems for combating money laundering and terrorist financing into compliance with the new FATF Recommendations, and to effectively implement these measures" (FATF, 2004, p. 2). When Recommendation 1 for example called for a criminalisation of money laundering, the state was to directly produce the governance service through legislative action. Similarly, Recommendation 17 stated that "countries should ensure that effective, proportionate and dissuasive sanctions, whether criminal, civil or administrative, are available to deal with natural or legal persons covered by these Recommendations that fail to comply with anti-money laundering or terrorist financing requirements" (ibid. p. 9).

The FATF Recommendations defined the overall governance service to be provided as combating money laundering and terrorist financing through the implementation of the prescribed policy catalogue. The governance addressee in this sense was the general public which was to benefit from a reduction of money laundering and terrorist financing and its intended effects on public security. On the operational level, the state's central governance service was formal institution building by producing and enforcing collectively binding rules. Delegated services, mainly for prevention, detection and reporting of money laundering suspicion, were to be provided by the financial sector and DNFBPs. These were to operate under state run command and control structures, including institutions whose establishment was recommended by the FATF. In this understanding, the financial sector and DNFBPs were governance addressees for whose economic activities the state provided an institutional structure. If successful, they would also be governance recipients as AML policy would protect them from criminal abuse. Therefore, the FATF Recommendations sought to establish a domestic AML governance framework through producing and implementing a system of rules and organisations to provide a collective good (cf. Draude, 2012, p. 147).

Direct governance provision by the state was included in Recommendations 1-5, 9, 10, 13, 14, 16-21, and 23-40. They encompass in its entirety the Recommendations pertaining to the legal system, institutional and other measures, as well as international co-operation as the exclusive domains of the state. To a smaller extend, the FATF Recommendations also foresaw a role for the state in measures to be taken by the financial sector and DNFBPs. Here, the state was to provide law enforcement and judicial services directed against money laundering and predicate offences. The following table summarises the FATF Recommendations and identifies the type of governance service to be provided by the state:

Overview of the *direct* governance provision by the state as foreseen in the FATF Recommendations (FATF, 2004)		
Recommen-dation	**Governance service (summary)**	**Type of governance service**
A. Legal systems		

1	Criminalisation of money laundering on the basis of the 1988 Vienna Convention and UNTOC with a view to include the widest range of predicate offences. Predicate offences should extend to conduct that occurred in another country, which constitutes and offence in that country, and which would have constituted an offence had it occurred domestically. Self-laundering might be exempt.	Production of collectively binding rules
2	a) Intent and knowledge required to prove the offence is consistent with the standards set forth in the Vienna Convention and the UNTOC. b) Criminal, civil or administrative liability applies to legal persons. Legal persons are subject to effective, proportionate and dissuasive sanctions.	Production and enforcement of collectively binding rules
3	Adoption of measures, similar to those in the Vienna Convention and UNTOC, to enable confiscation of property laundered, proceeds from money laundering or predicate offences, instrumentalities used in or intended for use in the commission of these offences, or property of corresponding value, without prejudicing the rights of bona fide third parties.	Production of collectively binding rules
B. Measures to be taken by Financial Institutions and Non-Financial Businesses and Professions to prevent Money Laundering and Terrorist Financing		
4	Financial institution secrecy laws do not inhibit implementation of the FATF Recommendations.	Production of collectively binding rules
5	Consider permitting financial institutions to complete customer and beneficial owner identity verification as soon as reasonably practicable following the establishment of the relationship, where the money laundering risks are effectively managed and where this is essential not to interrupt the normal conduct of business.	Production of collectively binding rules (optional)
9	Possibly permit financial institutions to rely on intermediaries or other third parties to perform certain elements of CDD under specified criteria.	Production of collectively binding rules (optional)
10	Financial record keeping requirements established in law. (In conjunction with interpretative note "General 2")	Production of collectively binding rules
13	Requirement by law or regulation for financial institutions to report suspicion of money laundering promptly to the FIU.	Production of collectively binding rules
14	a) Legal protection from criminal and civil liability for financial institutions and their personnel if they report money laundering suspicion to the FIU in good faith.	Production of collectively binding

	b) Prohibition by law of disclosing the fact that a STR or related information is being reported to the FIU	rules
16	Reporting requirement extended to the rest of the professional activities of accountants, including auditing. Lawyers, notaries, other independent legal professionals, and accountants acting as independent legal professionals, are not required to report their suspicions if the relevant information was obtained in circumstances where they are subject to professional secrecy or legal professional privilege.	Production of collectively binding rules
17	Effective, proportionate and dissuasive sanctions, whether criminal, civil or administrative, are available to deal with natural or legal persons covered by these Recommendations.	Production of collectively binding rules
18	Prohibition of shell banks.	Production of collectively binding rules
19	The feasibility and utility of a centralised system for reporting currency transactions over a fixed amount was considered.	Production of collectively binding rules (optional)
20	Applying the FATF Recommendations to other entities not listed as DNFBPs but identified as money laundering risk was considered.	Production of collectively binding rules (optional)
21	Ability to apply appropriate countermeasures against countries who do not or insufficiently apply the FATF Recommendations created.	Enforcement of collectively binding rules
23	Financial institutions are subject to adequate regulation and supervision and are effectively implementing the FATF Recommendations	Enforcement of collectively binding rules
24	Subjected DNFBPs to measures such as a) prevention and supervision in the casino sector and b) risk-sensitive approaches in other sectors. If b) is done by self-regulatory organisations, evaluate their capacity to ensure compliance.	Production and enforcement of collectively binding rules
25	Guidelines created and feedback provided to assist the financial sector and DNFBPs in applying AML measures.	Capacity building for private sector
C. Institutional and other measures necessary in systems for combating Money Laundering and Terrorist Financing		
26	FIU established and membership in Egmont Group considered. (In conjunction with interpretative note)	Production and enforcement of

		collectively binding rules
27	Responsibility of designated law enforcement agencies for AML established and use of specialised investigative techniques.	Production and enforcement of collectively binding rules
28	Investigators and prosecutors are able to obtain relevant data, including my coercive means, including search and seizure.	Production and enforcement of collectively binding rules
29	Adequate powers of supervisors, including to conduct inspections and compel production of information from financial institutions, as well as impose sanctions for compliance failure established.	Production and enforcement of collectively binding rules
30	Provision of sufficient resources for competent AML authorities.	Enforcement of collectively binding rules
31	Policy makers, the FIU, law enforcement and supervisors have effective mechanisms in place which enable them to co-operate, and where appropriate co-ordinate domestically with each other concerning the development and implementation of policies and activities to combat money laundering and terrorist financing.	Production of collectively binding rules
32	Statistics to review AML/CFT effectiveness established.	Capacity building (for production of collectively binding rules)
33	Measures taken to prevent the unlawful use of legal persons by money launderers especially ensure information on beneficial ownership is accessible for competent authorities.	Prevention
34	Measure taken to prevent the unlawful use of legal arrangements by money launderers, especially ensure information on express trusts is accessible for competent authorities.	Prevention
D. International Co-operation		
35	The country is party and implements international conventions relevant for AML.	Production and enforcement of

		collectively binding rules
36	Widest possible range of mutual legal assistance in relation to AML/CFT provided.	Enforcement of collectively binding rules
37	Mutual legal assistance rendered to the widest extent possible notwithstanding the absence of dual criminality and apply a wide understanding where dual criminality is required for mutual legal assistance or extradition.	Enforcement of collectively binding rules
38	Establish authority to expeditious action in response to requests by foreign countries to identify, freeze, seize and confiscate property laundered, proceeds from money laundering or predicate offences, instrumentalities used in or intended for use in the commission of these offences, or property of corresponding value. There should also be arrangements for co-ordinating seizure and confiscation proceedings, which may include the sharing of confiscated assets.	Production of collectively binding rules
39	Money laundering is recognized as an extraditable offence. Cooperation with other countries, in particular on procedural and evidentiary aspects, to ensure the efficiency of such prosecutions.	Production and enforcement of collectively binding rules
40	Competent authorities provide the widest possible range of international co-operation to their foreign counterparts. Exchanges should be permitted without unduly restrictive conditions.	Production and enforcement of collectively binding rules

Table 3: Direct governance provision by the state as foreseen in the FATF Recommendations

At its core, the 2004 FATF Recommendations required of the state passing laws and regulations that criminalise money laundering and establish a criminal, civil and administrative sanctioning regime in line with international conventions, primarily those of the UN. The state should also establish binding CDD, record keeping and reporting requirements for the financial sector as well as DNFBPs. Certain business models like shell banks were to be prohibited. Implementation by the private sector should be controlled for by sufficiently resourced supervisory institutions that also receive guidance and feedback to build the necessary technical capacity. FIUs were to be established as central recipients and analytical agencies for money laundering suspicions with their membership in the Egmont Group being desirable. Sufficiently resourced and empowered specialised investigative units were to be established applying investigative techniques like telephone surveillance and undercover agents. Complementing direct sanctioning of money laundering, the state was to establish and implement measures to confiscate criminal proceeds connected to money laundering. The competent authorities were to cooperate effectively and provide information to each other domestically as well as internationally within the confines of the law to the widest possible extent, including in extradition cases. Policy development was to be coordinated domestically between policy makers and implementing agencies.

The FATF tasked the private sector mainly with direct service provision, exclusively under section B of the FATF Recommendations. Delegated to them under state regulation, supervision and guidance, the financial sector and DNFBPs were to implement preventive measures like CDD and staff training, as well as record keeping and reporting of money laundering suspicions. Private sector measures should be risk sensitive with enhanced measures to be taken with regard to PEPs, high risk areas and relationships with business partners and financial institutions from states which did not or insufficiently implemented the FATF Recommendations. Financial institutions were to apply these measures as well in oversee branches and majority owned subsidiaries. The delegated roles as governance providers included:

Overview of governance provision *delegated* to the private sector as foreseen in the FATF Recommendations (FATF, 2004)		
Recommen-dation	**Governance service (summary)**	**Type of governance service**
B. Measures to be taken by Financial Institutions and Non-Financial Businesses and Professions to prevent Money Laundering and Terrorist Financing		
5	Financial institutions do not keep anonymous accounts or accounts in obviously fictitious names. Implement CDD measures on a risk sensitive basis consistent with guidelines issued by competent authorities.	Prevention
6	Financial institutions identify politically exposed persons and implement enhanced due diligence in relation to these customers.	Prevention
7	Financial institutions implement enhanced due diligence in relation to cross-border correspondent banking	Prevention
8	Financial institutions pay special attention to money laundering threats that arise from new or developing technologies and take preventive measures.	Prevention
9	Financial institutions relying on intermediaries or third parties for CDD immediately obtain customer or beneficial owner identification data as well as the intended nature of the business relationship. They also satisfy themselves that the third party is regulated and supervised and has measures in place to comply with CDD requirements in line with Recommendations 5 and 10.	Prevention
10	Financial institutions maintain transaction records, both domestic and international, for at least five years, to comply swiftly with information requests from competent authorities in due quality to provide evidence for prosecution and	Record keeping

	criminal activity. Identification documents, account files and business correspondence are kept for at least five years after the end of a business relationship.	
11	Financial institutions pay special attention to, examine and establish the findings in writing all complex, unusual large transactions, and all unusual patterns of transactions.	Prevention and record keeping
12	DNFBPs follow Recommendations 5, 6, and 8-11 in the following situations: a) Casinos - when customers engage in financial transactions equal to or above the applicable designated threshold. b) Real estate agents - when they are involved in transactions for their client concerning the buying and selling of real estate. c) Dealers in precious metals and dealers in precious stones - when they engage in any cash transaction with a customer equal to or above the applicable designated threshold. d) Lawyers, notaries, other independent legal professionals and accountants when they prepare for or carry out transactions for their client concerning the following activities: - buying and selling of real estate; - managing of client money, insurances or other assets; - management of bank, savings or insurance accounts; - organisation of contributions for the creation, operation or management of companies; - creation, operation or management of legal persons or arrangements, and buying and selling of business entities. e) Trust and company service providers when they prepare for or carry out transactions for a client concerning the activities listed in the definition in the Glossary.	Prevention and record keeping
13	Report promptly suspicions of funds being proceeds of criminal activity or related to terrorist financing to the FIU. (In conjunction with interpretative note “General 2”)	Reporting
14	Not disclose that and STR or related information was reported to the FIU. (In conjunction with interpretative note “General 2”)	Reporting
15	Financial institutions develop programmes against AML/CFT including internal prevention policies, procedures and controls, ongoing employee training and audit functions to test the system.	Capacity building (internal)
16	DNFBPs implement Recommendations 13-15 and 21, subject to the following qualifications:	Reporting if required directly by

	a) Lawyers, notaries, other independent legal professionals and accountants should be required to report suspicious transactions when, on behalf of or for a client, they engage in a financial transaction in relation to the activities described in Recommendation 12(d). Countries are strongly encouraged to extend the reporting requirement to the rest of the professional activities of accountants, including auditing. b) Dealers in precious metals and dealers in precious stones should be required to report suspicious transactions when they engage in any cash transaction with a customer equal to or above the applicable designated threshold. c) Trust and company service providers should be required to report suspicious transactions for a client when, on behalf of or for a client, they engage in a transaction in relation to the activities referred to Recommendation 12(e).	law or regulations, capacity building (internal), as well as prevention and record keeping
21	Financial institutions pay special attention to all business relationships and transactions with persons, including companies and financial institutions, from countries which do not or insufficiently apply the FATF Recommendations. Examination and establishment in writing of all transactions with no apparent economic or visible lawful purpose	Prevention and record keeping
22	Financial institutions apply the respective FATF Recommendations to branches and majority owned subsidiaries located abroad to the extent that local applicable laws and regulations permit. If prohibited, competent authorities in the country of the parent institution should be informed by the financial institutions that they cannot apply the FATF Recommendations.	Implementation of collectively binding rules

Table 4: Delegated governance provision by the private sector as foreseen in the FATF Recommendations

External influence as a governance configuration was established by the FATF Recommendations in two ways: by the FATF itself and through the international financial sector. The FATF exerted influence through the transnational institutional environment in which domestic AML policy was created. In terms of a standard policy cycle framework, agenda setting and policy formulation are integral parts of the governance process (cf. Draude, 2012, pp. 152-153). With regard to agenda setting, it remains an empirical question if states decided to voluntary implement the FATF Recommendations in response to a domestically defined problem or if the issue was based on external influence through incentives, sanctions, arguing or persuasion. The latter could clearly be argued for the example of Greece, where authors' stressed that money laundering was not a domestic concern (Stefanou & Xanthaki, 1999). Other accounts for the coercive effects of blacklisting, MERs and other mechanisms were plentiful.

Further, as the FATF Recommendations were defined by an international expert group, few states participated in the formulation of the international policy standard they were supposed to implement. For FATF member states on the other hand, policy formulation by the body could also be interpreted as upward delegation of authority under the assumption of consolidated statehood. While member countries of the FATF might thus have had some influence on formulation of the policy standard, the vast majority of states that subscribed to its implementation did not hold any decision making power in the process. Although the FATF Recommendations were not legally binding, they were created by a formalised process, published and endorsed by the FATF and FSRB members and drew partially on international conventions. The level of institutional formalisation was therefore high.

The central role of the FATF Recommendations in domestic AML policy development was observed in practically all cases of the literature review. As demonstrated, the standard yielded considerable third party enforcement powers. The application of such sanctions was institutionalised by Recommendation 21 which opened up space for power asymmetries between countries in the international system to take effect. These were mainly expressed in financial sanctions, termed counter-measures by the FATF, such as the escalating increase of costs for participating in the international financial system or the threat of all-out exclusion. States however retained their formal domestic policy independence as the FATF Recommendations did not foresee a hierarchical imposition or other measures based on the use of force that could have provided a compelling shadow of hierarchy. For this reason, the Recommendations and the Methodology as they are formulated are seen as external influence rather than direct outside imposition.

A nuance that is lost in many accounts on the role of external influence by the FATF is its differentiation between different Recommendations as Core and Key Recommendations. These are relevant as countries that did not reach a level of at least largely compliant (LC) in these Recommendations were subjected to a follow-up process by the FATF or their respective FSRBs (FATF, 2009b, pp. 12-14). While a compliance level of at least LC was compulsory for AML Core Recommendations 1, 5, 10 and 13, “some limited flexibility” was granted for the Key Recommendations 3, 4, 23, 26, 35, 36 and 40, “if substantial progress has also been made on the overall set of Recommendations that have been rated PC or NC” (ibid., p. 13). In follow-up processes, the respective countries presented regular progress reports on addressing the shortcomings observed in their MERs. If the plenary sessions were not convinced of sufficient progress over time, they could subject countries to enhanced follow-up with shorter reporting periods. Being subject to such measures initially fell short of an FATF call for counter-measures by other countries but was based on the FATF’s treatment of NCCTs. It had a potential negative reputational effect and could include a call by the FATF to pay special attention in transactions with the respective country which in turn increased transaction costs. In its strongest escalating forms, it could lead to invocating

Recommendation 21 (call for counter-measures), suspension from the FATF or finally a termination of a country's membership.

A conduit for external influence by the international financial sector was institutionalised by Recommendation 22. It directly addressed the financial sector to apply the FATF Recommendations in its branches and majority owned subsidiaries abroad, to the extent that locally applicable laws and regulations permitted. This means that even in states that did not implement the FATF Recommendations, international financial sector agents that applied the FATF Recommendations would have contributed to the FATF Recommendations intention to combat money laundering and terrorist financing as a governance service. They could do so voluntarily following Recommendation 22 or be forced to by home country regulators of states that enforce compliance by their domestically licensed financial institutions under Recommendation 23. In the latter case, the international financial sector could be conceptualised as transmitting statehood of a third country into the realm of the host state. The governance configuration then drifts into provision of statehood by external actors. As the FATF Recommendations under Recommendation 22 directly addressed the private sector and it is an empirical question if the respective financial institutions are based in states which enforces strong home country regulations, this configuration was however not a priori asserted by the FATF Recommendations.

Governance through competition systems was introduced by Recommendations 7a, 7b and 7e on cross-border correspondence banking, 9b on CDD intermediaries, and 21 on business relationships and transactions with persons from countries which do not or insufficiently apply the FATF Recommendations. By implementing the FATF Recommendation 7, 9 and 21, the state obliged financial institutions to exert certain standards within their business relations with third parties. This governance configuration is therefore comprised of a hierarchical institutional setting established by the state that sets up competition between different private sector actors and countries. In the case of correspondence banks, regulated financial institutions needed to carry out CDD as well as assess the respondent institution's internal AML provisions. Respondent banks that wanted to enter into a correspondent banking relationship therefore were provided with a market incentive to increase the quality of their internal AML provisions. A similar logic applied to the use of CDD intermediaries. If the state permitted financial institutions to use such services, financial institutions needed to submit intermediaries to CDD procedures and ensure that intermediaries themselves were regulated and supervised, as well as compliant with CDD requirements in line with Recommendations 5 and 10. Hierarchical enforcement of this provision by the state was provided for by controlling the ultimate responsibility for customer identification and verification that remained with the regulated financial institution.

Recommendations 9 and 21 introduced an element of regulatory competition between states. When Recommendation 9 called for CDD intermediaries being regulated and supervised, countries hosting

CDD intermediaries were presented with a competition based incentive to establish such regulations and supervision. Beyond the state based sanctions discussed already with regard to Recommendation 21, it also provided a competition element. When financial institutions were obliged to give special attention to business relationships and transactions with persons from countries which do not or insufficiently apply the FATF Recommendations, this translated into higher transaction costs. These costs were for example the implementation of enhanced due diligence procedures or a risk premium. If these costs were applied to the price for financial services, the financial sector of a country with compliance deficits lost international competitiveness and its real economy risked higher costs for international transactions.

Ideal-type governance configurations of the 2004 FATF Recommendations				
Configuration	**Actors**	**Modes of governance**	**Institutional setting**	**Resources and power**
Primary				
Delegation	<u>Public</u>: State institutions such as market supervisors, FIU, law enforcement and judicial agencies as primary governance providers; <u>Private</u>: Financial service sector and DNFBPs under delegation	<u>Hierarchical</u>: Command and control	<u>Formal</u>: Embedded in international conventions and domestic laws and regulations	<u>Highly asymmetrical</u>: Consolidated statehood with the capacity to enforce collectively binding rules
Secondary				
External influence	<u>Public</u>: FATF	<u>Non-hierarchical:</u> Through sanctions, but also arguing,	<u>Formal:</u> Strongly institutionalised	<u>Asymmetrical:</u> Distribution of resources (incl.

		persuasion, and capacity building	through the FATF Recommendations in conjuncture with international conventions	legitimacy) in favour of external actors
	Private: International financial sector	Non-hierarchical: Arguing, persuasion, and capacity building Linked to hierarchical governance provision by the state	Formal: Strongly institutionalised through the FATF Recommendations	Asymmetrical: Distribution of resources (incl. legitimacy) in favour of external actors
Competition	Public: State Private: International financial sector	Hierarchical: Institutional rules setting up competition Non-hierarchical: Market based competition	Formal: Strongly institutionalised through law based on FATF Recommendations	Asymmetrical: Command and control to create market based incentives

Table 5: Ideal-type governance modes of the 2004 FATF Recommendations

3.3 Hypotheses Development

3.3.1 Critical Reflections

The results of the previous sub-section need to be critically reflected in order to reach a sound set of hypotheses explaining how different governance configurations might contribute to AML policy transfer in areas of limited statehood. In particular, the idea-type combination of configurations instilled in the FATF Recommendations required contrasting with the results of the literature review and the theoretical insights of transfer studies and governance in areas of limited statehood. One contribution of the literature on governance in areas of limited statehood is the identification of actor roles by questioning who governs whom in empirical reality. In part, the answer to the question is contingent on power relationships and the governance service to be provided. This research based conceptualising the state as governance provider in section 3.2 on a level of analysis decision and the research interest of this study as national compliance. It reflected the internal logic of the FATF Recommendations and the Methodology. Compliance with the FATF Recommendation is ultimately measured at the domestic level, for which the Recommendations clearly identified the state as main transfer actor.

The literature however suggested that this clear cut approach is empirically challenged. The state, which was discussed above as governance provider, was for example also a governance addressee and recipient of the FATF which provided it with the FATF Recommendations as expertise based rule structure. Although formally voluntarily, the state was also subject to the mutual evaluation process governed by the Methodology. With regard to the role of international power relations, Hülsse observed that “there surely exists a shadow of hierarchy [cast by FATF member countries], which explains why non-member countries comply even in the absence of explicit threats and coercive measures” (Hüllse, 2008, p. 461). The socialisation of country officials into the network of AML practitioners and experts could be understood as governance through arguing and persuasion, contributing to voluntary compliance through an increase in the legitimacy of the FATF Recommendations.

Authors also hinted towards further actors playing the role of AML governance providers that were not explicitly mentioned in the FATF Recommendations. One example is the self-regulation of banks observed in 1970s Switzerland and more recently in the Wolfsberg Group. In how far these self-regulation initiatives were based on a shadow of hierarchy, i.e. the threat of forceful regulation by the state in case banks would not autonomously improve their prevention techniques, can only be answered empirically. This tasks presents research with considerable methodological challenges associated with reliably identifying underlying motivations of actors. Another example appeared to be the Egmont Group of FIUs. As an intergovernmental organisation, the Egmont Group provided incentives for countries to comply with the FATF Recommendations. Membership offered access to financial intelligence information gathered and shared within the Egmont Secure Network. None of this is reflected by looking at the FATF Recommendations alone.

Another area that merits critical reflection is the definition of the governance service that AML policy was meant to provide. The FATF clearly defined the intentionality of the 2004 Recommendations as providing “a new comprehensive framework for combating money laundering and terrorist financing” (FATF, 2004, p. 2). However, the literature review revealed a large variety of purposes ascribed to AML policies by academic observers and intended by actors from governments and the private sector. As governance services, these prominently included protecting financial sector integrity and overall economic development. In studies of countries as different as Austria, Greece or Russia, it conveyed clearly that AML was seen as a mean to foster international financial market integration and profit from international financial services.

While all of the above governance services would fulfil the normative attributes of the governance definition used in this study, the provision of a level playing field in international financial markets to reduce regulatory competition is debatable. If the establishment of a level playing field intends to eliminate competition from smaller financial institutions and smaller financial centres, as argued for example by Tsingou (2010), inclusivity is low and the provided service would be at the detriment of third parties. On the other hand, actors are likely to publicly justify their policies with market integrity and efficiency arguments. In this case, competition effects would merely be an externality of wider public good provision. Such situations that require a normative judgement by the researcher are not uncommon and the price for the openness to actors and processes in the governance in areas of limited statehood approach. In the case of the AML policy making and compliance with the FATF Recommendations, the domestic intention of governance – the service it is supposed to provide – and the role of different actors is thus equally an empirical question.

Closely related to the intentionality of AML governance is the question of its effectiveness. To assess it, it is first necessary to define the intended outcome. Effectiveness of AML policy thus remains unclear as long as its purpose remains ambivalent or undefined. Even where laws and regulations define specific policy objectives such as reducing the total amount of money laundering, AML policy might be ineffective or counterproductive without this affecting the drive for its implementation. In the end, too little data and reliable estimates of counterfactuals exists to argue the point. For example, at its origin in 1986 the criminalisation of money laundering in the US was intended to maintain the rule of law by combating perverting the course of justice. Governance services like investigations of predicate offences or the confiscation of laundered proceeds to fight organised crime might however even benefit from less prevention in the financial sector. Lower barriers of entry to common laundry schemes might lead to less sophisticated and thus easier to investigate financial movements. If this were the case, how effective are strong regulations and state delegation of record keeping and reporting duties to the private sector for combatting organised crime?

Many elements that define the ideal-type governance configuration of the FATF Recommendations are therefore likely to create and play out in more complex actor relationships than sub-section 3.2 would suggest. From a policy transfer in areas of limited statehood perspective, the approach to a series of points needs to be open, in particular: Who governs whom how and with whom for which purpose? With AML as an area of limited statehood (the situation in all countries until the 1980s), the financial intelligence created on the basis of financial information collected by the private sector and possible asset forfeiture to combat organised crime could well be public-private co-governance. Prosecution services as well as banks and other financial institutions could in principle cooperate based on self-interest to protect their reputation rather than a shadow of hierarchy. Investigations that 'followed the money' even before AML policy became a global standard show that non-hierarchical governance modes were already employed by state actors previously to the FATF Recommendations. Only if the study can reasonably provide empirical answers to such aspects will it be possible to assess the impact of different factors on AML policy transfer.

3.3.2 Hypotheses

Combining the insights of the literature review with the theoretical considerations of policy transfer and governance in areas of limited statehood, the central expectation of this work is:

Governance configurations explain the degree of policy transfer leading to compliance with the FATF Recommendations in El Salvador and Mexico.

Based in the results of both countries' MERs, the study assumes that in El Salvador and Mexico the state did not possess sufficient statehood in the area of AML policy development and implementation for ensuring AML governance service provision by delegation under command and control. The governments of both countries also showed a limited capacity to produce and enforce collectively binding rules in related areas of criminal justice and public security during the research period. Both faced a serious organised crime threat related to narcotics trafficking, severe incidents of grand corruption, a challenged judicial system and high levels of violence, including the highest homicide rates worldwide.

Relationships of state and non-state actors and the steering modes at their disposal can however provide functional equivalents to statehood. This offered possibilities for policy transfer of at least some aspects of the FATF Recommendations beyond the state as the singular governance provider. And indeed a significant number of FATF Recommendations were evaluated as C or LC in both countries. However, where non-state actors or were not effectively engaged or external actors did not substitute or complement the state in governance configurations, in El Salvador and Mexico the state might be found troubled to transfer AML policy to the domestic level. The following more detailed hypothesis set presents the expected mechanisms at work.

Hypothesis 1 (governance by delegation): Insufficient power differentials between domestic public and private actors explained an incomplete transfer of the FATF Recommendations resulting in limited implementation of collectively binding decisions.

The relation between governance by delegation and AML policy transfer is assumed to depend on the power differential between the state and regulated sectors. As long as governments in principle subscribe to the FATF Recommendations, the higher this power differential is the more complete the transfer process should be. As shown in sub-section 3.2, the FATF governance model assumes consolidated statehood and builds on the idea of the state casting a shadow of hierarchy to establish command and control to ensure private sector compliance. The state is defined by the FATF as the central governance provider and as a consequence AML policy is likely to fall into the wide category of “governance with government”. The institutional set-up is highly formalised, embedded in international regulations like UN Conventions, regional agreements, the FATF Recommendations and FSRBs and domestic law. With a fixed institutional setting and distribution of formal governance modes, most of the explanatory value should lie in the power differential between actors.

Despite the high level of formalisation, the initial peer-review data for El Salvador and Mexico suggested that this governance configuration prescribed as standard by the FATF at best led to a partial and thus incomplete transfer of the Recommendations. However, governance by delegation should still be the most prominent transfer mechanisms empirically observed. This was not due to its effectiveness but to the rigidity of the FATF Recommendations that required the domestic creation of this institutional setting for compliance. Its component parts like criminalisation of money laundering, creation of an FIU and the delegation of KYC/CDD, record keeping and reporting obligations to the private sector are the core of the AML policy standard – independent of their effectiveness. In wide parts, the FATF Recommendations are synonymous with governance by delegation. It therefore seems likely that governments in El Salvador and Mexico created the laws, structure and organisations required by the FATF but ultimate failed in effective implementation and delegation of tasks to the private sector.

Within such a situation, governance in areas of limited statehood would expect the state to employ non-hierarchical governance modes as functional equivalents to compensate for its limited capacity to exert hierarchical governance modes. Drawing from the theoretical literature, it is likely that such governance modes would be a mix of formal and informal arrangements in which the relationship between principal and agent is in flux. In this combination, the non-hierarchical informal arrangements might have been more successful than the formal process established by the FATF in transferring the Recommendations to the national level and increasing compliance. Many observations from the literature synthesis should play out in this configuration.

An important resource determining power relations between actors should be the perceived legitimacy of AML policy. Where the state could not threaten unilateral enforcement collectively binding rules needed to be accepted as legitimate by regulated actors to increase voluntary compliance. The need to invest in costly command and control would be reduced making capacity limitations for coercive implementation less severe. Legitimacy of the FATF Recommendations in various cases was based on its different assigned policy purposes and how well they corresponded to national threat perceptions. For countries which rely on international finance, market integrity measures received more legitimacy, while exposure of countries to organised crime led to an enforcement focus. In the presence of significant domestic challenges that AML could address, legitimacy and compliance should increase for the Recommendations that most directly address these issues.

It is expected that for both countries the serious and violent domestic organised crime threat would foster an enforcement focus. The exceptional homicide rates for El Salvador might make this more pronounced in the country while in Mexico, the historical novelty of such high murder rates might create political interest in AML as public security policy. International financial market integration should play an increasing role over time as this process reached El Salvador and Mexico incorporating their market governance in emerging international economic governance institutions. Other important arguments should evolve around the inherent conflict of AML with civil liberties, the policies' implementation costs, and their effectiveness, bearing in mind that such debates will be more concept than evidence based due to the lack of available data even in the most advanced economies. While a lot of negotiation is expected to take place as an important governance mode within this configuration, formal delegation will ultimately still be hierarchical due to the relationship between the state and non-state actors prescribed by the FATF.

Hypothesis 2 (external influence): Power asymmetries between foreign actors and public as well as private actors in El Salvador and Mexico increased AML policy transfer when they were embedded in a highly institutionalised setting.

External influence is another governance configuration already engrained in the FATF Recommendations and the international AML regime itself. Governance in areas of limited statehood would assume that external influence should be effective in increasing policy transfer if power differentials between external and domestic actors, both public and private, are high. For this to take effect, the institutional structure in which power is exerted would need to be highly institutionalised. The difference to the first hypothesis lies mainly in the inclusion of external actors as units of observation. Governance in areas of limited statehood would see strongly institutionalised settings as prerequisites for external influence being effective in governance service provision. Provisions like FATF Recommendations 21-23 opened such formalised *governance conduits* for external influence. Additional institutional frameworks might also exist outside the core of the international AML regime for example in the form of trade and services agreements connecting national economies, especially if they include financial market provisions.

While compliance with the FATF Recommendations was in principle voluntary, the literature clearly indicated that the FATF itself and member states that take a central role in the international financial system exerted strong international pressure for adopting the policy standard. The resistance of few countries to comply with the FATF Recommendations showed that despite this strong pressure channelled through Recommendation 21, blacklisting, the ICRG, mutual evaluation reports and similar means, AML policy transfer falls short of direct coercive imposition. As a governance configuration, it therefore appeared likely that this research would encounter external influence rather than external provision of statehood as a significant governance configuration fostering policy transfer to El Salvador and Mexico. The US should be an important external actor due to its triple role as main consumer market and destination of the regional illegal narcotics trade, regional economic (financial) centre, and a political driving force behind the FATF.

In the empirical cases of this study, power asymmetries were expected to be strong as both countries had high dependence on open participation in international markets and capital flows. Membership of El Salvador in CFATF and Mexico in FATF presented the central institutional framework for expected transfer through external influence. Given the accounts of many other countries, it should at least be sufficient to avoid counter-measures by the FATF due to credible third party enforcement and the high financial and political costs associated with blacklisting. Once this threat was avoided however, the explanatory power of external influence might diminish and additional compliance would only be achieved if other governance configurations were in place. Compliance enforced under this governance configuration was expected to face legitimacy challenges if it clashed with other principles of international relations, especially national sovereignty.

Hypothesis 3 (external provision of statehood): Power differentials between external and domestic actors selectively increased transfer of FATF Recommendations to the national level through hierarchical governance modes, if they were sufficiently embedded in international law as a necessary condition.

External influence and external provision of statehood both rely on international power differentials to effectively provide governance services which the study expects to encounter with regard to AML policy transfer in El Salvador and Mexico. The difference between both lies in the modes of governance as well as the institutional setting. While external influence is always non-hierarchical, external provision of statehood can also be hierarchical or rely on a shadow of hierarchy. This requires even higher power asymmetries between external and domestic actors than in the case of external influence – high enough to also encompass the institutional setting and making it hierarchical. Acting based on such strong power differentials to directly provide a governance service would require such action to be embedded in international law or other rule-based systems in contemporary international relations. Outside of such institutions, the normative requirements of the governance definition underlying this study are met only very exceptionally.

In the case of AML policy, what might most likely occur is that other states investigate and possibly adjudicate criminal cases for money laundering in El Salvador and Mexico. A prominent historical example would be the money laundering conviction of Panama's Noriega. Another possibility is financial market supervision and related fines based on the application of Recommendation 23. For such measures to be effective for increasing systemic compliance with the FATF Recommendation, they would need to be sustained over time and thus most likely be accompanied by a detailed and defined legal framework for extraditions and other forms of international legal assistance and information exchange. This high level of complexity combined with political sovereignty risks made it likely that an impact on policy transfer through external provision of statehood would most likely be more punctual than sustained enough to be reflected in policy transfer as measured by the FATF peer-review process.

Hypothesis 4 (competition systems): Higher levels of international market integration led to transfer of the FATF Recommendations for those sections of the market where AML compliance presented a competitive advantage.

In many country cases and also in the analyses of the international level of AML governance, it has become clear that economic competition within the international financial market played an important role in advancing FATF compliance. It was part of the explanation why private market actors pushed for stronger AML prevention policies in such diverse countries as the US, Switzerland or Russia and why international banking groups formed the Wolfsberg Group at the international level. Despite its high costs and arguable effectiveness for combatting crime, it seems some financial market companies and especially international banks saw AML policy development and its implementation as beneficial to their business. At the very least, it might protect their reputation from involvement in organised crime and could help to reduce competition from less regulated entities. The same might apply to DNFBPs. However, the internalisation of AML policy goals seemed less pronounced in this sector than in the financial sector. The latter for example has for a long time largely accepted limitations of bank secrecy and other business models prone to money laundering. If anywhere, aspects of policy transfer through learning and voluntary adoption should be observable in this governance configuration.

The list of functional equivalents to statehood for AML policy transfer through hierarchical governance by the state thus offered plenty of explanations for compliance beyond relative levels of statehood in public security. In addition to the identified factors, the study remained open to residual observations that could not be explained with the existing typology of governance configurations. This is particularly important as the applied typology was only an intermediate result in theory building based on systematising empirical findings before developing a more holistic model.

Based on the theoretical literature, this work also made additional assumptions on the details of the policy transfer process. With regard to the actor dimension, a mix of public and private sector actors should be observable in all expected governance configurations. State actors should include legislative, executive as well as judicial actors according to their roles as set out in the FATF Recommendations. The range of private sector actors should be more limited. The involvement of private sector actors would depend on their expertise as well as self-interest in the issue. Unless directly affected by money laundering or related crimes, traditional actors for example are unlikely to play an important role as the policy field is highly specialised and requires technical expertise that is not often found in religious or village associations. While civil society might play a role through the possible benefits of AML for public security, the strongest private sector involvement is expected for companies that are directly affected by AML policy and more involved in governance configurations due to their participation in transnational markets.

The sectorial logic discussed earlier is also expected to shape governance configurations. The FATF Recommendations addressed different types of state and non-state actors. On the state side, these could be roughly divided into market regulators and supervisors as well as law enforcement and justice actors. On the private side, the main distinction was between the financial sector and DNFBPs. These actors are connected with each other on an operational level as well as through the intentionality or purpose of their governance services. For market actors like supervisors, financial institutions and most DNFBPs, policies directed towards market integrity are closest to their interest and defined operational areas. Law enforcement and judicial actors are more likely to orient towards FATF Recommendations and AML policies promising more effective measures for combating predicate offences or organised crime. Within the DNFBPs, the literature review suggested that legal professions might develop a separate dynamic in AML policy development and implementation, as their professional privileges like client confidentiality were at stake.

Within these groups, it is likely that problem definitions and power relations differ. DNFBPs are for example unaffected by Recommendations 21 and 22 and are also unlikely to be under pressure from home country regulations if they exclusively operate domestically. This should decrease the depth of policy transfer and compliance by these actors. For legal professions, the FATF Recommendations were likely to face a legitimacy challenge similar to the one observed for financial institutions when banking secrecy was initially circumscribed with regard to AML. FIUs in this sense play an interesting role, as states had the possibility to assign them administrative, policing or judicial roles which might influence their problem and in turn policy orientation. This suggests that governance configurations might take different forms in: (1) the financial sector; (2) the non-financial sector; and (3) the police and justice sector which might impact the degree of transfer.

3.4 Methodology and Data

How did this study go about engaging with these hypotheses and further identification of factors with potential for explaining the degree of transfer of the FATF Recommendations to El Salvador and Mexico? As previously discussed, studies on governance in areas of limited statehood in the past constructed their analyses backwards from an observed governance service, asking with an exploratory framework, how it was delivered under conditions of limited statehood. This research built on the results of such studies and inverted the approach. It took a likely selection from the available typology of governance configurations as the main independent set of variables expected to explain the degree of AML policy transfer of the FATF Recommendations to El Salvador and Mexico. It is however not a hypotheses test in the strict sense. Its goal is a refinement of the hypotheses by evaluating them in two in depth case studies for sound hypotheses generation specifically for AML policy transfer beyond the purely theoretical studies and their combination with secondary literature.

Conditions of limited statehood in AML policy were assumed for El Salvador and Mexico due to the MER results of both countries. This might at first sight raise concerns of tautological reasoning (cf. Börzel, et al., 2018, p. 5). It might appear that limited statehood is supposed to explain incomplete policy transfer while limited statehood is itself measured by transfer results. This is not the case. It is precisely the analytical value added of studies of governance in areas of limited statehood if compared to classical political science literature to differentiate between statehood as a characteristic of the state and governance leading to the provision of a governance service. While the proxy of incomplete policy transfer, in the absence of other reliable data, was used as an indicator of limited statehood in AML governance, the central hypothesis is that the degree of transfer can be explained through governance configurations. These are the distinct combinations of actors, governance modes, institutional settings as well as distributions of resources and power. They do not constitute statehood but alternative forms of governance that were often observed to provide functional equivalents if statehood was limited.

In an ideal scenario of comparative politics with soundly established theoretical fundamentals and available data, measuring the impact of governance configurations on transfer of the FATF Recommendation would be done by identifying quantifiable data on both sides and run regression analyses based on a grounded assumption of the underlying causality. El Salvador and Mexico showed similarities in terms of the overall compliance score and spread in their respective MERs. At the same time, they vary in a series of variables identified as potentially relevant for AML policy transfer through the theoretical reflection of the literature review. These include for example:

(i) Their membership in the FATF as institutional setting;

(ii) the type of FIUs and the resulting differences in domestically available governance modes;

(iii) existence of criminal sentences, significant financial sanctions or fines by external actors against persons or organisations in the country as expressions of external influence and external provision of statehood;

(iv) grades of transnational integration of their financial and trade systems like dollarization, remittances or external trade to GDP ratios as sources of power for different actors.

This combination of a similarities in the dependent and differences in components of the independent variables made them suitable candidates for a most different systems design.

Yet, for this approach, the underlying scientific understanding of causal mechanisms of policy transfer of the FATF Recommendations is still not sufficiently reliable, as for example the limited explanatory value added of Verdugo's large-n regression of 2011 showed. Neither the data nor the theoretical foundations are strong enough to perform a reliable regression test for a large-n sample. To test its hypotheses and develop further insights into what and how different factors impact on AML policy transfer of the FATF Recommendations, this study therefore opted for comparative in depth case studies using a mainly qualitative approach. Its main task was precisely finding reliable indicators of Mearsheimer and Walts 'often unobservable causal mechanisms' specific for AML governance in areas of limited statehood.

This provides groundwork for future research to operationalise suitable quantifiable variables for run more traditional regression based studies. It is a necessary preliminary step if such analyses are to successfully tackle common problems of the approach, particularly "the difficulty to identify causal mechanisms" reducing this "byproduct of causal variables that offer limited variation through time and cases that are extremely heterogeneous" (Gerring, 2009). In order to reduce heterogeneity to a more manageable level, both cases were selected from a universe of cases in which a likely important context variable for AML policy development remained stable. Both El Salvador and Mexico were for a long time similarly affected by the same transnational organised crime phenomenon: cocaine and other drug trafficking from Latin America to the United States.

To explore the causal relationships of variables suggested by the literature in a manner that could later be used independently from specific national context, the case analyses were strictly organised by pre-defined governance configurations. This allowed continuing to further develop the existing theoretical and methodological debate in this area. A remaining practical challenge of this approach was that the configurations frequently interacted with each other in the observed empirical reform processes. When a new AML law for the financial sector was passed for example, the legislative process was influenced clearly by domestic power relationships between different public actors like interior, justice and economy ministries as well as subject to lobbying from industry groups and the influence of foreign experts of the FATF or a number of development assistance agencies. The separation between governance configurations was therefore analytical and not empirical. Interlinkages where highlighted where they were observed.

One alternative would have been to intrinsically develop a case specific presentation of the results guided for example by historical process tracing of AML policy development. While this would have made for an easier read as different actors and their relationships appeared at certain historical events, it would have complicated the attempt to clearly distinguish between the different governance configurations whose explanatory value this study tried to assess. The decision to create variance within both cases between different governance configurations aimed to help making the results useful for the theoretical development of studies on governance in areas of limited statehood. As a consequence, the complete picture explaining the degree of transfer in El Salvador and Mexico will only be visible at the end of each empirical sub-sections making up chapter 4. To facilitate this understanding and weaving the different explanatory threats together, chapter 5 presents an overall evaluation of the results and combines the insights of both case studies.

The dependent variable of this dissertation was assessed more straight forward. The FATF MER results indicated the degree of policy transfer. These documents present a detailed assessment of the level of norm implementation by Recommendation. In addition, they are rich in background information on the legal and practical reasons for this assessment making them methodologically transparent. The underlying peer-review methodology was standardised and similar for both cases. The regular publication of the peer reviews allows for an assessment over time. In addition to the MER itself, FATF and CFATF published regular follow-up reports that allowed more continuous observations in the Third Round of mutual evaluations.

The FATF is an organisation created as recently as 1989 which provided the earliest potential starting point for the research. This research considered the long term AML policy development in El Salvador and Mexico but focused its attention on the period between 2004 and 2014. The decade covered the Third Round of mutual evaluations holding the operationalisation of the dependent variable stable as reports were based on the 2004 Recommendations and the corresponding Methodology. The focus lay on the publication of the CFATF peer reviews in El Salvador in 2010 as well as the FATF's peer review of Mexico in 2008. This allowed for an assessment of the implementation process with regard to the role of external actors in a period that is relatively well documented.

After a short introduction to the AML specific country context, the empirical analyses start off presenting the results of the Third Round of mutual evaluations. The MER data was central to this study as it was the only point in time where standardised information on domestic AML policy was available and quantified across a large variety of cases based on the same methodology developed by the FATF. It makes not only El Salvador and Mexico easily comparable but would also allow the use of this study's results for any other case of the Third Round of mutual evaluations. The approach could also be adjusted to fit the results of the Fourth Round once these become available for most countries in the world. The MER data is a linchpin in the policy development analyses which looks both backward assessing policy transfers up until that moment as well as forward to capture the influence of the FATF peer-review process on transfer.

The four sub-sections on specific governance configuration analyse the transfer process in order to assess the interaction and power relationships between actors within specific institutional settings. Domestic policy reform processes were particularly fruitful for this task as the political debates and conflicts around them revealed fault lines between the interests of different actors. Starting with the domestic governance configuration facilitated mapping the different governance actors in El Salvador and Mexico and capturing the underlying institutional setting. At the same time it facilitated presenting the historical and contemporary development of AML policy in both cases providing important insights into power relationships as well as the linkages to external actors.

Concentrating first on domestic policy reform also helped to observe governance. Otherwise the process component of governance was often hidden due to the technical and often confidential nature of AML policy. Public media reporting was infrequent and partially suffered a selection bias. Issues covered as headlines were usually either high profile criminal cases or the potential economic impact of FATF non-compliance. This risked pushing the perception of more technical issues or consensual positions on policy development and implementation to the background. The public debate on AML policy in El Salvador was particularly hard to capture. Parliamentary debates were inaccessible but some newspaper reports could be identified – in defiance of the belief of at least one local expert that “in the public debate you will not find it” (Interview E4, 2011). Still, El Salvador provided significantly less empirical data to work with than Mexico. The research situation was further complicated by many of the most central reform processes in both countries happening between 2013 and 2014, while data collection through field research focussed on 2011 and 2012. This was addressed by a second extended phase of desk-based data collection using online sources.

The study in the end needed to use a large variety of data sources to aspire creating a complete picture of AML policy transfer to El Salvador and Mexico. Local experts saw writing on AML is “very little developed in Mexico” (Interview M7, 2011, p. 16). The secondary literature identified and considered for Mexico was indeed limited but of good quality. In contrast, almost no secondary literature on AML existed for El Salvador outside of grey literature. Primary data subjected to analysis included amongst others FATF publications, legal documents like laws, bylaws regulations and administrative documents, annual reports of public and private organisations, internal documents of private sector entities, hundreds of newspaper articles (again mainly covering Mexico) as well as over 40 interviews with AML experts and practitioners conducted during two extended field research phases in both countries in 2011.

The interviews were conducted as semi-structured interviews. Due to the sensitive nature of AML in both countries, most interview partners required confidentiality which resulted in anonymising the interview partner and largely foregoing the possibility of direct quotes. Annex 7.2 lists which type of institutions the interview partner belonged to and individual identification is possible with good reason after contacting the author. To increase the verifiability of data, this study used whenever possible those interviews for which audio recording was permitted and thus transcripts are available. Written and thus more easily verifiable sources were preferred sources to further substantiate conclusions.

The study focussed exclusively on AML policy and did exclude the Special Recommendations on financing of terrorism. This decision had conceptual reasons as AML and CFT are policies addressing different phenomena (cf. Krais, 2018, p. 4). Summarising them would include an additional policy objective that was historically of low significance in the region and might thus distort results. The inclusion of CFT measures in the FATF Recommendations was more a question of political opportunism than of conceptual fit: “Terrorist financing has been slotted into money laundering because of the urgency of this problem. However, terrorist financing often uses clean money to begin with and then transforms it into criminal money through acts of political violence. It is, therefore, only loosely related to money laundering” (Unger, 2007, p. 187). Where the Special Recommendations were observed to play a role that would allow for valuable insights on AML policy transfer, they were nevertheless not ignored in the research process. Such incidences are explicitly mentioned in the presentation of the empirical results together with the necessary caveats.

4. Country Case Analyses

4.1 Case Study: El Salvador

El Salvador's first major step towards a national AML policy was passing the "Regulatory Law on Drug Related Activities" (*Ley Reguladora de las Actividades Relativas a las Drogas*, in the following: Drug Law) (Diario Oficial, 1991, pp. 5-13) in March 1991. This was very early in international comparison with the first set of FATF Recommendations just passed the year before. The Drug Law contained the first domestic legal definition of money laundering as a criminal offense in El Salvador, as a crime derived from illegal narcotics trade. Money laundering of narcotics proceeds was since then punishable with prison sentences which gave the state legal possibilities to apply hierarchical governance modes from the outset of AML policy development in the country.

This first AML policy and the subsequent development of the policy field in El Salvador were embedded in processes that prominently involved international actors in the country's domestic security policy: (i) the peace process of the 1990s and the country's subsequent (ii) integration into international financial markets. In 1991, El Salvador was in the final year of its civil war which lasted from 1979 to 1992. Building on the Esquipulas Process, since 1990 the UN oversaw a peace process that would culminate in the 1992 Chapultepec Peace Accords. The peace agreement led to a profound security sector reform in El Salvador. Amongst others, large parts of governmental and non-governmental fighting forces were disbanded and a new police force was established with the National Civil Police (*Policía Nacional Civil*, PNC) in 1992 (for a detailed procedural account, see: Montgomery, 1995).

After ending its internal conflict, El Salvador also took steps towards aligning its AML policy to the emerging international standards which were still focussed on anti-narcotics. In 1993 the country ascended to the 1988 Vienna Convention and in 1997 it ratified the Central American Agreement for the Prevention and Repression of Money and Cash Laundering Crimes related to Illegal Drug Trafficking and connected Crimes ("*Convenio Centroamericano para la Prevención y la Repressión de los Delitos del Lavado de Dinero y de Activos Relacionados con el Tráfico ilícito de Drogas y Delitos Conexos*", in the following: Central American Agreement). Its FIU, the *Unidad de Investigaciones Financieras* (UIF), became a member of the Egmont Group in 2001. In 2003, El Salvador joined the CFATF after prolonged outreach efforts by the organisation (CFATF, 2003, p. 3) and remained a member of this FSRB throughout the timeframe of this research. This implied subscribing to the FATF Recommendations that were much more detailed and demanding than the broad AML provisions of the Vienna Convention. Finally in 2004, El Salvador also ratified the UNTOC as the most important international convention on AML that it remained outside of at the time.

A major step towards establishing AML as an independent domestic policy field in El Salvador was passing the Law against Laundering of Money and Cash (*Ley contra el Lavado de Dinero y de Activos*, in the following: AML Law) in December 1998 (Diario Oficial, 1998, pp. 11-16) with its regulation published in 2000. The law created the UIF and located it at the Attorney General's Office (*Fiscalía General de la República*, FGR). It was subsequently reformed in 2006, four times in 2014, and again in 2015. El Salvador further detailed regulatory requirements in the legally binding "Guidelines of the Financial Investigations Unit for the Prevention of Money and Cash Laundering in the Financial Intermediary Institutions" (*Instructivo de la Unidad de Investigaciones Financieras para la Prevención el Lavado de Dinero y de Activos en las Instituciones de Intermediación Financiera,* in the following: Guidelines) (FGR in UNODC, 2001)[11]. After its first publication in 2001 and a minor amendment in 2002, the UIF published a more substantial reform in 2013. The legal development therefore has two formative periods, an initial one in the 1990s stretching into the early 2000s and a concentrated reform period between 2013 and 2015[12].

The following sections will show in more detail how the broadly outlined AML policy development in El Salvador was primarily driven by external influence, resulting in an incomplete transfer of the FATF Recommendations into national law and practice. They will do so by analysing how inter- and transnational factors (i) contributed to a transfer of basic AML norms and organisational structures like the FIU model but (ii) failed to generate a domestic policy configuration capable of effectively delivering AML as a governance service for public security delivery. The main policy focus of this externally driven transfer in the 1990s and early 2000s was combatting transnational organised crime, in particular narcotics trafficking. This later shifted towards economic policy objectives addressing international financial market integration. In addition to the important role of the US and international conventions in these processes, external influence was also exerted by the FATF as standard setter, the review and follow-up process carried out by the CFATF, as well as measures applied by the Egmont Group of FIUs and other regional organisations. While many of these mechanisms constituted voluntary transfer through incentives, sanctions and learning, they were underpinned by a shadow of hierarchy cast by external state actors – specifically by US drug policy actors and financial market regulators. The latter contributed to creating an institutional framework for an increasingly transnational financial market in which local subsidiaries of international private banks contributed to transfer of prevention oriented AML policies.

[11] This research was unable to identify the precise date and location of the publication in the Official Journal despite requesting it from the UIF. The reviewed secondary literature also usually only states the year 2001 which might indicate that the first Guidelines were not published in the Official Journal but potentially circulated to regulated entities in the form of a letter, much like financial market supervisors usually distribute regulations and guidelines. The first update of the Guidelines in 2013 was published in the Official Journal and stated for the 2001 version that it was "approved by Mr General Prosecutor of the Republic by Agreement Number 356 of 16 July 2001". This dating makes it plausible that the cited version is the originally circulated version, unlike other publicly available versions for example on the UNODC maintained website "International Money Laundering Information Network" (IMoLIN) (FGR in IMOLIN, 2001, p. 25) or on the CICAD website which both stated as approval date 2 July 2001.

[12] For an overview see annex 7.1.

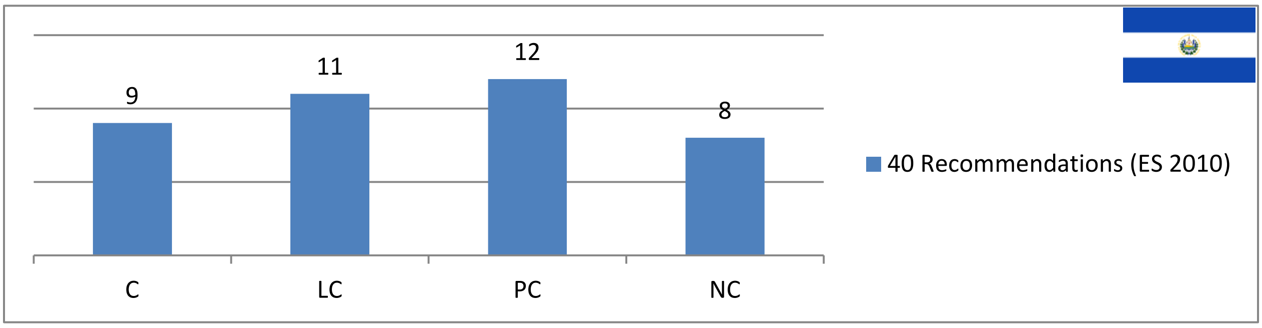
Domestic concerns, for example on public security, were not identified as important policy drivers. They were a minor part of the public AML policy debate and did not translate significantly into normative development, implementation and resource allocation. One interview partner from a financial regulator evaluated that “it does not occur to the common citizen that increasing financial controls could lead to an improvement in security matters” (Interview E7, 2011, p. 27). This was surprising as the country faced a long standing and severe organised crime challenge – mainly from drug trafficking and youth gang crime. Related to these phenomena were for many years the highest homicide rates in the world. El Salvador was attractive to money launderers, particularly for USD cash generated via street sales of narcotics – in which Salvadoran gangs with US origins like the Mara Salvatrucha (MS-13) were involved in both the US and El Salvador. Despite this connection and a strong focus of the public security debate on youth gangs, a connection between them and money laundering was not identified in the public debate. An interviewed high ranking police official even saw the focus of public attention on gangs as counterproductive to AML policy development. It would “push any other topic out” (Interview E4, 2011, p. 10) of the debate on organised crime.

From the literature findings, it could be assumed that such a situation would generate within an electoral system a strong domestic demand for implementation of AML policy to increase public security. However, it would also create a physical safety threat for policy makers and incentives for corruption in a country rated 3.4 on the Corruption Perceptions Index placing it 73rd in 2010 (Transparency International, 2010). After leaving office former FMLN (*Frente Farabundo Martí para la Liberación Nacional*) nominated president Mauricio Funes for example, who headed the government from 2009 – 2014 during the focus time of this study, was amongst others charged with illicit enrichment and money laundering. He has since lived in exile in Nicaragua where he became a naturalised citizen in 2019. Two of his predecessor from the National Republican Alliance (*Alianza Republicana Nacionalista*, ARENA), Antonio “Tony” Saca (2004-2009) and Francisco Flores (1999-2004, died in 2016), were charged with embezzlement and in the case of Saca also money laundering. In 2018, Saca plead guilty on embezzlement and laundering of USD 300 million which led to a 10 year prison sentence (BBC, 2018). The domestic level thus presented a difficult political environment during the research period for stronger AML policy and effective transfer of international standards to the national level by public actors.

4.1.1 El Salvador’s Compliance Pattern in 2010

CFATF published the results of El Salvador’s mutual evaluation for compliance with the 2004 FATF Recommendations in September 2010. The report evaluated the country as compliant with 9, largely compliant with 11, partially compliant with 12 and non-compliant with 8 of the 40 Recommendations on AML (CFATF, 2010a). Rated partially compliant with Core Recommendation 5 (due diligence) and Key

Recommendations 23 (regulation, supervision and monitoring) and 26 (FIU) as well as Special Recommendations IV and V on CFT, El Salvador entered the follow-up process. It moved to regular expedited follow-up in 2012 when the CFATF plenary did not see sufficient progress by the country and El Salvador not having participated in the two plenary meetings after the approval of its MER. Under the follow-up procedure, it provided nine semi-annual follow-up reports. The CFATF's plenary saw the country's progress in addressing its shortcomings as sufficient enough to re-enter regular follow-up in May 2014. It produced its ninth and final follow-up report of the Third Round of mutual evaluations in November 2014 (CFATF, 2014a, p. 2).



Graphic 2: FATF compliance of El Salvador in 2010.

El Salvador's wide and relatively even spread between compliance and non-compliance in 2010 revealed a pattern upon closer inspection. Overall, the country was seen as having good compliance levels with regard to overarching normative issues like the legal definition of money laundering, bank secrecy, reporting and the ratification of international conventions. It was however lacking in implementation and enforcement of these rules as well as detailing and extending out AML beyond the financial sector into regulation of PEPs, DNFBPs and other non-financial businesses and professions. Particularly the observations of LC and PC ratings frequently mentioned a lack of detail in the provisions that would go beyond the level of national laws, like regulations, directives but also administrative guidelines and manuals. In total, the report had 65 critical observations on AML policy making and implementation in El Salvador (see annex 7.1).

In the terminology of this thesis, this pattern indicated an incomplete transfer: While the legislature transferred basic international normative standards into national laws, the government and its agencies did not follow through in adapting and implementing AML as a national policy. An interview partner from El Salvador's police service that shared this overall analysis saw it as an expression of Peter Waldmann's "anomic State" with "laws that are there but not applied" (Interview E4, 2011, p. 16). Interestingly, El Salvador was in some areas evaluated more positively due to internal regulations and preventive practices of international banks surpassing the domestic legal requirements for AML prevention. Consequentially, the evaluators almost exclusively formulated recommendations to the public sector. This was the case even with regard to section B of the Recommendations, “measures to be taken by Financial Institutions and Non-Financial Businesses and Professions to prevent Money Laundering and Terrorist Financing”.

In more detail, the country complied with Recommendations 4, 11, 14, 19, 20, 27, 28, 35 and 37. These cover financial secrecy, transaction monitoring, legal protection of reporting entities and prohibition of alert, currency transaction reporting, regulation of other non-financial and professional businesses, existence and powers of specialised law enforcement agencies, international conventions and extradition.

The rating for Recommendation 20 provided an example of how public-private co-governance increased El Salvador’s FATF compliance. It covered the regulation of non-financial businesses and professions other than DNFBPs. The country reached compliant status as regulation of other non-financial and professional businesses “was not only ‘considered’ but included in a regulation body of the obligations in terms of ML prevention” (CFATF, 2010a, p. 106). As the establishment of collectively binding rules in the form of legal documents, this was governance service provided unilaterally by the state. The report then continued to note that however no secondary regulations or any supervision and enforcement body existed for these obligations of the AML Law. The report still noted a more complete policy transfer beyond mere minimal legal compliance. Money laundering risk for other non-financial businesses and professions was seen as relatively low, if compared to other countries with similar characteristics to El Salvador. This was due to the “high degree of bancarization, since [El Salvador] has different FIs [Financial Institutions], many of them affiliates to foreign institutions, which provide services to a great deal of the population under high control standards, among which we find ML and FT prevention” (ibid.). The internal prevention mechanisms of international banks thus provided a positive externality for the wider El Salvadoran economy. For parts of the non-financial sector, international banks were seen as providing proxy AML prevention as governance service. Prevention in the banking sector reduced money laundering risks not only in the financial sector but also for other non-financial businesses and professions.

El Salvador reached a level of largely compliant with Recommendations 1-3, 10, 13, 15, 18, 34, 36, 38 and 40. This includes all Recommendations aiming specifically at the legal system at the level of laws (1-3), spanning from the criminal classification of money laundering over the establishment of corporate liability to confiscation and provisional measures. The compliance rating for Recommendation 1 on criminalisation of money laundering exemplified a particularity of the country’s compliance system: International conventions and other treaties ratified by El Salvador automatically became national law (ibid., p. 22). Thus ratification of the Vienna Convention and the Central American Agreement provided AML policy at the normative level in El Salvador (cf. ibid., p. 23) in one of the most direct transfer processes possible between international and national law. The practical impact of international conventions on the national canon of rules and regulations also became evident through their frequent mentioning in documents of law enforcements agencies (cf. ibid., p. 25).

While El Salvador complied with most normative elements of the FATF Recommendations 1-3, it was evaluated as only largely compliant due to a lack of implementation. In relation to the size of the economy and the money laundering risks El Salvador was facing, the number of ML convictions was seen as too low and concentrated on simple cases of cross-border cash smuggling. Seizures were not ordered in over half of all money laundering cases. Sanctions for legal persons were not applied, in parts due to dissolution of companies being the only available legal sanction which presented a high threshold for enforcement action if compared to financial fines (ibid., pp. 31, 39).

Recommendations 10, 13, 15 and 18 are four of twenty Recommendations that form Section B on measures to be taken by private sector financial and non-financial institutions, businesses and professions. Together, their evaluation as LC expressed a satisfactory status of El Salvador in obligations for record keeping, suspicious transaction reporting, internal controls and dealing with shell banks. Observations on these issues were minor and focussed on lacking detail and clarity in legal obligations for non-financial actors (cf. ibid., p. 74) or with regard to regulating binding internal procedures of financial institutions. STR reporting did not cover FT (ibid., p. 80). The evaluation of Recommendation 18 highlighted another repeating subject in El Salvador's AML policy making: the general refraining from exerting external influence on other countries to comply with the FATF Recommendations. El Salvador was evaluated as lacking in obliging financial institutions "to ensure that respondent FI in other countries do not allow their accounts to be used by fictitious banks" (ibid., p. 88). Similarly, the only aspect mentioned for Recommendation 34 was that the practical problems to identify beneficial owners abroad should be addressed (ibid., p. 113). However, evaluators noted that El Salvadoran banking institutions did not have any correspondent relationships with banks outside the country (ibid., p. 87).

Evaluated as LC with Recommendations 36, 38 and 40 meant that El Salvador was either C or LC with five of the six Recommendations of Section D on international co-operation. It had ratified the relevant international conventions and treaties on AML and was sufficiently cooperative in providing mutual legal assistance. The MER again directed its criticism towards the lack of implementation which would not allow "to know the system's effectiveness" (ibid., p. 128) in confiscation and freezing of assets. While mutual legal assistance was rendered in practice, procedures and regulations were not clearly established (ibid.). The LC rating of Recommendation 40 was in part based on El Salvador's FIU being suspended from the Egmont Group at the time of the MER, due to shortcomings in the country's FT legislation related to reporting obligations and information exchange with national and international counterparts.[13] The breaking away of this conduit to external cooperation was further accentuated by the

[13] After addressing the FT issues successfully, the UIF was again suspended from the Egmont Group from September 2018 to June 2019 due to lacking independence of the agency.

lack of MoUs with international counterparts of El Salvador's market supervisors and regulators as well as customs and tax authorities (ibid., p. 132).

The CFATF evaluators pointed towards more severe shortcoming in El Salvador's AML policy with regard to the PC ratings of Recommendations 5, 8, 9, 17, 21-23, 26, 29, 31, 33 and 39. With 12 Recommendations, PC was the largest group of evaluation scores. Recommendation 5 was a Core Recommendation, 23 and 26 were Key Recommendations. In terms of this study, most of the MER's observations can be grouped into two categories: depth of transfer regarding the (i) production and (ii) implementation of collectively binding rules by the state. All observations were directed at governance by the public sector, including the legislature, market regulators and supervisors as well as law enforcement and prosecution agencies.

The MER indicated limited depth of regulatory transfer by statements such as a "lack of clarity, scope and clear differentiated requirements" of customer due diligence requirements (Recommendation 5, ibid., p. 70), "[a]bsence of specific requirements" on the use of new technologies and businesses (Recommendation 8, ibid., p. 71) or an attested "lack of specific regulations concerning the use of intermediaries" for CDD tasks (Recommendation 9, ibid., p. 72). Partial compliance indicated that the basic foundations of regulation were established but not spelled out with regard to the domestic context. Observations on the production of collectively binding rules concentrated on Section B of the Recommendations and encompassed AML policies on due diligence, regulation of new technologies, third party and intermediary submitters, sanctioning provisions for remittances service providers, as well as preventive policies for financial institutions when dealing with high risk countries or establishing foreign branches and subsidiaries. Statements on lacking implementation were more equally distributed, including observations in sections B, C and D.

Recommendation 5 on customer due diligence showed shortcomings in both, regulatory policy transfer as the production of collectively binding rules as well as their effective implementation by the state. As CDD under Recommendation 5 belonged to the Core Recommendations, the identified compliance challenges contributed decisively to El Salvador being subjected to the follow-up procedure. The follow-up table for Recommendation 5 alone lists over 17 pages the actions taken by different agencies to foster compliance in El Salvador between 2010 and 2014 (CFATF, 2014a, pp. 22-38). It provided a good test for the external influence exerted by CFATF through its peer-review process. While below sections will analyse what factors led to these actions the following paragraphs outline the situation presented in the 2010 MER.

As more severe compliance shortcomings, due diligence obligations were evaluated as lacking detail in the UIF's Guidelines. This included verification of information provided by customers, beneficial ownership identification, KYC regarding the business relation, and a risk based approach (CFATF, 2010a, p. 70). Under the existing regulations, there was no obligation for regulated entities to enquire if a client acted on behalf of a third party. Overall, beneficial ownership regulation was only "basic and really limited" (ibid., p. 64). When KYC data was collected, El Salvador's regulations did not contain requirements to regularly update the data (ibid., p. 65). Specific provision for simplified or enhanced due diligence did not exist (ibid., pp. 65-66). In the view of the evaluators, this did not provide a legal basis for regulated entities to scale their CDD measures appropriate to risk levels, indicating a transfer of only the basic policy level without spelling out finer regulatory details at the national level. A legal reporting threshold of about USD 57,000 was also considered to support an evaluation of PC for Recommendation 5 (ibid., p. 65). However, at the time, no formal international standard was yet defined on reporting thresholds. [14]

In addition to the lacking detail of CDD regulations, the implementation of the existing regulations was also insufficient in the eyes of the evaluators. This was partially due to governance limitations in El Salvador with regard to population data management. The evaluators identified that "there are no document verification services or official validation mechanisms for data" provided by clients (ibid., p. 60). This means that even where data was collected, its validity and therefore usefulness for money laundering prevention and AML enforcement was doubtful. This challenge was potentiated in cases of beneficial ownership (cf. ibid., pp. 63-64) which would require the application of KYC and CDD measures to both the client and the beneficial owner. Where beneficiary data collection was mandated, like in the cases of brokerage firms and exchange broker agents, evaluators did not identify evidence of sanctions imposed by market supervisors for non-compliance with these obligations (ibid., p. 64).

In this breadth, it is doubtful if CDD required by El Salvador's national laws and by-laws were at the time sufficient to effectively contribute to preventing or combatting money laundering. Despite these severe shortcomings, evaluators noted on various occasions a positive effect of internal regulations on compliance with Recommendation 5. Private sector entities for example regularly implemented CDD measures for beneficial ownership that were not required by the state (ibid., pp. 63-64). They also deployed automated monitoring and alerts systems on clients' transactions (ibid., p. 65). Regarding a risk based approach, a number of financial institutions were identified to have implemented enhanced due diligence measures when dealing with high-risk jurisdictions (ibid.). Overall, "El Salvador has been strengthened with the arrival of the foreign bank which has accomplished the purchase of several national banks with which self-control standards has improved for foreign banks such as HSBC, Citibank, Scotiabank, Bancolombia through the implementation of sound practices for normative compliance" (ibid., p. 54).

With regard to the outgoing external relations of banks registered and operating in El Salvador, no legal provisions existed to pay special attention when dealing with high-risk countries and jurisdictions

[14] The emerging international standard was USD 10,000 as reporting limit.

(ibid., pp. 78-79). This weakened the provision of external governance by El Salvador instilled in Recommendation 21 – an important contributor to the spread of the global AML regime according to the literature. Implementation of Recommendation 21 lends sanctioning power of states to the FATF by exerting pressure on black and grey listed countries and jurisdictions. Evaluators further attested a lack of regulations for money services businesses (MSB) and remittances service providers (ibid., p. 70). These were unsupervised and not included under the Guidelines if they did not form part of a financial conglomerate (ibid., pp. 59-60).

As the central implementing state agencies, the UIF and market supervisors were a particular concern in the MER. Compliance with Recommendations 23, 26 and 29 is therefore discussed here together, as these in principle separate roles in AML governance were strongly intertwined in El Salvador. Article 11 of the directives of the AML Law assigned regulatory tasks for AML to the UIF (Diario Oficial, 2000, p. 17). As a result, market supervisors were discouraged from issuing specific AML regulations for their areas of oversight. Evaluators "believed that only FIU has issued regulations" due to "many black holes with respect to regulatory powers of ML_FT for SSF [Superintendence for the Financial System] and SS [Securities Superintendence]" (CFATF, 2010a, p. 91). The regulatory demand on the UIF to produce collectively binding rules came on top of its usual task of collecting and analysing financial data to make it available for financial intelligence, law enforcement and the judiciary. It overburdened an already resource starved and understaffed agency consisting of five public officials with a judicial and prosecutorial background (two prosecutors, two financial analysts and one informatics professional) (ibid., pp. 44-45; 47). Interviewed SSF personnel saw this as one of the main shortcomings in El Salvador's AML system due to a power differential between the UIF and potential money launderers. The limited UIF staff would "see all the very complicated cases against these people who obviously have a lot of resources to pay for lawyers, they are big lawsuits" (Interview E7, 2011, p. 17).

This situation led to a subjective assignment of priorities for specific cases by the head of the UIF (CFATF, 2010a, pp. 45-46) rather than a system based on the characteristics of received data or a specific case. In practice, priorities appear to have been assigned to cases with a low task complexity where misconduct was most evident (cf. ibid.). At the same time, the UIF was evaluated as having too little independence from the Attorney General. Prosecutors were frequently removed and assigned to other tasks. The Attorney General also had the power to assign priorities to specific case work (ibid., p. 46), thus influencing the subjective priority assignment by the head of the UIF. Some level of independence with regard to STR analysis criteria was maintained including for cases of political relevance but "this technical autonomy has taken place thanks to the respect of the Attorney General that have had towards FIU job, and not because the law so orders" [sic][15] (CFATF, 2010a, p. 46).

The evaluation also took into consideration a lack of training for UIF officials and its lacking technological capacity to access existing databases. The latter was to a limited extend compensated by the auxiliary role of the PNC (ibid., p. 45). With regard to FT, the suspended membership of the Egmont Group further contributed to a PC-rating of Recommendation 26 (ibid., p. 47). SSF however had entered a number of MoUs with foreign supervisory entities, including the US, its neighbouring countries Guatemala and Honduras as well as Nicaragua (ibid., p. 94). The latter four formed the Central America-4 Free Mobility Agreement which allowed for free movement between the four countries since 2006.

Another unconventional provision further conflated the roles of an FIU with market regulation and supervision (CFATF, 2010a, p. 48). Article 10 of the AML Law (Diario Oficial, 1998, pp. 13-14) and article 4 of the directives (Diario Oficial, 2000, p. 16) obliged reporting entities to submit CTRs and STRs to both the UIF and market supervisors[16]. In addition to the UIF's Guidelines, the Superintendence for the Financial System (*Superintendencia del Sistema Financiero*, SSF), as the country's central financial market supervisor, also published its own specifications on reporting requirements in May 2009. The UIF and SSF both carried out data analysis with the SSF also demanding additional information from reporting agencies to fulfil this task (CFATF, 2010a, p. 44). Supervisory entities like the SSF's Reputational Risk Unit were however equally seen as insufficiently staffed to fulfil their AML tasks. (ibid., p. 92).

The MER found that parts of the financial market remained without any AML oversight. Remittances and non-banking financial entities that did not form part of financial conglomerates were not subject to effective oversight by the formally responsible Trade Obligations Superintendence (*Superintendencia de Obligaciones* Mercantiles, SOM) and had no sanctioning regime applying to them (ibid., p. 90). Supervision of remittances agencies fell to the SOM as these only needed to be registered as trade agencies under Salvadoran law (ibid., p. 95). With regard to Recommendation 17, the MER pointed out that no sanctioning regime existed for unsupervised remittances and non-banking financial service providers, whether monetary or non-monetary (ibid., p. 97). Despite these overlapping structures and a number of public and public-private coordination groups, cooperation on AML policy development and implementation remained often ad-hoc and without strategic direction. Evaluators came to the conclusion that "a real public policy has not been implemented in terms of coordination and cooperation" (ibid., p. 121).

[15] The language quality of the MER is at times lacking. There are also sections which appear drafted by the evaluated rather than the evaluators.

[16] The SSF merged with the Securities Superintendence (*Superintendencia de Valores*, SV) and the Pensions Superintendence (*Superintendencia de Pensiones*, SP) in 2011 (Diario Oficial, 2011). Since then, the SSF as the supervising agency and the Central Reserve Bank (*Banco Central de Reserva*, BCR) as the regulatory norm producing agency together form the core of El Salvadors AML related market regulation.

Recommendation 39 on extradition was the only AML policy on international co-operation where El Salvador failed to get at least a LC rating. On the now familiar theme, evaluators criticised the country for a lack of legislation that would "clearly detail and adequately regulate extradition and related procedures" (ibid., p. 130) combined with a lack of statistical data available on active extradition. Further, article 28 of El Salvador's constitution was seen as possibly limiting extradition as it exempts from this procedure "crimes of international transcendence"[17]. There was thus an additional conflict with civil liberties underlying El Salvador's AML policy in addition to more traditional bank secrecy considerations observed for the US and UK.

The evaluators saw El Salvador as non-compliant with Recommendations 6, 7, 12, 16, 24, 25, 30 and 32. Repeating some issues already identified previously, non-compliance with these Recommendations revealed that policy transfer had not taken place in the regulation of non-financial entities. Non-compliance with recommendations 6, 12, 16 and 24 translates as the absence of AML regulations, supervision and control mechanisms for DNFBPs and PEPs. This added to the lack of regulations observed for other non-financial businesses and professions. It means that in 2010, El Salvador did not have any AML policy beyond the financial sector and more precisely the banking sector and financial conglomerates – as for example independent remittances transfer agents remained unsupervised and largely unregulated. The MER recognised that the AML Law under article 2 contemplated non-financial reporting entities such as casinos, real estate agents or precious metal dealers (Diario Oficial, 1998, p. 12). Despite this inclusion however, none of these DNFBPs had "established controls in terms of ML/FT" and "no authorities [were] in charge of the regulation and supervision thereof and there [were] no secondary provisions that allow compliance with the obligations established in AML Law" (ibid., p. 102). The only identified exceptions were casinos which were subjected to municipal control at the time they received an operating license. That however did not include AML provisions (ibid.). Similarly no regulations, supervision or indeed "definitions or scope" (ibid., p. 67) existed with regard to PEPs. El Salvador was also evaluated as non-compliant with Recommendation 7 due to the absence of provisions on correspondent banking and cross-border business.

The NC rating for Recommendations 25, 30 and 32 further elaborated on the lacking resources and resulting low operational capacity of the UIF. In addition to the issues discussed above, the UIF was also seen as lacking in appropriate real estate for storing documents and equipment with IT infrastructure (ibid., p. 133). Due to the understaffing, the UIF was unable to provide feedback to reporting entities. The latter filled this void by "establish[ing] their own interpretation and analysis criteria" (ibid., p. 82). This lack of feedback and guidance went beyond reporting practices. The UIF did also not provide "statistics,

[17] The precise legal meaning of the original Spanish wording in El Salvador's constitution (*delitos de transcendencia internacional*) could not be fully established by the author. It also remains unclear in the CFATF's 2010 MER. The evaluators therefore chose to quote the Spanish language original and relied on interpretations of legal operators interviewed to establish that the definition was likely to include money laundering or financing of terrorism (cf. ibid., p. 129).

typologies, and criminal trends” (ibid., p. 133) for money laundering resulting in the absence of “result measurement systems that allow to effectively analyze the AML/CFT system” (ibid.).

4.1.2 Delegation under Conditions of Limited Statehood

The defining element of delegation under conditions of limited statehood as a governance configuration is that while the state formally aims to delegate governance tasks to private actors in a specific policy field, time or geographic location, it cannot credibly threaten the application of hierarchical governance modes to unilaterally enforce compliance. The resource and power differential between public and private actors is not sufficiently in favour of the state. The 2010 MER published by CFATF revealed that these characteristics were amply observable in El Salvador’s AML governance. The country’s statehood was limited nationally and continuously over time within this policy field. As summarised in sub-section 4.1.1, state actors were limited in both defining the detailed content of collectively binding rules as well as in the implementation of AML policies. They lacked legal mandates (e.g. SSF) as well as administrative resources (e.g. UIF) for command and control necessary for delegating AML tasks effectively to the private sector.

If delegation of AML governance services were to be effectively delivered in the future, the state had two options: It would either need to increase the power differential sufficiently in its favour to create a shadow of hierarchy or alternatively engage in non-hierarchical governance modes like arguing, negotiation or the provision of incentives, be they financial or in the form of reputation and other non-tangible values. In the view of governance in areas of limited statehood, these non-hierarchical governance modes could be complementary or might even offer functional equivalents to hierarchical modes underpinning delegation. The state could thus effectively engage in policy transfer from the international to the local level.

The basic structure and changes in domestic AML governance in El Salvador can best be analysed by following the historical development path of the policy field. This sub-section provides an analysis of how the country’s domestic governance configuration emerged from a narrow application of AML policy to illegal narcotics crime in the early 1990s. It grew from there into a stand-alone policy field by the end of the decade. The publication of the first specific AML Law in 1998 was the most defining moment for the formal domestic governance configuration that perpetuated a transnational (narcotics) crime oriented actor constellation. Once the basic legal framework was completed by passing the AML Law’s directives (2000) and publication of the UIF’s Guidelines (2001), the observed reform dynamic was overall low. Only minor legal adjustments passed the legislature between 2002 and 2012. There was also no increase in the implementation effectiveness of AML policy during that time, for example in the form of judicial case work or regulatory fines. Reacting to the external influence presented in sub-section 4.1.3, El Salvador then initiated a round of legal and administrative reforms between 2011 and 2015 which also incorporated to some extent new requirements of the 2012 version of the FATF Recommendations.

A distinctive feature of the actor dimension in El Salvador's formal domestic governance configuration was the position of the FIU in the prosecution services. This set El Salvador apart from most countries observed by the literature as well as the results for Mexico presented in section 4.2 that assigned a dominant role to public financial market actors in driving AML governance. Despite this emphasis on the judicial branch of government, the application of hierarchical governance modes and compliance with prosecution oriented FATF Recommendations remained comparatively low in El Salvador. Instead, Salvadoran subsidiaries of international banks held an important role in the empirical domestic governance configuration contributing to prevention oriented policy transfer and compliance. The difference to most other cases was that this role used informal and semi-formalised forums and mechanisms like the creation of public-private working groups or the participation of private sector representatives in official delegations to intergovernmental bodies like the CFATF. This gave the financial sector a prominent role in AML policy transfer.

Early developments and creation of a stand-alone policy between 1998 – 2002

El Salvador's first AML policy was part of its anti-narcotics strategy. In 1991, the Regulatory Law on Drug Related Activities specified in article 46 the illegality of "transactions derived from drug related crimes" (Diario Oficial, 1991, p. 10). It is the first time that money laundering was legally codified in El Salvador. The early AML provisions of the drug legislation aimed to empower the state in the application of hierarchical governance modes against narcotics trafficking. As analysed in sub-section 4.1.3 this development was strongly influenced by US involvement in El Salvador' security sector and the US' foreign policy focus on the War on Drugs directing AML policy towards enforcement oriented counter-narcotics policy.

Potential sentences included 8 to 10 years imprisonment for anyone knowingly carrying out transactions of drug proceeds or facilitating such transactions and 5 to 10 years for any knowing beneficiary of such transactions. Concealment as a defining characteristic of money laundering was criminalised under article 47 with 3 to 5 years imprisonment (ibid.). Bank secrecy was partially lifted as non-applicable to drug related financial investigations. Judges and the Public Prosecutor's Office (*Ministerio Público*, MP) could send information requests to the financial sector. Judges were enabled to freeze financial accounts for investigative purposes (ibid., pp. 11-12). The law further provided legal foundations for confiscation and forfeiture of assets and cash used in or generated by illegal narcotics trade. After confiscation, such funds were to be used for the prevention, treatment and rehabilitation of drug addicts (ibid., p. 12). In 1994 and 1996, additional exceptions from financial confidentiality privileges for criminal investigations were introduced to the regulatory laws of the stocks (Diario Oficial, 1994, p. 23) and insurances markets (Diario Oficial, 1996, pp. 137-138).

Early AML policy in El Salvador was thus an instrumental policy serving larger public good objectives. The Drug Law assigned investigative capacities for money laundering to the Executive Anti-Drug-Trafficking Unit (*Unidad Ejecutiva Antinarcotráfico*, UEA) whose formation was strongly influenced by the US, as discussed in the sub-section on external influence. Along with passing the responsibility for narcotics related money laundering investigations to the PNC, 430 UEA officers were integrated into the newly formed police force in 1993 (Popkin, 2000, p. 184). Unfortunately there is little further data on this early phase of AML policy in El Salvador. As also noted by the 2010 MER, there is crucially no reliable statistical information available on money laundering cases initiated or adjudicated based on AML legislation in El Salvador. It was therefore not feasible to assess the enforcement effectiveness of this initial allocation of AML to anti-narcotics efforts and compare its outcome to later changes in the governance configuration. Only since 2013, El Salvador started reporting progress with regard to the effectiveness of the AML system in terms of confiscations and case work. Amongst others, courts had ordered confiscation of over USD 1.2 million by the third quarter of the year (CFATF, 2013a, p. 6).

What is clear though is that the criminal law orientation of El Salvador's early AML policy centred the domestic governance configuration on public actors in law enforcement and the judiciary dealing with narcotics crime. The governance service aimed at the general population as governance addressees and sought to foster public health and security through increasing state control of illegal narcotics markets. This was also evidenced by the Minister of Justice and the Minister of Public Health and Social Assistance signing the Drug Law as responsible line ministries alongside the president (Diario Oficial, 1991, p. 13). Public security actors like the MP and PNC were thus the first domestic transfer agents of AML policy to El Salvador. The close link between anti-narcotics and AML was also indicated by the head of the UIF in 2011 recruited to the unit from the FGR's anti-narcotics section (Interview E11, 2011, p. 1) and the auxiliary policy support given to the UIF also stemming from the anti-narcotics section of the PNC (ibid., p. 7).

With the publication of the 1998 AML Law, El Salvador moved away from a purely narcotics centred AML policy but maintained its public security focus with an all-crimes approach. Under article 2 the AML Law covered as '"Institutions and activities subject to the control of this Law" (Diario Oficial, 1998, p. 11) a large variety of actors, both natural and legal persons, independent of their legal status which implicitly also included the informal sector. An illustrative listing of institutions encompassed the financial sector as well as non-financial businesses and services that the FATF later denominated DNFBPs like gambling, construction and real estate, precious metal dealers, transport and logistic companies, hotels and private security companies (ibid.). The definition of money laundering under article 4 and 5 was equally broad. 5 to 15 years imprisonment as well as a financial sanction of up to 2,500 minimum wages for non-agricultural workers (in 1998 a sum of approximately USD 1,700) was threatened to anyone "depositing, withdrawing, converting or transferring funds, goods or related rights which proceed directly or indirectly from criminal activities to hide or conceal its illicit origin” with money laundering also understood as “any other operation, transaction, action or omission intended to hide the illicit origin or legalise goods and values derived from criminal activities inside or outside the country” (ibid., p. 12). Within the all-crimes approach, examples for predicate offences included narcotics trafficking, a wide array of organised crime phenomena and also bribery and tax evasion (ibid., pp. 12-13).

With a lower potential prison sentence of 8 to 12 years, “hiding or disguising in any form or nature the origin, location, destination or movement of apparently legal funds” (ibid.) was also criminalised. This sanction would apply for example to financial sector actors engaged in layering or omitting reporting duties. The formulation did not require the need to prove their knowledge of the illegal origin of funds to create criminal liability. This disconnected the sanction for money laundering from the underlying predicate offence and made it into an independent crime. Article 7 further spelled out reporting duties. Anyone would be liable for money laundering who would not report knowledge or suspicion of money laundering to the FGR or would assist in eluding justice. The market supervisors were explicitly included in this group and charged with the duty to immediately transfer relevant information on money laundering received by the supervised entities to the FGR. In the cases of “negligence, incompetence or inexcusable ignorance” (ibid., p. 13) the sentence range was reduced to 2 to 4 years imprisonment for oversight bodies and market supervisors. Delegation of record keeping and reporting duties to the private sector was thus underpinned with the threat of hierarchical sanctions in the case of non-compliance.

Articles 9 to 15 set out further private actors’ compliance duties with regard to KYC/CDD, record keeping and reporting. The law created the position of a rudimentary compliance officer as the “designated staff member charged with ensuring the maintenance and updating of registers and forms indicated by” (ibid., p. 14) the AML Law. This generated a new professional profile which would concentrate and accumulate AML knowledge serving as a private sector link for AML policy transfer. By 2004 at least, the Salvadoran Banking Association (*Asociación Bancaria Salvadoreña*, ABANSA) had established a compliance officer committee (*Comité Intergremial de Oficiales de Cumplimiento*). Amongst others, this committee coordinated the banking sector in mutual evaluation exercises and participated in regional exchange organised by FELABAN to identify and share good AML practice. In 2004, the committee developed and shared suggestions for amendments to the AML Law with the UIF. Its role as policy transfer agent was not coincidental as the committee’s working programme for the year included (i) “participation in seminars, congresses and conferences” on AML that are often international, (ii) “exchange of information” between the committee members, and (iii) “assist the [UIF] and the [SSF] in the revision, discussion and development of new norms, regulations, guidelines and reform projects for the Law and Regulations of cash and money laundering” (ABANSA, 2004, p. 33). The role of ABANSA and the committee will be further explored in the sub-section on competition systems.

The AML Law set the CTR limit at 500,000 Colones a month (ibid., p. 13). In December 1998, this equalled about USD 57,000 in El Salvador's then official currency. As noted in the 2010 MER, this reporting threshold stayed stable for over ten years and was well above the emerging international consensus of USD 10,000. A reason for this initially high threshold might be El Salvador's largely cash based economy. This was not simply based on high levels of illegal or informal activities and cash remittances transfers. It was also grounded in structural characteristics of the legal economy. The domestic financial system did for example for a long time not provide the possibility of electronic financial transfers between different banks (Interview E14, 2011, pp. 35-36). It was therefore not uncommon for banks to receive large cash deposits for example for real estate acquisitions or payment of business services. This made it more difficult for banks and investigators to discern between legitimate transfers and potential money laundering on the basis of the transferred amount, particularly if the paying party was not a customer of the receiving bank. Another reason identified by an interview partner was the political lobbying of construction sector representatives (Interview E11, 2011, p. 23). CTR reporting policies were thus adapted to local circumstances during the transfer process, despite this deviation from the international standards being identified early by the legislature.

In addition to customer identification and a five year record keeping obligation, regulated entities were also to train their personnel in identifying unusual and suspicious transactions. Internal controls would need to be established to ensure compliance with financial sector actors having the additional obligation to pass internal codes of conduct to the market supervisor. These were to deploy deeper KYC/CDD rules like the familiarity of employees with the economic activities of their respective customers. Anonymous accounts were in turn made illegal (ibid., pp. 13-14).

Alongside the broader normative base established by the AML Law, it also increased the amount of actors formally involved in El Salvador's AML policy implementation. In addition to law enforcement, the judiciary and the private sector, domestic AML policy since 1998 also include market regulators and supervisors as AML governance providers. Article 13 of the AML Law for example established the double-reporting to the UIF and the market supervisors that was later criticised by the 2010 MER. It obliged reporting entities to send a CTR form with its contents predefined by the law to the respective market supervisors and equally to the UIF in cases of transfers deemed suspicious, converting the same document into a STR (ibid., p. 14). The AML Law for the first time provided market supervisors with the possibility of administrative financial sanctions for non-compliance in addition to the previously established penal sanctions (ibid.). This was a more fine grained approach to hierarchical governance that gave the state additional steering instruments with a lower application threshold and resulting administrative cost.

For the purpose of money laundering investigations, bank secrecy as well as tax confidentiality were lifted in article 24. This limitation of bank secrecy and tax confidentiality was only to be applied to money laundering cases but was a significant broadening from the limited application to narcotics investigations of the Drug Law. Article 22 explicitly allowed the use of information obtained in money laundering investigations for the investigations of other crimes (ibid., p. 15). Document, information requests and the admission as proof was made dependent on specific decisions of the General Prosecutor or the responsible judge. In this context, judges could also order asset freezing. The same power was vested in the General Prosecutor but only in exceptional circumstances for a limited duration of 10 days (ibid., pp. 15-16).

The law's section on "interinstitutional cooperation" further detailed the formal role of the UIF within the domestic governance configuration. Created under article 3 as an office ascribed to the FGR, the UIF was defined as the central AML body with wide ranging powers for data collection in relation to money laundering (ibid., p. 12). Within the typology developed by the IMF, this set up the UIF as a "judicial or prosecutorial-type FIU" (IMF, 2004, p. 16). The IMF saw advantages of this institutional setting in minimising delays between money laundering reports and the possible resulting application of judicial instruments like "seizing funds, freezing accounts, conducting interrogations, detaining suspects, and conducting searches" (ibid.) Judicial and prosecutorial FIUs were also characterised by little to no buffer between reporting entities and the judiciary or prosecution. It is therefore strongly geared towards the application of hierarchical governance modes which might on the downside discourage reporting as private sector entities might fear for their customer relations.

Other public institutions were obliged to collaborate with the UIF and provide "direct or electronic access to their respective databases", namely "the Finance Ministry [*Ministerio de Hacienda]*, the Central Bank [*Banco Central de Reserva*, BCR], the Real Estate and Mortgage Registry [*Registro de la Propiedad Raiz e Hipotecas*] and the public oversight bodies" (Diario Oficial, 1998, p. 14). In addition the Attorney General was granted power to request and receive "information from any entity, state autonomous, private or natural person for the investigation of money laundering" (ibid.). Paragraph 19 of the AML Law assigned an auxiliary role to the PNC, mainly for checking persons and vehicles entering or leaving El Salvador or in case of suspicion also inside the country (ibid.). By 2011 however, the PNC did not have direct access to the mentioned databases or to AML focal points within financial institutions through which its officials could directly gain information for criminal intelligence (Interview E4, 2011, p. 11). Officers with technical expertise on AML were concentrated in the Specialised Organised Crime Division (*Division Especializada contra el Crimen Organizado*, DECO) but no specialised financial crime unit existed (ibid., p. 7). The overall standing of the PNC at the UIF was low with it being seen "to need a lot of work on capacity building" (Interview E11, 2011, p. 30) and AML being "an issue that they cannot decipher" (ibid.).

If financial or asset declarations collected by the PNC were deemed false by the FGR, the respective funds could be retained and result in forfeiture, if no proof of legal origin could be produced within 30 days

(Diario Oficial, 1998, p. 15). The law foresaw the state to use such funds and assets to (i) strengthen investigating agencies for drug trafficking and money laundering, (ii) witness protection, (iii) victim compensation, (iv) drug addiction rehabilitation, and (v) drug prevention for youth and juveniles (ibid.). These provisions coupled the introduction of new hierarchical governance modes with incentives for their implementation for enforcement agencies that could benefit directly from forfeitures.

The Regulation of the AML Law ("*Reglamento de la Ley contra el Lavado de Dinero y de Activos*" (Diario Oficial, 2000, pp. 13-23)) passed in 2000, further detailing the formal domestic governance configuration. It was published in the Official Journal under the responsibility of the Ministry of Public Security and Justice underlining its prioritisation of public security as governance service. An important role for the Regulations was to establish inter-institutional cooperation and private sector obligations. Article 4 obliged regulated entities amongst others to:

(i) "provide technical assistance at the request of the UIF" in money laundering investigations;
(ii) "develop and implement internal programmes, norms, procedures and controls" as required by the AML Law but also international treaties and conventions;
(iii) adopt a KYC/CDD policy;
(iv) establish procedures to ensure the integrity of compliance officers;
(v) compile AML literature and establish continuous AML training for staff;
(vi) analyse reports and send relevant information to the UIF as well as the responsible market supervisors;
(vii) maintain data confidentiality also towards persons related to specific reports (ibid., pp. 15-16).

This set of requirements replicated the FATF's governance approach of delegation of AML governance service provision by the state to private actors. Particularly noteworthy is El Salvador's decision to open a direct path of delegation for international conventions which were to provide the basis for internal AML procedures at the same normative level as national legislation. This was in line with El Salvador's general direct transfer of international conventions into binding national norms. International actors like the UN with its 1988 Vienna Convention or the 2000 Palermo Convention would thus be granted a direct delegation power for AML governance services to regulated entities in El Salvador. This direct norm transfer was accompanied by softer forms of transfer through learning, for example in the obligation to compile literature and carry out regular staff training. During the investigation period, no body of AML literature was identified that would have been specific to El Salvador. A collection of AML literature would therefore mostly comprise international contributions and materials.

State institutions were also mentioned in the Regulations and their obligation to collaborate with the UIF reinforced. They were to actively inform it on any database related to money laundering as well as grant UIF personnel access to this data. Collaboration requirements were formulated very widely covering any public organisation or institution that might at any point be "related to the activities subject to the law" (ibid., pp. 16-17). Market supervisors were to pass on information on irregular or suspicious transactions "without exceptions, immediately and sufficiently" (ibid., p. 17) and any public official or state employee was to notify the UIF in cases of AML suspicion (ibid.). Article 11 contained one of the central aspects of the Regulations: the assignment of detailing out further regulatory aspects of AML policy to the UIF in the form of guidelines (ibid., pp. 17-18). While this formally strengthened the role of the UIF as domestic AML standard setter, it also created the resource demanding double role of the UIF as a prosecutorial FIU as well as a norm generating actor that was criticised in the 2010 MER. This taxing assignment of responsibilities was not met with corresponding resources (cf. also Interview E14, 2011, pp. 17-18).

At an operational level, the Regulations defined the CTR and STR procedures with more precision (ibid., pp. 18-21). Both were based on standard KYC/CDD procedures and to be filed if transactions were unusual with regard to the regular behaviour of clients or the underlying economic activities. Highlighting risk areas identified for money laundering in El Salvador, special attention was to be given to structuring of payments as well as advanced repayments of loans, unexpected payments of troubled loans and credits, the use of international payment instruments or accounts opened by money exchange houses. In addition to quantifiable factors like structuring and transactions just under the CTR reporting limit, employees of financial institutions were also charged with individually observing and evaluating client behaviour. Bank employees should for example generate a report, if clients frequently visited the safe-deposit box and then effect a cash payment in the same bank under the CTR reporting limit into an account, or if non-monetary instruments like traveller checks were "marked with strange signs and symbols" (ibid., p. 19). This added agency to the financial sector as reports were to an extent discretionary and based on the knowledge and skills of bank employees. A non-discretionary reporting obligation to the UIF was established for any non-supervised entity regulated by the AML Law, which encompassed financial services like remittances transfer agents (ibid., p. 21).

El Salvador's justice system passed the first criminal sentences for money laundering in 2003 and 2004. Four Guatemalan citizens were given a five year prison sentence and an additional financial fine. The USD 730,000 decommissioned during the case were used to financing AML and other related efforts (FGR, 2014a). Cases that led to criminal sentences for money laundering did thus exist but they were rare. 2004 and 2005 saw the initiation of two investigations for non-cash smuggling money laundering with the accused predicate offences of illegal deposit taking by Operaciones Bursátiles de Centroamerica (OBC) and Agave Azul (FGR, 2014b, pp. 21-22) that both allegedly operated as pyramid schemes. The OBC case was in the end not judged as money laundering but was at the time “the only case […] of interinstitutional or cross-border cooperation” (Interview E6, 2011, p. 18) in this case with US authorities. It culminated in an extradition from the US to El Salvador for fraud (ibid., pp. 12-14, 18).

Interview partners of the responsible market supervisor described Agave Azul as a formative case for the development of practical application of the early AML policy. The company was accused of operating a pyramid scheme based on tequila trade promising a 400% return on the initial investment (FGR, 2014b, pp. 21-22). It gathered over USD 1.4 million investments until 2005. The case revealed the limited possibilities of using the available AML policies at the time for the application of hierarchical governance modes. While the company was already under suspicion of illegal deposit taking and money laundering, the FGR could initially not take investigative actions. In the view of an observer, “as there was no type of crime, as a result they felt a little limited in acting as the Prosecutor’s Office” (Interview E6, 2011, p. 15). This led to a joint step-by-step operation of SV, PNC, FGR and the Ministry of Finance which involved personnel of the Securities Superintendence posing as potential investors with physical security provided by non-uniformed police officials. In the end, what triggered FGR action, seizure of company assets and eventually the dissolution of Agave Azul was a suspicion of tax fraud as the investigation produced untaxed sales bills (ibid., pp. 14-17).

Overall, the AML Law and its Regulation were comprehensive for their time if compared to the emerging international policy standard. With an all-crime approach, the institutional assignment of the UIF to the FGR, and its emphasis on law enforcement and the judiciary, El Salvador’s AML policy was clearly directed at public security provision as an underlying demand to be addressed by policy transfer. Yet the low resource allocation and doubtful effectiveness of AML policy for this purpose make it likely that this policy orientation was mainly the outcome of external influence rather than a domestic development as discussed in the respective sub-section. Concerns for financial market governance services that were identified in the literature review and that were also highly influential in Mexico as discussed below, did not play a major role in the early phase of AML policy in El Salvador. Only the SSF had a more prominent role as recipient of CTRs from the private sector. Much like the PNC, the law also assigned market supervisors auxiliary roles to the UIF, mainly as data providers. There was no ambiguity in the exceptions from banking confidentiality for AML investigations. In this sense the AML Law and Regulations continued El Salvador’s previous orientation of AML as instrument to combat narcotics trafficking. Its origin in anti-narcotics policy also became evident through the frequent mentioning of drug trafficking as a specific crime throughout the law.

Building on the normative framework of the AML Law and its Regulation, the UIF published the first set of its Guidelines in 2001 as administrative rules orienting the private sector on AML processes and procedures. The Guidelines remained unchanged for twelve years until the UIF published a new version in 2013. The preliminary considerations of the 2001 Guidelines stated their primary aim as maintaining the rule of law. Providing “standardised mechanisms” for KYC/CDD, record keeping and reporting would serve to “impede that persons or organisations exploit or intend to exploit the legal system […] to hide or conceal the illicit origins of their proceeds” (ibid., p. 1). Additional economic considerations enter the document as it described the international nature of money laundering which would “compromise the comprehensive security of States and the healthy operation of their financial systems and economies” (ibid., p. 2). One of the most significant additions of the Guidelines to the normative framework was the creation of obligatory compliance offices presided over by a compliance officer as the central operational AML body within regulated entities. In addition to centralising internal AML policy development and implementation, compliance officers also provided the link to the UIF as contact point for reporting obligations and information requests (ibid., pp. 28-30). In this way, the Guidelines further developed and formalised the role of the position rudimentarily created previously by the law.

The UIF Guidelines went into detail of the requirements for regulated entities much like an operational manual for AML in the financial sector might. Identification methods for suspicious transactions were for example illustrated with a series of possibly suspicious transaction types (ibid., pp. 20-22). By addressing the regulated entities directly in this way rather than formulating abstract rules, as a transfer mechanisms the Guidelines lay somewhere in between normative regulation through the state and a learning (or rather teaching) exercise on AML policy implementation. In textbook style, the Guidelines for example explained that the *“most important form to avoid the risk that the institutions are involved or used as intermediaries for illicit operations is precisely the correct [application of] ‘know your Customer’. Therefore this Chapter describes concrete and strict means for identifying and knowing the Customer, which need to be implemented in opening of accounts and contracts as well as in effecting transactions*” (ibid., p. 6). The Guidelines also referred to international standards at times in effect appealing to the international level for the legitimacy of and give context to the regulations. CTR reports for example should be filed using a form as stated in the Central American Agreement with its content defined by the UIF (ibid., p. 8). Compliance officers of each regulated entity were to send STRs. They had the possibility to encrypt their identity in the report after previously advising the UIF. Both steps had “the obvious goal to protect the staff member or employee” (ibid., p. 24) highlighting the threat for personal safety posed by organised crime in El Salvador.

In addition to providing its own requirements and standardised forms, the Guidelines obliged regulated entities to develop internal operations manuals to be approved by the responsible market supervisor (ibid., pp. 17, 26-27) as well as codes of ethics (ibid., pp. 31, 37-42). These requirement extended public sector AML governance into self-regulation of private companies reinforcing the mixed public-private governance configuration characteristic for AML implementation in general and also highly important for El Salvador's AML policy. Requirements for internal regulations oriented on international good practice also allowed for on ongoing adjustment based on specific sector risks and procedures, on which market participants and supervisors could be assumed to be more knowledgeable than the UIF as a prosecution agency. Self-regulation was delegated to regulated entities in the form of training and dissemination requirements. The content of these training was only prescribed in the form of general issue areas to be covered like the "development of instructions to assist personnel the filling out of" CTR and STR forms or annual "information courses or meetings, especially when the content of the Regulations or the formats of" CTRs and STRs change (ibid., p. 28). Perhaps the most far reaching regulatory intervention in institutional self-governance was the Guideline's requirements on personnel recruitment. Chapter XI obliged private actors to "carefully select and monitor the behaviour of the employees" (ibid., p. 31). Beyond the closer work environment, this vigilance was also to extend amongst others to paying attention to "employees whose lavish lifestyle does not correspond to their salary level" (ibid.).

The ambiguity of the Guidelines' approach between regulation and learning – that is between hierarchical and non-hierarchical governance modes – translated into its application. Administrative and punitive sanctions were rarely if ever applied to regulated entities for failing to comply with the Guidelines. Money laundering cases in El Salvador were instead almost exclusively based on encountered large sums of undeclared cash whose legal origin the owners were unable to justify (CFATF, 2010a, pp. 31, 39). The hierarchical governance modes provided by the AML Law were thus largely limited to cases with a low task complexity if compared to financial market regulation and supervision. The governance mode underlying delegation of AML tasks to the private sector was therefore hierarchical in principle but in practice relied on softer modes like persuasion, learning and capacity building.

In summary, the groundwork for El Salvador's AML governance configuration was constructed around public security actors. Based on El Salvador's initial AML legislation of 1991, the domestic actor constellation established between 1998 and 2002 centred on the UIF as the main AML governance provider within El Salvador's public sector. The legislature and the UIF transferred AML policy from the international level largely based on the international standard of the time but without much domestic implementation. The institutional setting was highly formal and enshrined in the AML Law, its Regulation and the administrative Guidelines of the UIF. These three domestic documents, the "Law, the Regulations and the Guidelines […] [t]his is the frame of reference" (Interview E7, 2011, p. 5) for actors like the SSF. The FATF Recommendations required this transfer to develop a sufficient steering power for national actors.

As the representative to GAFIC and the state institution most directly charged with AML policy development, the UIF was not only detailing preventive AML regulations as well as record keeping and reporting standards. As a judicial-type FIU, it also had direct access to the hierarchical governance modes of the FGR: threatening the application of penal investigations that could lead to severe prison sentences. As prescribed by the FATF Recommendations, a series of AML governance services were delegated to private actors. They were not just tasked to prevent money laundering in their institutions but also to collect customer information, report money relevant and suspicious transactions, and collaborate in criminal investigations. The private sector acted as both (i) a secondary governance provider and (ii) a governance recipient as safeguarding financial entities from being used by money launderers was a stated policy goal.

The application of AML policy and particularly penal and financial sanctions provided an insight into the power relationship between the UIF and market supervisors as primary governance providers and the private sector entities to which governance provision was delegated. In order for governance by delegation to work reliably, it would require an asymmetrical power relationship between the primary and secondary governance providers. While this power could be based on material (e.g. funding, staff and infrastructure) and immaterial resources (e.g. legitimacy, knowledge and skills), particularly in penal matters, such a power differential should manifest itself in observable application of hierarchical governance modes. If private sector compliance without the actual application of hierarchical governance modes cannot be assumed, financial fines, judicial proceedings and possibly prison sentences for money launderers in regulated entities should occur. High compliance on the other hand should lead to judicial proceedings and sentences against money launderers who used regulated entities to give a legitimate appearance to criminal proceeds.

As the 2010 MER evidenced, neither was the case. El Salvador had a low rate of financial fines by market regulators, criminal proceedings for non-compliance of regulated entities as well as only a limited number of money laundering cases which were mostly based on cash interdictions rather than financial intelligence work. This shows that the domestic governance configuration of delegation was characterised by limited statehood – the absence of hierarchical governance and a shadow of hierarchy that would induce compliance and allow effective delegation. The 2010 MER pointed specifically to the lack of a material resource asymmetry between the UIF and regulated entities. The UIF was overburdened with the complex double tasks of norm creation, data analysis and norm enforcement. At the same time, it was understaffed and needed to reply on inadequate infrastructure with regard to information and communication technology as well as physical office space. Specialised AML knowledge and skills were difficult to retain for the UIF due to its small staff being removed and replaced, depending on the priorities set by the FGR. In relation to an already weak FIU, financial market regulators were auxiliary bodies in AML governance tasked with market oversight and financial sanctioning in cases of private sector non-compliance.

While policy transfer was thus observed, its reach was limited to the creation of formal rules and institutions. In the first two decades of AML policy in El Salvador the domestic governance configuration never reached a level of self-sustained development. There was also no evidence identified by this research that the state or the private sector agents it assigned governance tasks to provide the intended public good of public security to the governance addresses. Hierarchical governance did not improve as expected and the country's public security situation continued to be characterised by one of the highest homicide rates worldwide with rampant organised crime.

AML Governance Reform 2011 – 2015

After the publication of the UIF Guidelines in 2002, with the exception of a minor legal amendment in 2006 and a reordering of the country's financial market governance in 2011, El Salvador's formally defined domestic AML governance configuration remained largely stable until the publication of updated UIF Guidelines in 2013. This is an indicator for low domestic political priority assigned to AML policy: a system that overall failed to achieve its intended governance service to improve public security was not reformed sooner.

Debates on policy reform were in the end triggered and sustained by external influence. By exerting compliance pressure with the 2004 Recommendations particularly the 2010 MER and El Salvador's submission to enhanced follow-up induced and oriented the content of a reform of AML legislation and its regulatory framework. On their own however, it seems unlikely that CFATF and FATF would have created a sufficient reform drive as the initial reserved reaction of El Salvador to the MER indicated. The threat of financial sanctions attached to an FATF listing, conditionality of US development grants as incentive, as well as targeted technical assistance in the form of knowledge and skill transfer by a variety of international actors were decisive contributions leading to policy transfer. This debate is however for later. For now, the following pages will analyse the reform process from a domestic governance perspective to discover the workings of the domestic governance configuration during the transfer process. The domestic configuration was itself transformed as part of this transfer with a reassignment of roles and power resources between different actors. These in turn provided links for external actors to engage with.

The direction of AML policy reform in El Salvador after 2010 was clearly defined by observations and recommendations of the CFATF's 2010 MER as well as the publication of the new FATF 40 Recommendations and 9 Special Recommendations in 2011 and 2012. In the follow-up process El Salvador laid a strong focus on improving compliance with the Core and Key Recommendations as expected from the literature review. The reforms' three main components with regard to the domestic AML governance configuration of delegated authority were in order of policy transfer impact (i) a series of amendments to the AML Law between 2014 and 2015, (ii) an update of the UIF Guidelines (Diario Oficial, 2013), and (iii) the publication of "Technical Rules for Money Laundering and Terrorist Financing Risk Management" (BCR, 2013) (*Normas Técnicas para la Gestión de Riesgos de Lavado de Dinero y de Activos, y de Financiamiento al Terrosimos*, in the following Technical Rules) by BCR as financial market regulator. In addition to these legal regulatory reforms, El Salvador also implemented a series of administrative and budgetary decisions and intensified its engagement with external and private sector actors.

An important element fostering FATF compliance developed prior and implemented in parallel to the mentioned AML reforms was a reordering of the domestic financial market governance configuration. Due to its impact on the actor constellation, it is discussed here before entering into more detail on specifically AML oriented reforms. Cornerstone of El Salvador's financial market governance reconfiguration was the Law on Supervision and Regulation of the Financial System (*Ley de Supervisión y Regulación del Sistema Financiero*, LSRSF) published in February 2011 (Diario Oficial, 2011, pp. 11-52). Its immediate background was the international financial crisis of 2007-2008 which legislators in the law's justification phrased as "the development [*conyuntura*] of the international financial markets and their respective impact on the real sector of the economies at a global level has reaffirmed the necessity to count with effective systems for financial supervision and regulation" (ibid., p. 10).[18] The law's intention was to modernise the country's financial sector governance (cf. Diario Oficial, 2011, p. 10). It origins traced further back to 2001, when a reordering of financial market regulation and supervision was already contemplate within the public sector (Interview E8, 2011, p. 4).

It was ultimately motivated by market based incentives to create an internationally competitive financial regulatory environment in El Salvador. Independent of its intended governance service, the reform indirectly addressed a number of issues the 2010 MER took with regard to the distribution and reach of supervisory and regulatory powers. It therefore had a positive effect on compliance with Recommendations 5, 12, 16, 17, 23, 24 25, 29 and 31 (CFATF, 2014a, pp. 22-110) – among them a Core and Key Recommendation as well as those Recommendations focussing on regulation and supervision of PEPs, DNFBPs and other non-financial businesses and professions. Of particular importance for FATF compliance

[18] While this is not the subject of this thesis, financial market governance reform in the wake of financial crises would make an interesting case to demonstrate the difficulty of separating different governance configurations. While the international financial crisis of 2007-2008 most immediately affected governance through changing market conditions, it also induced structural public policy reform in a series of countries and international institutions. In how far these are then developed locally in an endemic fashion, through hierarchical or non-hierarchical external influence or by other means of transfer is a question very similar to the one being answered here for AML policy.

was the LSRSF reordering of market regulatory and supervisory powers between different state agencies and the connected widening of the supervisory scope of the SSF.

The law separated the market supervisory role of SSF from market regulation for the financial system that was reallocated to the BCR (Diario Oficial, 2011, p. 11). Through this decision, BCR entered the domestic AML governance configuration as a new actor. The law tasked it with complementing the administrative regulations for the financial sector defined until then exclusively by the UIF Guidelines. The accumulated AML expertise of the SSF, as a semi-independent agency of the BCR, was retained for this purpose through the SSF's inclusion in the Regulations Committee (*Comité de Normas*). The LSRSF created the committee with a membership of the President and Vice-president of BCR, the Superintendent as head of the SSF and a series of directors from different line ministries. Its role was to approve financial market regulations which included AML by majority vote of its members (ibid., p. 45). Interviewed BCR staff saw the exchange with the supervisory institutions in the committee as a way to ensure "that what one writes here in the Bank responds to the local reality and not just to international standards" (Interview E8, 2011, p. 4).

BCR's participatory approach to regulation also included private sector participants represented in the BCR's directing council (Interview E8, 2011, p. 5). It defined its annual regulatory work plan in consultation with the supervisory institutions as well as with representatives from the private sector, amongst them "banks, insurances, stocks [and] pensions" (ibid., p. 8). Both could formulate regulatory needs which were then taken into account and prioritised by BCR. The interview partner describes the process of developing or updating regulations as follows: "*In cases where no initial draft [of a law] exists, one has to start reviewing international experience, to review international standards and propose what we technically believe could be a structure with articulated norms; and this document is submitted to a discussion with personnel of the Superintendence and one starts to work until a more developed document is defined which is consulted with the industry, which is to say, with the entities to be obliged to comply with the norms and then, after a series of meetings with them and validation with the Superintendence on which things we can take and which not, it is submitted to the comité de normas for approval*" (ibid.). International standards were an important starting point and default for regulation with BCR trying to adapt them to local circumstances. National financial market regulation was thus described as a transfer of international standards with local tweaks and private sector participation rather than an autonomous domestic rule development by state actors.

While the LSRSF limited the SSF's role as market regulator in favour of the BCR, it largely monopolised the supervisory role for the financial system at the SSF. Instrumental for this was the merging of SSF with the Pensions Superintendence (*Superintendencia de Pensiones*, SP) and the Securities Superintendence (*Superintendencia de Valores*, SV) and the subsequent dissolution of these entities (ibid.,

p. 11). Both SP and SV had in the past not assigned significant resources to AML and supervision of the private sector entities despite their formal inclusion as regulatory entities for AML. The merger thus offered an opportunity to strengthen money laundering related oversight in these sectors.

In addition to pooling the supervisory mandates and resources of SSF, SP und SV, the law further amplified the scope of regulatory AML policy by submitting new entities to the SSF's supervision. In addition to explicitly including problem areas like money exchange houses, the LSRSF contained an opening clause that widened regulation to "[t]he further entities, institutions and operations mentioned by the laws" (ibid., p. 15). This formulation implicitly covered agencies mentioned in the AML Law like remittances companies that did not belong to financial conglomerates and were therefore previously unsupervised. Remittances companies not being explicitly regulated in the initial law might indicate that the 2010 MER's observations did not play a major rule in its formulation. They were later explicitly added as regulated entities in a 2015 amendment (Diario Oficial, 2015a, p. 20) to the LSRSF clarifying any doubts about the applicable regulatory regime that might have persisted. The broadened scope and increasing prioritisation of AML supervision was also reflected in the creation of a new Department of Money Laundering and Terrorist Financing Risk as AML hub within the SSF and the assignment of additional staff to this area (SSF, 2014, p. 83; CFATF, 2013a, p. 6).

The legislator stated as reason for their inclusion in the LSRSF an increase in electronic funds transfers which in some cases would be carried out outside of the financial system (Diario Oficial, 2015a, p. 20). A staff member of BCR working for the Regulations Committee identified FATF compliance as a secondary policy objective of this reform. While the LSRSF's amendment was "*born from a concern of the legislature to establish equal conditions for all providers of money transfer services that compete in the market, given that only a part of them form part of the financial system and comply with certain regulations for being supervised; additionally it is intended to attend to a recommendation of the Financial Action Task Force (FATF) against money laundering on establishing a legal and regulatory framework for the issue of remittances*" (Wendy Doñan in enlaces, 2016). An interviewed UIF official emphasised in this regard that while regulation did already exist previously to passing of the LSRSF, "the problem is that there is no supervision" (Interview E11, 2011, p. 10).

The three main AML specific reforms in chronological order, (i) the updating of the Guidelines, (ii) development of the Technical Rules and (iii) a series of amendments to the AML Law were developed after 2011 on top of the reconfigured actor constellation in the financial sector. As analysed with regard to the CFATF's external influence, due to their significance for leaving the follow-up procedure, El Salvador's AML reform efforts prioritised the 2010 MER's observations on compliance with Core (5) and Key (23 and 26)

Recommendations. The country primarily sought to address the observations through legal adjustments and new administrative rules and only ventured into additional resource allocation at a later stage.

Before going into detail of these reforms, it is important to understand a very specific feature of El Salvador's actor constellation: the Inter-institutional Committee for Money Laundering and Terrorist Financing Prevention (*Comité Inter-institucional para la Prevención del Lavado de Dinero y es Financiamiento del Terrorismo*, IIC). At least since 2011, this informal actor coalition was at the centre of domestically developing and proposing drafts for legal and regulatory reforms. It brought together five main AML policy stakeholders from El Salvador's public and private sectors: UIF, SSF, BCR, ABANSA and the Stock Exchange of El Salvador (*Bolsa de Valores de El Salvador*, BVES) (CFATF, 2011a, pp. 3-4). Its origins trace back to 2007/2008 when these public and private actors came together amongst others as a reaction to El Salvador's MER of 2005 (Interview E10a, 2011). The groundwork for its inception was a regional World Bank consultancy of 2005 which recommended to El Salvador the creation of a public-private coordination group for AML based on US experience (Interview E14, 2011, p. 1). In the view of El Salvador's banking sector, as of 2011 it continued "to operate because we saw that the private sector had an opportunity for a more direct approach to the public sector" (ibid., p. 2). BVES confirmed this private sector view from the position of the stock exchange. The IIC would be the place where "all compliance officers see each other" (Interview E13, 2011, p. 12) and which would be the central institution for the private sector to engage with CFATF (ibid., pp. 13-14).

In accordance with Recommendation 31, already the 1998 AML Law (Diario Oficial, 1998, pp. 14-15) and its derived documents as well as the LSRSF (e.g. Diario Oficial, 2011, p. 25) stressed the need and obligation for inter-institutional cooperation. The 2nd follow-up report formulated that for this purpose "El Salvador [had] reactivated" the IIC (CFATF, 2011a, p. 3). However and despite this exceptionally close cooperation, the IIC was not formalised by the AML Law, its bylaws, regulations or any other legal or administrative norm. In October 2019 FGR considered the body's formalisation as part of a new AML Law with the task to "design and propose to the Executive the public policy to prevent, detect and sanction money laundering and terrorist financing" (La Prensa Gráfica, 2019).

The IIC's self-image was that of a private sector driven distinctly technical and apolitical organisation that would provide AML policy advice. Before 2011 it coordinated parts of the MER review process trying "to make [it] an objective analytical exercise, purely technical" (Interview E14, 2011, p. 5). After the results of the MER, it developed and coordinated AML policy reform proposals. Amongst others, it reviewed all draft legal amendments discussed by the Legislative Assembly in 2011. Its members saw it as their task to depoliticise the proposals and provide technocratic proposals with the aim to standardise best practice (Interview E10a, 2011). Well intended proposals from the legislature that might however go against FATF Recommendations were discouraged, like making STRs directly available to the Finance

Ministry (Interview E14, 2011, pp. 10-12). From within the ICC, legal initiatives were "proposed by the committee and they discuss them in the Legislative Assembly" (Interview E11, 2011, p. 36). The group also prepared and mutually agreed on the follow-up reports to CFATF (Interview E11, 2011, p. 20).

Through such public-private co-governance, the IIC became the main domestic convergence point for formulating collectively binding AML rules for the financial sector, a role it informally took over from SSF (Interview E8, 2011, p. 10). A testament for the depth of private sector involvement via the IIC was the participation of three representative of ABANSA in the 2010 CFATF plenary. They were the majority of the official delegation accompanying only two public sector officials from UIF and SSF (Interview E10a, 2011). The plenary session was of overarching importance for El Salvador as the decisive meeting determining the country's mutual evaluation results and compliance ratings for the Third Round of peer-reviews. Private sector participation at the plenary was unprecedented within CFATF at the time (Interview E10a, 2011; Interview E14, 2011, pp. 3, 6). Not only did the private sector participate but it also hosted meetings to prepare the peer-review process and a coordinated positioning of Salvadoran institutions, including the SSF and UIF (Interview E14, 2011, pp. 6-7).

Policy transfer through the IIC relied mainly on voluntary learning and knowledge transfer. While state institutions like the UIF, BCR and SSF could provide state authority, they drew on additional knowledge and skills on AML prevention provided by BVES and particularly international banks organised in ABANSA. An interviewed UIF official who in the past also served as CFATF evaluator stated about CFATF that "they had never seen this level of coordination with the private sector in any other country" (Interview E11, 2011, p. 20). At least since 2011, the IIC was directly involved in drafting proposals for addressing observations of the 2010 MER. Its members initially focussed on specific issues requiring a high level of international financial market expertise like correspondence banking, regulation of foreign subsidiaries and dealing with high risk countries and jurisdictions (CFATF, 2011a, pp. 3-4). An interviewed representative of ABANSA described the close relationship with the SSF in this process as "[…] sending a written note justifying the reform, explaining what topic of the CFATF is addressed and practically justifying to the Superintendence that it was necessary to do this reform" (Interview E14, 2011, p. 8). "With them it was super-fast. A norm could be emitted in a meeting of the executive council and the next week we already had a norm and [the observed shortcoming] was addressed" (ibid., p. 10).

An example was the external application of its own AML policy as an area in which El Salvador had shortcomings and no domestic regulatory experience (cf. CFATF, 2010a, pp. 87-88). After the IIC presented draft "'Guidelines for Correspondent Banking Services" to the financial sector Superintendent in early 2011 (CFATF, 2011a, p. 3), the Regulations Committee approved the country's first regulation for this sector in July of the same year (BCR, 2012a) and amended the rules for investing in financial entities or opening subsidiaries in other countries (BCR, 2012b). The regulations successfully addressed the observations to

Recommendation 7 (CFATF, 2012, p. 3) initially rated NC regarding the previous complete lack of correspondence banking regulation. The IIC further developed proposals to address Recommendations 21 on business relationships with higher risk countries and jurisdictions as well as Recommendation 22 on regulation of foreign branches and subsidiaries. These were addressed by the Regulations Committee further amending correspondence banking regulation in April 2012 (CFATF, 2014a, pp. 58-62). The regulations included the specific requirements to "pay special attention to commercial relationships and transactions" with entities that "carry out operations in countries that do not or insufficiently apply the FATF's recommendations" (BCR, 2012a, p. 3). Correspondence banking regulations of the BCR thus also contributed to compliance with Recommendations 21 and 22.

It is worth noting that correspondence banking regulation was created for a non-existing financial service in El Salvador. As the MER stated, "no banking entity offer[ed] this kind of service" (CFATF, 2010a, p. 67). Unlike the international banks organised in ABANSA, market regulators and supervisors therefore could not draw on any own experiences with regard to this activity. It is also not possible that the policy transfer responded to a domestic demand created by a specific crime problem that the regulation was supposed to solve. ABANSA considered its position to lobby for the regulation of potential future cases or the outright ban on correspondence banking in El Salvador and decided for the first option (Interview E10a, 2011). Such public-private co-governance rather than delegation by public entities appeared as the standard process in El Salvador's AML policy transfer with a focus on shared economic interests.

Regulation of this non-existent financial service is a clear example of transfer driven by external influence much like Nauru's AML policy regulating a largely non-existing domestic financial system illustrated by Sharman (Sharman, 2011, pp. 53-57). A representative of ABANSA used the case of PEPs regulation to illustrate the same point of compliance based on FATF requirements independent of local context. According to him, PEPs regulation was sufficiently covered by internal practice and regulations of the largely transnational banking sector. Yet "*[…] the evaluators told us: we will put this [Recommendation] as non-compliant because you have no regulation for PEPs. So the banks said: look a have a little manual here of internal policies on PEPs, approved from my group's head office and here we are applying PEPs policies, and CFATF said: it does not matter, if you do not have regulation you do not comply with the Recommendation*" (Interview E14, 2011, p. 13). While the driver might have been external, the example also highlights the need for a connection with the domestic governance configuration if policy transfer is to occur. In this case, the link was made via ABANSA's representation in the IIC.

Correspondence banking and PEP regulations were specific instances in which the IIC greatly facilitated policy transfer leading to singular regulatory adjustments for the financial market. It however also acted as coordination body in the three central reforms steps mentioned above. Over time, the IIC expanded its involvement from these politically peripheral issues in El Salvador to being directly involved in the drafting proposed amendments to the AML Law (e.g. CFATF, 2014a, pp. 32, 37). The first steps however were smaller with the update of the Guidelines and the development of the Technical Rules following the regulatory adjustments discussed up until now.

With regard to Recommendations 6 and 12 on PEPs and DNFBPs, the UIF Guidelines of 2013 broadened the regulatory framework to cover all reporting entities and not just the core financial sector. Newly regulated types of businesses included agricultural export, import and services, insurance brokers, casinos and gambling houses, as well as a series of DNFBPs as typified by the FATF like precious stones and metal dealers, importers of new vehicles, real estate agents, travel agencies and importantly also shipping and delivery providers which included remittances services (Diario Oficial, 2013, p. 177). The reformed Guidelines directly linked preventive AML in El Salvador to the international level by prescribing that regulated entities were obliged "to verify the actualisations of list of non-cooperative countries, fiscal havens and blacklists, published by International Organisms in the fight against money and cash laundering" (Diario Oficial, 2013, p. 180). This is a clear reference to the FATF listing of non-cooperative countries, jurisdictions and territories as well as potential other lists such as US and EU sanctions lists. Through their decision, these governance actors could directly exert external influence by defining part of the rule structure governing the domestic financial market and other regulated entities.

CFATF also recognised the contribution of the reformed Guidelines to compliance with Recommendation 31 on inter-institutional cooperation (CFATF, 2013a, pp. 95-96). The document spelled out the obligations already instilled in the AML Law. It obliged private sector actors to cooperate with each other in addition to their legal responsibilities towards the state. Part of this obligation was to inform other entities if and why they were perceived as vulnerable to money laundering during due diligence checks. This encompassed the necessity to indicate to prospective business partners "which are the points that according to their standards would need to be reinforced to reach compliance level sufficient to generate confidence in their actions" (Diario Oficial, 2013, p. 185). With this normative obligation, the UIF created a business to business learning conduit as a transfer mechanism which was directly linked to the economic incentive underlying the prospective business relationship. Overall the Guidelines contributed to compliance with Recommendations 5, 6, 12 and 13.

In addition to this regulatory update, El Salvador invested additional human and technical resources to strengthen the UIF. FGR assigned additional personnel to the unit and took steps to ensure their permanency as well as adequate training (CFATF, 2013a, p. 7). Since 2013 the UIF could access a system through which the SSF received electronic reports (WEB STR). These previously had to be received, processed and filed in print. UIF could also access databases like national registers of people, vehicles or telecommunications via the FGR. Cooperation with El Salvador's Anti-Drugs Commission (*Comisión Anti-Narcoticos*, CAN) was intensified by providing access to its database as well as jointly developing AML certification trainings (CFATF, 2014a, p. 84). This increased its capacity to investigate initial suspicion and facilitated data triangulation for the creation of financial intelligence. More data of better quality produced by the UIF could help to increase the power differential between the state and private market actors to make the application of hierarchical governance modes through the FGR more feasible.

As the most specific instrument to achieve FATF compliance, the BCR's Technical Rules derived from the LSRSF focussed on market regulation and supervision. The reform of the national financial system gave a stronger role to the financial market regulator which had previously left regulatory roles for AML exclusively to the UIF. Already by the time of the first follow-up report, SSF prepared and shared with financial institutions a draft supervisory circular letter (CFATF, 2010c, p. 3) that would complement the Guidelines. While in the end never published by SSF, this draft circular letter on "'minimum standards for managing ML/FT risks'" would later evolve into the Technical Rules of the BCR after it took over the role as El Salvador's principal financial market regulator.

The Technical Rules initially drafted by SSF and finally published in November 2013 by BCR mainly served to rectify compliance shortcomings with regard to Recommendations 5, 8 and 23 (CFATF, 2014b, pp. 5-6, 15, 41). They tied the justification of the Technical Rules to national legislation as well as the international standards with explicit mention of the FATF. The latter would "require the supervisor ensuring that [supervised] entities count with adequate policies and processes, including rules for due diligence with clients, to promote ethical norms and high level professionals in the financial sector and impede that the entities are used, intentionally or not, with criminal intent" (BCR, 2013, p. 1). Such references to international standards was seen by regulators as lending additional legitimacy to the provisions (Interview E1a, 2011). Mirroring the Guidelines, the BCR obliged regulated entities to regularly update their customer data. It added to the UIF's provision by including regulations for the use of new technologies as well as non-face-to-face business (ibid., pp. 17-18). These rules were developed "jointly by ABANSA, the SSF and the FIU" (CFATF, 2014a, p. 41). In addition to the financial sector, DNFBPs also fell under the regulatory scope of the Technical Rules (BCR, 2013, pp. 4, 15-16) which significantly expanded the universe of regulated entities.

In terms of internal regulation, entities subjected to the Technical Rules were to allocate the ultimate AML responsibility to the board of directors or an equivalent body. It was amongst others responsible for the approval of an AML manual, setting-up a compliance unit as well as naming compliance officer as part of management and with decision making autonomy (BCR, 2013, p. 7). The compliance officer was to exclusively carry out AML tasks, making it a highly specialised position and minimising conflicts of interests. In addition to the tasks prescribed by the Guideline, compliance officers were also obliged to develop a risk matrix for each specific entity (ibid., p. 8). They assumed an important role in knowledge transfer as they were to design and implement staff training on AML prevention (ibid., p. 9). Through this role, compliance officers consolidated their role as leading private sector AML experts in El Salvador and in effect their influence on policy making through the IIC.

With regard to normative policy transfer, the SSF tried to address PEP regulation immediately after publication of the MER (CFATF, 2011a, p. 3). This highly controversial issue could however also not been solved by the Technical Rules before the inclusion of PEP regulation at the level of the AML Law. The lack of legislation made it difficult to include the issue in administrative rules even though these could be published unilaterally by the executive. The Technical Rules did however contain a first set of PEP regulations with regard to risk management. As part of their due diligence, regulated entities were to consult lists of PEPs in addition to non-cooperative jurisdictions, tax havens, and persons connected to organised crime or terrorism. Any business relation with the listed persons needed to be authorised by management within the regulated entities. PEPs as well as their family members also had to provide additional information to regulated entities if they wanted to conduct business (BCR, 2013, pp. 14, 16-17).

The BCR also introduced other risk management measures further strengthening compliance with Recommendation 5. Risk was to be determined and managed continuously and in a documented fashion. Risk factors were not simply to be derived from a fixed initial analysis but assessed through ongoing measuring of risk factors. Mitigating actions were to be continuously adapted to changing risk profiles of the respective business relationship or economic activity. External actors entered into the risk management regulation by obliging regulated entities to take into consideration publications by the FATF, the UN and other international entities engaged in AML/CFT (BCR, 2013, pp. 10-13). Much like instilled in the Guidelines, as part of these heightened risk management requirements, regulated entities were obliged to regularly update their CDD data, which previously was only registered at the beginning of a business relationship (ibid., pp. 13-14).

Within the available legal framework, the Guidelines and Technical Rules thus already incorporated observations of the 2010 MER as well as new requirements of the 2012 FATF Recommendations. As administrative rather than legislative norms, they could be unilaterally developed and published by the government which facilitated the transfer process by reducing the costs associated with generating parliamentary majorities – especially with upcoming legislative and presidential elections. A review of the UIF Guidelines was amongst the first follow-up actions taken after publication of the MER (CFATF, 2010c, p. 3). Still, it took more than two years until the updated Guidelines were approved as Agreement 085 by the Attorney General in May 2013.

It was the first mayor reform to the Guidelines since their first publication in 2001 (FGR in UNODC, 2001). Its focus lay on updating the reporting obligations to the level of the international standards in 2013 while it kept the same overall objectives as the 2001 version. Adjustments spanned a wide array of KYC/CDD procedures, CTR and STR reporting, record keeping, personnel training, the role of compliance officers, interinstitutional cooperation and internal self-regulation of regulated entities (cf. CFATF, 2013a, p. 4). The reform proposals for the Guidelines were developed by the UIF through consultation with regulated entities as well as SSF and ABANSA (CFATF, 2013b, p. 4) most likely in the IIC.

Agreement 085 increased the level of details and specificity of many KYC/CDD, record keeping and reporting regulations. Amongst others, the bar for customer identification was significantly raised and the new Guidelines made regular updating of KYC/CDD data obligatory. The previous regulations did not foresee information updates after the initial registration and were thus prone to not reflecting changing customer activities or even ownership of companies. While a “designated official” (Diario Oficial, 1998, p. 14) was already introduced in the 1998 AML Law and further specified as compliance officers in the 2001 Guidelines, the reformed regulations added further detail to the requirements for this position. To strengthen the position of compliance officers within a company’s hierarchy, they were to have a “management position with decision making power which would be compulsory for the whole organisation” (Diario Oficial, 2013, p. 191). In addition to pre-existing requisites like knowledge of industry specific business and control, compliance officers were required to possess “three years of experience in cash and money laundering prevention and financing of terrorism” as well as a “national or international certification in the subject” (ibid.). These provisions were later elevated to the level of the AML Law as presented in the following.

While they were the higher ranking legal norms, the presented amendments to the AML Law followed updating of the Guidelines and passing of the Technical Rules which already took effect in 2013. Following the Guidelines and the Technical Rules, five amendments to the AML Law that passed between December 2013 and September 2015 were the legal cornerstone for El Salvador addressing the observations of the 2010 MER and leaving the follow-up process. Parts of these reforms were delayed by the election of a new Legislative Assembly in March 2012 (CFATF, 2012, p. 3) and the presidential elections of February and March 2014 with a change of government in June 2014. The resulting political shift, together with external influence of the US as analysed below, contributed to the July 2014 amendment reforming a number of articles that had just been reformulated half a year earlier – chief among them the list of regulated entities. Both amendments however shared very similar intentions to “make the legal norms of El Salvador conform to the International Standards […] taking into consideration the Recommendations of the Financial Action Task Force (FATF)” (Diario Oficial, 2014a, p. 7) and “harmonising the legal order of El Salvador with the

International Standards […] reflected in the different Recommendations which were issued by the Financial Action Task Force (FATF) to that effect" (Diario Oficial, 2014b, p. 4).

In sum, they contributed to addressing observations on Recommendations 5, 6, 8, 12, 17, 23, 26, 30 and 31 which included all AML related Core and Key Recommendations. The amendments were the first changes to the AML Law since adding the witness protection programme to possible beneficiaries of confiscated proceeds in 2006 (Diario Oficial, 2006, p. 17). This in turn was the only and relatively minor legislative adjustment since the law's initial publication in 1998. There was thus no major reform of the law during the lifespan of the 40 Recommendations from 2003/2004 that lasted till 2012. The reforms since 2013 presented an opportunity for El Salvador to address the observations of the 2010 MER as well as the newly published 40 Recommendations of 2012.

Preparation for legislative reforms taking up the MER's observations had begun immediately after its publication. Within six months, in addition to the adjustments to FT legislation allowing reinstatement to the Egmont Group, public actors under consultation of the IIC had drafted the first proposals for (i) amendments to the AML Law, (ii) an updating of the Guidelines and began developing what later became (iii) the Technical Rules (CFATF, 2010c, p. 3). In line with the prioritisation of the Core and Key Recommendations, these initial efforts focussed on normative change that would allow El Salvador to exit the enhanced follow-up procedure. By the 1st follow-up report of December 2010, SSF had proposed to the Legislative Assembly an amendment to the AML Law raising the CTR limit to the international standard of USD 10,000. This issue was also promoted by ARENA and FMLN to increase AML policy effectiveness and "'harmonise' the country's legislation with international laws" (Diario El Mundo, 2010). The UIF in turn developed a legislative proposal for regulating remittances companies. These would in the future fall under SSF supervision with the passing of the LSRSF in 2011 (CFATF, 2010c, p. 6) which aimed at increasing state capacity to effectively supervise the sector.

Binding together these first legal initiatives into a more comprehensive draft, the ICC presented in 2011 a "proposal for the amendment of the Anti-Money Laundering Act (AMLA) *driven* by the Inter-institutional Committee" (emphasis added by author; CFATF, 2011b, p. 3) as starting point for debate in the parliamentary Commission of Legislation and Constitutional Points. While these reforms passed relatively quickly as noted above, close observers from SSF saw them as largely technical with little political priority given to them by the legislature (cf. Interview E1a, 2011). The December 2013 reform bill of the outgoing Funes' government instead intended to address most normative observations of the 2010 MER.

Decree 568 broadened the list of regulated entities from 18 to 27 and added detail to the identification of previously regulated entities. Vehicle imports can serve as an example for the latter. While the 1998 law regulated only the import of new vehicles, the 2013 amendment broadened the provision to also include used vehicle importers. Similarly, regulation of remittances agencies was added to the category of courier services. New additions to the list included a series of politically sensitive areas, amongst others political parties, NGOs, sporting and business organisations, media companies, judges, attorneys and employees in the legal system. (Diario Oficial, 2014a, p. 8).

The broadening of the list of regulated entities was one of the most contentious points in 2013 and 2014. Under the Funes government, ARENA and FMLN legislators as well as the president disagreed for example if PEPs, media companies and political parties were to be included in the list (La Nación, 2013). After the presentation of the 6th follow-up report in May 2013 to the CFATF plenary, the FGR intensified its lobbying efforts to push through PEP legislation. Its representatives including at time the Attorney General held a series of meeting between June and October 2013 with the aim to promote FATF compliant legislation. Consulting with members of the IIC during the process, it targeted the Commission on Public Security and Combating Drug Activity of the Legislative Assembly as well as the presidency (CFATF, 2013a, pp. 28-30). In the end, despite these efforts and a "serious commitment and clarity among the members" (ibid., p. 29) of the mentioned commission, the first 2014 amendment did not include PEPs regulation while media companies and political parties were regulated.

Following the SSF's proposal of 2010, the decree published in January 2014 reduced the reporting threshold to USD 10,000 and broadened the reporting regime by making it obligatory independent from any kind of money laundering suspicion. STRs were in turn separated from the specific amount for a suspicious transaction more clearly differentiating between CTRs and STRs (Diario Oficial, 2014a, pp. 9, 11). The double reporting of CTRs and STRs to the UIF and SSF was abandoned with the UIF defined as the only receiving entity (ibid., p. 10). The professional qualifications legally required for compliance officers were increased, including the possession of an AML/CFT certification by the FGR, a minimum of three years professional experience in the area, and the assignment of a management position within the regulated entity (ibid.). Further, it was instilled in the law that SSF "in coordination with [FGR] and other organisations related to financial activities have to organise awareness building campaigns annually" (ibid., p. 11).

After the new government of President Sánchez Cerén took office in June 2014, the new legislator passed another substantial amendment to the AML Law little more than half a year after the Decree 568. Decree 749 changed and reverted some of the original provisions and previous reforms while also introducing new legal requirements. Amongst others, it reverted on the inclusion of sporting organisations in the list of regulated entities. At the same time, it kept the politically controversial regulation of political parties and NGOs and added advertising agencies to media companies as regulated entities. With the amendment, only part of the legal professions remained included as regulated entities, with judges and attorneys no longer subject to the law. With these provisions, El Salvador deviated from the international standards both by adding and subtracting from the standard list of regulated entities. The amendment instead established a special regime for lawyers, notaries, accountants and auditors, who were obliged to only file CTR for transactions exceeding USD 10,000 (ibid., p. 5). Criminal liability for legal persons was established under AML legislation while their liability was previously limited to market regulation and supervision (ibid., p. 7).

While PEPs were not themselves subjected to direct regulation, regulated entities were obliged to list and exert higher levels of KYC/CDD on this customer group through their inclusion in internal AML policies. PEPs were defined both by the country's constitution (presidents, vice-presidents, members of parliament, ministers, constitutional court members and other high ranking officials) as well as by directly referencing the UNCAC's definition (ibid., p. 6) drawing domestic policy content from an international norm. Decree 749 strengthened the regulated entities' capacity to request KYC/CDD data by obliging clients to comply with a large variety of information requests on individual financial and wealth information (ibid.). At the same time, requirements for compliance officers were reduced from three to two years of work experience. Instead of a university title the reformed law only required an "academic grade at a university" (ibid., p. 7). This opened up the position to personnel not having completed a full university career but left with an intermediary degree. Further provision changed the use of seized funds which in the future were to be transferred to the Special Fund created under the Law for Asset Seizure and the Management of Goods of Illicit Origin or Destination. Finally, the recently introduced legal obligation of annual awareness raising campaigns by SSF and other was abolished (ibid.).

Applying AML regulation to media companies was seen to conflict with civil liberties. This debate was related to the debates in the early years of AML if bank secrecy restrictions would unduly curtail civil liberties like the freedom of association. As a result of this conflict, within a month of the previous amendment Decree 774 of 14 August 2014 deleted advertising businesses and communication media of any type from the list of regulated entities (Diario Oficial, 2014c, p. 4). The justification given by the legislator made reference to the constitutional protection for the right of anyone to "express and distribute freely their thinking" and had the objective to "guarantee a real and effective Constitutional Guarantee for the Principle of Freedom of Speech and No Censorship nor Restraint" (ibid.). Interestingly, the concern here was not for a decrease in financial secrecy but rather one for the control of the press. As the FATF Recommendations do not foresee press and media companies as regulated entities, this decision had no effect on compliance and did not constitute policy transfer. It rather represents a domestic addition to the policy that was ultimately politically not sustainable without additional legitimacy provided by external factors.

Only one week after passing Decree 774 and even before its publication on the Diario Oficial, Decree 777 as the last of the 2014 amendments added PEPs regulations to the AML Law. This contributed to compliance with Recommendation 6. Entities subject to the law were to "institute […] a credible internal policy with intensified diligence for the identification of politically exposed persons, be they domestic or foreign, as well as the identity of any other natural or legal person in whose name they act" (Diario Oficial, 2014d, p. 4). The late addition to the legal reform package was an expression of the resistance to regulating PEPs in a country whose polity faced security risks like kidnappings and extortion as well as strong incentives for illicit enrichment facilitated by limited state action against corruption, narcotics trafficking and other forms of organised crime. Information on PEPs' finances might be used for criminal charges due to legitimate suspicion or for political gain. They might also be leaked to criminals seeking to target wealthy individuals and their families. PEPs regulation is thus an AML policy that appears particularly difficult to transfer into areas where statehood is limited with regard to justice and public security provision within political systems that are strongly elite dominated with deficiencies in public accountability.

The public debate on PEP regulation in El Salvador revealed the difficulties the transfer process faced. The Attorney General pushed for it to be included already in the first 2013 amendment to the AML Law. According to press coverage, this proposal was supported by the legislative commission preparing the amendment as well as private institutions like FUSADES (El Diario de Hoy, 2014a). Despite this support, PEP regulation was initially rejected by parliament leading the Attorney General to comment that parliamentarians had "'not at all respected' the agreements made for approval of the means suggested [by the FATF]" (ibid.). He saw this as politicising the legal reform. Parliamentarians would be "'beginning the political works and they turn upside down what had been agreed in the respective commission" (ibid.). For an interviewed ABANSA representative, the issue was also linked to the observation that "politicians do not like to be controlled and them approving a norm of self-control is complicated" (Interview E14, 2011, p. 14). As analysed in the following sub-section, a deciding push for the reform came from external influence exerted by the US who linked the disbursement of the USD 277 million development assistance package FOMILENIO II to the successful inclusion of PEPs regulation in the AML Law.

The final 2015 amendment passed as Decree 104 with the expressed "objective for the legal norms of El Salvador conforming with the International Standards on money and cash laundering, financing of terrorism, organised crime, drug trafficking and any of its variants as well as the Financial Action Task Force (FATF)" (Diario Oficial, 2015b, p. 6). At this time, El Salvador had already left the follow-up process which can therefore not have exerted compliance pressure leading to the legal adjustment. The amendment added cash smuggling to the list of money laundering conducts with a possible prison sentence of three to five years for failing to declare correctly the amount of currency carried while entering or leaving the country (ibid., p. 7). This further increased the hierarchical governance modes at the disposal of the state, in this case to be implemented by the customs office. This adjustment was only minor considering that most successfully adjudicated money laundering cases in El Salvador were based on cash smuggling that was already criminally liable.

Whether these reforms also impacted on the effective implementation of the law will remain to be seen in the Fourth Round of mutual evaluations which was ongoing during the preparation of the thesis. The bolstering of resources for key institutions like the UIF makes it likely that the 2011-2015 reform period would also have this outcome. Taking 2011 as a baseline, El Salvador started from a very low level of effective criminal application of the law with few, particularly domestic, money laundering cases and convictions and a weak institutional landscape. In the words of an interviewed high ranking police official, during that time there was "an absolute absence of this topic as a tool in the fight against organised crime" (Interview E4, 2011, pp. 9-10).

4.1.3 External Influence

To quickly recapture: External influence as a governance configuration describes external actors like foreign states or international organisations using non-hierarchical governance modes such as incentives, sanctions, arguing, persuasion or capacity building aiming to positively influence the domestic provision of governance services. It is most effective in a strongly institutionalised environment. Empirical power relations between external and domestic actors can be symmetrical or asymmetrical. Asymmetry in favour of the external actor is usually regarded as a necessary prerequisite for the effectiveness of the configuration in contributing to the delivery of governance services. In the case of transferring the FATF Recommendations, external influence observed in the literature review would for example cover the formulation of the FATF Recommendations as standard setting, blacklisting, the ICRG process, mutual evaluation procedures as well as capacity building and other forms of intentional steering by external actors within the domestic realm that fall short of applying coercive measures.

The FATF, together with CFATF as the FSRB in which El Salvador was a member, was the most relevant external influence for AML policy transfer to the country during the research period for one compelling reason: the FATF monopolised the definition of AML policy content. However, for the AML policy prescribed in the FATF Recommendations to actually becoming collectively binding rules, they still required approval and transfer through domestic actors into El Salvador's body of laws and administrative regulations. For domestic actors identified in the previous sub-section, the FATF Recommendations were the only AML policies that they made reference to when describing their objectives. With the exception of minor adjustments to the list of regulated entities, there was neither autonomous endemic AML policy development identified in El Salvador nor did other external actors offer alternative AML policy choices. The FATF Recommendations were in this regard a reference point to which other actors directed their positions on AML policy. This speaks for a very high expertise based legitimacy of the FATF.

The prescribed AML policies formed the universe of policy options that were transferred more or less successfully and more or less complete. Resistance to their transfer was certainly observed but this did not culminate in alternative proposals. Other influential international policy documents like for example the relevant UN conventions only contained more general AML norms that were surpassed in detail by the Recommendations. With this dominant role in defining the possible policy content in El Salvador, the FATF provided an important governance service of predefining possible collective rules. In this way, they formed the emerging domestic AML policy field.

Complementing the normative role of the FATF, CFATF was the operationally more engaged transfer actor through its leading role in carrying out El Salvador's mutual evaluation and follow-up process. Its conclusions could potentially lead to the country being included in FATF grey- and blacklists with the negative consequences discussed in the literature review. In the case of El Salvador, CFATF therefore stands in as a proxy for the debate on external influence of the FATF peer-review and blacklisting process in the literature. As El Salvador was not an FATF member, the CFATF plenary sessions, working groups and peer-review mechanisms were the central forums in which the country negotiated its compliance status with the FATF Recommendations. El Salvador voluntarily decided to join the organisation in 2002 / 2003.

The mutual evaluation of El Salvador observed the country being only partially compliant with a number of Core and Key Recommendations as a result of which CFATF subjected the country to expedited follow-up since May 2010. Despite this potential threat to its economic system characterised by high remittances inflows and a strong presence of international banks, CFATF initially perceived the country to give little regard to addressing the observations of the 2010 MER Report. It stated in its 2nd follow-up report that "El Salvador has not sent a delegation to the [CFATF] Plenary meetings of November 2010 and May 2011, and this raises the questions the degree of commitment of this country with its follow up process" [sic] (CFATF, 2011a, p. 4). This contrasts with interview partners from the El Salvadoran banking community that saw the report causing "a giant wave" as "naturally El Salvador does not want to end up on the list of countries that are particularly good for money laundering" (Interview E2, 2011, p. 38). An interviewed UIF official stated budget constraints restricting the country's participation and saw this as a main reason for El Salvador entering expedited follow-up. He was highly critical that this step was taken without prior discussion with the country (Interview E11, 2011, p. 14).

The UIF was critical of some aspects of CFATF's evaluation with "the [CFATF's] secretariat confusing concepts and the evaluators confusing concepts" (Interview E11, 2011, p. 10) particularly with regard to the division of labour or double reporting of STRs to the UIF and SSF. While the SSF would not undertake criminal investigations, the UIF was seen as "not having a regulatory or supervisory role" (Interview E11, 2011, p. 11). The UIF Guidelines would just be "guidelines in the framework of [the AML] law and this was the confusion the evaluators had" (Interview E11, 2011, p. 18) with regulation being "the work of the Superintendence, we do not regulate" (Interview E11, 2011, p. 19). Some private sector actors like BVES were more positive in their view of the MER, with the reports "help us to see what we need to strengthen, they are really very useful […] giving us the goals, what are the objectives to aim for […] not only for money laundering but also corporate governance, risk management, etc." (Interview E13, 2011, p. 16).

As discussed in more detail on the development of the domestic governance configuration of delegation, El Salvador has not been idle following the MER's publication. In line with hypothesis 1 of this research, its immediate follow-up actions focussed on transferring AML policies to comply with Core Recommendation 5 as well as Key Recommendations 23 and 26. With regard to CFT, Key Special Recommendations IV and V were equally assigned a high priority (CFATF, 2010c, p. 3; CFATF, 2011a, p. 2). Compliance with these Recommendations would have allowed El Salvador to leave the expedite follow-up and avert potential future sanctions under the 2009 Methodology.

The focus on leaving the follow-up process was so strong that in the first follow-up report, El Salvador exclusively informed on the progress in achieving compliance with the Core and Key Recommendations (CFATF, 2010c, p. 3). The merit of this prioritisation became evident in the conclusions of the 9th and final follow-up report. It based the recommendation that El Salvador should leave the follow-up process of the Third Round solely on the country having "adequately addressed the shortcomings identified in the MER for Core Recommendation 5 and Special Recommendation IV and Key Recommendations 23 and 26 and Special Recommendation V" (CFATF, 2014a, p. 5). The report provided a detailed progress account on the Core and Key Recommendations while progress on the other Recommendations was deferred to a descriptive annex table that contained no qualitative evaluations (ibid., pp. 22-110).

The first follow-up report was positive about the pace of the initiated reforms. However it also pointed out that El Salvador had not just prioritised the Core and Key Recommendations but had not reported at all on progress made with regard to the other remaining Recommendations rated PC or NC (CFATF, 2010c, p. 5). Despite the lack of a threat of sanctions with regard to El Salvador's compliance with Recommendations that were nor Core or Key, the country still started to report on its wider progress since the 3rd follow-up report after this reprimand by CFATF. In its 5th follow-up report of January 2013, CFATF adjusted its evaluation and noted little reform progress. For the first time it formally mentioned the possibility that "it might be considered to recommend the Plenary to place El Salvador under a stricter follow up process" (CFATF, 2013c, p. 5). The 6th follow-up report noted further delays due to personnel changes at the FGR and repeated the threat of moving El Salvador to a higher level of follow-up at the next plenary session, if El Salvador failed to "present the evidence necessary for the complete resolution of the Core and Key Recommendations and significant progress in the other Recommendations" (CFATF, 2013b, p. 10). The 7th follow-up report stressed that despite the amendments to the AML Law, issues like PEP regulations were still pending. The Guidelines' references to PEPs would not be sufficient to comply with the FATF Recommendations on the matter as these administrative rules did not have the necessary backing by a law.

The requirements for El Salvador formulated in the follow-up reports did not only increase in tone but also in content. During the follow-up process, CFATF at least partially incorporated the 2012 FATF Recommendations in its follow-up to the 2010 MER. Despite Recommendation 1 being rated LC in 2010, it was included in the follow-up process since the 7th follow-up report of November 2013. The report stated that “compliance with this Recommendation is pending” (CFATF, 2013a, p. 4) although the issue was not brought up in the previous reports. Data presented aimed at the effectiveness of the AML prevention and prosecution system which only featured as elements of Recommendation 1 since the 2012 version of the Recommendations. While previously being a purely normative Recommendation aiming at the legal definition of money laundering (FATF, 2004, p. 3), it since also encompassed the effective implementation of a risk-based approach to AML (FATF, 2012a, p. 11). In addition to adding this new demand on a Core Recommendation, the CFATF’s Plenary in 2012 also decided to increase the necessary level for compliance. It moved from requiring El Salvador implementing the Core and Key Recommendation only to also including for it “to make significant progress in other pending Recommendations” (CFATF, 2013a, p. 3). Data included in the report thus went beyond the normative change envisioned at that time by actors in El Salvador. As measures of effectiveness, the report stated the number of money laundering cases under investigation (11), how many were prosecuted (4) and sentenced (1) as well as the amount of confiscated money (about USD 850,000) as of the third quarter 2013 (ibid., p. 4). The CFATF peer-review process was therefore not static but dynamically incorporated elements of the 2012 Recommendations and Methodology in its policy transfer efforts.

The increased intensity of the follow-up progress also became evident by the length of the respective semi-annual reports submitted by El Salvador. While the 1st and 2nd follow-up reports had moderate twelve and seven pages including annexes, the 9th report needed a total of 110 pages to present progress made by the country. As the reports are accumulative, a jump in reported activity translates into an increase in the page count. After an initial phase of El Salvador adjusting errors in its reporting procedure, the largest jump from 62 to 97 pages occurs between the 6th and 7th report, representing a strong reform dynamic in 2013 that carried into 2014. This time frame included the passing of four AML Law amendments, two of them highly substantial, as well as the Guidelines and the Technical Rules which will be analysed in the sub-section on domestic governance. This concentrated reform effort was sufficient to allow the country leaving the follow-up process of the Third Round by November 2014.

In the case of El Salvador, in addition to the FATF Recommendations international and regional conventions on money laundering were identified as relevant external influence. A very direct transfer mechanism was El Salvador’s legal principle of ratified international conventions gaining legal status in the country without any further requirement of national legislation. Ratification of treaties thus instilled international norms into collectively binding rules at the national level. El Salvador ratified all three relevant UN Conventions containing AML provisions: the Vienna Convention in 1993 as well as UNCAC and UNTOC in 2004. They were mentioned frequently in the justification of AML laws and regulatory rules to increase their legitimacy. In Decree 777 of 2014 for example, the Legislature made part of the justification of an AML reform on PEPs regulation that in previous legislation it "was omitted to make mention of Article 52 of the 'UNITED NATIONS CONVENTION AGAINST CORRUPTION', an international instrument ratified by El Salvador […] by which it acquired legal character and in effect is at a superior normative level than secondary legislation" (Diario Oficial, 2014d, p. 4). While the AML provisions contained in the UN conventions were usually much less detailed than the policy prescriptions of the 40 Recommendations, they still played a significant role in creating legitimacy for domestic policy. Their advantage in terms of legitimacy was El Salvador's membership in the UN. It allowed the country to participate in the creation and eventual adoption of the content of the conventions increasing national ownership and input legitimacy. With regard to the FATF Recommendations, El Salvador was only a norm recipient as its membership in the CFATF did not entail any significant influence on the creation of the international policy standard.

At the regional level, the Central American Agreement was another reference point in El Salvador's AML policy making (cf. Interview E4, 2011, p. 16). The actor behind this framework was the Organisation of American States (OAS) through the Inter-American Drug Abuse Commission (*Comisión Interamericana para el Control del Abuso de Drogas*, CICAD). Costa Rica, El Salvador, Guatemala, Honduras, Nicaragua and Panama signed the Agreement in 1997 (OAS, 1997). It focussed on using AML as a mean to combat illegal narcotics trade and related crimes as well as safeguarding economic interests. Money laundering was described as leading to "decomposition of social, political and economic structures" as well as "generating distortion and unfair competition" (ibid., p. 1). The Central American Agreement went beyond a statement of policy goals and general AML principles like the UN Conventions. It defined common regional AML policy standards in much greater detail in the form a national law might. Its content was not only based on references to the Vienna Convention but also derived input from OAS model regulations on the subject, model legislation developed by one of UNODC's predecessors, the UN International Drug Control Programme (UNDCP), as well as a number of other international organisations (ibid., pp. 1-2). Although already in place, the FATF Recommendations or FSRBs were not specifically referenced by CICAD in the Agreement. It instead focussed on the more inclusive international processes of the UN and regional bodies, increasing the political legitimacy of the proposed policies with the FATF as a club-organisation lacking the inclusiveness of the afore mentioned forums.

The Central American Agreement provided the starting point for a fully-fledged national AML policy in El Salvador as a signature country. By ratifying the Agreement under its principle of directly applying international treaties in national law, El Salvador went beyond the previously existing narrow legal provision for investigations in narcotics cases. It also triggered the development and passing of El Salvador's first dedicated AML law in December 1998. Perhaps most importantly in terms of policy content, the Agreement expanded the actor dimension of El Salvador's governance configuration beyond its previous confinement to the law enforcement and judicial sectors. Its Chapter III provided the basic structure for financial market oversight, making AML part of market supervision tasks and signatory states were to develop at least basic KYC, CDD and record keeping measures. These basic private sector preventive measures were to be coupled with a STR-mechanism that could alert law enforcement and prosecution actors of potential money laundering cases and thus provide inputs for financial intelligence. The Agreement also expanded the scope of legal liability beyond national borders to include criminalisation for money laundering of criminal proceeds generated by narcotics trafficking independently from where the predicate offence occurred. Signature countries further committed to developing and implementing policies for decommissioning money and assets that were products of narcotics trafficking. These were in turn to be used for funding prevention and law enforcement actors (for the above: OAS, 1997). This created an incentive for the application of the AML laws as it would directly benefit the resources of law enforcement agencies.

In addition to providing normative frameworks through the conventions and the Agreement, the UN system through UNDCP/UNODC and the OAS (CICAD) also provided specialised technical assistance. With regard to addressing observations of the 2010 MER, CICAD for example certified compliance officers of financial institutions "to provide feedback to Entities Subject to the [AML] Law" (CFATF, 2014a, p. 4), bolstering compliance with Recommendations 26 and 30. UNODC delivered training workshops under its regional project "Combating Cash Smuggling in the Caribbean and Central America by Strengthening Operational Capability and Assisting Effective Implementation of FATF Recommendation 32 on Cash Couriers" making use of funding by Canada (UNODC, 2017).

Beyond these very specific efforts in the aftermath of the 2010 MER, the longer running engagements of both CICAD and UNDCP/UNODC with El Salvador were strongly dependent on US funding. In the mid-1990s when the narcotics oriented groundwork of AML policy was laid in El Salvador, UNDCP was financed by around 90% through voluntary contributions accounting for a total between USD 50 and 64 million (United Nations, 1997a, p. 22). This made UNDCP dependent "on earmarked contributions from a relatively small number of donor countries for special-purpose activities" (United Nations, 1997b). While the amount of country specific contributions could not be identified for the same time period, in voluntary donor contributions, the US is generally regarded as the main contributor. In 1999 for example, the US financed USD 25 million out of USD 62 million in total pledges for the organisation – well over double the amount of USD 9 million pledged by Italy as the second largest donor (Jensema & Thoumi, n.d., pp. 1-2).

UNODC as UNDCP successor continued to be "careful to avoid explicitly noting the dominance of the United States" (Bewley-Taylor & Trace, 2006, p. 5). CICAD's annual report for 1999 in turn stated the sum of US funds received at USD 4.97 million with the next largest contributor Japan coming in at USD 390,000 (CICAD, 2000, p. 43).

The glimpse into the financial contributions to CICAD and UNDCP/UNODC served to highlight a characteristic of multilateral organisations. While in this thesis the analytical decision was made to generally regard organisations like the UN, OAS or indeed the FATF and FSRBs as unitary actors, they could also be conceptualised as forums in and through which countries exercise their influence. This valid and important point has also been explored in the literature review. Funding plays a very important role in defining the power differential between an international organisation and its member states. If an organisation has only limited budgetary independence, voluntary contributions can very well be decisive on how organisations act within the margins of their mandate. In this regard, UNODC appears as an organisation very prone to member state influence with earmarked special purpose funding accounting for almost 99% of its total budget in 2018 (UNODC, 2019, pp. 142, 145).

In addition to indirectly exerting external influence through its position in international and regional organisations, the US also engaged in more readily observable direct activities regarding AML policy transfer to El Salvador. It built on its history as one of the most engaged international parties in El Salvador's security policy during the country's civil war. During this time, it provided over USD 1 billion in military aid to the government of El Salvador (United States General Accounting Office, 1991). The US was thus well positioned to influence El Salvador's emerging AML policy when a profound remodelling of public security governance in El Salvador took place as part of the country's peace process. The end of this war and the Cold War coincided with the further rise of anti-narcotics as a foreign policy priority of the US government during the 1990s. El Salvador was of strategic importance to achieve the goal of reducing drug supply in the US due to its location on the cocaine transit route from South America.

Against the backdrop of the Cold War during the 1980s, El Salvador's government forces had received strong support from the US against guerrillas of the FMLN. The US was thus heavily invested in the country's security sector and its reform which facilitate advancing its anti-narcotics policy as a foreign policy priority of the 1980s and 1990s. As a result, the US emerged as the most important bilateral external influence on AML policy in El Salvador. The US influenced the development of domestic AML policy at least since its inception at the national level in 1991. At this early stage, US government agencies targeted actors of El Salvador's law enforcement and the judiciary to develop AML policy in the direction of a counter narcotics policy. Building on its existing support for El Salvador's government, the US through the Drug Enforcement Administration (DEA) facilitated the creation of the UEA in 1990, an "institution built entirely through U.S. assistance" (Popkin, 2000, p. 184). The 1991 Drug Law then assigned investigative powers for money laundering cases to the UEA (Diario Oficial, 1991, pp. 6-7). Given the extend of the US presence in El Salvador's security sector, its expertise in this policy field, and the US' foreign policy priority assigned to the War on Drugs (particularly after the end of the Cold War), it seems highly plausible that the US was involved at least as an advisor in the formulation of the Drug Law.

After the 1992 peace accords and at the request of El Salvador's government, the US became the single most important international donor for the formation of the PNC. In the same year, the DEA established an office in the country. Through these strong ties, the US provided training for the new police force transmitting US knowledge and skills on policing (Costa, 1995, pp. 377-378). The US embassy and the DEA lobbied to ensure the transition of almost all UEA personnel, a total of 430 officers, into the newly created PNC (Popkin, 2000, p. 184). Former UEA officers we not necessarily assigned to drug-control positions but also to important decision making and information positions throughout the PNC. The US was for example successful in its efforts to install the former head of UEA as Deputy Director of Operations in the PNC. (Costa, 1995, pp. 373-174). This strategic distribution of personnel from an institution closely tied with the US anti-narcotics agencies facilitated future knowledge transmission on drug related AML policy to the country's public security sector.

Following its support during the immediate transition period, the US initiated in 1997 plans for establishing an International Law Enforcement Academy (ILEA) in El Salvador. The ILEA San Salvador became operational in 2005 and offered more permanency for knowledge and skill transfer through training courses. It was initially housed at El Salvador's own policy academy (*Academia Nacional de Seguridad Pública*, ANSP) before moving to its own compound in 2012. ILEA's goal was assistance in public security provision by increasing the capacity of trained personnel to "contribute at the regional level to diminish the insecurity caused by transnational crime" (ILEA, 2011, p. 26). While staffed by personnel from the US and El Salvador, its reach was regional. Police officers from any Latin American and Caribbean country were eligible to participate in training seminars. The courses focussed on transnational organised crime with "terrorism, drug trafficking, money laundering and gangs" (Interview E4, 2011, p. 6) amongst ILEA's priority areas.

During the research period, ILEA's course programme contained regular seminars and modules on money laundering investigations. In 2011 for example, the United States' Internal Revenue Service (IRS) delivered an AML training course to 32 students from El Salvador. In 2013 it trained 35 law enforcement personnel from Belize, Costa Rica, Dominican Republic, El Salvador, Mexico and Panama (Ministerio de Justicia y Seguridad Pública, 2012, p. 43). The IRS continued to teach broader financial investigative techniques in 2019 as well as the use of criminal intelligence by the Federal Bureau of Investigation (FBI) (U.S. Department of State, 2019). Further AML specific training was coordinated by the DEA (U.S. Department of State, 2019) which indicated a continued importance on narcotics focussed AML investigations for US technical assistance offers. Specialised AML training was provided for the UIF by the U.S. Immigration and Customs Enforcement (ICE) Academy. This was however only delivered to one official with the recommendation to include more personnel in the future and institutionalise a permanent training programme (CFATF, 2013a, pp. 7-8).

The U.S. Department of the Treasury included El Salvador in a technical training and advisory programme as part of its Office of Technical Assistance (OTA) between 2013 and 2016 (OTA, 2016, p. 5). Evidence of OTA work in El Salvador was identified as early as 2005 (Barclay, 2005). One of the first activities in the 2013-2016 programme was facilitating El Salvador's participation in a regional workshop on DNFBPS regulation. Attendance from El Salvador included the UIF, "SSF, the Superintendence of Business Obligations and the National Anti-Drug Commission with the collaboration from the Ministries of Finance and Foreign Affairs, the National Records Center" (CFATF, 2013b, p. 7). Two sources financed the training programme: the U.S. Treasury's own funds for technical assistance (TIATA) as well as the Central American Regional Security Initiative (CARSI) administered by the US State Department's Bureau of International Narcotics and Law Enforcement Affairs (INL) (OTA, 2016, p. 5). The training programme had three main goals, to "(a) strengthen the FIU", "(b) support effective, risk-based AML/CFT supervision" and "(c) continue to involve […] stakeholders in regional workshops and other activities as part of […] CARSI" (ibid.).

A direct outcome of the 2013 workshop was the development of an action plan for DNFBP supervision (CFATF, 2013b, pp. 7-8). In cooperation with CFATF and the Spanish development cooperation OTA workshops in El Salvador also facilitated UIF and SSF engaging with DNFBPs, further contributing to policy transfer in this area (CFATF, 2014a, pp. 47, 54, 68). Additional areas for knowledge and skill transfer were risk based supervision (ibid., p. 14) and the use of new technologies for money laundering (ibid., p. 41). OTA assistance in this regard included a reviewing the draft "Technical Rules on Money Laundering and Terrorist Financing" with its observations being included in the final draft (ibid., p. 34). The Technical Rules complemented the UIF's Guidelines as regulatory AML framework developed by the Central Reserve Bank as El Salvador's then financial market regulator. Overall, the CFATF's 9th follow-up report saw OTA assistance contributing to compliance with FATF Recommendations 5, 12, 16, 23, 24, 26 and 30.

The US treasury involvement in direct transfer of AML policy knowledge and skills to El Salvador was a long standing practice. An interviewed AML policy legal expert from BVES informed that US Treasury training in Panama around 1996 were amongst the first trainings given to El Salvadoran professionals. "The topic of money laundering was in fashion at the time" to "prevent the contamination [of the financial market] by money laundering practices" (Interview E13, 2011, p. 6). The political driver for this fashion in El Salvador was "the American embassy" which "hosted the majority of courses" (Interview E13, 2011, p. 7). The interview partner also confirmed the importance of US anti-narcotics policy in driving AML transfer through technical assistance. To him "the interest of the United States appeared to be the issue of blocking the outflow of drug traffickers' money so they would not have a place to invest" (Interview E13, 2011, p. 8). These courses did not only transfer knowledge and skills but also created a densely knit network of AML professionals in El Salvador for which, due to lack of other training opportunities, "assist the same seminars [...] to which we all go […] so we see each other's faces again every time there is a seminar or a course" (Interview E13, 2011, p. 13).

The US also effectively used financial incentives as a governance mode to facilitate AML policy transfer by conditioning a large scale investment programme as part of its public development assistance programme Millennium Challenge Corporation (MCC). A conditional grant of USD 277 million called FOMILENIO II was assigned to El Salvador in September 2013. The set of conditions included passing laws on asset forfeiture and public-private partnerships, appointment of a director and deputy director to a specialised unit for financial investigations in the PNC, and issuance of a decree to bring agricultural production in line with the US free trade agreement with Central America and the Dominican Republic (CAFTA-DR). The more specifically AML related condition for the grant's disbursement was increased compliance with the FATF Recommendations by addressing the observations of the 2010 MER (Seelke, 2014, p. 18). In effect, signing of FOMILENIO II was held back until the Legislative Assembly passed an amendment of the AML Law in December 2013 and additional PEPs regulations in August 2014 (Diario Oficial, 2014d, pp. 4-5). The conditions were agreed between El Salvador and the US in the last year in government of president Mauricio Funes. His administration was still in place when the first AML reform package passed the legislature in 2013. Additional policy reforms were introduced in the 2014 and 2015 as four more amendments to the AML Law under his successor, President Sanchez Cerén (FMLN) who had taken office in June 2014.

Controversy on MCC conditionality was expressed in public statements with regard to AML reform. High ranking government officials criticised the conditionality of the investment as an instrument of external influence. A call by the US ambassador to President Sánchez Cerén (2014-2019) the day after the amendment of July 2014 passed the legislature in which she reportedly "expressed her concern about the non-inclusion of family members of public officials" in the AML Law (El Diario de Hoy, 2014b) sparked the debate. Sánchez Cerén's Vice-President Óscar Ortiz then publicly argued that "we cannot make laws simply and purely for an economic programme" (La Prensa Gráfica, 2014a). The Technical Secretary of the Presidency Roberto Lorenzana stated that "the world should not be like that, that in change for a little money we would have to modify our legislation" (ibid.). As a reaction, the US ambassador in San Salvador clarified, that El Salvador had itself opted to apply for MCC funding and proposed the set of reforms "'to improve the investment climate'" that should therefore not be seen as "'impositions'" (La Prensa Gráfica, 2014a). The reforms would be passed not "'to please the United States'" but "'for the medium and long term benefit of El Salvador'" (El Diario de Hoy, 2014c).

The non-hierarchical conditionality was successful in advancing policy transfer by linking AML to other issues, specifically investment interests. The prospect of the grant led to “the Parliament hurrying up” (La Nación, 2013) its approval process of AML reforms already in 2013. One of the contentious points delaying the legislative process in 2013 was disagreement between ARENA and FMLN legislators as well as the president about including media companies and political parties as regulated entities (La Nación, 2013). After the approval of the 2013 amendment, complying with the FATF Recommendations on PEPs was the last of the conditions El Salvador needed to meet before disbursement (La Prensa Gráfica, 2014b; Rose, 2014). After passing the final AML Law amendment required to meet the disbursement criteria in August 2014, the MCC’s press release on the signing the compact in September 2014 underlined that in “the past year, the Government of El Salvador has taken steps to […] improve the government’s ability to address money laundering and financial crimes” (MCC, 2014).

Conservative sectors in politics and business were supportive of the conditions set for FOMILENIO II. ARENA’s former Foreign Minister Óscar Santamaría accused the FMLN government of deliberately passing insufficient AML legislation “in a provocative manner to [achieve that] the United States would decide not to disburse” the programme for the government to “have an excuse to search for assistance from allied countries like Russia, China, Venezuela” and others (La Prensa Gráfica, 2014a). AML policy was again linked to other political issues, in this case foreign relations to different country groupings. The Salvadoran Foundation for Economic and Social Development (*Fundación Salvadoreña para el Desarrollo Económico y Social*, FUSADES), an influential think tank closely linked to the business sector, stated publicly that the “Legislative Assembly must emit the regulations as soon as possible as the approval of incomplete reforms in the past has delayed the good evaluation of El Salvador and the signing of the agreement which would permit accessing FOMOLIN II” (FUSADES, 2014, p. 2). FUSADES was not identified before as a participant in the public debate on AML. It intervened shortly before the vote on the July 2014 amendment and after the 2013 amendment had unexpectedly excluded PEPs regulations, which was insufficient for meeting the MCC’s requirements. Grant conditionality thus broadened the actor configuration underlying AML policy, at least temporarily.

While not necessary to fulfil the MCC’s conditions for disbursement, the Government of El Salvador further committed to strengthening its regulation of cash transfers in a letter to the US embassy informing on the AML reform steps planned to meet the conditions (La Prensa Gráfica, 2014c). Once made, this apparently unilateral commitment by the government created an additional external obligation with the US. This contributed to regulations on cross-border cash transfer being passed as final step of the 2011-2015 AML reform period in August 2015 (Diario Oficial, 2015b). From a governance perspective conditionality of the FOMELINIO II programme highlights how financial incentives can effectively facility policy transfer at least at the level of legal norms. Linking the investment package to AML policy reform successfully locked in policy decisions beyond a presidential turn and activated advocacy work in El Salvador. The political debate it sparked with concerns of national sovereignty also highlighted how it also provoked resistance.

Independent of the normative debate on the issue, that government officials saw it necessary to push back against conditionality and finally gave into the demands underlines the effectiveness grant conditionality had in transferring AML legislative and regulatory policy to El Salvador. While the ambassador's statement and political reactions also constitute instanced of arguing and persuasion, they were constituted by the underlying grant offer. It therefore seemed prudent to ascribe the policy transfer contribution to grant conditionality rather than the accompanying debates that might have reinforced or hindered it by lowering or increasing political resistance against external influence.

FATF/CFATF, the UN, OAS and the US were the most influential external actors identified influencing AML policy transfer to El Salvador. The following paragraphs present additional actors whose actions were more restricted but nevertheless had an impact on policy transfer through the application of non-hierarchical governance modes: the Egmont Group through incentives and sanctions and multilateral development banks such as the World Bank, Inter-American Development Bank (IDB) and the Central American Bank for Economic Integration (CABEI, in Spanish BCIE) through capacity building.

The Egmont Group provided both an incentive and sanctioning potential. Both were instilled in membership of the organisation. Being a member allowed FIUs access to financial intelligence information of other member FIUs provided in the Egmont Secure Network. An additional benefit was experience exchange between the participating FIUs through the group's working groups and training programmes. A membership in the Egmont Group also entailed a gain in prestige by approval of this international body. Being a member required that an FIU was sufficiently well established to comply with international quality standards. Group membership could thus be understood as a secondary international standard specifically assessing FIUs and their level of international integration. It thus provided access to external legitimacy as a potential power resource for the UIF. While membership in the Egmont Group was voluntary, an FIU's membership status was considered in mutual evaluation reports. Reversing the positive effects of membership, this created a sanctioning power for the Egmont Group derived from the FATF (which in turn derived its sanctioning power from member states imposing financial market sanctions).

The Egmont Group successfully applied this mix of incentive and sanction associated with its membership status as governance mode during the research period. In the case of El Salvador, the suspension of the UIF's membership in the Egmont Group impacted negatively on the country' compliance evaluation concerning Recommendations 13, 26, 35 and 40. It created reputational damage and increased the risk of protective countermeasure being taken by business partners of the country's financial system.

The suspension from Egmont lasted from May 2009 till July 2010 and was lifted due to the Legislative Assembly passing CFT legislation in May 2010 (Egmont Group, 2010, p. 25). The UIF' suspension induced a reform of El Salvador's CFT legislation that was already on the way when the MER was published. The reform was promoted by the "FIU together with other government dependencies" (CFATF, 2010a, p. 47). Decree 342 created reporting obligations for private sector entities to the UIF in cases of FT suspicion as well as with regard to detecting persons mentioned in terrorist financing lists. It also allowed the UIF to share this information with national and international counterparts (Diario Oficial, 2010, p. 18). While the legal reform was not directly AML related but focused on financing of terrorism, the subsequent reinstatement of the UIF as an Egmont Group member had an immediate positive effect on compliance with the 40 Recommendations also with regard to AML (CFATF, 2010c, p. 4).

Although not in the timeframe of this research, the Egmont Group again suspended the membership of El Salvador's UIF between 2018 and 2019. It is worth noting that the Egmont Group's based its decision on a "continuous lack of compliance with Egmont Group principles relating to operational independence and autonomy" (Egmont Group, 2018, p. 2) – an issue that was also mentioned in the 2010 MER. Backdrop to the suspension was a conflict between the FGR and President Sánchez Cerén who vetoed a law granting more independence to the UIF. During his term, the activity of the FGR in financial investigations had significantly increased leading amongst others to corruption charges against former Attorney General Luis Martínez and ex-president Funes under whom Sánchez Cerén had served as Vice President (InSight Crime, 2018). Amongst others, public interest focussed on state funds of almost USD 1 billion reportedly used discretionary for illicit enrichment by at least five consecutive presidents that ruled the country since 1994 (El Faro, 2017). The proposed law intended to improve the AML preventions system, strengthening of the UIF through the creation of a Financial Analysis Unit at the FGR and the establishment of an Inter-Institutional Committee for the Prevention of Money Laundering and Financing of Terrorism (La Prensa Gráfica, 2019).

Multilateral development banks mostly influenced AML policy transfer through technical assistance as capacity building. The World Bank contributed specifically to the country's compliance with Recommendations 5. It supported El Salvador in preparing a national risk assessment as part of a regional assistance programme (CFATF, 2013a, pp. 4-5). With the application of its "National Risk Assessment Tool" the World Bank aimed to "guide jurisdictions in assessing the ML/FT risks […] to design a more effective […] (AML/CFT) regime", "contribute to capacity building", as well as "raise awareness, and trigger interaction and cooperation among the stakeholders from governments and the private sector" (World Bank, 2015, p. 1). With these goals, external influence by the World Bank aspired to more than knowledge and skill transfer. It aimed to both broaden the domestic actor constellation as well as increase the intensity of interactions within it.

Part of the exercise was a workshop held in San Salvador in June 2014 hosted by the FGR. In addition to the FGR and UIF, the national risk assessment involved further public and private actors in El Salvador, amongst them the FGR's organised crime units specialised in human trafficking, extortion and corruption, the Supreme Court, PNC, market supervisors as well as a number private market actors from the legal and financial sector including banks and money transfer agents (CFATF, n.d.). These formed a working group with individual teams focussing on the assessment of risks in specific areas like banking, securities or insurances (World Bank, 2015, pp. 1-2). In its final follow-up report, CFATF saw the shortcoming of El Salvador not having conducted a country risk study as "resolved significantly" based on the World Bank's contribution (CFATF, 2014a, pp. 6, further 31, 34-35). The BCR also drew on the results of the Financial Sector Assessment Programme implemented by the World Bank and the IMF to identify regulatory priorities (Interview E8, 2011, p. 9).

An interview partner from ABANSA stated that the World Bank had engaged with El Salvador on AML policy transfer as early as 2005, when the country was included in a regional assessment of AML capabilities. Amongst others, this sparked the creation of a public-private working group that would later develop into the IIC as El Salvador's central domestic AML policy development institution as presented in the domestic governance section (Interview E14, 2011, p. 1). The timing of the assessment also coincided and likely influenced the setting-up of an organisation for exchange between compliance officers within the financial system.

With the IDB another multilateral development bank also provided technical assistance to El Salvador. Similar to most other technical assistance actors, its efforts concentrated on a specific policy sub-field – in this case the regulation of DNFBPs. El Salvador engaged the IDB with a technical assistance request in June 2013, relatively far into the CFATF's follow-up process. Yet, contacts between UIF and IDB as well as draft TORs existed as early as December 2011 (Interview E11, 2011, p. 17). The IDB's central contributions were (i) an assessment of current DNFBPS regulation, including proposals for its reform, and (ii) an exchange including a physical internship placement for officials from El Salvador at Guatemala's financial market supervisors (*Intendencia de Verificación Especial*, IVE). In addition to the topic itself, the regulatory assessment as policy transfer through the IDB differed from that of the World Bank that it transferred information and knowledge into the legislative process rather than analytical skills and a tool to a specific group of actors. It was a more direct form of transfer in which the IDB in the end provided a custom made policy proposal for consideration of El Salvador's legislator. This cooperation with the IDB positively impacted on compliance with Recommendations 12, 16 and 24, 25, 26, 30 and 32 (CFATF, 2014b, p. 10; CFATF, 2014a, pp. 16, 48, 52, 54-55, 58, 68-69, 72, 75-76, 80, 82-83, 86, 91-98).

The assistance offered by CABEI was financed by development assistance funds of the government of Italy. It was as an AML prevention component of the larger "Plan for Assisting the Central American

Security Strategy" (CABEI, n.d., p. 101). The strategy was commissioned by the Central American Security Commission (CASC), an intergovernmental organisation founded as an outcome of the Esquipulas Process. Its membership comprised of Costa Rica, Honduras, El Salvador, Nicaragua, and Guatemala. With a scope of five countries and a budget of 1.7 million USD, the project was relatively small. Technical assistance included a workshop by Italian AML experts held in El Salvador in May 2013. It focussed on participants from law enforcement and the judiciary as well as supervisors and FIUs from SICA member countries. Despite this focus on law enforcement and the judiciary, the programmes objectives were framed as mainly economic oriented. Its goal was to "contribute to the stability of the region's financial systems by strengthening money laundering prevention systems and mechanisms […] considering the international standards and the Italian experience in the fight against organised crime and mafias" (CABEI, 2011). As briefly tapped on in the literature review, the Italian experience is generally underrepresented in the largely Anglophone AML literature. Its specific organised crime approach to money laundering shone through by a representative of Italy's specialised financial police unit (*Guardia di Finanza*) and a prosecutor of the National Anti-Mafia Bureau (*Direzione Investigativa Antimafia*) holding this workshop. Politically, the responsible Italian ministries were Justice, Interior and Foreign Affairs (ibid.).

4.1.4 External Provision of Statehood

External provision of statehood is a highly conditioned governance configuration. Its characteristics are that foreign states or international organisations have the ability to apply hierarchical governance modes or project a shadow of hierarchy into the domestic sphere that will lead to the provision of governance services. This has a high potential to generate conflict with sovereignty concerns of the state in whose domestic realm foreign hierarchical rule is carried out. The external provision of statehood in today's international system is therefore usually embedded in a formalised institutional environment. For this governance configuration to be effective, the resource and power distribution between external and domestic actors is assumed to be necessarily highly asymmetrical in favour of external actors.

The most likely case of a foreign state or international organisation applying hierarchical governance modes in AML governance in El Salvador would be the initiation of criminal proceedings against residents of the country potentially including extradition requests. The other likely case would be the imposition of financial sanctions like fines for local subsidiaries of financial institutions that are registered or potentially even headquartered in the US. The long arm jurisdiction of the US' AML policy makes this scenario feasible, given the strong presence of US registered banks in the country. It includes for example provisions creating criminal liability if US infrastructure like telecommunication services is used in the laundering process or if parts of financial services are carried out in the country. Many of these banks locate important business processes in their US headquarters, like for example the clearing process of financial transfers.

While US agencies used such possibilities in Mexico as presented in the following section, no such cases of external provision of statehood were identified in El Salvador. The observed role of US actors was limited to external influence rather than the outright direct provision of statehood. According to an interview partner of the SSF, superintendence institutions from Colombia and Panama did carry out oversight visits in El Salvador based on bilateral MoUs (Interview E5a, 2011, p. 3). Arguably though, external influence was successful enough in impacting on national AML policy development and delivery that US actors did not need to directly engage in hierarchical governance in El Salvador to pursue their interest. Given the political cost attached to hierarchical governance by outside actors that raise sovereignty concerns, it might be preferable to enable and trigger hierarchical governance by El Salvador. In addition to the categories of governance by, with or without the state, from an International Relations perspective, such AML governance in El Salvador could be described as *governance through government*.

The involvement of US security agencies in actual money laundering casework in El Salvador illustrated this relationship. Although not strictly qualifying as an application of hierarchical governance modes by an outside actor, the US did not only influence the normative environment and capacities of law enforcement and judicial actors in the country. It also provided criminal intelligence and investigative resources further enabling specific case work. An early example was a 2005 case of money laundering against Panamanian citizen Carlos P. in El Salvador. P. was accused of using a remittances company to transfer 10 million USD of proceeds derived from illegal narcotics trafficking from the US to El Salvador. Reports by the DEA facilitated the opening of proceedings against him (FGR, 2014c, p. 23). In a confidential cable, the US ambassador qualified the DEA's involvement as central to P.'s arrest which "would have been impressive if the [government of El Salvador] had broken the case. Instead, all evidence and information was provided to Salvadoran officials by Post DEA" (Barclay, 2005).

US involvement was not limited to the DEA and narcotics trafficking cases. In 2012 Peruvian Jorge H. as legal representative of CrediMás and two Salvadorans were accused of tax evasion and laundering USD 11.6 million. CrediMás was a US based pawnbroker offering credit in exchange for gold and other valuables in the Northern Triangle and Nicaragua (Mis finanzas en línea, 2012). Gold was then exported to the US. Through CrediMás being based in Miami, the FBI was able to provided information on the international transactions of the company that led to legal proceedings in El Salvador. The FBI's involvement appeared to have been vital for the case as according to the PNC, the "'investigation was born as a product of the coordination with the United States' embassy with which we have a very good coordination'" (La Prensa Gráfica, 2012). This coordination did not equally involve all El Salvadoran agencies as in contrast to the PNC, the FGR "negated that the FBI has participated in the proceedings" (ibid.).

While the two presented cases are singular examples, it appears worth investigating further how international cooperation of law enforcement actors leads to money laundering cases in countries that face trouble initiating complex money laundering cases themselves. The issue with deriving a generalizable point from the data is that such information is usually not publicly available complicating a methodologically sound research process. The central role of the DEA in the case of Carlos P. for example would not have been available without the leak of US confidential diplomatic cables by Chelsea Manning through WikiLeaks. The role of the FBI in the CrediMás case was reported contradictory by PNC and FGR. Yet, this anecdotal data points to the possibility of hierarchical governance as co-production between two states. In the observed scenario, an external actor lent operational resources and the host state legitimacy. Criminal intelligence was offered as a hierarchical governance resource to public security actors in El Salvador which then carried out the legal proceedings through national institutions. While this seems plausible, more insights would be needed to assess the impact of institutional settings and power differential between actors in the US and El Salvador as well as inside El Salvador on governance effectiveness.

4.1.5 Competition Systems

This sub-section analyses the empirical effect of competition that impacted on policy transfer of the FATF Recommendations observed in El Salvador. Competition systems as a type of governance configuration capture how economic incentives within a market lead to the provision of governance services. An important characteristic of competition systems are the institutional rules that govern markets. These could for example foster AML policy development and implementation if AML prevention is a legal prerequisite to participate in a given market. Alternatively, a well working AML prevention system might also provide a relative competitive advantage for market participants if it makes them more attractive for investors and customers or otherwise increases their market position. AML policy transfer through competition systems should thus occur, if market participants see it as beneficial to model their AML prevention system on the FATF standards or try to influence the development of the institutional rules for the market in this direction. In these cases, the FATF Recommendations or national legislation in other countries are likely to present policy blue prints for market participants to design their internal AML systems on.

To achieve such goals, market participants in legal markets are usually limited to non-hierarchical governance modes at their disposal. State actors that create and maintain competition in the market can deploy hierarchical or non-hierarchical means to influence the institutional framework. Actors that create and maintain competition with the intention to foster the provision of governance services are expected to require sufficient material or ideational resources for a significant power differential to effectively steer market participants towards this goal. The observed effects on policy transfer in El Salvador were differentiated by economic sectors. Competition effects facilitated compliance with the FATF Recommendations for the financial sector but not for the non-financial sector. The central driver for the transfer process was the economic incentive for banks to offer financial services in El Salvador while at the same time being able to operate in international markets without risking supervisory or reputational repercussions.

Within a highly integrated transnational financial market, particularly transnational banks transferred AML policies as part of their internal governance systems with a focus on compliance and risk management. These internal policies were at times more demanding than domestic regulatory standards. As a result, international banks engaged non-hierarchical governance modes like knowledge and skills transfer as well as regulatory lobbying with the goal to increase El Salvador's compliance with those FATF Recommendations required for international financial market integration. Foreign and domestic state actors set-up competition within the financial market applying a distinguishable mix of hierarchical steering and the projection of a shadow of hierarchy through financial market regulation and oversight. The institutional rules were strongly influenced again by US actors due to their salience in the regional (and global) financial market. El Salvador's economy had particularly close ties with the US financial market. Not only did El Salvador's government officially dollarize the economy in 2001. Its GDP to remittances ratio was also exceptionally high with large amounts of USD remittances received from migrants to the US. As a result, international and US regulated banks had a strong standing in its financial system.

One important economic factor driving AML policy transfer through competition systems was El Salvador's exceptional role in the remittances market. Remittances were mostly generated by the large proportion of Salvadorans living in the US: 1.1 million in 2008 with El Salvador's population counting about 6 million people at the time. Salvadoran immigration to the US was remarkable not only in proportion to its relatively small population but also in total numbers. The Migration Policy Institute observed in 2010 that "the immigrant group from this tiny Central American country is now nearly as large as the immigrant population from much larger China" (Migration Policy Institute, 2010).

Remittances in El Salvador accounted for one of the highest rates worldwide equivalent to between 18% and 22% of the countries annual GDP between 2004 and 2017 (World Bank, 2019), a total of USD 3.5 billion for example in 2010 (World Bank, 2020). The role played by remittances for social security was even higher. They constituted 50% of household income of recipient households. 79% of the recipient households were classified as "poor or at risk of falling into poverty" (IDB, 2016). One visible sign of the dollar cash flow was the country's status as net exporter of USD 100 bills to the US with the BCR not importing any such notes (Interview E2, 2011, p. 41). In addition to remittances, El Salvador was also strongly connected to the US through the real economy with merchandise exports to the US accounting on average for 12% of its GDP between 2003 and 2007 (IMF, 2010, pp. 37, 55). There were thus a strong macro-economic reasons for El Salvador to seek compliance with rules such as the FATF Recommendations allowing the country to participate in international financial transfers without additional costs for AML risk mitigation measures.

This high level of economic exchange and resulting cash flows between El Salvador and the US could be used to disguise even large scale illicit financial flows. Placement of USD in cash in El Salvador did not require prior conversion to local currency which decreased the risk of detection in comparison to other countries. This created incentives for money laundering in El Salvador but at the same time also for AML policy transfer to prevent money laundering and thus reduce reputational risk for the market place. The dependence of large parts of El Salvador's population and economy on US remittances increased the economic, social and therefore political risk should potential sanctions for AML non-compliance increase the costs of financial transfers or threaten exclusion of the country from participation in the international financial market. According to ABANSA staff, to participate in the remittances market, banks in the United States transferring money to El Salvador would for example "ask local banks for information to ensure that the local bank complies with the Recommendations, complies with local laws, and complies with the requirements of the United States" (Interview E14, 2011, p. 26).

The impact of this economic incentive on policy transfer was empirically observed, for example in an interview with BCR staff as the central regulatory body for AML in the financial sector. The interviewed made it very clear that the driver for AML regulation targeting the financial market were economic rather than public security concerns: "*Currently, basically sticking to the international standards, that is the objective. […] To guarantee that the businesses developed by banks manage to position themselves in a globalised sphere and in order to be attractive for international shareholders to participate in the Salvadoran market place, because it complies with the international standards. This would be the goal*" (Interview E8, 2011, p. 12). The BCR saw a direct relationship between adherence to international standards and desirable economic development effects. "*One would seek that in the level that one gets closer to the standards, the local businesses are in equal conditions as those markets called 'the First World' and not anymore an emerging economy. One would think that this increase in efficiency would generate some development progress, in the national income distribution, as improvements at the macro level for sticking to the standards*" (ibid., p. 13).

The compliance incentive provided by strong economic ties with the US was reinforced by the internationalisation of El Salvador's financial sector that saw a strong influx of foreign direct investment in the 2000s. By 2009 the country had "the largest presence of foreign banks among Central American countries, with two domestic banks (both state-owned) accounting for only 5 percent of banking assets"

(IMF, 2010, p. 9). Foreign banks dominated the country's financial market with 64% of assets, none of which were owned by private domestic banks since 2007. In 2008 and 2009 over 90% of loans formally registered in the country were provided by foreign banking institutions. These also captured over 90% of total deposits (IMF, 2010, p. 30). In 2014, El Salvador reported to the CFATF that about 93% of its banks were foreign-owned as well as 81% of its insurance and 43% of its stock market (CFATF, 2014b, p. 2).

Mayor international banks that acquired banks in El Salvador during the 2000s include Scotiabank (Canadian, acquired Banco de Comercio in 2005), HSBC (British; acquired Banistmo in 2006 and sold its operations in El Salvador to Colombian Banco Davivienda in 2012), Citibank (US American, acquired Banco Cuscatlan in 2007), and Bancolombia (Colombian, acquired Banco Agrícola in 2007). At a smaller scale foreign niche banks complemented the market. An example was ProCredit, a German bank that focussed on sustainable financing of small and medium sized enterprises as well as financial market development. Pushed by home market regulation and pulled by market interests in El Salvador, the presence of international banks contributed to a regulatory alignment of the domestic financial market institutions with international standards. The arrival of international banks also intensified the links between regulators in El Salvador and the respective home country of financial institutions. SSF for example entered supervisory agreements with its homologues in the US and Colombia when Citibank and Bancolombia established their operations in the country (Interview E7, 2011, p. 24).

Subsidiaries of international banks with operations in El Salvador were inclined to spread their regulatory standards and bring the domestic context as close as necessary to their home market regulations to avoid supervisory action. The US had in the past proven its general willingness and capacity to comply with Recommendation 21 enforcing counter measures against "countries that apply the FATF Recommendations insufficiently" (FATF, 2006b, pp. 137-140; see also literature review). As also further discussed below on empirically observed cases in Mexico (like the USD 1.9 billion sum of forfeiture and fine by HSBC for money laundering violations) foreign subsidiaries of banks that operated in the US were required to comply with domestic AML regulations or face a credible threat of supervisory action and potentially criminal charges. Citibank obviously fell under US regulation as a bank headquartered in New York. However, HSBC as a British bank also offered customers a branch network in the US and Scotiabank from Canada offered financial services for trade and investment. With a much smaller institutional footprint in the country, Bancolombia also fell under US regulatory oversight and banking supervision as at least since 1995, when it was listed at the New York Stock Exchange, and through established correspondence banking relationships with US financial institutions.

While the US was not observed directly exerting hierarchical governance modes in El Salvador to enforce AML policy through fines and criminal proceedings, it still projected a shadow of hierarchy on the banking sector. As ABANSA stated, "[e]verything from [the US] affects us because many banks are registered in New York" (Interview E14, 2011, p. 9). This led to banking institutions engaging in direct internal policy transfer. PEPs regulation for example was a highly contentious topic in domestic politics as discussed above. However, in practice, many international banks had been applying PEPs lists for years prior to passing of the national legislation required by the FATF Recommendations and pushed for in the CFATF's 2010 MER. The same interview partner stated that "the international banks apply this policy for years in El Salvador. All banks have their PEPs-lists, all the banks have the UN list and the OFAC [Office of Foreign Assets Control of the US Department of the Treasury] list and there are others that have about 30 lists more" (ibid., p. 12). The reason was given as risks and costs consideration when working in transnational markets: "For banks it is easier to create a regulation based on international policies that all of them have, agree on a regulation and tell the government: look, on the issue of PEPs I recommend you to pass a law that obliges me to do this" (Interview E14, 2011, pp. 12-13).

Interviews conducted with banking representatives in 2011 confirmed the orientation on US regulatory requirements rather than the less demanding regulatory standards of El Salvador. International banks for example safeguarded against PEP associated risks by employing World-Check as a commercial provider of PEP risk data and developing internal lists well before these were regulated in El Salvador for the first time in 2014 (Interview E10a, 2011). Similarly for an interviewed international insurance company active in El Salvador, lists provided by OFAC were used as blacklists due to internal regulations when entering new customer relations (Interview E9, 2011, p. 20). The banking sector played a key role due to its salience in El Salvador's wider financial sector comprised mainly of conglomerates. These financial service groups, usually with a bank at the core, would also offer services such as insurances, brokerage or credit cards. The internal regulations and positions on AML policy were unified within such conglomerates which in turn often operated as local subsidiaries of larger international banks. These, as interviewed ABANSA staff noted, "become sometimes more demanding than the actual supervisor" (Interview E14, 2011, p. 7).

SSF personnel was conscious that "in some cases the internal manuals of banking entities are more rigid" (Interview E7, 2011, p. 4, cf. also p. 25) than the domestic regulatory requirements and would for example implement a USD 10,000 reporting threshold. The amount was far lower than the El Salvadoran reporting limit of USD 57,000 but complied with the emerging international standard and also established US regulation. Interviewed banking representatives confirmed the salience of internal regulation which was usually stricter than Salvadoran law. Even for smaller institutions, the system ensuring compliance "regarding money laundering very clearly comes from our holding" (Interview E2, 2011, p. 23), for example regarding PEP lists or the implementation of specialised software. BCR personnel observed that international banks operating in El Salvador "include the norms of their home countries [in their regulations] and there it is a little more elevated than those than can be had here" (Interview E8, 2011, p. 14). A challenge for directly transferring internal regulations of international banks to laws and regulations in El Salvador was presented by the domestic market. SSF personnel were sceptical to “ask a small cooperative bank from […] Sonsonate […] to apply policies of Citi” (Interview E7, 2011, p. 26) mainly with regard to the costs that this would generate.

In addition to applying internal compliance regulations in Salvadoran subsidiaries, international banks also invested in staff training. Due to their central role prescribed by the AML Law, an important focus lay on compliance officers. Their professional training was carried out in parts in-house and by private third party providers like the US registered Association of Certified Anti-Money Laundering Specialists (ACAMS). ACAMS offered vocational training primarily for compliance officers but SSF personnel was also certified by the organisation (CFATF, 2014a, p. 63). ABANSA was mentioned along with the UIF as one of two institutions from El Salvador which provided AML specific training to SSF personnel (Interview E7, 2011, p. 22). Another certifying agency of SSF personnel was Inter-American Community Affairs, a consultancy provider about which only very limited data could be retrieved. Globally, it was one of the first organisations to engage in a structured training of AML professionals for the private sector. In the field research in both El Salvador and Mexico, it clearly transpired that ACAMS certification was seen as an industry standard for AML professionals. ACAMS was a large scale provider of AML conferences and trainings in the region. At least in El Salvador, it also acted as an agent for knowledge transfer establishing AML capacity in El Salvador’s public sector.

In-house training was not only conducted by the large market participants but also by much smaller institutions like ProCredit. The bank management identified that the level of previous education on compliance and AML in El Salvador was too low as to directly recruit personnel for such positions domestically. The initial recruitment of compliance personnel to allow for the required in-house knowledge was done from other financial institution in El Salvador. Such personnel transfer also contributed to the spread of AML knowledge and skills within the financial system. Recruitment from abroad was seen as too expensive as most foreign educated personnel would not return to El Salvador due to better earning opportunities abroad (Interview E2, 2011, pp. 3-4). Due to the limited offer on the domestic job market, ProCredit opted to offer in-house training to compensate for this situation (ibid., pp. 3-8). The bank had its own training facility with 12 teachers with programmes that included AML. This training was complemented with national and international seminars providing opportunities for exchange with other entities. In 2011, ProCredit’s one week induction course on AML included sessions with SSF, BCR and ABANSA as part of its six months traineeship for new employees (ibid., pp. 6-7).

In addition to market regulation and supervision requirements by foreign and domestic regulators, banks based their direct AML policy in El Salvador on considerations of general reputational risk. They operated in a country located on a major international drug trafficking route, with weak money laundering control systems, very high remittances inflows and an official currency which was used in the world’s largest drug retail market. "*[Reputation] is intangible. It can change over time (for better or for worse). It is difficult to define. It is difficult to measure. It is difficult, if not impossible, to value (and is assigned no value by our accounting conventions). And yet it is, without question, among the most valuable assets of any company, particularly a global financial institution*" (Stansfield, 2006, p. 470). Operating in El Salvador put this asset at risk. Customers might shun away from banks used for drug money laundering and regulators might increase their scrutiny for banks with operations in El Salvador increasing their costs of doing business.

In this regard, banking representatives were aware that reputation was not only limited to a specific bank or banking as a sector but encompassed the market place as such. This generated self-interest in lobbying for regulation of the wider financial sector to include risk areas like remittances transfer (Interview E10a, 2011). An interviewed CFATF representative identified the resulting shared interest between the public and the private sector leading to cooperation on AML policy development: "The public and the private sector it is a partnership to protect the reputation of the country, to make sure that the system is working well – and that can't be done without the involvement of the private sector" (Interview E16, 2013, 17min). Interviews with the banking sector largely confirmed this drive of reputational concerns and internal self-regulation of international groups for compliance in the financial sector. Taking a wider view on the effects of money laundering for the reputation for El Salvador as a market place, "[..] the banking sector does not see this anymore as a problem of the state but as a problem for everyone. The banking sector is very aware that any bad qualification, any bad qualification of the country does not only affect the current governmental authorities but everyone" (Interview E14, 2011, p. 7).

ABANSA did not locate the ensuing responsibility for AML policy creation an implementation exclusively at the state. Instead, "[w]e cannot just leave it to the public authorities to solve something that affects all of us" (ibid., p. 34). It saw a distinct role for private sector involvement with the "most important thing in this process is cooperating with the state's entities to be able to elevate the compliance level of the country" (ibid., p. 24). However, this role was limited to assisting norm creation by state authorities and implementation of AML policies in the financial sector. While ABANSA for example recognised the budget limitation of El Salvador's AML system, it saw this outside its scope of action. Somewhat frustrated, the interview partner pointed out with regard to the UIF that "we cannot do anymore because, let's say, the private sector cannot solve the budgetary problems of the government. I cannot pay the prosecutors" (ibid., p. 20).

CFATF however saw external effects of banks high compliance levels with the FATF Recommendations It evaluate that due to comparatively high levels of bancarization in El Salvador the banking sector would also lower money laundering risks for non-financial businesses and professions (CFATF, 2010a, p. 106). The UIF equally observed this systemic effect of banking compliance based on competition that went into the wider financial system and the non-financial sector. If non-regulated or insufficiently supervised entities would want to use banking services, they were forced to implement AML policies within their own businesses. Banks would say: "*Look, unfortunately I will not be able to operate with you because you engage in certain [risky] activities and I don't have the calm, the trust that funds of questionable reputation will not enter [my bank]. So what do they do? Many of these institutions have created their compliance officer, have created their compliance rules at the work place. But the problem remains the same: the supervision*" (Interview E11, 2011, p. 21). Overall, the UIF identified the banking sector as "very good, very excellent" in its collaboration of AML investigations. The reason was explicitly identified as a reputational concern: "[…] they understand the meaning of denying to hand in information, because they are not only guided by ethical principles but because it also has a reputational component which does not allow them that one goes to a judge to tell them by force that they have to hand over evidence" (ibid., p. 8).

Similar competition effects were identified in the stock market. An AML policy driver was the intention of BVES to more closely integrate with the markets of Costa Rica and Panama under the Central American Market Association (*Asociación de Mercados de Centroamérica*, AMERCA). In the view of an interviewed BVES representative, participating in a larger integrated market with common and compatible rules would make El Salvador more attractive to foreign investors. This in turn contributed to policy transfer as BVES had "[…] exchange on AML practices because [El Salvador is] entering an international market. We have to see how Costa Rica is following its policy, how Panama is creating it and enter into similar treatment to maintain a shielding against money laundering in the regional market which is being created" (Interview E13, 2011, p. 2). As a concrete outcome of this exchange, in addition to the requirements of national legislation, BVES also created internal regulations including a transaction monitoring system that would allow rapid checks and follow-ups if unusually high transactions were detected (ibid., p. 4).

BVES international orientation became clear for example by stating that "[w]e don't want to be bad because the negative view is not the internal one, who is here will continue to come to the Salvadoran stock exchange, but it blocks external investment" (ibid., p. 17). One specific issue identified by BVES was potential negative effects of non-compliance with the FATF Recommendations' application. This could lead to not being recognised as "an organised market" by the US "Securities and Exchange Commission" which would lead to the El Salvadoran market becoming "more attractive for external investment" (ibid.). Actual compliance deficits and risks were seen as comparatively low. BVES mentioned that by the end of 2011, no stock market operator had ever refused to cooperate with an AML investigation. Client data was "normally handled in a very reserved way" (ibid., p. 5) and risk assessments were seen as low because money would enter the stock market only via banks (ibid., p. 10) referring to the gate keeper effect of banking compliance. What was identified as principal shortcoming of AML in El Salvador was supervision and enforcement of AML laws and regulations in the non-financial sector (ibid., pp. 15-16).

However, competition does not only create incentives that will foster compliance and lead to AML policy transfer. The higher direct and indirect costs of creating and running a compliance system also disincentives a push for stronger AML policy for actors with a higher risk tolerance. A goal might be to seek the minimally necessary compliance level required to avoid regulatory action while expanding the business and customer bases as much as possible. An interviewed compliance officer form an insurance company described how such different approaches played out within companies and firms. She saw AML policy as "a very critical topic in our country to eradicate certain things that are happening" (Interview E9, 2011, p. 2) probably referring to organised crime. She then emphasised at length that within the company, compliance was required with both the national legislation as well as the company's internal AML policy which were applied group wide. The holding would adapt its company policy to the local legislation (ibid., p. 12) but offered the possibility to deviate from internal policies if local circumstances made it necessary (ibid., p. 14). This is in line with the general observation of the financial sector applying AML policy because it was in its own self-interest and moreover prescribed by transnational company policy and potentially foreign regulations applying at headquarter level.

The interview partner then went on to identify a typical competition related tension in the company between sales and compliance. The sales staff initially resisted stronger application of internal rules when these were followed-up on more closely since the later 2000s: "Sales always feels disadvantages: We are asking more as local laws and policies!" to which she would reply with a reputation and risk management argument: "But we are really better covered" (ibid., p. 15). According to sales, due to the higher requirements, for example in requesting KYC documentation, the company would lose customers as competitors were less stringent (ibid., p. 16). Despite this competitive pressure, the interviewed compliance officer in her view could draw on support of both local management and group management in order to gradually increase norm acceptance in the company. As the interview partner put it: "A lot of support, I would not be here if not, I couldn't" (ibid.).

While at the beginning, compliance was seen "as the enemy of sales, this is not the case anymore" (ibid., p. 9). Instrumental for this change in addition to management support the interview partner identified awareness raising and training measures using practical examples (ibid., pp. 9-10). This would have led to deeper norm dissemination than just legislative action. As a result, the company was described as no longer easily accepting new customers that were unwilling to provide the requested documentation. However, that this behaviour was still identified in competitors raised questions both on the spread of AML policy compliance in El Salvador as well as revealing persisting competition incentives for non-compliance, at least in the short run. At the same time, insurance companies also shared knowledge by larger and more established companies informally revising internal regulations like manuals of smaller competitors with less specialised legal knowledge (ibid., p. 14).

In summary, the self-interest of financial market to establish an AML compliance system which met international market regulatory standards translated into policy transfer into the domestic market through reputational concerns, peer-learning and lobbying activities with El Salvadoran policy makers. Instead of the state unilaterally defining and enforcing collectively binding decisions, domestically the financial sector contributed to overall higher compliance rates through application of self-regulation that at time surpassed the domestic legal requirements. These efforts were however limited to those areas that were relevant for transnational financial market integration. Particularly El Salvador's internationalised banking sector faced high money laundering risks and therefore needed to demonstrate compliance with preventive measures to safeguard its reputation and avoid sanctions, especially regarding US market supervisors. El Salvador's KYC, CDD, record keeping and reporting regulations consequentially focussed on banks and financial conglomerates.

4.2 Case Study: Mexico[19]

Mexico was an early adopter of AML policies passing its first anti-money laundering law in 1989, prior even to the publication of the first FATF Recommendations. The country was also a founding member of the CFATF in 1992 and later transferred its FSRB membership to GAFISUD (today GAFILAT) in which most Latin American states are organised. Since 2000, Mexico is also a member of FATF. Despite this early and active international engagement with AML policy making, domestic policy objectives at times differed significantly from those prioritised at the international level by the FATF. As further detailed in sub-section 4.2.2, at the first introduction of AML in Mexico, the domestic policy focus lay on fiscal concerns and combatting tax evasion. Wider economic governance services related to financial market integrity and reputation increased in prominence since the mid to late 1990s in the context of the establishment of the North American Free Trade Agreement (NAFTA) and Mexico's markets opening up for international corporations. With rising violence levels related to drug trafficking, fighting organised crime became a central policy objective in the late 2000s. In parallel to these changing domestic policy objectives, the country undertook two major AML reforms between 1995-1997 and 2007-2014 [20] during which most policy transfer of the FATF Recommendations into the national environment occurred.

At least since 2000, the main public security concern related to money laundering in Mexico was seen as organised crime, in particular trade in illegal narcotics (cf. FATF, 2000, p. 11). Still in 2017, the US-government portrayed Mexican organised crime groups as holding a major role in the supply of narcotics to consumers in the United States with additional funds generated though kidnapping, extortion, human and firearms trafficking and other serious crimes (cf. US Department of State, 2017a, pp. 129-130). By providing market access through controlling cocaine trafficking routes to its northern neighbour, Mexican criminal organisations were able to capture a highly profitable bottleneck in the drug value chain. Building on well-established narcotics trafficking and contraband smuggling structures that trace back at least into the prohibition era, they took over this role from Colombian organisations when shipping drugs directly to the United States over the Pacific and the Caribbean became too dangerous through increased maritime interdiction activities since the late 1990s (cf. US Department of Justice, 2007, pp. 4-5).

Their strategic position at the US southern border gave Mexican criminal actors privileged access to a market worth billions of US-Dollars. Even though precise estimates are impossible, US and Mexican public agencies assumed that Mexican drug trafficking organisations received between USD 19 and 29 billion in cash annually (US Department of Homeland Security, 2010, p. ii). Parts of this money, non-cash value transfers and additional revenue from other crimes were distributed within criminal networks to pay for the illegal supply with drugs, weapons, and illicit services. Others were used to buy goods on legal markets,

[19] With approval of the dissertation supervisors, earlier versions of parts of this chapter were pre-published in the Journal of Money Laundering Control as Behrens 2015.

[20] For an overview see annex 7.1.

including luxury goods for consumption as well as investment goods such as planes needed for drug shipments (cf. US Department of Justice, 2010). Mexico's FIU estimated that between 2007 and 2012 the equivalent of almost USD 9 billion of illicit funds were laundered through the Mexican financial system alone (SHCP in Contralínea, 2013). Other, still conservative, estimates stated the total amount of money laundered by organised crime in Mexico at USD 10 billion annually (Brien, et al., 2011, p. 52).

While assuming their new position in the cocaine supply chain to the US, Mexican organised crime groups became the major contributors to a sharp increase in the country's homicide rates. These almost tripled between 2007 and 2010, reaching 23.7 homicides per 100,000 population from a previous level of 8.1 (Molzahn, et al., 2013, p. 5). For comparison, the UN estimated the world-wide average at 6.2 homicides per 100,000 in 2012 (UNODC, 2013, p. 12). Even though these figures were not equally distributed throughout the national territory, Mexico during this time could justifiably be described as an area of limited statehood with regard to public security provision and the monopoly on the use of force. In the words of Mexican journalist Ana Francisca Vega: "In many parts of the country the law that works is the law of drug traffickers" (El Economista, 2010a).

In this light, Mexican policy makers came to see money laundering policies as a way to "hit the criminals where it hurts them the most, in their finance" (Calderón, 2010). The Calderón government (2006-2012) made a reform of Mexico's AML policy part of its central political project to foster the rule of law and public security (Presidencia de la República, 2007, pp. 43-79; also Interview M18, 2011, p. 1). Combatting money laundering was also seen as "a strategy which would not lead to [armed] confrontations and fatalities" (El Economista, 2010b) which as a frequent criticism towards the increased use of state force during the Calderón presidency. AML was seen as an area "where attention in fighting organised crime has to be put, not in the shootouts in the streets […]" (Proceso, 2010a). This view to prioritise AML policies as less violent strategy was also shared by opposition politicians like the then party leader of the Party of the Democratic Revolution (*Partido de la Revolución Democratica*, PRD), Jesús Ortega (cf. El Economista, 2010c).

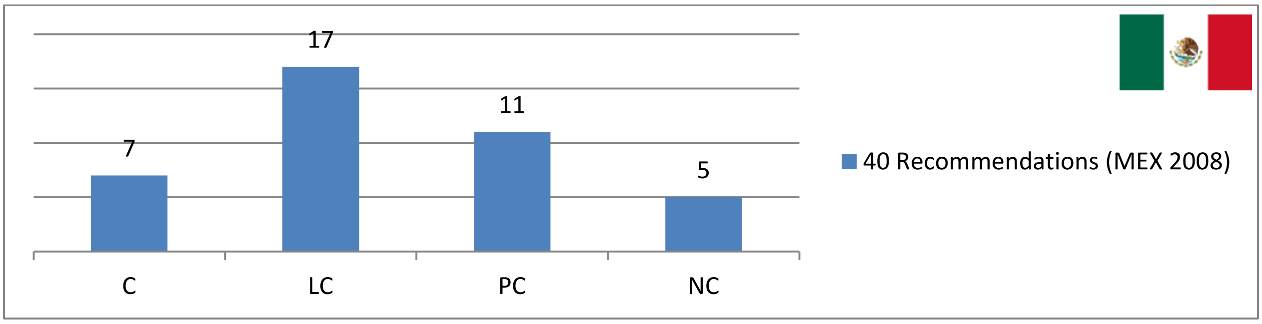
Between 2007 and 2014, Mexico's comprehensive AML policy reform included amongst others the introduction of the country's first dedicated anti-money laundering law (DOF, 2012a). The policy reform process focussed on the strengthening of prosecutorial policy aspects and the regulation of formerly unregulated sectors of the economy. While some observers like Edgardo Buscaglia saw the reform as a "predictable failure" (Buscaglia in Zeta, 2013) largely due to doubts about its effective implementation, early results indicated that Mexico's prosecutorial reform strategy yielded noteworthy effects (Behrens, 2015, pp. 28-30). The US Department of State for example observed a marked jump in prosecution rates for money laundering with 160 criminal convictions reached between November 2011 and November 2012 (US Department of State, 2013, p. 164). This presented roughly a doubling of the total number of convictions since Mexico first declared money laundering an offence in 1989. More recent studies however found that prosecution numbers have dropped again in recent years (cf. US Department of State, 2017a, p. 129) with the FATF 2018 MER registering an average of 32 convictions annually between 2013 and 2015 (FATF and GAFILAT, 2018, p. 65)[21].

Within this context, despite the limitations of statehood with regard to public security demonstrated by Mexico, interlocking governance configurations were observed that contributed to Mexico complying with parts of the FATF Recommendations as evaluated by the 2008 MER and subsequent follow-up reports. Public and private actors related to the financial system, particularly the banking system, have traditionally dominated a domestic governance configuration of delegation under conditions of limited statehood. Law enforcement and prosecution agencies, as well as entities involved in DNFBP regulation remained largely marginalised or even outside of this governance configuration. With regard to financial market regulations, Mexico's limitations in formulating and enforcing binding rules on market participants were partially offset by external influence, external provision of statehood and competition systems. These configurations did however not encompass domestic law enforcement and prosecution actors or the regulation of DNFBPs which remained largely uncompliant until the AML reform process initiated in 2007. Since then, the Mexican state embarked on a strategy to broaden the scope of AML regulations and increase its capacity to deploy hierarchical governance modes. This strategy increased Mexico's compliance level sufficiently to exit an enhanced FATF follow-up process in 2014.

4.2.1 Mexico's Compliance Pattern in 2008

Mexico's 2008 MER was jointly developed by the FATF, GAFISUD and the IMF. The evaluators saw Mexico compliant (C) with 7, largely compliant with 17, partially compliant with 11 and non-compliant with 5 of the 40 FATF Recommendations on anti-money laundering (FATF, 2008). The evaluation result led to both FATF and GAFISUD / GAFILAT subjecting Mexico to follow-up procedures. By 2014, Mexico had sufficiently addressed the mentioned shortcoming with regard to the Core and Key Recommendations as well as most other observations to be taken off the follow-up process in the FATF plenary of February 2014 (FATF, 2014a).

[21] An important caveat for these numbers is data inconsistencies which put in doubt the quality of the underlying statistics. An example is the FATF's own observations that between 2013 and 2015 the registered number of convictions in Mexico is much higher than the number of convicted persons. Again – these numbers should be taken as an indication of tendencies and magnitude rather than at face value.



Graphic 1: FATF compliance of Mexico in 2010.

A closer look at the 2008 MER evaluation showed in which areas Mexico was particularly successful or challenged to be compliant with the FATF Recommendations. The document revealed a clear pattern: Mexico complied mostly with Recommendations addressing the financial sector, in particular with regard to the banking system. The majority of the legal and regulatory structure for the core financial system was in place. With some exceptions, Mexico fulfilled record keeping and reporting standards in this sector and largely complied with CDD as well as enhanced due diligence. Equally, the state provided supervisory functions with regard to the core financial sector and the financial sector engaged in the development and implementation of AML programmes within its institutions. Domestic and international co-operation was sound, receiving on the most part an evaluation rating of largely compliant. Problems mostly emerged related to enforcement and particularly prosecution issues, as well as the regulation of DNFBPs and non-core financial sector services like money exchange and remittances services, as well as non-banking limited purpose (SOFOL) and multi-purpose (SOFOM) financial lending institutions.[22] The following paragraphs provide an overview of these findings.[23]

In 2008, the country was compliant with Recommendations 4, 10, 14, 19, 22, 29 and 40. With the exception of Recommendation 40 (other forms of international co-operation), these Recommendations covered legislating and implementing record keeping and reporting standards in the financial sector as well as its supervision. The MER included 137 observations on the remaining 33 Recommendations on money laundering.

Mexico received a slightly diminished evaluation of largely compliant on Recommendations 2, 3, 6, 7, 11, 15, 18, 21, 26, 28, 31, 32, 34-37, and 39. The reasons identified by the MER all addressed the state in legislative, market regulatory and enforcement functions. Three of these evaluations follow directly from lack in detailing specificities of the money laundering offense in compliance with Recommendation 1 (which was evaluated PC). Compliance with the AML aspects of Recommendation 35 for example required the full implementation of the Vienna Convention. This would have automatically followed from an adjustment to the legal definition of the money laundering offense to criminalise the mere conduct of

[22] SOFOLs and SOFOMs are similar to non-banking financial institutions and companies (NBFI / NBFC).
[23] A full list of the observations is provided in annex 7.1.

money laundering without the necessity to relate it to its purpose. Further primarily normative requirements identified by the report included:

- Provisions for and strengthening of confiscation measures
- Enhanced CDD for PEPs and correspondent banking
- Internal audits in financial institutions
- Financial institutions satisfying themselves that their foreign respondents do not permit their accounts to be used by shell banks
- Imposition of counter-measures under Recommendation 21 without the previous need of identification by an international organisation.
- Measures to ensure information on beneficial ownership

In addition, the MER also pointed out implementation shortcomings to be addressed by primarily administrative adjustments. Amongst others, the evaluators attested a low level of enforcement action evidenced by "low number of convictions relative to the significant threat of organized crime, the low number of indictments, the volume of intelligence reports of STRs and the size and complexity of the financial system" (FATF, 2008, p. 63). With regard to unusual transaction reports, the evaluators critically observed that financial institutions tended to apply defensive (over) reporting by applying market regulators' guidelines indiscriminate of risk assessments. This contributed to a situation in which the Mexican Financial Intelligence Unit *(Unidad de Inteligencia Financiera*, UIF) was overburdened to analyse the large amount of filed CTRs (cf. Interview M2, 2011, p. 15). Money exchangers and money remitters were not sufficiently monitored by state agencies. The MER observed that the UIF did not have sufficient access to STRs from certain sections of the financial market, in particular money exchange centres (*centros cambiarios*), MSB and SOFOMs. Neither did the UIF have access to criminal records which would be important for the creation of financial intelligence. In addition to these challenges, the UIF was described as understaffed to comply with its mandate. The evaluators saw effective national co-operation between investigative and prosecutorial actors hindered by an organisational reform of these sectors carried out in the year prior to the evaluation. Additionally, the General Attorney's Office (*Procuraduría General de la República*, PGR) and the AML section of its Specialised Organised Crime Division (*Subprocuraduría de Investigación Especializada en Delincuencia Organizada*, SIEDO) were underfunded. Finally, a lack in the provision of AML relevant statistics was identified with regard to the FIU, Customs and beneficial ownership information.

On the lower end, Mexico received a score of partially compliant with Recommendations 1, 5, 8, 9, 13, 17, 23, 25, 27, 30 and 38. These include Core Recommendations 1, 5 and 13 as well as key Recommendation 23. With regard to legislation, Mexico did not apply all of the FATF's aspects of the money laundering offense. In particular, the country did not criminalise the act of concealment and disguise itself that defined money laundering under the international standard. With the exception of the banking sector, CDD regulations and supervision were seen as severely limited. Specific shortcomings in this regard were mentioned for the insurance sector, money exchangers, foreign business relationships, third parties and business through agents, as well as high risk areas where indications of money laundering existed. Mexican AML policy lacked provisions for the development of measures regarding new technologies and non-face-to-face business. A deficiency with regard to mutual legal assistance was seen in possible complications with regard to Mexico's mentioned divergent legal definition of the money laundering and analogous the terrorist financing offense.

Implementation and enforcement in many areas were limited. With regard to the effective application of Recommendation 1, evaluators criticised that money laundering investigations insufficiently focussed on the financial sector, usually limiting themselves to cash encountered at border crossings or in other law enforcement operations. Financial intelligence reports were underused. In some areas where reporting requirements existed, like money transmitters and currency agents, such reports were "not being transmitted to the FIU, nor utilized in any form" (FATF, 2008, p. 197). Monetary sanctions for non-compliance by private sector agents were low and non-monetary coercive measures were insufficiently applied. The PGR did not "properly investigate" (FATF, 2008, p. 115) money laundering and SIEDO was under resourced. The usefulness of Mexico's FIU for criminal investigations was also put in doubt by the report which pointed out that between "[...] 2004-2007 prosecutors secured 149 indictments for ML [money laundering], but only two were related to financial intelligence reports produced by Mexico's financial intelligence unit" (FATF, 2008, pp. 8-9). Beyond the banking sector, regulators were generally evaluated as under resourced and understaffed. This led to insufficient supervision of specific sectors like unregulated foreign exchange centres and money remitters, unlicensed SOFOMs, and cross-border activities as well as few onsite inspections. Guidelines and feedback to reporting entities were only provided by the FIU but not by market supervisors, neither financial nor with regard to DNFBPs. Finally, the country was non-compliant with Recommendations 12, 16, 20, 24 and 33 – all measures directed towards regulating DNFBPs, including legal professions.

The clearest distinction between compliance on non-compliance in the 2008 MER was sectorial between the financial and non-financial sectors, accentuated by generally low levels of enforcement. In summary, the MER found that "[...] AML/CFT preventive measures are comprehensive, contain risk-based elements, and are being implemented across all the principal sub-sectors of the financial system." While the preventive Recommendations were thus generally complied with in this sector, the report directed its criticism towards the non-regulation of DNFBPs and the lack of investigations related to "[...] drug trafficking, organized crime and other predicate criminal activities [...]". This criticism encompassed the low effectiveness of the FIU in generating financial intelligence reports to be used by law enforcement.

4.2.2 Delegation under Conditions of Limited Statehood

The research identified power relationships between public and private actors forming a governance configuration of delegation under conditions of limited statehood as the main explanatory factor for Mexico's degree of compliance with the FATF Recommendations. The underlying power relationships primarily depended on changing domestic political objectives of AML favouring transfer of different policy sub-areas. Actors with competing policy interests derived legitimacy as a central power resource from linking AML to broader political agendas. While Mexico transferred FATF Recommendations to some extent continuously since the early 1990s, the bulk of domestic AML policy development took place during Mexico's two AML reform phases of 1995-1997 and 2007-2014. Both responded to domestic concerns that went well beyond AML: economic liberalisation and integration into international (financial) markets in the 1990s, and curbing an upsurge in violence related to organised crime around 2010. Through this historical development, path dependencies have formed that endowed public and private financial market actors with additional power resources, like specialised agencies, expertise and skills. As shown in the respective sub-sections, the power relationship between different actors involved in AML governance was also influenced by external factors and competition effects that reinforced but rarely drove domestic policy development.

Mexico's increasing orientation towards international economic integration traced back to the late 1980s. Amongst other structural economic reforms, it necessitated bringing the Mexican financial market up to international money laundering prevention standards to be attractive for foreign investment. The most relevant Recommendations for this governance service emphasised record keeping standards, financial institutions' internal AML policy development and public oversight. Combating organised crime as the policy priority since the late 2000s required the implementation of AML measures that facilitated investigation, confiscation and prosecution of offenders. The governance service to be provided by AML for law enforcement and prosecution relied on the creation of financial intelligence on money laundering, its related predicate offences and criminal networks. This information could be used in criminal investigations and as evidence for trials. Another important enforcement area was asset forfeiture legislation and its implementation. The central FATF Recommendations for prosecution touch upon the definition of the money laundering offense, dissemination and effective use of STRs and other sources of financial intelligence, mutual legal assistance, or the establishment of well-resourced specialised money laundering investigative agencies.

Main proponents of economic AML policy promotion were the Finance Ministry including its semi-independent market supervisors, as well as private banks and other financial institutions. Others, like the PGR, specialised police services and non-state actors advocating for more public security promoted AML policies serving as tools for fighting money laundering and its predicate offenses. As a result of shifting domestic political priorities, the institutional setup and power relationships between actors in Mexico changed over time. While economic actors were protagonists of Mexico's AML policy development process since the late 1980s, law enforcement and prosecution actors were increasingly integrated into the configuration since 2007. The shifting AML policy orientation went along with a change in the emphasis on different governance modes. Mexico initially depended on non-hierarchical modes like arguing and negotiation between public and private financial market actors for transferring the FATF Recommendations. Increasing administrative fines and prosecutions during the 2010s expressed a stronger application of hierarchical governance modes by the state which contributed to higher degree of compliance with the respective Recommendations. However, the perpetuating institutional structure in Mexico's AML governance also created path dependency effects. Financial market actors around the Finance Ministry had historically accumulated most AML knowledge and occupied central positions in AML governance configurations. Prosecution and judicial actors found it difficult to effectively and sustainably increase their policy steering powers when their objectives became politically more salient.

Domestic AML Configuration before 2007

The FATF's 2008 MER made apparent the then lacking hierarchical prosecutorial and intelligence aspects in Mexico's anti-money laundering governance. At the same time, the country achieved satisfactory compliance evaluations with many non-hierarchical preventive Recommendations directed at financial market regulation. The roots of Mexico's traditional policy focus on economic over crime fighting concerns traced back to the country's ratification of the 1988 Vienna Convention. Under article 3, the Convention called for the criminalisation of money laundering related to narcotics trafficking (United Nations, 2001). Mexico embarked on a modified path, by establishing money laundering as a fiscal offence under Article 115 bis of the Federal Fiscal Code (*Código Fiscal de la Federación*, CFF) in 1989. While it opted for a wide understanding of money laundering by defining the laundering of all criminal proceeds as an offence, Mexico singled out tax evasion rather than narcotics trading as its primary manifestation (cf. DOF, 1989).

As a result of its inclusion in the fiscal code under the chapter of fiscal offenses and the emphasis on tax evasion, Mexican legal scholars agreed that the 1989 law targeted "fiscal fraud" (Gluyas, 2007, p. 8) and treated money laundering as an "immanently fiscal offence" (García Gibson, 2009, p. 71) (cf. also Interview M16, 2011, pp. 3-4). The 1989 CFF did not yet foresee administrative fines but introduced provisions for substantive prison sentences of three to nine years for offenders (DOF, 1989). While such hierarchical governance modes were legally provided, law enforcement and prosecution actors were not part of the implementation of the law. Over the next 18 years, only 25 money laundering convictions were achieved (cf. FATF, 2008, p. 8). An important factor explaining this low conviction rate is that the initial emphasis on money laundering as a fiscal offence translated into a money laundering governance configuration built around economic actors with a strong prevention focus. As initially a fiscal matter, the Finance Ministry became the main governmental actor charged with further policy development. One result of this setup was that until the publication of the Federal Law for the Prevention and Identification of Operations with Resources of Illicit Origin (*Ley Federal para la Prevención e Identificación de Operaciones con Recursos de Procedencia Ilícita*; AML Law) in 2012 (DOF, 2012a), Mexico based its money laundering legislation on widely dispersed secondary law, mostly in the form of market regulation directives published by the Finance Ministry and its related market supervisory institutions (cf. García Gibson, 2009, pp. 75-76; Gluyas, 2007, p. 51).

After autonomous initial steps in 1989, Mexico's domestic AML policy development successively started to align with the FATF Recommendations. As shown in chapter three, the FATF Recommendations prescribed the establishment of a domestic governance configuration of delegated AML authority to the private sector and compliance enforcement by the state. These corner stones of the international AML standard were already part of the first FATF Recommendations in 1990 (cf. FATF, 1990). Mexico started to partially emulate this configuration with the introduction of KYC and record keeping obligations for the financial sector through a reform of the CFF in 1993. The amendment to the fiscal code also established the legal basis for penal sentences in case of KYC and record keeping violation as well as financial sector complicity in money laundering (cf. DOF, 1993a). In governance terms, this introduced the necessary normative base for the state projecting a shadow of hierarchy which would still require a credible threat of enforcement to have an impact on governance by private actors. The legislation introduced these first more detailed AML obligations for the private sector in a law for the implementation of tax reductions foreseen in the "Pact for Stability, Competitiveness and Employment". The pact was a central political framework document for Mexico's market liberalisation initiated with a predecessor plan in 1988 that brought together economic actors from both the state and the private sector.

The salience of economic actors and their political interests continued during a first phase of AML reform in Mexico between 1995 and 1997. The timing of this reform coincided with entering into force of NAFTA and Mexico joining the Organisation for Economic Cooperation and Development (OECD), both in 1994. Amongst others, NAFTA facilitated foreign banks to open subsidiaries in Mexico, a sector that was nationalised during an economic crisis in 1982 and re-privatised between 1991 and 1992. In December 1993, Mexico allowed foreign investors to acquire amongst others up to 30% of financial groups or brokerage houses, and up to 49% in insurance and surety providers or exchange houses (DOF, 1993b). Limitations on acquisition of financial groups were fully dropped in 1999 (DOF, 1999). This was of interest particularly with regard to the US as the NAFTA member hosting one of the world's leading financial centres and Mexico's main trading partner. Only one year after it opened its financial market to foreign investment, the Mexican Peso Crisis erupted in December 1994. To create trust in this context, the Mexican government aimed to boost its state infrastructure for supervising an increasingly complex private financial market, including its institutionalisation through respective legal and administrative frameworks – part of which was AML reform (cf. Interview M11, 2011, pp. 7-8). The liberalisation and international integration of the Mexican financial system also established a competition system whose effect on AML policy transfer and FATF compliance are analysed in more detail sub-section 4.2.5.

At least from this time forward, the FATF Recommendations firmly oriented the further development of Mexico's AML policies (cf. Gluyas, 2007, p. 51). In order to allow the Finance Ministry the publication of money laundering directives, the Mexican Congress passed a number of similarly formulated legal reforms to various financial market laws in 1995 (DOF, 1995a). Article 115 of the Law on Credit Institutions (*Ley de Instituciones de Crédito*, LIC) can serve as an example. It empowered the Finance Ministry to publish money laundering directives in order to "detect and prevent" (ibid.) money laundering in credit institutions and financial corporations. To do so, it required previous consideration of the opinion of the National Banking and Securities Commission (*Comisión Nacional Bancaria y de* Valores, CNBV) as the market regulator for this sector. A similar provision was included in article 112 of the Federal Law on Surety Institutions (*Ley Federal de Instituciones de Fianzas*, LIF) requiring previous consideration of the National Insurance and Surety Commission (*Comisión Nacional de Seguros y Fianzas*, CNSF). CNBV and CNSF were in turn semi-independent subsidiaries (*organos desconcentrados)* of the Finance Ministry.[24] Requirements for consulting with law enforcement and prosecution actors during policy development were not included in this legislation. Although institutions like CNBV were initially reluctant to take on a role perceived as policing work (Interview M18, 2011, p. 7), this perpetuated the focus on economic AML aspects and a consolidation of a governance configuration centred on the Finance Ministry and financial market actors.

Before the Finance Ministry made use of these new instruments and published its first set of money laundering directives in 1997, Mexico also introduced new AML policies creating additional provisions to investigate and prosecute the offence. In 1996, Congress relocated the money laundering offence from paragraph 115 bis CFF to the newly created paragraph 400 bis of the Federal Penal Code (*Código Penal Federal*, CPF) (also for the following cf. DOF, 1996a). This more clearly marked out money laundering as a criminal rather than a fiscal offense, allowing national legislation to be in line with the FATF standard derived from the Vienna Convention. It also marked a starting point for the stricter application of AML departing from the previous situation where "there were certain norms which were not complied with, like KYC […]" (Interview M14, 2011, p. 7). In comparison to the previous legislation, article 400 bis increased the threat of imprisonment to between five and fifteen years, and added 1000 – 5000 daily rates of fines to the

[24] Mexico's other two other relevant institutions tasked with carrying out regulatory AML compliance supervision during the research period were the National Commission of the Pension Saving System (*Comisión Nacional del Sistema de Ahoro para el Retiro*, CONSAR) and the Tax Administration Service (*Servicio de Administración Tributaria*, SAT) (in 2011, the role of market regulator for CDCs was relocated from SAT to CNBV).

potential sentence. Sentences were to be increased by 50% and included a consideration of barring from public employment or office any public servants tasked with preventing, accusing, investigating, or judging criminal conduct that was found guilty of money laundering. This provided an additional normative layer of protection for the state against criminal attempts to diminish the application of hierarchical steering modes by subverting law enforcement and prosecution for money laundering purposes. The law dropped the special mentioning of tax evasion as a predicate offence. By getting rid of the requirement of knowledge of the illicit origin of funds, the reform also entailed a conceptual shift that defined money laundering as an independent crime. Its conduct was seen as causing social harm in itself by threatening market competition and the functioning of the legal economy, as well as by promoting other crimes (cf. Gluyas, 2007, pp. 10-11). The primary public good to be protected by the state through article 400 bis was "economic stability in a broad sense" (Gluyas, 2007, p. 47).

At first sight, it appeared that through article 400 bis in criminal law, law enforcement and prosecution actors would significantly increase their role in applying hierarchical governance modes in Mexican AML governance. Higher fines and prison sentences aimed to increase the deterrence potential of the legislation. This complemented new preventive functions to be carried out by market oversight bodies under the directives of the Finance Ministry. However, despite the new understanding of money laundering as a criminal rather than a fiscal offence, the Finance Ministry was established in a buffer role in criminal investigations.

The new law mandated that reporting of money laundering suspicion by the Finance Ministry was a necessary prerequisite for initiating criminal proceedings in all cases where the alleged money laundering involved the use of services offered by financial institutions. While legally under the CPF, the PGR could generally investigate money laundering suspicions ex officio, it required a previous reporting by the Finance Ministry for any case "in which services of institutions part of the financial system are utilized" (FATF, 2008, p. 52). One reason for the introduction of this prerequisite was to avoid potential misinterpretations of the PGR which might lack the necessary expertise in financial market matters (Interview M4, 2011, p. 20). The Finance Ministry in turn was obliged to report potential money laundering cases if it came across suspicious activities through its oversight functions and could substantiate these within the limits of its legal mandate (cf. DOF, 1996a).

The Finance Ministry's report filing obligation was implemented to a very limited extent as the low ratio between transaction reports and criminal report filings showed. The Finance Ministry lacked full access to and expertise in applying criminal intelligence to fulfil this role as critically observed by the FATF (cf. FATF, 2008, p. 95). In some cases, the filing of criminal reports took "between six months to one year" (Interview M6, 2011, p. 9) and it typically had to be initiated at the Finance Ministry by investigative agencies (ibid. p. 11, p. 14). This caveat thus curtailed the power of investigative agencies to proactively work on money laundering cases, as most complex or large scale schemes rely on financial sector services in one or more of the money laundering stages. At the time, the parliamentary opposition unsuccessfully criticised these regulations as limitation of the investigative and prosecutorial roles of the Public Prosecutor's Office (*Ministerio Público*, MP) (Ortiz Dorantes, 2011, p. 25). Through this institutional setup, the Finance Ministry was not only the central state actor for the development and application of preventive AML measures but also a bottle neck for investigative and prosecutorial action.

Despite these limitations for investigative and prosecutorial actors to apply hierarchical governance modes, Congress further detailed their role in implementing AML policies by including money laundering in the Federal Law Against Organized Crime (*Ley Federal Contra la Delincuencia Organizada*, LDO) (DOF, 1996b). With this law, money laundering could lead to charges of organised crime, if a group of three or more persons formed to commit the offence. Forming such a group was to be punished as a separate criminal offence, thus increasing the potential sentence for money launderers. In order to investigate organised crime, a specialised unit was to be created in the PGR that could draw on the assistance of the Federal Judicial Police (*Policía Judicial Federal*), also housed at the PGR, and specialised criminal investigators.

Again, the Finance Ministry was designated a gate keeper role in regard to the financial market. In any money laundering related investigation, the PGR was legally obliged to undertake its investigations in cooperation with the Finance Ministry. Any documentation required from the financial sector was to be accessed through the Finance Ministry in cases of fiscal crimes, and through the respective financial market regulators CNBV, CNSF and CONSAR for investigations involving their areas of oversight. The law restricted the use of information gathered in this way to the specific case being investigated, thus severely limiting the usefulness of AML policies for the gathering broader financial intelligence on organised crime networks or criminal markets. The Finance Ministry was authorised to carry out audits if requested by the MP and under the condition of sufficient circumstantial evidence to support initial suspicion of organised crime. The PGR was also granted the legal right to use undercover operatives to infiltrate criminal organisations, as well as the surveillance of private communication with the approval and under the auspice of a district judge. SIEDO assumed this investigative role when it was founded in 2003. Communication surveillance was limited to investigations that were not of an electoral, fiscal, trade, civil, work related or administrative character. This restricted its application in various areas with high money laundering risks. Finally, the Federal Law Against Organised Crime enabled the MP to seize criminal assets with previous judicial authorisation.

Against this backdrop, the Finance Ministry published a first set of regulatory directives in March 1997 specifying AML responsibilities for various financial market actors. Their justification allowed capturing the governance services aimed to be provided with the legislation. The directives stated that money laundering involved operations between a "variety of countries on all continents, [...] endangering the comprehensive security of states and the healthy operation of their financial and economic systems, [...] thus becoming a problem of international importance" (cf. e.g. DOF, 1997a). Mexico was characterised as "participating ever more actively with other states and intergovernmental organisations, that develop coordinated official actions, to contribute to [the aim] that the diversity of legal regimes established by sovereign nations, does not become an element abused by internationally operating criminals to dilute and distort the true origin of the substantial financial resources […] of those dedicated to […] committing offences, in an organised fashion, trying to evade their legal responsibilities with it" (ibid.). The 1997 directives described money laundering as a global problem of transnational criminal activities threatening national security and economic interests. They linked the international and the national levels not only through defining the nature of the problem but also through policy measures to be taken by national governments and which Mexico committed to applying "ever more actively" (ibid.). Compliance with international standards to prevent and combat money laundering was therefore implicitly included as governance service. In an environment of increasing internationalisation of AML policy in the 1990s, the Finance Ministry tried to maintain a balance between the international and the domestic. While a strong connection to international economic and criminal phenomena as well as crime fighting efforts was established, the directives also emphasised national sovereignty in the definition of legal frameworks.

The content of the directives however followed the general line of established international standards. Inspired by the US Bank Secrecy Act (Interview M7, 2011, p. 3), they introduced a two tiered reporting system under which money exchange houses (*casas de cambio*, CDC) (cf. DOF, 1997b), stock market actors (cf. DOF, 1997c), and credit institutions including SOFOLs (cf. DOF, 1997a) were to report relevant (CTR) and suspicious (STR) transactions. Relevant operations were all operations that surpassed the equivalent amount of USD 10,000 in national currency. The application of a reporting threshold in US-Dollars rather than Mexican Pesos underlined an orientation towards international standards. To be able to determine if a transaction was suspicious, basic CDD was to be carried out. The directives further detailed KYC standards established by existing law. To foster the context specific implementation of these requirements, regulated institutions were to develop and implement internal training manuals and policies. These were to be approved by the Federal Fiscal Prosecutor's Office (*Procuraduría Fiscal de la Federación*), a legal advisory branch of the Finance Ministry with limited investigative powers.

Over the years, the directives were continuously updated to bring the Mexican regulatory standards in line with new international requirements to protect financial markets from misuse. These included regulations for politically exposed persons, more sophisticated KYC and CDD procedures, and provisions against terrorist financing (cf. García Gibson, 2009, pp. 75-82). Banks organised in the Mexican Banking Association (*Asociación de Bancos de México*, ABM) aimed to comply with the newly established regulations. ABM aimed to address capacity building requirements of banking personnel in a centralised manner, publishing its own AML training manual with the aim to “unify capacity building criteria between credit institutions” (ABM in Gluyas, 2007, pp. 71-73). The first AML manual created by ABM in 1996 also served as the basis for manuals developed by other organisations like the Mexican Association of Stock Exchange Institutions (*Asociación Mexicana de Instituciones Bursátiles*, AMIB) (Interview M14, 2011, p. 9) and the Mexican Association of Insurance Institutions (*Asociación Mexicana de Instituciones de Seguros*, AMIS) (Interview M6, 2011, p. 20). Others like the Mexican Association of Specialised Financial Institutions (*Asociación Mexicana de Entidades Financiera Especializadas*, AMFE) provided trainings to their members on how to develop AML manuals modelled on good practice examples of transnational companies (Interview M15, 2011, pp. 19-20).

Following the publication of the 1997 directives, reforms to article 115 of the LIC and the respective equivalent laws for other parts of the financial system (cf. DOF, 1997d) further strengthened the legal basis for the new regulatory requirements by including obligations similar to the directives but with a lower level of detail. It is interesting to note here, that the regulations often specified financial sector requirements at an early stage and were later further substantiated by law. This indicates that financial sector institutions, both public and private, were more in tune with the development of international standards than the wider Mexican polity represented in Congress. Despite the directives already specifying detailed AML obligations, legal reforms in Congress were necessary to include the new definition of money laundering now moved to the CPF as a criminal offense in laws governing the financial sector. The reforms also introduced reporting obligations for financial institutions, which were obliged to send CTRs and STRs to the Finance Ministry via the respective market regulators. Through CTRs, reporting became generalised rather than based on concrete suspicion of money laundering. By receiving the reports of their respective sections of the financial market, the market supervisory bodies were to act in practical terms like a decentralised FIU. Any measure to be taken towards a client under the law had to be treated confidentially (no tipping-off). Similar reforms were introduced to the laws regulating the stock market, auxiliary credit institutions, the securities sector and other parts of the financial system. Non-compliance could be sanctioned with up to 100% of the respective transactions by the market supervisory institutions.

Until Mexico formally established its FIU in 2004 (cf. DOF, 2004a), the country’s financial market regulators acted as the sole decentralised analytical entity of transaction reports that passed on their information to the Attached General Directorate for Transaction Investigations (*Dirección General Adjunta de Investigación de Operaciones*, DGAIO) of the Finance Ministry (*Secretaría de Hacienda y Crédito Público*, SHCP) if seen necessary. After the establishment of the UIF, the practice to channel reports through Mexico’s market supervisory bodies CNBV, CNSF, CONSAR and SAT initially continued (cf. Gluyas, 2007, p. 50). As specialised unit concentrating AML expertise within the Finance Ministry, the Mexican FIU was also assigned roles of providing guidelines for financial market institutions in suspicious activity reporting (Gluyas, 2007, p. 87ff). Gluyas described the agencies primary role as providing economic governance services, through which “market failures” of “the use of illicit funds in the banking and financial sector as a threat to the profitability of companies” (Gluyas, 2007, p. 145) could be addressed. It thus contributed to “generating macroeconomic financial stability” (ibid., p. 146). Following its economic policy orientation, Mexico opted for an administrative type FIU that became a semi-independent agency under the roof of the Finance Ministry.

According to the IMF, governments usually opt for administrative type FIUs to create a buffer between the financial market on one side and law enforcement and prosecution actors on the other in order to lower reservations of regulated entities to report suspicious activities. A frequent disadvantage of administrative type FIUs is their lack of investigative resources that would be available to law enforcement agencies and delay of law enforcement activity in suspicious cases (cf. IMF, 2004, p. 10). The Mexican system served as an illustrative example for the advantages and disadvantages of administrative type FIUs. Under the two tired reporting system, market supervisors saw part of their role as ensuring that during AML procedures, financial secrecy was observed (Interview M18, 2011, p. 3; Interview M22, 2011, p. 9). Between 2002 and July 2005 the financial market regulators and the UIF received almost 12.4 million CTRs and STRs which led to only 65 criminal complaints filed at the PGR (Gluyas, 2007, p. 179). This lack of report filing, through the requirement of the Mexican law necessitating such reports to initiate investigations involving the financial sector, severely curtailed the use of AML policy to create criminal intelligence for law enforcement and prosecutions (cf. Interview M22, 2011, p. 6).

The results of the 2008 MER thus reflected Mexico’s domestic money laundering governance configuration of delegation characterised by a cleavage between actors with an economic and a crime fighting orientation. The institutional structure strongly favoured the Finance Ministry over the PGR as the central governmental AML policy actor. Consequentially, preventive and regulatory measures in the financial market were relatively far developed and largely compliant with international standards, but proved to be ineffective for crime fighting purposes. They could not translate into prosecution of money laundering or the gathering of financial intelligence. The PGR as central prosecutorial body did not have sufficient access to information provided by the financial sector. Crucially, it could not even proactively investigate money laundering cases in the financial sector. This made it very difficult to practically apply penal law as the central hierarchical governance mode foreseen in the FAF Recommendations that might create a shadow of hierarchy to foster compliance. The most readily available instrument for the state were thus administrative fines for non-compliance issued by the market regulators which presents a comparatively less severe threat.

Gluyas and others also observed this cleavage between preventive and prosecutorial actors within the Mexican AML system: "*[…] a structural disarticulation was detected between the administrative area carrying out preventive functions and the criminal justice system, more precisely the judiciary, which manifests itself in the lack of efficient information integration with regard to initiated legal proceedings that reached a guilty verdict as result of accusations established by the Financial Intelligence Unit*" (Gluyas, 2007, p. 209). Another Mexican AML criminal law expert identified that "the PGR wanted to resolve the problem from the perspective of trying to seek justice but not to recuperate resources like the Finance Ministry. […] The Finance Ministry and PGR did not have an integrated vision because they were conditioned by their institutional interests" (Interview M4, 2011, p. 14). With regard to AML policy implementation, "there [was] no triangulation of information […] neither on the institutional nor on the technical level […]" (ibid. p. 29). Similarly, a private sector affiliate observed that "the people that are involved in this issue [AML] either know of prevention or of criminal law but few have the complete story" (Interview M11, 2011, p. 17).

The MER also pointed to a number of actors that were absent from Mexican AML governance configurations in 2008, in particular DNFBPs. They were not included as governance providers, addressees, recipients or those entitled to receive governance services under domestic law. Reviewing press articles and other documents, no intentionality on their part was identified to proactively provide governance services through self-regulation or voluntary implementation of international AML standards. Before the AML reform initiated in 2007, they did also not appear in the reviewed documents as formulating expectations or demands for AML policies. Before the reform process, apart from their mention in the 2004 FATF Recommendations, neither the Mexican government nor external actors explicitly demanded or enforced their regulation by exercising external influence or provision of statehood. Considering that Mexico's AML policies focussed on the regulation of financial institutions to allow their integration into international financial markets, this finding is not surprising. Under this domestic political driver and with no external pressure, there was simply no reason to include DNFBPs under domestic AML policy provisions. As presented below in the detailed debate of the reform proposals, many DNFBP sectors were indeed highly resistant to being delegated AML governance tasks.

AML Governance Reform 2007 – 2014

As presented previously, Mexico initiated its second AML governance reform after the federal elections of 2006, well after the publication of the 2004 Recommendations and prior to the publication of the 2008 MER. This timing corroborated that while the FATF Recommendations influenced the content of the reform as a policy guideline, its primary political drivers were domestic concerns about organised crime and related violence. The following pages first present the main steps of the reform process and then, through looking at debates around specific legislation, turn to a deeper analysis of factors influencing the policy transfer process. This analysis revealed that reform in the financial sector was a continuous process. The Finance Ministry and the private financial sector as the traditional centre of AML governance in Mexico continued to update preventive AML provisions through the emission of regulatory directives. While this process continued smoothly, attempts to change the structure of the governance configuration in favour of prosecution oriented actors, hierarchical governance modes and the expansion to DNFBPs caused political conflict. This stalled and sometimes hindered policy transfer that could have contributed to FATF compliance.

In its National Development Plan for the period between 2007-2012, the Calderón administration made AML policy part of one of four strategies in its central political project to "recover the strength of the state and the security of social coexistence through the frontal and effective combating of narcotics trafficking and other forms of organised crime" (Presidencia de la República, 2007, p. 59). It put special emphasis on gathering and disseminating intelligence on criminal organisations (cf. ibid., pp. 57-58). An intensification of AML efforts was to target the economic structures of organised crime, based on "achieving and consolidating international standards for preventing and fighting money laundering" (ibid., p. 59). A February 2008 email of Paul Thursten, CEO of HSBC Mexico, to Michael Geoghegan, the then CEO of HSBC Group revealed that this new policy orientation quickly had at notable impact on the delegation of governance tasks to the private sector in Mexico: "'[…] with President Felipe Calderon declaring war on the drug gangs, crime and corruption the judicial authorities have heightened the focus on financial investigations and have been putting increasing pressure on the bank regulators because the banks have been seen as not providing enough support'" (Thurston in US Senate, 2012, p. 68).

The National Agreement reiterated this general policy orientation in August 2008. The document stipulated the formulation and publication of a national AML strategy as its central initiative. Jointly, the Secretariat of Public Security (*Secretaría de Seguridad Pública*, SSP), the Interior Ministry (*Secretaría de Gobernación*, SEGOB, which integrated the SSP in 2013), the Finance Ministry represented by the UIF, and the PGR (also for the following cf. DOF, 2008a) were to develop this national strategy. At a political level, this put the PGR on par with the Finance Ministry in designing the new policy framework. With SSP and SEGOB, it also introduced two additional ministries which held mainly public security mandates to the AML governance configuration. For interior minister Blake Mora, Mexico's new AML legislation was to explicitly serve national security interests against large scale cartels (cf. El Economista, 2011a). The national strategy should entail a series of investigative and judicial protocols to lead to convictions, as well as performance management elements. Additionally, it was to include a legal proposal to Congress for the regulation of cash transactions. With these instruments, the National Development Plan 2007-2012 and the National Agreement aimed to increase the effective application of hierarchical steering modes at the state's disposal to apply AML and other law enforcement and prosecution methodologies for combating organised crime.

The prominence given to these policy objectives deviated significantly from the previous economic and financial market orientation that relied mainly on prevention, negotiation and the threat of regulatory fines. The Finance Ministry however, through its longstanding engagement in the area and hosting the UIF, did command considerably more specialised AML knowledge and resources than SSP, SEGOB and the PGR. An interviewed Mexican AML expert saw the PGR as a particularly weak actor with regard to the quality of AML case work provided (Interview M23, 2011, pp. 12-13).

Independently of the National Strategy published in August 2010, the Mexican government previously and in times in parallel introduced a number of smaller initiatives. A particularly Mexican experience in addition to conventional AML policies was the country's use of a nationally developed remedy which was initially intended to reduce or at least tax the informal sector – the Tax on Cash Deposits (*Impuesto a los Depósitos en Efectivo*, IDE). Established by law in October 2007 (DOF, 2007), since January 2008 IDE was a 2% tax levied on most cash deposits in Mexican bank accounts that exceeded a combined value at a given bank of 25,000 Mexican Pesos (MXN) a month. In 2010 a reform reduced the allowed amount to MXN 15,000 and raised the tax to 3% (cf. DOF, 2009a). In turn, the tax payment was deductible from income tax which should lead to the IDE only affecting undeclared incomes in the informal or illegal sector. This policy was not intended nor systematically applied to AML. However, data on financial movements created through the IDE was on occasions used to identify areas with money laundering risks and individual cases (cf. El Economista, 2010d; Interview M19a, 2011). Nevertheless, Senators like the secretary of the Finance Commission criticised the law as ineffective in dealing with the informal economy or money laundering (El Economista, 2010e). Unfortunately, Mexican authorities were not willing or able to share any further details on the subject which could be an experience well worth the interest of the international AML community.

Amongst the central AML policy developments of the Calderón government was the continuation of successive updates of AML regulations through the emission of directives by the Finance Ministry between 2009 and 2012 with the goal to update and homogenise AML requirements in the financial sector (cf. e.g. DOF, 2009b; FATF, 2014b, p. 13). In terms of policy content, the directives published between 2009 and 2012 further detailed previously existing provisions for the financial sector and made them more demanding in order to increase their usefulness for law enforcement and the judiciary. Principal areas included KYC/CDD, STR reporting, regulation of cash transactions, and provisions on client risk identification which also introduced the possibility for the government to identify specific high risk jurisdictions. They introduced a risk based approach to dealing with financial sector clients and required financial institutions to establish Communication and Control Committees (*Comités de Comunicación y Control*, CCC) as central internal AML coordination bodies (cf. DOF, 2009b). The 2010 follow-up report submitted by Mexico mentioned these steps as beneficial for compliance with AML Recommendations 5, 7, 8 ,9, 11, 13, and 23 (FATF, 2010b, p. 5).

In 2011 the Finance Ministry further expanded the directives include previously unregulated SOFOMs (cf. DOF, 2011a). Before their inclusion under the directives, SOFOMs that did not belong to larger financial groups were unregulated entities that for example engaged in micro-credits and other small scale financial activities. The legislature added the concept of SOFOM to the Law on Auxiliary Credit Institutions and Activities (*Ley General de Organizaciones y Actividades Auxiliares de Crédito*) in 2006 (DOF, 2006a) as a legal figure into which already existing regulated SOFOLs should transform. SOFOLs were initially created as a legal figure in Mexico to provide access to credit in the economic crisis of 1995. SOFOMS were unregulated until 2011 with a limited supervision carried out by default through the Mexican consumer protection agency for the financial market (*Comisión Nacional para la Protección y Defensa de los Usarios de Servicios Financieros*, CONDUSEF). CONDUSEF was quickly overburdened with this task by a rapid expansion of the sector from 50 to 2,000 entities just between 2006 and 2011 (Interview M15, 2011, p. 5).

While the directives published between 2009 and 2012, just like their predecessors, mentioned compliance with international standards and promoting economic development as important objectives, a shift in policy orientation became clearly visible in their justification. The 2009 directives for financial institutions justified AML policies through the central statement that “one of the most effective strategies in the fight against organised crime in Mexico is cutting back its economic resources”, identifying “organised crime’s economic capacity” as “one of its principal means to evade justice” (DOF, 2009b). This justification contrasts with the 2004 directives. In reference to the National Development Plan 2000-2006, these defined their purpose as “*strengthening the financial system*”, amongst others by conveying *“[…] the image of a financial system that is strong, ethical and with clear rules of action, promoter of growth with stability; as well as [to] reconstruct the national financial system as first-rate economic agent in the generation of growth, through generating resources, granting credit and their channelling to national and regional development projects*” (DOF, 2004b). While the political impetus of the new directives stemmed from a focus on combatting organised crime, the 2004 directives aimed at the reputation and fostering the economic development of the Mexican financial system.

With regard to financial market regulation, the FATF valued positively the efforts of different sections of the Finance Ministry to increase their cooperation as well as regular meetings between government agencies and the private sector (cf. FATF, 2014b, pp. 22, 33). These meetings did not only treat exchange over regulatory details but also aimed to improve compliance quality through STR filing training and reporting feedback by the UIF. Particularly close coordination was observed between the Finance Ministry and ABM as detailed in the sub-section on competition systems. Legal reforms strengthened CNBV in its role as a market supervisor. A reform of the Law on Auxiliary Credit Institutions and Activities in 2011 put it in charge of the supervision of CDCs (DOF, 2011b) and exchange centres. Until then, SAT carried out this supervisory role – a set-up whose results the president of the Business Coordination Council (*Consejo Coordinador Empresarial*, CCE) evaluated as not having been useful (Felipe González in El Universal, 2010a). Exchange centres differ from CDCs in their previously low levels of formalisation. While CDCs were larger institutions, sometimes belonging to financial conglomerates, exchange centres were small operations in which for example pharmacies, hotels or individuals registered as providers of USD-MXN exchange services. Before this reform, it was estimated that over 2,000 exchange centres operated outside of any supervision (cf. El Economista, 2009a) and that they could be opened with a simple registration procedure at the SAT (El Universal, 2011a). Associated to these new responsibilities was a staff increase by 154% from 41 in 2008 to 104 in 2012 and the creation of a new position at the vice-president level for AML issues within CNBV (FATF, 2014b, p. 25).

The strengthening of CNBV yielded results through the application of administrative sanctions. For example, it "revoked its authorisation granted to two currency exchange houses" (FATF, 2014b, p. 26), a sector notoriously prone to money laundering. Related to the record breaking HSBC case in the US, CNBV fined the bank's Mexican subsidiary an equivalent of USD 27.5 million in 2011 (CNBV, 2011, p. 133). While it appears low in comparison to the US fine, the amount was a clear step up from previous application of financial sanctions by Mexican financial market regulators. The FATF explicitly mentioned this regulatory action in its follow-up reports as a sign of implementation progress and contributed to the country's compliance with Recommendations 17 and 23 (FATF, 2014b, pp. 26, 33). Increasing its international engagement, the CNBV also signed 39 bilateral or multilateral Memorandums of Understanding facilitating information exchange with foreign financial market regulators and also leading to supervisory missions to other countries by CNBV (cf. ibid., p. 27). Another positive development recognised by the FATF was heightened efforts at market supervision beyond the banking sector and CNBV. An example was a measurable increase in regulatory activity in the insurance and bonding sector supervised by CNSF. The 2014 FATF follow-up report praised the organisation for the creation of a specialised unit which between 2009 and 2012 carried out supervisory inspections on companies representing a combined market share of over 74% (FATF, 2014b, p. 25). As a result of this tighter supervision, CNSF issued 21 sanctions in 2009 with a total amount of fines equivalent to USD 900,000 (ibid.).

As normative step towards establishing more hierarchical governance modes, Mexico published its first Asset Forfeiture Law (*Ley de Extinción de Dominio*, LED) in May 2009. Under the auspice of the PGR, this introduced asset forfeiture to money laundering cases which was previously only applicable to organised crime cases since the passing of the LDO in 1996. While the 2009 asset forfeiture legislation was not a figure of criminal law, its effective application would allow withdrawing funds from organised crime and criminal markets. The law was only made possible in Mexico through a constitutional reform in 2008.

This constitutional reform explicitly excluded asset forfeiture for a series of specified conducts, including money laundering by organised crime and crimes against health (such as narcotics trafficking), from the general prohibition of confiscation guaranteed by article 22 of the Mexican constitution (cf. DOF, 2008b). The asset forfeiture law detailed the forfeiture procedures as well as international cooperation and mutual legal assistance. Its enactment was presented as contributing to compliance with Recommendations 3 and 38 (FATF, 2010b, p. 5).

Directly following the official publication of the Asset Forfeiture Law, the Mexican Congress passed the Federal Police Law (*Ley de la Policía Federal*, LPF) in early June 2009. The law provided the Federal Police with the legal mandate to use wiretapping in money laundering investigations under judicial approval and oversight (cf. DOF, 2009c). This decision was another step to expand the governance service provided by AML policies from economic interests to crime fighting and to increase national capacity for the application of hierarchical governance modes. Article 16 of the law's regulations published in 2010 put the anti-narcotics division in charge of criminal money laundering investigations within the Federal Police (also for the following cf. DOF, 2010a).

Through this assignment, the anti-narcotics division held a coordination role for law enforcement related AML activities. Article 80 of the regulations established the role of the General Directorate for Tactical Analysis of Crimes against the Financial System to collect and analyse money laundering related data for preventive and crime fighting purposes. Article 81 additionally assigned to the General Directorate of Financial Intelligence for Prevention the mandate to cooperate with other state actors in charge of preventing money laundering in the financial system like the Finance Ministry and market supervisory bodies. These assigned law enforcement competencies had a wide range and presented an additional normative bridge over the cleavage between law enforcement and economic actors. The Federal Police was not only to "participate […] in the implementation of financial operations surveillance mechanisms" (ibid.) but also to cooperate in information exchange, development of training programmes, international control of illicit financial flows, and prevention of crimes against the financial system, amongst others. The 2010 follow-up report saw these provisions as beneficial for Mexico's compliance with Recommendations 27, 28 and 31. Mexico's progress on these same Recommendations was also presented as positively impacted by the legal provisions in articles 22 and 27 of the reformed organic law of the PGR equally published in 2009 (cf. DOF, 2009d). These allowed the Public Prosecutor's Office to rely on the Federal Police as an auxiliary resource (cf. FATF, 2010b, p. 5).

National AML Strategy of 2010

In addition to these specialised initiatives, the government proposed a more substantial adjustment to Mexico's anti-money laundering governance configuration in its "National Strategy for the Prevention and

Combating of Money Laundering and Financing of Terrorism" (SEGOB, 2010, p. 1). Before its publication, the government tried to secure non-partisan support in the context of defining an anti-narcotics strategy as state policy during a series of consultation termed Security Dialogues (cf. e.g. El Economista, 2010f). It initially received a public buy-in to its wider security strategy by the major political parties in Congress (cf. El Universal, 2010b). Again complementing previously existing economic policy goals with crime fighting governance services, the document defined the National Strategy as "a concrete action by the state to combat organised crime and other criminal phenomena, this way allowing the sustained development of Mexicans' economic capacities on the basis of legality, trust, transparency and legal certainty" (SEGOB, 2010, p. 5).

Its two objectives were to "1) impede the availability of proceeds to criminal organisations; and 2) prosecute timely and effectively money laundering and financing of terrorism cases of high relevance" (ibid., p. 10). Concrete criminal threats for Mexico were identified as narcotics production and trafficking as well as US dollar cash transactions (ibid., p. 6). The document went on to identify three main national governmental actors for preventing and fighting money laundering. In the order of the original text, these were the PGR through SIEDO, the SSP through the Federal Police, and the Finance Ministry through the UIF and market supervisory institutions. Contrary to the historical experience of Mexico, the National Strategy saw the role of the Finance Ministry as to "contribute in the prevention and fighting of money laundering" (ibid., p. 8) while it envisioned the PGR and SSP in leading roles. The National Strategy is thus a document outlining perspectives of an AML governance configuration built around law enforcement and prosecution actors. It put forward four main strategic pillars:

(1) A first pillar was "Information and Organisation" aiming at the "effective and efficient detection of money laundering operations and terrorist financing" (ibid., p. 13). The government assigned it the highest priority seeing financial and criminal intelligence as well as organisational structure as "the most valuable inputs to combat money laundering and financing of terrorism" (ibid., p. 10). The document proposed to intensify the use of financial intelligence to combat crime and create evidence for criminal investigations. Instrumental for reaching this objective was the creation of new and better use of existing databases. Actions of actors preventing and combating money laundering should be constantly checked to ensure their suitability for legal proceedings. Information exchange between preventive and prosecutorial agencies, both domestic and foreign, should be strengthened with the stated goal to carry out investigations, analyses and litigations. Under the leadership of the National Public Security Council, a wide variety of federal agencies should establish means to share information and develop action plans in their respective areas to prevent and combat money laundering. Specialised investigative groups should be formed. These were to be isolated from other agencies to work on specific issues, geographic areas, and

sectors. Ultimately, existing agencies in the prevention and prosecution of money laundering should be consolidated and receive additional training (for the above cf. ibid., pp. 13-14).

(2) The second pillar "Normative Framework" aimed at "strengthening legal instruments for the prevention and the combating of money laundering and terrorist financing" (ibid., p. 15). In addition to limiting the use of cash in general and other forms of payments susceptible to money laundering in high crime areas, the government proposed a widening of the Finance Ministry's supervision to include cash transfers. In parallel, a law should be proposed to restrict the use of cash in acquiring real estate, cars and other high value items. New types of yet to specify criminal offences were to be created to combat money laundering more effectively, and specialised investigative techniques should be introduced. The government also proposed to regulate a large number of previously unregulated DNFBPs and other economic activities with high money laundering risk, including among others gambling centres, non-financial credit agencies, prepaid value card emitters, real estate agencies, car dealers, construction companies, jewellers, armour-plating companies, (public) accountants, and lawyers. Legal changes should close existing judicial loopholes and facilitate the information exchange between public agencies. Finally, the just recently passed asset confiscation law should be reformed (for the above cf. ibid.).

(3) The pillar "Risk Based Supervision and Effective Proceedings" aimed to "take efficient action based on intelligence and adequate programming" (ibid.). Its main objective was strengthening already existing agencies. It proposed to increase the detection of cash at the borders through establishing a more integrated control system. This would entail gathering information on persons moving relevant amounts of cash across the border and implement risk based inspections. Information on cash transfers gathered in this way should be communicated timely from border control to preventive and prosecutorial AML agencies. Similar measures were to be developed and implemented for non-cash international value transfers. Supervisory agencies' preventive functions should be enhanced by focussing activities on vulnerable sectors and an increased cooperation between supervisory agencies both domestically and abroad. The latter was of particular importance for cooperation with home market regulators of financial institutions headquartered outside of Mexico. Supervised actors that would not comply with their AML obligations as stipulated in the Finance Ministry's directives should be sanctioned as an example to others. The PGR was to send a list of criminals with arrest warrants to financial institutions to inform the financial system's CDD procedures. A last set of provisions was to increase the effective implementation of asset recovery and forfeiture laws against organised crime (for the above cf. ibid., pp. 15-16).

(4) The final pillar "Transparency and Accountability" proposed means to "measure and publish objectively the effectiveness of state activities oriented towards the eradication of money laundering activities and terrorist financing" (ibid., p. 16). Statistically observable variables it aimed to introduce included the amount of intelligence reports sent by the UIF to the PGR and the SAT as well as criminal

report filings by the UIF at the PGR. The latter were subdivided in proactive filings by the UIF and reactive filings based on information requests of the PGR. The PGR was to report the number of subjects apprehended for money laundering as well as the seized assets. Under the fourth pillar, public actors at the federal state and municipal levels were to be included in AML governance by providing information, for example of property and land registries, trading licenses, notary archives or identity information. Pillar four also included the objective to communicate the development of money laundering cases in order to make transparent the effect of filing reports and detected cases both to the general public and the regulated sectors (for the above cf. ibid., pp. 16-17).

Systematising these proposals in terms of governance in areas of limited statehood, the National Strategy sought to affect the existing governance configuration mainly in two areas: (i) broadening the governance configuration of delegation through the inclusion of new actors, and (ii) introducing new and strengthening existing hierarchical governance modes at the disposal of prosecution agencies. The farthest reaching proposed structural reform was the inclusion of DNFBPs and other economic actors to which AML governance services similar to those of the financial sector were to be delegated. Implementing this proposal would expand AML policy in Mexico well beyond its previous financial market focus to include almost all parts of the formal economy which handle relevant amounts of cash and other forms of value transfer. In accordance with the FATF Recommendations, these AML provisions would also encompass legal professions which enjoyed professional confidentiality privileges akin to the established limitations of bank secrecy in the financial sector.

The second reform area was not structural in the sense that no new actors were to be included in AML governance. However, by creating new and strengthening existing hierarchical governance modes, the power relationship between actors within the governance configuration would be altered. Restrictions on the use of cash in and by themselves would be an attempt to govern hierarchically by directly enforcing the use of a particular value transfer system which produced a paper trail. The hope was that if cash restrictions were successful, the Mexican economy would make more use of the “financial system where the government has more control” (cf. Interview M3, 2011, p. 17). While this might sound like a simple proposal from the perspective of countries with mostly consolidated statehood, most parts of the world including Mexico struggle to control the informal economy and the use of alternative currencies, particularly USD.[25]

More indirect measures to combat money laundering included enhancing the coordination and cooperation between prosecution actors. Particularly the creation and use of criminal intelligence was to

[25] This challenge also seems to have returned for areas of largely consolidated statehood, which struggle to control the use of digital currencies like bitcoin for trading in darknet and other deep web markets (cf., Campbell-Verdyn, 2018).

improve in this manner. This increased coordination was to go beyond sharing data to also encompass the establishment of joint investigative units. In addition to the improved information and intelligence use in the law enforcement and prosecution sectors, the UIF and market regulators were also to be subjected to sharing more information and to cooperate more with such agencies. Success of these measures would integrate the law enforcement, prosecution and financial sectors in a common AML policy development and implementation framework.

Strengthening of the role of the PGR and the SSP would be a central mean to implement the Strategy's vision of a future in which AML policy would be directed by law enforcement interests. To an extent, it would reverse the empirically observed reality of the Finance Ministry's almost monopolistic leadership in AML matters by limiting it to preventive tasks and an instrumental role supporting law enforcement and prosecution interests. In turn, the work of market supervisory institutions was to become more focussed on high risk areas and include inputs from other countries and agencies to become more effective rather than operate as box ticking compliance. The specific call for exemplary fines for non-compliance made by the Strategy indicated that in the past, market regulators had not used their sanctioning power to a satisfactory level. With regard to the relationship between the state and actors to which It delegated the provision of governance services, the reforms proposed in the National Strategy aimed to increase the capacity to threaten the application administrative fines as well as criminal prosecutions. If these were effectively implemented, Mexican state agencies could increase their capacity to project a shadow of hierarchy that might in turn increase private sector compliance. This could go a long way in transforming the governance configuration from one of delegation under conditions of limited statehood to governance by delegation relying on command and control as envisioned by the FATF Recommendations. The implementation of this far reaching strategic proposal was to address the shortcoming identified by the FATF in compliance with AML Recommendations 1, 2, 5, 9, 12, 16, 20, 24, 27, 28, 30, 32, 33 and 38 (cf. FATF, 2010b, p. 3).

To put this envisioned realignment of Mexico's AML governance into practice, the Calderón administration accompanied the National Strategy with two legal initiatives to the Mexican Senate (cf. Gaceta Parlamentaria, 2010, pp. 11-121). They consisted of (i) a bill of decree amending various laws relevant for AML policy such as the Federal Penal Code, the Federal Criminal Procedures Code, the Organised Crime Law and various financial laws, and (ii) a Federal Law for the Prevention and Identification of Transactions with Resources from Illicit Origin and Financing of Terrorism. The proposals aimed at adjusting legal and structural factors that previously limited the application of AML policies to combat organised crime.

The newly included governance provider SEGOB prepared the proposed bill of decree. Its objective was to "impair the financial structures of organised crime, given the magnitude of the damage these cause to society” (ibid., p. 12). SEGOB presented an inadequate legal framework as one of the central reasons of the recent growth of an organised crime challenge in Mexico. Criminal organisations would “employ more violence in committing crime and make more difficult their persecution through their undisputable transnationalisation, as in the cases of operations with resources of illicit origin, benefitting from the limits of our traditional regulations” (ibid., pp. 12-13). To provide the policy proposal with additional legitimacy, the document implicitly and explicitly referred to the FATF Recommendations as international AML policy standard and to Mexico’s membership on various occasions in the text (cf. ibid., pp. 13, 18). The FATF Recommendations thus also oriented SEGOB as a law enforcement and prosecution actor in policy formulation. While maintaining the government’s general line of argument directed at the domestic agenda, the proposed bill of decree also mentioned the UNTOC to further legitimise the deployment of enhanced investigative techniques (cf. ibid., p. 21) against criticism (cf. e.g. El Economista, 2010g). The content of the proposal focussed mainly on reforming the CPF and the LDO with adjustments in other laws following from these changes. Its key proposals were to:

- adjust the legal definition of the money laundering offence in line with the international standard, e.g. criminalising the conduct of concealment and disguise including the use of front men and similar techniques rather than just criminalise intentional money laundering (cf. ibid., pp. 14-19);
- limit the need for the PGR to receive a criminal report filed by the Finance Ministry to initiate investigations to cases directly involving employees, civil servants, and consultants in the financial sector. At the same time intensify the reporting obligation of the Finance Ministry if criminal conduct were suspected (cf. ibid., pp. 15-16);
- establish a legal basis for forfeiture of equivalent value (cf. ibid., p. 19);
- include money laundering under the definition of organised crime and introduce new investigative techniques, including controlled deliveries and the possibility of undercover operations under supervision of the PGR (ibid., pp. 21-22);
- and allow information request from prosecution agencies to the financial sector conveyed via the CNBV or the judiciary, thus further limiting financial secrecy in regard to AML (ibid., p. 24).

The central reform area envisioned by the decree was strengthening the role of prosecutorial actors, in particular the PGR. The legislator did ultimately not approve the proposed decree. This was partially due to resistance against specific proposals and partially due to the incorporation of the policies in other legislative initiatives introduced in parallel like the AML Law.

The broadening of the legal definition of money laundering to encompass concealment and disguise was taken up again in a 2013 decree initiative (cf. Senado de la República, 2013, p. 56) presented the successor administration under President Peña Nieto of the Institutional Revolutionary Party (*Partido Revolucionario Institucional*, PRI) who got elected in 2012. As analysed in the sub-section on external influence, passing of the revised legal definition of money laundering was mainly due to external influence exerted by the FATF enhanced follow-up process. It was necessary for Mexico to reach a satisfactory compliance level with Core Recommendation 1. Forfeiture of equivalent value did not pass Congress during the 2007 – 2014 reform period.

One of the most far reaching proposals was to allow the PGR to initiate AML investigations in the financial sector without the need for a previous criminal complaint filing by the Finance Ministry for cases not implying members of the Mexican financial system. This proposed reform did not pass Congress. If it had been approved, the PGR would have increased its independence from the Finance Ministry in enforcing deeper AML compliance. Since its introduction in 1996, the criminal complaint filing requirement institutionalised the position of the Finance Ministry as a buffer for the application of hierarchical governance modes in the financial sector by law enforcement and prosecution actors. Despite its high potential for changing the power relationship between different governance actors in favour of the PGR, which could have increased its capacity to autonomously apply hierarchical governance modes, the proposal did not receive wide spread attention in the political or public debate on AML policy reform. The rejection of the proposal thwarted the establishment of the PGR as the second central governmental actor in AML policy development and implementation. The underlying question of the future role of the relationship between the Finance Ministry and the PGR in AML governance however remained on the political agenda as part of the debate on the AML Law as discussed below.

Congress equally resisted undercover operations as stipulated under the original decree initiative with reference to UNTOC. They were discussed publicly and in Congress as the Calderón government trying to create a “financial police” (El Economista, 2010h). Despite the reservations of Congress to allow undercover operations, these were eventually unilaterally introduced by the government in March 2011 for organised crime cases through the passing of an administrative decree by the PGR (DOF, 2011c). Such decrees had a lower political threshold as they did not require congressional approval. They could be issued by the executive branch to detail the implementation of existing legal provisions which presented a way to circumvent the legislature’s resistance. In the case of AML investigations, the PGR derived this authority from the Organised Crime Law which normatively provided for this previously unused crime fighting methodology since 1996 (cf. DOF, 2011c). Consequentially, the PGR assigned this task to SIEDO which thus increased its capacity to investigate and prosecute money laundering cases involving organised crime. In April 2011 the Mexican Senate’s Commissions on Justice, the Interior, Legislative Studies, considering the opinion of the Commission on Finance and Public Credit, politically confirmed this decision in its analysis and opinion (*dictamen*) of the AML Law proposal (cf. Senado de la República, 2011). While the PGR could now use undercover operations on money laundering related to organised crime, the government did not succeed to include money laundering as a defining conduct of organised crime. Even if to a significantly more limited extend than originally intended, these provisions did still increase the possibility of the PGR to apply prosecutorial means to combat money laundering.

The reforms presented above contributed to a satisfactory assessment of compliance with Recommendation 27 by the FATF in 2014 (cf. FATF, 2014b, p. 33). However, they only led to a limited adjustment rather than a substantial shift in the power relationship between the Finance Ministry and the PGR in Mexico's AML policy. The PGR's budget increase of "24% in 2012, […] some of [which] have been allocated to AML" (FATF, 2014b, p. 33) was unlikely to produce a sufficient counterweight within the configuration to compensate for its limited access to financial intelligence data and possibilities to initiate prosecutions in the financial sector.

First Comprehensive AML Law

The second part of the legal package proposed in August 2010 was the AML Law initially titled "Federal Law for the Prevention and Identification of Operations with Resources of Illicit Origin and Financing of Terrorism" (Gaceta Parlamentaria, 2010, p. 60). The finally passed "Federal Law for the Prevention and Identification of Operations with Resources of Illicit Origin"[26] (DOF, 2012a) was Mexico's first comprehensive law dedicated exclusively to AML. The organised crime focus of the domestic debate also explained partially why the Senate's *dictamen* dropped references to financing of terrorism in the proposed title of the new law. While the *dictamen* also saw mentioning terrorism as unnecessary duplication as this crime would already be covered implicitly by the law (Senado de la República, 2011), financing of terrorism was not a priority issue for Mexican law makers.

The Calderón government developed the proposal, which PGR initially aimed to present as early as 2008 (cf. Proceso, 2008), with the goal to "intensify the strengthening of the institutions in charge of watching over the security and peace[27] of Mexicans" (ibid. 2010, pp. 61-62). The legal initiative made specific reference to "narcotics trafficking, robbery, kidnapping, [and] extortion" (ibid.) underlining its primary political orientation towards crime fighting. This new policy orientation also impacted on the actor level, where market supervisors like CNBV saw only a marginal connection of the AML Law on their areas of responsibility (cf. Interview M18, 2011, p. 48). The proposed law understood money laundering as an activity that would "allow organised crime to finance violence and corruption" (Gaceta Parlamentaria, 2010, p. 63). The speaker of the National Action Party (*Partido Acción Nacional*, PAN) in the House of

[26] Financing of Terrorism was dropped from the title of the final law.

[27] The term used in the Spanish original is "tranquilidad", which conveys the idea of tranquillity / peace of mind rather than the idea of peace as in the absence of war.

Deputies framed his support for the initiative with reference to a recent mass killing of 72 mostly Central American migrants in Tamaulipas (Perez in El Universal, 2010c), equally connecting AML closely to combating organised crime and reducing violence in Mexico. Concrete policy measures aimed both at the preventive and prosecutorial side of AML governance with a particular focus on DNFBPs (cf. ibid., p. 65). The key policies (cf. Gaceta Parlamentaria, 2010) of the original AML Law initiative were to:

- restrict the use of cash in high value acquisitions (cf. ibid., p. 66);
- increase information exchange and coordination between different public actors to make better use of available information for investigations and prosecutions; and give the PGR and the Federal Police easier access to data of the Finance Ministry in money laundering investigations (cf. ibid., pp. 69-71);
- include DNFBPs and other high risk non-financial businesses under AML regulations by tasking them with KYC/CDD, record keeping and reporting obligations (cf. ibid., pp. 66-69).

Cash restrictions were a complementary measure intended to obstruct money laundering at the placement stage. They continued to develop a policy first implemented as outcome of the US-Mexican criminal proceeds study as analysed below in the sub-section on external influence. The increased information exchange was a component of repositioning the PGR within the domestic governance configuration – a debate that for some time also considered elevating PGR to the central AML governance provider. Further, the proposed policies primarily aimed at expanding the domestic governance configuration to include DNFBPs and other economic activities with a high risk of money laundering. In its final form, the AML Law included most policies outlined by the Calderón government's 2010 initiative and incorporated some policies initially presented as part of the bill of decree. However, like in the case of abandoning the report filing requirements by the Finance Ministry to enable PGR investigations or make the PGR into the government's central AML actor, the proposals most likely to shift power relationships within the existing governance configuration were toned down significantly.

The proposed AML Law generated significant political resistance causing delays in the legislative process. Congress passed an amended version of the law in October 2012 during the first months of Peña Nieto's presidency after two years of debate. The time required to passing the law should be seen in the context of the president not able to rely on a PAN majority in either house of the Congress during the LXI Legislature (2009-2012). The AML Law was therefore subject to a negotiation process with other represented parties in Congress. Due to the distribution of seats in both the Senate and Chamber of Deputies, the government depended on support by members of the PRD or PRI to pass new legislation. While the PRD was located on the other side of the Mexican political spectrum from PAN, PRI legislators reportedly would "not permit that a political reform would pass that would put at risk their intention to recover the Presidency in 2012" (El Economista, 2010i).

In the Senate, the government's initial proposal confronted two alternative initiatives, one launched before and one after its publication. The first was presented by PRD senators Minerva Ramos and René Arce in 2009 (Senado de la República, 2009). In the text and as well in its public promotion, PRD referred to the FATF's MER, stating that the document would describe Mexico as "one of the principal countries for [money] laundering" (El Universal, 2009a). This should be confronted by establishing AML regulation and reporting requirements for DNFBPs and other economic actors under the leadership and supervision of the Finance Ministry (cf. ibid.; also El Universal, 2009b). The PRD proposal was prevention oriented and sought to expand the governance configuration by charging with KYC/CDD and reporting duties non-financial economic actors like providers of gambling and lottery services, non-banking credit and payment systems, pawn brokers, real estate agents, and legal professions (Senado de la República, 2009, pp. 6-7). Non-compliance was to be met with financial sanctions but no penal sanctions were contemplated in the draft law (ibid., pp. 10-11). Senator Ramos accused particularly the PRI of blocking the proposals (El Universal, 2010d). While lacking PRD majorities in Congress should also be considered, notaries' resistance to being subject to AML policies was stated as one main reason for the law never leaving the state of legal initiative (El Economista, 2010k). When the government presented its initiative, PRD representatives continued their push for a more inclusive AML governance configuration, demanding the inclusion of PEPs under AML obligations (cf. e.g. El Economista, 2010l).

In October 2010 Senator Santiago Creel, former Interior Minister (2000 – 2005) under the Fox administration and member of the then governing PAN as well as a presidential candidate runner up against Calderón in 2006, presented another alternative AML law proposal after the government had already published its initiative (cf. Senado de la República, 2010). It incorporated policy proposals made by the PRD and the government while adding more non-financial sectors to the list of regulated entities, including additional PEPs, political parties and religious organisations. The expressed inclusion of political party financing is an example of context sensitivity of AML policy transfer, as in Mexico, criminal money was feared to enter campaign financing (cf. e.g. Milenio, 2012; El Economista, 2012a). Similarly, religious organisations in Mexico were regularly rumoured to receive substantial funding derived from drug trafficking (i.e. El Economista, 2010m) for which the term narco-alms (*narcolimonsas*) was established (cf. Interview M2, 2011, p. 20).[28] Creel explicitly framed his proposal as mean to fight narcotics trafficking with less violent means. The use of intelligence data might allow fighting criminal organisation "probably without firing a single shot" (Senado de la República, 2010). In formulating its policies, Creel's proposal also drew explicitly and extensively on the FATF Recommendations as well as experiences from Spain and Colombia which was a case of policy transfer through learning.

[28] For the deep link between narcotics trafficking and cultural life in Mexico see Maihold and Sauter de Maihold (2012).

Interviewed Mexican AML experts stated that one senator's proposal[29] drew on AML expertise created through a series of meetings between criminal law experts, researchers and representatives of different economic actors. Starting points for reflection during these consultations were the 2004 FATF Recommendations, senator Arce's and the president's initial proposal as well as AML laws from Spain, Colombia and to a more limited extend Brazil, which were then contrasted with local context (cf. Interview M3, 2011, pp. 3-6; cf. also ALD, 2010). On this basis, the consultation process was directed at identifying means that would "contribute to Mexico attacking the finances [*sector patrimonial*] of narcotics trafficking" as a more promising strategy compared to a "frontal attack" (ibid. p. 7) on organised crime. Participants of the expert group meetings pointed out that while the FATF Recommendations were an important point of reference, the legal initiative was not motivated by the desire "to comply with the FATF Recommendations [but] by the problem of organised crime which Mexico currently confronts" (ibid., p. 9). Another interview partner attributed the rise of AML policy on the political agenda of different parties to its connection to combating organised crime as "the grand public policy, […] the big effort that the federal government is making" (Interview M5, 2011, p. 19). This further substantiated observations of an organised crime challenge as the central domestic driver of AML policy transfer between 2007 and 2014 based on the FATF Recommendations (cf. also Interview M4, 2011, pp. 12-13; Interview M7, 2011, p. 6) that also stretched to competing proposals in the Senate.

In addition to this opposition in the legislature, during the two-year public debate, many representatives of the financial sector, DNFBPs and other non-financial economic actors intervened through public statements and lobbying work both in favour and against specific AML policies. Two of the most influential groups were present from the early stages of the negotiation process, with the presidents of ABM and the National Association of Mexican Notaries (*Asociación Nacional del Notariado Mexicano*, ANNM) accompanying president Calderón and the finance minister during the public presentation of the law initiative in the presidential residence of Los Pinos (Milenio, 2010). The Senate's *dictamen* of April 2011 reflected the underlying political controversies with regard to all central aspects of the initial government proposal (cf. Senado de la República, 2011). In summary, parliamentary opposition criticised the legal initiative mainly on four grounds as: (i) damaging the economy through restricting the use of cash, (ii) a mere way to generate fiscal revenue through fines, (iii) threatening civil liberties, and (iv) unduly burdening private actors by delegating them law enforcement tasks that should be the exclusive domain of the state and which risked putting private citizens in physical danger (see e.g. El Economista, 2010j).

Similar to its strategy in the proposed bill of decree, the government's legal initiative explicitly referred to the FATF. Two paragraphs of the background section were dedicated the FATF and its

[29] Due to the timing of its publication in October 2010 and its holistic aspiration, it was most likely Senator Creel's AML law proposal.

Recommendations (cf. Gaceta Parlamentaria, 2010, p. 64), together with a much more detailed reference in the section establishing AML obligations for DNFBPs (cf. ibid., pp. 68-69). The section on DNFBPs refers to the FATF MER of 2008 and its observance that Mexico lacked regulations for gatekeepers. Meeting the FATF standards was further stated as a secondary goal of the proposed law through which the government, in addition to combating organised crime, aimed to "comply with the international obligations of our country" (ibid, p 69). The Senate's *dictamen* similarly referred to the FATF Recommendations on regulating DNFBPs and held that with the proposed measures, Mexico would "cease to be placed at a low and reprehensible prevention level where it is currently located" (Senado de la República, 2011). This explicit mention of the FATF attempted to infuse the legislative proposal with additional legitimacy in order to reinforce it against domestic resistance. Such resistance mainly originated from to be newly regulated actors such as DNFBPs but also from the non-banking financial sector which both successfully secured amendments to the proposed law.

One of the most contentious points (cf. Interview M5, 2011, p. 4) in the initial law proposal foresaw transforming into a national law and expanding the limitations on the use of cash and other forms of payment for high value acquisitions. From an AML perspective, Mexico had recently made positive experiences with restrictions on the use of USD in cash that were introduced in 2010. The decision to reduce the use of USD in cash was based on the binational criminal proceeds study between the US and Mexico (cf. FATF, 2014b, p. 26) mentioned in the sub-section on external influence.

In addition to restrictions on the use of USD, the AML Law proposal also foresaw restricting the use of MXN in cash. The proposed policies on domestic currency use included regulations on activities such as purchases of real estate, vehicles, jewellery and precious metals, art or lottery tickets (cf. Gaceta Parlamentaria, 2010, p. 77). Cash restrictions on acquisitions of real estate and vehicles were amongst the first priorities the Calderón government focussed on in order to expand AML policy beyond the financial sector which the PGR saw as already "'having a very sophisticated regulation'" (Medina Mora in Proceso, 2008). Under the proposed AML Law, the acquisition of real estate was to be possible only with the use of payment methods that permitted identifying the buyer, effectively excluding cash. The same rule was to be applied to any other acquisitions over a value equivalent to MXN 100,000. The government's initiative pointed towards similar legislative obligations already existing in French taxation law (cf. Gaceta Parlamentaria, 2010, p. 78). Again, this reference to international experiences attempted to charge the proposal with additional legitimacy. This could serve to advance AML policy aspects whose implementation risked being unpopular with the regulated sectors that in the past relied on a cash economy and feared negative economic repercussions.

The general concern for money laundering risks associated to cash use was widely shared in Mexico. However, an ensuing political debate centred on which economic activities should effectively be restricted in their use of cash and to what extent without damaging economic development. Despite the strong political emphasis of the Calderón administration on real estate for example, former attorney general and at the time president of the NGO Transparencia Nacional qualified the real estate sector as being "'a minimal' part" (Reyes in El Universal, 2010e) of money laundering schemes in the country. Instead, Reyes emphasised a necessity of still further expanding regulations in the financial sector, particularly to non-regulated SOFOMs (cf. ibid.).[30] Real estate companies tried to corroborate the low need for additional AML supervision, stating that for acquisitions between MXN 250,000 and 2.5 million, over 90% of buyers use formal credit (ibid.; cf. also El Universal, 2017). Senators from the leading parties in the Senate therefore saw little use in banning cash for real estate purchases. During the review in the Senate's commissions, they held that "intermediaries of buying and selling of real estate and property [would] not be affected by the law" (El Economista, 2010g).

While some critics presented the policies as ineffective for the real estate sector, a variety of other economic areas feared to be negatively affected. Immediately after the general outline of the proposal became public knowledge and still before being submitted formally to parliament, concerns were raised that a low threshold for cash payments of possibly under MXN 50,000 could negatively affect small and medium sized enterprises (cf. El Economista, 2010n). PRI Senator Alfonso Navarrete announced resisting the government's proposal "if it pretended to go after small businesses and citizens" as "[i]n Mexico, many communities effect their transactions in cash which does not mean that they are tax evaders or money launderers" (Navarrete in El Universal, 2010f; cf. also La Jornada, 2010).

The National Tourism Business Council (*Consejo Nacional Empresarial* Turístico, CNET) claimed that such restrictions would put the industry at a competitive disadvantage as it risked losing competitiveness as exchange services could no longer be offered "which can be done in all hotels of the world" (Azcárrage in El Universal, 2010g). Another concern was that restricting the use of USD in cash as well as its exchange to MXN would lead to a parallel black market for USD (cf. Proceso, 2010b), noticing that even before the restrictions were in effect, exchange rates offered by exchange centres were already lower than official interbank rates (cf. El Universal, 2010h). Support for concerns of the tourism industry that restrictions on cash would negatively impact their business came from within the administration. Pointing towards the sector being "the third largest source of income for the country" (Guevara in El Economista, 2010o), tourism minister Gloria Guevara assured the tourism industry that the Finance Ministry was open to adjust the existing proposal in order to avoid a negative economic impact. In an attempt to induce policy learning, she also invited the Secretary-General of the World Tourism Organisation (UNWTO) to Mexico to share international best practice on the subject (ibid.).

[30] This hole in the preventive AML system was closed by publication of regulations of the Finance Ministry in 2011 as detailed above (cf. DOF, 2011a).

The National Association and Exchange Centres and Money Transmitters (*Asociación Nacional de Centros Cambiarios y Transmisores de Dinero*, ANCEC-TD) supported this analysis adding that once restrictions were in place, USD cash flows would be diverted into other transfer channels (El Universal, 2010i). The Association of Gaming and Lottery License Holders lobbied for a complete withdrawal of the idea to restrict cash use in their sector (ALD, 2010). Somewhat misrepresenting money laundering mechanisms in the gambling sector, its president pointed towards the rules in gambling establishments were "being made to lose and not to win money" (El Economista, 2010j). ABM argued against this, stating that the restrictions would on the contrary "discourage that [illicit] dollars would get into the country'" (ABM in Proceso, 2010b). Other economic sectors organisations that publicly declared their support for the measure were the Business Coordination Council (*Consejo Coordinador Empresarial*, CCE), mainly representing the wider financial sector, and the Canacintra, representing Mexican small and medium sized industrial producers (El Universal, 2010h).

After negotiating with banks, the tourism industry and businesses in border regions (cf. El Universal, 2010h), Finance Ministry regulations published in June 2010 allowed financial entities to receive up to USD 4,000 for individuals as well as up to USD 7,000 for businesses and legal persons with bank accounts at the respective institution to conduct financial operations such as currency exchange or payment of credits. Clients who were not account holders were restricted to a monthly maximum of up to USD 1,500. Exceptions were introduced for legal persons in specified border regions with the US where a USD 7,000 threshold applied in order to safeguard economic interests of the tourism industry and businesses with ties to the US. Use of USD for payment of acquisitions, services and other daily payments were restricted for Mexican citizens to USD 300 and foreign citizens to USD 1,500 monthly. At the same time, KYC and reporting standards for cash exchange operations were tightened (cf. DOF, 2010b). Responding to pressure by the Senate, a slight adjustment was introduced in December 2010 that allowed more flexibility in frontier regions and for the tourism industry (Excelsior, 2010; El Universal, 2010j). The measure coincided with the Christmas shopping and the holiday season which contributed to demand for money exchange services being four times the average rate in December (El Universal, 2010j). While some observers like Edgardo Buscaglia saw restrictions on the use of USD in cash as generally insufficient, comparing it with "'wanting to do brain surgery with a kitchen knife'" (Buscaglia in Proceso, 2010b), they contributed to Mexico's compliance with Key Recommendation 23 by addressing shortcomings in cash acceptance practices (FATF, 2014b, p. 26).

A particular role that is not contemplated in the FATF Recommendations but that is in many countries an area of limited statehood is the importance of cash for the informal sector. Some interview partners saw money laundering through the informal sector as a far bigger challenge than in the formal sector (cf. Interview M16, 2011, p. 7). The Director General for AML of Tiber, a larger Mexican currency exchange house, underlined the low levels of banking access in Mexico, estimating the size of the informal economy at 65% (Provincia, 2011). PRI Senator Ramiro Hernández from Jalisco voiced strong opposition to the government's proposal which would "provoke discouragement of investment, slow down the country's development and the [regulated] activities would continue in hiding and even the informal commerce will be made to grow" (ALD, 2010). While not mentioning the informal economy explicitly, the ABM's presidents observation that in Mexico "criminals do not need to deposit [cash] […] at a bank or carry out sophisticated triangular financial operations, […] money is laundered through the acquisition of goods in cash and later deposited in the banking system as product of a legitimate transaction" (Deschamps in El Universal, 2010k). PRI Senator Navarrete framed his opposition to the AML Law as avoiding any form of market regulation "disguised as a fight against money laundering, which would hurt many people" (La Jornada, 2010).

The debate on the economic impacts on the informal sector highlighted that the AML policy debate in Mexico differentiated between the informal and the illegal. A widely shared position held that while illegal money laundering activities should be confronted, the new law should avoid unduly hindering informal economic activities on which a sizable portion of the Mexican economy and employment depend. The rural economy, a traditionally highly informal sector in Mexico, pointed towards challenges that implementing cash restrictions would present. According to the president of the Federation of Rural Owners of Mexico State (*Federación de Propietarios Rurales del Estado de México*), the low percentage of the population holding and using a bank account (bancarisation) in the country side together with the custom of spot transactions in cash would lead to the "'just paying for the sinners'" in rural populations where there were "no banks or ATMs" (Carrillo in ALD, 2010). Producers would be accustomed to use cash and at the times of making sales already use a portion of the income in order to pay for inputs (ibid.; cf. also El Economista, 2010e).

While the economic criticism presented above was generated mainly by DNFBPs, the private sector was not a homogenous group with large parts of the financial sector and particularly banks supporting cash restrictions. Following its position to support the establishment of USD restrictions earlier in 2010, in the preparation of the government's law initiative, ABM proposed restricting the use of cash in general to MXN 50,000 as well as, modelled on US experiences, the introduction of a blacklist of individuals and enterprises which banks could consult before opening accounts (cf. El Universal, 2010l). After the government's presented its initiative, ABM publicly endorsed it with its president describing it as "'a much more profound step […] which will contribute significantly to being more effective in combating money laundering'" (Deschamps in El Universal, 2010m).

Apart from the support by ABM, another outspoken organisation in support of the law was the CCE, despite acknowledging short term economic impacts on some businesses (cf. El Universal, 2010n). It saw

AML as a way to combat public insecurity as "'the most problematic' factor 'for doing business in Mexico'" (Gutiérrez in El Economista, 2012b). With its affiliated organisations, including ABM, the CCE represented the wider financial sector including insurers as well as the non-financial formal sector lead by the Employers Confederation of the Mexican Republic (*Confederación Patronal de la República Mexicana*, COPARMEX[31]), and others. COPARMEX in turn included a strengthening of the UIF as one of nine publicly made proposals to the government to give positive economic impulses (El Economista, 2011b). After the publication of the government's initiative, the CCE pressed for a swift passing of the bill in Congress. It tried to exert political pressure on the institution as a whole stating through its president that "'the cost on society for those who do not authorise the law immediately, well I think it will be high'" (Sánchez in El Universal, 2010n). It continued its support over time, backing up president Calderón's request to Congress for an extended period of legislative session attempting to pass the AML Law in August or September 2011 (Proceso, 2011a) or at least before the end of the administration in 2012 (cf. El Economista, 2012c).

On the public side, the PGR defended cash restrictions again by trying to derive legitimacy from comparison with practices in other countries. Then Attorney General Laynez stated to the Senate Committees on Treasury and Legislative Studies that Mexico was the "only country to still allow" (El Universal, 2010o) large cash acquisitions. The Vice-Minister of Finance, José Meade[32], characterised AML policies as even beneficial for the economic development of DNFBPs and other non-financial entities. It would allow "accountants, notaries and jewellers to better know their customers" and through blocking out criminal activity in the end benefit "everyone, the financial sector and the real sector" (Meade in El Economista, 2010p). The grace period for the introduction of new rules like cash restrictions would allow for necessary adjustments to be made in business conduct thus minimising economic impact, particularly in border regions (ibid.).

The establishment of cash restrictions was overall not an act of hierarchical imposition by the Mexican state on the private sector but the result of a negotiation in which different private sector representatives also exerted their voice. In its final form, Article 32 of the AML Law did include prohibitions of the use of cash and other forms of direct value transfer like precious metals in high value acquisitions (cf. DOF, 2012a). It defined specific goods and services which were assigned differentiated threshold values relative to the minimum wage level in the Federal District (Mexico City). The orientation of this law against organised crime became clear noticing that in addition to the acquisition of real estate, vehicle and jewels, armour-plating of any kind of vehicle was also included in the list of services for which cash payments over a certain value were prohibited. The final regulations were however softer in comparison to the initial

[31] According to their own claim, employers organised in COPARMEX represent 30% of national GDP (COPARMEX, 2017).

[32] Meade later went on to serve as finance minister and minister of three other departments under Calderón as well as Peña Nieto culminating in his presidential candidature for a PRI lead coalition in 2018.

proposal of restricting such payment methods completely for real estate and any acquisition over MXN 100,000. Congress reduced the scope of the law by defining a list of products and services. Additionally, using the exchange rate of October 2012, the threshold for real estate was raised to about MXN 500,000 (USD 39,000) for real estate and MXN 200,000 (USD 15,600) for other kinds of regulated products or services like cars, boats, airplanes, different luxury items or armour-plating services.

In addition to the economic impact of cash restrictions, the proposal was criticised as merely a mean to generate fiscal revenue through fines for non-compliance. Critics included amongst others public notaries and the Inbursa Financial Group (Inbursa)[33] (El Economista, 2010q, p. 48). Of particular concern was the use of undercover agents, at times termed a "financial police" (El Economista, 2010g), which were to be deployed by PGR (ibid.). The fiscal revenue argument aimed at the leadership the Finance Ministry in AML matters. In December 2010, both the PRD and the PRI "demanded that it should not be the Finance Ministry but the PGR which completely supervises actions against [money laundering] as otherwise the law could be used by the government merely as a tool to create fiscal revenue" (El Economista, 2010r). The Senate's *dictamen* reflected this view by stating that the information gathered through AML policies shall only be used "for compliance with the objective of the law and in no way for the generation of fiscal revenue" (Senado de la República, 2011). Even the Finance Ministry itself saw a need to "'pay a lot of attention'" to "'the prosecution and judicial action part'" (Cordero in El Universal, 2010p).

This position was also supported by some Mexican AML experts (El Economista, 2011c). Still, the UIF as the central AML governance body should remain at the Finance Ministry (cf. ibid.). Under the compromise reached in the Senate, the PGR was to create a new Specialised Unit for Financial Analysis dedicated to money laundering investigations (cf. Senado de la República, 2011). The new unit was created by an administrative decree in March 2012 (DOF, 2012b) during the outgoing Calderón administration which did not succeed in passing the final AML Law in Congress during its tenure (cf. El Economista, 2012d). Through this decree, the PGR was also in charge of developing the criteria to be used by the Finance Ministry for transaction reports (cf. ibid.) giving the PGR an indirect form of influencing criminal intelligence gathering that might lead to AML casework. In addition, during the first half of 2011, the PGR included money laundering in its rewards programme with up to 25% of seized funds benefiting persons who would provide it with valuable information to identify such funds (DOF, 2011d).

Falling short of substantial reallocating roles and agencies, to better integrate the existing domestic AML governance configuration, the government's AML Law initiative concentrated on further measures to increase information exchange. Building on previous initiatives like information sharing agreements between the PGR and CNBV (cf. Proceso, 2009a; El Universal, 2009c), the policies aimed primarily at making

[33] Created and owned by Mexico's estimated richest individual, Carlos Slim, Inbursa offered securities as well as banking and stock market services.

the data provided by the UIF accessible and useful for law enforcement and prosecution agencies (cf. Gaceta Parlamentaria, 2010, p. 71). The UIF was to take on the role of a repository of information and expertise in AML matters that continued to serve preventive roles as well as an increased service provision for investigative and prosecutorial actors like the Federal Police and the PGR (cf. Gaceta Parlamentaria, 2010, pp. 71, 104-110). Amongst others, the UIF gained access to databases from other federal entities like the ministries for the Economy and Public Service, SAT, and the National Migration Institute (El Economista, 2010s). Coinciding with these increased demands, the UIF received a budget increase of almost 39% in 2011 (El Economista, 2010t)

This setup of more information available to the UIF and its closer connection to the Federal Police and PGR followed the line of increasing the role of law enforcement and prosecution in AML governance. It granted them better and more autonomous access to financial intelligence data created in the financial system, albeit via the UIF. The government's objective was to allow the development of "investigations that would result in cases judged adequately" (cf. ibid. p. 64). With a coordination role in AML prosecutions, the PGR would be better positioned in domestic AML governance complementing the preventive work centred on the Finance Ministry. The Federal Police would fulfil an auxiliary role by supporting the investigative work of the PGR. While in the end not granting fully autonomous access to financial intelligence data to the PGR, Article 8, section X of the final AML Law provided it with the possibility of information requests to the financial sector. These had to be undertaken via the Finance Ministry (cf. DOF, 2012a). The PGR could only request information for already formally initiated investigations and not engage in proactive financial intelligence gathering through the AML reporting system to open a case (ibid.).

A third strand of debate on the AML Law proposal also dealt with the actor dimension within the domestic AML governance configuration. It asked how and which DNFBPs and other high risk sectors would be charged with KYC/CDD, record keeping and reporting duties. As detailed above, the PRD pushed for an inclusion of additional PEPs. Referring to the FATF Recommendations and Spanish AML law, Congressmen of the Mexican Labour Party (*Partido del Trabajo*, PT) similarly expressed the view that additional actors should be charged with reporting duties, like political parties, unions, religious associations and custom brokers (Proceso, 2011b). Their no-inclusion contributed to PT rejecting the proposed law during consultations in the Chamber of Deputies (Proceso, 2011c). The Espinosa Yglesias Study Centre (*Centro de Estudios Espinosa Yglesias*, CEEY) brought together a group of experts drawn from academia and the private sector to deliver a written evaluation of Calderón's original proposal (El Economista, 2011c). They largely confirmed many of the criticism observed previously but took an overall positive view on the necessity to pass the AML Law (CEEY, 2010, p. 2). Their analysis similarly suggested further widening the obligations for private actors within the law to include, amongst others, the financial sector, pawn and custom brokers, political parties, churches and currency exchange centres as well as identifying measures to combat money laundering in the informal sector (ibid., pp. 2, 16-17).

In this debate, civil liberty arguments played a strong role, particular for the regulation and role of legal professions in AML policy implementation. Concerns for civil liberties were for example expressed by PRI Senator Hernández of Jalisco. Notaries would be converted into police agents while continuing "'a public policy […] which aims to deteriorate the law, the freedom and the property of people'" (Hernández in ALD, 2010). Based on these considerations and security threats detailed further below, he declared his opposition to the proposed law. It would "'not pass, because we will not allow them to step over the persons' rights and guarantees'" (Hernández in ibid.). When the AML Law and its implications for DNFBPs were debated with DNFBP representatives in commissions of the Mexican Senate, various DNFBP business associations representing "lawyers, academics, public accountants, notaries pubic and gambling license holders" rejected the idea that they were to "hand in reports without them being suspected of illicit activity, and violate professional secrets" (ALD, 2010). A representative of the Mexican Bar Association stated in a Senate hearing on the initiative that it aimed to "'prosecute the governed'" (unnamed representative in El Economista, 2010j).

Especially for legal professions, civil liberty arguments on client confidentiality were fielded in a similar way to bank secrecy debates during early AML development. Echoing in all but wording one of the earliest identified public criticisms of AML policy seeking to establish record keeping and reporting standards for the financial sector in the US, the AML Law was seen as establishing a "governmental and fiscal big brother where everybody is suspicious for carrying cash" (El Universal, 2010q; cf. Time, 1972). This assessment was made by participants of a closed session two day seminar on the AML Law proposal attended by the Finance Minister, Attorney General as well as the heads of SAT and PGR. Among the invitees were notaries as well as senators of the governing PAN and PRI senator Navarrete as an outspoken critic of the AML Law. (El Universal, 2010q). It was seen by participants as an attempt of governmental lobbying (ibid.). The high level attendance underlined the need for the government to negotiate its proposal against resistance by sectors targeted for regulation and a lacking majority in Congress.

Notaries public were identified as one of the most involved DNFBPs with regard to their inclusion in AML governance (cf. e.g. Interview M4, 2011, pp. 14-18). Not only did they participate in the presentation of the initial proposal by president Calderón, they also featured in many debates on the issue and were for example invited to the debate of the legal proposal in the Justice Commission of the Chamber of Deputies (Proceso, 2011b). The president of ANNM positioned notaries public as generally in favour of AML policies but built in caveats for how far the sector could go. It was "'prepared to […] provide privileged information to the state, in accordance with the requirements of legal regulations, all of this within the scope of its responsibilities and without any impairment to the rule of law'" (Castillo in El Universal, 2010m). Even generally supportive representatives of the law, like the president of ANCEC-TD saw obligations for customs agents and notaries as excessive which might turn them into “investigators of their clients” (El Universal, 2010r). In reaction, Senator Creel’s proposal of October 2010 contemplated a special reporting mechanism for notaries public modelled on Spanish experiences. In it, specific transactions would be defined for which notaries public would be obliged to report. The reporting would not be sent directly to the UIF but passed as a monthly report through the College of Notaries Public as the responsible regulatory entity for the sector. This should not only increase the quality of the information but also provide a layer of anonymity to the reporting notary public “to adequately safeguard [their] security” (Senado de la República, 2010).

Exchange centres as well as customs brokers also saw their rights curtailed as the law would violate the presumption of innocence and revers the burden of proof (El Universal, 2010s). The president of the Confederation of Custom Brokers’ Associations held that the sector could not be subject to corruption as they were obligated to register at the SAT as supervisory entity for the sector (ibid.) – an argument that did not carry further in the debate. Somewhat surprisingly, given the long standing international practice and the positioning of ABM, Inbursa also publicly criticised the law for violating civil liberties. In a series of observations submitted to the Senate, the financial conglomerate identified the law as containing unconstitutional and arbitrary measures “against the Mexican financial system” (El Economista, 2010u). The proposed law would violate the presumption of innocence and allocate to the Finance Ministry powers of accusation that should be reserved to the PGR. Bank secrecy violations for AML purposes would be “absurd” (ibid.). The document would propose public-private co-governance under which financial entities would be aware of covert operations in order to “’facilitate and assist this work’” (Inbursa in ibid.).

Adding to the legal arguments were concerns of exposure of many DNFBPs, and in particular the people that work in them, to criminal threats of violence. The Calderón government identified this challenge already during the Security Dialogues leading up to the formulation of the National Strategy, where the president “recognised that it is difficult to find financial experts which risk up to their lives to detect” (El Economista, 2010f) criminal proceeds. Especially small scale businesses and professions that work individually, sometimes in remote areas with a strong presence of organised criminal groups, expressed a fear of violent retribution if they were to report money laundering suspicions. The security situation was one reason why for example the “Mexican Institute of Public Accountants” (*Instituto Mexicano de Contadores Públicos*, IMCP) fought against the inclusion of the profession under AML regulations. It would “put at risk the physical integrity and the life of professional accountants, especially in areas where crime ‘had the monopoly on the use of force’” (Donez in ALD, 2010).

Notaries provided an example of the of security concerns in Mexico at the time the AML Law was debated. They offered legal services under client confidentiality, they usually operated individually and were present throughout Mexico including in areas where criminal threats of violence are a serious concern. A fixed number of notary positions were assigned for specific geographic areas. For example in Acapulco, a city of 670,000 inhabitants which has consistently shown very high homicides rates in recent years, ANNM listed 17 notaries with full name and contact data in its online directory by May 2018. One important notary service is supporting clients with trading and registering land and real estate titles, including the handling of cash. These are economic activities with high money laundering risks. This combination of a service offer attractive for organised crime, an easy ways of identification, and low number of individuals whose profession is bound to a determined geographic area, made notaries very prone to "plata o plomo" tactics – the "choice" offered between accepting money (plata = silver) from very likely illicit sources in exchange for their services or become the victim of violence and potentially be killed (plomo = lead; a bullet). Such threats were real considering the frequency of notaries or their family members being killed in the 2010s, not only in remote areas but also at daylight in the streets of the high income and usually considered secure banking district of Polanco in Mexico City (cf. Excelsior, 2013). Notaries public were seen as "particularly vulnerable" (Farah, 2010, p. 13) to threats of violence. Representatives of the notary public coined the initiative as converting them into "targets for narcotics traffickers" (El Universal, 2010q).

The argument resonated with at least some policy makers who expressed that the proposed AML Law created concerns about putting regulated actors, especially notaries, "on a path to prison or death" (ALD, 2010). The PRI took up this concern maintaining that it was in its interest that the initiative "would not put at risk entities with AML obligations such as notaries" (El Economista, 2010l) and others which would require legislative adjustments to the initial proposal. The Senate's first review in December 2010 assumed a similar position considering it mistaken to task notaries and other legal professions with reporting duties without establishing legal safeguards for their security (El Economista, 2010r). Some experts were also concerned with state agents' possible collusion with organised crime (Interview M5, 2011, p. 11) and stressed the challenges to close bank accounts in areas with high violent crime rates as it would put staff with direct client contact in physical danger (Interview M6, 2011, p. 9). In a Senate hearing on DNFBP regulation, the president of the Mexican branch of the International Fiscal Association voiced this concern that reported information might "fall into the hands of unscrupulous public officials" (ALD, 2010). Such security threats contributed to the Senate adjusting the reporting obligations for notaries and other legal professions along the lines of Senator Creel's proposal (El Economista, 2010r).

Such wide spread security concerns are by definition a challenge for governance by delegation unique to areas of limited statehood, where the state cannot effectively monopolise the use of force. As a consequence, some private and public sector representatives put into doubt this governance configuration of delegation by the state as such. ANNM stated that while it was willing to comply with the AML Law once established, it would differ from other legislation in that it would charge notaries with investigating the origin of funds which would and should be a domain of the SAT or other fiscal authorities (cf. Notimex, 2011). Former Attorney General Gabriel Reyes expressed concern that people who run businesses with reporting obligation would be "in a defenceless state […] as the government is only transferring its law enforcement work to companies, while it is actually its own obligation" (Reyes in El Universal, 2010e). Similar positions were taken by senators from different parties who criticised the AML Law as edgy (*filosa*) and an attempt to offload a public sector responsibility on citizens and the private sector (cf. e.g. El Universal, 2010o). Congressman Di Constanzo of the PT saw reporting obligations as nothing but a delegation "of police work to citizens and with it put their lives in danger" (Proceso, 2011c).

Senator Murillio Karam (PRI), who later served as Attorney General under Peña Nieto, warned of "mixing mechanisms of financial control with an issue that should be exclusively about prosecuting money laundering", could create negative effects on the economy, "especially when citizens substitute professionals" (El Economista, 2010e; cf. also El Economista, 2010j). Voicing concerns received by notary publics, Karam made reference to the FATF Recommendations putting in doubt the legitimacy of the planned delegation of AML tasks to private actors. According to this position, the government's proposed AML Law would be "inconsistent with the recommendations" (El Universal, 2010t) of the FATF and needed to be reformulated in order to be in line with comparative law and the international standard (El Financiero, 2010). Such references show that claims to the interpretation of the FATF Recommendations were used to support conflicting positions in the development of AML in México. While the international standard was not questioned in itself, actors tried to establish interpretations of the Recommendations in public discourse that would strengthen their respective positions. In terms of governance configurations, such attempts aim at gaining control over legitimacy as a resource of power in the policy transfer process.

As a consequence of the private sector criticism of the government's proposal to regulate a number DNFBPs and other economic actors with high money laundering risk, the Senate report adjusted the tonality of the proposals towards regulated entities, both financial and DNFBPs. While the original proposal focussed on regulating specific entities and assigning them record keeping and reporting obligations (*sujetos obligados*), the Senate's *dictamen* employed a logic of private economic actors being potentially abused by money launderers. The concept of *sujetos obligados* was outright rejected as "misguided, as it generalises the mistaken idea that these are the entities that carry out the illicit money laundering" (Senado de la República, 2011). Instead, DNFBPs and other economic actors were characterised as victims who "through the activities they carry out are vulnerable to the actions of organised crime" (cf. ibid.). On a semantic level, non-financial entities were also not to file reports. Interview partners explained that in Spanish the wording (*reportar*) would carry a connotation of a criminal charge (cf. e.g. Interview M14, 2011, p. 11). The use of *reportar* might also indicate a direct transfer of English wording into Spanish at the moment of initial transfer in the mid-1990s, instead of transfer through learning which should have more appropriately conveyed the meaning. DNFBPs were to send notifications (*avisos*) instead of reports to the respective state institutions in charge of AML policy implementation – which in practical terms served the same purpose as transactions reports.

The introduced conceptual change by the Senate went beyond semantics and contributed to a divergence between DNFBP and financial sector regulation. CDD requirements were much lower for DNFBPs with the resulting regulatory focus being limited to KYC measures. The final AML Law established through articles 17 and 24 a special regime for legal professions like notaries that had to notify through their respective umbrella organisations (DOF, 2012a, p. 10; DOF, 2013, p. 4). This served a double purpose of safeguarding an extent of legal confidentiality and reducing the risk of criminal groups targeting individuals with violence and other coercive measures (cf. Senado de la República, 2011). If subsequently reports were filed, the final law's regulation further specified that these were to be received by the SAT which was to pass them on to the UIF or by the UIF directly (DOF, 2013, pp. 1-2). This adjustment was a result of political negotiation by notaries, as the DNFBP group most resistant to being subject to AML regulations. As operations with very small personnel and high levels of client contact, they saw themselves as highly vulnerable to criminal violence (cf. Interview M2, 2011, p. 20). It was thus also a solution to transferring the FATF Recommendations to an area of limited statehood in which the Mexican government did not possess the monopoly on the use of force.

While acknowledging the need for an AML law, the Senate's *dictamen* explicitly introduced economic policy considerations by stating as its main reason for proposed adjustments to "reduce the negative implications that [the initiative] would have had, and which were identified by listening to the principal economic actors" (cf. Senado de la República, 2011). Further, it added to the law's objectives to "protect the integrity of the national economy and the financial system" (ibid.). Giving more prominence to the financial sector, it also included a new first section in the legal proposal largely referencing already existing AML prevention policies for banks and other financial actors (ibid.). The Senate stressed that "the usefulness of the [prevention] regime has been amply recognised and accepted by society and especially by financial entities" (ibid.). Emphasising the broad acceptance of the law by regulated entities indicated that adherence to law could not be expected from the outset through hierarchical enforcement but required a level of acceptance by the governed.

Not adding much in substance to the existing legal framework, the inclusion of financial sector regulations however did make the AML Law more comprehensive in scope and lifted the previously existing policies from the level of administrative directives to law (cf. Interview M2, 2011, p. 10). According to interviewed Mexican criminal law experts, the previous AML legislative level of directives in combination with article 400 bis of the CFF limited the MP in its work, as its requests for investigations were not based on a specific AML law (cf. Interview M3, 2011, p. 12; Interview M4, 2011, p. 2). With these changes, the new law and its directives came into effect in July and August 2013 respectively. The regulation of DNFBPs and other parts of the private sector with high money laundering risk contributed to compliance with Recommendations 12, 16, 20 and 24 (cf. FATF, 2014b, p. 33).

Implications for the Governance Configuration

In summary, the reforms undertaken by the Mexican government and legislature between 2007 and 2014 led to a limited reordering of the country's AML governance configuration of delegation under conditions of limited statehood. After its completion, transfer of the 2004 FATF Recommendations was deeper but still not complete. Following its broader security agenda, the Calderón government engaged in transferring particularly those policy sub-areas which would contribute to the more effective application of hierarchical governance modes like investigations and prosecutions. After passing the AML Law in its initial months of government, this process discontinued with the election of President Peña Nieto in 2012. By 2014 only the adjusted legal definition of money laundering passed Congress through external influence exerted by the FATF. On the government side, with the end of the Calderón government in 2012, Mexico maintained locked in its former path dependency on an AML governance configuration with the Finance Ministry as its central actor continuing an administrative policy focus on prevention and compliance in the financial sector as presented below.

Within these limits an important result of the reform was broadening the governance configuration by including in it a series of DNFBPs, PEPs and formerly unregulated financial actors. By better integrating the PGR and police services into AML governance, the previous prevention oriented system focussing on financial integrity was broadened to include more prosecutorial aspects. The Calderón government attempted reforms that had the potential to establish the PGR as the second central structural pillars of money laundering governance in Mexico. The most far reaching proposals like the broad use of undercover operations, direct access of prosecution agencies to financial data, or the full relocation of the UIF to the PGR were however rejected by Congress. Despite the reduction in the requirements to file reports previously to initiating legal proceedings, money laundering cases making use of financial services were still difficult to investigate if they implicated members of the Mexican financial sector. Thus, the institutional double structure at the Finance Ministry and PGR persisted which reflected the unresolved underlying tension between proponents of different AML governance services. Commanding the resources of the UIF and in charge of regulation and supervision of most regulated entities, the Finance Ministry remained the most powerful institution, dominating domestic AML policy formulation and implementation. Still, with the inclusion of DNFBPs under the country's regulatory and reporting regime, additional information sources were available to combat money laundering, its preceding offences, and organised crime more effectively.

As a result, the reform had some shortcomings that continued to limit the application of hierarchical governance modes in delegation relationships which in turn contributed to a less complete policy transfer. Despite a small increase, Mexico continued its trend of relatively low administrative fines for non-compliant financial institutions (cf. GAFISUD, 2008, p. 12; also Interview M7, 2011, pp. 10-11). Coercive measures were observed only to a very limited extend. This indicated a symmetrical power relationship between state entities and the private sector to which governance service provision was delegated. The clearest indicator of a low application of hierarchical governance modes in Mexico were the statistics on criminal proceedings. Till 2007, the country achieved only 25 convictions for money laundering since the offence was first established under Mexican law in 1989 (FATF, 2008, p. 8). After an increase in the following years, Mexico achieved an annual average of 33 convictions for money laundering between 2004 and 2012, placing it between Colombia (98) and Brazil (30) in a cross country comparison with other Latin American countries (Rico, 2013, p. 5). However, if the exceptional 160 convictions of 2012 are not considered, the average drops to 17, putting the country almost at level with the much smaller economy of Panama. While the average rose in subsequent years, it did so at a consistently low level (FATF and GAFILAT, 2018, p. 65). Such a low number of convictions also made the implementation of relatively expensive AML policies vulnerable to cost-benefit arguments (cf. Interview M4, 2011, pp. 35-36; cf. Interview M6, 2011, p. 35). However, such arguments were rarely found in analysing the Mexican AML debate. The rare mentioning of the cost aspects of AML in Mexico could be based on both a higher level of acceptance for AML as well as the strong normative pressure exerted via the link of AML to highly violent organised crime in the country.

By the end of the reform process, the Finance Ministry as host to the UIF and market regulators remained the central dominant actor in the domestic governance configuration of delegation under conditions of limited statehood. Its main governance counterpart was the private financial sector and in particular banks, who provided important knowledge on AML regulation and served as negotiation partners. In this sense, preventive AML policy making and implementation in the financial sector can be described as public-private co-governance. The law enforcement and prosecution sector thus remained insulated from the most relevant money laundering risk areas. The shadow of hierarchy cast by hierarchical governance through Mexican public actors on the financial sector with regard to AML was insufficient to further increase compliance. As a result, it is not surprising that the 2018 MER developed by the FATF and GAFILAT, measuring compliance with the 2012 Recommendations, found as one of its main conclusions that the Mexican legal framework was overall evaluated positively but “the volume of financial intelligence disseminated to the Procuraduría General de la República (PGR) is limited in number resulting in a low number of financial investigations.” Further, „[u]ntil relatively recently, the PGR did not rank the identification and investigation of ML as one of its key priorities. ML is not investigated and prosecuted in a proactive and systematic fashion, but rather on a reactive, case-by-case basis […]" (FATF and GAFILAT, 2018, pp. 3-4).

4.2.3 External Influence

With regard to Mexico, the overall explanatory power of external influence was relevant but more limited than in El Salvador beyond the normative definition of AML policies in the Recommendations by the FATF. Targeted action of external actors contributed to higher levels of compliance if these were effective in linking up with domestic actors within the domestically salient governance configuration of delegation under conditions of limited statehood as discussed in the previous sub-section. External influence was primarily observed around the FATF as central governance actor. Its main non-hierarchical governance mode was the provision of the Recommendations itself which guided Mexico's policy development since the 1990s. The mutual evaluation and follow-up process contributed to their transfer as peer-learning process. It provided knowledge on how to transfer the policy standard into national legislation and foster effective implementation. Beyond this general orientation of national AML policy development, the FATF's effectiveness to induce policy transfer through additional governance modes like the incentive of membership in the organisation or the threat of sanctions in the follow-up process was limited. Other actors like GAFISUD, the US government, and the IMF were also identified as non-hierarchical governance actors within a configuration of external influence. While GAFISUD followed the FATF's model, the US and the IMF applied more targeted interventions which contributed to compliance with Recommendations in specific policy sub-areas.

Within the organisational structure of the FATF and governed by written guidelines and procedures, the relationship between the FATF and Mexico as a member state was highly institutionalised. In this institutional framework, the exercise of external influence by the FATF was limited to persuasion and arguing prior to the 2008 MER. This took the form of knowledge transfer through the definition and constant updating of the policy standard itself as well as feedback on the country's compliance in the form of evaluation reports. Linked to domestic governance configurations and political priorities of market development, the FATF in this way contributed to the transfer and implementation of those Recommendations governing the financial market since the 1990s. Since 2007, the process also included prosecutorial aspects of AML which increased in importance as domestic policy goals. With the 2008 MER, the organisation introduced an increasing threat of sanctions as additional governance mode, including an escalation of the follow-up process to targeted enhanced follow-up in 2013. This last step fostered additional compliance with the FATF's Core and Key Recommendations and in particularly Recommendation 1, adding to policy change driven by more domestic concerns.

In its Annual Report 1999-2000, which commemorated the inclusion of Mexico in the organisation as a "major achievement" (FATF, 2000, p. 4), the FATF published a positive summary report of the country's compliance with the 1996 Recommendations (ibid, pp. 11-13). As a new FATF member, Mexico at that time reaffirmed its commitment to comply with the Recommendations and their acceptance as legitimate standard for its domestic AML policy development. The FATF report emphasised the importance of Mexico in combating transnational criminal threats due to its position along major international narcotics trafficking routes as well as other forms of transnational organised crime such as weapons smuggling and human trafficking. These were presented as the main risk factors for money laundering in the country, "both within and outside the financial sector" (ibid, p. 11). Concerns for Mexico's performance in terms of AML policy development were however low. The FATF evaluated that since a 1997 policy reform, "almost all of the basic [AML] measures are now in place" and "efforts now need to concentrate on removing remaining loopholes, refining existing requirements, and working to make the system more effective" (ibid.). External influence was exerted through the incentive of membership in a prestigious international organisation, provision of the policy standard, and pointing to tasks ahead for Mexico. Manifestations of arguing and persuasion included amongst others the provision of the public summary evaluation report and the confidential full report, Mexico's participation in the FATF plenary and working groups as a full member, and its exposure to the organisation's publications and guidelines. Mexican regulatory authorities stated that participating in FATF working groups allowed them to learn from and transfer international knowledge on AML to Mexico while in the process adapting it to local circumstances (Interview M18, 2011, pp. 13-14).

Most of these factors contribute to continuous processes whose causal effects on compliance over time are difficult to pinpoint. To meet this challenge, the work concentrated on the critical suggestions of the FATF's Annual Report 1999-2000 that addressed specific AML compliance issues. It then assessed the influence of the FATF on policy reforms that were developed and implemented in Mexico until the publication of the 2008 MER. A first observation of the FATF was a low number of convictions reached for money laundering. This was attributed primarily to the definition of the offence and a Mexican legal peculiarity that allowed for a reversal of the burden of proof in money laundering cases. The FATF held it likely that such problems would be "overcome through further cases, combined with legal training" (FATF, 2000, p. 12). It also suggested adjusting the legal definition of money laundering to allow a wider application of the offence to less severe misconduct. Further, Mexico should review its asset confiscation regime to introduce the confiscation of equivalent values in cases where the direct proceed has been dissipated by criminals. "[S]pecialised law enforcement and prosecutorial units dedicated exclusively to the investigation of proceeds of crime cases" (ibid.) should be created. The report identified as the central AML bodies of the Mexican state the DGAIO as the national FIU and the PGR. Both were characterised as well-resourced and "with strong commitment to integrity" (ibid.). It was suggested that the work of DGAIO could be made more effective by giving the FIU direct access to STRs instead of routing them through market supervisory bodies, and in general to enhance interagency cooperation. Money remittances and exchange service providers should be included under AML provisions and the identification of beneficial ownership should be required from financial institutions. With regard to international financial transfers, the FATF suggested to reduce the reporting threshold amount to the emerging international standard of USD 10,000.[34]

Mexico has since completed the Third Round of mutual evaluations in 2008 under the more demanding 2004 Recommendations with the mixed results presented above. Comparing the FATF's observations of 2000 and 2008, it appears that the country made little progress on most of the observations from 2000. This sheds doubt on the effectiveness of the FATF's non-hierarchical governance modes based on incentives, knowledge transfer and peer-learning. However, Mexico continued to develop its AML policy framework in other areas. The country officially established its designated Financial Intelligence Unit at the Finance Ministry as successor of DGAIO in 2004. It further updated its AML legal provisions for the financial sector in 2000, 2004 and 2006, mainly through the publication of directives by the Finance Ministry. The legal changes between 2000 and 2006 focussed exclusively on the financial sector. They included regulations on enhanced KYC/CDD measures and their expansion to beneficial ownership, detailing of reporting mechanisms, the obligation to apply AML regulations in foreign subsidiaries, introduction of AML measures based on risk and of the PEP concept, internal training and capacity building obligations, regulations on the use of US dollars in cash, and obligatory annual external compliance auditing (cf. Ortiz Dorantes, 2011, pp. 28-30). Although reporting requirements were established for exchange centres and money remitters, their supervision was assigned to SAT which was seen as deficient in enforcing AML regulations due to staff resource limitations (FATF, 2008, p. 13).

Angélica Ortiz, former Director of Legal Affairs at the UIF, identified the FATF's MERs as well as the updated Recommendations of 2003/2004 as main drivers of these legal adjustments (cf. Ortiz Dorantes, 2011, pp. 28-30). This assessment is supported by the justification of the 2004 directives for credit institutions which stated compliance with the FATF Recommendations as a principal reason for their publication together with strengthening the financial system to foster economic growth (cf. DOF, 2004b). Similarly justified directives were published for other parts of the financial sector and explicit reference to FATF compliance was also made in the directives passed in 2006 (cf. e.g. DOF, 2006b). If FATF compliance was the main driver of these adjustments, the question emerges why the country only transferred those Recommendations into national policy which addressed the financial sector through prevention oriented policies and not also those oriented at criminal investigations and prosecutions? This adds to the little

[34] Despite this observation by the FATF, this reporting threshold was already established for "relevant transactions" (CTRs) in the Finance Ministry's 1997 directives (cf. DOF, 1997a).

progress made on addressing the observations of the FATF's 2000 report. There would need to be additional explanatory factors to the external influence exerted through the regular non-hierarchical FATF processes.

As elaborated further in the respective sub-sections, Recommendations for the financial market were successfully transferred as in this policy sub-area, external influence by the FATF intersected with the domestic governance configuration of delegation under conditions of limited statehood as well as competition systems. Although emphasising the role of the FATF, Ortiz's account hints at this connection, when she observed that in preparation of the 2006 directives, in January of the same year "a working group was formed bringing together representatives of state authorities and credit institutions with the objective to analyse, review and update the content of the directives applicable to the credit institutions." This was done to "issue a homogenous regulatory framework that would reflect the criteria and new recommendations of the FATF on preventing money laundering and financing of terrorism" (Ortiz Dorantes, 2011, p. 30). Within this working group, the public and the private sector negotiated domestically which and how to implement the FATF Recommendations with the negotiating parties consisting exclusively of financial sector actors (cf. also Interview M18, 2011, pp. 13-14, 18-19). The state did not unilaterally implement and hierarchically enforce the Recommendations due to the FATF's influence but the FATF incentivised public-private exchange formats. Its effectiveness varied between different policy areas. The observations of the 2000 report developed little steering power and the new Recommendations of 2004 were selectively applied through negotiations with the financial sector. Similar negotiation forums were not identified for the law enforcement and prosecution sector. The FATF Recommendations at the time thus served as a regulatory template for policy reform in Mexico but developed only limited agenda setting power of their own.

Despite the updating and adjustment of financial market regulations, with the publication of the 2008 MER Mexico was placed under a follow-up process by the FATF. Following the FATF's Process and Procedures, the plenary was obliged to this step as Mexico was rated only partially compliant with Core Recommendations 1, 5 and 13. It received a similar score for Key Recommendation 23. The FATF put Mexico on "targeted enhanced follow-up" in February 2013 after the country did not address the observed issues to the satisfaction of the plenary (cf. FATF, 2014b, p. 3). "Targeted" meant that enhanced follow-up was only implemented for those Core and Key Recommendations which did not show sufficient progress by February 2013. The complete follow-up process led to a total of seven follow-up reports till the country left the follow-up process in 2014[35]. While falling short of a call for counter-measures or the inclusion of Mexico in the FATF Public Statement as a jurisdiction with strategic AML/CFT deficiencies ('greylist'), the

[35] This research could acquire and review the 2010, 2011 and 2012 interim reports as well as the final 2014 report summarising and ending the follow-up process. The 4th-6th reports are confidential and were not shared by FATF.

implementation of the enhanced follow-up process expanded the application of external influence on the country by the FATF from arguing, persuasion and the incentives of membership to the threat of applying sanctions. The legitimacy of this step was high as Mexico as a FATF member state participated in the design of the institutional framework formalising this escalation.

In differentiation to accounts in the literature assigning FATF processes an almost coercive power to enforce compliance with its Recommendations through the threat of sanctions, it is important to note that "the decision of whether or not Mexico should be removed from the follow-up process [was] based solely on the decisions regarding the core and key recommendations" (FATF, 2014b, p. 6). The final follow-up report specifies that information on all other Recommendations was "not discussed or approved by the FATF Plenary" (ibid., p. 32). Mexico, as El Salvador and presumably other countries, was aware of this due to the formalisation and transparency of the follow-up process. The threat of sanctions against Mexico was therefore limited to AML Recommendations 1, 5, 13 and 23 as well as the Special Recommendations defined as Core and Key Recommendations rated as partially or non-compliant. If less detailed, the FATF did however also provide feedback on the progress in addressing any other remaining shortcoming as reported in the follow-up documents.

By 2012, pending the conclusion of ongoing legislative processes and provision of additional information, Mexico had already addressed most shortcomings in Recommendations 5, 13 and 23 (cf. FATF, 2012b, pp. 3-4). Less progress had been made on Recommendation 1 with regard to the legal definition of money laundering while its application had been increased as demonstrated by growing conviction figures. Insufficient progress was also made on transferring most Special Recommendations on financing of terrorism and none on Special Recommendation III regarding the freezing and confiscation of terrorist assets. Extrapolating from this data and the 2014 follow-up report, the FATF's targeted follow-up since 2013 – whose reports are confidential – likely focussed on Recommendation 1 and various Special Recommendations. The legal definition of money laundering, together with the last remaining observation on the Special Recommendations, was finally adjusted to be in line with the international standard by the adoption of a law adjusting the CPF on 11 February 2014 (DOF, 2014a). This closed the follow-up five and a half years after Mexico entered the process and brought Mexico to a satisfactory compliance level with the 2004 Recommendations in the eyes of the FATF ten years after their publication[36].

If Mexico had not adjusted its legislation, it would have had to face an increased risk of the FATF calling for counter-measures. This would have resulted in a negative impact on its external financial and trade relations, not least with the US. As a final component in the adjustment of the legal definition, liability of legal persons was established through the publication of a new National Code for Criminal Procedures in

[36] By the time Mexico reached this compliance level, the 2012 Recommendations were already in place. The follow-up process initiated in 2008 however continued to measure compliance with the 2004 Recommendations.

March 2014. Article 421 of the code did not explicitly address money laundering but provided for general criminal liability of legal persons with the exception of the state (cf. DOF, 2014b). By the time Mexico left the follow-up process in 2014, forfeiture of equivalent value was still “under consideration by Congress” (FATF, 2014b, p. 34). While this negatively impacted the evaluation of progress on addressing shortcomings in compliance with Recommendation 38, it did not influence the decision by the FATF to end the follow-up process as Recommendation 38 was neither Core nor Key. This underlined that there was no automatic relationship between a negative FATF evaluation and sanctions. At least in Mexico, this effect of external influence was mostly limited to the Core and Key Recommendations.

The date of passing the final legal adjustment just one day before the FATF plenary session of 12 February 2014 speaks for an influence of the FATF threat of sanctions on the reform. In this regard, the Mexican Senate’s Joint Commission on Justice and Legal Studies in its preparatory opinion on the decision to approve the legal adjustments of 2014 made clear that in addition to affirming its “dedication to the fight against […] money laundering”, through the reform the country would “[…] comply with the recommendations the Financial Action Task Force (FATF) has made to the Mexican State in recent years […]” (Senado de la República, 2014, p. 29). However, the long overall time passed and the variable pace of reform addressing different Recommendations also indicates limitations of external influence by the mutual evaluation and follow-up processes. While encompassing all Recommendations in its reports, the follow-up process mainly targets the Core and Key Recommendations ultimately threatening sanctions for persistent non-compliance. If effective, this should lead to shortcomings in these Recommendations to be addressed first. Unlike in El Salvador, no indication was identified that Mexico assigned any priority to addressing these Recommendations in order to achieve FATF compliance.

The Mexican AML reform started in 2007 and the FATF MER and follow-up process did not coincide and appear to have a limited causal relationship. By the time the 2008 MER was published and even before the related country visit by the assessment team in January 2008, Mexico had already embarked on its AML policy reform. It was announced in the National Development Plan 2007-2012 (Presidencia de la República, 2007, p. 59) in May 2007, within six months after president Calderón assumed office. In August 2008 and still prior to the MER’s publication, the government of Mexico, various other state actors as well as representatives of civil society, the business community, trade unions and religious organisations signed the “National Agreement for Security, Justice and Legality” (DOF, 2008a). This document contemplated the development and publication of a national AML strategy to reach money laundering convictions and increase control over financial flows, in particular cash transactions. Both of these documents clearly directed AML towards the purpose of combatting organised crime in the context of Mexico’s deteriorating public security situation. Such a policy orientation should prioritise policy transfer leading to compliance with those Recommendations that directly contribute to law enforcement efforts.

Published in August 2010, the "National Strategy for the Prevention and Fight against Money Laundering and Financing of Terrorism" reflected this focus on domestic policy preferences. While neither the National Development Plan nor the National Agreement made any reference to the FATF or other international elements of AML, the National Strategy mentioned the FATF only in passing. Despite Mexico being subjected to the follow-up process for insufficient compliance with three out of four core as well as one key AML Recommendations and various Core and Key Special Recommendations, the document claimed that the 2008 MER "acknowledged the progress of the Mexican state on the subject and in particular the adequate level of compliance with the established standards" (SEGOB, 2010, p. 7). This low visibility of the FATF, its Recommendations and the mutual evaluation process is even more remarkable bearing in mind that Mexico held the FATF's presidency during the time of publication of the National Strategy which also marked the Recommendations' 20th anniversary.

In summary, the reach of external influence by the FATF on Mexico has consisted mainly in providing the standard and detailed orientations on policy development in the form of MERs on which the country based the development of its AML policy framework. While at the time of the 2008 MER report, there was "a public interest, […] it was a verbal reaction and well, there was no operational reaction" (Interview M4, 2011, p. 26). While this might be overstating the point, as for example CNBV refined its process for regulatory fines based on the MER's recommendations (Interview M18, 2011, p. 41), the MER appeared more as a part of policy learning responding to national political priorities rather than a form of quasi-coercive imposition. The regular follow-up process equally only had an indirect influence on the adoption of new legislation or the implementation of measures to increase policy effectiveness in the 2007-2014 reform process. While some implementation and prosecution oriented reform measures were already on the way before the publication of the 2008 MER, other reform steps could also not be traced back to the FATF follow-up process. An exception seems to be the adoption of legal changes to bring the definition of the money laundering offence in line with Recommendation 1 and the Special Recommendations on financing of terrorism. These get enacted last in the follow-up process and most reforms in this area only gathered speed after Mexico entered targeted enhanced follow-up. Although not many details are available for this stage due to the confidential nature of the proceedings, it is plausible that the more immanent threat of sanctions was a decisive factor leading to these legislative changes which were not prioritised at the domestic level.

In parallel to the FATF process, GAFISUD implemented its own follow-up in regard of the 2008 MER. Under a stricter procedure, GAFISUD immediately initiated an enhanced follow-up as Mexico did not at least reach an evaluation of largely compliant with the Key Recommendations (cf. GAFISUD, 2009, p. 1). The first two public reports were submitted by Mexico in 2009, before the first follow-up report to the FATF was due. A total of seven follow-up reports were delivered to the organisation by June 2012 with no further reports publicly available or identified by this research. The high level political importance given to GAFISUD's follow-up process by Mexico was low, even if compared to the FATF. While some attention was given to the publication of GAFISUD follow-up reports in expert debates prior to the availability of the first FATF follow-up report in 2010 (e.g. García Gibson, n.d.(a)), it is rarely mentioned in any newspaper articles and was not a point of reference for any of the interviewed experts in Mexico. The mention of GAFISUD in public documents was limited to listings of international organisations and initiatives on AML in which Mexico was a member (e.g. SEGOB, 2010, p. 8) but no specific reference to the follow-up of the 2008 MER was identified. By adding no additional elements to the ongoing FATF procedures apart from additional reports on the same issues, the organisation did not developed an effective external influence independent from the FATF's follow-up process. In short: the FATF plenary was the more important parallel forum in which Mexico engaged with the international community on its AML obligations.

Through specific governance interventions, the US was more effective than GAFISUD at exerting external influence. While these interventions were not explicitly directed at compliance with the Recommendations, they strengthened law enforcement and prosecutorial aspects of AML policy implementation in Mexico and thus increased the degree of transfer in these areas. Direct US influence on Mexican AML policy development and implementation was traced back till 1994, when US counter narcotics specialists administered AML training to CNBV (Interview M18, 2011, p. 9). A more recent concrete example mentioned in the FATF's 2014 follow-up report was the joint development of the "United States of America – Mexico Bi-National Criminal Proceeds Study". The document was published by the US Department of Homeland Security in 2010 and developed, amongst others, with the US Immigration and Customs Enforcement (ICE) as well as the Finance Ministry and the UIF on the Mexican side. Its goal was to better understand money laundering schemes involving the transfer of USD in cash to Mexico. The document stated as its driver the increase in organised and associated violent crime "to disturbing levels over the past years" (US Department of Homeland Security, 2010, p. 7) that affected both countries. In the 2014 FATF follow-up report, the "authorities stress that the restrictions on the acceptance of USD in cash was a policy decision taken after a comprehensive joint Mexican – US investigation that concluded there was a substantial amount of USD in cash entering the Mexican financial system, for which there was not a clear licit economic explanation" (FATF, 2014b, p. 26). The results of the study thus directly fed into restrictions on the use of US dollars in cash established by Mexico in 2010. This was an unpopular decision in parts of Mexican economic sectors with high licit USD turnover (cf. El Economista, 2010v), as further detailed in the sub-sections on delegation under conditions of limited and competition systems.

Between their establishment in September 2010 and November of the same year, Mexican businesses reduced their USD deposits by 75% (ALD, 2010). In December 2010 the Mexican finance minister stated that due to such restrictions, the annual USD export from Mexico to the US dropped by up to 80% (El Universal, 2010j). The initial reduction was largely maintained over time with the 2014 FATF follow-up report stating that since its establishment, "the amount of USD in cash that has entered the Mexican financial system has dropped by 70%" (ibid.). Such cash restrictions aimed to provide a safeguard against money laundering at the placement stage. This is one reason why banks like HSBC, that faced high money laundering risks particularly for their services offered for USD, imposed limitations or partially withdrew from accepting foreign currency in cash in January 2009, even before prohibitionist legal norms were in place (cf. Interview M2, 2011, p. 8).

A more comprehensive effort by the US to enhance AML policy development and implementation in Mexico was part of the Mérida Initiative[37]. The Mérida Initiative was a broader joint US-Mexican programme to improve citizen security through combating organised crime initiated in 2008. Since the public declaration of intent in a joint statement of the Mexican and US presidents in Mérida in 2007, fighting "illicit financial activities, including cash smuggling across the border" (The White House, 2007) was included under its objectives. By 2017, the US had delivered "more than 1.6 billion" (Seelke & Finklea, 2017, p. 13) USD to Mexico under the Initiative with the largest portion of USD 1.1 billion implemented under the Calderón government till 2012 (ibid.). Its implementation included assistance to the Mexican government in applying hierarchical governance modes through supporting justice reform, law enforcement, related procurement and capacity building, as well as non-hierarchical modes in civil society engagement and others (cf. US Department of State, 2017b).

Out of this total financial support to Mexico, only a small part went into AML specific activities. Procurement assistance for the implementation of AML measures covered mobile non-intrusive inspection vehicles, including mobile X-ray deployment, for the detection of bulk cash smuggling to the SSP, the SAT and the Naval Secretariat (SEMAR). Equally directed at combating bulk cash smuggling was the provision of training courses to canine units deployed at the US-Mexican border. To upgrade the use of technology, information technology (IT) equipment was provided to the AML unit of the Federal Police. The UIF was also supported with IT soft- and hardware (cf. also SEGOB, 2010, p. 8) for the detection of suspicious financial operations, processing of larger amounts of data and strengthening money laundering related investigations. Together with technical assistance and training provided to the UIF, total support for the unit under the Mérida Initiative was USD 22 million between 2010 and 2015 (cf. Seelke & Finklea, 2017, p. 14) The PGR received a soft- and hardware package to expedite case processing which would also benefit AML investigations. Additional capacity building training was provided by the US Treasury to the PGR and UIF.

[37] For a more comprehensive analysis of the Mérida Initiative as a state building exercise, refer to (Finkenbusch, 2017).

Although not explicitly referred to by the respective FATF follow-up reports, the US efforts contributed to strengthening Mexico's national capacity to apply hierarchical governance modes to enforce AML compliance. The increased effectiveness of prosecutorial aspects of AML, to which the Mérida Initiative contributed, was evaluated positively by the FATF that noted increasing prosecutions and financial intelligence work, albeit starting from a low level (cf. FATF, 2014b, pp. 9-12). The Mérida Initiative targeted law enforcement and judicial actors in Mexico. This external influence through strengthening these specific actors, like the PGR, tied in with domestic reform efforts that overall led to a higher degree of policy transfer of prosecutorial aspects of the FATF Recommendations. Through the framework of the Mérida Initiative and more specific AML agreements under its roof (cf. El Universal, 2010u), US support was highly formalised. Its domestic legitimacy for the Mexican government was equally high, at least during the Calderón administration which initiated the process shortly after taking office in 2007. While the Mérida Initiative was increasingly criticised during its implementation due to human rights concerns for the actions of Mexican law enforcement agencies, these were not directed at its AML efforts. Even critical observers were positive towards an increase in AML activities under the Initiative (e.g. Wolf & Morayta, 2011, pp. 703-707) which speaks for a high legitimacy of these efforts.

The IMF complemented US technical and financial assistance efforts in increasing domestic AML capacity in Mexico through a technical assistance programme for CNBV. Between 2008 and 2011, the IMF programme targeted the preventive side of AML policy implementation by strengthening Mexico's most important market supervisory institution. It included designing a programme to evaluate banking institutions and instil a risk based approach to AML (El Universal, 2011b). Its effects were evaluated positively by contributing to compliance with FATF Recommendation 23 (cf. FATF, 2014b, p. 26). Overall, only few organisations were training Mexican actors in AML, thus further contributing to an alignment of concepts and strategies between Mexico and particularly the US. As a private sector actor, like in El Salvador, ACAMS was one of the first possibilities for compliance officers to receive a formal training in the area. Many interview partners had received training by ACAMS and were certified by the organisation. However ACAMS was not validated by Mexican authorities as a certifying agent and based its trainings on US laws, regulations and experiences. A certificate was thus only a mean to increase expertise and reputation (Interview M14, 2011, pp. 17-19). Domestic actors only provided trainings later with for example the National Institute for Penal Sciences (*Instituto Nacional de Ciencias* Penales, INACIPE) offering AML prevention trainings for different kinds of actors. These included not only members of the judicial branch but also private sector actors like stock brokers (Interview M14, 2011, p. 10), money exchange centres and DNFBPs (Interview M7, 2011, pp. 16-19). The INACIPE course covered the training requirements mandated by Mexican law for various sectors. In addition to these providers, larger financial sector actors started to undertake most of their training via sometimes group wide e-learning modules which in at least one case were available only in English as of 2011 (Interview M17, 2011, p. 13), limiting their reach.

4.2.4 External Provision of Statehood

The only external actor empirically observed to directly provide statehood in Mexico was the US government. US market regulators, law enforcement and prosecution actors employed hierarchical governance modes by fining financial institutions and at times investigating and prosecuting individuals for money laundering operations in Mexico. The institutional embeddedness of this configuration evolved over time. In the 1990s the US government intervened without the knowledge of Mexican officials. By the late 2000s the relationship was highly formalised, based on international treaties, memorandums of understanding and mutual legal assistance agreements between Mexico and the US. Under the FATF Recommendations, the application of AML preventive measures by financial market actors in foreign subsidiaries and their supervision by home country regulators was instilled in Recommendations 22 and 23. While power distribution was asymmetrical between the US and the target of its market supervision and law enforcement actions, it was with Mexican consent that the US provided statehood within the country under the Calderón government.

The governance modes applied by the US in Mexico and their evolution over time to enforce AML policies became most visible in its application to concrete cases. A first prominent example of hierarchical AML governance by the US in Mexico was "Operation Casablanca"[38], an undercover operation carried out by US law enforcement between 1995 and 1998. As one of the most significant AML law enforcement operations of the US at least until 2020, it targeted narcotics related money laundering operations carried out primarily in Mexico for the Cali and Juarez cartels. By 1999, amongst other results it led to the seizure of USD 98 million, two tons of cocaine and criminal charges against 26 Mexican bank officials "from 12 of Mexico's 19 largest banks" (US Department of State, 2000). In addition, three of the largest Mexican banks were accused of money laundering: Bancomer which as BBVA Bancomer developed into Mexico's biggest financial institution; Serfín, a predecessor bank of today's Mexican subsidiary of Banco Santander; and Confía, later acquired by Citigroup which operates in Mexico under the brand Banamex. While the case focussed on money laundering in Mexico, the respective arrest were made in the US. For this purpose, banking officials were lured into the country under false pretence, including attending an AML conference (New York Times, 1998). The case was then dealt with by a federal court in Los Angeles following the initial discovery of the laundering scheme by the US Customs Office in that city. As a result of the ensuing investigation, Mexican banks forfeited USD 28 million and paid additional USD 1 million in fines to the US government. Of the USD 98 million initially ceased, a total of USD 64 million were forfeited to the US government. Prosecutors also secured 28 individual guilty pleas and six additional convictions for money laundering and/or narcotics trafficking offences in the context of the operation (US Department of State, 2000).

[38] The highly popular band and five times Grammy Award nominee Los Tucanes de Tijuana even dedicated a corrido song to the case.

The repercussions of the case went beyond the direct external implementation of US AML policies on Mexican banks. After an initial conflict over a potential violation of Mexican sovereignty, it led to the Brownsville Letter to foster bilateral judicial cooperation, and contributed to stricter AML prevention in Mexico. When the US Attorney General announced the operation, carried out without the knowledge of Mexican officials, in May 1998, this caused a very sour response by the Mexican government. It was variously termed a "diplomatic crisis" (González, 2012) or one of the "five worst moments in US-Mexican relations" (Infobae, 2017). In its aftermath, the Attorneys General of both countries signed a joint letter to their respective presidents in July 1998 following the UN General Assembly's Special Session (UNGASS) on the World Drug Problem that took place in June of the same year (cf. US Department of Justice, 1998). With the goal to improve "consultation and collaboration on law enforcement activities […] with due respect for each other's sovereignty" (PGR, 1998) the document outlined five steps: in addition to more disclosure of law enforcement operations, these foresaw setting up a joint training programme including "sophisticated investigative techniques" (ibid.) and setting up of a secure direct communication line between both Attorney Generals.

For the Mexican banking sector, the case marked a significant break in their approach towards AML and led to a stricter application of preventive AML measures. The US Department of State observed a doubling of CTRs and STRs received by DGAIO from 1998 to 1999 which however did not translate into law enforcement or prosecution activities (US Department of State, 2000). González as the Editorial General Director of the Mexican newspaper El Economista quoted a confidential senior Mexican banking sources which clearly attributed this change in compliance to the external provision of statehood by the US that created a shadow of hierarchy: "'[B]eyond what the authorities requested, we did it because we were really afraid that a mistake could land us in prison. […] To be honest, it weighed much more the fear to be sentenced in the United States than here'" (in González, 2012).

Although less severe in their diplomatic repercussion, further relevant cases of external provision of statehood by the US were money laundering allegations against Wachovia made public in 2007 and HSBC in 2010. These two banks had their international headquarters outside of Mexico, in the US and the UK respectively, but were involved in money laundering schemes through their Mexican and US operations. Both cases were settled through deferred prosecution agreements. While US fines for AML policy violations are relatively frequent compared to most other parts of the World, both cases set new respective records at their time with total payment of fines and forfeitures reaching USD 160 million (Wachovia) and USD 1.92 billion (HSBC).

Wachovia, which was bought up by Wells Fargo in 2010, was one of the biggest US banks at the time of its AML investigation. The case initiated from two criminal leads in Mexico and the UK. In 2006, Mexican army personnel ceased a DC-9 plane with 5.7 tons of cocaine on board that was on a drug run from Caracas in Venezuela to Toluca in Mexico (cf. Bloomberg, 2010). The ensuing investigation discovered that the plane was originally bought in the US with money laundered through Wachovia via the correspondent services the bank provided to Mexican currency exchange houses. In the same year in the UK, one of Wachovia's own senior compliance officers and a former police officer started filing STRs for the suspicious use of traveller checks in Mexican currency exchange houses that involved Wachovia accounts. After the bank did not take action against these activities, but instead against its own employee, the compliance officer left the bank after a settlement in 2009 (The Guardian, 2011). In the deferred prosecution agreement (DPA) resulting from the ensuing investigations and prosecution activities, Wachovia agreed to forfeit USD 110 million and pay a USD 50 million fine to the US government.

The role of information from Mexico and the UK leading to a criminal investigation in the US is a good example of the transnational nature of law enforcement in sophisticated money laundering cases. While Wachovia was fined as a US bank, the money laundering placement stage as an important bottle neck of the money laundering process was located at Mexican currency exchange houses. US regulators had already targeted such money laundering schemes by emitting warnings to its banking sector which as a result gradually withdrew its engagement with Mexican currency exchange houses. US officials found that Wachovia instead expanded its operations despite being aware of the risk "as early as 1996 and through 2004" as well as the fact that "other U.S. banks had stopped doing business with the CDCs because of these concerns" (US Attorney, 2010, p. 2). Amongst other services, Wachovia offered to the currency exchange houses bulk cash transport to the US for deposit and services allowing the "deposit at Wachovia [of] items drawn on U.S. banks, including checks and traveler's checks" (ibid.) presented by Mexican currency exchange house customers. Its services were offered without an "effective AML policy or procedure" (ibid.) in violation of the BSA which applied to a total financial transfer volume of at least USD 424 billion from CDCs to Wachovia between May 2004 and May 2007 (ibid.). Of these, "at least USD 110 million" (ibid., p. 3) were identified as drug proceeds. While the fine of "less than 2%" (Bloomberg, 2010) of Wachovia's 2009 profit might seem low and no prison sentences for money laundering were achieved, the case tied in with an ongoing legal reform in the country analysed in the sub-section 4.2.2. Similar to the bi-national criminal proceeds study, it highlighted the use of US dollars in cash in Mexican laundering schemes.

An even larger case that would dwarf the payments under the deferred prosecution agreement with Wachovia emerged publicly in 2010. At its end in 2012, HSBC as the bank accused of violating the BSA, as well as US financial sanctions against Iran and other countries, signed a DPA. It foresaw a total payment of USD 1.92 billion, USD 665 million of which were payable in civil penalties to US regulators (US Department of Justice, 2012). This reduced HSBC's annual profit before taxation in 2012 by about 8.5% to USD 20.65 billion (cf. HSBC, 2013a, p. 2). The US government investigated HSBC for AML shortcomings and violations concerning the banks operations between its Mexican (HBMX) and US (HBUS) subsidiaries between 2006 and 2009. In summary, HBUS treated Mexico as a low risk country for money laundering, contrary to US government's advice and other negative money laundering risk indicators. By applying a general HSBC policy at the time but violating US regulations, HBUS also failed to implement due diligence procedures for opening a correspondent account for HBMX which as an HSBC subsidiary was treated as low risk client. Together with severe and prolonged AML shortcomings at HBMX this led to allegations that HSBC "facilitated the laundering of at least $881 million in drug proceeds through the U.S. financial system" (US Department of Justice, 2012).

The core of the laundering scheme was similar to the Wachovia model and based on the repatriation of US dollars into the US financial system by using correspondent services and Mexican financial institutions with weaker AML policies for the placement stage. According to a US Senate's Subcommittee on Investigations report, amongst others, HBMX had inherited a dysfunctional KYC system when it established a presence in Mexico through the acquisition of Bital bank in 2002, was reluctant in separating from high risk customers due to business considerations, offered high risk products such as USD accounts in the Cayman Islands, and had an overall "poor compliance culture" (US Senate, 2012, p. 48). In addition to wire transfers and the clearing of traveller cheques, between 2007 and 2008 HBMX exported over seven billion USD in cash to HBUS. US government official expressed the concern that HSBC "could reach that volume only if they included illegal drug proceeds that had been brought back to Mexico from the United States" (ibid., p. 36). The services offered by HSBC and its lacking AML safeguards were so attractive for money launderers, that in February 2008 the then Head of HSBC Group Compliance internally shared with colleagues that Mexican market supervisors and the UIF held information that "'[…] apparently includes tapes of a drug lord recommending HBMX as the place to bank'" (King in US Senate, 2012, p. 68). According to the US Department of Justice, between 2006 and 2009, HBUS "failed to monitor over $670 billion in wire transfers and over $9.4 billion in purchase of physical U.S. dollars from HSBC Mexico" (US Department of Justice, 2012). While formally the accusations were directed at HBUS, the money laundering trail originated at HBMX and the fine and forfeiture affected HSBC Group as a whole.

The US Senate's report provided an overview of money laundering risks and HSBC's actions to strengthen its internal AML system in Mexico since its acquisition of Bital (US Senate, 2012, pp. 35-113). Chronologically reviewing decisions and internal communications as well as supervisory actions and mayor events, it allows evaluating the impact of foreign law enforcement action in steering an international bank in Mexico. Although significant efforts were made by HSBC Group, AML weaknesses at HBMX were not successfully remedied before the threat of severe regulatory fines and potential law enforcement action in the US emerged. This was the case despite continuous reports by CNBV and internal auditors on deficiencies that led to smaller fines and firing of HBMX staff.

HSBC Group, HMBX, and CNBV as its domestic market supervisor were concerned with internal AML policies at Bital as early as 2002 (cf. e.g. Flockhart in US Senate, 2012, pp. 48-49). After the acquisition, HBMX struggled to bring its internal procedures up to group standards and Mexico's legal requirements. Early supervisory action in Mexico included a smaller fine of USD 75,000 in 2004 for failure of HBMX to update AML relevant customer information, especially KYC data. It also failed by that time to establish a functioning CCC as the legally mandated central internal AML body within the bank. In the same year, senior management of HSBC Group compliance identified "missing KYC documentation" as "by far the greatest problem" (Root in ibid., p. 52) in relation to AML. HSBC later internally learned that attendance and meeting minutes of the CCC were fabricated and then presented to CNBV as evidence of AML policy compliance which led to a firing of the responsible employee (cf.ibid. p. 53).

In spring 2006, HBMX received an internal audit report which despite stating that progress had been made identified a series of remaining basic AML deficiencies, including in transaction monitoring, customer risk profiling and training (ibid. p. 55). Instead of taking the recommendations on board to improve its internal AML procedures, HBMX contested the findings. Amongst others, it pointed towards a recent CNBV audit which was expected to have satisfactory results (cf. ibid., p. 59). Reasons for slow progress were seen in the extent of AML weaknesses inherited from Bital, fluctuation of leading AML staff, and an overly strong emphasis on business over compliance. Overall, as the Senate's report summarised that over eight years from 2002 to 2010, "HBMX's AML deficiencies were longstanding and widespread" which included "inadequate compliance resources, missing KYC information, manufactured site visits, inadequate account monitoring, unread alerts, poor training on the [transaction] monitoring system and assigning SCC [Special Category Clients] designations, internal disputes over closing accounts with suspicious activity, accounts left open despite multiple SARs and orders by regulators to close them, a SAR filing backlog, and an account closure backlog that spanned three years"(ibid. p. 78).

While not sufficient to bring HBMX up to AML standards in due time to avoid supervisory fines, a widely publicised case of large scale money laundering in 2007 gave an impulse to bringing HBMX to HSBC Group compliance levels. In that year, over USD 200 million in cash were located next to guns and other valuables in a house of HBMX customer Zhenli Ye Gon in Mexico City. The investigation leading to this seizure was "led by the DEA and Mexican law enforcement units" (DEA, 2007) and based on "a lead passed from the DEA Mexico City Country Office to its Mexican law enforcement counterparts" (DEA, 2018). Mr. Gon was subsequently arrested in the US and faced charges in both countries on the account of money laundering and narcotics related crimes (cf. US Senate, 2012, p. 57). He was accused of connections with the Sinaloa Cartel and other criminal groups for which he allegedly facilitated the production of Methaphetamin through the import and deviation of precursor chemicals via his medical company Unimed. In his defence, he stated that he was forced by death threats of the then serving Labour Minister Javier

Lozano Alarcón to store the money. Gon claimed the funds were left from the presidential campaign of Felipe Calderón (cf. BBC, 2016) who got elected in 2006. Charges were dropped in the US in 2009 under reference to witnesses not willing to testify but Gon remained in custody until he was extradited to Mexico in 2016.

When the case broke in 2007, it was widely publicised in national and international media. The stockpile of cash secured from Gon's house in Mexico City has become one of *the* images associated with money laundering in Mexico. Although the connection between Gon and HBMX did not receive public attention till the 2012 Senate report, the high profile of the case and the fact that Gon was an HSBC customer led HBMX's CEO to instruct his AML Director to give the case "'the highest priority'" and pointing to it causing "'potential reputational damage to HSBC Group'" (Paul Thurston in US Senate, 2012, p. 58). HMBX's CEO then took personal charge of efforts to amend HBMX's internal AML policies including the operations of the CCC and increasing the relative power of HMBX's AML area in relation to business (cf. ibid. pp. 59-60). Beyond the national context in Mexico, the case also led to the direct involvement of senior management at the group level (ibid., p. 60).

This ad-hoc involvement of senior management during a compliance crisis sheds a spotlight on the internal role of compliance within banks in relation to the business area. While compliance departments are generally regarded important to safeguard reputation, their internal role in Mexican banks was characterised by an interviewed Mexican AML expert as lacking "both on paper and in practice" (Interview M2, 2011, pp. 12-13). In theory, the compliance department should report directly to the CEO. In practice, this link was frequently filtered through an intermediate layer of decision making. This created situations in which conflicts between short term business interests and compliance interests were negotiated between mid-level managers at different areas of a bank, with business often having a more direct access to internal decision takers (cf. Interview M2, 2011, pp. 13-14). As a result, business interests were likely to prevail over compliance interest. In the case of HSBC, senior HSBC Group's compliance management was aware of this problem and advised their local counterparts accordingly: "'The AML Committee just can't keep rubber-stamping unacceptable risks merely because someone on the business side writes a nice letter. It needs to take a firmer stand. It needs some cojones. We have seen this movie before, and it ends badly'" (Root in US Senate, 2012, p. 63). When he was dismissed in early 2008, HBMX's AML Director was seen as having "'felt very strongly that relevant business heads within HBMX had absolutely no respect for AML controls'" (Bagley in ibid., p. 69).

Despite the attention dedicated to AML by HBMX's CEO and additional progress being made, the pace of change remained relatively slow. More radical steps were then initiated after a meeting between senior representatives of CNBV and HSBC's Group CEO in November 2008. During this meeting, amongst others, CNBV expressed concern about the size of HSBC's USD business which captured over 1/3 of all USD repatriated from Mexico to the US (ibid., p. 73). HSBC senior management was also informed that whenever public action was taken to deter money laundering, HSBC was seen to play a role (ibid.). HSBC saw CNBV's more critical assertions as expression of the Mexican government's reorientation towards criminal enforcement: "The intelligence that we have been able to gather is that President Felipe Calderon declaring war on the drug gangs, crime and corruption the judicial authorities have heightened the focus on financial investigations and have been putting increasing pressure on the bank regulators because the banks have been seen as not providing good enough support." (Thurston in ibid., p. 68). Another important development in 2008 was growing US law enforcement activity. This added weight to the concerns expressed CNBV which in the past had only limited effect. Since 2008, various US agencies investigated a narcotics related money laundering scheme that made extensive use of HMBX accounts to deposit large amounts of USD bulk cash. Between 2009 and 2012, the US Justice Department secured "the arrest, extradition, and conviction of numerous individuals illegally using [HBMX] accounts" (US Department of Justice, 2012).

Immediately after the meeting with CNBV, HBMX's embarked on series of short-term measures including a withdrawal from accepting cash USD and repatriating them to the US. When comparing costs and benefit of the decision to abolish USD cash business, HSBC's Group CEO was quoted to have made clear "'that nothing is worth risk to our reputation'" (Geoghegan in US Senate, 2012, p. 74). The measure was implemented with effect of 1 January 2009. On the same date, HBMX initiated closing accounts belonging to CDCs. Along the same line, HSBC also took an executive decision to place compliance concerns over business by declaring "'that if there are persistent breaches of KYC in a particular branch, the branch will be closed and all staff dismissed regardless of how much business we will lose on account of it'" (Geoghegan in ibid., 75). The decision was implemented by closing four branches which showed low compliance standards as exemplary measure and dismissal of staff in other branches (ibid., p. 76). Complementary to these short term measures, HSBC Group compliance raised the risk level of all Latin American operations to the highest level in 2009, giving the context of a "'drug war'" and the risk of "'potential sting and other operations by the US authorities'" (Bagley in ibid., p. 77) as main reasons. HBUS mirrored this step for HBMX, assigning it the highest risk level shortly after which lead to enhanced due diligence measures taking effect (ibid., p. 78). The DPA also stated as a remedial action HBUS' withdrawal from the banknotes business (United States District Court E.D.N.Y, 2012, p. 28). The US Senate's report linked this to HBUS being aware of US investigations into a money laundering allegation against a Mexican client and also connects the timing of HBMX's decision to stop accepting USD in cash due to "Mexican AML regulatory concerns" (US Senate, 2012, p. 45).

The three presented cases have in common, that the US used domestic laws and regulations to apply hierarchical governance modes for prosecuting or fining individuals, banks and international banking groups for AML violations that originated in Mexico. The external provision of statehood did therefore not take place in the territory of the Mexican state but, using the interconnection of financial markets, directly affected financial institutions in Mexico with weak AML prevention mechanisms. The DPA reached with HSBC for example detailed organisational restructuring with regard to AML management not just at HBUS but at the group level. Additional requirements included staff training and “a review of all customers KYC files across the entire group” whose first phase would “cost an estimated [USD] 700 million to complete over five years” (United States District Court E.D.N.Y, 2012). Beyond the direct application of AML measures, the cases also had clear positive repercussions for FATF compliance in Mexico through establishing a shadow of hierarchy. This effect was identified for example for Operation Casablanca which had the effect that “Mexico, in the financial sector, matured very quickly in terms of money laundering prevention, because just as the [Finance Ministry’s] regulations were being understood, the sector saw that this was a serious and very important issue” (Interview M2, 2011, p. 3). The establishment of an institutional framework following Operation Casablanca has overall increased the legitimacy of hierarchical governance of the US in Mexico. Fear of US prosecution led to higher private sector compliance with reporting requirements and a reduction or withdrawal from handling larger amounts of US dollars in cash. They additionally tied in with and reinforced ongoing AML policy reform in the country that included a record fine by Mexican market supervisors to HSBC for HBMX’s deficiencies in 2011.

While these effects of external statehood provision by the US were observed in Mexico, critical voices also identified a potential limitation of statehood of the US in its legal proceedings against Wachovia and HSBC (e.g. Die Zeit, 2012; La Jornada, 2012). Both cases did not come to trial but were resolved by DPAs and no penal sanctions were achieved against responsible individuals. At 2% and 8.5% of annual profit respectively, the fine and forfeiture payments did also not weigh too heavily on the financial well-being of the affected institutions. In the immediate aftermath of the announcement of the DPAs, share prices of both banks rose (cf. The Guardian, 2011; CBS News, 2012). Wachovia seems to have benefited from the timing of its case in the midst of the US banking crisis that ensued in 2007. A bigger fine or criminal prosecution would have further increased market instability and was politically undesirable. In the case of HSBC, a report prepared by the republican staff of the US House of Representatives committee on financial services concluded that HSBC was not prosecuted as it was similarly feared that “prosecuting the bank would have serious adverse consequences on the financial system” (US House of Representatives, 2016, p. 1). A prosecution might have risked the existence of HSBC which could have endangered the international financial system and according to some observers led the US government to the conclusion that the bank was “too big to jail” (The New York Times, 2012). Depending on the evaluation, domestically within the US, the deferred prosecution agreements could therefore also be seen as a negotiation system between the state and the private sector instead of an expression of consolidated statehood and hierarchical governance modes.

Adding to these observations of concrete cases from the perspective of a legal analyst, Gluyas accounted for direct provision of statehood by the US in Mexico through the PATRIOT Act (cf. 2007, pp. 59-61). It did not only target terrorist financing but also money laundering. The law had an extraterritorial reach establishing AML obligations for any financial institutions maintaining relationships with US banks. The PATRIOT ACT did in this sense reaffirm the US minimum contacts rule established under previous US legislation. This legal obligation towards the US could create normative conflicts for Mexican and other non-US banks which are at the same time subject to domestic law in the countries in which they operate, particularly with regard to financial secrecy provisions. Citing other Latin American legal scholars, the author observed a trend in Latin America resolving this issue by submitting to this legal framework and a "tendency to penalise culpable money laundering" as well as a view to see money laundering prevention as an obligation of the private sector (ibid., p. 61). These views demonstrate a power asymmetry in favour of the US which at least conceptually allows extraterritorial application of hierarchical governance modes. The derived view of an obligation of the private sector to prevent money laundering in order not to commit a legal violation through omission is another example of a shadow of hierarchy cast by the US in the region.

Spanish Banco Bilbao Vizcaya Argentaria (BBVA) can serve as one example of US regulatory impact on international banking groups in Mexico beyond the direct application of sanctions. With its acquisition of Bancomer in 2000, it operated one of the largest retail banks in the country. In 2011, BBVA's Mexican business yielded EUR 1.269 billion in economic profit, with its second most lucrative business area and home market, Spain, being attributed roughly half with EUR 652 (BBVA, 2011). BBVA-Bancomer did not only operate as a retail bank but as a financial conglomerate offering a range of financial services, including for example insurance and retirement funds administration. While being a much less lucrative market for BBVA at the time (ibid.), its US operations, including a listing at the New York Stock Exchange, required the bank to comply with US market regulations throughout its subsidiaries (similarly cf. Interview M17, 2011, pp. 5, 8, 15). BBVA's group wide obligations towards US regulators included AML regulations of the BSA and financial sanctioning regimes under OFAC.

The underlying mechanism was US regulators' active supervision of compliance of foreign banks in the US and US banks with foreign operations with BSA, OFAC and the PATRIOT Act. These supervisors included entities like the Federal Reserve System (Fed) (Fed, 2016, pp. 89-94) or the Office of the Comptroller of the Currency (OCC) (OCC, 2018). Their supervision also encompassed country visits to Mexico (cf. Interview M2, 2011, pp. 16-17) with off-site supervision being carried out "in cooperation with the responsible host-country supervisor" (Fed, 2016, p. 92). In the case of banking supervision, the Fed counterpart was CNBV. The latter was also in frequent exchange with OCC on regulatory matters (cf. Interview M18, 2011, p. 50). In 2013, the Financial Crimes Enforcement Network (FinCEN), the US FIU, signed a MoU with CNBV that allowed sharing of supervisory information. It was the first time, that FinCEN entered into such an agreement with a foreign supervisory body (cf. FinCEN, 2013, p. 1). This expanded FinCENs reach beyond the links created between it and the UIF through bilateral cooperation and forums like the Egmont Group. Such close cooperation between US supervisors and CNBV (cf. Interview M18, 2011, pp. 50-52) also opened a mutual learning conduit for the involved institutions.

That US regulatory supervision in relation to Mexico was not mere lip-service was evidenced by the record fines against Wachovia and HSBC discussed above. The US used its position as a dominant global financial market centre frequently to create an international reach of its domestic policies. Another prominent example for this governance configuration beyond AML is the Foreign Account Tax Compliance Act (FATCA) regulations (cf. Interview M14, 2011, pp. 13-14; Interview M16, 2011, pp. 18-19). They obliged BBVA and other banking groups with US operations to comply with information gathering and sharing with US public institutions like the Internal Revenue Service (IRS) (cf. BBVA, 2018; cf. also Interview M6, 2011, p. 28).

Given the reach of US regulations and the increasing international integration of financial markets, large international banks seek to implement a standardised compliance system throughout their entire banking group (cf. Interview M17, 2011, p. 5). In practical means, this is done by internal AML manuals as well as compliance trainings that are created and disseminated at the group level. This facilitates compliance management and trainings can be developed and applied in a centralised manner thus reducing costs. Delivery can take place almost globally via digital learning platforms with only minor adjustments for local legal and cultural context or language group (cf. ibid. pp. 12-13; Interview M6, 2011, pp. 17-18). A result is the view of a Mexican expert on criminal law and AML who characterised financial entities as “passive but cooperating actor[s]” (Interview M4, 2011, p. 23) in terms of AML policy making and implementation. Referring to the situation in 2011, internal regulations published by headquarters of international banks were seen as “the only method that is working” (ibid., p. 24). Internal regulations by international financial institutions based on foreign regulations and enforcement were thus ascribed a bigger effect on financial market compliance than hierarchical governance by the Mexican state through market supervision and law enforcement (cf. ibid., pp. 24-25).

The US also served as a repository for information and expertise on AML in areas where the Mexican state did not provide equivalent information. Money laundering prevention was strengthened through the publication of the Special Designated Nationals and Blocked Persons List (SDN) by the OFAC. The list names persons and organisation, including enterprises, with which US citizens are prohibited from doing business, due to their presumed involvement in terrorism, narcotics trafficking or other forms of organised crime. For AML purposes, the list serves as a blacklist which was also applied by compliance officers in Mexican financial sector firms on request of the Finance Ministry (Interview M6, 2011, p. 18). No similar list was domestically available (cf. US Department of Homeland Security, 2010, p. 11) but listings in the US were also instrumental to law enforcement and prosecution activities in Mexico. In December 2017 for example, OFAC designated as drug traffickers Blanca Cazares together with "19 companies and 22 individuals in Mexico that are part of her financial network" (U.S. Department of Treasury, 2007) and subjected them to economic sanctions. The targeted companies spanned sectors as diverse as real estate, MSB, toy production, catering, jewellery and cosmetics resale (ibid.). In 2008, Mexico's Attorney General stated that all companies accused by the US were "'subject to preliminary investigations'" (Medina Mora in Proceso, 2008).

The US also directly provided hierarchical governance resources to Mexican law enforcement. The Mexican Federal Police was inhibited to investigate money laundering through their lack of direct access to data from the financial sector. They could partially offset this shortcoming by drawing on information received through international cooperation with counterparts from the United States to initiate cases. The Federal Police was seen as criminal intelligence provider for the prosecution system (cf. Interview M6, 2011, p. 20). Such criminal intelligence information was used for preliminary investigations which, if initial suspicion was substantiated, allowed the PGR (SIEDO) to open formal proceedings and request financial data from the UIF and market supervisors (cf. Interview M24a, 2011).

4.2.5 Competition Systems

Policy transfer through competition systems played out in Mexico in a largely similar way to El Salvador. This is not surprising, as both countries' financial market development was part of the same macro-process of international financial market integration since the end of the Cold War. Globally and in the region, US laws and regulations played a central role in this process due to the salience of the US banking and financial services sector. As a result, policy transfer through market integration contributed to high compliance rates in Mexico with preventive AML policies for the financial market. For DNFBP regulation and prosecutorial policies, similar market based mechanisms reinforcing AML policy transfer were not identified. Instead, transnational competition in the real economy of border regions created obstacles for AML reforms – an effect that was not observed in El Salvador due to lack of regulatory AML policy competition with its direct neighbours and the dollarization of its economy.

In Mexico, AML policy transfer via private international banking groups was amplified by two factors: (i) The US and Mexican economies were very highly integrated which, facilitated by NAFTA, also extended to the financial sector (cf. Correa & Seccareccia, 2009, pp. 87-89), creating additional economic incentives for regulatory alignment. (ii) Mexico's financial market regulators actively participated in AML policy transfer out of a macro-economic rational. The resulting manifestation of a competition system as governance configuration included a policy transfer cascade which followed this idea-typical model:

1. Under a shadow of hierarchy cast by foreign (i.e. US) market supervision, international banking groups transferred preventive AML policies into Mexico through group-wide internal regulation.
2. The Finance Ministry accumulated AML policy knowledge through regular exchange with the banking sector and from observing international banks' internal regulations.
3. To safeguard and increase the reputation of Mexico as financial market place, the Finance Ministry generalised new AML policies throughout the Mexican financial sector in the form of directives and laws.
4. Some of these measures, like cash restrictions, also affected the non-financial sector creating additional market based competition effects such as incentives for formalisation and increasing business size.

Throughout this cascade, governance modes changed, as did institutional settings and power structures between actors. While transfer in step one was induced under the shadow of hierarchy of rules cast by foreign states in which international banking groups were located, step two was a non-hierarchical transfer from the private to the public sector. In step three, the Mexican state intended to exert hierarchical governance on private financial market actors beyond the banking sector. Apart from the complexity of this transfer process, the governance configuration was also strongly intertwined with the other three observed governance configurations: examples include the provision of training and peer-review data under external influence that also informed learning of market regulators, the direct application of hierarchical governance modes by US market supervisors and law enforcement to banks in Mexico, and the delegation of AML governance tasks by the Mexican state to the private sector under conditions of limited statehood, which is where the observed policy transfer cascade culminated.

Despite the often fluid transition between competition systems and other governance configurations, its defining core of non-hierarchical economic incentives within an institutionalised transnational market structure were identified and had an observable impact on policy transfer. Competition that induced governance existed both amongst private market participants and between Mexico and other states aiming to attracted limited private investment capital into their financial markets. Its effect became clear in the comparison with lower levels of AML policy transfer in economic sectors which relied predominantly on domestic markets. While not being the only transfer mechanism, competition systems thus still significantly contributed to more complete policy transfer of the prevention and financial market oriented FATF Recommendations to Mexico.

To briefly recapitulate, the Mexican AML reform of 1995 – 1997 took place at an important time of institutional re-configuration of the Mexican financial system. Recent re-privatisation of the domestic banking sector met with the signing of NAFTA, Mexico entering the OECD and the Peso Crisis. Together, these events were catalysts for a very rapid and wide ranging financial market liberalisation in the country that included legal provisions allowing foreign investment into banking and other financial services. The resulting transfer pressure of US AML regulations on private banks through the external provision of statehood was analysed in the respective sub-section. One important aspect of external provision of statehood was that, if banking groups wanted to operate in the US and at the same time in Mexico, internal AML regulations of Mexican subsidiaries needed to at least comply with US AML regulations like the BSA and submit to rules established by the OCC, FED, OFAC and others. This form of governance by US public institutions was hierarchical and institutionalised over time through documents like the Brownsville Letter and bilateral agreements with Mexico allowing joint supervision and information exchange between US and Mexican authorities (cf. Interview M18, 2011, p. 52).

If the described governance of the transnational financial market was based on US provision of statehood, what are the elements of governance by a competition system that contributed to AML policy transfer to Mexico? The point here is that participating successfully in the transnational financial market between Mexico and the US, for which AML compliance was a prerequisite, was an economic imperative for high street banks in Mexico. While market governance followed highly institutionalised rules and was hierarchical, the decision to enter the market was voluntary and based on economic incentives. The competitive importance of at least establishing correspondence banking relationships with the US, if not maintaining a subsidiary, stems from the salience of economic exchange with the US for the Mexican economy. This added a layer of governance to the US-Mexico AML policy transfer which complemented other governance configurations and facilitated policy transfer.

According to a senior executive, HSBC for example, established its presence in the US "primarily to provide a U.S. platform to its non-U.S. clients" (US Senate, 2012, p. 2). With regard to Mexico, the US in 2016 was the source of 49% of its imports (USD 179 billion) and destination for 81% (USD 302 billion) of its exports (Gobierno de México, 2018). Mexican exports to the US of that year were equivalent to about 29% of its GDP (USD 1.047 trillion) (cf. World Bank, 2018). One sizeable portion of these bilateral economic flows was generated by Mexicans that worked in the US. They continuously transferred large amounts of USD to Mexico in the form of remittances whose official level stood at USD 23 billion in 2011 (Banco de México, 2018). While parts of the remittances flow was channelled through informal means or personally transported in cash (cf. Interview M7, 2011, pp. 8-9), their transfer by wire or other means of electronic funds transfer presented a business opportunity for banks and more specialised MSBs like fund transmitters. Large banks managed bilateral financial flows either through their own respective subsidiaries on both sides of the border or entered correspondent banking relationships which also subjected them to AML measures in line with FATF Recommendations 7 (cf. Interview M14, 2011, p. 27).

Remittances and other USD inflows into Mexico could for a long time be easily converted into MXN by the use of CDCs and exchange centres or used in its original form as cash US Dollars. Like in many Latin American countries, the experience of regular financial crises and currency instability, together with the size of the illegal and informal economy, further contributed to the USD being long since and widely used as parallel currency in Mexico, particularly for high value cash transfers (cf. e.g. Ortiz, 1983; Baquero Latorre, 2000; Interview M16, 2011, pp. 8-9). This reduced need to convert USD into national currencies increased money laundering risk associated with cash earned through street sales of narcotics in the US. Guillermo Babatz, then president of CNBV pointed this out in 2010 as the USD "'being a cash currency which is accepted everywhere in the country for anything, [which made it] very easy to introduce dollars of illicit origin into the economy'" (Babatz in ALD, 2010).

The crisis year of 1994 marked an important step in defining the direction of this institutional development towards a transnationally integrated liberal market. It ended with Mexico relinquishing its crawling peg exchange rate with the USD and a rapid devaluation of the MXN to about one third of its previous value. In the same year, the Mexican banking system saw a jump in the establishment of international financial service providers. Large international banking groups like "GE Capital, Santander, J.P. Morgan and Chase Manhattan" (Turrent, n.d., p. 33) started their operations in the country. Mexico offered attractive conditions for international banking investment as a recently liberalised market with close ties to the US and a comparatively weak domestic financial sector. The country's economic integration with the US meant that banks could also count on US support in times of macroeconomic turmoil, as evidenced by the USD 50 billion financial assistance programme made available to Mexico by the US government at the height of the Peso Crisis in 1995 (cf. Maxwell & Vinod, 1996). By around 2010, the only large bank in Mexico which remained under domestic ownership was Banorte. It too was tightly linked to the US market which amongst others included a gradual take-over of Texas based Inter National Bank in 2006 and 2009.[39] Other large retail banks in Mexico were either from the US or with operations in the country submitting them to US regulations and supervision (e.g. Citibank (Banamex), HSBC, Scotiabank, BBVA (Bancomer)).

The close economic integration between Mexico and the US was not an imposition by the US or merely an inevitable evolutionary process driven by private market forces. The Mexican state, under sectorial leadership of the Finance Ministry, supported market liberalisation as part of its wider economic policy strategy pursued by a series of different governments and ruling parties since the Salinas presidency (PRI, 1988 – 1994). As a result, transnational market governance between both countries was not exclusively built on multilateral trade agreements like NAFTA and rules of organisations like the OECD or

[39] The bank was sold back to US investors in 2017.

the FATF. It was also reflected in national norms and structural characteristics of the Mexican financial system (cf. Villegas Hernández & Ortega Ochoa, 2002, pp. 40-62). Amongst others, the political orientation towards international market integration influenced AML policy making. As presented above, Mexican law established supporting the development of the domestic financial market as one of the Finance Ministry's and the financial market regulators' main mandates (cf. also Interview M18, 2011, p. 23). CNBV as the central supervisory body for AML compliance for example had at the core of its mandate to "ensure the stability and correct functioning" and "maintain and strengthen the healthy and balanced development of the financial system" (DOF, 1995b; cf. also Interview M18, 2011, p. 23). Sub-section 4.2.2 has shown that this role included the establishment of AML regulations with a clear prevention focus as part of an actor constellation interested in financial market development.

This economic orientation of the Finance Ministry and market supervisors explains a pattern in which prevention and market oriented AML reform steps coincide with major economic crises. The Peso Crisis and the Great Recession, which started as a banking crisis in 2007 induced by bad financial governance of subprime mortgages in the US, both stand at the beginning of the country's latest AML policy reform phases. The Great Recession affected national growth rates which started to decline since 2007. They only turned negative with an estimated -5.1% in 2009 before recovering to +5.1% in 2010 (OECD, 2018). In these crises, the AML reforms of 1995-1997 and 2007-2014 allowed Mexico to guard against a loss, and potentially even increase its reputation as a well-regulated financial market. Showing the ability to reform in times of crisis and being in line with international regulatory standards could contribute to avoiding investors moving their money to market places perceived as safer or to more crisis-resistant assets and currencies (cf. Interview M17, 2011, p. 2). While the first reform phase was a systemic change, the prevention and financial market oriented part of the second reform phase was a more condensed expression of a continuous updating process of Mexican AML regulations to the evolving international standards set by the FATF. It tied in with the crime oriented policy reform but would most likely also have been implemented independently of it in continuation of prevention and financial market oriented AML policies in Mexico. Under an economic logic and in line with the findings of the literature review, AML policy making by SHCP and market supervisors thus aimed at safeguarding and potentially increasing the reputation of Mexico as a financial market place as one of their policy goals.

While organised crime was the main target of the 2007-2014 reform period, public official particularly of the Finance Ministry stated reputational concerns to legitimise norm changes. In the debate on the government's AML Law proposal, the Deputy Finance Minister made explicit the link between the security threats Mexico faced and its attractiveness for economic investment, particularly for "'some particular regions [in which] the problem is impacting the economy'" (Meade in El Economista, 2010p). While Mexico would be historically very apt at conveying its economic policy to the world, it would now face “the challenge to communicate the topic of security as part of what we are doing” (Meade in ibid.) as this would also form part of analysts’ evaluations of Mexico (ibid.).

Similar to reputation as a contributing macro-economic factor for the state in transferring the FATF Recommendations, the literature review also identified it as an important driver for private market actors in establishing and implementing AML policies. But in the case of Mexico, were the potential economic effects of reputation able to induce competition between different private market actors for who would best provide AML governance services? If existent, the effect should most likely be noticeable in the banking sector, given the high levels of transnational integration, historical focus of the Mexican AML politics on it and its high compliance level with the FATF Recommendations. Indeed, within interviews and reviewed documents, reputation was identified as a factor that banks considered and communicated as reasons to establish AML standards both internally and in public regulations. HSBC’s Group CEO for example referred to the “worth” (Geoghegan in US Senate, 2012, p. 74) of reputation for the bank to internally legitimise drastic AML measures in Mexico in 2008, stating that guarding against reputational risk associated with money laundering was to take precedence over short-term business concerns. Amongst the outspoken public supporters of the AML Law passed in 2012 was ABM (e.g. El Financiero, 2011). Explicit reference to reputation was also made outside the financial sector, for example by the president of COPARMEX, who saw it as “’seriously deteriorated’” (Espinosa in Proceso, 2012). The public security situation would be detrimental to economic development in Mexico and amongst others cause “’entrepreneurs and entire families to leave to other countries looking for security and wellbeing’” (ibid.).

Given the high compliance level of the financial sector and public support for AML policies, it was not surprising that banks were generally seen as having a helpful attitude towards AML (cf. Interview M4, 2011, p. 24). A noteworthy part of the governance configuration leading to policy transfer was the alignment of interest between internationally operating banks in Mexico and the Finance Ministry. These were since the mid-1990s the central actors driving domestic AML policies generated by competition in a transnational financial market. Both public and private sector actors were oriented towards promoting the Mexican financial market place through transnational integration. This translated, amongst others, into a shared policy objective of transferring and implementing preventive (but not prosecutorial) AML policies. This could increase reputation and investor confidence in the Mexican market place while at the same time safeguarding against hierarchical regulatory imposition from the US. Such a strong alignment of public-private economic interests was not observed for any other actor constellation within the Mexico’s AML governance configurations.

This alignment contributed to a close cooperation between banks and the Finance Ministry in Mexico’s AML governance. Private actors had an important role in this process by transferring knowledge to the public sector. Internal regulations of international financial market actors imposed by their respective headquarters were seen as one of the most effective preventive AML measures in Mexico. Peer-learning between financial institutions and negotiations between Mexican market regulators and the private sector spread such regulatory standards through the Mexican financial system by non-hierarchical means. As the Finance Ministry and Mexican market regulators initially had little experience with and knowledge of AML policy, they drew from practices of international banks that established a presence in Mexico (cf. Interview M2, 2011, p. 6). The knowledge gained during regulatory visits and information exchange with the banking sector gave public actors access to up to date international regulatory standards.

Central AML governance provider of the Mexican private financial sector was the AML Committee of the ABM which was founded in 1997. It coordinated AML prevention in the private sector and also periodically served as a partner for consultation by the public sector in AML policy making at the national level. (cf. Interview M2, 2011, pp. 8-10). The knowledge transfer on the development of AML regulations has since been institutionalised and takes place mainly between the Normative Commission of ABM and CNBV but also spans to other regulated entities (Interview M18, 2011, pp. 13-14, 18-19; Interview M22, 2011, p. 2). The ABM for example cooperated with CNBV in the reform of money laundering directives and conducted training for public officials on money laundering issues (ABM, 2010: 25-26). ABM also organised international conferences like the 11th International Seminar on the Prevention of Money Laundering and Terrorist Financing in 2009 which aimed at international experience exchange and included Mexican authorities like SIEDO amongst its invitees (cf. El Economista, 2009b, p. 42). CNBV and the private sector further coordinate in preparation of FATF mutual evaluation visits (Interview M18, 2011), a practice of public-private coordination also observed in other countries.

Through these transfer conduits, knowledge on AML policies cascaded out from international banks to domestic institutions which integrated and internalised them into their preventive and regulatory procedures over time. The internal regulations of international banks “were in their time the basis for the regulations set by the Finance Ministry” (Interview M4, 2011, p. 25). The development of preventive AML policy for the financial sector in Mexico was thus partially circular. While state institutions defined the law which all formal participants in the financial market had to follow, “the national law was also influenced [and] took good things from the policies of foreign banks” (ibid.). This knowledge transfer took place between public and private financial market actors and did not reach law enforcement and prosecution actors. As a result, specialised knowledge needed for financial investigations remained a rare commodity for agencies like the Federal Police or the PGR, adding to issues of professional training and financing shortcomings.

This cooperation between international banks in Mexico and the Finance Ministry represented by CNBV influenced the development for AML regulations also for other parts of the financial sector (cf.

Interview M6, 2011, pp. 5, 25-26). ABM could establish this role not only because of the authority generated by its command of international good practice but also through many of Mexico's international banks being part of larger financial conglomerates. These also offered services like insurance, sureties or brokerage. Negotiations between ABM and the Finance Ministry therefore offered the advantage that certain AML policies were already agreed between central actors on both sides. The AML Law was an emblematic case, in which the Finance Ministry first negotiated with ABM and only after reaching an agreement invited other sectors like stock brokerage firms to comment on the draft. This significantly reduced other private actors' possibilities to further influence the final AML Law (Interview M16, 2011, pp. 23-24) despite areas like stock exchange brokers or insurance provider also exchanging positions and negotiating with their respective supervisory institutions like CNBV and CNSF (cf. ibid.; Interview M6, 2011, pp. 5-6, 21; Interview M16, 2011, pp. 15-17, 23-24).

This regulatory concentration on the banking sector and the focus on compliance with the FATF Recommendations in the financial sector at times led to situations in which regulatory requirements did not take into consideration the particularities of the sector (cf. Interview M6, 2011, p. 22). An example are Mexican retirement funds administrators (*Administradoras de Fondos para el Retiro*, AFORE). AFOREs were included under AML policy and needed to comply with mandatory reports of the insurance sector. Despite such service providers creating the required system and training personnel, they did not report any cases, because they received funds directly from the Mexican social security system which reduced the money laundering risk to a minimum. For the sector, AML policies were thus a significant cost while at the same time not creating any useable output neither for money laundering prevention nor criminal intelligence that could serve combatting predicate offences (Interview M6, 2011, pp. 1-3).

Upon closer review however, reputation *within* Mexico (as compared to the overall external reputation of the Mexican market place) was an ambiguous term for interview partners from the Mexican financial sector. It referred at times to reputation in the eyes of market supervisors and at others to customer reputation. While a negative regulatory reputation could lead to more supervisory activities, potential fines and higher compliance costs (cf. ibid., pp. 12-13, 15), a negative reputation with customers was feared to lead to direct loss of business (cf. Interview M17, 2011, pp. 11-12).

Both kinds of reputational concerns have potential to contribute to AML policy transfer. In governance terms, the two relate to two distinct governance configurations. Concern for regulatory reputation is an effect and as such an indicator of a shadow of hierarchy cast by market supervisors applying hierarchical steering modes. While some interviewees expressed a strong view of Mexican supervisors mainly being out to fine private institutions (cf. e.g. Interview M14, 2011, p. 10), the empirical data showed that regulatory fines were overall comparatively infrequent and low. It was therefore implausible that the direct economic costs of fines by domestic supervisors would by themselves create an economic effect large enough to have an impact on competition that induced AML policy transfer at a systemic level. Concern for customer reputation on the other hand is a purely non-hierarchical economic incentive created through the market: private financial companies would setup internal AML procedures to avoid losing business for being associated with money laundering and its predicate offences like drug trafficking or kidnapping. Fines in this regard could for example have the effect of generating unwanted media attention (cf. Interview M17, 2011, p. 12) which might amplify reputational damage despite comparatively low direct costs.

Notwithstanding the potential economic impact of a negative customer reputation with regard to AML, there was no evidence identified that in the Mexican financial system, customers based their decisions on where to do business on the AML reputation of a financial institution. The only concrete example referred to by interview partners was the Operation Casablanca as damaging reputation, without further specifying its economic effects (cf. ibid. pp. 11-12). While significant in terms of crime and external provision of statehood, US financial analysts at the time evaluated the effect of Operation Casablanca as very limited in terms of economic impact on the affected banks, let alone the wider Mexican financial market (cf. Brooks, 1998). The review of Mexico's domestic normative development could also not trace significant domestic reforms directly back to the case which unfolded in 1998 – just after Mexico concluded its first AML reform period. While the general argument might still merit deeper analysis correlating AML related public scandals to business data in a cross-country comparison, HSBC Mexico might serve as a first indicative example for the researched context.

If any banking institution, HSBC Mexico should have experienced a significant loss of business after money laundering allegations against it became public, culminating in record breaking agreements and fines in both Mexico and the US in 2012. Even before the allegations became public, HSBC's AML reputation with supervisors was considerably affected as "the place to bank'" (King in US Senate, 2012, p. 68) for narcotic offenders. Through the media attention that lasted for several years, the case also became known to a wider public audience beyond the specialised expert community usually dealing with AML. It even led to a Netflix documentary targeted at a broad audience (Dirty Money: Cartel Bank, 2018) as well as Rolling Stone magazine publishing a long article on the subject titled "Gangster Bankers: Too Big to Jail – How HSBC hooked up with drug traffickers and terrorists. And got away with it" (Rolling Stone, 2013) illustrated by a smiling man-like pig in a suit holding the World hostage at gunpoint.

Despite these severe reputational setbacks, its economic development in Mexico continued on a positive path without a major market effect identifiable from the money laundering scandal. Both HSBC Mexico's return on equity (ROE) and its return on assets (ROA) were positive in 2012 and doubled in percentage points compared to 2011 (HSBC, 2013b, p. 8). Both continued to be positive in 2013 and were higher than 2011 (HSBC, 2014, p. 8). While deposits decreased slightly by 0.7% in 2012, they were still up

17.4% compared to 2010 (HSBC, 2013b, p. 9). This indicates that customer decisions on where to bank in Mexico seemed to be largely unaffected by the bank's AML reputation. At a global level, HSBC "invested billions of dollars" (Financial Times, 2018) in overhauling its internal AML system. This represented a significant investment but, as discussed above, followed primarily from pressure by law enforcement, supervisory fines and the details of the deferred prosecution agreement in the US. This, rather than concerns of customer reputation in Mexico, was the more likely driver for ramping up internal AML policies. Empirically, customer reputation was not observed as an economic incentive for competition on AML policy development and implementation between banks that could lead to a race to the top. This finding also corresponded well to interview partners and also the US Senate report mentioned differing interests between compliance and business departments in private financial market actors as hindering to AML policy implementation, as business interests were often prioritised (e.g. Interview M6, 2011, pp. 30-31; Interview M14, 2011, p. 7). There was thus a conflict rather than a mutual reinforcement of business interests and AML.

The empirical weakness of a causality argument between customer reputation and AML policy transfer in Mexico was also evidenced for DNFBPs and "other than designated non-financial businesses and professions that pose a money laundering and terrorist financing risk"[40]. Similar concerns about customer reputation should apply to each legal business that is vulnerable to being used for money laundering and as a consequence be connected to its associated predicate offences. Gambling license operators or real estate can be counted among the sectors that people usually associated with money laundering outside the banking system. It could be assumed that for smaller scale and trust intensive operations with direct customer contact like notaries public or jewellers, reputation might be an even more important economic asset than for more anonymous large scale businesses. If this were the case, DNFBPs and others should proactively and voluntarily develop and implement AML policies in order to safeguard against reputational risk. This was not observed.

When domestic AML policies were conceived in Mexico in 1989, DNFBPs stayed outside its regulatory scope. While the first non-banking financial services were included under AML regulations as early as 1995, DNFBPs were unconcerned with AML and undertook no efforts to systemically develop their own internal policy standards or push for a sector wide regulation by the state. There was also no significant direct reaction of DNFBPs to the 2008 MER, which identified a lack of their regulation as leading to NC ratings in Recommendations 12, 16, 24 as well as negatively affecting a series of other Recommendations which include DNFBP provisions (FATF, 2008, pp. 313-321). They remained outside the system and any kind of AML governance configuration, as they were not even considered as governance addressees, until the AML Law proposal by the Calderón government in 2010. Only when it became

[40] As contemplated under Recommendation 20.

credible that the state would charge DNFBPs with obligations like KYC, record keeping and reporting did their active involvement in AML policy making increase (cf. Interview M3, 2011, p. 11). There was thus no sufficient intrinsic market induced incentive identified for these organisations to develop and implement AML policies. An AML expert familiar with gambling license holders summarised this well for the sector in 2011, observing that he did “not know of any internal regulation of any [gambling] license holder which regulates the issue of money laundering. Why? Because as of today the law does not require it […]” (Interview M11, 2011, p. 13).

As analysed above, large parts of the non-financial private sector were highly critical of the AML Law proposed by the Calderón government in 2010. Economic arguments were made not in favour but against the law. On economic grounds, it was presented as impeding economic activity through cash restrictions as well as creating high compliance costs. The need for changes in the proposal considering its economic effects were particularly put forward with regard to those sectors that were in high risk of money laundering due to their reliance on cash and acceptance of USD, like the tourism sector, businesses in border regions and the informal economy. If customer reputation were an economic benefit that outweighed such concerns, these sectors should have lobbied for sector wide binding regulations with strong supervision. Instead, they were successful in achieving adjustments to the proposal which included higher thresholds for the use of cash in acquisitions, specific treatment for border regions, lower CDD standards and similar reductions in AML policy obligations.

In contrast to the transnationally integrated financial sector, a negative effect for AML policy transfer was generated by cross-border competition in the real economy. Between very integrated economies like Mexico and the US, especially in border regions, there is direct competition between easily transportable consumer goods and services on both sides of the border. This competition is influenced by price differences that might for example be based on different levels of domestic taxation but also regulatory standards like AML obligations. The above mentioned quadrupling of exchange activities in Mexico during December (El Universal, 2010j) is an effect of this competition, as many Americans go to Mexico for Christmas shopping or to spend their vacations. Recently introduced USD cash restrictions were therefore relaxed in December 2010, which according to the president of CNBV would benefit the medical and car part sector (El Universal, 2010j). Cross border competition in the non-financial sector in this case led to a relaxation of AML rules. The president of ANCEC-TD made this competitive pressure explicit, observing that “those who most benefit from establishing limits for operations in USD are the businesses in the United States located in the border zone” (ibid.). This observation contrasts with the financial sector, in which the establishment of global financial markets promoted a unified regulatory AML system precisely to avoid regulatory competition in favour of large international banking groups. If this logic will be eventually transferred to DNFBPs and other non-financial economic activities needs to be evaluated after AML policies become more binding in that sector. As power is relatively more equally distributed for many consumer markets than in global finance, the dominant role played by the US and UK in global finance will however not be easy to replicate by a functional equivalent.

There is another twist to the competition argument in Mexico to which the standard view of the governance configuration did not fully apply: competition between large scale formal businesses and professions and those that operate on a smaller scale or at least in parts informally or illegally. Given the scale of such competition, this is a problem unique to areas of limited statehood where the state cannot reliably enforce legal requirements for businesses. In their lobbying for an exclusion of their sector from cash restrictions, the Association of Gaming and Lottery License Holders for example argued that the government should focus on the "almost 50 casinos which are in the hands of criminal organisations" (ALD, 2010). INFONAVIT, a public institution under the roof of the Mexican Finance Ministry and Latin America's largest mortgage provider, supported the initiative on competition grounds. It would "eliminate the buying of houses with cash, which is abnormal, [as] no honest person buys real estate with cash" (Borrás in El Universal, 2010v). Despite its reservations regarding the government's AML Law proposal of 2010, the PRI also identified money laundering as illicit competition to the formal economy that would create market distortions (see Navarrete in El Universal, 2010f). Calderón on the other hand tried to link AML to the protection of the formal economy, thus pitching it against the informal economy. Money launderers would "'seek to make good money out of ill-gotten at the cost of all the efforts that Mexicans make in the framework of the formal economy'" (Calderón in Toluca Noticias, 2010).

The sector in which such domestic competition elements were clearly observed as impacting AML governance was the currency exchange market between USD and MXN. Exchange service providers took different positions on AML regulation depending on the relative policy costs for them, which in turn depended on business size and level of formalisation. Larger and more formalised CDCs that in parts belonged to financial conglomerates differed in their position towards the government's AML Law proposal from the smaller and sometimes informal exchange centres. The AML regulations proposed under the AML Law in 2010 would affect them unevenly due to economies of scale, putting exchange centres at a competitive disadvantage compared to CDCs. AML policies were seen as creating serious economic challenges particularly for small exchange centres for which for example AML reviews would present high costs which "they then cannot cope with and have to close" (Felipe González in El Universal, 2010a). Sector representative saw AML policies highly critical, assessing that "far from strengthening the sector [the regulations] are strangling us" (ibid.). Representatives of larger banks like HSMX's Director General in turn saw the new regulations as establishing a "level playing field for all banks" (cf. El Universal, 2010h).

Before the publication of the 2009 directives re-regulating their supervision, it was estimated that 7,000 exchange centres existed in the country under the dysfunctional supervision of SAT, while at the same time only nine CDCs operated supervised by CNBV (cf. El Universal, 2009b). CDCs similarly were largely in favour of the proposal, arguing that it would order the market – a position even shared by those exchange operators organised in the ANCEC-TD (El Economista, 2011d). According to the vice-president of Mexican Association of Exchange Houses (*Asociación Mexicana de Casas de Cambio*, AMCC), the previous regulations were unbalanced due to their lack of regulation of exchange centres (cf. ibid.). Exchange centres and MSBs on the other hand emphasised their role in the Mexican economy which banks would not be carrying out anymore in order to protect themselves from money laundering. As a result, according to the president of the ANCEC-TD, "the problems which exchange centres are currently facing [with regard to money laundering] are provoked by the banks" (El Economista, 2010w). ANCEC-TD also argued against a view that would see banks as a way to solve money laundering related to the exchange sector, pointing out that "it were financial institutions […] that captured over USD 10 billion whose origin the authorities could not establish" (El Universal, 2010i). According to the same source, restrictive regulation with the objective to prevent AML had led to over 1,400 exchange centres having closed operations or started operating illicitly in Mexico between 2008 and 2010, as they were not given permission to open checking accounts (El Economista, 2010w). ANCEC-TD saw this economic pressure as a direct effect of AML being used for competition purposes by the banking sector (Castro in ibid.).

A similar competition based divide existed between different types of the exchange centres. Interviewed in 2009, the president of the ANCEC-TD lobbied regulators to "detect more quickly those businesses that appear and disappear […] quickly as this tendency increases the negative image which the exchange business currently has" (El Economista, 2009a). While the ANCEC-TD saw the existing regulation for the sector as sufficient, supervision would be lacking (El Universal, 2010s; El Economista, 2011d). A solution to this situation would "benefit those exchange centres which conduct their activities within the confines of the law" (El Economista, 2009a). ANCEC-TD's evaluation of the initiative was therefore overall positive for exchange entities that operated within the confines of the law (El Universal, 2010r). It expressed an interest in regulating a market that was "expanding without control or supervision" (El Universal, 2010j). The organisation's president estimated in 2009 that 1.500 exchange centres were linked to organised crime (cf. Proceso, 2009b), with 3,000 exchange centres not falling under any kind of government regulation still in 2010 (El Economista, 2010w). A similar number of 1.500 exchange centres was estimated to disappear with the establishment of new exchange centres being more difficult in the future after the introduction of the introduction of the new regulations, amongst others passing exchange centre supervision to CNBV (El Universal, 2011a). The introduction of USD cash restrictions had also impacted this market.

In effect, AML policies would contribute to formalising the foreign exchange market, thus creating barriers to entry for smaller service providers who would have relatively higher compliance costs. The necessary investments into ICT equipment and training were estimated by ANCEC-TD to be up to 40% of income (El Economista, 2010w). Interview partners observed a similar effect between larger and smaller banks that needed to comply with AML policies (cf. Interview M6, 2011, pp. 7-8). In such cases, reputational arguments intertwine with competition effects creating a situation in which parts of the exchange service providers (CDC and larger formal exchange centres) would have an incentive to promote AML policies in order to reduce competition. This rational underlay pleas by registered exchange centres for CNBV to follow-up on reports on and close operations of non-registered exchange centres (El Economista, 2011d). Despite the new regulations, in early 2012, ANCEC-TD saw illegal USD exchange still on the rise and continued to demand action by CNBV against unregistered exchange centres (El Universal, 2012).

Apart from the credible threat of sanctions from the US in case of further AML violations as exemplified by HSBC, cash restrictions also offered an economic incentive for banks to support AML policies. A reduction in the use of cash and other easily transferrable valuable can be assumed to lead to an increase in the use of financial sector services. CNBV was aware of this effect of the AML reforms which would "'contribute to boosting the use of banks [*bancarisación*]'" (Guillermo Babatz in Milenio, 2009) in the Mexican economy. Equally, the former Mexican president of the FATF and head of the UIF, Luis Urrutia, saw it as necessary for AML policies to "concentrate on bringing the population which currently does not use banks into the formal economic system" (El Universal, 2011c). This would directly benefit for example institutions that offer account management or wire transfers and other forms of non-cash value transfer. At a press conference where the Finance Ministry presented new regulations for the exchange of USD, the president of ABM stated that banks would extend their foreign exchange services by cooperating with hotels and businesses who would serve as correspondents under regulations that were still to be published by CNBV (cf. El Economista, 2010x). This detailed knowledge of regulation still under development demonstrated the close coordination between the financial sector and regulatory authorities with regard to AML. Within the financial sector, the Finance Ministry, the Mexican Central Bank (Banxico) and CNBV on the one side and private banks on the other (cf. García Gibson, n.d.(b)) were the central negotiating parties.

Another area that received less public attention but showed very similar AML policy transfer dynamics to the foreign exchange market was the regulation of SOFOMs since their introduction in 2006. The SOFOM market consisted of financial service providers that were either part of larger financial groups and thus regulated by CNBV or independent small scale enterprises with an average of 5-7 employees (Interview M15, 2011, p. 18) that initially operated without any regulation (DOF, 2006a). The second category can be subdivided into institutions created as SOFOM after 2006 and SOFOLs that transferred their legal status to SOFOM over time. SOFOLs that transferred to SOFOM usually already had established internal AML procedures as this was required under their previous regulation. Although not required by the 2006 legislation, many SOFOLs were seen to have maintained their internal AML policies and systems during the transfer of their legal status (Interview M15, 2011, pp. 6-7, 19) with newly created SOFOMs also drawing from these experiences for their self-regulation (ibid. p. 4). The initial lack of regulatory requirements for SOFOMs was seen as an emulation of US regulation of no-not-banks which were seen as successfully self-regulating entities until the economic crisis of 2008 revealed vulnerabilities of this model (ibid. pp. 5, 14, 16).

The difference in regulatory requirements between independent SOFOMs and those belonging to larger financial groups reflected and perpetuated both a different in vulnerability for money laundering and the relative costs of establishing an internal compliance system. While regulated and self-regulating entities could reduce their money laundering risk, they also incurred higher costs than SOFOMs that did not invest in self-regulatory AML systems. AMFE as the sector's trade association tried to foster self-regulation of SOFOMs together with IDB but was largely unsuccessful in transferring AML policies modelled on the banking sector to SOFOMs (ibid. p. 14). Such unsuccessful attempts for self-regulation contributed to state regulation being the preferred regulatory strategy since 2008. A unified regulation would lead to a situation in which "all entities would be in the same line and compete in the best possible way, instead of some being disadvantaged and others not" (ibid. p. 6).

Competition effects influencing the degree of AML policy transfer governance in Mexico were thus observed to both limit and advance compliance with the FATF Recommendations. The strongest positive impact was observed for the banking sector for which participating in the transnational economy between the US and Mexico provided a strong incentive to promote a unified regulatory system based on the US laws and regulations. The currency exchange and specialised financial services market also showed signs of a competition effect leading to stricter AML policies with an economic incentive created by the possibility to reduce the number of competitors and create a level playing field. While international banks and local service providers differed in the nature of their market place, one being transnational and the other domestic, for both barriers to entry played a central role. These were created by governments in the US (banks) and Mexico (exchange, specialised financial services) which corresponded to the model of the governance configuration as institutional rules setting up competition being defined hierarchically by the state. While the US shadow of hierarchy to enforce its rules was amply observed, there are also strong indicators that Mexico was able to largely enforce at least parts of its new rules with the sharp and stable reduction of USD exchange and deposits. However, for Mexican DNFBPs in border regions for which laxer AML regulations in Mexico presented a competitive advantages towards similar companies on the US side, competition contributed to them resisting tighter regulations and successfully achieving legislative exemptions.

5. Conclusions

The final chapter of this thesis consists of three sections. Section 5.1 presents the most immediate results by drawing conclusion from the previous chapters to answer the central research question: "What factors explain compliance and non-compliance of El Salvador and Mexico with the 2004 FATF Recommendations?" The hypotheses generated in chapter 3 are assessed here in a concise manner evaluating their explanatory value. This section combines results from both empirical case studies to reach more generalizable conclusions. It does so by relating the empirical results with the theoretical foundations of the study and the insights of the literature review. The hypotheses set as a whole will then be probed for necessary adjustments to better reflect the results and increase its usefulness for future research.

The final section of this thesis shortly ventures forward into policy advice and back into theory development. Science is not politics and the limited scope of this study requires that such reflections be taken with a grain of salt. It would however also be a loss to finish this in-depth analysis of two rarely researched cases in a policy area largely untouched by political science without at least making the attempt to condense some information that might or might not be useful to AML policy practitioners. Finally, it presents the central implications of the results on the academic thinking about policy transfer and governance in areas of limited statehood. Did the combination of these two academic strands pay off and what lessons did it offer for the further development of both fields? Chapter 5 thus creates anchoring points facilitating further exploration of both AML policy as well as policy transfer in areas of limited statehood.

5.1 FATF Compliance in Areas of Limited Statehood

Overall, the initial hypotheses developed in chapter 3 held up well in the empirical case studies. Governance configurations developed for analysing public good provision in areas of limited statehood helped explain the degree of AM policy transfer from the FATF to the national level in El Salvador and Mexico. The four different applied typologies revealed how specific aspects of the actor constellations and embedding institutions as well as the procedural dimension of governance contributed to this process. While each configuration focussed on different aspects, at an aggregate level the state was in neither case nor configuration a unitary provider of AML governance services. Policy transfer and implementation in many occasions involved external and private sector actors. Within the state, different organisations took sometimes complementary but also competing positions. Institutional settings as well as resource availability through funding, personnel for organisations and expertise but also perceived legitimacy of the proposed policies shaped the power differential between these different involved actors. External factors were more effective when either their legitimacy was increased, usually by being embedded in a formal institutional framework, or the constellation allowed for a transmission of a shadow of hierarchy across borders. In the case of external provision of statehood, the impact of hierarchical governance modes applied by external actors in Mexico at times even exceeded the estimate of the respective hypothesis.

More important than the mere indication of correlations between types of governance configurations and aspects of FATF policy transfer and compliance however were the offered explanations of a causal relationship through their theoretical foundations in transfer studies and governance in areas of limited statehood. This is the central contribution of this thesis that advanced the understanding of FATF compliance. It expanded on the mere correlation of factors based on a more or less educated guess or single case studies thus far identified as the most common approach in the contemporary literature. The following pages present the conclusions of the analyses aiming to refine the initially developed set of hypotheses for four different ideal-type governance configurations. They concentrate on the similarities of policy transfer between both cases to filter out specifically those factors that are more likely generalizable to other cases.

Hypothesis 1 (governance by delegation): Insufficient power differentials between domestic public and private actors explained an incomplete transfer of the FATF Recommendations resulting in limited implementation of collectively binding decisions.

In the first ideal-type configuration analysed, both case studies confirmed that domestic governance provision by the state through delegation of AML tasks to other actors remained the salient configuration for AML governance. Yet it deviated significantly from how this delegation is envisioned to work in areas of consolidated statehood and laid out in the FATF Recommendations. Without a consistent threat of sanctions for non-compliance, delegation relied on non-hierarchical governance modes as functional equivalents where it could and remained largely ineffective where it could not. As a reminder, the ideal-type that according to the literature should lead to effective governance provision through delegation in areas of limited statehood was comprised of the following components with the ideal-type of the FATF reproduced in the third row:

Configuration	Actors	Modes of governance	Institutional setting	Resources and power
Delegated authority to other actors [under conditions of limited statehood]	Host states as principals, other actors as agents	Delegation is hierarchical; governance is hierarchical or non-hierarchical	Usually formally regulated; sometimes embedded in international regulations or domestic law of agent	Delegating state lacks resources to enforce contracts
Delegation as	<u>Public</u>:	<u>Hierarchical</u>:	<u>Formal</u>:	<u>Highly asymmetrical</u>:

envisioned in the ideal-type of the FATF Recommendations	State institutions such as market supervisors, FIU, law enforcement and judicial agencies as primary governance providers; Private: Financial service sector and DNFBPs under delegation	Command and control	Embedded in international conventions and domestic laws and regulations	Consolidated statehood with the capacity to enforce collectively binding rules

Table 6: Idea-type governance configurations underlying hypothesis 1

The institutional setting of AML policy transfer in El Salvador and Mexico was highly formal, embedded in international regulations and domestic law. Both countries belonged to early adopters of AML policies. Mexico, as a pioneer in international comparison, established its first domestic legislation on the subject in 1989 even before the FATF published the initial version of its Recommendations. By the mid-1990s, both countries had officially subscribed to implementing the FATF Recommendations and successively joined FATF (Mexico) and CFTATF / GAFISUR / GAFILAT. With the adoption of the FATF Recommendations came at its core the formal acceptance at a normative level to replicate the envisioned governance configuration of delegation under a shadow of hierarchy. Legislators, governments and their agencies accordingly developed ever more sophisticated collectively binding rules defined at the national level in the form of laws and regulations. National laws in both cases referenced directly and frequently international standards of the FATF as well as regional and UN conventions.

Within these steadily evolving formal institutional frameworks, state actors directly transferred AML policy by creating the legal and regulatory norms as well as organisational structures prescribed in the FATF Recommendations. These constituted hierarchical delegation of AML tasks to the private sector such as record keeping, KYC/CDD and reporting duties. To support enforcement of these rules, El Salvador and Mexico established state agencies like FIUs that operated for most of the time sufficiently close to international standards to qualify as members of the Egmont Group. Newly passed AML laws and additional AML provisions in existing legislation gave state agencies in law enforcement, prosecution and the judiciary hierarchical governance tools. With the state thus formally established as primary governance provider and the private sector as a recipient and secondary provider through delegation, both countries eventually reached a sufficient compliance level to leave their respective follow-up procedures by 2014.

Without this domestic institutional framework, private actors as well as government agencies would have lacked the legal justifications on which to provide AML governance services, despite the complementation by external incentives and sanctions. Account closures by banks for example risk causing economic damage to customers and therefore need sound legal foundations if a bank wants to avoid being held financially accountable. Gathering and systematically compiling criminal intelligence equally requires legal backing if they are not to create clashes with civil liberty rights. The same holds even stronger for the application of hierarchical governance modes like arrests and criminal sentences. Domestic establishment or legal and regulatory rules and delegation of tasks and authority was thus at the same time a first incidence and a necessary prerequisite for AML policy transfer and FATF compliance. Through the extensive involvement of the private sector AML was in both cases clearly a process of governance with governments. Given the restrictive nature of AML for economic actors, it is difficult to imagine a governance configuration where the state would be absent from AML policy making and implementation.

A gradual state centred development of AML policy through transfer of emerging international standards to the domestic level accurately describes the observation in El Salvador and Mexico for overall compliance over large time frames between 1989 and 2014. The details of how the transfer process worked, were however more complex and reveal important divergences from this general path described above. Within the same domestic institutional and actor framework, such variance requires explanation. The reasons for variance of transfer results at a lower level of aggregation lay in the procedural dimension of governance, especially in the power relationships between actors and the resulting applied steering modes. Looking at these two factors showed that transfer was slower and more limited in some policy sub-areas. As hypothesised, reasons lay in insufficient power differentials for the application of hierarchical governance modes between public and private actors. For non-financial actors these were not effectively counter-balanced through the domestic application of non-hierarchical governance modes to delegate AML governance tasks to them.

AML policy transfer was for example consistently less complete in the regulation and supervision of DNFBPs as well as other businesses and professions. This emerged as a clear pattern in both case studies in the observations of the MERs but also after the end of the respective reform periods concluding the Third Round of mutual evaluations. In the Third Round, both El Salvador and Mexico were evaluated as NC with Recommendations 12, 16 and 24. These were the most important provisions for regulating DNFBPs. They received an NC evaluation despite both countries at the time having already put in place legal means to regulate and supervise at least parts of the variety of sectors that make up DNFBPs. Governments however neglected detailing these policies in regulatory documents as well as their implementation to a level at which the existing legal requirements were ultimately insufficient to receive at least a PC rating. A good example for this shortcoming was El Salvador's inclusion of casinos, real estate agents and precious metal dealers in its 1998 AML Law without proceeding to assign control mechanisms and supervisory institutions to these sectors. Their inclusion into the domestic AML governance system thus never took place beyond the normative level.

The reasons for a lack of AML policy transfer for and to non-financial business and professions were twofold: normative and based on state capacity. On a normative level, most governments did not prioritise regulating DNFBPs and other non-financial money laundering risk areas. The focus lay on the financial sector and in that area mainly on banks. This corresponded to the historical development of the policy field at the international level at which non-financial businesses and professions entered as regulated entities well after standards for AML policy in the financial sector were already largely developed. It also reflects high money laundering risk perceptions as particularly banks offer services attractive to money launderers and can be used for placement and (international) layering of larger sums. The degree of disparity between the political prioritisation of financial sector regulation over non-financial sector regulation was however remarkably sharp given the prominent position of DNFBPs and other services and professions in the 2004 Recommendations. This was due to external factors discussed below providing additional incentives for AML policy transfer to the financial sector thus boosting compliance in that area.

The Mexican AML policy transfer process provided a good case for observing the political dynamics that resulted in a financial market focus of AML policy. While laws and regulations since 1989 include provisions for both preventive and prosecutorial policies, their reach appeared limited to prevention concerns of financial market actors. The country initially built its money laundering governance structure around financial market actors which with the establishment of NAFTA led to a focus on financial market integrity. Under this paradigm, the Finance Ministry became the central actor pushing AML from a market development perspective. During this time, Mexico created a sophisticated preventive regime in the banking system with the cooperation of private market participants. As a result, law enforcement and judicial actors were side-lined and with them prosecutorial policies, explaining in parts the low conviction levels observed.

The shortcomings of this approach became apparent, when the country's money laundering policy was revised by the Calderón government that made fighting violent crime one of its central political goals. In the context of growing violence associated with organised crime the Mexican government began to gear money laundering policies towards a wider crime fighting agenda as additional policy objective. It realised that the focus on preventive measures and financial integrity issues excluded actors from the law enforcement and the judiciary from Mexico's money laundering governance. In order to increase the usefulness of money laundering policies for criminal intelligence and prosecution, the Calderón government attempted and partially succeeded in passing structural reforms. In this process the PGR temporarily emerged as the second central actor in money laundering policies. Under the new governance structure, law enforcement and judicial actors had better access to financial data and a broader investigative and legal tool-box. These efforts started to show initial results in 2012 that saw a jump in money laundering convictions.

Ultimately however, the Finance Ministry retained most of its influence in steering national AML policy in Mexico. Two of its most significant structural power resources that the reforms were unable to change were housing the FIU and the gatekeeper function for money laundering investigations in the financial system. The most far reaching reforms addressing these structural factors met significant resistance. Added to this resistance were concerns of newly regulated sectors outside the financial system that like in the case of notaries resonated strongly in the press. Against the backdrop of high violence rates associated with organised crime notaries fielded security and civil liberty arguments against passing on client information to the state. A second group voiced economic concerns of which tourism and trade dependent businesses in border regions were examples. They feared that particularly the envisioned cash restrictions would be detrimental to their economic development. Both in the end were successful in negotiating agreements with the state that allowed for specialised treatment of these groups. They secured adjustments to their reporting obligations and limitations of cash restrictions.

In El Salvador to a lesser extent, the main actor group resisting an expansion of AML regulations were political actors and parties by dragging their feet on passing new legislation on PEPs which put them under stronger scrutiny. The later accusations of three former presidents for financial crimes including money laundering showed why tougher rules were a threat to at least parts of the polity. Similarly in Mexico PEP regulation and party financing were contentious issues during the debate of the AML Law. It merits further scientific exploration if PEP regulation is particularly difficult in countries with electoral systems that are at the same time affected by large scale economic crime. This seems plausible if financial flows between organised crime and political parties or politically influential individuals are not sufficiently safeguarded against. In El Salvador at this time as well as previously in Mexico, members of parliament opposing stronger AML regulation based their position on sovereignty issues. This hinted to the importance also of external factors in AML policy transfer in advocating for legislation that potentially also allows investigations into financial data of the legislature.

AML governance in El Salvador and Mexico was thus not merely a task of normative delegation for governments as unitary actors which was gladly supported by the regulated sectors as secondary governance providers out of self-interest in market integrity. Instead institutional interests diverged and many regulated entities needed to be forced to comply (cf. “kicking and screaming” (Levi, 1991, p. 124)) through hierarchical governance modes or persuaded by softer approaches with varying degrees of success. Without a shadow of hierarchy cast by the state, such softer approaches had limited effectiveness for AML policy transfer in both empirical cases. This is not surprising given that the specific governance service to be delivered by AML policy itself strongly relies on criminalisation of an economic activity – i.e. the application of hierarchical governance modes. The analysis of different groups of actors within money laundering governance configurations made apparent, that AML as a policy field is a politically contested area. Although this might appear trivial, it is contrary to the technocratic image the policy field usually enjoys and perpetuates in the FATF's narrative. Actors focussing on advancing or restricting preventive and prosecutorial applications of these policies compete for political support for their specific preferences.

The second level of explanation complementing the domestic normative preference for political objectives lay in the states' capacity to enforce collectively binding decisions. As will be concluded further below, external factors compensating for the lack of a domestic shadow of hierarchy were key to reaching higher compliance levels in in the financial sector. Domestically however, once rules were established, both states clearly struggled to unilaterally enforce compliance through hierarchical governance modes. Conviction rates were historically low in both countries. They did not markedly increase in a sustained manner during the research period despite the observed reforms and good reason to assume that large scale money laundering existed. Criminal charges and convictions in El Salvador were mostly for cash interdictions at border crossings. The few identified more complex cases were based on the provision of US criminal intelligence and external legal assistance. Criminal cases in Mexico were comparatively more frequent, larger in scale and involved more sophisticated money laundering techniques in the financial system. In relation to the likely magnitude of money laundering in the country and the intensive focus on combatting organised crime in the early 2010s, still convictions and fines remained relatively rare occasions. Regulatory fines were negligible in El Salvador and even the larger fines in Mexico did not get close to the levels imposed in countries like the US even for closely related cases like HSBC.

The explanation of this mix of normative transfer of rules and regulations in a highly institutionalised environment with limited implementation lay in the process dimension of governance. As assumed by the hypothesis the research identified a power differential between domestic state and private sector actors to which governance tasks were delegated. The persistence of high crime levels that generated significant financial resources that require laundering and corresponding low conviction rates is an indicator of this differential. Explaining a small power differential by the lack of observing the expected results of a higher power differential would however be tautological – a problem common to most AML policy analyses for the lack of better data on actual occurrence of money laundering. The in-depth case studies revealed better offers for underlying reasons.

A paradigmatic observation is the role of the FIU in both countries for enabling hierarchical AML governance at the domestic level. To comply with the FATF Recommendations, FIUs have to be the unitary national agency to receive and analyse STRs. They then provide analyses on potential money laundering to law enforcement and prosecution agencies if criminal charges for money laundering are to be generated and lead to adjudicated cases. FIUs are thus neuralgic points in AML governance as envisioned by the FATF, particularly for enabling other state actors in the application of hierarchical governance modes. Without analysis provided by FIUs more sophisticated money laundering schemes are difficult to unravel. Financial intelligence would be limited without a systematic approach to STRs and access to often confidential data of the financial system. FIUs do not only concentrate AML knowledge and skills for the public sector but also provide domestic and international data access if they are active members of the Egmont Group.

For different reasons, the FIUs in both countries did not fulfil their role satisfactory in supporting hierarchical governance. El Salvador's judicial type FIU was in fact part of the prosecutorial branch but very insufficiently resourced and understaffed. Together with a high rotation of its only two assigned prosecutors it was challenged to develop the necessary capacity to fulfil its role. This precarious overstretch of resources was further amplified by also tasking the unit with additional regulatory roles and representation in different national and international AML working groups and fora. While an FIU thus formally existed as an institutional shell, it could not effectively support the application of hierarchical governance modes by providing its core purpose of systemically compiling and analysing STRs in a manner that made them useful for criminal prosecutions. The duplication of its preventive role at the SSF until 2011 underlined the low political priority given to the FIU until that point. A reordering of roles and additional funding for the FIU allowed El Salvador to leave the FATF review process. No evidence was however identified that these changes led to sustained growth of the FIU's capacity to provide criminal intelligence and financial analyses fostering hierarchical AML governance in El Salvador.

Mexico's administrative FIU located at the Finance Ministry was in contrast sufficiently staffed and resourced. It was however embedded in a governance configuration whose primary purpose was for most of its history not criminal enforcement to curb organised crime but financial market development. Until Mexico founded its FIU in 2004, its tasks were in fact carried out by market supervisory institutions. This is a completely different situation than the one identified in El Salvador where the FIU was 'disembedded' from the AML system in the financial market. But both set-ups contributed significantly to the same result: limited capacity of the state to apply hierarchical governance modes to enforce AML compliance.

To understand effectiveness of the FIU in AML governance in Mexico the key question is indeed: "Effective in achieving which objective?" Mexico had a sophisticated AML system but its focus lay on money laundering prevention in the financial system to protect and advance its economic development. The often repeated political objective was fostering the financial market, amongst others through integrating it internationally, particularly with the US. The FIUs relationship to organisations like the PGR was therefore distant with FIU personnel seeing its role as a buffer between the criminal justice and financial system. Also for this reason STRs rarely led to criminal cases which were more likely to develop through international inputs (i.e. HSBC) or connected to criminal investigations of predicate offenses, in particular illegal narcotics trade. Mexico's FIU during the research period should be conceptualised more as an extension of the market supervisory than of the criminal justice system. The gatekeeper role of the Finance Ministry for initiating criminal investigations in the financial sector was one of the clearest expressions of the power distribution between actors pursuing economic and law enforcement interests with AML policy transfer.

Why are these findings for both FIUs paradigmatic? They reveal on this neuralgic point that the domestic governance configurations were clustered into at least three groups with different and at times competing interests. Group one as the "financial market group" and group two as the "prosecution group" underline the importance of defining the objective of AML policy pursued by the state. The third group is a residual of all those regulated actors like most DNFBPs to which AML governance were normatively delegated but that in practical terms remained largely outside of governance service delivery through AML.

Both countries had strong groups of financial market actors who made up the core of the actor constellation shaping AML governance. The groups' AML policy purpose was economic, specifically protecting the financial markets of both countries from misuse and fostering its development through international integration. As discussed on many occasions in this study, this policy objective created a focus on prevention oriented policies but disincentivised prosecution. Simply put, from an economic development perspective, preventive policies in the financial sector had a high legitimacy and thus found norm acceptance by the regulated entities. Integrity of the financial sector should be high enough to avoid negative reputational effects. If money laundering occurred however, the application of hierarchical governance modes should not endanger the further development of the market. Mexico's FIU was part of the actor group forwarding this approach and therefore focussed on prevention but did not significantly boost prosecution.

The prosecution group centred on state actors in law enforcement, prosecution and at times the judiciary. El Salvador's UIF as part of the FGR belonged to this group while the SSF fulfilled the preventive role of FIUs in AML policy for the financial sector. The reason is the genesis of AML policy in El Salvador out of anti-narcotics legislation which since the end of the civil war included AML provisions. The FIU however was too under-resourced to effectively implement AML policy. As a judicial FIU that competed with the SSF, it had little insights and contacts into the financial market. It was therefore not in a position to build a bridge between the financial market on the one side and law enforcement and prosecution services on the other. In this light the participation of the private sector at the 2010 CFATF Plenary could also be seen as a show of the gap between both sectors. The UIF was limited in its capacity to present the financial sector position at the meeting and therefore relied on additional input from the financial market group represented in parts directly by the private sector.

This distance between prosecution agencies and the financial sector was also observed in Mexico. The difference was that Mexico's UIF was firmly integrated into the financial market group and thus linked it directly to the international level without the need to rely on additional private sector input. Before the 2007-2014 reform period, law enforcement and prosecution agencies were largely absent from AML governance. While not void of external influence, the reform period was an attempt at redirecting AML policy towards combatting transnational organised crime and drug trafficking in Mexico. The in the end short-lived uptick in AML investigations and prosecutions reached its peak in 2012 and has since fallen from its height of 145 investigations that led to prosecutions down to 43 in 2016 (FATF and GAFILAT, 2018, p. 62). Agencies like SEGOB, the Federal Policy or the PGR were gradually drawn into the configuration during this period but data from the Fourth Round of mutual evaluations seems to indicate that this shift was not sustained.

In terms of governance configurations, this resulted in an alignment of interest between public and private market actors in the financial system. Within the financial market groups, for this reason non-hierarchical governance modes contributed to AML policy transfer. Banking organisations like ABANSA and ABM both had standing exchange formats with market regulators and supervisors. Despite not formalised, the IIC in El Salvador was the most institutionalised of such exchange formats. International banks as private sector actors facilitated policy transfer by transmitting their AML knowledge and skills to the public sector alongside communicating their regulatory preferences. When necessary for international compliance, the financial sector group also expanded the reach of AML regulations to include vulnerable and previously neglected sections of the financial system like money exchangers (Mexico) or remittances services (El Salvador). A positive side-effect of this expansion that also provided an additional economic incentive was the formalisation of these financial services which drove informal providers out of the market opening up business opportunities for the banking sector.

Transfer of preventive AML policy in the financial sector was thus a negotiated process. The co-production of legislative and regulatory norms based on international standards and experience was merely formalised in laws and regulations by the state. The role of the IIC in El Salvador was the clearest example of this dynamic. Not only did it comment and provide feedback to legal proposals, it also presented fully fledged drafts to the legislature and regulatory bodies that were then adopted as collectively binding decisions. Strikingly, public regulations at times lacked behind self-regulation of private sector actors that implemented group wide AML policies in El Salvador and Mexico before corresponding obligations were domestically created. In El Salvador, private sector regulation of the financial market was far enough advanced beyond the national legislation that the CFATF even considered it in determining its compliance evaluation. This alignment of interest in the financial sector excluded particularly law enforcement and prosecution as well as DNFBS and other business and professions from AML governance.

Between law enforcement and prosecution agencies no comparatively dense actor network was detected. They at times carried out investigations and case work, which however seemed more ad-hoc and often lacked a specialised judiciary. Detailing the resulting observed empirical AML governance configuration of delegation under conditions of limited statehood resulted in a divided structure. The cleavage ran between the financial market group and the prosecution group at the domestic level. In the model of the FATF Recommendations FIUs would be the most likely organisation to bridge this gap. Their role brings them in contact with both groups and their services are important for prevention as well as prosecution centred policies. However this role was empirically not fulfilled at any time in El Salvador or Mexico. Given the existence of non-hierarchical governance modes in the financial market group, policy transfer mainly took place for prevention oriented policies as boost for financial sector development.

Hypothesis 2 (external influence): Power asymmetries between foreign actors and public as well as private actors in El Salvador and Mexico increased AML policy transfer when they were embedded in a highly institutionalised setting.

External actors in the governance configuration of external influence need targets that they aim to influence through non-hierarchical means to foster governance service provision. In the wording of policy transfer studies, one characteristic of external influence is that transfer occurs voluntarily. For this reason, external influence is only effective if it links with domestic actors and governance processes. The application of coercive measures by external actors would shift the configuration into external provision of statehood. The idea-type governance configuration would assume such interaction to be effective for governance service provision in a highly formalised institutional environment and if power relations were asymmetrical in favour of the external actor.

Configuration	Actors	Modes of governance	Institutional setting	Resources and power
External influence	Mostly foreign states, their agencies, and IOs including regional organizations	Non-hierarchical: incentives and sanctions, but also arguing and persuasion; capacity building	Mostly strongly institutionalized through inter-state treaties and arrangements	Asymmetrical distribution of resources (incl. legitimacy) in favour of external actors necessary condition for effectiveness. In case of

		Linked to other governance configurations on the ground		symmetrical distribution, external influence rather limited
External influence as envisioned in the ideal-type of the FATF Recommendations	Public: FATF	Non-hierarchical: Through sanctions, but also arguing, persuasion, and capacity building	Formal: Strongly institutionalised through the FATF Recommendations in conjuncture with international conventions	Asymmetrical: Distribution of resources (incl. legitimacy) in favour of external actors
	Private: International financial sector	Non-hierarchical: Arguing, persuasion, and capacity building Linked to hierarchical governance provision by the state	Formal: Strongly institutionalised through the FATF Recommendations	Asymmetrical: Distribution of resources (incl. legitimacy) in favour of external actors

Table 7: Idea-type governance configurations underlying hypothesis 2

In the analysed empirical cases external influence frequently interlinked with the domestic configuration contributing to shaping the course of governance by delegation to private actors. The institutional setting was thus partially provided with a formal structure by the domestic configuration. This was complemented by international institutional frameworks provided by the FATF, FSRBs, Egmont Group, Wolfsberg Group but also the Mérida Initiative and other forms of international cooperation. The FATF Recommendations themselves provided for elements of this governance configuration opening conduits for the external application of non-hierarchical governance modes both by the FATF as well as other states and the private sector.

The clearest occurrence of external influence shaping AML governance in both cases was the FATF. Its relevance was twofold as (i) the actor defining the AML policy standard and by (ii) providing an institutional framework for exchange between actors as well as the provision of incentives and sanctions for the transfer of international standards to the national level. Put as clearly as possible, AML policy in El Salvador and Mexico was almost synonymous with the transfer of the FATF Recommendations into national AML governance. Potentially endemic iterations of AML policy development were only observed in Mexico in 1989 when the first AML legal provisions were created and more recently in the use of tax on cash deposits (IDE) to detect possible illicit transactions. In El Salvador such observations were absent. This does not mean that all of the FAT Recommendations were implemented or that AML governance was transferred 1:1 in the studied cases, which the empirical observations gave no reason to believe. It is however clearly the case that AML policy did not exist in a meaningful manner outside the policy framework defined by the FATF.

Why both countries did not independently develop their own AML policies responding to their specific needs is a question on a counterfactual outside of the scope of this study. According to the literature this seems to be the case for the vast majority of countries. An interest of this study was however to test if and explain how these standards managed to get transferred into El Salvador and Mexico by external actors through non-hierarchical governance modes. One factor was their perceived high level of expertise based legitimacy. Neither El Salvador nor Mexico could draw on domestic AML expertise and the FATF offered a ready-made policy prescription for this highly technical policy field. The FATF Recommendations were also one of the internationally most widely accepted policy standards with even UN documents referencing them as a desirable set of rules that should be implemented to curb organised crime and corruption. Such wide spread international endorsement further increased the legitimacy of the policy prescriptions as an emerging international normative consensus. This second level of external influence by intergovernmental organisation was accentuated in El Salvador which directly elevated international and regional conventions like the Central American Agreement into nationally binding legal obligations once these were ratified.

Actors in El Salvador and Mexico saw the FATF Recommendations as a technical benchmark to be complied with rather than a choice derived from political preferences. Interview partners and other empirical data like newspaper articles but also parliamentary documents and research articles in both countries measured national performance by using MER and follow-up reports as sources. At times particularly the readings on El Salvador conveyed the sentiment that implementation of the FATF Recommendations was also a question of national prestige, of belonging to the international community and particularly the international financial market. This was less frequently the case for Mexico where the initial strategic documents of the Calderón administration did not even reference the FATF in their section on AML policy. Empirically not identified were however critical voices that fundamentally targeted the standards themselves.

For Mexico as a member state, the FATF also provided a forum for the application of non-hierarchical steering modes like arguing and persuasion by other states during the FATF peer-review process and its plenary sessions. CFATF fulfilled a similar role for El Salvador however with much more limited access to debates on the further development of the Recommendations and thus less input-legitimacy. Yet voluntary membership of El Salvador in CFATF and Mexico of FATF additionally underlined the legitimacy the FATF Recommendations enjoyed in both countries. A similar observation was made for membership in the Egmont Group. While in this occasion not directly related to AML, suspension of El Salvador's membership in the organisation led to swift legal adjustments to bring legal CFT provisions in compliance with the international standard. FATF compliance and membership in the Egmont Group were thus accepted as international standards and normatively aspired to which indicates a high level of norm acceptance and potentially internalisation at least in parts of the legislator and public administration.

The FATF itself had no hierarchical governance modes at its disposal to complement its strategy of legitimacy creation through arguing and persuasion. Analysed separately from outside factors, the FATF was thus based its governance on purely non-hierarchical modes. Its closest instrument akin to coercive imposition was its power to trigger sanctions by states through a call for countermeasures. As the past had shown a high adherence of countries in the international system like the US, UK and EU member states to such calls, these to some extend loaned their shadow of hierarchy to the organisation. The FATF did however not use this instrument in the observed cases for example through black- or greylisting. The possibility did still cast a shadow of hierarchy at least in the later stages of the follow-up procedure in El Salvador and Mexico.

Differentiating the general view of the literature that blacklisting leads to compliance, these empirical cases showed that with regard to the 2004 Recommendations and Methodology compliance pressure was only effectively exerted for the Core and Key Recommendations. Only these were in the end decisive for triggering calls for countermeasures and defining the intensity of the follow-up process. A result of this study is therefore that the effectiveness of blacklisting for AML policy transfer was overrated by the literature, especially when seen as a single coercive factor without taking into consideration the other complementary transfer mechanisms identified in this study. In addition to defining the universe of AML policies through its Recommendations, the FATF peer-review and follow-up processes were highly instrumental for policy transfer. They should however be conceptualised as non-hierarchical governance modes which only in regard to the Core and Key Recommendations develop stronger sanctioning powers if third parties chose to adhere to a FATF call for countermeasures. MERs and follow-up reports empirically rather offered detailed policy guidance for learning paired with concrete orientations on which actions to take. In addition they engaged countries with the wider international AML community. Public actors in both El Salvador and Mexico stated that the evaluators misunderstood parts of the national governance set-up and as a result undertook a too negative evaluation of the empirical reality. Discussion of MERs and follow-up reports in the plenary were incidents of arguing and persuasion for policy change that went into both directions.

The FATF related processes were however not void of power and opened conduits for more assertive but still non-hierarchical governance modes to take effect. If criticism of AML policy transfer by external actors occurred it was based on sovereignty issues with regard to perceptions of being unduly pushed by third parties to transfer the Recommendations into national policy. Such criticism directed attention to the second important aspect of external influence as the attempts particularly of the US to established AML policy as part of the set of collectively binding rules. In addition to its prominent role in the FATF, the research also identified the US as the most prominent country applying bilateral means to promote AML policy transfer. Its prominence was likely due to the proximity of the three countries and a shared public health and security challenge in the transnational narcotics trade. While observable in both case studies, the US was particularly effective at influencing public and private actors in El Salvador through non-hierarchical means fostering AML governance transfer. In this case US agencies accompanied the development of national AML policies since their inception in 1991 towards the end of the Civil War.

The involvement of the DEA and the US embassy in the creation of the first domestic legal and organisational AML structures contributed to shaping the domestic governance configuration. A direct outcome was the focus of national AML policy on illegal narcotics trading and the location of the FIU at the FGR. This clear prosecution orientation of the initial domestic AML actors should have boosted the application of hierarchical governance modes in the country. With a focus on law enforcement and the judiciary US agencies would have a counterpart in international narcotics related AML cases that they had developed historically strong ties with. The latest prominent exertion of such a direct approach in shaping El Salvador's AML governance was the conditionality of FOMILENIO II on AML governance reforms. While criticised as undue foreign involvement, it would be difficult to argue that withholding a development assistance grant until a set of conditions are met would constitute a mode of hierarchical governance or coercion. It provided an effective incentive that decisively contributed to the transfer of contentious PEP regulations to the country at the normative level. As international AML policy developed towards financial market governance, the US also expanded its approach in El Salvador. It included AML not only in its police trainings at the ILEA but also provided specialised training financed and presented by actors of the IRS and other sections of the US Treasury.

The US profile of external influence was smaller in Mexico but also traced back to the early steps of the country in developing a national AML system. With a similar policy orientation than in El Salvador anti-narcotics specialists offered AML training to CNBV as early as 1994. For the early 1900s such evidence however remained anecdotal. As Mexico remained on its path for a prevention and financial market oriented AML system it seems unlikely that anti-narcotics interest projected by the US had a major impact on the development of its domestic governance configuration. US influence got more pronounced and effective when crime fighting interests aligned between the two countries under the Calderón administration. External influence from this point also benefitted from the Mérida Initiative as a formalised institutional setting. External influence included AML training and capacity building accompanied by substantial resources and equipment provision for law enforcement and border control. Another non-hierarchical contribution was the joint development of the binational criminal proceeds study that proved instrumental in establishing the political backing for cash restrictions and controls.

In addition to its direct bilateral influence, the US also held a strong position in different organisation that provided technical and legal assistance facilitating AML policy transfer through learning and capacity building. In El Salvador multilateral actors like CICAD and UNDCP/UNODC were identified as transfer agents providing AML trainings. Other organisations and countries like the World Bank, IDB, Italy and Spain were also identified as providing AML trainings but at a smaller scale if compared to the long term engagement of the US. They did still lead to very concrete transfer results like the reformulation of DNFBP regulations in El Salvador. The foundation of the IIC traced back to a World Bank recommendations. In addition to multilateral development banks the IMF as another financial sector actor engaged in external influence in Mexico by running an AML training programme for CNBV. Again external influence took the form of learning and capacity building oriented on the observations of the 2010 MER rather than an outright imposition of policies on the country. These very specific contributions to policy transfer through external influence however built on the structural impact of the FATF's successful creation of a widely accepted international standard and institutionalised transfer process.

In summary it can be concluded that external influence did play a significant role in AML policy transfer to both countries. Power asymmetries understood in the wide sense of governance in areas of limited statehood played a central role but not just by projecting an external shadow of hierarchy cast by states as most of the international literature review suggested. The FATF appeared to have drawn much of its capacity to define AML as a policy field in both countries from its high level of expertise based legitimacy and wide international adherence to its standards. These power resources proved highly effective, so much so that AML policy in both countries was practically defined by the level of compliance and non-compliance with the Recommendations. Another layer contributing to the effectiveness of the FATF was the high level of formalisation of its institutional structure build on transparent procedures. External influence by the US as well as other bi- and multilateral actors was more ad-hoc. Particularly where the US managed to institutionalise international cooperation formats, like ILEA in El Salvador or the Mérida Initiative in México, its effectiveness in contributing to AML policy transfer increased as expected for more formalised institutional settings.

What contrary to the ideal-type governance configuration of the FATF remained unobserved was the role of the private sector. This was due to the expected effect mainly working through local branches and subsidiaries of banks that formed part of the domestic governance configuration. The additional international aspects of the private sector were captured in this study as competition effects explored under hypothesis 4.

Hypothesis 3 (external provision of statehood): Power differentials between external and domestic actors selectively increased transfer of FATF Recommendations to the national level through hierarchical governance modes, if they were sufficiently embedded in international law as a necessary condition.

External provision of statehood as "the ability of the state to enforce collectively binding decisions" (Börzel & Risse, 2010, p. 118) was not part of the ideal-type AML governance configuration envisioned in the FATF Recommendations. The FATF as a voluntary club organisation did not foresee nor recommend states intervening with hierarchical governance modes to enforce AML policies in other states. The configuration still appeared as a potential aspect of AML policy transfer based on the insights developed by combining policy transfer studies and of governance in areas of limited statehood. The case studies therefore probed for hierarchical governance by external state actors or international organisations that directly provided governance services in El Salvador and Mexico. The expected institutional setting that should effectively lead to governance was formal and rules based. Resource and power relationships would need to be highly asymmetrical to compensate for the lower level of legitimacy generally associated with hierarchical governance by external actors. Together, institutional embeddedness and high power differentials should overcome potential sovereignty concerns to allow for effective governance service provision.

Configuration	Actors	Modes of governance	Institutional setting	Resources and power
Statehood provision by external state actors	Foreign governments and IOs as principal governors	Hierarchical and/or non-hierarchical embedded in "shadow of hierarchy"	Hierarchy (often embedded in international law); rule-based in the contemporary system	Very asymmetrical to ensure enforcement capacity; lack of material resources can be compensated by claims to legitimacy

Table 8: Idea-type governance configuration underlying hypothesis 3

The corresponding hypothesis of this study was formulated cautiously given the demanding preconditions of this governance configuration. Moreover as external influence was not normatively prescribed by the FATF Recommendations it should only become observable if it actually led to AML policy transfer. This should require all of the above mentioned aspects to be in place. Including a hypothesis on external provision of statehood paid off as it was empirically observed, albeit rarely. It took different forms from outright foreign intervention like in Operation Casablanca to more common cooperation between law enforcement, judicial and market supervisory actors.

Operation Casablanca did not meet the requirement of embeddedness in international law or a rule based approach which was one of the reasons it met with such a strong diplomatic rejection by the Mexican government. Despite this rejection it yielded significant results in transferring AML policy to Mexico by inducing change in the private sector casting a shadow of hierarchy. The long-term impact on policy transfer of Operation Casablanca went beyond the arrests of Mexican citizens on money laundering charges combined with substantial financial forfeitures and fines for mayor banks. It contributed to a paradigm change in the Mexican banking system that following the operation notably increased its attention to AML prevention. This seems to defy the theoretical literature as interventions of this kind should not lead to governance service provision if they are seen as illegitimate. The US had however demonstrated that the power differential between its prosecution system and the Mexican financial sector was asymmetrical enough to allow the unilateral application of hierarchical governance modes. The integration of both countries financial markets under NAFTA created a rules based institutional system for this shadow of hierarchy. Part of this formalisation was also the Bownsville Letter which evolved into agreements embedding external provision of statehood today in the formal institutional framework expected for effectiveness.

While Operation Casablanca was a unique high level external intervention, more common forms of external provision of statehood were difficult to observe due to the often confidential nature of such operations. An example from El Salvador according to data retrieved from WikiLeaks was the DEA's provision of information to the UIF which allowed it to initiated criminal proceedings against Carlos P.'s remittances company. A similar case that involved US criminal intelligence was CrediMás although this appeared more in line with standard international legal assistance. While in contrast to Operation Casablanca, the US did not itself unilaterally enforce collectively binding decisions in El Salvador, its assistance appeared decisive to enable El Salvadoran actors exerting statehood. Similar anecdotal evidence for information flows between US law enforcement agencies and their counterparts was also identified with regard to Mexico's Federal Policy. This form of external provision of statehood could be described as governance through the state or a lending of statehood in order to differentiate it from outright unilateral hierarchical governance provision by external actors. It is a softer form than foreign intervention yet the direct operational linking of enforcement institution from two states should still form part of the wider category of external provision of (elements of) statehood by external actors.

Such lending of statehood was observed in Mexico particularly with respect to complex and large cross-border money laundering cases. The two most prominent examples were Wachovia and HSBC, both of which agreed to pay large sums in forfeitures and fines for violations of US money laundering legislation in regard to their operations in Mexico. This facilitated procedures in Mexico that contributed to the highest historical fine for AML violations set by Mexican supervisors to HSBC in the aftermath of the US decisions. Another way the US provided important resource for increasing statehood was via the provision of sanction list for high risk individuals and organisations published by OFAC. During the Calderón presidency law enforcement and judicial cooperation on AML was significantly more formalised and intensified under the umbrella of the Mérida Initiative which shifted the engagement towards external influence that was strongly institutionalised but relied mainly on non-hierarchical governance modes as presented above.

The hypothesis thus held up but is likely not a frequent form of AML policy transfer in areas of limited statehood. If it occurs, it is unlikely to solidify over a larger time span without gradually evolving into softer forms of external influence. The political and operational costs of an intervention without them being institutionally embedded seem too high a risk if not for the largest money laundering cases that usually only take place in more advanced economies that provide a sufficiently big turnover to hide larger sums. It could be imagined that such risks are reduced in situations in which bilateral relations are already highly deteriorated. Likely imaginable cases in the current international environment might be prosecutions by US agencies of money laundering allegations in Iran, North Korea or Venezuela. In other situations, it would be expected that such a governance configuration might be used strategically by foreign actors to advance AML or to serve a specific political purpose. A prominent example that was not subject of deeper analysis in this research seems to be the money laundering case against former president Noriega of Panama in France and the US which allowed for international prosecution and extradition.

Hypothesis 4 (competition systems): Higher levels of international market integration led to transfer of the FATF Recommendations for those sections of the market where AML compliance presented a competitive advantage.

Competition systems are a governance configuration that includes external and domestic actors on equal footing with the emphasis for differentiating between actors residing in the state and non-state categories. Governance services are provided if private actors are in competition and engaging in governance provides a competitive advantage for them. In order for competition systems to be effective, theory assumes that state actors would need to establish the institutional setting that will create and maintain competition and direct it towards governance service provision. According to the literature, "[…] the most significant question with regard to the efficiency and effectiveness of this governance configuration is whether the embedding institutions have enough material or immaterial resources at their disposal to make the competition system work" (Risse, 2012, p. 23). It is supposed to work best in formalised institutional settings where state actors command a sufficient power differential to create and regulate competition. Private market actors are incentivised by profit prospects. Market participants then in turn also apply non-hierarchical governance modes towards third parties thus influencing governance according to their specific interests.

The ideal-type governance configuration of the FATF entailed elements for governance through competition systems. Many of the Recommendations aimed to regulate financial and non-financial businesses and professions, in effect establishing AML rules and regulations that need to be observed for participating in markets. They control market access and subsequently cost for market participation. Organisations that adhere to these rules and regulations should have a competitive advantage by joining the market as well as avoiding regulatory fines and damage to their reputation. As such the FATF model relies on command and control through state actors that create and implement generally binding decisions. Particularly the last part sets high demands for statehood as market supervisors need to cast a sufficient shadow of hierarchy to induce compliance.

Configuration	Actors	Modes of governance	Institutional setting	Resources and power
Competition systems	State and non-state actors, domestic and international	Competition system: non-hierarchical; Institutional rules setting up competition: hierarchical or non-hierarchical	Effectiveness depends crucially on the institutional setting in which it is embedded	Institution regulating competition requires material or ideational resources inducing competition to produce governance
Competition as envisioned in the ideal-type of the FATF Recommendations	<u>Public</u>: State <u>Private</u>: International financial sector	<u>Hierarchical</u>: Institutional rules setting up competition <u>Non-hierarchical</u>: Market based competition	<u>Formal</u>: Strongly institutionalised through law based on FATF Recommendations	<u>Asymmetrical</u>: Command and control to create market based incentives

Table 9: Idea-type governance configurations underlying hypothesis 4

The empirical results clearly demonstrated the explanatory value of competition systems for AML policy transfer by highlighting the active role of private actors. Transnational financial market integration in both El Salvador and Mexico greatly contributed to AML compliance becoming a relevant competitive advantage particularly in the financial sector. Varying levels of power differentials existed between external and domestic public actors and this sector in both countries. In addition to the governance configurations analysed above, external actors drew their power also from the high level of financial interaction with the US as a main international driver for global AML standards. Compliance pressure of domestic but also external market regulators and supervisors together effectively created a sufficient shadow of hierarchy to contribute to the implementation of binding decisions for institutionalising AML in the financial market. This effect was not equally strong in the non-financial sector in which hierarchical governance by external actors could not significantly influence the institutional rules of the markets to include AML policies as most non-financial markets were largely domestic.

The hierarchical governance modes that based on AML compliance created and sustained competition for the transnational financial market that included El Salvador and Mexico were partially already described under external influence and the external provision of statehood. The presence of international banks in both countries added another layer: home market requirements for the application of AML policies in oversee branches and long-arm justice provisions created for example through the BSA and the reliance on US financial services like clearing processes for national branches of transnational banking groups in El Salvador and Mexico. External governance provision in this manner was not implemented in El Salvador and Mexico but nevertheless bound local subsidiaries of US registered banks to US rules and regulations. For transnational banks, the minimum standard of AML policies they implemented were determined by the strictest national regulator. This created the institutional setting based on power differentials between the strongest regulator and transnational banks.

The reach of external regulators and supervisors was increased by international agreements adding to a formalisation of the institutional setting. In El Salvador these took the form of MoUs with counterparts from main banking partner countries. Regulatory integration in Mexico was significantly deeper with financial services being included in NAFTA. Transfer in the financial sector did not only include norms but also instruments like PEP lists or analytical software and techniques. Lists of individuals and background information on persons and businesses were provided by outside external public actors like OFAC as well as private sector organisations like World-Check. The role of international banks in the domestic market was therefore instrumental as *governance conduits* for effective AML policy transfer. Since the mid-1990s, both countries gradually but quickly moved from a largely national ownership to an almost complete internationalised banking system with only few larger national banks remaining in Mexico. By the late 2000s the banking sector in both countries mainly consisted of US registered banks which required them to comply with US regulations including AML. This went along with the general transnationalisation of international financial market as a context of the observed development. NAFTA intensified this development for Mexico which entered into a highly formalised integrated market of financial services with Canada and the US. The banking sector as well as market regulators and supervisors repeatedly confirmed the empirical observations hinting to the importance of US AML regulations in a strongly integrated transnational financial market.

While laws and regulations provided the formal part of the institutional setting, economic incentives were also empirically identified as important drivers for policy transfer for the financial sector in both cases. This is the defining factor for competition systems. In El Salvador, an important economic incentive was managing remittances transfers that accounted for about one fifth of annual GDP. This was not only an attractive market for money service providers but also essential for social security in the country. In addition to being a sizable market for the private sector, the government therefore also had important economic and political reasons to allow free and low-cost money transfers between from the US without risking sanctions. With regard to AML and USD cash flows, El Salvador was under particular scrutiny as a narcotics transit country, home of some of the US' most notorious criminal gangs and an officially dollarized and largely cash based economy that increased laundering risk. Remittances and policy transfer were therefore closely connected in El Salvador. While remittances also played a role in Mexico's much larger economy, the emphasis of economic relations with the US lay on trade and foreign direct investment. Both are highly reliant on international capital flows which also created strong incentives for banks to establish a presence in both sides of the border. Financial sanctions by foreign regulators would have threatened these trade and remittances transfers, both of which play a central role for the economies of El Salvador and Mexico.

This economic incentive to participate in financial services connecting El Salvador and Mexico with the US was the non-hierarchical driver for private sector actors to engage in AML governance service provision. The state(s) set-up competition and directed it towards AML governance by making AML compliance a necessary prerequisite for legal market entry. This included US as well as domestic financial market regulations in El Salvador and Mexico. Active criminal enforcement action was however observed rarely. It was principally in the shadow of hierarchy that interests aligned strongly enough between the domestic public and the private sector in the financial market with both benefitting from growth induced by transnational financial market integration. In addition to avoiding sanctions, particularly market regulators and supervisors saw AML policy transfer as contributing to national market development making it more attractive for investors. There is thus also a positive macro-economic incentive to comply (pull factor) in addition to avoiding potential negative repercussions of non-compliance (push factor).

El Salvador provided a particularly clear example of how competition effects worked as a transnational governance configuration. International banking groups active in El Salvador set and implemented higher AML prevention standards than required by domestic law. This was due to almost all mayor banks in El Salvador being foreign owned and registered in the US during the research period. It necessitated for these banks to comply with US AML regulations with these also applying to foreign subsidiaries as required by Recommendation 22. The same external regulatory pressure also affected the financial sector in Mexico where US market supervisors and law enforcement had demonstrated their willingness to use hierarchical governance modes to sanction non-compliance. What still made El Salvador stand out was that the implemented policies by international banks were advanced and credible enough that CFATF revised their evaluation upwards from where they would have been had they only considered domestic legislation.

Financial sector actors were thus not just delegated governance tasks but also empirically observed to actively engage in non-hierarchical governance beyond the legal and regulatory requirements for external and domestic actors. International banks for example employed arguing and persuasion as well as facilitating learning for their own employees and the public sector. Both countries had institutionalised consultation formats between the public and the private sector. The best example was again the IIC as the central driver for norm development and transfer to El Salvador. Institutionalised exchange in Mexico did not have such a defined organisational form but was also identified between ABM's Norms Committee and the Finance Ministry as well as its decentralised semi-dependent bodies like CNBV. In both countries the banking sector offered AML trainings not only obligatory for a large part of their staff but also to public officials, including from law enforcement and prosecution agencies. This took the form of seminars and workshops but also large scale international conferences. Competition based policy transfer thus went beyond the mere direct effects of an externally cast shadow of hierarchy. Large parts of the banking sector saw it at least in their interest to actively promote AML policy transfer beyond their own organisations. This voluntary promotion of AML policies might also indicate that AML has been internalised as a behavioural norm within the sector, as some of the interview partners claimed. Its positive economic effects however also included market access, formalisation of the financial system and therefore an increase in market size, as well as a competitive advantage for larger firms against smaller ones whose relative compliance costs are higher.

For the interviewed private sector representatives and much of private sector writing, a large part of the debate on AML revolved around the elusive concept of reputation. Within the financial sector it was clearly seen as an economic resource that can be increased or diminished by organisational behaviour and performance. Money laundering accusations, fines and criminal charges with potential convictions were frequently defined as major reputational risks whose avoidance also justified investing in costly internal AML systems or closure of branches like in the case of HSBC. An active drive for AML policy transfer and FATF compliance would protect the reputation of the market place as a whole. Within the financial sector, this went beyond banking. El Salvador's BVES linked their interest in advancing AML compliance to its desire of being recognised by the US Securities and Exchange Commission to facilitate foreign investment. Similar dynamics were also identified for other parts of the financial sector like SOFOLES/SOFOMES in Mexico. Mainly for this reason the private sector in both countries was directly involved in a coordinated preparation of the country visits during the peer-review. This underlines the strong cooperation between the public and private sector in the financial market AML governance which was even more pronounced in El Salvador as expressed through private sector participation in its delegation to the CFATF plenary.

Reputation was however identified as an only vaguely defined term for which different understandings existed in parallel. Reputation in Mexico left the confines of financial market regulation with other private sector representatives voicing concern of negative impacts of the deteriorating security situation on business. It would not only threaten entrepreneurs and their families but also be detrimental to foreign direct investment. This created some additional private sector support for AML policy transfer beyond the financial sector that aimed to direct AML towards crime fighting. Most commonly reputation was discussed however on the domestic level usually either referring to the standing of a regulated entity with its supervisor or with customers. Investors and customers in this regard also become non-hierarchical governors with economic incentives being their main governance mode applied to influence compliance. While interview partners stated reputational concerns as important drivers for policy transfer and the concept is plausible, no empirical evidence was identified that AML violations would lead to a loss of customers in both countries. This would be a good topic for further AML studies that probe if and how AML non-compliance affects reputation and in turn customer preference. Reputation with market supervisors points towards the governance configuration of hierarchical delegation which under the transnational lens of competition systems might be external or domestic.

These interactions highlight how competition systems interconnected the other governance configurations. Private sector actors were affected by hierarchical and non-hierarchical governance in more than the host state and also acted themselves as non-hierarchical governors. As such, one of the effects of competition systems was the transmission of the effects of hierarchical governance (not the hierarchical governance modes) from the US to El Salvador and Mexico. Competition systems in the case of AML policy transfer therefore created *governance conduits* that facilitated policy transfer by passing on knowledge, skills and instruments as well as power differentials between state and non-state actors. The financial sector is therefore also the area where competition systems were most closely connected to domestic governance by delegation further strengthening the preventive policy approach of the financial market group discussed previously. Competition systems outside of the financial system were much less effective explaining the limitation to just normative transfer but stopping well short of implementation and delivering AML policy as a governance service. This was a key contributor to explaining the variance between AML policy transfer in the financial and non-financial sectors.

While the institutional setting for the transnational financial market included hierarchical elements, the power of foreign actors to govern hierarchically was much less pronounced for DNFBPs. Their markets were mostly local or national and thus outside the reach of foreign regulators, law enforcement and judicial actors. At the same time, as observed continuously by the FATF, the state in El Salvador and Mexican did not create a credible threat of state sanctions or criminal enforcement for most DNFBPs. They are therefore a good indicator for the steering capacity of market based incentives, if these occur outside a shadow of hierarchy. If preventive AML measures would pay in and by themselves, for example in the form of reputational gain that attracts customers or at least to avoid reputational damage which might dissuade customers, DNFBPs would be likely to proactively create and implement preventive AML policies. The observation of low compliance rates for DNFBPs thus sheds doubt on a central argument for proponents of AML self-regulation. Reputational damage for being associated with organised crime and particularly illegal narcotics trade should at least equally affect non-financial businesses and professions. Yet, these businesses seem to have given little concern to AML policy before state regulation threatened to raise their costs of doing business through record keeping and reporting obligations. Reputational concerns therefore seem to draw their steering power from the shadow of hierarchy cast by domestic and foreign state regulation, even if the actors themselves perceived it that way.

Additionally markets and competition also created effects detrimental to AML policy transfer – also in the financial sector. The self-interest to achieve a compliance system sufficiently strong to avoid regulatory action or reputational damage was observed to be in constant tension with other business concerns. A strict application of AML policies could hinder business relationships with high risk customers or in high risk regions and sectors. In economic terms, for profit oriented private actors, the individual cost-benefit equilibrium for AML policies is thus situated at the point where the benefit of policy implementation is equal to the costs of loss of business they generate plus the costs of fines for non-compliance. It was also empirically observed that despite the overall externally communicated commitment to AML competing interests were struggling within the researched financial sectors. HSBC and Wachovia provided examples of how business interests at times outweighed the capabilities of internal compliance departments. The Senate Report gave rare insights into how such a conflict of competing interests played out in one of the world's largest banking groups. Similar effects were also described at a much smaller scale in an El Salvadoran insurance provider between sales and compliance personnel. Compliance departments benefit if they can invoke the internal shadow of hierarchy of management to sway the individual employee's cost-benefit analysis as evidenced by the high level executive exchange that took place at HSBC in run-up to it being charged in the US.

Smaller financial market actors also struggled to cover the costs for implementing sophisticated AML systems at the disposal of international banking groups. This showed that market effects can both be a driver as well as a hindrance of policy transfer depending on the economy of scale. Costs of setting up internal AML systems reduced relative to firm size with very high initial costs for hardware, software, training and staff. Smaller companies therefore have an incentive to have less demanding AML systems in place which was also recognised by El Salvador's market regulator. As international banks apply the same internal AML system within the group, they aim for compliance with the highest regulatory standard of any country in which they operate as a benchmark. Instead of managing the legal peculiarities of each market place and subdividing procedures within the bank for each national subsidiary, compliance that is downward compatible reduces the costs of managing many different parallel systems within the same banking group. International banks therefore had a competition based incentive to increase compliance demands towards local competitors in order to increase their competitive disadvantage. A refinement of the hypothesis might therefore investigate in a large-n study if relative concentration of financial capital at international banks within a market would correlate with AML policy transfer.

A model for AML governance in areas of limited statehood: Transnational Delegation

What probing all four hypotheses has shown is the difficulty to distinguish empirically between the four researched governance configurations. Are for example international banks that need to follow home country regulations best conceptualised as providing AML services under a shadow of hierarchy projected by external provision of statehood or acting under a competition system? To move ahead with future research from this point, it seems advisable to continue refining the analytical framework by breaking up the governance configurations into their composing elements. Particularly the division between a domestic governance configuration and three others that involved external actors as well as between competition based and other forms of non-hierarchical governance modes sat uneasy with the observed empirical reality of AML policy transfer. While applying the existing models of governance configurations served an analytical purpose as a simplification of reality and a straitjacket to discipline the research process, the study strongly indicates that AML is a transnational policy field. As such, it might by definition be an area of limited statehood as long as no transnational state exists that has “the ability to enforce collectively binding decisions” (Börzel & Risse, 2010, p. 118). The future challenge will be reducing AML governance configurations into their composing elements and rearranging them without losing theoretical and methodological cohesion.

While home market regulation is hierarchical, the domestic AML governance initially relied largely non-hierarchical market based incentives and learning processes. Governance only becomes hierarchical delegation at the domestic level when market regulators, supervisors and law enforcement accumulate sufficient legal and operational resources to create an asymmetrical power relationship to credibly threaten the application of existing laws. They do so not just by domestic law making and enforcement but also by tying into international processes like ratifications of international conventions or participating in trainings offered by domestic and external agencies. External influence thus also plays a role in this development. There lies therefore certain difficultly in distinguishing between domestic delegation, external influence, external provision of statehood, and competition systems in AML policy transfer. The analysis of competition systems in both cases most clearly demonstrated how external and domestic actors as well as hierarchical and non-hierarchical governance modes frequently interlock in AML governance and policy transfer. Empirically AML governance contains a variety of elements of hierarchical and non-hierarchical governance by external and domestic actors. This observation is also akin to the continuum between coercion and voluntarism identified by policy transfer studies. As a result, the respective sub-sections of analysed governance configurations required referencing between each other to avoid relevant explanatory gaps.

The observed structures and processes making up AML governance did however not appear random but followed identifiable patterns. This sub-section attempts condensing them into a specific type of configuration for AML governance termed *transnational delegation*. While Schlichte makes a valid point that "the specific constellation of single contexts determines the effect of external conditions" (Schlichte, 2018, p. 60) this attempt does not mimic the attitude to "need catch-all formulas in order to sell programmes" (ibid.). It aims at the middle ground between analytically starting from scratch in any country analysis and overarching catch-all models that are so generic that they lose analytical value added. The proposed model is a new and additional item in the analytical tool-box with a specific application purpose for those that are interested in understanding AML governance in a country where this policy field presents an area of limited statehood. As a purpose specific tool of scientific analysis is neither a laser scalpel nor a sledge hammer.

It aims to fulfil the task of social science research to simplify reality into a model - in this case one for AML governance provision where this policy field presents an area of limited statehood. Arguably this is the case for the vast majority of countries at most times, even in the core of the OECD if one takes note of the difficulties also advanced economies face in preventing and prosecuting money laundering. While it was analytically useful to discipline the research process by existing ideal-types of governance configurations in areas if limited statehood, it is now time to relate back to the premise of the governance in areas of limited statehood literature and interpret the results backwards from the governance service and maintain an openness for interaction of actors and processes alike. The observations and results made previously of course remain valid with the proposed governance configuration providing a more fitting remix of their elements rather than an entirely new composition. This reflection therefore remains on an aggregate level and refrains from repeating in detail the previously identified governance structures and processes.

What is the distinctive characteristic of AML governance that merits baptising a new type of governance configuration? A key element of the configurations is identified as *governance conduits*, institutional structures of transnational markets that rely on economic incentives for their creation and facilitate the casting of a shadow of hierarchy by external actors into the domestic context. Their effects on governance then reach beyond the creation and maintenance of competition for AML production that would be the analytical focus of competition systems. To do so, they link up with domestic components of the governance configuration and interact with power relations between domestic actors. Despite the limitation of data aggregated at the transnational level, within the observed governance configuration a clear pattern was that AML governance and policy transfer was not equally effective for all kinds of markets. For the simplified model, the governance configuration can be structured by two different kinds of markets: (transnational) financial markets and (domestic) non-financial markets. *Governance conduits* are therefore only an element bridging the external and domestic in a wider configuration that in the end is also strongly defined by domestic actor relations.

This aspect differentiates AML governance from the thus far identified typologies. AML governance strongly and frequently connected public and private actors that the existing typologies would identify as external and domestic. Trouble for the established typologies of governance configurations lay in the distinction between external and domestic. It has proven of only limited explanatory value based on the results presented in the previous pages that AML governance and the resulting policy transfer contains important transitional elements. The observation of a transnational space in which AML governance exists seems robust enough to include it in a generalizable model of any AML governance configuration. Actors should therefore be defined not by their status of external or domestic but by their empirical role in the governance configuration. Specifically at the process dimension of governance the identified power relations in transnational financial markets and domestic non-financial markets supersede the distinction between external and domestic location of the actors. For future research this creates the need to engage with the currently limited data availability which is mainly aggregated at the national level. In the most contemporary literature, others have already begun to venture into a transnational governance understanding of the FATF with Jakobi arguing that "given the fluid nature of international finance, the FATF was particularly successful in creating transnational security spaces" (Jakobi, 2018, p. 174).

The distinction between public and private actors in AML governance remains unchallenged. It goes along with the definitions immanent to the FATF Recommendations but also with the observation that in most cases only public actors apply hierarchical governance modes that fulfil the minimal normative criteria of governance as public good oriented. For AML governance the normative element of governance is important as organised crime produces credible threats of violence competing with the state's claim to a monopoly on the use of force. These influence AML policy transfer but do not in themselves constitute governance. Particularly PEP regulations and reporting duties for notaries and legal professions were adjusted from the international standard to offer additional protection for these regulated groups from extortion and coercive violence.

Based on this approach and using the insights created in the previous pages and chapters, the elements comprising different governance configurations can be newly combined. The resulting governance configuration of *transnational delegation* provides an offer for how AML policy was transferred in areas of limited statehood. Applying the same representation format used for ideal-type governance configurations leads to the following AML-specific overview:

Configuration	Actors	Modes of governance	Institutional setting	Resources and power
AML governance in areas of limited statehood (*transnational delegation*)	<u>State</u> FATF, FSRBs, legislatures, market regulators and supervisors, law enforcement and judiciary; domestic and international <u>Non-state</u> Private market participants; domestic and transnational	<u>State</u> Hierarchical (criminal law and market regulation) and non-hierarchical (agenda and standard setting, knowledge transfer, negotiation, arguing and persuasion) <u>Non-state</u> Non-hierarchical (agenda setting, negotiation, knowledge and skill transfer, arguing and persuasion)	Generally formalised (international conventions and standards; domestic laws and regulations) with highly institutionalised informal elements (public-private consultation groups, informal sector)	<u>Financial market</u> Power differential in favour of external state actors based on home market enforcement capacity and legitimacy through expertise transmitted in *governance conduits* <u>Non-financial market</u> Insufficient between domestic state and private actors to hierarchically enforce compliance; external actors unable to cast shadow of hierarchy

Table 10: Idea-type governance configuration of transnational AML governance in areas of limited statehood

The following paragraphs capture with a higher resolution how the different types of actors are interrelated within the configuration leading to a transnational public-private co-production of AML governance. The emergence of AML governance as a transnational policy field drew from two main factors: (i) the practically monopolistic definition of AML policy by the FATF 40 Recommendations as a standard with a near global reach and (ii) the transnational integration of financial market for which the Recommendations aim to provide collectively binding rules. The FATF exclusively applies non-hierarchical governance modes: agenda and standard setting as well as knowledge transfer, arguing and persuasion in the form of the peer-review process. With the exception of standard setting which is exclusively done by the FATF, FSRBs apply similar governance modes at the regional level expanding the reach of the FATF's governance. The organisation draws power from legitimacy based on its perceived high level of technical expertise as well as the wide acceptance of its Recommendations by states, intergovernmental agencies like UN bodies and private sector organisations like the Wolfsberg Group. Yet it does not itself command coercive means for hierarchical governance. For this, it requires third parties to act in accordance with its Recommendations and advice. In effect it delegates tasks to public and private actors without commanding hierarchical governance modes. The wide adherence of powerful state actors to FATF's calls for counter measures however could be seen as mitigated access to quasi-hierarchical governance modes.

The FATF aims mainly at regulating private markets that for the Recommendations are assumed to be national by default. With state agencies in the lead through legislation, market regulation and supervision as well as law enforcement and the judiciary, private market actors are expected to act as secondary governance providers. Reality in areas of limited statehood is more complex. A major part of AML governance aspires to regulating specifically financial markets. These are today highly integrated between many countries and effectively form a transnational market spanning substantial parts of the world. This observation of AML governance as an institutional characteristic of transnational financial markets was made previously in the literature prominently for example by Helleiner (2002), Hägel (2009) or Tsingou (2010). In this policy sub-field the FATF's default of national governance is therefore left behind. AML policies and power differentials have the potential to affect actors beyond the domestic confines of a single state. They do so by states taking up the FATF Recommendations and delegating AML governance tasks to private actors that are participating in this transnational market due to the economic advantages it presents. At least some states can directly underpin this delegation with a shadow of hierarchy.

The most obvious example for this effect are large banking groups with subsidiaries in multiple countries. Governance tasks are not only delegated to them by the host state of every subsidiary. Laws in many countries housing international financial centres also demand group wide compliance. Hierarchical governance underpinning delegation to financial market actors can therefore draw from power differentials between other states agencies and transnational market actors. These in turn draw from the salience of international financial centres as well as the regulatory and law enforcement capacity they command. Prime examples for AML are the US and the UK whose financial hubs in New York and London are a source for defining rules for transnational financial markets. AML in the financial sector thus does not only rely exclusively on domestic state actors. The conduit that allows external power differentials to affect AML policy transfer to other countries is the presence of externally regulated transnational financial market actors in the home and host markets.

If the FATF Recommendations could only rely on the *governance conduits* of transnational financial markets that increase banking groups' compliance, policy transfer would still fall well short of the observed compliance levels. For AML governance to reach deeper and further it requires the effective engagement of domestic state actors as delegating actors in their own right. This was incentivised by the same interplay between the FATF and state actors regulating international financial centres. The evaluation of national market places as a whole, not just the financial market, can provide a compelling reason for states agencies charged with economic development and financial sector actors to expand AML policy into the non-financial sector. This analytical element of competition systems is not restricted to private actors but also pits countries against each other that compete for foreign investment. For this reason domestic legislators and market regulators passed national legislation delegating AML governance tasks not only to the financial but also the non-financial sector. This is where the dynamics identified for domestic governance by delegation play out. Only in exceptional circumstances like the Calderón's administrations focus on combatting rampant violence of organised crime, do non-economic incentives drive domestic AML policy development. This also holds true for the initial development of AML in the US in the 1970s which was not targeted at financial integrity but at combatting organised crime.

A likely explanation why many countries today might only focus on financial integrity aspects of AML is that the task complexity of effective AML governance is very high while its benefits remain elusive. This in turn invites political challenges to the legitimacy of such regulations. Compliance systems are costly and require coordinated actions by the state and private sector. Agencies from different kinds of markets but also from economic governance to law enforcement and the judiciary have to coordinate and cooperate for AML governance to be effective beyond the reputational level. To reduce these coordination costs, the financial market group in both countries set up informal public-private consultation bodies. In addition to state actors, private sector actors in the financial market establish and institutionalise AML rules through their own initiatives. Banking groups again stand out by transferring their group wide regulations but also by creating the Wolfsberg Group, lobbying and providing training to employees and state actors fostering FATF compliance. This effect was analysed particularly for Mexico under the concept of a *policy transfer cascade* leading to wider adoption of AML policies in the non-financial sector. Elements of it were also visible in El Salvador, where the process however appeared more ad-hoc. Such clearly defined cascades might therefore be observable in other cases but should not necessarily form part of the generalizable model. What is clear though is that economic incentives provided by the transnational financial market carry debates on AML policy into the non-financial sectors of the economy where they meet less favourable cost-benefit calculations.

AML legislation and market regulations face barriers for entering into implementation because of the limited reach of the identified incentive structure. The further away actors' interests lie from those of international financial market integration and development, the less they are affected by the non-hierarchical offer of economic incentives and sanctions. Private market actors that operate in mainly domestic markets are not subject to transnational market regulations by hierarchical governance modes. External actors in this area needed to rely on non-hierarchical instruments and cooperation with domestic law enforcement and judiciary in order to influence AML implementation. One example of such non-hierarchical governance was FOMILENIO II in El Salvador. The at times informal law enforcement cooperation through passing on of information in both studies cases showed that the approach of governance through governments by lending statehood to domestic law enforcement actors can work but has difficulties reaching systemic relevance. The cleavage therefore runs on a fault line between financial and non-financial markets and the actors involved in their governance. Within non-financial markets this diminishing reach of external actors continues to be observable with larger companies and industry groups observed as being more supportive of AML regulations than smaller scale enterprise or the informal sector. The latter as in many countries the largest provider of employment and income should not be disregarded in the debate if the model aspires to be holistic. AML *governance conduits* do not reach into these parts of the economy.

Domestic actors from law enforcement and prosecution could be instrumental for bridging this gap. They can potentially provide the hierarchical governance modes to underpin domestic delegation of AML tasks to the private sector that includes non-financial market segments. Yet they often seem excluded from AML governance for the reasons stated above. Domestic hierarchical governance is complex, costly and requires a domestic political problem to be solved in order to generate sufficient legitimacy to justify the effort. The limits of *transnational delegation* became particularly clear with regard to PEP regulation. Lacking economic incentives, PEPs resist establishing delegation of AML tasks to themselves as well as the threat of hierarchical governance modes applied to them. In the observed cases they fielded as arguments that their economic situation would become transparent to the FIU and potentially leaked to the public or organised crime. Low trust in law enforcement and the judiciary thus creates additional barriers for establishing PEP regulations as part of AML policy. Similar factors affect the effective delegation of AML tasks to lawyers and notaries.

In summary, the *governance conduits* provided by financial markets for the application of hierarchical and non-hierarchical governance modes by external actors thus positively impacts FATF compliance levels. Mainly domestic non-financial markets did not equally integrate external actors which showed the limitations of the AML governance by transnational delegation. The absence of a market based *governance conduit* reduces the power differential particularly between external state actors and domestic private market actors. For non-financial markets the default of governance by delegation in the national environment is maintained. Where market linkages do not or only in a greatly reduced manner provided conduits for incentives and sanctions as resources of formal or informal regulatory power, non-financial private sector actors but also public institutions charged with their regulation and supervision are much less concerned by AML regulations. They only take an active stance towards AML governance if tightening of domestic regulations is proposed when AML is linked to other concerns like threats of physical safety by organised crime, foreign direct investment or large scale investment oriented development grants. Such functional equivalents to the incentive and sanctioning system offered by the transnationally integrated financial market however prove to be limited in their capacity to provide a systemic functional equivalent to a shadow of hierarchy cast either external or domestic threats of hierarchical governance modes. AML implementation by private actors can thus not be assumed to be purely voluntarily based on normative conviction in the absence of economic incentives and/or enforcement by the state. In the absence of the domestic state applying hierarchical governance modes, the shadow of hierarchy "cast by external state governors as a functional equivalent has [again] proved indispensable" (Lederer, 2018, p. 198).

Based on these results, a large-n quantitative study should find the following refined hypotheses on AML policy transfer as measured by compliance with the FATF Recommendations to hold up:

(i) *A higher share of banks in the domestic capital market subject to home market regulation in countries with effective AML policy enforcement leads to increased overall compliance rates for countries with a stronger effect for preventive AML policies in the financial sector.*

This relationship captures the observed effect of transnational delegation via governance conduits in the transnational financial market. Currently particularly the domestic presence of banking groups regulated in the US and UK should have this effect. Both countries are not only important international financial centres but also prominent drivers of global AML policies with effective national implementation agencies. The institutional setting of transnational financial markets is also highly formalised and therefore unlikely to face significant legitimacy challenges.

(ii) Proximity to FATF peer-reviews leads to an increase in compliance with FATF Recommendations regulating the non-financial market if controlled for average compliance levels with other Recommendations.

With the incentive structures and governance conduits of the financial market not directly replicated for non-financial markets, their effect on AML policy transfer in these policy sub-fields should be less pronounced. The above hypothesis still allows testing the second order effect of overall country evaluations by the FATF / FSRB peer-reviews. At these moments of international scrutiny pressure by financial market actors increases to lift overall compliance rates in order to avoid a call for counter measures. The control should reveal the specific effect for non-financial market regulation as it is likely that overall efforts to reach compliance will also increase around dates for the peer-review. Data construction for testing this hypothesis under the new FATF Recommendations would need to take account of the reformed

Methodology, particularly which combination of ratings leads to potential counter measures. Otherwise it risks overestimating the effect of potential FATF blacklisting much like the past literature has done by neglecting the Methodology's focus on Core and Key Recommendations.

(iii) *Law enforcement and judicial type FIUs increase compliance with Recommendations aiming at the regulation of DNFBPs, other non-financial businesses and professions as well as PEPs if controlled for institutional capacity (for example financial and human resources).*

FIUs are neuralgic points in domestic AML governance. This hypothesis is based on the assumption that effective FIUs are necessary prerequisites for the domestic application of hierarchical governance modes in AML governance. Their effect will however be difficult to observe if they form part of the financial market group where transnational delegation and home market regulation are already likely to lead to higher compliance levels in the presence of transnational banking groups. FIUs in areas of limited statehood are therefore mainly likely to have an observable effect by underpinning delegation to non-financial market actors with a credible threat of hierarchical governance modes. Law enforcement and judicial type FIUs are more likely to do so than administrative types by increasing AML expertise in these areas that are otherwise at the fringes of the domestic governance configuration. A control for institutional capacity would be needed to account for cases like El Salvador's UIF which was simply too under-resourced to have a noticeable effect on domestic AML compliance.

(iv) *High levels of violence by organised crime lead to overall higher compliance with prosecutorial AML policies and regulations for the non-financial sector.*

This hypothesis tabs into the effect of domestic policy legitimacy and purpose of AML governance. It is assumed that high violence levels of organised crime will create a domestic demand and associated legitimacy for AML policy transfer that aims at effective and broad implementation. Mexico under the Calderón administration showed this pattern and Colombia, a country notorious for violent organised crime, provides another example. El Salvador on the other hand is a cautionary tale that the relationship between the factors might not be as straight forward. Potentially additional intermittent variables for administrative accountability need to be identified that link public demand with actual political prioritisation of AML. This together with strong counter forces by organised crime might explain why Verdugo (2011) did not identify this effect.

(v) *Indicators for the presence of organised crime and corruption in a country lead to lower compliance levels with regulations for PEPs and individually identifiable reporting actors like lawyers and notaries.*

Barriers for AM policy transfer are significantly higher if political decision makers are potentially affected by organised crime either by threats or co-optation into criminal enterprises. Both cases should lead to reduced willingness of PEPs to promote their own regulation. Easily identified individuals to which AML governance tasks could be delegated equally have good reason to resists such duties if it threatens their physical integrity or potentially illegal business interests. This relativizes the potential positive effects of an organised crime threat creating demand for AML policy transfer with regard to these specific groups. Both El Salvador and Mexico provided initial evidence for this effect with PEPs, lawyers and notaries amongst the latest addition into the governance configuration and at times with special reporting mechanisms aimed at reducing their risk exposure. This is thus a special case of hypothesis (iv) which merits a closer look potentially also as a control for the above mentioned effects of governmental accountability and counter forces of organised crime.

5.2 Implications for policy and future research

A first necessary question that the research raised for policy practitioners is: What objective or governance service is AML policy supposed to achieve? A clear answer to this question is necessary if proponents of AML want to avoid the impression "that the whole [AML] system is an expensive, and possibly even dangerous, waste of everybody's time" (Sharman, 2011, p. 41). While its goal was initially clearly defined as fighting domestic organised crime in the US at the time when the first AML legislations were developed in 1970, AML has since taken on a series of new purposes without explicitly shedding old objectives. The verdict on cost-benefit of these policies is still out. After several decades, there is still no reliable data on how money laundering prevention impacts on the size of criminal markets. The proliferation of political goals added to the already difficult assessment of the impact of AML. Plainly, it needs to be better defined what AML is supposed to have an impact on before significant endeavours can be undertaken to measure whether or not current international standards contribute to their achievement.

Contrary to the initial intentionality of AML and much of the discourse on the international level, facilitating for law enforcement agencies and prosecutors to 'follow the money' to investigate predicate offences was clearly not a priority in the observed cases. Even the most likely scenario, the Mexican reform package under the Calderón government, aimed at financial flows and seizing criminal proceeds rather than strengthening investigative capacity for predicate offences. Beyond this outlier, the main focus in the observed cases as well as the tone of much of the more contemporary literature on today's international AML regime and its national expressions rather seems to be preserving financial integrity by pushing illegal money out of the financial sector. The importance of financial market governance seems to have produced a feedback loop through strengthening the role of the financial market actors in policy formulation. An observation in this direction is that the FATF has increasingly based its rational to promote money laundering policies on “threats to the integrity of the international financial system” (FATF 2012: 7). Aspects of financial intelligence on criminal organisations and the prosecution of predicate offences have taken a backseat under this paradigm. Mexico was an illustrative case that between 2007 and 2012 followed an approach present at the initial outsets of money laundering policies in the 1970s – the use of money laundering to combat organised crime and investigate predicate offences. The short-term effects of this ultimately stumped reform process are still worth observing today for those interested in applying money laundering policies to crime fighting.

Internationally discussed and developed AML policy is not so much about preventing or prosecuting the underlying crimes than about safeguarding the reputation of financial intermediaries, particularly large international banking groups. This is ultimately a policy objective that was only created by AML policy itself, as before the advent of AML this need did not seem to exist. By voluntarily or involuntarily committing to AML, the financial sector has redirected the policy objective towards its own preferences of safeguarding its services from criminal abuse. To be clear, there is nothing inherently normatively wrong with this governance service. It however competes with resources for other identified governance services of AML like crime fighting. It should therefore be explicitly identified and discussed with the objective to clarify priorities for the allocation of resources. Terrorist financing, though discussed in this work only in passing, as well as newly included proliferation financing are further policy objectives added since the early 2000s. In these areas, data on financial flows is useful as intelligence information and for targeted sanctioning but far removed from the initial purpose of fighting predicate offences. Resources, both in budget and legitimacy, are limited for implementing the FATF Recommendations. This constrains state capacity in many countries to implement and comply with the FATF Recommendations.

Countries therefore should focus their efforts and limited resources on areas where they can achieve the best cost-benefit results in terms of AML policy development and implementation catering to their domestic needs. It appears that states can outsource parts of their domestic compliance systems by relying on governance configurations in which other states and the private sector effectively provide for compliance with the FATF Recommendations in the financial sector. This is particularly the case for international financial institutions regulated through home market regulations as well as competition. If this is the case, domestic resources can be allocated to other priorities. States should concentrate on areas where external factors could not effectively provide functional equivalents to hierarchical rule by command and control: enforcement as well as regulation of DNFBPs, smaller financial institutions that do not participate in international financial markets and particularly regulation of the informal sector, to which international AML policy development has so far largely turned a blind eye.

The AML community should reflect critically about the purpose of AML taking into consideration these aspects if it wants to contribute to solving domestically defined social problems. This discussion is also needed in order to claim legitimacy that is increasingly demanded by regulated entities. To create this resource of power, it needs to find justifications beyond its current reliance on conceptual convictions, high levels of technical expertise and broad international consensus. Demands on legitimacy are likely to rise with increasing costs of sophisticated AML systems that organisations in poorer economies might not be willing or able to pay without a tangible benefit. What holds for differences between economies is also valid for differences between different economic sectors. Governments in the end need to identify such policy objectives themselves according to the respective needs of governance recipients. Reputational damage for example plays a much smaller role for many DNFBPs than it might for banks which was clearly evidenced by their lack of proactive engagement in AML debates. Beyond financial integrity of transnational financial markets and intelligence gathering on terrorist networks, more classical topics of AML might be closer to public concerns: particularly violent organised crime, tax evasion and corruption come to mind. By focussing on financial integrity and the salient role of financial market actors in AML policy transfer, such applications of AML have lost prominence since the 1980s.

If crime fighting objectives are to re-emerge more prominently in the international debate on AML, organisations like the FATF and prominent promoters of AML need to refocus their attention. Prosecutorial policies and actors should re-enter the focus in addition to prevention oriented policies for the financial market. If competition for resource allocation arises for further developing national AML systems, inclusion of law enforcement and prosecution agencies with investigative powers into domestic and transnational AML governance configurations should be prioritised. With regard to AML the shadow of hierarchy seems a necessary prerequisite for effective delegation that can only be partially supplanted by non-hierarchical governance modes. In the end, this requires a country based approach in which legitimacy for AML is reconstructed bottom-up from the specific requirements of local contexts. Otherwise it risks limiting itself to the transnational financial system as well as box-ticking compliance in other areas on order to appease international demands by the FATF and the states that lend it enforcement power. The reality of this risk was evidenced for example by lack of normative detail adapting AML policies to the domestic context or the lacking resources and operational independence of the UIF in El Salvador. While complying on paper, El Salvador's authorities could not generate a domestic governance configuration that on its own drove policy transfer complete enough to reach actual implementation.

If fighting predicate offences is selected as a policy goal, a concrete measure could be to reverse the trend of administrative type FIUs and make the conscious choice to advocate for locating these agencies either at the police or prosecution services. If sufficiently resourced, this would give these underrepresented parts of national governance configurations not only skills and knowledge on financial intelligence creation. It would also provide a crucial bridge into the well-established AML community in the transnational financial sector. In the latter, additional efforts might merely reinforce an already well developed prevention system instead of strengthening the AML system where it is weakest: in the use of criminal intelligence for the investigation and prosecution of predicate offences. If AML is to serve this purpose, a key indicator of success should be cases where financial intelligence contributed to criminal convictions for predicate offences rather than the amount of stand-alone money laundering convictions. Achieving money laundering convictions is not only complex and costly. As an indicator of success it also reinforces the focus on money laundering as a crime in its own right. While it certainly is, it only develops by a chain of socially disruptive criminal behaviour that originates with a profit oriented crime.

This instrumental view on AML seems to be largely missing in contemporary AML policy transfer, judging from anecdotal evidence not only in areas of limited statehood but also in places like Germany that switched from a law enforcement to an administrative type FIU in 2017. Italy's development assistance to El Salvador was an example to the contrary. Given Italy's vast experience with using AML for crime fighting this often overlooked national experience might provide interesting orientation for the debate re-orienting the international AML regime. To achieve a stronger domestic crime fighting focus, it might be an issue that this very technical policy field is often detached from citizens, due to the specialised expertise on which it currently builds parts of its legitimacy. This is likely potentiated in countries with less accountable governments, where popular demands for public security might compete with incentives and sanctions for politicians offered by organised crime. The lacking criminal enforcement of AML policies in El Salvador and Mexico as two countries with high levels of violent crime points in this direction. To counter such tendencies, the results of this work suggest that the international level should move towards a more differentiated approach. One possibility would for FATF Style Regional Bodies to increase their activities in supporting criminal enforcement in regions where capacities in this sector are lacking and organised crime is a more imminent threat than terrorism, proliferation and loss of financial integrity.

Despite the largely empirical and policy oriented direction of this research, the final pages of this work provide some reflections on the selected combination of theoretical and methodological approaches of policy transfer studies and governance in areas of limited statehood. In the end, the endeavour was also a practical test providing insights on "how policy transfer relates to differing modes of governance" (Dolowitz & Marsh, 2012, p. 342). In the empirical analyses Stone's prediction held up that the combination of policy transfer insights "with other approaches" developed "an empirically grounded account of policy change" (2012, p. 490). What resulted from this combination is an expansion of the established policy transfer literature opening up new fields of research which require overcoming traditional policy transfer studies' bias on areas of consolidated statehood. It provided new possibilities to answer the central question of transfer studies of "[w]hat restricts or facilitates the transfer process" (Stone, 2000, p. 8) under the particular circumstances presented by limited statehood.

In these contexts the results call for future policy transfer studies to further emancipate themselves from a state centred view of policy development and implementation and move towards a governance and public goods centred approach. AML policy showed that empirically states are neither necessarily the origin nor the destination of policy transfer. While some states like the US and the UK play an important role in the development of global AML standards, it is the FATF as an intergovernmental expert panel that is the origin of the FATF Recommendation. Beyond the analytical confines of this study that defined the FATF as origin of the standards for methodological reasons, AML policy standards and FATF member states are themselves influenced by private sector organisations like the Wolfsberg Group at the international level or national lobby groups as clearly observed in the case of FATF member Mexico. It therefore seems prudent to conceptualise already the initial international agenda and standard setting for AML policy as an area of limited statehood where a single state does not unilaterally command sufficient power for taking and enforcing collectively binding decisions. All the way down to the implementation at country level, AML governance in most countries is likely to involve a network of public and private actors that influence each other through sometimes hierarchical but most often non-hierarchical governance modes.

To understand policy transfer in such a context, the established view of states either coercing or voluntarily learning from each other seems too limited. Even though policy transfer studies apply a continuous spectrum between these two poles, the approach is restricted by implicitly defining states as the principal governors and analytical nationalism that complicates accounting for transnational factors. While transfer studies identified the need to account for transnational factors at least two decades ago (cf. .e.g. Stone, 2000; Stone, 2004), it has thus far lacked the means to effectively combine a transnational view with one that can account for what his research terms limited statehood – situations in which the state is only one of many options as governor. Without this open approach to transnational governance significant part of the variance of policy transfer as the dependent variable between financial markets and non-financial markets would remain unexplained.

The differentiation between domestic and external governance configurations appears to be more a level of analysis decision than an attempt to model empirical reality. What should be applied instead are basic building blocks of governance configurations, stripping them of yet another prefabricated distinction: that of internal and external factors. Governance is in the end not even a multi-level game but rather system in which the process dimension is in flux. Particularly power relationships shift over time and space which makes it more important to understand their dynamics rather than their specific state at a given moment of observation. Competition systems were a clear expression of the resulting level of analysis question. In the case of AML policy transfer, competition systems were created in a transnational as well as an international market. While the financial sector was highly integrated between Mexico and the US, the real economy in border regions was characterised by market differentials across the border. For the overall system however, a transnational view is necessary that is defined by the scope of the empirical governance configuration.

Policy transfer and governance in areas of limited statehood are relatively easily combined. The initial premise was fulfilled that both share a common view on actors and institutions with governance in areas of limited statehood emphasising a process dimension. The latter is highly important for occurrences of policy transfer where the relationships between actors and institutional contexts are highly volatile. While formally external states might not have a hierarchical relationship towards domestic private market actors, they might empirically acquire a functional equivalent through home market regulations. At the domestic level, the formal relationship between public and private actors might be one of command and control codified in laws, while empirically it is negotiated in informal yet highly institutionalised contact groups. Resources of power become available to these actors at certain times, like around the publication of MERs or with the prospect of economic investments. At other times they diminish, when for example upcoming elections diminish political support to extend AML policy to PEP regulations and party financing. Policy transfer needs to and can integrated insights from governance in areas of limited statehood while also taking on board a few analytical tools that allow probing such cases.

Both fields of research are also very flexible as their theoretical foundations are grounded in empirical research and not (yet) too rigid for further development. The main explanatory threats of policy transfer (i) information availability, (ii) economic interconnectedness and (iii) heightened advocacy efforts by external actors found their expression in the applied governance configurations and empirical results. Both fields were thus a good fit which should be explored and consolidated further by more theory oriented studies. In order not to overstretch this combination, it seems prudent to first follow the more cautious approach to governance in areas of limited statehood which still assumes that “state actors are not absent in areas of limited statehood” (Risse, 2011, p. 24) rather than the more radical approach of complete openness for all kinds of actors propagated by Draude (Draude, 2012). Also for AML in El Salvador and Mexico, it seems confirmed that the “state still enjoys some benefit of doubt when it comes to legitimacy claims” (Risse, 2012, p. 15). More radical extensions of policy transfer without the state might exist and would be interesting to explore but appear likely to be empirical outliers. This would make it more difficult to test initial theoretical assumption on their empirical results on other cases for subsequent generalisations. The application of such an approach would also decrease the importance to identify “where voluntariness ends and where coercion begins” (Holzinger & Knill, 2005, p. 779). This question of definition would be replaced by a much more fine grained view on complex, mostly non-hierarchical and bidirectional interactions between public and private actors that in their combination as distinguishable governance configurations impact on policy transfer.

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7. Annex

7.1 Tables and Figures

Timeline: Development of El Salvador's AML policy until 2015.

YEAR	AML POLICY	RELEVANT DOCUMENTS AND ARTICLES
1991	• Criminalisation of narcotics related money laundering	• Regulatory Law on Drug Related Activities
1993	• Ratification of the Vienna Convention which includes obligations to criminalise money laundering	• UN Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances
1994	• Exceptions to bank secrecy of money laundering investigations for the stock market	• Law of the Stock Market
1996	• Exceptions to bank secrecy of money laundering investigations for the insurance market	• Law on Insurance Companies
1997	• Adherence to regional AML standards	• Central American Agreement for the Prevention and Repression of Money and Cash Laundering Crimes related to Illegal Drug Trafficking and connected Crimes
1998	• First comprehensive AML law establishing an all-crimes approach	• Law against Laundering of Money and Cash (AML Law)
1999	• Exceptions to bank secrecy of money laundering investigations for the banking sector	• Banking Law
2000	• Details operationalising AML Law provisions, amongst others on: o Cooperation with the UIF o Internal private sector regulations and staff trainings o KYC/CDD standards o Requirements for compliance officers o Reporting procedures o Record keeping	• Regulation of the AML Law
2001	• Obligation of compliance offices for the private sector • Requirements for internal AML manuals and codes of ethics • Instructions for background checking in personnel recruitment • Definition of reporting formats etc.	• Guidelines of the Financial Investigations Unit for the Prevention of Money and Cash Laundering in the Financial Intermediary Institutions
2004	• Ratification of UNTOC • Ratification of UNCAC	• United Nations Convention against Transnational Organized Crime • United Nations Convention against Corruption
2006	• Establishment of witness protection for AML	• Decree 1033 reforming the AML Law

2011	• Reorganisation of financial sector regulation and supervision with AML tasks concentrated at BCR and SSF • Regulations for correspondence banking and investing in foreign financial entities or opening foreign subsidiaries	• Law on the Supervision and Regulation of the Financial System • BCR norms NPB1-11 und NPB4-51
2012	• Obligation for the financial sector to pay special attention in operations with countries that do not or insufficiently apply the FATF Recommendations	• BCR norm NRP0-8
2013	• Inclusion of PEPs, DNFBPs and others under regulations specified in the Guidelines • Increased obligations for international and inter-institutional cooperation including sharing of negative due-diligence results between private actors • Intensification and expansion of KYC/CDD obligations, including regular updating of files • Rules for use of new technologies and non-face-to-face business • Expansion of AML regulations by the SFF to entities outside the financial sector (DNFBPs) • Allocation of legal responsibility for AML to board of director level and establishment of compliance officers as exclusive position (no role-sharing) • Obligation for AML risk assessments and the use of PEP-lists	• Updated UIF Guidelines • Technical Rules for Money Laundering and Terrorist Financing Risk Management
2014	• Expanding scope of regulated entities to additional DNFBPs and others including political parties and media companies • Reduction of reporting threshold to USD 10,000 • Abolishment of double-reporting to UIF and SSF • Increased demands on professional qualification for compliance officers • Obligation for private sector to organise annual awareness raising campaigns • Change of regulated entities, deducting sporting organisations, judges and attorneys as well as adding advertising agencies • Reduction of reporting obligations for legal professions • Introduction of criminal liability for	• Decree 568 reforming the AML Law • Decree 749 reforming the AML Law

	legal persons regarding money laundering • Obligation for private sector to compile PEPs lists • Reduction of professional qualification requirements for compliance officers • Creation of a Special Fund for seized assets • Abolishing of requirement to hold annual awareness raising campaigns • Deduction of advertising and media companies from list of regulated entities • Obligation to develop and apply an internal policy for intensified due-diligence to PEPs	• Decree 774 reforming the AML Law • Decree 777 reforming the AML Law
2015	• Explicit inclusion of cash smuggling into money laundering conducts	• Decree 104 reforming the AML Law

Timeline: Development of Mexico's AML policy until 2014[41].

YEAR	AML POLICY	RELEVANT DOCUMENTS AND ARTICLES
1988	• Ratification of the Vienna Convention which includes obligations to criminalise money laundering	• UN Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances
1989	• Criminalisation of money laundering as a fiscal offence	• Article 115 bis of the Federal Fiscal Code
1993	• Establishment of basic KYC and record keeping obligations for the financial sector • Establishment of sanctions for the financial sector	• Article 115 bis of the Federal Fiscal Code
1995	• Empowerment of the Finance Ministry to pass secondary AML legislation in the form of directives	• Article 115 of the Law on Credit Institutions and similar laws for other parts of the financial sector
1996	• Transfer of the money laundering offence from the Fiscal to the Penal Code • Introduction of financial fines as sanctions for norm violation in addition to more severe prison sentences • Definition of money laundering as a possible organised criminal offence • Establishment of a specialised organised crime unit in the General Attorney's Office	• Article 400 bis of the Penal Code • Federal Law against Organised Crime
1997	• Publication of a first set of AML regulations by the Finance Ministry for the financial sector, amongst others on: ○ Record keeping standards ○ Basic customer due diligence ○ Reporting obligations ○ Refinement of KYC obligations ○ Internal AML policies and training obligations ○ Cooperation with the Finance Ministry on continuous norm development • Introduction of generalised reporting obligations rather than reporting on suspicion • Introduction of CDD	• Various directives published by the Finance Ministry • Article 115 of the Law on Credit Institutions and similar laws for other parts of the financial sector
2000	• Updating of AML regulations by the Finance Ministry for the financial sector	• Various directives published by the Finance Ministry
2003	• Ratification of UNTOC	• United Nations Convention against Transnational Organized Crime

[41] Laws and regulations are assigned to the year they were published in the Official Journal of the Federation (Diario Oficial de la Federación, DOF).

2004	• Formal establishment of a designated Financial Intelligence Unit • Updating of AML regulations by the Finance Ministry for the financial sector • Ratification of UNCAC	• Organisational law of the Finance Ministry • Various directives published by the Finance Ministry • United Nations Convention against Corruption
2005	• Limitation of bank and trust secrecy in money laundering cases	• Article 117 of the Law on Credit Institutions
2006	• Updating of AML regulations by the Finance Ministry for the financial sector	• Various directives published by the Finance Ministry
2009	• Introduction of asset forfeiture for money laundering • Updating of AML regulations by the Finance Ministry for the financial sector	• Federal Asset Forfeiture Law • Various directives published by the Finance Ministry
2010	• Publication of the National Strategy for the Prevention and Combating of Money Laundering and Financing of Terrorism • Assignment of AML responsibilities to the Federal Police's anti-narcotics division and use of enhanced investigation techniques • Restrictions on the use of US dollars in cash • Updating of AML regulations by the Finance Ministry for the financial sector	• Regulation of the Federal Police Law • Directives for Article 115 of the Law on Credit Institutions • Various directives published by the Finance Ministry
2011	• Relocation of market supervision for currency exchange centres and money remitters from the Tax Administration Service to the National Banking and Securities Commission • Publication of AML regulations for multi-purpose financial lending institutions by the Finance Ministry • Updating of AML regulations by the Finance Ministry for the financial sector	• General Law on Auxiliary Credit Organisation and Activities • Various directives published by the Finance Ministry
2012	• Strengthening of prosecutorial AML provisions • Inclusion of AML obligations for DNFBPs • Establishment of a specialised AML unit at the General Attorney's Office • Updating of AML regulations by the Finance Ministry for the financial sector	• Federal Law for the Prevention and Identification of Operations with Resources of Illicit Origin • Arrangement of the General Attorney of the Republic which creates the Specialised Unit for Financial Analysis and establishes its powers • Various directives published by the Finance Ministry
2014	• Reform of the legal definition of the money laundering offence to include concealment, possession and use of criminal proceeds without the need for a specific purpose • Establishment of criminal legal liability	• Article 400 bis of the Federal Penal Code • Article 421 of the National Code of Criminal

	of legal persons	Procedures

MER observations for El Salvador 2010 (based on CFATF, 2010a, pp. 134-139)

LARGELY COMPLIANT (LC)		
Recommendation	**MER Commentary**	**Addressed governance providers**
A. Legal systems		
1: Money laundering classification	• Implementation is insufficient since there is no adequate number of convictions, few of them are concerning serious or complex money laundering cases (only cash smuggling) and upon investigating applicable crimes, there are no adequate prosecutions of the money laundering offense derived from predicate crimes.	Public: Investigation and prosecution agencies; judiciary
2: Money laundering – mental element and corporate liability	• The only sanction for legal persons that incur in criminal liabilities is dissolution, which lacks graduality and proportionality. Not applied in practice.	Public: Legislature; market regulators
3: Confiscation and provisional measures	• No seizures are ordered in more than half of the ML cases investigated.	Public: Prosecution agencies; judiciary
B. Measures to be taken by Financial Institutions and Non-Financial Businesses and Professions to prevent Money Laundering and Terrorist Financing		
10: Maintenance of records	• In the case of companies not subject to financial legislation, the obligation of preservation of correspondence is not clearly established.	Public: Legislature; market regulators
13: Suspicious transaction report	• The law provides a limited obligation of reporting suspicious operations of financing of terrorism with FT not being a precedent crime of ML.	Public: Legislature
15: Internal controls, compliance and audit	• Insufficient legal grounds for the Compliance Officer figure and its functional independence and authority in FI • Specific requirements are not evidenced with respect to scope and procedures of internal Audit to verify	Public: Legislature; market

	adequate compliance with AML/CFT Recommendations.	regulators
18: Fictitious banks	• There is no obligation of FI to ensure that respondent FI in other countries do not allow their accounts to be used by fictitious banks.	Public: Legislature; market regulators
C. Institutional and other measures necessary in systems for combating Money Laundering and Terrorist Financing		
34: Legal agreements – beneficiaries	• Practical problems to identify beneficial owner when it comes from third party countries.	Private (delegated): Financial institutions
D. International Co-operation		
36: Mutual legal aid (AML)	• There is not a set of regulations developing mutual legal assistance clearly, although this has not presented obstacles for cooperation in practice.	Public: Legislature; judiciary
38: AML in confiscation and freezing	• Scarce number of cases does not allow to know the system's effectiveness. • Poorly detailed regulatory procedures.	Public: Prosecution agencies; judiciary
40: Other forms of cooperation	• FIU is suspended from Egmont Group which limits its possibilities of cooperating with homologue Units. • There were no MOUs or mechanisms found to speed up cooperation with homologue institutions abroad by the Superintendences, Customs, General Tax Direction.	Public: Legislature; executive

PARTIALLY COMPLIANT (PC)		
Recommendation	**MER Commentary**	**Addressed governance providers**
B. Measures to be taken by Financial Institutions and Non-Financial Businesses and Professions to prevent Money Laundering and Terrorist Financing		
5: Due diligence by client	• Lack of clarity, scope and clear and differentiated requirements in the instructions related with compliance with prevention and control of ML and FT.	Public: Legislature; market

	• Legal deficiencies and important deficiencies concerning the implementation of CDD requirements for money transmitters or remittance companies. • Inappropriate CDD indicator of USD 57,142.86 for obligation of reporting operations in cash and transaction monitoring. • Absence of a concrete requirement to accomplish CDD in all cases in which there is suspicion of ML/FT or doubt with respect to whether the information from customer is sufficient and/or in case of uncertainty about veracity, modifications or alterations in the identification documents. • Deficient identity verification requirements for beneficial owners. • Lack of general requirement for the obtention of information about actual nature and purpose of the business relation. • Absence of regulations and insufficient guidelines for CDD based on risk. • Absence of controls and risk reduction for postponement of the verification of identification, including recently organized companies.	regulators and supervisors
8: New technologies and businesses which are not face to face	• Absence of specific requirements for the implementation of measures for the prevention of inadequate use of technological developments.	Public: Market regulators
9: Third party and intermediary submitters	• Lack of specific regulations concerning the use of intermediaries that may accomplish certain CDD diligences on behalf of FI. • Lack of requirements for FI (Insurance and Money Transmitters) to "immediately" obtain CDD information of third parties given that such entities are not expressly included in the FIU instructions. • Inadequate supervision/monitoring of Money transmitters and paying agents (to whom compliance is conferred) by transmitter institution for AML/CFT obligations compliance.	Public: Legislature; market regulators and supervisors
17: Penalties	• With respect to remittance entities and non-banking financial entities not supervised by the SSF and SS there is	Public:

	no sanctioning regime extended and proportional to the seriousness of the offenses committed concerning noncompliance with AMLCFT regulations • There is no possibility of non-monetary sanctions or the closing of violating entities, as well as sanctions to officers thereof due to specific noncompliance in the prevention of AML and FT, when dealing with remittance entities and non-banking financial entities not supervised by the SSF and SS.	Legislature; market regulators and supervisors
21: Special attention to higher risk countries	• There are no obligations for FIs to pay special attention to commercial relations and transactions with persons from and in other countries where FATF Recommendations are not applied, or are insufficiently applied.	Public: Legislature; market regulators
22: Branches and subsidiaries abroad	• There has not been a specific regulation developed concerning AML-CFT regulation to Foreign Branches or Affiliates	Public: Legislature; market regulators
23: Regulation, supervision and monitoring	• Insufficient resources (personal, equipment, training) by supervision entities to accomplish their oversight functions. • Lack of control and supervision of remittance entities and other non-banking financial entities that do not form part of a Financial Conglomerate.	Public: Legislature; executive; market regulators and supervisors
C. Institutional and other measures necessary in systems for combating Money Laundering and Terrorist Financing		
26: FIU	• Simultaneous delivery of STR, both to FIU as to SSF which affect confidentiality of reports and creates parallel FIU in other entities. The number of officers that make up FIU, and their capacity to analyse information is very reduced relative to the number of reports received. • FIU has insufficient autonomy to accomplish its tasks. Attorney General of the Republic frequently removes attorneys from FIU to assign it to other tasks of the Attorney General´s Office and is empowered to give instructions to FIU about which cases are considered priority and which not. • There is no adequate access to databases of public entities and private subjects authorized by ML Law.	Public: Legislature; executive; prosecution agencies

	• There is no operative division among analysis and criminal investigation, with the judicial function having higher priority, which reflects lack of technical autonomy in the essential work to produce financial intelligence. • Public information about statistics and typologies is not produced. • FIU is suspended by the Egmont Group. • There is no permanent training program for FIU officers.	
29: Supervisors - powers	• Remittance entities and non-financial banking entities which are beyond supervision of SSF and SS (leasing companies, credit cards, general warehouse stores, etc.) are not subject of on-site inspections or are demanded documentation to verify compliance with AML-CFT. • With respect to remittance entities and non-banking financial institutions which are not supervised by SSF and SS – are not applied a specific sanctions regime in case information requirements are not adequately met in order to verify compliance with AML-CFT.	Public: Legislature; market regulators and supervisors
31: Domestic cooperation	• A real public policy has not been implemented in terms of domestic coordination and cooperation.	Public: Executive
33: Beneficial legal persons	• Low degree of efficacy • Opacity of bearer shares	Public: Legislature; market regulators
D. International Co-operation		
39: Extradition	• There are no internal laws that clearly detail and adequately regulate extradition and related procedures. • Article 28 of the Constitution could be interpreted as a limitation to extradition when dealing with international transcendence crimes. • It could not be verified with concrete statistics the application of active extradition at the request of other countries.	Public: Legislature; judiciary

NON-COMPLIANT (NC)		
Recommendation	**MER Commentary**	**Addressed governance providers**
B. Measures to be taken by Financial Institutions and Non-Financial Businesses and Professions to prevent Money Laundering and Terrorist Financing		
6: Politically exposed persons	• Absence of provision related with PEPs	Public: Legislature
7: Correspondent banks	• Absence of provisions related with Correspondent Banks and cross-border business	Public: Legislature
12: DNFBP – R.5, 6, 8-11	• There are no competent authorities in ML and FT matters that regulate and supervise DNFBPs. • There are no provisions that allow compliance with FATF Recommendations	Public: Legislature
16: DNFBP – R.13-15, 21	• There is no regulation on the matter of prevention and detection of ML and FT applicable to DNFBPs. • There are no authorities empowered to accomplish regulation and supervision tasks of DNFBPs.	Public: Legislature
24: DNFBP – regulation, supervision and monitoring	• There is no regulation in terms of prevention and detection of ML and FT applicable to DNFBPs. • No authority is empowered to accomplish regulation and supervision of DNFBPs.	Public: Legislature
25: Guides and Feedback	• FIU and other competent authorities do not accomplish feedback processes to reporting entities. • No updated guides or guidelines have been issued to support regulated entities in the compliance with AML-CFT regulations. • FIU has not given feedback to entities about quality and timeliness of suspicious transaction reports. • No guidelines have been issued for any type of DNFBPs.	Public: Prosecutorial agencies; market regulators and supervisors
C. Institutional and other measures necessary in systems for combating Money Laundering and Terrorist Financing		
30: Resources, integrity and training	• FIU does not have the necessary number of officers to adequately develop tasks (paragraphs 35 and 45 of Section 2.5) • There is a lack of functional autonomy for FIU, since it depends directly from operative and human resource	Public: Executive; prosecutorial agencies

	decisions established by the Attorney General´s Office. (see Section 2.5) • The real estate where FIU is located lack modules or physical spaces for adequate storing and custody of documents. • FIU has no technological tools that allow direct informatic access to date bases of State entities and institutions or private companies, to obtain investigation or analysis information in an efficient manner or at least more rapidly (section 2.5) • FIU lacks a permanent and adequate training program addressed to officers. (Section 2.5).	
32: Statistics	• FIU has not been able to implement information mechanisms that offer obliged subjects periodical reports on statistics, typologies and criminal trends (Section 2.5). • Law enforcement authorities do not have systems to measure results, that allow to effectively analyse AML/CFT systems.	Public: Investigative and prosecutorial agencies; market regulators

MER observations for Mexico 2008 (based on FATF, 2008, pp. 313-321)

LARGELY COMPLIANT (LC)		
Recommendation	**MER Commentary**	**Addressed governance providers**
A. Legal systems		
2: Money laundering offense – mental element and corporate liability	• The money laundering offense is not being effectively implemented as is shown by the very low number of convictions relative to the significant threat of organised crime, the low number of indictments, the volume of intelligence reports of STRs and the size and complexity of the financial system.	Public: Investigation and prosecution agencies
3: Confiscation and provisional measures	• Legislation does not provide for the ability to forfeit assets of equal or corresponding value. • There are no criminal laws/tools for preventing or voiding contracts and actions that diminish the ability to recover assets subject to forfeiture.	Public: Legislature; judiciary
B. Measures to be taken by Financial Institutions and Non-Financial Businesses and Professions to prevent Money Laundering and Terrorist Financing		
6: Politically exposed persons	• No explicit requirement in some regulations to obtain senior management approval for existing PEP accounts and relationships. • Need to define the scope of "origen de recursos" to include source of wealth for PEPs in addition to source of funds.	Public: Market regulators Private (delegated): Financial institutions
7: Correspondent banking	• Inadequate CDD requirements for correspondent relationships for the mutual fund and securities firms, including the need to establish their AML/CFT responsibilities and that of their respondents.	Public: Market regulators Private (delegated): Financial institutions
11: Unusual transaction	• Many reporting institutions are using the list of possible alerts provided in the regulations as triggers of reports,	Public:

	without sufficiently analysing the background and purpose of such transactions. • The monitoring of transactions by money exchanges (centros cambiarios) and money remitters (transmisores de dinero) has been almost exclusively focused on the control of unique or structured transactions starting at USD 3,000.	Market regulators, investigative agencies Private (delegated): Financial institutions
15: Internal controls, compliance and audit	• No explicit requirement in all the AML/CFT regulations to have a well resourced and independent audit function.	Public: Market regulators Private (delegated): Financial institutions
18: Shell banks	• No requirement for FIs to satisfy themselves that their foreign respondents do not permit their accounts to be used by shell banks.	Public: Legislature; market regulators
21: Special attention for higher risk countries	• Mexico can impose countermeasures only with respect to countries previously identified by an international organization, and not to countries of specific concern to Mexican authorities.	Public: Legislature; market regulators
C. Institutional and other measures necessary in systems for combating Money Laundering and Terrorist Financing		
26: The FIU	• Does not have full, timely and secure access to STRs from exchange centres, money services businesses and unregulated SOFOMs filed through the SAT. • FIU has no access to criminal records. • The number of staff is low relative to the amount of reports received and expected future volume of STRs and workload potentially hampering the FIU's effectiveness.	Public: Legislature, executive
28: Powers of competent	• The reorganization of federal forces of investigation have created difficulties in the coordination between such	Public:

authorities	forces and prosecutors, thereby affecting the capacity of competent authorities to exercise document production, search and seizure powers in an effective manner. • The insufficiency of resources allocated to PGR's SIEDO and its specialized units is affecting their capacity to implement their investigative powers in an effective manner.	Executive
31: National co-operation	• The reorganization of the federal forces of investigation over the past year has created transitional coordination and cooperation difficulties between these forces and prosecutors. • Absence of effective joint cooperation or coordination mechanisms between the PGR and the Judiciary to implement joint policies and conduct activities aimed at fighting organized crime.	Public: Executive
32: Statistics	• Supervisory: C • FIU: LC ○ There is no information on requests denied by either the Mexican FIU or its foreign counterparts. ○ No statistics were provided on the number of consultations made by the FIU or the number of declarations received and analysed by the FIU. • Customs: LC ○ No statistics or any other information to assess the effectiveness of domestic coordination arrangements. ○ No statistics on the number of international information requests made and received by the General Customs Administration were provided. • Law Enforcement: C	Public: Executive
34: Legal arrangements – beneficial owners	• Lack of sufficient measures to ensure that there is adequate, accurate and timely information on the beneficial ownership and control of legal arrangements in all cases. • No statistics on the number of requests for beneficial ownership information or the amount of sanctions applied to conclude that the measures are effective.	Public: Market regulators
D. International Co-operation		

35: Conventions	• Mexico has not fully implemented the Vienna and Palermo Conventions. • Mexico has not fully implemented the Terrorist Financing Convention.	Public: Legislature
36: Mutual legal assistance (MLA)	• The deficiencies in the money laundering and terrorist financing offenses may impact on Mexico's ability to provide MLA.	Public: Legislature
37: Dual criminality	• The deficiencies in the money laundering and terrorist financing offenses may impact on Mexico's ability to provide MLA and extradite.	Public: Legislature
39: Extradition	• The deficiencies in the money laundering and terrorist financing offenses may impact on Mexico's ability to extradite.	Public: Legislature

PARTIALLY COMPLIANT (PC)		
Recommendation	**MER Commentary**	**Addressed governance providers**
A. Legal systems		
1: Money laundering offense	• ML offense does not cover the concealment or disguise of the true nature, source, location, disposition, movement, or ownership of or rights with respect to property nor the possession or use of property without a specific purpose. • ML offense is not being effectively implemented, insufficient focus on ML investigations committed through the financial system, and underutilization of financial intelligence reports from the FIU.	Public: Legislature
B. Measures to be taken by Financial Institutions and Non-Financial Businesses and Professions to prevent Money Laundering and Terrorist Financing		
5: Customer due diligence	• No CDD (AML/CFT) regulations and supervision as yet for unregulated SOFOMs. • Inadequate implementation of CDD requirements esp. oversight requirements imposed on insurance companies for business conducted through agents. • Need to qualify the use of numbered and coded accounts in accordance with c5.1.	Public: Legislature, market regulators

	• Significant legal and capacity deficiencies in implementing CDD requirements for centros cambiarios and money remitters. • Inadequate CDD threshold (USD 10 000) for business relationships for casas de cambio and insurance companies. • No distinction in all cases between CDD requirements for business relationships and all types of occasional transactions, including a direct requirement for to aggregating linked occasional transactions. • No explicit requirement to conduct CDD in all cases where there is suspicion of ML/FT or doubt about the adequacy of customer information. • Inadequate provisions in all the regulations with respect to CDD requirements when there are indications and/or certainty of false, erased or altered identification documents. • Weak identification verification requirements for non-beneficiary insurance policyholders. • Insufficient requirements in the 2004 regulations for the identification of foreign beneficiaries. • No direct explicit requirement for FIs to ascertain/request that applicants for business to state whether they are acting on behalf of others. • No general requirement for obtaining information on the purpose and nature of business relationships. • Insufficient justification and guidelines for risk-based CDD, including with respect to simplified CDD for customers listed in the Annex of the regulations. • No risk mitigating controls for deferment of identification verification, including with respect to newly-formed companies. • Provisions to defer verification of identification of customers associated with insurance policies are too broad. • No explicit provision to refuse to open an account (e.g. when identification documentation/verification is inadequate or cannot be completed) and to terminate existing business relationships when CDD cannot be completed and file a STR.	<u>Private (delegated)</u>: Financial institutions

8: New technologies & non face-to-face business	• No specific requirements to implement measures to prevent misuse of technological developments. • No specific risk mitigating CDD requirements for transactions that do not require face-to-face contact.	Public: Legislature, market regulators
9: Third parties and introducers	• Lack of a requirement for FIs to immediately obtain CDD information from third parties. • Inadequate supervision/monitoring of insurance intermediaries for compliance with AML/CFT obligations. • Inadequate supervision/monitoring of paying agents (on whom reliance is placed) by remittance firms for compliance with AML/CFT obligations.	Public: Legislature, market regulators
13: Suspicious transaction reporting	• The reports filed by some sectors are not being transmitted to the FIU, nor utilized in any form (Bonding companies and the registered money transmitters and currency exchanges). • There is no clear obligation to report the suspicion of the financing of international acts of terrorism (only of terrorist acts committed locally). • Excessively broad definition of suspicion in the regulations generates defensive reporting, and the guidance issued to address this issue is not legally adequate to limit the scope of said regulations. • The obligation to report attempted transactions is not explicitly established in regulations, and not consistently implemented by financial institutions.	Public: Legislature, market regulators, investigative agencies Private (delegated): Financial institutions
17: Sanctions	• Sanctions not sufficiently proportionate and dissuasive. On average, relatively low fines applied and insufficient use of nonmonetary sanctions.	Public: Market regulators, investigative agencies
23: Regulation, supervision and monitoring	• Insufficient supervision, largely due to inadequate budgetary and human resources, of the unregulated foreign exchange centres and money remittance sector. • No AML/CFT regulation and supervision for unlicensed SOFOMs. • Inadequate oversight mechanisms for intermediaries (channels of distribution) in the insurance and bonding sectors, and on cash acceptance practices.	Public: Market regulators

	• Insufficient use of offsite supervisory capacity for planning and conducting onsite inspections, consistent with the risk-based provisions in the regulations and prudential supervision. • Insufficient cross-border supervision including through the use of supervisory MOUs.	

25: Guidelines and feedback	• Supervisory: NC
	  ○ Need for more current guidelines on new ML and FT techniques and methods including for new technologies.
	  ○ Need for industry-specific guidelines on ML and FT risks in the Mexican market to support risk-based compliance.
	• FIU: LC
	  ○ The recently increased strategic analysis capability of the FIU has not yielded significant information that could be used by reporting institutions to recalibrate their preventive mechanisms, and the FIU has not published Mexico-specific typologies since 2005.
	  ○ FIU provides occasional feedback on STR quality to institutions of concern, but there is no mechanism in place to provide reporting institutions with more opportune and relevant feedback about their reports, other than an automatic acknowledgment of receipt of their STRs. The project to rate the quality of STRs still has not reached a representative sample of reports.
	• DNFBP: NC
	  ○ No AML/CFT framework and guidelines for DNFBPs.
		Public:
		Legislature, market regulators, investigative agencies

C. Institutional and other measures necessary in systems for combating Money Laundering and Terrorist Financing		
27: Law enforcement authorities	• ML offenses are not being properly investigated by PGR, insufficient focus on ML investigations committed through the financial system, and underutilization of financial intelligence reports from the FIU. • The insufficiency of resources allocated to PGR's SIEDO and its specialized units is affecting Mexico's capacity to conduct investigations and prosecutions of ML offenses in an effective manner.	Public: Legislature, investigative and prosecutorial agencies

	• Mexico does not have laws or other measures that would allow competent authorities to postpone or waive the arrest of suspected persons and/or the seizure of money for the purpose of identifying persons involved in such activities. • The reorganization of the federal forces of investigation over the past year has created coordination difficulties between these forces and prosecutors, thereby affecting the effective investigation and prosecution of ML offences.	

30: Resources, integrity and training	• Supervisory: PC
	  ○ EC 30.1, 30.3 and 30.3
	  ○ Insufficient training for risk-based supervision including for offsite surveillance of ML and FT risks.
	  ○ Insufficient focus on, and provision of specialized training to inspections staff, for the review of controls in FIs designed to detect non-cash suspicious transactions.
	  ○ Insufficient staff of the DGPOI to provide more adequate support to all of the CNBV's supervisory units and other outside authorities such as the FIU and the PGR.
	  ○ Insufficient staff for the SAT for supervising money exchange centres, money remitters, and SOFOMs.
	• FIU: PC
	  ○ Low number of staff relative to the amount of reports received and expected future volume of STRs and workload, and there is no timetable for increasing resources for the FIU, especially in the number of staff.
	• Law Enforcement: PC
	  ○ Insufficient resources allocated to PGR's SIEDO and its specialized units hinder effectiveness in the conduct investigations and prosecutions.
		Public:
		Market regulators, investigative and prosecutorial agencies

D. International Co-operation		
38: Mutual legal assistance on confiscation and freezing	• The deficiencies in the money laundering and terrorist financing offenses may impact on Mexico's ability to provide MLA.	Public: Legislature

NON-COMPLIANT (NC)		
Recommendation	**MER Commentary**	**Addressed governance providers**
B. Measures to be taken by Financial Institutions and Non-Financial Businesses and Professions to prevent Money Laundering and Terrorist Financing		
12: DNFBP–R.5, 6, 8–11	• No AML/CFT regulations exist for any category of DNFBP, except trust services which only specified financial institutions can provide.	Public: Legislature
16: DNFBP–R.13–15 & 21	• No AML/CFT regulations exist for any category of DNFBP, except trust service providers which are designated financial institutions.	Public: Legislature
20: Other NFBP & secure transaction techniques	• No consideration has been given to applying the FATF recommendations to other high-risk businesses and professions. • No evidence of measures taken to encourage the development and use of modern and secure techniques for conducting financial transactions that are less vulnerable to ML.	Public: Legislature
24: DNFBP—regulation, supervision and monitoring	• No AML/CFT regulations and supervisory framework exist for any category of DNFBP, except for trust service providers which are designated financial institutions.	Public: Legislature, market regulators and supervisors
C. Institutional and other measures necessary in systems for combating Money Laundering and Terrorist Financing		
33: Legal persons–beneficial owners	• Mexico has not taken measures to prevent the use of legal persons in relation to ML/TF. • The Registry may not be able to obtain or have access to adequate, accurate and current beneficial ownership and control information. • Mexico has not taken appropriate measures to ensure that legal persons using bearer shares are not misused for ML.	Public: Legislature; market regulators

7.2 List of Interviews[42]

Coding:
M = Mexico related
E = El Salvador related
a = Only notes available

Code	ORGANISATION	DATE	TRANSCRIPT	LENGTH
El Salvador				
E1a	Superintendencia del Sistema Financiero (SSF)	13.10.2011	NO	-
E2	Banco ProCredit	21.10.2011	YES	81 min.
E3a	Fundación Nacional para el Desarollo (FUNDE)	21.10.2011	NO	-
E4	Academia Nacional de Seguridad Pública	24.10.2011	YES	59 min.
E5a	Superintendencia del Sistema Financiero (SSF)	01.11.2011	NO	-
E6	Superintendencia del Sistema Financiero (SFF)	08.11.2011	YES	94 min.
E7	Superintendencia del Sistema Financiero (SFF)	08.11.2011	YES	64 min.
E8	Banco Central de Reserva (BCR)	12.11.2011	YES	41 min.
E9	Chartis Insurance	14.11.2011	YES	77 min.
E10	Scotiabank	29.11.2011	NO	-
E11	Fiscalía General de la Republica, Unidad de Investigación Financiera (FGR / UIF)	01.12.2011	YES	86 min.
E12	Ministerio de Economía	05.12.2011	YES	61 min.
E13	Bolsa de Valores (BVES)	06.12.2011	YES	49 min.
E14	Asoc. Bancaria Salvadoreña (ABANSA)	06.12.2011	YES	101 min.
E15a	Policía Nacional Civil (PNC)	12.12.2011	NO	-
E16	Caribbean Financial Action Task Force (CFATF)	01.03.2013	YES	60 min.
Mexico				
M1a	Heinrich-Böll-Stiftung	07.03.2011	NO	-
M2	Consultant	08.03.2011	YES	63 min.
M3	Instituto Nacional de Ciencias Penales (INACIPE)	08.03.2011	YES	42 min.
M4	Instituto Nacional de Ciencias Penales (INACIPE)	10.03.2011	YES	30 min.
M5	Centro de Estudios Espionsa Yglesias (CEEY)	14.03.2011	YES	60 min.
M6	Instituto Nacional de Ciencias Penales (INACIPE)	15.03.2011	YES	88 min.
M6	Bancomer	16.03.2011	YES	75 min.
M7	Instituto Nacional de Ciencias Penales (INACIPE)	18.03.2011	YES	61 min.
M8a	ING Bank	18.03.2011	NO	-
M9a	Asociación Mexicana de Instituciones de Seguros	25.03.2011	NO	-
M10a	Universidad Nacional Autónoma de México (UNAM)	31.03.2011	NO	-
M11a	Asociación de Permisionarios de Juegos y Sorteos (APJSCA)	31.03.2011	YES	105 min.
M12a	Servicio de Administración Tributaria (SAT)	31.03.2011	NO	-
M13a	Banamex	18.04.2011	NO	-
M14	FINAMEX	27.04.2011	YES	91 min.

[42] The list of interviews is coded to protect the anonymity of interview partners for whose cooperation I am most grateful. With good cause, viewing the decoded list and transcripts can be requested from the author.

M15	Asociación Mexicana de Entidades Financiera Especialidadas (AMFE)	28.04.2011	YES	76 min.
M16	Asociación Mexicana de Intermediarios Bursátiles (AMIB)	29.04.2011	YES	54 min.
M17	MarylLynch	29.04.2011	YES	39 min.
M18	Comisión Nacional Bancaria y de Valores (CNBV)	02.05.2011	YES	110 min.
M19a	Servicio de Administración Tributaria (SAT)	09.05.2011	NO	-
M20a	BBVA, Asociación de Bancos de México (ABM)	24.11.2011	NO	-
M21a	Consultant	25.11.2011	NO	-
M22	Comisión Nacional Bancaria y de Valores (CNBV)	25.11.2011	YES	35 min.
M23	Consultant	25.11.2011	YES	60 min.
M24a	Policía Federal (SSP)	26.11.2011	NO	-
M25	Thomson Reuters	14.11.2012	YES	75 min.

7.3 Short summaries

Short summary

The dissertation "Compliance and Non-Compliance with the FATF Recommendations: Policy Transfer in Areas of Limited Statehood" explains how national anti-money laundering (AML) policies develop in relation to the international policy standard of the Financial Action Task Force (FATF). It does this by a series of refining steps starting out with a typology of explanatory offers in the existing AML policy literature. Consecutively the results of the literature review are processed through a filter that combines insights from two theoretical fields: policy transfer and governance in areas of limited statehood. A derived set of intermediary hypotheses is then qualitatively tested on El Salvador and Mexico as case studies through the use of governance configurations as an analytical tool. The generated insights are turned into a generalizable model in a final step. The result of this research process delivers the first empirically as well as theoretically grounded generalizable model for FATF compliance by different countries.

The literature holds that both money laundering and AML policies are highly relevant for public security, integrity of the international financial system as well as for anyone interested in effective international regulatory regimes. Money laundering is mostly linked to profit oriented transnational organised crime. Estimates of its total annual volume stand at around 3.6% of global gross domestic product (UNODC, 2011, p. 9). Many observers therefore see preventing and controlling money laundering as a worthwhile investment in combatting organised crime. The FATF's approach of AML policy as financial market regulation makes it a relevant factor in international financial market governance. The interest of scholars of international regimes stems mainly from the FATF's alleged high capacity to create rule compliance, despite the voluntary nature of its 40 Recommendations.

Yet the available quantitative data on compliance with the FATF Recommendations at country level shows a picture that does not support the narrative of an overall highly effective compliance regime. There is plenty of empirical variance between countries that has yet to be explained. Measures for levels of statehood, understood as "the ability of the state to enforce collectively binding decisions" (Börzel & Risse, 2010, p. 118), reveal a wide scattering of FATF compliance, particularly in the middle-ground between countries with highly consolidated statehood and those with particularly low levels in closely related policy fields like public security and bureaucratic capacity. The first collection of explanations for compliance found in the literature review are grouped into a typology for the first time in this dissertation, with four groups emerging: (i) Conflict with civil liberties that hinder the adoption of AML policies; (ii) Questions on cost, effectiveness and the purpose of AML which depending on the answers can both support or hinder compliance but in any case structure the political debate around AML policy development; (iii) Considerations of international governance which focus on market internationalisation and globalisation as driving forces of both money laundering and AML; (iv) Domestic political context as a highly individualised view on the preferences of politicians and governments to adopt or reject AML policies as prescribed by the FATF.

By itself this typology falls short as an explanatory framework that can aspire to provide generalizable answers or at least an analytical model on AML policy development across cases. Sending it through a filter, that combines insights from studies on policy transfer and governance in areas of limited statehood, forces the typology into a theoretical framework. This charges the remaining factors with explanatory value. Policy transfer studies provide a well-tried and tested approach to the influence of international standards on national policy development. However it is in danger of a bias towards mechanisms prevalent in contexts of consolidated statehood. It further lacks analytical tools adapted to areas of limited statehood. This gap is filled by the combination with theoretical additions and the application of techniques from studies on governance in areas of limited statehood.

The result is a bespoke analytical toolkit of AML governance configurations that takes account of actors and institutions as well as governance as a process shaped by power differentials. In this approach, the state is only one of many potential actors that influence policy transfer from the international to the national level. These actors can either apply hierarchical or non-hierarchical governance modes. These are expected to be more or less effective in fostering compliance, depending on their institutional embeddedness and resource endowments of governance actors. In addition to the state, in particularly financial and non-financial market actors appear as additional key AML governance providers that are at the same time recipients of governance services. Criminal actors might also influence AML policy development but do not fall under the public goods centred definition of governance applied in this dissertation. The empirical case studies test the explanatory value of four governance configurations that build on existing typologies:

(a) Delegation under conditions of limited statehood
(b) External influence
(c) External provision of statehood
(d) Competition systems

All four governance configurations reveal distinctive relevant dynamics of policy transfer between FATF on the international level and domestic governance actors. While all four are observable in both El Salvador and Mexico, comparing the same governance configuration in both cases shows how specific power relationships and institutional constraints influence the resulting depth of transfer. One important similarity between El Salvador and Mexico is their integration into transnational financial markets since the 1990s. The financial market in both countries is characterised by a dominance of international banks and other international financial actors. The research identifies them as central actors in transferring prevention oriented AML standards for the financial market into national regulatory legislation by non-hierarchical modes like knowledge transfer and lobbying. These actions are oriented at safeguarding the integrity of their businesses and their reputation as well as avoiding sanctions from mostly foreign market regulators. With this presence of foreign banks in an increasingly transnational financial market thus came along external state actors that contribute to enforcing compliance and at times even apply hierarchical governance modes.

Another key element shaping the compliance patterns in both cases is the domestic governance configuration of delegation under conditions of limited statehood. In the end, power relationships at the national level decide over if, where and how external impulses contribute to shaping policies. The positioning of the national Financial Intelligence Unit (FIU) at the Attorney General's Office (El Salvador) or the Finance Ministry (Mexico) was an important indicator of either prosecution or prevention oriented policy transfer. FIUs serve key public AML governance functions under the FATF model and are also a potential source of power given the concentration at these units of scarcely available AML knowledge in the public sector. A strongly economic and prevention centred AML policy configuration proved difficult to direct firmly towards prosecution and public security oriented AML governance when this was attempted under Calderón's presidency in Mexico (2006-2012). Emblematic is the failed attempt to relocate the FIU into the administrative realm of the Attorney General's Office. While public AML policy transfer to laws and regulations in El Salvador was overall more prosecution oriented, depth of transfer remained shallow in good part due to the FIUs scarce resources. As a result, prosecution remained a weak spot in the AML policy of both countries with only limited policy transfer – albeit for different underlying reasons.

The dissertation amalgamates these and a series of further results of the empirical case studies and their theoretical comparative reflection into a new model. The resulting picture is a strongly intertwined mesh of external and domestic actors, institutions and power sources. To adequately reflect this in a generalizable model of a governance configuration explaining AML policy transfer that is specific for areas of limited statehood, the existing typology is expanded to include: *Transnational Delegation*. This model acknowledges the empirical result that AML governance is transnational in nature by involving public and private actors, both external and domestic. They are woven together at the same time by organised crime using transnational financial markets to launder their money as well as the attempts of different actors to provide AML governance services for this market. AML might thus be understood by definition as an area of limited statehood as long as no transnational state exists that has "the ability to enforce collectively binding decisions" (Börzel & Risse, 2010, p. 118) on transnational financial markets. While the FATF delegates AML governance to state and non-state actors, it lacks hierarchical enforcement power for this task. It depends on governance provision by third parties in order create a credible shadow of hierarchy. What emerges instead as a function equivalent to statehood is a distinctive mix of hierarchical and non-hierarchical governance modes that can lead to a more complete policy transfer. This seems most promising by connecting transnational financial market regulation with domestic organised crime centred enforcement policies.

Kurzzusammenfassung

Die Dissertation "Compliance and Non-Compliance with the FATF Recommendations: Policy Transfer in Areas of Limited Statehood" erklärt die Entwicklung nationaler Antigeldwäschepolitiken (AML) mit Bezug auf den internationalen Politikstandard der Financial Action Task Force (FATF). Sie erreicht dieses Ziel durch eine Serie von Verfeinerungsschritten mit einer Typologie der Erklärungsansätze der bestehenden AML-Literatur als Ausgangspunkt. Dieses Ergebnis der Literaturrecherche wird durch einen Filter verarbeitet, der zwei theoretische Stränge miteinander verbindet: Politiktransfer und Regieren in Räumen begrenzter Staatlichkeit. Ein daraus abgeleitetes Zwischenset von Hypothesen wird dann qualitativ getestet an den empirischen Fällen El Salvador und Mexiko, unter Nutzung von Governancekonfigurationen als Analysemittel. Die daraus resultierenden Erkenntnisse werden in einem letzten Schritt zu einem verallgemeinerbaren Modell zusammengefasst. Das Resultat dieses Forschungsprozesses ist das erste, theoretisch wie empirisch fundierte, verallgemeinerbares Modell für FATF Compliance einzelner Länder.

Laut Literatur sind Geldwäsche und Politiken zur Geldwäschebekämpfung hochgradig relevant für die öffentliche Sicherheit, die Integrität des internationalen Finanzsystems sowie für jeden mit einem Interesse an effektiven internationalen Regulierungsregimen. Geldwäsche steht meist in Verbindung mit profitorientierter transnationaler Organisierter Kriminalität. Sie hat ein geschätztes jährliches Gesamtvolumen von 3.6% der globalen Wirtschaftsleistung (UNODC, 2011, p. 9). Prävention und Kontrolle

von Geldwäsche wird daher von vielen Beobachtern als eine gute Investition in die Bekämpfung der Organisierten Kriminalität gesehen. Durch den Ansatz der FATF AML als Finanzmarktregulierung auszugestalten, ist AML Compliance auch ein relevanter Bereich für die Governance internationaler Finanzmärkte. Das Interesse von Forschern zu internationalen Regimen kommt wiederrum aus der verbreiteten Annahme, die FATF habe eine hohe Kapazität Regelbefolgung herzustellen, trotz der freiwilligen Natur ihrer 40 Empfehlungen.

Die verfügbaren quantitativen Daten zur Compliance mit den FATF Empfehlungen auf Länderebene zeichnen aber ein Bild, dass das Narrativ eines insgesamt effektiven Regimes für die Regelbefolgung nicht stützt. Es gibt eine hohe empirische Varianz zwischen Ländern, die noch erklärt werden muss. Messungen für Staatlichkeit, hier verstanden als „die Fähigkeit eines Staates zur Durchsetzung kollektiv verbindlicher Regeln“[43] (Börzel & Risse, 2010, p. 118), in verwandten Politikfeldern wie öffentliche Sicherheit und Bürokratiekapazität zeigen eine breite Streuung von FATF-Compliance, insbesondere im mittleren Bereich zwischen konsolidierter und sehr niedriger Staatlichkeit. Die erste Sammlung erklärender Faktoren aus der Literatur wird in der Dissertation zum ersten Mal in eine Typologie gefasst, die vier Gruppen bildet: (i) Konflikte mit bürgerlichen Freiheitsrechten die für die AML-Politiken hinderlich sind; (ii) Fragen nach Kosten, Effektivität und Zweck von Geldwäschebekämpfung die, je nach Antwort, förderlich oder hinderlich für Compliance sein können aber in jedem Fall die politische Auseinandersetzung um AML-Politikentwicklung strukturieren; (iii) Betrachtung von internationaler Governance die auf die Internationalisierung und Globalisierung von Märkten abheben, als Treiber von sowohl Geldwäsche wie auch Antigeldwäschepolitiken; (iv) Inländischer politischer Kontext als eine hoch individualisierte Sicht auf die Präferenzen von Politikern und Regierungen zur Annahme oder Ablehnung AML-Politiken, wie sie von der FATF vorgegeben werden.

Für sich allein ist diese Typologie nicht ausreichend als Erklärungsrahmen der generalisierbare Antworten oder zumindest ein analytisches Modell für Politikentwicklung zur Geldwäschebekämpfung über verschiedene Fälle anbieten soll. Erst ihr Filtern durch eine Kombination der Erkenntnisse aus Studien zu Politiktransfer und Regieren in Räumen begrenzter Staatlichkeit zwingt die Typologie in einen theoretischen Rahmen. Dies steigert gleichzeitig den Wert der verbleibenden Faktoren als Erklärung. Politiktransfer als akademisches Feld bietet dabei einen etablierten und verlässlichen Ansatz zum Verständnis des Einflusses internationaler Standards auf die nationale Politikentwicklung. Es läuft jedoch Gefahr eines Bias, der Mechanismen überbetont, die im Räumen konsolidierter Staatlichkeit wahrscheinlicher in Erscheinung treten. Außerdem bietet Politiktransfer wenig Handwerkszeug, das zur Analyse von Räumen begrenzter Staatlichkeit passt. Diese Lücke füllen theoretische Erwägungen und Techniken von Studien zum Regieren in Räumen begrenzter Staatlichkeit.

[43] Translation by the author.

Das Ergebnis ist ein speziell zugeschnittener analytischer Handwerkskoffer aus AML Governancekonfigurationen, die Akteure und Institutionen genauso in Betracht ziehen wie Governance als einen Prozess der von Machtgefügen geformt wird. In diesem Ansatz ist der Staat nur einer von einer Vielzahl von möglichen Akteuren, die den Politiktransfer von der internationalen auf die nationale Ebene beeinflussen. Diese Akteure können entweder auf hierarchische oder nicht-hierarchische Governancemodi zurückgreifen. Es wird angenommen, dass sie mehr oder weniger effektiv sind in der Herstellung von Compliance, abhängig von ihrer institutionellen Einbettung und den zur Verfügung stehenden Machtressourcen. Zusätzlich zum Staat treten insbesondere finanzielle und nicht-finanzielle Marktakteure als weitere Governanceakteure in Erscheinung, die gleichzeitig Governor und Empfänger von Governanceleistungen sind. Kriminelle Akteure könnten die Entwicklung von AML-Politiken ebenfalls beeinflussen, fallen aber nicht unter die in der Dissertation verwendete Governancedefinition, die auf öffentliche Güter abstellt. Die bereits in Typologien etablierten Governancekonfigurationen, auf deren Basis ihr Mehrwert für Erklärungen in der Arbeit getestet wird, sind:

(a) Delegation unter Bedingungen begrenzter Staatlichkeit
(b) Externer Einfluss
(c) Externe Bereitstellung von Staatlichkeit
(d) Wettbewerbssysteme

Alle vier Governancekonfigurationen zeigen bestimmte relevante Dynamiken des Politiktransfers auf, zwischen der FATF auf internationaler Ebene und inländischen Governanceakteuren. Während zwar alle vier in El Salvador und Mexiko beobachtbar sind, beeinflussen fallspezifische Machtbeziehungen und institutionellen Zwängen die Tiefe des Transfers in einem Vergleich der jeweiligen Governancekonfigurationen zwischen den Fällen. Eine wichtige Gemeinsamkeit zwischen El Salvador und Mexiko ist ihre Integration in transnationale Finanzmärkte seit den 1990ern. Der Finanzmarkt beider Länder zeichnet sich aus durch eine Dominanz internationaler Banken und anderer internationaler Finanzakteure. Diese zeigen sich als zentrale Akteure des Transfers präventionsorientierter Standards zur Geldwäschebekämpfung für Finanzmärkte in nationale Regulierungspolitik durch nicht-hierarchische Governencemodi wie Wissenstransfer und Lobbying. Diese Aktivitäten zielen ab auf die Absicherung der Integrität ihrer Geschäftsfelder und ihrer Reputation sowie auf die Vermeidung von Sanktionen durch meist externe Aufsichtsbehörden. Mit der Präsenz internationaler Banken entlang eines zunehmend transnationalen Finanzmarkts haben also auch externe staatliche Akteure zur Durchsetzung von Compliance beigetragen, teilweise sogar durch die Anwendung hierarchischer Governancemodi.

Ein weiteres Kernelement, das die Compliancemustern beider Fälle formt, ist die inländische Governancekonfiguration von Delegation unter Bedingungen begrenzter Staatlichkeit. Letztlich entscheiden Machtbeziehungen auf nationaler Ebene darüber, ob, wo und wie externe Impulse zur Ausgestaltung der

Politiken beitragen. Die Position der nationalen Zentralstellen für Geldwäscheverdachtsanzeigen (FIU) bei der Generalstaatsanwaltschaft (El Salvador) oder im Finanzministerium (Mexiko) war ein wichtiger Indikator für Politiktransfer in entweder der Strafverfolgung oder der Prävention. FIUs üben im Modell der FATF öffentliche Schlüsselfunktionen in der Geldwäschebekämpfung aus und sind auch mögliche Machtressourcen, durch die dortige Konzentration von anderweitig im öffentlichen Sektor kaum verfügbaren AML-Wissens. Die stark auf Wirtschaft und Prävention abzielende Governancekonfiguration Mexikos war entsprechend nur schwer auf Strafverfolgung auszurichten, als dies unter der Präsidentschaft Calderóns (2006-2012) versucht wurde. Sinnbildlich ist der gescheiterte Versuch, die FIU in die Zuständigkeit der mexikanischen Generalstaatsanwaltschaft zu verlegen. Während der öffentliche Politiktransfer in Form von Gesetzen und Regularien in El Salvador stärker auf Strafverfolgung ausgerichtet war, war seine Reichweite insbesondere auch durch die mangelhafte Ressourcenausstattung der FIU stark begrenzt. Im Ergebnis bleibt Strafverfolgung eine Schwachstelle der Antigeldwäschepolitik in beiden Ländern mit nur begrenztem Politiktransfer – wenn auch basierend auf sehr unterschiedlichen Gründen.

Die Dissertation verbindet diese und weitere Erkenntnisse der empirischen Fallstudien und ihrer theoretischen vergleichenden Reflektion zu einem neuen Modell. Das Ergebnis ist ein engmaschiges Netz von externer und inländischer Akteure, Institutionen und Machtressourcen. Um dieses adäquat in einem generalisierbaren Modell abzubilden, das AML Politiktransfer erklärt, wird die bestehende Typologie der Governancekonfigurationen in Räumen begrenzter Staatlichkeit erweitert um: *Transnationale Delegation.* Dieses Modell trägt der Beobachtung Rechnung, das AML-Governance grundsätzlich transnational ist durch die Einbeziehung von öffentlichen und privaten Akteuren, inländisch wie extern. Diese sind gleichzeitig verwoben durch die Nutzung transnationaler Finanzmärkte zur Geldwäsche durch die Organisierte Kriminalität wie auch die Bestrebungen unterschiedlicher Akteure zur Bereitstellung von Antigeldwäschepolitiken als Governanceleistung für diesen Markt. Antigeldwäschepolitik kann daher per Definition als Raum begrenzter Staatlichkeit verstanden werden, solange es einen transnationalen Staat gibt mit der Fähigkeit zur „Durchsetzung kollektiv verbindlicher Regeln“[44] (Börzel & Risse, 2010, p. 118) in transnationalen Finanzmärkten. Während die FATF zwar Geldwäschebekämpfung an Staaten und nicht-staatliche Akteure delegiert, verfügt sie dabei über keine hierarchischen Mittel zur Regeldurchsetzung zur Verfügung. Sie ist abhängig von Governance durch Dritte, um einen glaubwürdigen Schatten der Hierarchie zu werfen. Was stattdessen als funktionales Äquivalent von Staatlichkeit auftritt ist ein identifizierbarer Mix aus hierarchischen und nicht-hierarchischen Governancemodi, die zu einem vollständigeren Politiktransfer beitragen können. Am ehesten erscheint dies möglich durch die Verbindung von transnationaler Finanzmarktregulierung mit inländischen Strafverfolgungsanstrengungen, die ihren Fokus auf Organisierter Kriminalität legen.

[44] Translation by the author.

7.4 List of publications resulting from this research pre-publication

Behrens, T., 2013. Das internationale Anti-Geldwäscheregime in Mexico. Politische Wirkungen zwischen Kriminalitätsbekämpfung und Finanzmarktregulierung. In: G. Maihold & D. Brombacher, ed. *Gewalt, Organisierte Kriminalität und Staat in Lateinamerika.* Opladen: Barbara Budrich, pp. 169-196.

Behrens, T., 2015. Lift-off for Mexico? Crime and finance in money laundering governance structures. *Journal of Money Laundering Control*, 18(1), pp. 17-33.

Behrens, T. & Brombacher, D., 2015. Transnationale Organisierte Kriminalität. In: T. Jäger, ed. *Handbuch Sicherheitsgefahren.* Wiesbaden: Springer VS, pp. 135-145.