

## Chapter 2

# The Socio-Legal Framework

**Abstract** This chapter proposes an operational definition of socio-legal effectiveness that is then applied for the empirical research. It first discusses different approaches to the definition of legal effectiveness provided not only by socio-legal studies, but also by other disciplines, such as administrative sciences, economic theories of law, and political sciences. Secondly, it outlines the preferred definition, and presents the variables chosen to assess empirically the effectiveness, according to the chosen definition, and the different methods used. Thirdly, based on the theoretical framework illustrated, it formulates a hypothesis on the effectiveness of the money laundering offence.

**Keywords** Legal effectiveness • Symbolic function of law • Law (in)action • Legal implementation • Law-making process • Discourse analysis • Criminal statistics • Semi-structured interviews • Qualitative research • Empirical research

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Embarking on a study of the effectiveness of a law is a complex task, because the definition of legal effectiveness itself has been the subject of intense debate. Legal theorists, political scientists, political sociologists, administrative experts, and economists, have added their respective views to this debate. Legal effectiveness might depend too on the impact the law has on areas of human life outside the

immediate legal sphere. Despite this complexity, it is critically essential, especially in the light of prodigious legislative enactments nowadays, to verify the effectiveness of a statute first, before introducing a new one. Even more importantly is to assess the usefulness of criminal laws at a time when policy-makers appear to be fashioning laws randomly that are ineffective, purely symbolic or even supportive of criminality.

In the literature, the term ‘effectiveness’ is at times substituted by expressions such as ‘efficiency’, ‘validity’, or ‘efficacy’; this work adopts the term ‘effectiveness’, on the basis of *Friedman’s* milestone ‘The Legal System: A social science perspective’.<sup>1</sup> Commonly a rule can be defined as effective if it achieves the goals for which it was adopted. However, legal experts and the different categories of professionals involved in preventing and combating money laundering have different perspectives on how to define an effective legal act. In order to be able to acknowledge their diverse perceptions, this book conceives a definition of legal effectiveness that draws mostly upon socio-legal theories on legal effectiveness, but also upon some other disciplines, all of which provide the relevant elements for the interpreting the different perspectives.

One of the most common socio-legal definitions of effectiveness is the one that looks at compliance rates: A legal act shall be effective if the addressees comply with it, and ineffective when the addressees deviate from the prescribed conduct.<sup>2</sup> According to this approach, the effectiveness of a law is measured quantitatively. An example of this typology of definitions is the one provided by *Geiger* in his groundbreaking work *Vorstudien zu einer Soziologie des Rechts*. He expresses the concept through the mathematic formula ‘ $e = (s \rightarrow bg) + [(s \rightarrow c\check{g}) \rightarrow r]$ ’, which shows that the coefficient (e) of effectiveness corresponds to the sum of the compliant behaviours (g) and of the deviant behaviour (ġ) to which a sanction follows (r). Dividing the coefficient of effectiveness (e) by the number of cases in which the addressees are in typical situations (s), it equals the level of obligatory (v) of a legal act: ‘(v):  $v = e/s$ ’.<sup>3</sup> The formula has been criticised because of the reduced

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<sup>1</sup> The author defines effectiveness as the ‘power to make an intended result occur, or the capacity to produce effects’. *Friedman* 1975, p. 45. Also *Allott*, in his popular book ‘The limits of law’ speaks of ‘effectiveness of law’ to indicate whether a particular provision fulfils its purposes. See *Allott* 1980, pp. 28 ss; 1981, p. 233. Often it is referred to the same sociological concept of effectiveness by using the word ‘efficacy’. See for instance, ‘Black’s Law Dictionary’, *Garner* 2014, pp. 628–629; and *Villegas* 2003. The term effectiveness is translated in different ways. *Piovani*, for example uses the term ‘effectivity’ (*effettività*) to refer to legal orders and effectiveness (*efficacia*) to mention legal acts; see *Piovani* 1953, pp. 5–8. *Kelsen* instead uses the word *Effektivität* (effectiveness) to refer to legal orders and *Wirksamkeit* to talk about single legal acts. See *Kelsen* 1952, pp. 2, 24.

<sup>2</sup> Generally there is the tendency to define the law’s effectiveness by having in mind behavioral rules. These thoughts are not yet completely applicable to private law. For a detailed analysis of the differences existing between an effectiveness assessment of criminal law and of private law; see *Rottleuthner* 1983, pp. 85 ss.

<sup>3</sup> *Geiger* 1987, p. 182.

applicability and because of the incapability of taking into account other factors.<sup>4</sup> There are some critical issues that pose a challenge to *Geiger's* formula. As regards to the obligatory relation, *Geiger* does not define a 'typical situation', thus making it difficult to apply the formula in those cases in which it is not easy to calculate the number of typical situations.<sup>5</sup> Taking the crime of murder as an example, for which the obedience consists in the abstention from killing, it is impossible to calculate how many times individuals have been in a 'typical situation' and have not committed a murder as a consequence of the deterrent effect of the criminal provision.<sup>6</sup> Where an act sanctions numerous deviant behaviours, its degree level of effectiveness increases, according to *Geiger's* the formula. This might frustrate the deterrent potential and thus actually diminish its effectiveness.<sup>7</sup> At another level, *Geiger's* formula has been questioned for not providing information on other variables that can influence the addressees' behaviour. Also, an evaluation of the effectiveness of the law can be influenced by the reasons for the deviant behaviour, to the extent, for example, that voluntarily disobedient conduct aimed at expressing rejection of a certain law differs from deviant behaviour caused by a mistake. There are also rules that are respected also, not because they are perceived as being right, but because there is no other alternative, or because it is better to have them than to have no rules at all.<sup>8</sup> In such cases, a high compliance rate might not mean that the rules are very effective. Moreover, the mathematical formula is unable to take into account cases in which a high deviance rate does not nullify the effectiveness of the law, or cases in which, on the contrary, a high compliance frustrates the goal of the law. On the one hand, 'frequent violations of a legal act are not evidence of the fact that act has not had any influence.'<sup>9</sup> On the other hand, full compliance with law might not lead to the intended goal,<sup>10</sup> and could even frustrate its purpose. The addressees could fall short of meeting the social aims of the law where they do not obey the content of a legal provision. In such a case, obedience actually causes unforeseen collateral effects.<sup>11</sup> In other words, partial non-compliance might lead to

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<sup>4</sup> Geiger gives more indications on the other variables relevant to an assessment of legal effectiveness in its work; see Geiger 1987, pp. 182 ss; + 204 ss. Yet according to Rottleuthner its formula has not been very successful in the sociology of law. Rottleuthner 1983, p. 82. Blankenburg on the contrary believes that Geiger has specifically provided such a formula in order to show that most rules regulating daily life are violated without that such deviant behaviors are followed by a sanction and are thus ineffective. Blankenburg 1995, p. 3.

<sup>5</sup> Blankenburg 1995, p. 5.

<sup>6</sup> Rottleuthner 1983, p. 80.

<sup>7</sup> The same criticism could be raised against the philosophical definition of *effectuality*. An even more extreme criticism is brought forward by scholars who believe that laws are effective if they do not need to be enforced by legal authorities. Kelsen 1952, p. 20. See also Rehinder and Schelsky 1972, p. 558.

<sup>8</sup> Friedman 1975, p. 45.

<sup>9</sup> Aubert 1965, p. 316.

<sup>10</sup> Blankenburg 1985, p. 209.

<sup>11</sup> Noll 1972, p. 261.

fulfilling the functions of a legal act better than full compliance.<sup>12</sup> Furthermore, some rules do not achieve their social goals only through compliance. *Rottleuthner* gives the example of rules that impose speed limits that are aimed at reducing or eliminating car accidents.<sup>13</sup> If all drivers respected the limits and thus complied with the rule but caused many more car accidents, those rules would not be effective because they would be unable to demonstrate their social function. In addition, compliance and deviance are controversial concepts. *Friedman* defines them as ‘two poles of a *continuum*’.<sup>14</sup> Different people can interpret the same behaviour differently in different circumstances. In fact, the two concepts are attributes deriving from sequences of decisions-definitions that emerge in the course of the interaction.<sup>15</sup> ‘Deviance and compliance do not exist; they are merely social definitions of what is compliant and what is deviant’.<sup>16</sup> Particularly in respect of criminal law, there might be different definitions of deviance for the same fact, depending on whether the perspective is from the point of view of the victims, the police, or the public prosecutors. None of them is the correct one, for only a view that would take into account all of them could come closer to the real fact.<sup>17</sup> Most studies on deviance and compliance have been looking at the causes of deviant behaviour or at the processes through which, and the conditions under which, a criminal sanction is applied to particular deviance categories. The dominant problem relating to criminalisation is whether criminalisation is a neutral process or whether it serves the interests of the powerful. In this context, the labelling theory has turned the traditional question around from ‘Why do they deviate?’ to ‘Why do they label it as deviant?’<sup>18</sup> Besides being a socially relevant topic, the labelling of deviance has a marked political aspect, namely, the fact that policy-makers can have an interest in defining certain behaviour as deviant.<sup>19</sup> The labelling theory is used in

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<sup>12</sup> Blankenburg 1985, p. 214.

<sup>13</sup> Rottleuthner 1983, p. 90.

<sup>14</sup> Friedman 1975, p. 47.

<sup>15</sup> Ferrari 1992, p. 143.

<sup>16</sup> Gallino 2012, p. 217. A definition given is ‘the violation of a norm that would, if discovered, result in the punishment or condemnation of the violator’. Yet not all deviant behaviors result in the punishment or condemnation of the deviant. Ritzer and Ryan 2011, pp. 139–140.

<sup>17</sup> Blankenburg 1995, pp. 13 ss.

<sup>18</sup> The labelling perspective has been influenced by the thought of Tannenbaum who believed that the social definition of delinquency was attached to people, who would be more prone to take on a deviant role. In particular the author stated that ‘the process of making the criminal, [...], is a process of tagging, defining, identifying, segregating, describing, emphasizing, making conscious and self-conscious; [...]’. See Tannenbaum 1938, p. 20. Moderate reactives belonging to the functionalist school of thought, such as Becker and Erickson believed that the labelling process is crucial to understand deviance as a social phenomenon, by taking into consideration problems such as the selectivity issue, the role and consequences of stigmatization, the difference between known and secret deviants. See Becker 1963, pp. 3 ss; and Erickson 1962.

<sup>19</sup> Gallino gives the example of the strike, once perceived as a deviant act and nowadays as a fundamental right of workers. See Gallino 2012, p. 218.

this work to interpret the reasons behind the criminalisation or the non-criminalisation of certain behaviours.<sup>20</sup>

Given all these situations in which a calculation based on compliance and deviance rates does not correspond to the effectiveness of a law, it can be inferred that an evaluation of the effectiveness cannot be limited to a quantitative assessment. There is, furthermore, a methodological issue, namely, the following: The anti-money laundering laws are characterised by a high level of uncertainty with regard to whether they are obeyed or disobeyed, for the statistics are often inconsistent. Therefore, despite the quantitative approach provides relevant information on the criminal justice activity against money laundering, data on deviance and compliance shall be interpreted qualitatively, in order to take into account other variables.

Administrative sciences use the concept of efficiency as opposed to the one of effectiveness.<sup>21</sup> While effectiveness looks at the outcome of the application of the law, efficiency refers to the optimal relationship between the goals achieved and the means employed.<sup>22</sup> The concept of efficiency refers to the methods used to implement a law, particularly the executive mechanisms to enforce it. An executive mechanism is said to be efficient if it succeeds in fulfilling its purpose by employing rational means. A peculiar type of efficiency is the ‘efficiency regardless of the purpose’ (*zielunabhängige Effizienz*),<sup>23</sup> which refers to entire legal frameworks and not only to individual statutory provisions. According to this view, an apparatus is efficient if it functions optimally, notwithstanding the effects it achieves, because its purpose consists in its mere existence.<sup>24</sup> While not being exhaustive, any opinion on the efficiency of a law or of a legal structure provides information on the effectiveness too. Therefore, assessments on the efficiency of the anti-money laundering regime contribute to the wider socio-legal evaluation of effectiveness.<sup>25</sup>

From a political science point of view, the analysis on legal effectiveness belongs to the broader category of policy analysis.<sup>26</sup> Certain typologies of policy-analyses assume typically that legislative intent is capable of being made clear and known, that language itself is transparent, and that the policy-making process is rational and geared towards attaining stipulated goals. Yet, for the purpose of this research, other typologies of policy-analyses are taken in consideration.

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<sup>20</sup> The work does not seek to explain the motives of deviance.

<sup>21</sup> According to the Burton’s legal Thesaurus ‘efficiency’ is a synonym of ability, ableness, adeptness, capability, excellence, productiveness, but also efficacy, and effectiveness. See Burton 2007, p. 206.

<sup>22</sup> This definition of efficiency is taken in particular from Leisner. The scholar describes a specific type of efficiency, the ‘*Zweck-Mittel Effizienz*’, which consists of the optima relation between the goal (*Zweck*) and the means (*Mittel*). See Leisner 1971, pp. 7 ss.

<sup>23</sup> Leisner 1971, pp. 7 ss; see also Paliero 1992, p. 494.

<sup>24</sup> Hierro 2010, p. 180; and Villegas 1994.

<sup>25</sup> Bettini 1983, p. 107.

<sup>26</sup> In this work policy to indicate the whole system of legislations adopted to prevent and repress money laundering is referred to.

Particularly, those directed at revealing and interpreting tensions between legislators, implementers, and other public role players, let alone the fact that ambiguity in policy can also be purposeful. Given that the main source of policy meanings is in the language, the methodology used by policy analysts is the discourse analysis.<sup>27</sup> This work focuses on the effectiveness of a single legal provision, which is the money laundering offence, yet, given the fact that the provision is part of a broader policy, its effectiveness cannot be detached from the impact of the whole policy. The genesis of the money laundering offence is also analysed in the context of the international, European and national discourses on the introduction of the anti-money laundering policy.

Finally, it might be useful to bring to mind the definition of effectiveness in the context economic legal analysis. In this field, legal efficiency is often measured on a rational cost-effectiveness basis, which compares the expenses with the results in economic terms.<sup>28</sup> A rational analysis of crime control processes assumes that different actors, from the lawmakers to the enforcers of the law, have a rational attitude, for instance, implementers respect the legislature's directives. In addition, economic analysis disregards the personal motives of law enforcement agents. Yet, the economic approach can offer interesting ideas, especially with regard to criminal law. In particular, according to an economic perspective, the criminal justice system shapes the legal response to a crime on the basis of a cost-benefit analysis.<sup>29</sup> A study conducted by German scholars has highlighted that the compliance rate with a certain criminal law will be inversely proportional to the costs of preliminary investigations.<sup>30</sup> The economic approach assumes that the goal of law enforcement

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<sup>27</sup> Yanow 2014, p. 142. For a complete overview, see also Pal 1995, p. 185; and Swaffield 1998, p. 199.

<sup>28</sup> A cost-benefit analysis is 'a method of setting put the factors that need to be taken into account in making choices about major investments in public sector projects. The objective is to assign all costs and all benefits, social and economic, so that one can see clearly whether the benefits exceed the costs of a venture [...]'. See Scott 2014, p. 130.

<sup>29</sup> With regards to criminal law, Amelung describes the efficiency as the optimal relation between the means adopted and the goals achieved through a cost-benefit analysis. According to the scholar, such analysis should take into account as costs also non-economic costs, such as social or individual costs and the collateral effects, which are those non-intended consequences. See Amelung 1980, pp. 30–31.

<sup>30</sup> In addition, law enforcement will try to collect as much information as possible during preliminary investigations if this proves to be more convenient. Prosecutors will prefer to indict for crimes that require the lowest degree of evidence. Prosecutors decide whether to indict a person on the basis of the potentiality that the information gathered proves the fact with the aim of conviction. In this regard, information revealed by the suspect in the appeal can be essential. Furthermore, public prosecutors will never try to close a proceeding if they possess enough evidence to indict the offender, in the opposite situation they will always accept the proposed offer of closing the proceedings. According to the economic approach, the discretion granted in these situations does not frustrate the effectiveness of the law, because law enforcement has the liberty to choose whether to continue or to close a proceeding, and therefore could also always choose to continue it. See Jost 1998, pp. 268 ss.

is the maximisation of compliance rates, and that agencies act in a rational way. The economic calculation can also be applied in the initial phase in order to decide whether to punish behaviour under criminal or administrative law, depending on expedience. Despite the diversities between the sociological and the economic approaches, this book takes into consideration the outcomes of some cost-benefit analyses undertaken by other researchers on the anti-money laundering regime in order to contribute to the general socio-legal assessment of its effectiveness.<sup>31</sup> In a cost-benefit analysis of criminal law, costs are also understood as the social costs of punishment and exclusion. If these are higher than the benefits, the law infringes the principle of proportionality.<sup>32</sup>

## 2.1 An Elastic Concept of Legal Effectiveness

All things considered, for the purposes of this study, I have adopted an elastic concept of legal effectiveness, which draws upon the definition given by *Ferrari* in his essay '*Le funzioni del diritto*', the functions of law.<sup>33</sup> Such elastic approach is meant to serve the empirical research and to interpret the perceived concepts of effectiveness emerging from the interviews. It is in fact an operational concept. This has the advantage of providing a measurable outcome, rather than a static one. By taking into account elements that influence the formulation, the application and the reception of the law across a certain lapse of time and against the backdrop of the diverse perceptions of the effectiveness, the assessment is revisable and modifiable. The elasticity thus permits the limits of a contingent and relative assessment to be overcome.

According to *Ferrari*'s definition, a statutory law is effective when 'there is correspondence between the political plan (*disegno politico*) and the effects of such law'.<sup>34</sup> The political plan is a wider concept than the purposes of the rule-makers and includes those intentions that are not explicitly expressed by the rule-makers. With this as its operational definition, the book assesses the effectiveness of the German anti-money laundering legislation, using the following variables: The expressed and latent intentions of lawmakers and of other actors that influence the law-making process (the political plan), the reception of such legislation by legal actors and legal role-players and the implementation, including all the conse-

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<sup>31</sup> The economic approach is similar to the one proposed by the legal realism's method of reasoning. Legal realism determines the meaning of a legal act by weighting the costs, benefits, probable consequences, and underlying values and purposes of the law. In addition, it also considers whether the interpretative result will be fair and just. Black's Law Dictionary 2014, p. 1456.

<sup>32</sup> Baratta 1990, p. 94; Marinucci and Dolcini 2006, p. 8.

<sup>33</sup> Ferrari 1992, p. 148.

<sup>34</sup> Ibid.

quences attributable to the legislation (the effects). In addition, given that ‘the impact of the law cannot be studied in isolation from the impact of other factors’,<sup>35</sup> other external factors are taken into account. In particular, the analysis is indeed embedded in and strongly influenced by a particular historical-economic context.

### 2.1.1 *The Political Plan*

A political plan is always a compromise among different opinions rather than the expression of the unanimous will of the lawmakers. The legislature is a collective organ, comprised of different social groups that pursue their respective interests. Political parties are composed of various individuals that might have diverse expectations and might interpret signals and messages differently. The intentions of lawmakers may vary with time, so that the same provision can be interpreted differently in time, and if such differences are not translated into an amendment, the intent of the legislator cannot be predicted in relation to those provisions.<sup>36</sup> Laws are influenced not only by legislatures, but also by external factors, such as lobby groups, economic actors, and international institutions. The ‘elastic’ notion allows all actors that have an influence in the process of rule-making to be taken into account.<sup>37</sup>

This book focuses especially on the role of lawmakers as architects of the political plan and of its implementation, and as communicators of the legal message to its public. Yet, it is important to focus not only on formal decision-making processes, but also on non-decision-making processes that involve the mobilisation of the political agenda by powerful groups, taking decisions that prevent issues from becoming and emerging as the subject of formal decision-making.

The socio-legal concept of function is used to interpret critically the political plan. In order to assess the effectiveness of the money laundering offence not only on the basis of the official goals, a functional approach is adopted. By studying the functions attributed to the offence, and thus the interests brought forward by the different actors taking part in the law-making process, conflicting interests and diverging expectations emerge. A statute has direct and indirect functions. The first correspond to the prescribed behaviour and are thus fulfilled through compliance. The second are the purposes that lawmakers aim to achieve through compliance. The legislature might or might not declare the function of a law. The legislature might declare a fictitious intention to make the new law more acceptable for the

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<sup>35</sup> Aubert 1965, p. 88.

<sup>36</sup> It has to be noted that the legislator is not the only actor that can interpret the law, in fact in common law systems the judiciary has the same duty. Reflections made with regard to the legislator can be applied *mutatis mutandis* for the Supreme Court. See Ferrari 1992, p. 135.

<sup>37</sup> Ferrari 1992, p. 133.



public, while the real function is kept latent.<sup>38</sup> Non-declared intents may be kept secret due to stylistic or opportunistic reasons, for example, to avoid a loss of popularity.<sup>39</sup> While intended functions may be inapplicable in practice, the law could be re-directed to attain a different aim. Moreover, the legislature can consider enacting a law that lacks a clearly-defined function in order to allow for contradictory and alternative applications. Sometimes declared intentions can be misleading, as *Friedman* observes, ‘lawmakers may say one thing and mean another’.<sup>40</sup> In other words, where the intention is declared, this might not be the real will of the legislature. What lawmakers say is the manifest function, what lawmakers mean is the latent purpose of a law.

There is abundant literature that deals with the dichotomy between manifest and hidden functions of a law. It is especially sociologists with a functional approach who consider research of the latent intentions of the law to be essential, because it has allowed the revelation of patterns that go beyond the moral, naive judgements based on declared goals and obvious effects.<sup>41</sup> The concept of latent functions, as opposed to manifest functions, was introduced in the western sociology of law by *Merton*.<sup>42</sup> Yet, for purposes of this book, the term ‘latent functions’ is used with the meaning attributed by *Aubert*, who, includes in the category also those functions that are wanted but not expressed by rule-makers.<sup>43</sup> He states in particular that, if one wants to understand the reasons why a law that does not achieve the goals for which it was enacted continues to remain in force, it is necessary to look at that law’s latent functions. In his study of a social policy regulating housewives’ working conditions, *Aubert* observed that the policy was ineffective in pursuing the declared goals’.<sup>44</sup> The scholar came up with the hypothesis that parliament consciously formulated ‘empty legislation’.<sup>45</sup> He concluded that the legislation, while appearing ineffective, had the latent function of reconciling internal conflicts amongst parliamentarians by providing the satisfaction that the enactment gave to the political parties supporting the cause of the policy, and the certainty of its ineffectiveness to those opposing the legislative novelty.<sup>46</sup> The concept of latent

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<sup>38</sup> Ferrari 1992, p. 134.

<sup>39</sup> Villegas 1994.

<sup>40</sup> Friedman 1975, p. 55.

<sup>41</sup> Merton 1983, pp. 195, 197, 203.

<sup>42</sup> Merton takes as an example the indigenous propitiatory rituals, for instance, the rain dance or the fertility ritual, none of which results in rain or pregnancy, but have the latent goal of fostering the collectiveness of a community. See Merton 1983, pp. 173, + 191–193.

<sup>43</sup> Aubert 1965, p. 329.

<sup>44</sup> Aubert conducted an empirical study on the Norwegian housewives’ legislation. See Aubert 1965, pp. 321 ss.

<sup>45</sup> From the empirical research conducted on the effective implementation and on the legislative process, Aubert highlighted diverse factors that influence the legislation’s effectiveness, among others the historical context, the level of implementation, the level of knowledge and the opinions of the addresses about the provisions. See Aubert 1965, pp. 317 ss.

<sup>46</sup> Aubert 1965, p. 329.

functions is fundamental to this study. In order to analyse a law by using this concept, it suffices that, without those functions, it would be impossible to explain the law.<sup>47</sup> Researchers can observe latent functions by, on the one hand, reading the parliamentary debates and the *travaux préparatoires*, which ‘constitute the privileged place of a study about the relations between social science and law’,<sup>48</sup> on the other hand, by observing the real effects of the law in practice.

### 2.1.2 The Symbolic Function of Law

Laws whose latent functions prevail over the manifest ones are also defined as symbolic laws.<sup>49</sup> Only those laws whose symbolic dimension was intended by the legislature are actually considered symbolic laws.<sup>50</sup> There is abundant literature on the concept of ‘symbolic legislations’.<sup>51</sup> The German Constitutional Court has recognised the existence of a typology of laws that have symbolic effectiveness, as ‘permanent expressions of a socio-ethical, and thus legal evaluation of human actions’.<sup>52</sup> In 2006, the Federal High Court described the German Anti-corruption Law, ‘*Antikorruptionsgesetz*’ as symbolic legislation, ‘*symbolische Gesetzgebung*’.<sup>53</sup> Criminal law has a strong symbolic component that explains its general-preventive function.<sup>54</sup> This symbolic dimension does not yet exhaust the purpose of criminal law, which is usually directed at an instrumental function of solving social conflicts through the protection of determined interests.<sup>55</sup> Constitutions often contain principles that are purely symbolic, the vague formulation of which might be filled with a different content, according to social

<sup>47</sup> Merton 1983, p. 201.

<sup>48</sup> Treves 2002, p. 234.

<sup>49</sup> Hassemer, NStZ, 1989, p. 556.

<sup>50</sup> In this sense, see also Funcke-Auffermann 2007, p. 53.

<sup>51</sup> The adjective ‘symbolic’ is used with slightly different meanings. For instance, Hegenbarth defines it as a corroboration of the normative claim, in opposition with the guarantee for enforcement; Ryffel considers the symbolic impact of law as latent; and according to Amelung such legislations aim at prestige rather than effectiveness; Neves defines a symbolic legislation as a text [...] that have a manifest relation with the substantial normative reality, yet they primarily serve the realization of political purposes. See Hegenbarth, ZRP, 1981, p. 202; Ryffel 1974, pp. 255 ss; Amelung, ZStW, 1980, p. 54; and Neves, IfS-Nachrichten 16, 1999, p. 9.

<sup>52</sup> BVerfG, final sentence, 25 February 1975, Neue Juristische Wochenschrift 1975, p. 580.

<sup>53</sup> BGH, LG Wuppertal, 9 May 2006, 5 StR 453/05.

<sup>54</sup> See for example Günther, who believes that punishment in penal law should be symbolical. See Günther 2002, p. 219.

<sup>55</sup> According to Hassemer, on one hand associating criminal law, with all the consequences connected as execution, incarceration, and all the other duties imposed on the suspects, to a symbolic dimension is rather odd, because the impact of penal law on people’s life is all but not symbolic. Yet, the scholar argues that, on the other hand, it is obvious that penal laws have a symbolic ‘*Wirkung*’. See Hassemer, NStZ, 1989, pp. 553–554.

progress.<sup>56</sup> Principles such as human dignity, freedom and equality have been interpreted very differently over the course of history; they are thus rather symbolic in nature, yet they are accepted as expressions and confirmations of shared values. Hence, the symbolic effectiveness of the law can be a positive thing.<sup>57</sup> Indeed, the adjective ‘symbolic’ derives from the word ‘symbol’, which stems from the ancient Greek *sun-ballein*, which means ‘to meet’, and thus in this context can be referred to laws that connect the public with the legal system. Symbols used by the law can communicate cohesion in order to unify a society and legitimise institutions, or differentiation, to glorify or degrade a specific social group.<sup>58</sup>

Symbolic laws might be enacted for different reasons. Alibi laws are introduced to give the appearance that something has been done and that the polity is taking care of the regulated matter. These types of laws gain consensus through their mere existence: The effective content of the law is unimportant, for what counts in these situations is the appearance of justice.<sup>59</sup> In a cost-effectiveness analysis, such laws might represent a perfect solution for a legislature dealing with a complex phenomenon, subject to time pressure, and one that does not want to lose its popularity by attracting criticisms for increasing public expenditures.<sup>60</sup> A symbolic alibi-law will not require any implementation costs because it is ineffective. Moreover, it will be perceived by the public as an efficient solution, because those who do not have enough information to recognise the ineffectiveness of the laws will be satisfied by their mere adoption. In fact, these types of laws can serve propagandistic functions. Yet, if that satisfaction remains empty and the law does not have any instrumental effectiveness, individuals may eventually be deceived by the legislature. Compromise laws are directed at mediating conflicting opinions and interests within the parliament and are usually formulated vaguely in order to allow various interpretations that would then satisfy all parties. This typology is also known as ‘*gesetzgeberischer double talk*’ (legislative double talk)<sup>61</sup> or trade-off laws.

Yet, when not all that the law promises becomes true, and if in fact, only a minimal part of the promises is maintained, the law is an empty promise that deceives its addressees.<sup>62</sup> The problem with symbolic laws arise when such laws, while seeming to be pure declarations of values, deceive citizens, making them think that the law is regulating a specific issue, while the laws actually have the purpose (and the latent effect) of maintaining the status quo—thanks to their ineffectiveness.

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<sup>56</sup> Noll 1972, p. 262.

<sup>57</sup> See Bryde 1993, p. 16 ss.

<sup>58</sup> A symbol is most generally ‘any act or thing that represents something else’. Scott 2014, p. 746.

<sup>59</sup> Ferrari 1997, p. 268.

<sup>60</sup> Newig 2007, p. 308. See also Moccia 1995, pp. 27, 97, and Newig 2003, p. 112.

<sup>61</sup> The term ‘gesetzgeberischer double talk’ is used also by Lucke in the work ‘Das Geschlechterverhältnis im rechtspolitischen Diskurs. Gleichstellungsdiskussion und gesetzgeberischer “double talk”,’ 1991.

<sup>62</sup> The term ‘promise’ was used in a sociology of law conference held in Berlin in September 2015, ‘the promises of law’ (‘Die Versprechungen des Rechts’). See LSI Berlin 2015.

Such laws legislations have a symbolic, manifest function, but at the same time an instrumental latent function, which is to keep the situation as it was before the law was enacted. While the declared goal will not be achieved, the latent one will have a practical impact on society. Hence, while giving the appearance of a legal change, *mutatis mutandis*, the status quo will not be modified. It is especially provisions whose declared goal is to protect weaker social groups by changing certain power relations that disadvantage them, that can cause real harm if they are merely symbolic. In fact, not only will the weak social groups remain without legal protection, but also social claims based on the law will be symbolically neutralised by the rule.<sup>63</sup> At the same time, those who did not want to change the *status quo* remain unaffected. These provisions deceive citizens that their social claims for justice are satisfied, but actually, they do not provide the effective legal protection needed by society. These laws create situations of actual impunity, covered by the appearance of symbolic punishment. Therefore, these mechanisms create victims and at the same time, they make privileged people de facto immune from the criminal justice system. Scholars have interpreted this impunity as a planned impunity, as a desired effect of the practice of decriminalising certain social groups in order for the perpetrators of such crime to avoid being punished. Against this background, *Cottino* interprets *Aubert's* research outcomes even more critically. He believes that the housewives' law, which *Aubert* proved to be ineffective in improving housewives' working condition, but effective in solving a parliamentary conflict, actually perpetuated power relations between 'workers' and 'bosses'. This was ultimately a defeat for the workers, according to *Cottino*. In fact, the law confirmed and even legitimised the *status quo*. The instrument of the ineffective piece of legislation belongs to a social control strategy. *Aubert* theorises the practice of 'decriminalisation', which envisages different ways of avoiding punishment through a blockage of the criminalisation process, which starts with the adoption of a law and ends with the action of law enforcement agencies. The adoption of a planned, ineffective norm is one of the possible ways of blocking such a process. If class struggle nowadays is conducted through laws, which are intended to entrench the position and the interests of the dominant class, while impeding the fight of the lower classes for their rights,<sup>64</sup> it can be argued that the money laundering offence has been designed as non-effective in order not to harm the interests of money launderers. Laws against white-collar crimes have always been, after all, very harsh on paper, but in practice have not been widely applied.<sup>65</sup> In fact, 'statistics unequivocally show that crime, as popularly conceived an officially measured, has a high incidence in the lower class and a low

<sup>63</sup> See Noll, ZschwR, 1981, pp. 347 ss; and Hassemer, NStZ, 1989, p. 554.

<sup>64</sup> Gallino 2012, p. 21. This assumption is based on a Marxist approach to law that conceives law as a superstructure of a capitalist society. In this context legal concepts and doctrines reinforce the position of the ruling class.

<sup>65</sup> Sutherland 1940. See also Blankenburg 1985, p. (205) 210. Yet, this can be also explained by saying that individuals belonging to privileged classes obtain a better education, hence tend to commit more sophisticated crimes that are harder to be detected or to be proved at court. Blankenburg 1995, p. 22.

incidence in the upper class'. It returns again to the difference between the law in action and law in the books.

In addition, those laws would be disproportional because they are not appropriate for achieving their declared outcomes. Even an attempt at implementing them would require a useless effort that might cause collateral damages and costs. Their de facto inapplicability could lead to a public loss of confidence in the legal order. As *Beccaria* observed in the 18th century, 'useless provisions, disregarded by people communicate their humiliation also to the healthiest rules'.<sup>66</sup> The concept of the symbolic dimension of the law is therefore necessary to reveal patterns of power underlying the law. The relationship between the symbolic dimension of law and the effectiveness of law still is a controversial topic. In reality, it is not possible to clearly distinguish such categories; in fact, often those attributes can be measures by using different measures for the same provision.<sup>67</sup>

### 2.1.3 *The Integration of the Law in the Existing Criminal Justice System*

On the assumption that the integration of a provision in the legal system can influence the effectiveness of a law, this study looks at the scholarly debate surrounding the money laundering offence and at the opinions of practitioners and privileged observers. Those who should enforce it, in order to avoid conflicts with other rules, might disregard a new rule that hardly integrates in an established legal framework. Oppositely, a well-accepted reform is more probable to become part of legal professionals' practice. In order to investigate the relationship between the level of acceptance of the law and its effectiveness, it is necessary to understand to what extent the legal community of scholars, experts and practitioners have integrated the piece of legislation in their theoretical frameworks or in their daily practice. Legal actors might consider a policy effective and adequate with respect to certain aspects, or to have met certain goals, but simultaneously very ineffective in other respects.

Many factors can affect the perceived legitimization of a legal novelty, for instance, the way that news is communicated to the public.<sup>68</sup> Yet, given that the

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<sup>66</sup> *Beccaria* 1786, p. 129.

<sup>67</sup> Also Hagenbarth recognises that the law has a double nature, and that along with instrumental functions, provisions can also have a symbolic function. See Hagenbarth, ZRP, 1981, p. 201. According to Hassemer the question of the symbolic nature of a law cannot be answered with a yes or a no, but rather with a 'more or less'. Hassemer, NStZ, 1989, p. 555. See also Funcke-Auffermann 2007, p. 56.

<sup>68</sup> The Media delivers messages to the public and can amplify social needs and expectations of the justice system. It can create the necessary consensus among society, for instance, by reporting primarily and constantly about misbehaving immigrants in order to justify the enactment of specific criminal laws that target immigrants, for example. This happens by manipulating social perceptions about risk related to certain situations about which the public does is not sufficiently

analysed law is very complex, this study does not aim to assess the public's perception of legitimacy. Rather, it focuses on the opinions of legal scholars who have a profound understanding of the law. The acceptance of the law is also potentially influenced by political decisions. In fact, policy makers can influence the reception of laws, for example, by choosing a certain type of language. This makes it important to adopt a critical perspective. In the final analysis, issues concerning a vague or mistaken legal formulation might be ascribed to a political decision. In the case study analysed by *Aubert*, one of the variables that influenced the law's ineffectiveness was the lack of knowledge on the part of the addressees. *Aubert*, however, interpreted this issue as part of a political plan of enacting an ineffective piece of legislation by adopting complex legal vocabulary that was not appropriate for the addressees. In this sense, *Aubert* hypothesised that the legislature was not interested in letting housewives understand the content of the legal news. The use of complex language, while at first sight may seem like a guarantee of impartiality, precision and credibility, and thus legitimise the legislator's action, can be used to achieve latent functions. A 'bad formulation' may be a technical issue linked to the appropriateness of the legislation, but it can also be a part of a planned ineffectiveness. By recalling the symbolic dimension of law, the use of complex language can serve the symbolic function of legitimation while concealing other latent functions.

### 2.1.4 *The Effects of the Implementation*

By using the word 'effects' and not 'compliance' or 'deviance', the operational definition considers not only those consequences foreseen by lawmakers, but also those that were not planned, and the so-called 'collateral effects', as well as the costs of enforcement. Through the elastic definition, the conflicting dimension of law emerges in the implementation phase, when a piece of legislation can display *eu-functions* for certain addressees and *dys-functions* for others. The reference is here *Friedman's* notion of impact, which encompasses all consequences somehow linkable to the application of the law.<sup>69</sup> *Friedman* includes in the notion of impact also those collateral effects that *Boudon* would define as '*effet pervers*', namely, those consequences that are unexpected and contrary to the will of the legislator.<sup>70</sup>

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(Footnote 68 continued)

informed and thus not able evaluate automatically. However, this study does not critique the media although the topic concerning the media did crop up in the interviews. See Part V.

<sup>69</sup> According to *Friedman's* definition, a legal act is any act performed by a public institution. In this study, the term 'legal act' is equated with a legal provision in a statute. See *Friedman* 1975, p. 45.

<sup>70</sup> *Boudon* 1981, p. 24. The classical example are laws that criminalize abortion with the declared goal of safeguarding women's health, but which actually have had the opposite effect of increasing the risk to women's health by making them resort to illegal abortions.

The impact of a law can also be defined as all the consequences that would have not occurred had the law been not enacted. In fact, even though not all scholars agree on the fact that new laws create new customs, it cannot be denied that a new piece of legislation creates a different situation, despite the fact that it is often violated.<sup>71</sup> Legal effectiveness corresponds to the positive impact of a law, namely, to those consequences, which are in line with the intents of the rule-makers.<sup>72</sup>

‘Non-enforcement is common in the law, perhaps as common as enforcement’.<sup>73</sup> Failed enforcement can be ascribed to the legislative process or to the enforcement structure without returning to the legislator. The question whether it is the first or the second can be answered on a case-by-case basis. Implementers of the law can influence policy-makers with respect to which policies might be more feasible to apply in relation, for example, to their competences. Political decisions can impact on implementation to the extent that the implementing authorities are provided with the requisite resources and instruments such as incentives, supervisory capacity, and information. For example, in federal states local authorities are given the necessary power, structure and resources in order to implement state legislation.

Research on the effectiveness of criminal law has to take into account the so-called ‘dark number’, namely the number of cases that do not surface through the workings of the criminal justice system. Especially in the field of organised crime and money laundering, the dark area is considered to be rather large. Besides undetected acts, the number of which could be registered in statistics compiled by the police, the organisational strategy of detecting some crimes is biased. Modern criminology has shown that the use of discretion operates as a filter for the imposition of punishing criminal acts. Research on the offences reported shows that criminal investigators can play an important role in labelling criminality. Also, after arrest and once prosecutions are instituted, prosecutors may categorize certain forms of conduct, and can prioritise certain cases over others. It has been proven that the action of the investigative authorities, namely, the police, might influence the implementation of a law, to the extent that, for example, investigative efforts can be directed towards the prosecution of certain conducts rather than others.<sup>74</sup> In addition, it bears noting that the successful prosecution of crimes often does not eliminate the further commission of crime but might simply transfer its manifestation to a different sector. This phenomenon, known as ‘spill-over effect’ or ‘*Verlagerungseffekt*’ can frustrate the efforts to counteract crimes perpetrated with respect to a particular field of criminal law, or a region or state or group of states when one actor does not implement effective penalties, thus enabling crimes to be committed with impunity.

The imposition of sanctions is part of the enforcement of penal laws. The menace of punishment can foster the deterrent effect of criminal law.

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<sup>71</sup> Aubert 1965, p. 89.

<sup>72</sup> Friedman 1975, p. 48.

<sup>73</sup> Friedman 1975, p. 94.

<sup>74</sup> Blankenburg 1995, pp. 10, 20.

Yet, deterrence can only be verified through behavioural research of potential offenders. This study infers the deterrent potential of the provision from interviewees' opinions and from criminal statistics on sanctions applied to offenders. Sanctions cannot be deterrent if they are not applied. What prevents a potential offender from violating the law is the perceived risk of the real sanction applicable and not the vague threat of being punished. The certainty of punishment is, therefore, of great importance, apart from it being one of the fundamental principles of penal law. In order to influence people's perception of the risk of sanctions, the criminal justice system can accentuate its role through surveillance methods. As much as police cars parked along a street have a deterrent effect, to the extent that drivers will believe that their driving is being monitored, other surveillance systems have a similar effect.

Another premise is necessary when assessing the effectiveness of criminal law: Effectiveness means assessing the right balance between the repressive claim and the necessity of respecting fundamental legal principles, and thus limiting the scope and use of criminal law. If on the one hand there is public interest in the prosecution of crime, on the other hand the effectiveness of criminal law cannot be guaranteed at any cost. When prosecuting crimes, a state needs not to violate other fundamental principles. It is thus necessary, while assessing the effectiveness of a criminal policy, to look at the attributed functions and thus at the law-making process.

Besides being part of a strategic plan, law enforcement may be the result of a distorted perception about the seriousness of crime. The implementers of the law are able to interpret criminal law provisions within the limits of the discretionary powers they enjoy and in so doing, they are able to influence the effectiveness of the criminal law. In this context it is important to bear in mind that certain offences are perceived to be less serious than others. White collar crimes and other economic crimes are notoriously perceived to be less serious than, for example, bodily injury or offences linked to organised crime. Economic crimes such as money laundering are characterised by a high level of technicality that hinders the public from fully understanding their seriousness. Moreover, they are usually perceived as 'victimless' offences that do not directly harm specific individuals or goods.

## 2.2 Assessing the Variables

The study is comprised of a combination of different methods, namely, a discourse analysis, an analysis of a study of the doctrinal debate, a qualitative analysis of quantitative data, and an empirical research conducted by way of semi-structured interviews. The following lines describe the methodology adopted to assess the variables identified as relevant for evaluating the effectiveness of the money laundering offence. The discourse analysis's aim is to reveal manifest purposes of the law that are communicated to the public and to unveil the latent intentions that have underpinned the foundation of the anti-money laundering initiatives and their subsequent developments. The discourse analysis is conducted by way evaluating



primary documents such as official documents, recommendations and declarations of intents, UN-Resolutions and Conventions, official commentaries, statements and fact-sheets, European directives and decisions, explanatory and evaluation reports, action plans and official records of the German Parliament (*Drucksachen*). The historical and political context has also been inferred through secondary sources, such as books, articles, and the work done by NGOs. This is therefore a pure desktop study, based on primary sources such as legal and parliamentary documents, and secondary sources, namely, legal scholarship. Research conducted on institutional documents has advantages and disadvantages. Among the positive aspects are the fact that it is possible to analyse a phenomenon in a diachronic way and, thanks to the availability of the literature, such research can be conducted with minimal financial cost. The drawbacks of especially formal documents, according to one scholar, is that the information at one's disposal is incomplete and has an official character.<sup>75</sup> It is, on the other hand, true that official documents often provide a distorted image of the reality, in accordance with the will of the authority that produced them. This is the technical perspective discussed above in relation to the issue of the manifest and latent purposes of a given law. It is however possible, to integrate and contextualise notions contained in the documents with other related sources. From official parliamentary documents, for example, the manifest intents are inferred, while from the political discussions that preceded the approval of the final draft of the law, latent goals are deducted. The analysis of the law-making process is closely aligned to the theoretical assumptions spelt out above, and this will include looking at both the sociological, political and economic factors that play a role in obtaining a more balanced understanding of the issues at play here.

The qualitative interpretative analysis of quantitative secondary data makes use of criminal statistics published by the federal police, by the Ministry of Justice and Consumers Protection (BMJV), the Ministry of Finance (BMF) and by the Federal bureau for statistics. Moreover, data is inferred through reports compiled by transnational bodies such as the Financial Action Task Force (FATF). Secondary data is data that has been previously collected and tabulated by other sources. Due to the external origin, this type of data may not be 100% reliable, however, thanks to the qualitative approach, a critical perspective on the outcome of the statistics is maintained. The use of a qualitative technique to analyse quantitative data serves the goal of keeping a critical approach in evaluating criminal statistics on money laundering. Furthermore, the joint use of qualitative and quantitative generates a unique insight into the complexity of social phenomena, which would not be evident from an analysis of either type of data alone. Part IV looks into the deeper considerations relating to the collection of data. Given that the underlying hypothesis is that the offence of money laundering does not address the phenomenon of money laundering in its complexity, the official numbers are seen as being representative of the functioning of the criminal justice system and thus as only one of the factors constituting the variable of the implementation of the law.

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<sup>75</sup> Corbetta 2003, p. 159.

Between January 2014 and July 2015 30 semi-structured interviews were conducted with individuals who have a key-role in the decision-making process for the amendment of anti-money laundering law, and with legal role-players that apply the law in their daily practice. Interviews make it possible to gain an understanding of the perceptions, opinions and practices otherwise not come across in purely textual research findings. In addition, the opinions and perceptions of practitioners offer a useful insight into law enforcement practices and thus on the effects of the ‘law in action’, on the background of the previous assumptions about the importance of revealing the latent functions and effects of law.

In particular, the experts interviewed were, a policy advisor for the German Parliament for the socialist party (SPD); a former and a current deputy director general respectively, heads of the economic, computer, corruption related and environmental crime divisions of the Ministry of Justice and Consumers Protection, the head of Division VII A 3, Payment systems; German SEPA Council; prevention of money laundering, terrorism financing and other forms of financial crime of the Ministry of Finance, two civil servants from the Division I 18, public security and order of the State department of Hessen, and a policy officer of the NGO WEED (World Economy, Ecology and Development). The legal role-players consisted of 11 lawyers, three police officers, two representatives of the Chamber of Public Accountants and four public prosecutors, the former head of Department Three of the detective branch of the police of the state of Berlin which deals with organised crime, and two chief superintendents of the Berlin State Detective branch of the police, leading the financial investigations group—Berlin LKA 311GFG—(*Gemeinsame Finanzermittlungs Gruppe*).<sup>76</sup> The sampling was confined geographically to Berlin.<sup>77</sup> A pilot-interview was conducted with a member of the NGO Tax Justice Network Germany, and one of the authors of the report ‘*Schattenfinanzzentrum Deutschland. Deutschlands Rolle bei globaler Geldwäsche, Kapitalflucht und Steuervermeidung*’<sup>78</sup> (Shadow Financial Centre Germany: Germany’s role in global money laundering, capital flight and tax evasion @own translation) published in November 2013 by WEED (*Weltwirtschaft, Ökologie & Entwicklung*), GPF (Global Policy Forum), Tax Justice Network Deutschland, and Misereor. The pilot interview proved particularly useful since the report he co-authored was one of publications that helped to public awareness then, and because it was the first report published by the non-governmental sector on the topic of about money laundering in Germany.

The sample of respondents to be interviewed was based on a selection of a subset of the whole population. The sampling design chosen was the so-called ‘expert sampling’. Respondents were chosen in a non-random manner, based on

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<sup>76</sup> The interview sample consists of a majority of male respondents. Yet, given that gender is not considered a relevant variable for the purpose of this research, this element is not taken into account.

<sup>77</sup> Two interviews with interviewees outside of greater Berlin were conducted by telephone.

<sup>78</sup> Henn et al. 2013.

their expertise in the area of anti-money laundering law. The advantage of this approach is that experts tend to be more familiar with the subject matter than non-experts, which lends more credibility to their opinions. Yet, the findings are still not generalizable to the overall population at large. Interviews were semi-structured along the flowing lines: A track of questions was set, but the order in which topics were addressed and the way of formulating questions was left open. A protocol was set on the basis of the study conducted on legal scholarship, the law-making process and the quantitative data collection. Some questions were set for all interviews, while others were designed to correspond to the group of experts to be interviewed. This semi-structured interview afford the interviewer the liberty to introduce fresh questions arising from the responses to the questions put, thus ensuring that all topics are covered and the necessary information is gleaned. All interviews except one were conducted face-to-face, either where the respondent's place of employment or at the interviewer's university workplace. As all interviewees were mother tongue German speakers, the interviews were conducted in German. This made it easier for the interviewees to respond confidently and eloquently, whilst at the same time allowing for spontaneity. The aim of a qualitative interview is indeed to provide a frame within which the respondents can express their own way of thinking in their own words.<sup>79</sup> Subject to the approval of the interviewees, interviews were recorded in order to keep records. Where they requested this, the interviewees were give a list of the questions prior to the interview. During the initial conversations, the nature and purpose of the project, how the collected data would be used, people involved and desired interviewees were communicated to the respondent. However, during the interview, respondents were left free to express their own opinions, without being influenced by the perspective of the interviewer. Also, if required, complete anonymity was assured. Yet, notwithstanding what methodology manuals suggest,<sup>80</sup> respondents were not left completely free to talk. The role of the interviewer was, on the contrary, an active one. This tactic was adopted because of the specificity of the sample and of the object of the research. The risk an interviewer runs when dealing with government officials and with public servants, is that they might be prone to avoid 'hot issues' and would prefer to talk without interruption about a topic more desirable to them. Since the goal was, instead, to stimulate conversation and specifically on problematic issues and bothersome questions, respondents were often interrupted or urged not to divert from the discussion. Despite being time-consuming and at risk of bias, the choice of using personal interviews was informed by the several advantages: the opportunity to clarify any issues raised by the respondent, the possibility of asking probing or follow-up questions, the improvement of response rates through persuasion, the inferring of information read from the body language, pauses, tone of voice, and the dynamics between respondents.<sup>81</sup> Given that the aim

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<sup>79</sup> Corbetta 2003, p. 72.

<sup>80</sup> Corbetta 2003, p. 93.

<sup>81</sup> Bhattacharjee 2012, p. 78.

of the empirical research was to understand the opinions, perceptions, interpretations and the motives of the actions of the role-players who apply the law (legal actors), the interview was considered the best tool to assess the respondents' perspective on a particular issue, for purposes of obtaining a close understanding of their way of thinking. In addition, the information garnered from the interviews is supplemented with official declarations of intent and opinions issued by the respective organisations from which the interviewees came, as well as other official documents. Given that many topics that were touched were strongly political in nature, the author desisted from interposing her perspective. Therefore, Part V contains the actual words spoken by the interviewees in the direct conversations, all of which the author has translated into English.

## 2.3 Considerations

Against the background based on the socio-legal framework that sets the definition of legal effectiveness, and on the critical literature on the inadequacy of the international anti-money laundering system to eliminate the targeted activity, as set out in the introduction of this book, the hypothesis underlying the case study is the following: Article 261 of the GCC may be an example of a symbolic legal provision, whose latent purposes prevail over its declared purposes. In particular, it is hypothesised that the law satisfies all parties taking part in the law-making process, thanks to the actual ineffectiveness, which pleases those who were against the enactment of the provision. While the manifested purpose of tackling money laundering has in fact remained in the background, other latent goals might have been pursued. It is further hypothesised that the 'legal inaction' is part of a process of decriminalisation that intentionally grants impunity to a certain group of actors, in this case those laundering money, while giving the appearance that the practice is not accepted by law by labelling it as criminal.

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