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Do EU policymakers learn from differentiated implementation outcomes? The differentiated implementation of the EU's Anti-Money Laundering policy, its causes, and its impacts on new legislation

Mathieu Goubier

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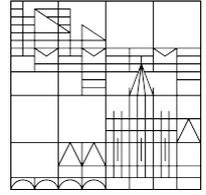
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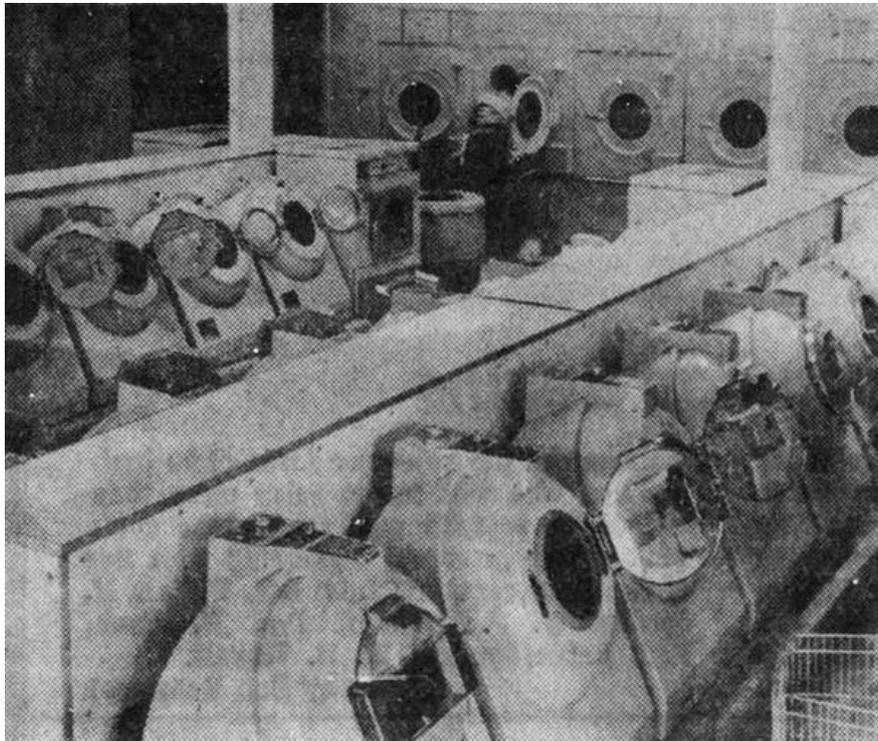
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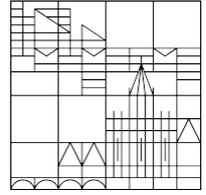


Year 2022-2023

*Ecole de Gouvernance européenne (Sciences Po Grenoble) / Master of Politics,
and Public Administration (Universität Konstanz)*

*Sous la direction de la Prof. Eva THOMANN (Universität Konstanz) et du Prof.
Fabien TERPAN (Sciences Po Grenoble)*

Photo on the front page: Al Capone's famous laundromats, where the practice of money laundering got its name (1927).



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KEYWORDS: AML/CFT, differentiated policy implementation, customisation, policy evaluation, fuzzy-set QCA

ABSTRACT

Member states strategically make use of the phase of transposition of directives as a means to preserve their national competences, such as anti-money laundering and countering the financing of terrorism (AML/CFT) policy, vis-à-vis the European Union (EU), by choosing whether to water-down or enhance EU requirements. Both the motivations and dynamics of these ‘customisation’ choices have received limited attention in research, especially in relation to AML/CFT policy. I try to develop a theoretical framework which explores how the combination of “necessary” and “mediating” conditions, at European, domestic, and actors’ levels, can lead member states to tailor EU AML/CFT policy to their preferences. Making use of fuzzy-set Qualitative Comparative Analysis, I investigate the customisation of five rules outlined in the 5th AML directive (AMLD5) across the six founding member states (BE, FR, DE, LUX, NL, IT) in the period 2018-2020 (sample size N = 30). My analysis reveals that the strict categories of “necessary” and “mediating” factors partly fail in explaining customisation outcomes. While the goodness of fit conditions have a blurry impact on implementation strategies, both the tax/financial transparency cultures and the political preferences of countries have important implications for customisation outcomes. When member states have restrictive tax planning traditions and are politically favourable towards a measure, they tend to act as proactive problem-solvers and hence do not water-down EU rules. Moving along the policy cycle I then turn to new EU AML package to assess whether EU policymakers “have learnt” from previous implementation outcomes in the proposal of new legislation. My conclusions are clear: the European Commission has well identified the cases of fragmented transposition, and largely addresses them in its new legislative proposals. This research strives to build a more complete understanding of both the nuanced dynamics of customisation and the practice of policy evaluation by the Commission. By investigating this, I try to contribute to a deeper understanding of how member states assert their preferences in reaction to EU regulatory pressure, and in turn, how the Commission takes these preferences into account for future policymaking.

INTRODUCTION

“The European experience shows that far-reaching economic integration can be achieved without suppressing cultural diversity and legitimate differences in national preferences.”

(Giandomenico Majone 1999: 309)

The EU Council Directive 2018/843 (Anti-Money Laundering Directive 5 – AMLD5) is the latest adopted policy which strives to prevent money laundering and terrorist financing (AML/CFT) in the European Union (EU). It has been estimated that as much as 1.28 percent of the EU annual gross GDP is “detected as being involved in suspect financial activity” (Europol 2017). Being the main policy instrument addressing money laundering and its predicate offences, this EU Directive is key and a case-in-point regarding the requirements that obliged entities and supervisory authorities have to subscribe to in order to prevent money laundering and terrorist-financing. Since the early 1990s, the EU has equipped itself with a series of directives in order to harmonise the fight against money laundering in the Union for a scourge which is in essence transnational. In that sense, AML/CFT policies are a prime example of EU integration as “an unprecedented effort at jointly governing problems which cannot be resolved within the borders of a single nation state” (Zhelyazkova and Schrama 2023). However, a plethora of recent scandals and leaks, inter alia the Panama and Pandora Papers, have shown that EU Member States are not exempt from criticism and weaknesses in their AML/TF architecture. Indeed, the Pandora papers have shown that several EU Member States have been, at best negligent, even complicit in concealing and allowing some dirty money flows in the Single Market. Most recently, in the wake of the Russian invasion of Ukraine, the patchy implementation of European targeted financial sanctions on Russian and Belarussian oligarchs has revealed blatant flaws in the EU’s AML structure. Harmonisation in AML/CFT policies is key. Hence, analysing Member States’ reactions to the latest-to-date batch of AML rules, AMLD5, is especially relevant and has policy implications in the sense that it can be predictive of forthcoming challenges in the implementation of AML/CFT policies.

This paper is an analysis of factors that can explain the differentiated policy implementation (DPI) of AMLD5 in several EU Member States during transposition. I analyse whether customisation can help in explaining different policy outcomes. Tackling this issue is key for different reasons.

First, from an academic point of view, many authors have addressed the question of compliance, but virtually no systematic study of how the fine-grained adaptation of member states to EU-level requirements has been conducted in this policy field. The AML/CFT field is particularly relevant because, as many policymakers and experts put it, “the EU’s anti-money laundering framework is only as strong as its weakest point”¹ meaning that since the Single Market allows for free financial flows in the Union, one careless member state is enough to undermine the effectiveness of the whole system.

Besides, the empirical implications of fighting money laundering are of drastic importance. Both because of the sheer amounts concerned; several hundred billion euros per year in the EU, and the amount of media and public scrutiny on the issue, properly fighting money laundering and terrorist financing is an issue of public trust in institutions.

In addition, from an EU Governance perspective, with the European Commission proposing increasingly ambitious and varied financial regulation pieces of legislation, with far-reaching implications on financial flows, data-protection and else, knowing the potential caveats in implementation among member states can help in better designing future pieces of legislation to ensure their harmonious application in the Union.

Lastly, for comparative policy analysis, knowing the potential explanations for vertical EU policy change is important, as already small differences in transposition can explain great differences in policy output.

The first part of my study will thus strive to answer the question: **how and why do EU Member States customise AML/CFT policies?**

Determining the conditions under which EU member states adapt and change national legislation, institutions, and public policies to comply with EU law is of utmost importance for understanding the EU’s problem-solving capacity (Börzel and Risse 2003; Thomann and Sager 2017). Analysing the implementation process promises important insights into the extent of legal compliance within the EU and the fundamental governance capacity of supranational politics (Treib 2003: 39). Indeed, EU policy is only as good as its implementation (Treib 2014).

The end product of this analysis will be both differentiated policy outputs and some of the reasons behind them. In a second part, going a step further, I will ask **whether EU**

¹ Personal statements from MEPs Eva Poptcheva and Luis Garicano, as well as officials from the European Commission

policymakers also take stock of these outputs and learn from them when proposing new legislation on the topic. I enjoy the fact that a new package of AML/CFT policies has been recently proposed to complement past EU policies in that domain (European Commission 2021). Drawing on the differentiated implementation lessons of AMLD5; that is what has been implemented in a patchy manner and why; we can systematically assess the policy choices that were made for the new AML package.

PART I: WHY DOES RESEARCHING ON DIFFERENTIATED IMPLEMENTATION OF MONEY LAUNDERING RULES MATTER?

Chapter 1: Differentiated implementation: A review of literature

1- A question of legitimacy

Simply put, the relative low level of democratic input in the EU's decision-making processes leads to the sine qua non condition that the EU must effectively fulfil its policy goals to acquire and retain its legitimacy. As early as 1999, Giandomenico Majone perceived the importance of the issue by defining the legitimacy problem of the regulatory state. The European integration and the liberalisation that came with it coincided with a rise of regulation as the distinctive policymaking mode of EU institutions. Indeed, both because the EU depends on member states to delegate competences and because the EU budget is too small to allow for great redistributive and economic policies, 'regulation is by far the most important type of policymaking in the EU' (Majone 1999: 2). Yet, the most striking characteristic of this regulatory mode of governance is the extensive delegation of powers to non-elected institutions; cases in point being the European Commission or EU agencies; that fulfil important policymaking functions but are not directly accountable to the people or its representatives. To put it in Fritz Scharpf's terms, the EU governance mode lacks 'input legitimacy', measured in terms of the EU's responsiveness to citizen concerns as a result of participation by the people (Scharpf 1970, 1997, 1999). The academic literature tells us that in order to compensate for this lack of democratic input by the people, the EU must cultivate some sort of 'output legitimacy' This dimension of legitimacy is more concerned with the quality of what comes out of EU governance processes. In that sense, legitimacy is judged primarily on the basis of policy outcomes (Caporaso and Tarrow 2008; Majone 1998; Menon and Weatherhill 2008; Moravcsik 2002). In a way, output legitimacy is the empirical interpretation of Abraham Lincoln's famous saying that democracy is governance *for the people*. Schmidt (2012) concludes that, for the EU, which lacks not only the majoritarian institutional inputs (at the exception of the European Parliament) but also its preconditions of a European demos and thick collective identity, output legitimacy is key. Importantly, several

empirical studies of the relative importance of different types of legitimacy have concluded that output assessments are the most important conductor for citizens' choices of a governance structure. Thus, the EU must and can gain legitimacy through the provision of good policy outputs (Strebel 2019).

2- Proper implementation as the key to legitimacy

The logical following question is: how does the EU ensure the provision of good policy outputs? Unlike a normal nation state, the EU relies on a singularly complicated multi-level decision-making framework. European integration entails that member states transfer part of their policy competences to a common institutional structure. In return, to account for national contexts, EU legislation, especially EU directives which member states must transpose in their national legal order, delegate some decision-making processes to the implementing countries (Treib 2014). The issue of implementation of EU directives is thus crucial for understanding the EU's problem-solving capacity.

The proper (or not) implementation of EU law has long been studied through the lens of 'compliance'.

The compliance literature asks whether member states do transpose EU directives effectively and in due time. Beyond the cacophony of approaches, methods, and findings, a limited but coherent picture of compliance in the EU can be drawn. First, in spite of the European Commission's figures which show a transposition deficit of around 1%, research shows that the gap is much bigger (Borghetto et al. 2006; Haverland et al. 2010; König and Luetgert, 2009; Mastenbroek and Kaeding 2006), hence reinforcing the importance of understanding the factors fuelling (non-)compliance. Second, regarding these factors, it seems that at a very general level, national administrative capacities enhance formal and practical implementation (Knill and Tosun 2010). On the other hand, EU measures can fuel oppositions from diverse actors and give rise to conflicts which often lead to delayed, poor, or incorrect implementation (Steunenberg 2007; Dorrenbächer and Mastenbroek 2019). More importantly, several studies show that the transposition deficit is only the tip of the iceberg. Indeed, looking beyond the phase of formal legal transposition into the administrative and practical application of EU legislation has proved essential to uncover the significant challenges remaining for implementation (Wiedermann 2008; Börzel and Buzogany 2010; Falkner et al. 2005)

3- Moving beyond compliance

The top-down focus on compliance has several caveats. First, EU directives can be, on paper, perfectly transposed in the national legislative order but practically poorly implemented (Versluis 2019). In that sense, case studies have proven that legal and practical compliance are not always linked (Falkner et al. 2005; Zhelyazkova et al. 2016, 2019). In addition, the compliance prism “insufficiently captures the implications of member states being part of a multi-level system” (Schmidt 2008: 299) notably because it “tends to prejudge the EU as the main source of domestic change” (Börzel and Risse 2012: 2). It thus neglects the bottom-up dynamic of the European integration experience.

Indeed, EU studies have long shown that instead of blunt non-compliance, member states also use ‘differentiation’ as a response to the deepening and widening of European integration (Schimmelfennig et al. 2015). As the European Union's membership and competences expanded over time, there emerged a pressing requirement to accommodate the diverse needs of its member states. This led to the recognition of the necessity for flexibility in governance structures. This flexibility was achieved through a concept known as ‘differentiation’, which allows member states to get involved within the EU at varying paces, through different formats, or even not at all, based on their individual national preferences and capabilities (Dyson and Sepos 2010).

The existing body of literature has pinpointed two primary forms of differentiation within the EU framework. The first is termed 'differentiated integration', wherein member states selectively participate in specific EU legal arrangements. This aspect has become a well-established characteristic of EU governance since the post-Maastricht period (Holzinger and Schimmelfennig 2012). Conversely, a more recent concept referred to as 'differentiated implementation' has been identified, which pertains to variations in the discretion exercised by member states under common EU legal frameworks (Zhelyazkova et al. 2023).

What distinguishes this literature on differentiation is its move away from conventional compliance studies. Instead of focusing solely on the examination of infringement procedures or the legal adoption of EU regulations (Börzel et al. 2012; Duina and Blithe 2011; Falkner et al. 2005), the research on differentiated implementation delves into the diverse practices of implementing EU policies across different member states (Zhelyazkova, 2014; Zhelyazkova et al. 2016). This shift allows for a more nuanced understanding of how EU policies are put into practice in various national contexts.

In essence, the expansion of EU membership and powers required a response that could accommodate the varying needs and preferences of member states. Differentiation emerged as a solution, enabling countries to engage with the EU in ways that align with their unique circumstances. This concept manifests as differentiated integration when member states selectively partake in EU legal arrangements, and as differentiated implementation when variations in discretion under shared EU legal frameworks are observed. This novel approach to studying implementation practices has broadened the scope of analysis beyond mere compliance, shedding light on the intricate ways in which EU policies are enacted across the diverse landscape of member states. Most of it incorporates one of the central postulates of the sociology of public action, which anticipates implementation as a set of achievements, practices, and reconfigurations of heterogeneous actors. Consequently, whether by investigating territories or sectors, these analyses seek to reconstruct the 'translation' of European policies.

This new strand of research, striving to account for numerous bottom-up aspects, moves beyond the question of legal compliance into the realm of the practical diverse adaptations of member states to EU law pressures. The concepts of *gold-plating* and *customisation* view the implementation of EU law rather as a process of decentralised problem-solving by the member states. In that way, Europeanisation becomes the employment of common solutions to shared problems, adapted to domestic circumstances (Püzl and Treib 2007). Gold-plating considers the cases where the implementing member states go beyond the minimum requirements set out in EU directives. It describes the non-literal, as opposed to literal transposition, interpretation of EU pieces of legislation (Steunenberg and Dimitrova 2007). However, by including in the concept both the (too) early implementation of EU directives and their non-literal implementation gold-plating retains an element of non-compliance. It does not depart from the top-down undertone of superfluous and problematic 'over-implementation' (Falkner et al. 2005). Drawing on gold-plating but trying to distinguish itself more from the compliance lens is the concept of customisation. Customisation measures how member states interpret, adapt and change EU rules in both their restrictiveness and density dimensions during the process of transposition (Thomann 2015; Zhelyazkova and Thomann 2022). It captures the extent to which domestic pieces of legislation complement EU rules with more/fewer or stricter/looser rules than required. It differs from legal compliance because it reflects the way in which member states respond to EU regulatory pressures by changing rules when transposing them into domestic law – thus, customisation can happen even if there is no compliance (Thomann 2017,

2019; Thomann and Zhelyazkova 2017). These changes are, by essence, highly political as they allow for room for manoeuvre for countries to sway and shape European policies in line both with their preferences and capacities (Richardson 2012). Indeed, studies have shown that rather than answering European regulatory pressures with bleak non-compliance, member states dynamically manage and water-down that pressure by customizing EU provisions to better fit domestic institutional circumstances and policy preferences. Thanks to its theoretical flexibility, customization allows for the study of practical implementation as the process in which rules are enforced and applied by the relevant domestic institutions and target groups – it goes further than intentions “on paper” to relevant activities “in action”.

How does differentiated implementation affect the effectiveness of EU rules in practice?

As Treib (2014) puts it “EU policy is only as good as its implementation”. Just as differentiated integration enables countries to opt-in or opt-out of EU policies, it is essential to study differentiations in national responses to EU rules because ultimately any EU policy needs to be implemented by the relevant national institutions (Jordan 1997). On the one hand, the EU’s ‘Better Regulation’ programme seems to assert that customisation is all about “superfluous over-regulation” and red taping. Because it creates ambiguity and administrative burdens for target groups, member states should transpose in a way that is just necessary to comply with the EU’s minimum requirements (Voermans 2009). On the other hand, Jans et al. (2009) take the view that some EU policies are actually intended to be ‘minimum rules’ for which the Commission is happy that member states improve and complement them. For instance, for environmental protection policies, “the whole system [...] is based on the assumption that member states would make use of article 176 EC Treaty [which provides for the possibility for member states to take stricter measures]” (Jans et al. 2009: 434-435). Empirically, customisation has been shown to be actively used by member states in several policy fields. Analysing how 27 EU member states implement separate provisions from 31 EU directives from the justice and home affairs and environment policy sectors, Thomann and Zhelyazkova (2017) find that countries routinely change and adapt EU policies, making them both more or less restrictive, depending on policy-specific factors and the panorama of domestic politics. Further contributing to the fine-grained analysis of these differentiated implementation patterns, Zgaga et al. (2023) show that the interplay of uploading and downloading factors leads member states to customize EU fiscal policies. When uploading outcomes do not reflect their preferences, countries exercise ‘opposition through the backdoor’ by rendering EU law less

restrictive. Most often, member states use customisation during transposition as an opportunity to creatively solve regulatory problems.

Interestingly, the same types of factors which affect compliance seem to impact customisation dynamics. In their analysis, Thomann and Zhelyazkova (2017) consider both factors in the areas of administrative capacity and coordination and national political preferences. Trying to test whether the misfit hypothesis helps in explaining differentiated implementation outcomes, Brendler and Thomann (2023) show that misfit is not a necessary condition for customisation but rather acts in conjunction with the perceived salience of the EU rule. Interestingly, Zgaga et al. (2023) show that when it comes to a core state power, fiscal policy, countries abstain in all cases from rendering EU rules more restrictive in the absence of a credible deterrent. When their political preference is in line with the EU legislation goals, they however do not hesitate to take more stringent transposition measures than required.

4- First insights on AML/CFT differentiated implementation

With regards to AML/CFT, several clues point out to a possible differentiated implementation among member states of this policy. As many as five AML directives have been taken since 1991 and a sixth version is in preparation, with contrasted results. In a study of the evolution of EU's AML/CFT policy, van den Broek talks about a process of 'asymmetrical harmonisation' (van de Broek 2014). In fact, the EU has gone from strictly rule-based to a more-flexible risk-based approach to AML. The aim of the latter is to calibrate policies on the level of risk. It implies that obligated entities, all the categories of professionals that must apply AML/CFT rules, have some discretion as to what suspicious transactions or people to report to competent authorities (Dalla Pellegrina and Masciandaro 2009). This approach has its merits, it notably allows for more flexibility and fewer administrative burdens for businesses, but also implies some greater room for manoeuvre for member states. Indeed, going into the details of the Italian case, Costa (2008) shows that the very definitions and concepts of money laundering and the basic principles diverge between EU member states. Analysing the prospect of the fourth AML directive, taken in the wake of the Panama Papers leaks, solving these coordination issues, Koster (2020) highlights that implementation of EU directives rules very much remains problematic. The European Commission itself has acknowledged (European Commission 2021b) the poor and uncoordinated implementation of AML provisions in several reports. All in all, this paints a rather patchy picture of the state of AML/CFT policies' implementation. Reflecting on this observation that EU AML/CFT directives "do only half the job", van de

Broek openly asks whether it would not be “more desirable if the EU directives were to pay more attention to the enforcement instruments?”. Regarding the reasons for such discordant transposition, Gilmour (2020) mentions the member states’ overriding need to maintain national secrecy laws, their adherence to legal professional privileges, or their concerns over data privacy. AML/CFT policies are thus clearly a likely case for customisation.

Chapter 2: What is money laundering and how is the fight against it organised?

1- Money laundering explained.

According to Interpol, money laundering is the act of concealing or disguising the identity of illegally obtained revenue so that it appears to come from legitimate sources (Interpol, 2023).

Even if it is impossible to date its origins, it is undoubtedly a practice as old as crime for profit itself, since it is hard to imagine thieves sitting back and contemplating their loot without trying to disguise its criminal origin so that they can later enjoy it as their rightful owner. On the other hand, the legal concept of money laundering is relatively new since it has been a specific offence for less than thirty years. The very name money laundering goes back to the past practice of the Italian American mafia of washing brand new banknotes to give them a worn appearance. At the time, this involved placing counterfeit notes on the market (a federal offence in the United States of America) and, very marginally, the reintroduction (or insertion) into the economy of sums received as a result of illegal activity. But there is a major difference between 'washing' counterfeit notes and 'laundering' dirty money. This important distinction summarizes in itself the complexity of the concept of money laundering and the repression of this offence. In fact, something which came up regularly in the discussions around the EU’s AML framework efficiency, is that it is one thing to investigate a case of 'putting into circulation' washed counterfeit money - which, despite the genius of the counterfeiters, always has the small flaw that indicates its criminal origin - and quite another to trace 'real' money that has been tainted by illegality in a purely virtual” way, because at some point it has passed through criminal hands or been used to honour an illegal transaction. For the sake of simplicity, let us run the metaphor of the banknote. In the case described above, in fact, the banknote being laundered is perfectly legal. It was issued by a central bank and was undoubtedly used for many everyday transactions before being used for illegal transactions, and the launderer, by inserting it into the formal economy, is simply reintroducing it into the world in which it was manufactured and in

which it is intended to circulate. Because of its fungible nature, it is extremely difficult to track a banknote. Without changing its appearance, it can move indefinitely from the formal economy to the informal or criminal economy. The same is true of all the different types of money and goods (private bank virtual money, crypto-assets, real estate properties, luxury goods, Non-Fungible Tokens...) that can be the means of money laundering.

So how can we separate the wheat from the chaff?

As several Members of European Parliament (MEPs) and expert officials of the European Commission have put it: it is a real challenge². All the more so as the process of money laundering, which returns dirty money to the legal economy, is not in itself a criminal process (depositing money in an account, making an electronic transfer, etc.). By criminalising money laundering, we do not seek to apprehend an act on its own merits, but on the basis of the circumstances that explain it and prompted it: its objective (to disguise the origin of funds), the origin of the funds involved in the transaction (funds of criminal origin) or the identity of their real owner (the criminal). These are all factors that are always very difficult to prove. In comparison to the usual field of criminal law, the definition of money laundering does not encompass three key elements³: money laundering does not, at least in appearance, victimise anyone; it is carried out by socially powerful actors; finally, these actors employ techniques identical to those used to reintegrate speculative money and tax fraud. We might add that the very notion of money laundering is intimately linked to the mixing of legal and illegal money with a view, through a financial operation, to global reintegration. The existence of a very thin line between the legal and the illegal domains in the accumulation of wealth encourages this state of affairs.

Russia in the 1990s is a good example: the explosion in organised crime went hand in hand with the process of privatisation and the development of private enterprise. Criminal organisations were not content to remain in the traditional mafia niches - drug trafficking, armed robbery, or extortion. They acted like real businesses, taking advantage of market opportunities, privatisations waves, and mergers to get even richer. The only difference was that, alongside the usual management tools, they used corruption, extortion, and even murder to achieve their

² Informal discussions with MEPs Tang and Peter-Hansen and EC staff during trilogue negotiations of the new AML package.

³ Exchange with European parliament legal staff.

ends. In fact, the Russian language has coined a term for this particular type of business that dates back to the Gulag era: *vori v'zakone*, "thieves within the law"⁴.

In fact, most money laundering operations involve at some point mixing the laundered sums with resources from a perfectly legal activity. It is what makes them so difficult to pinpoint.

In addition, not all countries have become aware at the same time of the reality of money laundering - which was not easy because the formal and informal economic sectors are so intertwined - of the criminal economy in the world's financial circuits and became certain that this posed a real threat to their stability. There are still many different approaches to the offence of money laundering, and these are mainly the result of initiatives by the most developed countries (G7). On the one hand, western countries, including the EU since 1991, have seen money laundering as a rather invasive and evolving phenomenon requiring a strong and urgent response from the international community. In the wake of the terror attacks of 9/11, the focus on the strong connections between money laundering and the financing of terrorism has resulted in increased pressure to adopt more stringent regulations around the globe (Roberge 2008). However, in spite of the best efforts of the Financial Action Task Force (FATF), an expert group providing guidelines and best standards set up in 1989; the vast majority of countries in the South or emerging economies still see the whole range of anti-money laundering measures as, at best a fad of the rich countries, and, at worst, as an additional constraint of globalisation. All the more so since the legal and administrative exceptions that the developed countries have put in place to loosen their own financial constraints (offshore centres, for example, are the preferred places for money laundering) appear to the rest of the world to be a deception.

Finally, as briefly mentioned above, the history of the fight against money laundering is also the recent history of new threats to which governments are trying to respond according to their own priorities. This is not neutral. Because these threats (sometimes real, sometimes imaginary, or traumatic) are ultimately identified by a precise and necessarily subjective policy. When it comes to dirty money, drugs, organised crime, corruption, and terrorism are the key variables that, since the 1980s, have motivated and shaped the legal framework for anti-money laundering measures. For other offences, such as tax fraud, stock market malpractice or taking an interest, for example, the offence of money laundering only arose occasionally, more recently coinciding

⁴ My translation.

with the series of data leaks which have shown the complicity of certain states towards money launderers (LuxLeaks, Panama Papers, Pandora Papers, Suisse Secrets, to mention just a few). This shows that, even within the framework of an active anti-money laundering policy, the field of money laundering is always a moving target.

2- The EU approach to AML/CFT

This variety of perceptions, giving rise to evolving criminal and administrative legislative responses, has obviously made it difficult to assess the phenomenon as a whole. What emerges is a nebula of different practices, standards, and frameworks between states and financial institutions which compete to impose their own practices. On that background, since the early 1990s, the EU has tried to establish a common framework between its member states with the idea that money laundering being in essence a transnational plague, EU countries would be stronger together. The development of this AML/CFT policy has been based around a set of key principles.

Since AMLD3 (2005), the architecture of the EU's AML/CFT framework is a risk-based one. It implies that policies and measures are calibrated on the risks that each transaction/account/person raises. Practically, how is money laundering prevented? It all relies on obliged entities, i.e., all the categories of professionals which must apply the vigilance measures. In practice, an obliged entity, for example, a real estate company or a bank, will check the origin and the owner every time it starts a business relationship with a client or carries out a transaction. This process is called Customer Due Diligence (CDD). Under the risk-based approach, the level and extent of CDD may differ from client to client as it is determined on a risk-sensitive basis. As long as the obliged entities are able to demonstrate to the competent authorities that the measures which they implement are proportionate to the level of risk they have assessed, they comply with AML/CFT requirements. Crucially, in order for the due diligence to be effective, you need to have as many obliged entities from as many different economy fields to implement it. One of the key developments of the EU's AML/CFT policies over the years has thus been the expansion of the scope of obliged entities. More rigidity in the definition of the due diligence measures that they shall apply has also been introduced. Moreover, the Panama, Paradise, Pandora Papers have brought to the fore two significant issues. First, they have blatantly exposed the widespread involvement of the rich and powerful, and the political elite, in questionable tax evasion/money laundering schemes in particular in offshore centres. Second, they have also highlighted the role of complex and anonymous

property links, via shell companies and other means, which prevent the identification of the natural person behind the illicit proceeds. To tackle the first part, the EU's AML/CFT policies have concentrated more on specific requirements that obliged entities must follow when it comes to political-exposed persons and the rich. Regarding the second problem, the gold-standard is the prompt and accurate identification of the beneficial owner, the real natural person who ultimately controls the company's assets and activities. To help doing this, the EU has mandated member states to build 'Beneficial ownership registers' that inventory all the owners of companies established in the member state. For these registers to be as efficient as possible, recent EU law has focused on securing their interconnection and expanding the access to them to all competent authorities, obliged entities in their CDD process, and, with AMLD5, all members of the public thus crucially facilitating the work of whistleblowers.

PART II: HOW AND WHY DO MEMBER STATES CUSTOMISE EUROPEAN ANTI-MONEY LAUNDERING RULES?

Chapter 1: Factors explaining the customisation of AML/CFT policies

Adaptation pressures from the EU in themselves are not sufficient to spur domestic changes. Following classical explanations for domestic change, we argue that two types of conditions are needed in order to explain the empirically observed differentiated implementation: necessary conditions, referred to as the goodness of fit; and mediating conditions, the latter affecting the transposition without being necessary for differentiation (see table 2) (Börzel and Risse 2002). In this study, I proceed by reducing the degree of abstraction in the analysis of the role of our conditions. In practice, I start from the high-abstraction goodness of fit factors to the empirical assessment of domestic actors' preferences and strategies. In parallel, I go from EU-level factors and scope of analysis to actors' level.

1- The necessary condition: goodness of fit?

In order to result in domestic change, Europeanisation i.e., European regulatory pressures, must be *inconvenient* enough to challenge the status quo in the member states. That is, there must be some degree of 'misfit' (Börzel 1999; Duina and Blithe 1999) or 'mismatch' (Héritier, Knill and Mingers 1996) between European-level and Member-State-level policies and processes. In the literature, this is referred to as the 'goodness of fit' (Risse, Cowles and Caporaso 2001) which affects the extent of the pressure for adaptation from European integration on member states. When European law, norms, and policy frameworks are largely compatible with those at the domestic level, they do not create complications regarding effective and homogenous implementation, or compliance for that matter. For the purpose of this paper, I identify two kinds of misfit divided in three conditions.

First, European integration can result in general "institutional misfit" challenging domestic institutional and legal frameworks. A case in point: the European Commission has established itself on the principle of near constant accessibility to societal and business lobbies, while Germany has developed a corporatist system of interest mediation and arbitration and France

exhibits what can be described as a statist government-business relations model. All our member states of interest have different institutional designs and cultures that result in a better or worse fit to EU policies. Second, EU policies can challenge national policy objectives, regulatory standards and the policy instruments generally used to fulfil these objectives (Héritier, Knill and Mingers 1996). As we will see in the context of AML/CFT policy, in order to avoid administrative and regulatory costs at the domestic level because of policy misfit, member states try to “upload” their policy preferences at the EU level, especially by negotiating and potentially convincing other partners and forming coalitions in the Council arena, prior to formal EU decision-making (see for instance, Bocquillon and Evrard on renewable energies policy + find other general refs). Drawing on this, we test the influence of three independent variables linked to these two dimensions of ‘goodness of fit’. Using van Waarden’s (1995) concept of ‘national regulatory styles’, I compare the institutional fit of Belgium, France, Germany, Italy, Luxemburg, and the Netherlands with the EU institutions in general. Making use of in-depth case studies of our six member states, I devise a more precise and AML/CFT related measure of fit by assessing the existence of prior domestic legislation and measures that were in line with the spirit of AMLD5. Obvious links have also been shown to exist between tax and AML/CFT policies, notably because tax policy implies the regulation of the very actors and schemes which also allow for money laundering, in particular tax intermediates⁵. For this reason, I also analyse the role of national tax policy traditions, as measured by Tax Observatory’s Tax Haven Index and the existence (or not) of Residence/Citizenship by Investment (RBI/CBI) measures in their national legal order, in explaining differentiated implementation of AML/CFT policies.

2- The role of actors

There must also be some mediating factors contributing to such domestic variations on top of the required ‘goodness of fit’. From a theoretical perspective, there are many ways to conceptualize the various adaptation pressures in response to European integration. From a rationalist institutionalist view following the ‘logic of consequentialism’ (March et al. 1998), the institutional misfit between member states and European levels provides new constraints

⁵ It is for this very reason that the European Commission has launched a new consultation in the wake of its AML proposals with a view to « tackle the role of intermediaries ». SAFE has been described as both a future safeguard against fiscal evasion and money laundering. Interestingly enough, a whole section of the AML directive focuses on internal rules and procedures for the personnel of obliged entities to try to impose high moral/probity standards for tax intermediates, something the profession has consistently failed to implement on its own.

and/or possibilities to political and societal actors in the pursuit of their personal interests. Veto players are usually the key factor mentioned in that regard (Tsebelis 1995, 2011). Indeed, “veto players tend to shape the timing and quality of implementation regardless of the differential gaps in the goodness of fit between European requirements and national traditions” (Haverland 2000). We will thus test that proposal by examining the effect of the number and salience of formal veto players on the customization.

Zooming even deeper into domestic and actor-centred explanations for customization, we analyse next the empirical interest constellations and preferences of key actors. In line with Treib (2003), we argue that the preferences of political parties in the government may have a decisive impact on transposition outcomes. To test that hypothesis, we systematically analyse the position of the government at the time of AMLD5’s transposition with regards to all the key rules we identified in the directive.

Importantly, several of our conditions (AML/CFT policy fit; number of veto players, and the political preference of the government) are rule dependent. It allows us to obtain a more accurate idea of the mechanisms behind the customization of each AMLD5 measure retained in our analysis.

Naturally, we keep in mind that these two pathways are not mutually exclusive and can often work hand in hand in a process of adaptation changes at the domestic level.

Table 1: Summary of theoretical argument

Type of condition	Independent variable	Level of analysis
Necessary condition 'Goodness of fit'	1- Institutional fit	EU and domestic general levels
	2- AML/CFT Policy fit	(EU and) domestic policy level
	3- Tax policy traditions	
Mediating conditions	4- Veto players	Domestic policy level
	5- Government political preferences	Actor level

3- Directional expectations

We have different expectations as to the direction each conditions will have on differentiated implementation outcomes.

*Hypothesis 1: The better the institutional fit between the EU's and the member state's regulatory styles, the more the member state will tend **not to remove** restrictiveness from EU rules, i.e., the state will either add restrictiveness or do a literal transposition.*

The origin of the goodness of fit argument can be found in the research by H eritier (1995). She argues that member states try to upload their policy preferences to the European community level, with the objective of translating them into binding EU pieces of legislation. By doing that, countries try to minimise the costs of adaptation (H eritier 1995: 278). On the other hand, if a member states is not successful in uploading its preferences at the EU level, it will not easily adapt to the resulting policy outcome. Thus, the assumption that for successful implementation, there needs to be at least a moderate level of institutional fit between the EU policy and the status quo in the member state (Knill and Lehmkuhl 2002; Knill and Lenschow 1998; Cowles, Caporaso, and Risse 2001). Previous research on the role of misfit in differentiated policy implementation has come to blurry conclusions, but several studies seem to indicate that institutional misfit poses a serious issue leading to both non-compliance and non-adaptation (Duina, and Blithe 1999; Knill and Lenschow 1998; Van Waarden 1995). In their version of institutional misfit, Knill and Lehmkuhl (2002) highlight the potential mismatch between EU regulatory frameworks and national regulatory styles as a crucial implementation hurdle. National regulatory styles stem from conceptions of state-society relations, statehood, and legal systems, all rooted in the first developments of the nation states. They are shown in special policy preferences, policy styles and problem-solving approaches (van Waarden 1995). In the same way that Brendler and Thomann (2023) suggest that when high institutional fit meets high salience, member states may issue substantively more ambitious policies than what the EU requires, we argue that institutional fit may drive better implementation outcomes. If a member state exhibits similar problem-solving and policy-making frameworks as the EU, it will tend to adapt well to European requirements, hence not feeling the need to remove restrictiveness from such rules.

*Hypothesis 2: The better the AML/CFT policy fit between the EU and the member state, the more the member state will tend **not to remove** restrictiveness from the EU rule, i.e., the state will either add restrictiveness or do a literal transposition.*

European policies may challenge domestic regulatory standards, policy objectives, or the tools used to fulfil those aims (Héritier, Knill, and Mingers 1996). Such misfit can also result in pressures on underlying institutions (Caporaso and Jupille 2001). This policy misfit generates adaptation costs for the member states so they strive to upload their preferred policies at the EU level both by swaying the Commission prior to the proposal of European policies and by convincing other countries in the Council of Ministers arena. This legislative competition amounts to a ‘regulatory patchwork’ of EU directives and regulations, some being more akin to what some member states already have in their national legal orders than others. As a result, countries that have succeeded in this regulatory competition find themselves less pressured by new EU measures which resemble their own policies, while others face more adaptation challenges (Cowles, Caporaso, and Risse 2001). Importantly, all member states – including the “Big Three” – may have to face significant, though possibly different, degrees of adaptation pressures when they need to “download” European policies (Börzel 2002). I argue that when a member state has already developed an AML/CFT policy with measures akin to what AMLD5 prescribes, it will tend not to remove restrictiveness from those EU rules, because the regulatory pressure from the EU already corresponds to its preferences.

*Hypothesis 3: The more aggressive the tax planning traditions of the member state, the more the member state will tend **not to add** restrictiveness to EU rules, i.e., the state will either remove restrictiveness or do a literal transposition.*

Money laundering and tax laws are linked in many ways. First, the facilitators of money laundering and tax evasion are the same. They mostly consist of a cast of tax intermediaries, notaries, and fiscal advisors which provide advice to businesses and people willing to hide the proceeds of their illegal activities. Second, the techniques and instruments used to launder money (shell companies, trusts, real-estate properties, free zones...) are the same as those used for fiscal avoidance and evasion (Koutouzis and Thony 2005). The plethora of recent data leaks have highlighted the evidence of the closely intertwined nature of tax crimes and money laundering. The two crimes are so intrinsically associated that the world standard-setting authority when it comes to the fight against money laundering and the financing of terrorism, the Financial Action Task Force (FATF), considers tax evasion to be a predicate offence for

money laundering. Indeed, “in a single process, tax evasion generates both criminal tax savings and launders those criminal proceeds by concealing or disguising their unlawful origin” (Kemsley et al. 2022). The International Monetary Fund (IMF) itself advises leveraging anti-money laundering measures to enhance tax compliance and tackle tax crimes (Mathias and Wardzynski 2023). It is thus no coincidence that the countries that find themselves on the tax haven list are often the same that appear on the FATF’s black and grey list of high-risk jurisdictions. European member states such as the Netherlands, Luxembourg, Malta, or Cyprus have developed aggressive tax planning measures, opaque tax systems and a clear protection of the privacy rights of certain categories of professionals which might, possibly unintentionally, allow for accrued money laundering and tax evasion. We thus argue that countries exhibiting aggressive tax planning traditions, as manifested by their Tax Haven index score and the existence of specific tax measures to attract foreigners’ investments in exchange for residence or citizenship, should be less inclined to adopt AML/CFT measures that mandate more transparency and impose obligations on more businesses.

*Hypothesis 4: The higher the number of veto players, the more the member state will tend **not to add** restrictiveness to the EU rule, i.e., the state will either add restrictiveness or do a literal transposition.*

In the compliance literature, federalism, and countries with a higher degree of regionalism are found to have consistent negative effects on thorough implementation (Slepcevic 2009). The time for transposition increases, and the level of compliance decreases as member states exhibit more multi-layered institutional frameworks. The logic behind that observation rests on the veto players argument: the more actors you have that can veto the adoption of the national transposition measure, the lengthier and more complicated the transposition will be. As Haverland (2000) puts it “veto players tend to shape the timing and quality of implementation”. In practice, the veto players rationale has been divided in two possible translations; one that focuses on the whole political system level; another which accounts for only the actors which have specific veto power for the specific piece of legislation being passed. The general veto players hypothesis has received some support, with Hartlapp (2009) or Héritier et al. (2001) finding that it was associated with more cases of late transposition and lengthier delays. The policy-specific veto players idea has yielded even more consistent findings, with authors repeatedly highlighting the negative consequences on timeliness and quality of implementation (i.a., Kaeding 2008; Steunenberg and Kaeding 2009; Steunenberg and Rhinard, 2010, Steunenberg and Toshkov 2009). More generally, Tsebelis (1995, 2000) finds that countries

with a high number of veto players should be plagued more frequently by reform dead-ends. In our case, when a member state has many veto players, the consensus on the transposition measure is harder to build, it should tend not to add restrictiveness to EU rules so as to settle on the lowest common denominator.

Hypothesis 5: The more politically favourable towards a specific measure, the more the member state will tend not to remove restrictiveness to the EU rule, i.e., the state will either add restrictiveness or do a literal transposition.

To better explain the differentiated implementation strategies of member states, we need to bring domestic politics to the forefront. While the goodness of fit and veto players arguments have received some support, they are by essence apolitical concepts which are not suited to explaining the domestic politics of implementation. Indeed, the domestic response to EU regulatory pressures also depends on the preferences and beliefs held by national political, administrative, and social actors (Börzel, and Risse 2000; Mastebroek and Kaeding 2006). Making use of the rational choice and sociological approaches, Mastebroek and Kaeding (2006) show that both the preferences and dominant belief systems of policymakers affect implementation of EU law. Practically, the calls to reflect on the interplay of processes at the EU and national levels (Thomann and Sager 2017; Treib 2014) highlight that member states can use transposition as an opportunity to exercise ‘opposition through the back door’ and compensate for a regulatory push that did not mirror their preferences (Thomson 2010; Thomson et al. 2020; Zhelyazkova 2013). A government that was against the adoption of a new AML/CFT directive, or some parts of it, during the negotiations in the Council may choose to water it down during transposition. On the contrary, governments may well accept wide-ranging deviations from existing policy traditions if the aims pursued by new European requirements go hand in hand with their political tendencies. When that is the case, parties in government will tend not to remove restrictiveness to European measures.

Table 2: Summary of IVs and operationalisation for our Member States

	Institutional fit (INSTIFIT)	AML/CFT policy fit (POLIFIT)	Aggressive tax planning (TAX)	Many veto players (VETO)	Government politically favourable (POLI)
Operationalisation	<p>National regulatory styles (Van Waarden, 1995) and compatibility with EU regulatory style.</p> <p>Two levels: Good: national and EU styles are highly compatible Mediocre: national and EU styles are poorly compatible</p>	<p>Existence/or not of previous measures in national legislation in line with the spirit of AMLD5.</p> <p>Two levels: Good fit: existence of at least one previous measure in line with AMLD5 No fit: no previous measure in line with AMLD5</p>	<p>Member State's tax policy traditions as measured by <u>Tax Haven Index</u> + specific tax measures for attracting foreigners (RBI/CBI).</p> <p>Two levels: Aggressive: high CTHI score + RBI/CBI tax measure Restrictive: medium/low CTHI score + no RBI/CBI tax measure</p>	<p>Number of formal veto players for the adoption of the measure.</p> <p>Two levels: High: > 2 from two different power branches Low: < 2</p>	<p>Political preferences of the government towards a measure as assessed in party manifestos and speeches.</p> <p>Three levels: Favourable: Member of government has expressed their support towards measure Neutral: No sign of support nor disapproval Unfavourable: Member of government has expressed their disapproval towards measure</p>
Belgium (BE)	Corporatist statehood; consensual	Some previous measure in	CTHI value: 973 (medium)	2 veto players whose formal consent is	<i>Liberals (Wilmès)</i>

	intervention, pragmatic regulation	line with BO registers requirements ; no previous measure in line with extension of OEs list ; no previous measure in line with protection of whistle-blowers	+ no specific RBI/CBI tax measure	required (Chamber of representatives and Head of State)	Favourable to extension of OEs list; neutral towards the rest
France (FR)	Etatist statehood; Active intervention; unclear regulation	Previous measures in line with BO register requirements and open access; previous measure in line with extension of OEs list ; no previous measure in line with protection of whistle-blowers	CTHI value: 908 (medium) + no specific RBI/CBI tax measure	Depending on the implementing measure 3 veto players for law (National Assembly, PR, and Constitutional Council) 1 veto player for decrees and ordonnances (PR or PM)	<i>Liberals (Macron/Edouard Phillippe)</i> Favourable to registers; neutral towards the rest
Germany (DE)	Corporatist statehood; Consensual intervention ; legalist regulation	Some previous measures in line with BO registers requirements ; some previous	CTHI value: 634 (low) + no specific RBI/CBI tax measure	5 veto players whose formal consent is required (Bundestag, Bundesrat, Chancellor, competent Minister, and	<i>Christian-democrats and SPD (Great Coalition)</i> Favourable to extension of OEs list and

		measures in line with extension of OEs list ; some previous measures in line with protection of whistle-blowers		Federal President)	protection of whistle-blowers; neutral towards registers
Italy (IT)	Corporatist statehood; Active intervention; unclear regulation	Some previous measure in line with extension of OEs ; some previous measures in line with BO registers requirements ; some previous measures in line with protection of whistle-blowers	CTHI value: 443 (low) + some specific RBI/CBI tax measure	1 veto player whose formal consent is required (President of Council)	<i>Populistic-Far right (Conte I)</i> Favourable to extension of OEs list and registers; neutral towards rest
Luxembourg (LUX)	Corporatist statehood; consensual intervention, unclear regulation	No previous measures in line with any of AMLD5's requirements	CTHI value: 1814 (high) + some specific RBI/CBI tax measures	4 veto players whose formal consent is required (Parliament, State Council, Grand-Duke, competent Minister)	<i>Liberals (Bettel II)</i> Unfavourable to registers; neutral towards rest
Netherlands (NL)	Corporatist statehood; consensual	No previous measure in line with	CTHI value: 2454	Depending on the	<i>Liberals – Christian</i>

	intervention, pragmatic regulation	extension of OEs list; some previous measure in line with BO register requirements; some previous measure in line with protection of whistle- blowers	(high) + some specific RBI/CBI tax measure	implementing measure 4 veto players for law (Chamber of representatives, Senate, Head of State, competent Minister) 2 veto players for decree (Head of State and Minister)	<i>Democrats (Rutte III)</i> Unfavourable to registers and extension of OEs list; neutral towards rest
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Chapter 2: Data and methods

I empirically analyse the customisation of EU Council Directive 2018/843 in the six founding member states of the EU, that is, Belgium, France, Germany, Italy, Luxembourg, and the Netherlands. I now discuss our case selection, both of member states and AMLD5 rules, the method of Qualitative Comparative Analysis (QCA) that we use, and how I measure and calibrate the outcome and conditions.

1- Selection of cases

This study is the first research on customisation of AML/CFT rules and *a fortiori* AMLD5. The fifth anti-money laundering directive is to date the most ambitious piece of legislation taken at EU level to tackle the laundering of capitals and the financing of terrorism. Under AMLD5, member states must drastically expand the scope of obligated entities, i.e., all those categories of professionals which must apply AML vigilance rules and report suspicious transactions and accounts. A beneficial owner or transparency register is also set up for all businesses to disclose the ultimate natural person that is in control of the company. Competent authorities, other obligated entities in the process of fulfilling their due diligence obligations, as well as any member of the public, can access this register to consult data on these beneficial owners. Taken in the wake of the Panama Papers, the directive also provides for additional safeguards for whistleblowers inside the obligated entities.

In order to assess the customisation of AMLD5, I first need to select rules, that is, provisions in the directive for which we have to find the national transposition measures and analyse the direction of their customisation (if any). The selection of AMLD5 provisions follows an inductive logic. I thereby follow the criterion of salience (meaning the political importance, thus excluding niche fields) while ensuring that different sub-policy areas are included on an equal basis to make the provisions representative of the whole AML/CFT field. To make that assessment I make use of my in-depth knowledge of the field and access to first-hand documents. Based on a systematic content analysis of AMLD5, I analyse the transposition of five rules: (1) The scope of obliged entities; (2) The definition of beneficial ownership; (3) The set-up of the beneficial ownership register; (4) The rules of access to the registers; and (5) The internal rules for protection of whistleblowers. For all these rules, I investigate customised restrictiveness.

I analyse the customisation of five AMLD5 rules in six countries: Belgium, France, Germany, Italy, Luxembourg, and the Netherlands, resulting in a total of 30 cases.

The choice of studying the six founding member states of the EU has been guided by both scientific and practical reasons. Retaining these six member states in my analysis allows to implicitly control for several variables that might have confounded the relationship between outcome and conditions. Indeed, the six founding members of the EU share some key features: the recency of EU membership, their belonging to the Eurozone, and the fact that they are all well above the average GDP/capita level of the EU. I thus posit that this indirectly amounts to some common habits, developed over the years, of transposing EU rules and a similar level of administrative capacity, both factors being important in the implementation dynamics in member states. Practically speaking, the ease of working with these six countries' languages and the hands-on accessibility to the legal acts taken to implement AMLD5 via the national versions of their Official Journal has also made my work much more efficient. The six cases vary in other theoretically relevant characteristics. Their institutional and policy fit with that of the EU varies from good to poor. Their tax policies differ, with at one end the Netherlands and Luxembourg being aggressive tax planners, and at the other, Germany and Italy representing a more restrictive tax planning tradition. Moreover, their administrative and institutional set up goes from federal states with a high degree of regionalism (Germany and Italy) to a highly centralised state (France) which implies great variations in the number of veto players involved. Finally, their political preferences towards AMLD5 rules also diverges with, for instance, some governments being clearly in favour of transparency registers for beneficial owners, while others were reluctant towards the idea. These member states are not representative of the EU,

but they are cases in point which help in understanding the multi-way processes which drive different customisation outcomes. These cases are helpful to understand the puzzle according to which there is no variation in compliance as such among them, though preferences of governments and actors and institutional frameworks varied greatly. This further contributes to the research on differentiated implementation by exploring yet another policy field.

2- Fuzzy-set Qualitative Comparative Analysis

With the help and advice of Prof. Eva Thomann, I make use of the method of fuzzy-set Qualitative Comparative Analysis (fsQCA) and complement it with specific case studies of typical and deviant cases. FsQCA (Oana et al. 2021; Ragin 2014; Schneider and Wagemann 2012) allows us to model the theoretically expected interplay of capacities, institutional, and preferences factors and practically identify complex configurations of factors that are sufficient and/or necessary for the outcome. FsQCA helps me in comparing the 30 cases of interest, which would be nearly impossible with comparative process-tracing, using the rich empirical evidence available rather than having to rely on counterfactual cases. FsQCA conceptualises the phenomena of interest as sets in which cases can have membership or not, and to different degrees. For instance, some member states did not add restrictiveness to AMLD5 rules (CUSTRLESS); while others did not remove restrictiveness from them (CUSTRMORE). The two *explananda* are called ‘outcomes’ and independent variables are called ‘conditions’.

First, necessary conditions (supersets) are analysed. Second, to assess sufficient conditions, all logically possible combinations of conditions are displayed in the rows of a ‘truth table’. Each case displays one of these paths. Truth table paths that are not observed empirically are termed ‘logical remainders’. When enough cases in a truth table row also display the outcome, the path is sufficient for the outcome. Via logical minimisation, the shortest possible description of those configurations that are sufficient for the outcome is derived (packages QCA and Set Methods; Dusa 2018; Oana et al. 2021).

All QCA results must pass three tests: empirical consistency, empirical importance, and substantive importance (Oana et al. 2021). The corresponding consistency, Proportional Reduction in Inconsistency (PRI), coverage, and Relevance of Necessity (RoN) parameters all range from 0 to 1. To deal with limited empirical diversity, we employ the Standard Analysis and make theoretically informed directional expectations about the sufficiency of logical remainders. The details of the analysis are reported in the online appendix, including truth tables, assumptions made on logical remainders and the R replication file.

3- Measurement and calibration

To assess customised restrictiveness, I analysed and compared the legal requirements in AMLD5 and in each member state, considering both transposition acts introduced during the implementation phase of the directive (30 May 2018 – 10 January 2020) and pre-existing domestic pieces of legislation (all national transposition measures are transmitted by the member states to the Commission and can be found on the Commission’s website) (European Commission 2020). For each rule, I analysed whether restrictiveness as removed, unchanged, or added compared to the requirements of AMLD5, see table 3, and calibrated the two outcomes CUSTRMORE and CUSTERLESS. CUSTRMORE means that member states have not removed restrictiveness, while CUSTERLESS means that member states have not added restrictiveness during the phase of transposition. While these two outcomes overlap practically by including cases of unchanged restrictiveness, they have distinct non-overlapping explanations.

Table 3: Operationalisation of customized restrictiveness and calibration of its direction for EU Council Directive 2018/843

AMLD5 rule	Provision	Measurement of customized restrictiveness in national rule
<p>Rule 1: List of obliged entities</p> <p>Key elements:</p> <ul style="list-style-type: none"> - Fiscal advisors; - Providers of electronic money or wallet services; - Real estate agents for transactions > 10K euros - Art dealers when transactions > 10K euros 	<p>Paragraph 1(5) AMLD5 <i>modifying Article 2 AMLD4</i></p>	<p><i>Removed:</i> Thresholds and conditions for belonging in a category are more strict</p> <p><i>Unchanged:</i> Thresholds and conditions for belonging in a category are unchanged</p> <p><i>Added:</i> Thresholds and conditions for belonging in a category are expanded</p>
<p>Rule 2: Definition of beneficial ownership</p> <p>Key elements:</p> <ul style="list-style-type: none"> - Physical person who owns more than 25% of shares. 	<p>Paragraph 2(b) AMLD5 <i>modifying article 3(6) AMLD4</i></p>	<p><i>Removed:</i> Thresholds and conditions to be considered as BO are more restrictive</p> <p><i>Unchanged:</i> Thresholds and conditions to be considered as BO are unchanged</p> <p><i>Added:</i> Thresholds and conditions to be considered as BO are less strict</p>

<ul style="list-style-type: none"> - If impossible to identify, analysis is kept. - Additional precisions for fiducials and trusts. 		
<p>Rule 3: Register set-up</p> <p>Key elements:</p> <ul style="list-style-type: none"> - OEs must collect exact and up to date information on BOs and interests owned. - BOs must report all the necessary information. - OEs must report any divergence in the register. 	<p>Paragraph 15 <i>AMLD5 modifying Article 30 AMLD4</i></p>	<p><i>Removed:</i> Looser requirements concerning reporting of BO information</p> <p><i>Unchanged:</i> Unchanged requirements concerning reporting of BO information</p> <p><i>Added:</i> Stricter requirements concerning reporting of BO information</p>
<p>Rule 4: Access to registers</p> <p>Key elements:</p> <ul style="list-style-type: none"> - Access to: competent authorities, OEs, and public. - Possible fee or registration. - Possible exemption in exceptional circumstances. 	<p>Paragraph 15(c) <i>modifying article 30(5, 5a, 6) AMLD4</i></p>	<p><i>Removed:</i> Stricter rules for access (fee/registration/automatic exemption)</p> <p><i>Unchanged:</i> Same rules for access</p> <p><i>Added:</i> Looser rules for access (free access/no registration/no exemption)</p>
<p>Rule 5: Protection of whistle-blowers</p> <p>Key elements:</p> <ul style="list-style-type: none"> - Legal protection inside OE against threats. - Tool to lodge complaint inside OE. - Effective judicial remedy. 	<p>New article 38 <i>AMLD5</i></p>	<p><i>Removed:</i> Less protection for whistle-blowers</p> <p><i>Unchanged:</i> Same protection for whistle-blowers</p> <p><i>Added:</i> More protection for whistle-blowers</p>

Table 4 summarises the measurement and calibration of the two outcomes and the five conditions based on qualitative content analysis of primary sources, among which: institutional systems, previous member states' legislative or regulatory measures, tax policy traditions and tax systems of member states, adoption procedures of different types of legislation, plenary debates, as well as party manifestos. All this was complemented by secondary literature. As a parliamentary assistant to a Member of European Parliament who is Rapporteur on the AML Regulation, that is one of the files making part of the new anti-money laundering and countering the financing of terrorism package now being discussed, I have also enjoyed constant contacts and exchanges with European Commission and European Parliament staff and experts that have helped me to fill in informational gaps. All sources and more details on the measurement and calibration are indicated in the appendix.

Table 4: Measurement and calibration of sets

Set	Measurement	Calibration thresholds
CUSTRLESS: removed or at least unchanged restrictiveness	Added, unchanged, or removed restrictiveness	1= removed 0.67 = unchanged 0 = added
CUSTRMORE: added or at least unchanged restrictiveness	Added, unchanged, or removed restrictiveness	1= added 0.67 = unchanged 0 = removed
INSTIFIT: good institutional fit	Good, or mediocre institutional fit	1= good 0 = poor
POLIFIT: existence of previous policy measure in line with AMLD5	Existence or not of at least one previous policy measure	1= yes 0 = no
TAX: aggressive tax planning tradition	Aggressive, or restrictive tax planning tradition	1= aggressive 0 = restrictive
VETO: High number of veto players	High (>2 from two different power branches) or low (<2) number of formal veto players	1= high 0 = low

POLI: political preference of government towards measure	Favourable, neutral, or unfavourable government	1 = favourable 0.67 = neutral 0 = unfavourable
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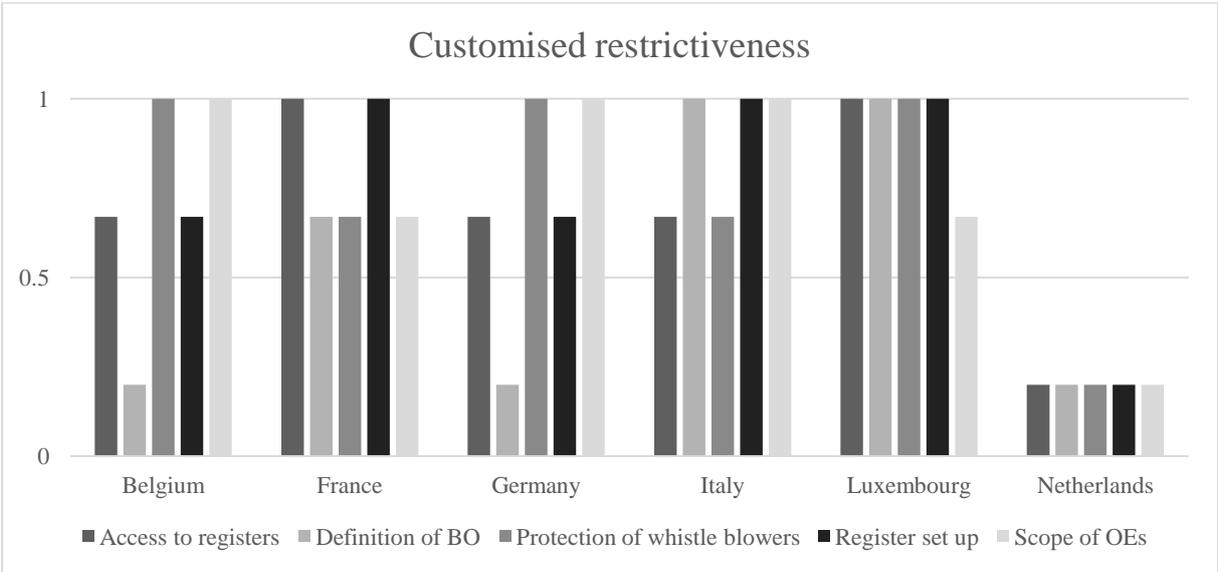
Chapter 3: Results and discussion

1- Description of results

Figure 1 shows that all member states analysed actively customised AMLD5. In 13 cases out of 30, member states added restrictiveness to the EU rule. In 10 cases, member states stuck to the version provided in AMLD5 and opted for literal transposition, thus not changing the restrictiveness of the rule. Finally, in 7 cases, among which 5 in the Netherlands, member states removed restrictiveness from the EU rule. Hence, the six founding member states, though similar in many regards, have had very different strategies in implementing AMLD5.

The countries varied in the degree to which they rendered the rules more stringent. Belgium chose more restrictive provisions for both the protection of whistleblowers and the scope of obliged entities which must comply with AML vigilance rules. It let both the rules regarding the beneficial ownership register set-up and access (arguably the two most crucial rules) unchanged, while watering down the definition of beneficial owner. Germany had the same transposition strategy as Belgium. On the other hand, France did not loosen the requirements of any of the rules. It rendered both the set-up and access to transparency registers stricter while leaving the other measures unchanged (definition of beneficial owner, scope of obliged entities, and protection of whistleblowers). Like France, Italy chose not to water down any of the provisions of AMLD5. It left untouched the access to the transparency register and the protection of whistleblowers rules but rendered stricter the requirements surrounding the definition of beneficial owner, as well as the register set-up and the perimeter of obliged entities. Finally, Luxembourg and the Netherlands differ greatly in their implementation outcomes. While my assessment shows that Luxembourg tightened the rules on everything but the scope of obliged entities, which was literally transposed, the Netherlands watered down all AMLD5 rules, sometimes to quite a great extent (see annex).

Figure 1: Customised measures and customisation outcomes per member state.



Notes: Read a value of 1 as “more restrictiveness”; 0.67 as “unchanged restrictiveness”; and 0.2 as “removed restrictiveness”.

2- Conditions for customised restrictiveness

We analyse two distinct outcomes that illustrate the limitations that member states impose when transposing EU directives: the scenario where member states do not add restrictiveness to EU rules (CUSTRLESS), and the scenario where member avoid diluting EU rules, i.e., they do not remove restrictiveness to EU provisions (CUSTRMORE). Table 5 presents the possible paths by which the countries refrain from introducing additional constraints (CUSTRLESS). For each path, we delve into a representative case and explore the interaction between theoretically necessary and mediating conditions involved at all levels. We also check whether our assumptions were correct.

Table 5: Intermediate solutions for no added restrictiveness (CUSTRLESS)

	inclS	PRI	Coverage	Unique coverage	Cases
~ INSTIFIT* ~ POLIFIT* POLI	1	1	0.080	0.080	fr5,it4
INSTIFIT* POLIFIT* TAX* VETO	1	1	0.180	0.020	nl3,nl5; nl2
INSTIFIT* POLIFIT* ~ VETO* POLI	1	1	0.040	0.040	be2
INSTIFIT* TAX* VETO* ~ POLI	0.959	0.957	0.459	0.319	lux2,lux3,lux4,nl1,nl4; nl3,nl5
~ POLIFIT* ~ TAX* VETO* POLI	1	1	0.040	0.040	de4
Solution	0.971	0.967	0.659		

Notes: Read * as AND, + as OR, ~ as NOT.

Path 1: Opposition through the back door due to poor institutional and policy fit in France and Italy

For the protection of whistleblowers in France, as well as the access to registers the domestic implementation was not complemented with stricter requirements. With the *Decreto legislativo del 04/10/2019 n° 125*, Italy made the access to beneficial ownership register conditional upon the payment of a fee, a possibility that is mentioned but not prescribed by the directive. France stucked to the exact same wording as AMLD5 when it comes to the protection of whistleblowers, though the directive actively encourages member states to elaborate on this provision. This can perhaps be explained by the poor institutional fit in both Italy and France, having arguably the institutional frameworks which are the furthest away from the EU's. The absence of previous legislative measures going in the direction of AMLD5 is also an important element. Indeed, before AMLD5, no law or decree had ever been proposed in Italy to set up a transparency register, let alone ensuring a public access. In the same vein, the in-depth overtime analysis of the *Code Monétaire et Financier* in France shows that the idea of the protection of whistleblowers inside the company was never explored in French law prior to AMLD5.

Path 2: Opposition through the back door due to divergences in tax cultures and a high number of veto players in the Dutch case

In the first path, the combination of good institutional fit, an aggressive tax culture, and a high number of veto players led the Dutch authorities to never add restrictiveness to AMLD5 rules. In spite of sometimes pre-existing rules that were in line with the objectives of the directive (for instance for the definition of beneficial owner, the set-up of the register, or the protection of whistleblowers) and a theoretically good institutional fit, both conditions that should have encouraged the Netherlands to “gold-plate” the directive’s provisions. On the contrary, it seems first that the aggressive tax planning culture that has been prevalent in the Netherlands over the past decades can help in explaining the reluctance in implementing stricter transparency rules for businesses notably. Indeed, the country has raised significant concerns due to its perceived involvement in aggressive tax planning and tax avoidance. Characteristic of these concerns, the European Commission has issued a negative ruling on state aid provided by the Dutch government to a Starbucks subsidiary, a rare decision later overturned by the General Court in 2019 (European Commission 2015). More recently, the European Commission has initiated investigations into potential state aid granted by the Netherlands to Inter IKEA (European Commission 2017) and Nike (European Commission 2019). Dutch legal entities have also been prominently featured in tax planning structures exposed by LuxLeaks (2014), the Panama Papers (2016), and the Paradise Papers (2017). Non-governmental organizations (NGOs) have ranked the Netherlands among the top three contributors to tax avoidance. (Oxfam 2016; Publish What You Pay Norway 2011). These concerns have even led the Fiscal Affairs Committee of European Parliament to host multiple hearings regarding the possible ways to tackle aggressive tax planning in the Netherlands. Though, the Dutch government has vigorously denied claims that it engaged in harmful tax practice and the facilitation of aggressive tax structures, including RBI/CBI schemes, the country is still perceived by researchers as being very reluctant to impose strict transparency requirements on companies that could expose them to public criticism. Indeed, for instance when the Dutch government created a beneficial ownership register back in 2016, it made the paying of a fee mandatory for accessing the register, a move that was highly criticized by NGOs (Ministerie van Financiën 2016). Opaque company ownership has however been repeatedly linked in the literature with high risks of money laundering (Blum et al. 1999; van der Does de Willebois et al. 2011, FATF 2016). Importantly, in 2014, the Court of Audit (Algemene Rekenkamer 2014) carried out a comprehensive assessment of the anti-money laundering (AML) policies in the Netherlands, building upon a prior report from 2008 that was highly critical. The earlier report had identified significant shortcomings, including inadequate measures to prevent money laundering, low probabilities of detecting money laundering and subsequent punishment, and insufficient

utilization of opportunities to confiscate illegal assets by investigating agencies and authorities. The subsequent 2014 report acknowledges that investments have been made to enhance capacity, expertise, and information sharing, but it raises concerns about the inability of the responsible ministers to provide a clear understanding of the primary money laundering risks and the tangible outcomes of AML policies. It also criticizes the political reluctance to improve businesses transparency in the country. The report's recommendation is twofold: firstly, to gain a comprehensive understanding of the predominant money laundering risks specifically within the Netherlands, and secondly, to initiate the collection and thorough analysis of both quantitative and qualitative data concerning the actions of the agencies engaged in AML efforts (Algemene Rekenkamer 2014). Second, the high number of veto players involved in the formal adoption of *Implementatiewet registratie uiteindelijk belanghebbenden van vennootschappen en andere juridische entiteiten*, the law at the centre of the transposition of most AMLD5 rules (4 veto players involved: Chamber of Representatives, Senate, Head of State, and competent Minister) might also explain the reluctance of the Dutch government to try to tighten anti-money laundering rules. Indeed, the Dutch legislative process appears to be one of the most lengthy and complicated in the EU (Voermans et al. 2012). Another trail that can unfortunately not be fully researched here might be the apparent systemic imbalance and fragility of Dutch governments over the past years, with more than ten government shifts in as many years. This governmental fragility could encourage governments in power not to render any EU rule more restrictive with fear of being exposed to both adverse party moves or public scrutiny. Going down this path, it would be interesting to assess the general patterns of customisation for all EU directives in the Netherlands.

Path 4: Watering down as a result of political opposition in Luxembourg and the Netherlands

In three cases related to the definition, set-up and access to beneficial ownership register, Luxembourg loosened the requirements compared to AMLD5. For instance, when it comes to the functioning of the register, paragraph 15 AMLD5 mandates that beneficial owners “shall give all the necessary information to the obliged entities” whereas neither the *Loi du 25 Mars 2020 portant modification de la loi modifiée du 12 novembre 2004 relative à la lutte contre le blanchiment et le financement du terrorisme* nor the *Loi du 13 janvier 2019 instituant un Registre des bénéficiaires effectifs* make mandatory for beneficial owners to transmit this information to obliged entities. In the same way, paragraph 15c AMLD5 provides for a possible

exemption in cases where public access to registers might raise a significant risk for beneficial owner. This exemption should however be limited, justified, and proportionate. Luxembourg watered down this requirement by implementing an automatic system of exemption that is not subject to review. Similarly, for four of our rules, the Netherlands opted for a clear loosening of the measures. For example, the scope of obliged entities subject to AML/CFT vigilance rules was tightened with a raising of some of the thresholds necessary to be considered an obliged entity. The transposition of article 38(5) AMLD5 on the protection of whistleblowers inside a company could also not be found anywhere in the Dutch transposition acts. How can one explain this apparent watering down of the directive's provisions? In all these case, the key factor is perhaps the reluctance of both Luxembourgian and Dutch governments to implement such rules in the first place. Indeed, Luxembourg has proved particularly against the very principle of a public access company register. In the wake of the LuxLeaks revelations, the country has engaged on a path to restore its public image but a series of checks in 2020 has revealed the lack of compliance with the transparency requirements by companies established in Luxembourg. In fact, until then, the administration was not actively chasing the businesses which were not registered on the beneficial ownership register (Poujol 2021). When the judiciary decided to get involved, a simplified legal procedure was chosen in order to prevent offenders from having their names publicised. "Pay up and forget it", in a way. The pecuniary fines applied were also derisory with amounts up to EUR 2.500. Coincidentally, on the eve of the first hearing, the international OpenLux leaks highlighted the flaws in the transparency of the beneficial ownership register, revealing that only 52% of companies, investment funds, foundations and non-profit associations had an identifiable owner. The hidden side of Luxembourg is thus not so hidden. This naturally goes hand in hand with an aggressive tax planning culture which encourages global companies to set up their headquarters in Luxembourg with the promise of financial secrecy and a cover-up from the state. Research has shown that Luxembourg counts among the most important offshore financial centres globally (Garcia-Bernardo et al. 2017). It is perhaps no coincidence that the European Court of Justice's judgment which invalidated the public access to registers in November 2022 (CJEU *Sovim* 2022) originated from a Luxembourg law firm. Regarding the Netherlands, I have previously entered in great details regarding the predominant culture of financial secrecy and aggressive tax planning in the country over the past decades (Gacia-Bernardo et al. 2017). If one focuses on the reduced scope of obliged entities with higher thresholds for dealers in high-value goods and real-estate, a partial exclusion of fiscal intermediaries, and a complete exclusion of free zones, this can maybe be partly explained by the constant reluctance of the Dutch government

to expose its traders and fiscal intermediaries to the “administrative burden” of CDD requirements. This has been noted by the FATF 2022 Mutual Evaluation Report on the Netherlands which highlights that “transactions involving high-value goods and real-estate are also identified as high-risk [...] [with] several cases indicating money laundering through purchasing high value goods and properties, often through intermediaries” (FATF 2022). Thus, in both cases, a political culture of fiscal and financial secrecy, complemented by clear reluctance to implement further transparency rules on businesses might have resulted in a watering down of AMLD5 rules.

Paths 3 and 5: Two special opposition cases in Germany and Belgium

It should first be noted that the last two paths have very limited coverage and in fact explain only one case each. Two specific combination of conditions also led to “not more restrictiveness” in Germany and Belgium. These cases are hard to explain and even harder to generalise since they are unique scenarios. However, the fact that Germany chose not to add restrictiveness to the rule on access to beneficial ownership might be partly explained by the lack of policy fit in that context. Indeed, the public access to registers provided for by AMLD5 was a novelty in Germany which had never explored the concept of full access to transparency registers before. It can help in explaining a certain Germany “shyness” on that measure. Regarding the Belgian transposition of beneficial ownership definition, though the path does not make intuitive sense, the quandary can be explained by the perhaps too refined assessment of customisation in that case. Paragraph 2(b) AMLD5 provides for, in case of obliged entities being unsuccessful at identifying their beneficial owner, that the manager is mentioned as beneficial owner and that the assessment shall be kept. Belgian law does implement the same requirements but makes no mention of the mandatory keeping of the assessment. Further discussions with experts from the Commission have later decreased the importance of the latter in my view since the member state is still obliged in any case to transmit the assessment to the Commission services if asked. Hence, for that rule, the removed restrictiveness outcome can be explained by poor coding from my part.

We now turn to combinations of conditions through which member states did not water down AMLD5 rules (CUSTRMORE; Table 6).

Table 6: Intermediate solutions for no removed restrictiveness (CUSTRMORE)

	inclS	PRI	Coverage	Unique coverage	Cases
~ INSTIFIT* ~ TAX* ~ VETO* POLI	0.962	0.953	0.500	0.500	fr5,it4; fr1,fr2,fr3,fr4,it1,it2,it3,it5
INSTIFIT* ~ POLIFIT* ~ TAX* ~ VETO	0.890	0.876	0.160	0.160	be4,be5; be1
INSTIFIT* ~ POLIFIT* VETO* POLI	1	1	0.120	0.080	de4; lux1,lux5
INSTIFIT* ~ TAX* VETO* POLI	0.833	0.800	0.200	0.160	de4; de1, de2 ,de3,de5
Solution	0.922	0.905	0.940		

Notes: Read * as AND, + as OR, ~ as NOT. **Bold** case means deviant case, to be explained further down.

Path 1': When political favour meets a favourable tax culture and low institutional barriers, France, and Italy as particularly active problem-solvers.

In all French cases and all but one Italian cases, these member states chose to render AMLD5 requirements more restrictive. A favourable political and tax culture context, as well as few institutional hurdles (few veto players) can help in explaining that outcome. Indeed, both countries have repeatedly featured well in international comparisons on financial secrecy and aggressive tax planning crackdown. Tax Justice Network ranks France and Italy 18th and 27th as states facilitating tax evasion and financial secrecy (Tax Justice Network 2021). Both member states have been exemplary in their efforts to improve the transparency of company ownership. For instance, in spite of the CJEU's decision to invalidate public access to registers both countries have maintained that access (Ministère de l'Economie 2023) and encouraged other member states to do so, in the Council arena (Secrétariat Général des Affaires Européennes 2020). This signals clear French and Italian priorities in favour of stricter rules in the fight against money-laundering. This was surely aided by the simplicity of the regulatory tools chosen to transpose AMLD5. In fact, the French transposition of register-related provisions took place through the use of *décrets* and *ordonnances*, two regulatory instruments that require the formal consent of only veto player (the Prime minister or President of the Republic, depending on cases). In the same fashion, the Italian government made use of a *Decreto* for which only the approval of the President of the Council is necessary. Interestingly,

the mediocre institutional fit (van Waarden 1995) between the EU's and both member states seems to not have resulted in pressure to literally transpose these rules. One can posit that in the AML/CFT context, political priorities and low institutional hurdles tend to explain more of the customisation strategies.

Path 2': The Belgian way: a favourable institutional and cultural context complemented by few veto players.

In the Belgian case, the *Loi du 20 juillet 2020 portant des dispositions diverses relatives à la prévention du blanchiment de capitaux et du financement du terrorisme et à la limitation de l'utilisation des espèces* has enhanced the requirements surrounding the perimeter of obliged entities, the access to registers, as well as the protection of whistleblowers. The constellation of conditions points out to the role of both 'goodness of fit' and mediating factors in that outcome. First, Belgium has similar institutional and decision-making frameworks as that of the EU. Indeed, like the European Commission, the Belgian state exhibits a corporatist model of statehood and engages in pragmatic regulation (van Waarden 1995). Second, the general tax and financial transparency context in Belgium has clearly shifted towards more transparency requirements on companies over the past few years. Case in point: Belgium has scraped the last remaining traces of its RBI/CBI schemes (EPRS 2018). Finally, in a country famous for its governmental instability and the length of legislative processes, the choice of a fast-tracked regulatory instrument, the *Arrêté Royal*, requiring only the consent of the Chamber of Representatives and the signature of the head of state may explain the problem-solving enthusiasm in the implementation of some of AMLD5 measures.

Path 3' and 4': The right political, cultural, and institutional context in Germany for improving the requirements.

Germany exhibits a combination of both the right political impetus, and a favourable fit for enhancing most of AMLD5's provisions. For example, though article 38(5) AMLD5 only provides for general measures of whistleblowing protection inside the obliged entities, Germany implemented a complex system of reversed burden of proof in the context of the *Gesetz zur Umsetzung der Änderungsrichtlinie zur vierten EU-Geldwäscherichtlinie*. Instead of employees having to show in front of a court that they were subject to a form of discrimination, article 34 provides that the employer must prove that it has not discriminated the whistleblowing employee. This clear tightening of the rules highlights exceptional willingness from the German government to better protect whistleblowers, also shown by the

recent transposition of the 2019 Whistleblower Protection Directive via the *Hinweisgeberschutzgesetz* which “went much beyond the requirements of the directive” (Pinsent Masons 2023). Germany has also been exemplary in the areas of financial transparency and the fight against aggressive tax planning, perhaps due to the fact that big German companies are partly state-owned which prevents the inclination to engage in tax evasion (Ninow et al. 2021). The recent OECD negotiations on Pillars I and II have seen the country being actively involved in the push for a global minimum corporate tax rate with the German Ministry of Finance being among the first to publish its draft implementing measures of OECD’s Pillar II (Baker McKenzie 2023). All this complemented by an excellent institutional fit between Germany and the EU which helps in explaining the apparent constant problem-solving willingness of the country when it comes to transposing EU directives (Paasch and Stecker 2021). Interestingly, this gold-plating happened in spite of the high number of formal veto players in the German institutional context, which has been shown to prove a significant barrier for timely transposition of EU law (Paasch and Stecker 2021). Indeed, the implementation seems to have taken time, with the main transposition act only coming into force on 19 December 2019, but the content of the provisions has been almost systematically made more restrictive.

Post QCA case discussion – the watering-down of the definition of beneficial owner in Germany: a deviant case

We compare the deviant case of the definition of beneficial owner (de2) in Germany, with removed restrictiveness (CUSTRLESS), with a typical case of CUSTRMORE – the protection of whistleblowers (Oana et al., 2021). Though both rules shared the same context of conditions, with high institutional fit, and favourable tax culture and political priorities, Germany chose to slightly water down the definition of beneficial owner, whereas it rendered the protection of whistleblowers more restrictive. What made the difference?

Here again, I can impute that quandary to poor coding from my part. As it was for the Belgian definition of beneficial owner, the decision to code the German measure as “removed restrictiveness” was based upon the fact that, in case no beneficial owner can be identified, the obliged entity must in all cases keep a record of that assessment. German law does not mention such a mandatory keeping of the assessment. However, this provision is made useless by the fact that the record is in any case kept and made available to the European Commission services,

if expressly asked (see above discussion of Belgian case). Hence, all in all, Germany did not really water down this AMLD5 rule.

3- Discussion of results

My analysis delivers three key insights about how member sought to ‘regain control’ of their AML/CFT policies vis-à-vis EU regulatory pressures, by either watering down AMLD5 requirements, or on the contrary going further than what the directive strictly prescribed.

Lesson 1: There is no necessary condition, or at least not in the way expected.

First, contrary to my theoretical expectations, there is no necessary conditions(s), or at least they do not work in the way I expected them to. Mediocre and good institutional fits are found in both paths of “not going beyond EU requirements” (CUSTRLESS) or of “not removing restrictiveness from EU rules” (CUSTRMORE). In that sense, hypothesis 1 according to which a good institutional fit compatibility with the EU is required in order for countries to gold-plate AMLD5 rules, is erroneous. The Netherlands and Luxembourg both have in theory good institutional compatibility with the EU, and they are, by far, the two member states that have watered down AMLD5 provisions the most. On the contrary, France and Italy which, on paper, have the poorest institutional fits have repeatedly rendered AMLD5 requirements more restrictive. In the same vein, my measure of policy fit as the existence of a previous domestic rule going in the direction of AMLD5 does not correlate with “not removing restrictiveness” from EU rules, as was my theoretical explanation. In fact, the Netherlands had similar legislation to AMLD5 already in place before the transposition and still actively made the provisions less restrictive.

A possible explanation for this contradiction is what I would call the classical limitation of the goodness of fit argument. It is perhaps too broad and too deterministic, as it assumes that national governments want to maintain some sort of status quo. Member states will only change their national policies if the cost of adaptation is not too high. Yet, in reality domestic policymakers are willing to reform existing policies and institutions (Knill and Lenschow 1998; Treib 2003). They may even utilise EU law pressure as a leverage to undertake these reforms while shifting the blame to “Brussels”. The apolitical essence of the goodness of fit (both institutional and policy fit) fails to explain the politics of customisation.

Lesson 2: Tax cultures and AML/CFT are somehow linked.

The hypothesis 3 according to which countries which exhibit aggressive tax planning and financial secrecy traditions will tend not to add restrictiveness to AMLD5, rules seems to hold. Interestingly, its contrary also holds with member states that have restrictive tax cultures correlating with not removing restrictiveness from European requirements. This important finding can be partly explained by the obvious links between tax policies, financial secrecy, and the fight against money laundering and the financing of terrorism. These links are well illustrated by the beneficial ownership register. Having access to information identifying the beneficial owner of every company established in the EU, allows both the control of AML/CFT obligations and the checking of fiscal obligations. The register information is actually often used by fiscal authorities to monitor the tax obligations of companies and people. It also exposes companies which are well known to engage in tax avoidance to much more public scrutiny. In that sense, it is no coincidence that the states that are identified by the FATF as being ‘at-risk’ for money laundering are very often the same as those listed as tax havens. Luxembourg and the Netherlands are cases in point.

Lesson 3: Domestic actors are part of the story.

Both the veto players and the political preference hypotheses have received mixed support. Political preference does correlate to a certain extent with added restrictiveness, since in all cases where no watering down of the rules happened, it coincided with a certain political favour from the government in place. France, Italy, and Germany are obvious cases where the gold-plating of EU rules happened thanks to a willingness from the government to improve on EU proposals. For instance, the French particular problem-solving aptitude when it comes to the access to registers correlated with very high French priorities to set the example at the EU level and to push European partners to do the same, notably in the context of the French Presidency of the Council of the EU which coincided with the negotiations on the new AML package. However, in four cases, political preference is part of the combination of conditions leading to “no added restrictiveness”. In all these cases, in fact, literal transposition was the path chosen by the member state. The political favour of the government does seem to play a role in the customisation of European requirements. Finally, the veto players hypothesis that posited a reluctance to add restrictiveness to AMLD5 rules in case of numerous veto players is largely invalidated. I can see two ways to explain that state of fact. First, rather than the number of veto players what matters are the preferences of veto players. If a country has five veto players but they are all aligned, passing effective legislation will not be problematic. The analysis of the preference of just one veto player (the government) has revealed the importance of actors’

strategies. Second, in the German case, which is the main counterfactual to the veto player argument, the favourable institutional, cultural, and policy contexts, complemented by a high push from the German government to enhance some of AMLD5 requirements, might have overcome an otherwise difficult administrative layering of veto players.

PART III: MOVING ALONG THE POLICY CYCLE: DID EU POLICYMAKERS LEARN FROM DIFFERENTIATED IMPLEMENTATION OUTCOMES?

Chapter 1: The theory and practice of policy evaluation in the European Commission

1- Evaluation in the policy cycle

In the third and final segment of this analysis, I delve into the question of how European policymakers respond to the complex practice of differentiated policy implementation. This question flows logically from a public policy cycle perspective, which entails transitioning through various stages. In the public policy cycle, as theorized by Lasswell (1956), after the implementation phase, we proceed to the evaluation phase. These two phases are critical as they allow us to conceptualize the iterative "trial and error" approach that characterizes public policy development. This perspective of science-driven policies was notably epitomized by the renowned call for an experimenting society put forth by Donald Campbell (1996). As such, policy reforms can be regarded as experiments that are implemented and subsequently evaluated in terms of their successes and shortcomings, aiming to be refined with subsequent rounds of reforms. As Coglianese aptly states, "evaluation answers the question of whether a treatment works in terms of reducing a problem" (2012: 14).

In the European context, there has been a significant shift in the approach to policy evaluation, particularly following the European Commission's commitment to conduct assessments on legislation with substantial impacts in 2000 (Poptcheva 2013). This change coincided with the Commission's 2001 White Paper on Governance, which advocated for more evidence-based decision-making (Poptcheva 2013: 2). It underscored the importance of effectiveness as a core element of proficient governance, advocating for greater integration of legislative evaluation clauses. However, this emphasis initially did not lead to a heightened focus on ex-post legislative (EPL) evaluation. The European Commission's 2002 Communication on Enhancing Lawmaking (European Commission 2002) reaffirmed the systematic use of ex-ante impact assessment as the preferred approach for enhancing effectiveness. A shift in perspective

emerged in 2007 when the Commission pledged to establish an action plan to promote EPL evaluation, revised its evaluation quality standards, and emphasized the pivotal role of post-implementation assessment (European Commission 2007: 3; Fitzpatrick 2012: 478).

EPL evaluation serves as a critical tool for policymakers to identify gaps between written laws and their tangible impacts through a comprehensive analysis of administrative processes, regulatory compliance, and resulting consequences. This practice not only provides a platform for acquiring valuable insights (Smismans 2015: 12) but also serves as a foundation for ensuring effective enforcement (Stame 2008: 124), thus holding significant theoretical potential within the regulatory cycle of the European Union. Indeed, the Commission has consistently recognized the potential of EPL evaluations and highlighted several reasons for their importance, including enhancing policy effectiveness (European Commission 2001: 10), bolstering legitimacy (European Commission 2007: 3), and improving enforcement (European Commission 2010: 7).

Despite this theoretical significance, ensuring consistent and high-quality production of EPL evaluations is far from guaranteed. Reflections from both political and rationalistic evaluation perspectives (Bovens et al. 2008) reveal two significant hurdles. Firstly, from the rationalistic viewpoint, the meticulous creation of high-calibre evaluations may face obstacles due to evaluability issues (Fitzpatrick 2012: 480; Summa and Toulemonde 2002). Secondly, unveiling critical issues within the practical execution of legislation through EPL evaluations could potentially lead to demands for the revocation of existing laws. Such an outcome conflicts with the Commission's alleged strategy of continuous legislative expansion (Lodge 2008: 286; Majone 1999: 2), introducing the risk of partial, skewed, or even absent evaluations. This dynamic could result in the Commission, often seen as an extension of the Council, seeking to evade scrutiny from the Council itself (Pollack 1997: 109; Tallberg 2003: 19). Nevertheless, in its role as the guardian of the treaties, the Commission could utilize evaluations to uncover shortcomings in policy implementation by member states. However, the European Court of Auditors (2010: 42) highlighted that merely "24% of ex-post evaluations addressed issues related to the review of existing legislation." Considering that legislation constitutes the primary policy instrument employed by the European Union (Lodge 2008: 282), this revelation implies that the legislative component remains a somewhat underemphasized element within the Commission's evaluation framework.

To gain a deeper understanding of the dynamics of EPL evaluations by the European Commission and whether these evaluations inform the subsequent wave of legislation, Mastenbroek, van Voorst, and Meuwese conducted a meta-analysis of ex-post legislative evaluations by the Commission. Their findings indicated that the scope of EPL evaluations was indeed inconsistent but demonstrated a clear upward trend. However, the quality of these assessments remained unsatisfactory (Mastenbroek et al. 2015). Consequently, it appears that EPL evaluations can serve as a means for the European Commission to enhance the enforcement of its policies towards member states, but they can also present a challenge, where negative evaluation results may lead member states to push for the repeal of the policy. It remains to be seen whether policies with differentiated implementation, such as AML/CFT, can benefit from EPL evaluation as an instrument to learn from differentiated implementation outcomes and to enhance the harmonization of policy provisions with the next wave of reforms.

2- How do the EPL evaluations work in practice?

Within the European Commission, various operational Directorates-General are responsible for conducting evaluations in their respective domains. To ensure quality control, a centralized body known as the Impact Assessment Board (IAB) was established in 2006, reporting under the authority of the Commission President. This board, comprising high-level officials from multiple DGs, provides assessments on the quality of all Commission Impact Assessments (IAs). Over time, the number of IAs undertaken directly by the Commission or on its behalf has grown significantly, rising from 21 in 2003 to 97 in 2012 (Poptcheva 2013).

Member States have more recently increased their engagement in evaluations through national audit authorities. Furthermore, the European Court of Auditors (CoA) conducts performance audits of selected EU expenditure programs, including Structural Funds, and issues public opinions regarding the Commission's financial evaluations. All reports from the Court are made publicly available.

The Commission promotes the combination of diverse evaluation methodologies. However, certain studies indicate that it tends to prefer evaluation results of a quantitative nature rather than qualitative (Hörner and Stephenson 2012). This preference for quantitative data is argued to stem from its effectiveness in communicating the added value of EU actions. Additionally, quantitative methods are considered less costly since they build upon existing data. On the

contrary, there are concerns about the scientific reliability of this quantitative-oriented approach, leading some to characterize it as "number fetishism" in the evaluation context.

3- How are EPL evaluations normally integrated in the policy cycle?

Incorporating evaluations effectively into the policy cycle poses certain challenges due to the time frame involved, as evaluations typically require 12 to 18 months to complete. This timeframe often leads to ex-post evaluations not being factored into Impact Assessments (IAs) since they may be published after the adoption of the program, when the lessons learnt could have informed the decision-making process. Consequently, there are calls from stakeholders and experts to better align evaluation with the policy cycle, ensuring that the crucial links between evaluation and policy formulation are duly considered (European Parliament 2013).

Critiques often focus on the limited utilization of evaluations for lesson-learning and strategic policy objectives, rather than merely as management tools. The 2012 report from the Commission's Impact Assessment Board (IAB) pointed out that a considerable number of IAs did not incorporate the outcomes of ex-post evaluations of EU legislation and programs. In response, the Commission expressed its intent to examine the extent to which ex-post evaluations are appropriately considered in the future. In line with this, the Commission, in its December 2012 Communication on EU Regulatory Fitness, indicated its plan to adopt a standardized two-page summary sheet within its IA reports, aimed at facilitating the quick identification of key results (European Commission 2012), building on a suggestion from the European Parliament. The Commission's 2012 public consultation on Smart Regulation in the EU received feedback from multiple respondents advocating for better visibility of evaluation results and the provision of feedback to stakeholders regarding the anticipated next steps in specific policy areas. In a subsequent Communication on Smart Regulation, the Commission committed to improving the political relevance of evaluation results by more effectively integrating them into the policy cycle (European Commission 2012). As part of this effort, the Commission announced the adoption of a revised framework for policy evaluation, showcasing its commitment to enhancing the connection between evaluation and policymaking.

Drawing on the theories of how policy evaluation can inform future legislation and how the European Commission conducts these evaluations in practice, I put these to the test. Have the differentiated implementation outcomes of AMLD5, especially the cases where several member states decided to water down EU provisions been recognized by the European Commission?

Have these cases been addressed in any way with the new AML/CFT package, and especially by the proposed anti-money laundering regulation (AMLR)?

Chapter 2: Does evaluation inform the next reform? Lessons from the new AML package

1- Identifying the weaknesses in AMLD5's transposition

First, it is worth noting that the Commission has been well aware of challenges in the implementation of AML/CFT rules in EU member states. A 2019 communication, accompanied by four reports and studies on the risks linked to ML/TF in the Union, clearly highlights that “despite the recent enhancement of the legislative framework, challenges remain” (European Commission 2019b). In particular, the reports show some “horizontal vulnerabilities that remain, particularly on identification of beneficial owners”, the “failure [by supervisors] to engage in a meaningful dialogue with obliged entities by giving quality feedback”, and the “accessibility of beneficial ownership registers”. (European Commission 2019b: 2). The Commission has thus identified the main areas of improvement for a new AML/CFT reform.

Putting the policy evaluation work of the Commission to the test requires first to delineate the contours of what was to be improved in the implementation of AMLD5. I have made use of our analysis and assessment of the customisation part to identify all the cases where member states chose to water EU requirements, as these are the most problematic instances. Table 7 summarizes all these cases. As one can see, the measure surrounding the definition of beneficial owner has been subject to the most intense watering down, with the rules related to the set-up and access to the beneficial ownership register loosened in two cases. Finally, the scope of obliged entities, as well as the protection of whistleblowers have been rendered less restrictive in one instance. The type of watering-down describes what exactly member states have done in the transposition phase to loosen the requirement of AMLD5.

Table 7: Cases of “removed restrictiveness” of AMLD5 rules

Rule	Number of cases of watering-down	Cases	Type of watering-down
Scope of obliged entities	1	nl1	Thresholds are either added or higher
Identification of beneficial owner	4	be2, de2, lux2, nl2	Smaller categories of BO; no mandatory keeping of the assessment
Set-up of beneficial ownership register	2	lux3, nl3	No mandatory transmission of information by BO; no penalties or sanctions in case of violation; limitation of register to national companies
Access to beneficial ownership register	2	lux4, nl4	Addition of registration and/or fee to access the register
Protection of whistleblowers	1	nl5	No provision on protection of whistleblowers

Logically, any policy evaluation of AMLD5 informing a future reform of the AML framework should focus on these watering-down in the order of their importance. Thus, with the next batch of administrative proposals, the Commission should try to ensure a consistent and harmonious implementation of the rules surrounding the scope of obliged entities, first, and the rules regarding the set-up and access to the beneficial ownership register. I now turn to the proposed anti-money laundering and countering the financing of terrorism regulation (AMLR) and the 6th anti-money laundering directive (AMLD6) to assess whether these issues were addressed.

- 2- The new AML package: an obvious attempt to harmonise the implementation of AML/CFT rules

As is known, the European Commission can use either directives or regulations to achieve its policy objectives. The choice between the two depends on the specific goals and the context of the legislation. The new AMLR is by essence an attempt to reach a certain uniformity and a direct applicability of AML/CFT rules in the Union. The use of a regulation indicates that the Commission seeks to establish a standardised and consistent approach to anti-money laundering measures across all member states. Indeed, when in May 2020, the Commission adopted its action plan for a comprehensive Union policy on preventing money laundering and terrorism financing (European Commission 2020b), one of its key priorities was a ‘single EU rulebook’. As the Commission puts it “the current approach to EU legislation has resulted in diverging implementation of the framework across member states”. “To limit divergences in the interpretation and application of the rules, certain parts of AMLD should be turned into directly applicable provisions set out in a Regulation. *At a minimum, this should include the provisions laying down the list of obliged entities, customer due diligence requirements, internal controls, reporting obligations, as well as the provisions on beneficial ownership registers and central bank account mechanisms.*” (European Commission 2020b: 3). EU decisionmakers had thus clearly indicated their willingness to harmonise some of the very provisions which we found as being watered-down in my analysis. The further analysis of the Commission’s proposal for an AML Regulation will reveal whether the intent has overcome the test of the practice.

Identification of beneficial owner

Regarding the definition of beneficial owners, the measure that required the most harmonisation in our assessment, EU policymakers seem to have learnt from their past errors. Already in the explanatory memorandum of the AML proposal, the Commission explains that “more detailed rules are provided to identify the beneficial owner(s) of corporate and other legal entities, and a harmonised approach to the identification of beneficial ownership is laid down.” (European Commission 2021c). In the legislation, an entire chapter (Chapter IV) is dedicated to the details of identifying the beneficial owner. Article 42 provides for a clarification of the very concept with a clear statement that control through an ownership interest means an ownership of 25% plus one of the shares or voting rights in the corporate entity. It also adds precisions on the meaning of ‘control via other means’ which further enlightens the assessment that obliged entities must conduct, one aspect that was crucially missing in AMLD5. Importantly, article 45 reinstates the obligation for obliged entities, after having exhausted all possible means of

identification, to keep the records of the actions taken in order to identify their beneficial owner. This record should from then on be accompanied by a statement and “a justification that there is no beneficial owner or that the beneficial owner could not be identified and verified”. Finally, legal entities “shall make the information collected available upon request and without delay to competent authorities.” (European Commission 2021c). Hence, in that case, one can clearly say that the Commission grasped the scale of the problem and solved exactly the challenges raised by the transposition of AMLD5 into its new regulation.

Set-up and access to beneficial ownership register

Regarding the set-up of the beneficial ownership register, the Commission seems to have understood the extent of the problem here again. Article 45 AMLR provides that “all corporate and other legal entities incorporated in the Union shall obtain and hold adequate, accurate, and current beneficial ownership information.” This, on top of reaffirming the obligation of obliged entities to hold and transmit beneficial ownership information, solves the problem raised by the Dutch case, which until then only mandated Dutch companies to collect this information. The regulation states that all companies “incorporated in the Union” should appear in the register. Additionally, to counter the fact that some countries had not made a legal obligation for beneficial owners to report their information, article 46 AMLR provides that “the beneficial owner(s) of corporate or other legal entities shall provide those entities with all the information necessary for the corporate or other legal entity.” Finally, in a manifest attempt to improve on the very non-dissuasive sanctions/penalties that some member states had planned in case of beneficial owners not subscribing to these requirements, article 49 AMLR provides that member states shall lay down the rules on sanctions applicable to infringements of the provisions of the whole Chapter IV. In any case, “the sanctions provided for must be effective, proportionate, and dissuasive.” In a last attempt to ensure the effectiveness of these penalties, article 49 further adds that countries shall notify those rules on sanctions by 6 months after the entry into force of the regulation to Commission together with their legal basis and (icing on the cake) “shall notify it without delay of any subsequent amendment affecting them.”

Regarding the access to the registers, since registers remain a national tool to be implemented by member states, the Commission has detailed rules surrounding them in the 6th anti-money laundering directive (AMLD6). Article 12 AMLD6 provides that “member states shall ensure that any member of the general public has access to [beneficial ownership register] information.” Confronted with the problem of some member states de facto limiting the access

with the setting of a fee or the obligation to register, the Commission opted for a consensual approach by providing for the possibility of countries rendering the access to the register conditional on authentication or the payment of a fee, “which shall not exceed the administrative costs of making the information available”, thus ensuring no abuse from the part of member states (European Commission 2021d).

Scope of obliged entities

Simply put, article 3 AMLR provides for an exhaustive list of all entities that are to be considered as obliged entities for the purposes of AML/CFT. This list will be directly implemented into member states’ laws which prevents any drifts. Thus, the type of adaptations which were observed in our member states are solved. Interestingly, the Commission seems to have added some of the categories that were not listed in AMLD5 but that some member states decided to nonetheless count as obliged entities. For instance, France had added the category of crowdfunding service providers during the transposition phase of AMLD5. This category can be found in the AMLR as proposed by the Commission. This perhaps indicates some willingness from the Commission to learn from case where member states gold-plated previous EU legislation.

Protection of whistleblowers

Finally, with at least one member state (the Netherlands) not transposing AMLD5’s measure on the protection of whistleblowers, and a certain blurriness in the writing of that rule leading several countries to add restrictiveness to it during the implementation phase, the Commission also had an opportunity to improve and harmonise these requirements. Let it be said, let it be done. Article 43 AMLD6 adds many details and clarity to the protection of whistleblowers inside an obliged entity. For instance, member states shall from then on “provide one or more communication channels for reporting.”

All in all, the in-depth assessment of the new AML legislation proposed by the European Commission highlights that the Commission has been well aware of the differentiated implementation challenges raised by AMLD5. As the Commission itself has put it “the fragmented landscape of AMLD/CFT across the EU raises significant challenges” (European Commission 2020b: 4). Both the AMLR and the 6th AMLD do address the problems my customisation assessment identified. This shows that the EPL evaluations from the Commission

indeed work to a certain extent, at least in correcting the most obvious fragmentation cases. To see whether the EU policymakers also learn from positive member states' feedback, further research could focus on trying to assess the reaction of the Commission to gold-plating cases.

CONCLUSION

The transposition of AMLD5 highlights the customisation strategies in the multi-level playground between the EU and member states. If the institutional and cultural settings and the political preferences of member states are not aligned with the EU's, that is if countries have failed to “upload” their policy choices at the Union level (Genschel and Jachtenfuchs 2016; Radaelli 2002), they reluctantly implement EU requirements and customise them during the transposition phase – if they can (Thomson 2010). On the other hand, if member states have successfully managed to convey their preferences to EU policymakers, they will enjoy the implementation process as an opportunity to enhance EU legislation, rendering it more restrictive (Zgaga et al. 2023). All in all, member states try to tailor EU provisions to their specific domestic circumstances, if the institutional framework allows for it.

The first key insight here is that there does not seem to be any “necessary” or “mediating” factors for the customisation of AML/CFT policy. Member states adopt different customisation strategies for different rules, in some cases goodness of fit seems to play an important role, in others it is rather the politics of customisation which matter. In that sense, poor fit does not necessarily correlate with a watering-down of EU rules. The goodness of fit measure, as it presupposes that member states favour the status quo, finds itself inapt to explain what is by essence political changes. Unsurprisingly, perhaps, when member states are politically and culturally eager to undertake the reforms that the European level mandates, they tend to add restrictiveness to EU rules, signalling that they are proactive problem-solvers (Thomann 2019). It would be interesting to complement this finding with qualitative interviews of member states' EU representatives to assess whether my measures of political and cultural preferences coincide with active work from the part of the member state in the Council to sway the proposed legislation in their favoured direction. In any case, customisation seems to be a strategic reaction to EU enforcement (Treib 2014), with strategies depending on the political, institutional, and cultural domestic contexts (Mastenbroek and Kaeding 2006). Adding a measure of the EU enforcement credibility to our conditions would perhaps help in explaining in more detail the role of deterrence in the customisation strategies of member states (Zgaga et al. 2023).

Second, progressing along the policy cycle, my analysis has revealed that the European Commission indeed “learns” from differentiated implementation outcomes. In the context of its EPL evaluations (Poptcheva 2013), the Commission identifies the areas of weaknesses and fragmentation of past legislation and takes them into account for future legislation. The analysis

of the customisation outcomes of AMLD5 and if (and how) they have been addressed in the new AML package is particularly enlightening. The Commission proposed both a new legislative tool (a regulation) and considerably detailed the AMLD5 measures that suffered from a watering-down by member states. Thus, the Commission seems to learn from “bad” experience with legislation. Interestingly, though this finding would require more research, EU policymakers also seem to get “positive” feedback from member states: some gold-plating instances find their way into new pieces of legislation. These important insights in the area of policy evaluation however lack a crucial aspect: the Commission is only one of the EU’s policymakers. Its proposals can be completely changed during the negotiations in the European Parliament, the Council, and between the Parliament and the Council in the process of the ordinary legislative procedure. In other words, the Commission seems to indeed learn from differentiated implementation outcomes but is it the case for all EU policymakers? An analysis of the positions of the Parliament and the Council on the AML package would help in answering that question.

For now, our results, though very partial, suggest that customisation dynamics depend on complex constellations of conditions, none of them being “necessary” or “mediating”. Member states rather customise on a case-by-case basis. To try and get a more elaborate idea of these strategies, future research should deepen the ‘how’ and the ‘why’ of EU AML/CFT policies’ customisation, with better factors’ operationalisation and a measure of enforcement credibility. Analysing the implementation of previous AML directives might prove useful in understanding long-term customisation patterns and reinforce the idea that politics matter more than institutional frameworks. Given the limited generalisability of the analysis of six country cases, comparative implementation research should also strive to address whether these lessons can travel beyond the AML/CFT context, and the member states studied here. This is all the more important since it has been shown that customised implementation influences practical compliance with EU law (Zhelyazkova and Thomann 2022). Thus, analysing customisation appears crucial to understand the EU’s problem-solving capacity and, a fortiori, its legitimacy.

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ANNEX

FIGURES AND TABLES

Table 1: Summary of theoretical argument

Type of condition	Independent variable	Level of analysis
Necessary condition 'Goodness of fit'	1- Institutional fit	EU and domestic general levels
	2- AML/CFT Policy fit	(EU and) domestic policy level
	3- Tax policy traditions	
Mediating conditions	4- Veto players	Domestic policy level
	5- Government political preferences	Actor level

Table 2: Summary of IVs and operationalisation for our Member States

	Institutional fit (INSTIFIT)	AML/CFT policy fit (POLIFIT)	Aggressive tax planning (TAX)	Many veto players (VETO)	Government politically favourable (POLI)
Operationalisation	<p>National regulatory styles (Van Waarden, 1995) and compatibility with EU regulatory style.</p> <p>Two levels: Good: national and EU styles are highly compatible Mediocre: national and EU</p>	<p>Existence/or not of previous measures in national legislation in line with the spirit of AMLD5.</p> <p>Two levels: Good fit: existence of at least one previous measure in line with AMLD5</p>	<p>Member State's tax policy traditions as measured by Tax Haven Index + specific tax measures for attracting foreigners (RBI/CBI).</p> <p>Two levels:</p>	<p>Number of formal veto players for the adoption of the measure.</p> <p>Two levels: High: > 2 from two different power branches Low: < 2</p>	<p>Political preferences of the government towards a measure as assessed in party manifestos and speeches.</p> <p>Three levels: Favourable: Member of government has expressed their support towards measure</p>

	styles are poorly compatible	No fit: no previous measure in line with AMLD5	Aggressive: high CTHI score + RBI/CBI tax measure Restrictive: medium/low CTHI score + no RBI/CBI tax measure		Neutral: No sign of support nor disapproval Unfavourable: Member of government has expressed their disapproval towards measure
Belgium (BE)	Corporatist statehood; consensual intervention, pragmatic regulation	Some previous measure in line with BO registers requirements ; no previous measure in line with extension of OEs list ; no previous measure in line with protection of whistleblowers	CTHI value: 973 (medium) + no specific RBI/CBI tax measure	2 veto players whose formal consent is required (Chamber of representatives and Head of State)	<i>Liberals (Wilmès)</i> Favourable to extension of OEs list; neutral towards the rest
France (FR)	Etatist statehood; Active intervention; unclear regulation	Previous measures in line with BO register requirements and open access; previous measure in	CTHI value: 908 (medium) + no specific RBI/CBI tax measure	Depending on the implementing measure 3 veto players for law (National Assembly,	<i>Liberals (Macron/Edouard Philippe)</i> Favourable to registers; neutral

		line with extension of OEs list ; no previous measure in line with protection of whistle-blowers		PR, and Constitutional Council) 1 veto player for decrees and ordonnances (PR or PM)	towards the rest
Germany (DE)	Corporatist statehood; Consensual intervention ; legalist regulation	Some previous measures in line with BO registers requirements; some previous measures in line with extension of OEs list ; some previous measures in line with protection of whistle-blowers	CTHI value: 634 (low) + no specific RBI/CBI tax measure	5 veto players whose formal consent is required (Bundestag, Bundesrat, Chancellor, competent Minister, and Federal President)	<i>Christian-democrats and SPD (Great Coalition)</i> Favourable to extension of OEs list and protection of whistle-blowers; neutral towards registers
Italy (IT)	Corporatist statehood; Active intervention; unclear regulation	Some previous measure in line with extension of OEs ; some previous measures in line with BO registers requirements ; some previous	CTHI value: 443 (low) + some specific RBI/CBI tax measure	1 veto player whose formal consent is required (President of Council)	<i>Populistic-Far right (Conte I)</i> Favourable to extension of OEs list and registers; neutral towards rest

		measures in line with protection of whistle-blowers			
Luxembourg (LUX)	Corporatist statehood; consensual intervention, unclear regulation	No previous measures in line with any of AMLD5's requirements	CTHI value: 1814 (high) + some specific RBI/CBI tax measures	4 veto players whose formal consent is required (Parliament, State Council, Grand-Duke, competent Minister)	<i>Liberals (Bettel II)</i> Unfavourable to registers; neutral towards rest
Netherlands (NL)	Corporatist statehood; consensual intervention, pragmatic regulation	No previous measure in line with extension of OEs list; some previous measure in line with BO register requirements; some previous measure in line with protection of whistle-blowers	CTHI value: 2454 (high) + some specific RBI/CBI tax measure	Depending on the implementing measure 4 veto players for law (Chamber of representatives, Senate, Head of State, competent Minister) 2 veto players for decree (Head of State and Minister)	<i>Liberals – Christian Democrats (Rutte III)</i> Unfavourable to registers and extension of OEs list; neutral towards rest

Table 3: Operationalisation of customized restrictiveness and calibration of its direction for EU Council Directive 2018/843

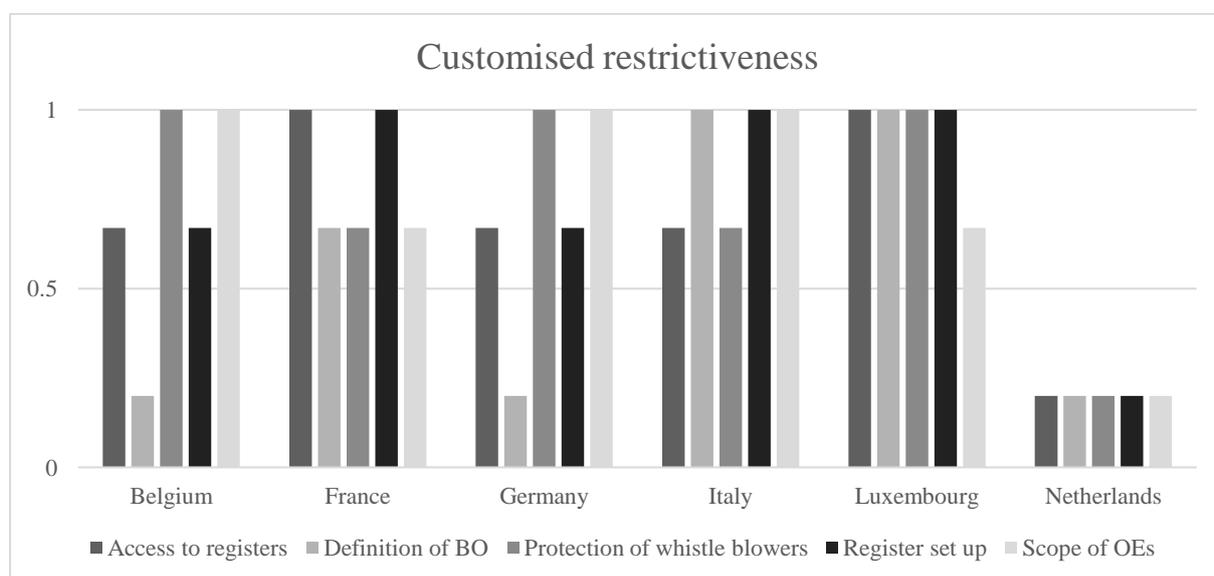
AMLD5 rule	Provision	Measurement of customized restrictiveness in national rule
<p>Rule 1: List of obliged entities</p> <p>Key elements:</p> <ul style="list-style-type: none"> - Fiscal advisors; - Providers of electronic money or wallet services; - Real estate agents for transactions > 10K euros - Art dealers when transactions > 10K euros 	<p>Paragraph 1(5) AMLD5 <i>modifying Article 2 AMLD4</i></p>	<p><i>Removed:</i> Thresholds and conditions for belonging in a category are more strict</p> <p><i>Unchanged:</i> Thresholds and conditions for belonging in a category are unchanged</p> <p><i>Added:</i> Thresholds and conditions for belonging in a category are expanded</p>
<p>Rule 2: Definition of beneficial ownership</p> <p>Key elements:</p> <ul style="list-style-type: none"> - Physical person who owns more than 25% of shares. - If impossible to identify, analysis is kept. - Additional precisions for fiducials and trusts. 	<p>Paragraph 2(b) AMLD5 <i>modifying article 3(6) AMLD4</i></p>	<p><i>Removed:</i> Thresholds and conditions to be considered as BO are more restrictive</p> <p><i>Unchanged:</i> Thresholds and conditions to be considered as BO are unchanged</p> <p><i>Added:</i> Thresholds and conditions to be considered as BO are less strict</p>
<p>Rule 3: Register set-up</p> <p>Key elements:</p> <ul style="list-style-type: none"> - OEs must collect exact and up to date information on BOs and interests owned. - BOs must report all the necessary information. 	<p>Paragraph 15 AMLD5 <i>modifying Article 30 AMLD4</i></p>	<p><i>Removed:</i> Looser requirements concerning reporting of BO information</p> <p><i>Unchanged:</i> Unchanged requirements concerning reporting of BO information</p> <p><i>Added:</i> Stricter requirements concerning reporting of BO information</p>

<ul style="list-style-type: none"> - OEs must report any divergence in the register. 		
<p>Rule 4: Access to registers</p> <p>Key elements:</p> <ul style="list-style-type: none"> - Access to: competent authorities, OEs, and public. - Possible fee or registration. - Possible exemption in exceptional circumstances. 	<p>Paragraph 15(c) <i>modifying article 30(5, 5a, 6) AMLD4</i></p>	<p><i>Removed:</i> Stricter rules for access (fee/registration/automatic exemption)</p> <p><i>Unchanged:</i> Same rules for access</p> <p><i>Added:</i> Looser rules for access (free access/no registration/no exemption)</p>
<p>Rule 5: Protection of whistle-blowers</p> <p>Key elements:</p> <ul style="list-style-type: none"> - Legal protection inside OE against threats. - Tool to lodge complaint inside OE. - Effective judicial remedy. 	<p>New article 38 AMLD5</p>	<p><i>Removed:</i> Less protection for whistle-blowers</p> <p><i>Unchanged:</i> Same protection for whistle-blowers</p> <p><i>Added:</i> More protection for whistle-blowers</p>

Table 4: Measurement and calibration of sets

Set	Measurement	Calibration thresholds
CUSTRLESS: removed or at least unchanged restrictiveness	Added, unchanged, or removed restrictiveness	1 = removed 0.67 = unchanged 0 = added
CUSTRMORE: added or at least unchanged restrictiveness	Added, unchanged, or removed restrictiveness	1 = added 0.67 = unchanged 0 = removed
INSTIFIT: good institutional fit	Good, or mediocre institutional fit	1 = good 0 = poor
POLIFIT: existence of previous policy measure in line with AMLD5	Existence or not of at least one previous policy measure	1 = yes 0 = no
TAX: aggressive tax planning tradition	Aggressive, or restrictive tax planning tradition	1 = aggressive 0 = restrictive
VETO: High number of veto players	High (>2 from two different power branches) or low (<2) number of formal veto players	1 = high 0 = low
POLI: political preference of government towards measure	Favourable, neutral, or unfavourable government	1 = favourable 0.67 = neutral 0 = unfavourable

Figure 1: Customised measures and customisation outcomes per member state.



Notes: Read a value of 1 as “more restrictiveness”; 0.67 as “unchanged restrictiveness”; and 0.2 as “removed restrictiveness”.

Table 5: Intermediate solutions for no added restrictiveness (CUSTRLESS)

	inclS	PRI	Coverage	Unique coverage	Cases
\sim INSTIFIT* \sim POLIFIT* POLI	1	1	0.080	0.080	fr5,it4
INSTIFIT* POLIFIT* TAX* VETO	1	1	0.180	0.020	nl3,nl5; nl2
INSTIFIT* POLIFIT* VETO* POLI	\sim 1	1	0.040	0.040	be2
INSTIFIT* TAX* VETO* POLI	0.959	0.957	0.459	0.319	lux2,lux3,lux4,nl1,nl4; nl3,nl5
\sim POLIFIT* \sim TAX* VETO* POLI	1	1	0.040	0.040	de4
Solution	0.971	0.967	0.659		

Notes: Read * as AND, + as OR, \sim as NOT.

Table 6: Intermediate solutions for no removed restrictiveness (CUSTRMORE)

	inclS	PRI	Coverage	Unique coverage	Cases
~ INSTIFIT* ~ TAX* ~ VETO* POLI	0.962	0.953	0.500	0.500	fr5,it4; fr1,fr2,fr3,fr4,it1,it2,it3,it5
INSTIFIT* ~ POLIFIT* ~ TAX* ~ VETO	0.890	0.876	0.160	0.160	be4,be5; be1
INSTIFIT* ~ POLIFIT* VETO* POLI	1	1	0.120	0.080	de4; lux1,lux5
INSTIFIT* ~ TAX* VETO* POLI	0.833	0.800	0.200	0.160	de4; de1, de2 ,de3,de5
Solution	0.922	0.905	0.940		

Notes: Read * as AND, + as OR, ~ as NOT. **Bold** case means deviant case, to be explained further down.

Table 7: Cases of “removed restrictiveness” of AMLD5 rules

Rule	Number of cases of watering-down	Cases	Type of watering-down
Scope of obliged entities	1	nl1	Thresholds are either added or higher
Identification of beneficial owner	4	be2, de2, lux2, nl2	Smaller categories of BO; no mandatory keeping of the assessment
Set-up of beneficial ownership register	2	lux3, nl3	No mandatory transmission of information by BO; no penalties or sanctions in case of violation; limitation of register to national companies
Access to beneficial ownership register	2	lux4, nl4	Addition of registration and/or

			fee to access the register
Protection of whistleblowers	1	n15	No provision on protection of whistleblowers

APPENDIX

Customisation analysis

Table 1': List of implementation measures by member state:

Belgium	<ul style="list-style-type: none"> - Loi du 20 juillet 2020 portant des dispositions diverses relatives à la prévention du blanchiment de capitaux et du financement du terrorisme et à la limitation de l'utilisation des espèces. - Arrêté royal du 30 juillet 2018 relatif aux modalités de fonctionnement du registre UBO.
France	<ul style="list-style-type: none"> - Code monétaire et financier Titre IV (modified by following acts) - Décret n° 2018-284 du 18 avril 2018 renforçant le dispositif français de lutte contre le blanchiment de capitaux et le financement du terrorisme. - Loi n° 2019-486 du 22 mai 2019 relative à la croissance et la transformation des entreprises. - Décret n° 2019-1213 du 21 novembre 2019 relatif aux prestataires de services sur actifs numériques. - Ordonnance n°2020-115 du 12 février 2020. - Décret n° 2020-118 du 12 février 2020 renforçant le dispositif national de lutte contre le blanchiment de capitaux et le financement du terrorisme. - Décret n° 2020-119 du 12 février 2020 renforçant le dispositif national de lutte contre le blanchiment de capitaux et le financement du terrorisme.
Germany	<ul style="list-style-type: none"> - Gesetz zur Umsetzung der Änderungsrichtlinie zur vierten EU-Geldwäscherichtlinie.
Luxembourg	<ul style="list-style-type: none"> - Loi du 25 Mars 2020 portant modification de la loi modifiée du 12 novembre 2004 relative à la lutte contre le blanchiment et le financement du terrorisme. - Loi du 13 janvier 2019 instituant un Registre des bénéficiaires effectifs. - Règlement grand-ducal du 15 février 2019 relatif aux modalités d'inscription, de paiement des frais administratifs ainsi qu'à l'accès aux informations inscrites au Registre des bénéficiaires effectifs.
Netherlands	<ul style="list-style-type: none"> - Besluit van 9 september 2020 tot wijziging van het Handelsregisterbesluit 2008 en het Uitvoeringsbesluit Wwft 2018 in verband met de registratie van uiteindelijk belanghebbenden van vennootschappen en andere juridische entiteiten ter implementatie van de gewijzigde vierde anti-witwasrichtlijn (Implementatiebesluit registratie uiteindelijk belanghebbenden van vennootschappen en andere juridische entiteiten). - Implementatiewet registratie uiteindelijk belanghebbenden van vennootschappen en andere juridische entiteiten. - Implementatiewet wijziging vierde anti-witwasrichtlijn. - Inwerkingtredingsbesluit Implementatiewet wijziging vierde anti-witwasrichtlijn.
Italy	<ul style="list-style-type: none"> - Decreto legislativo del 04/10/2019 n° 125 - Modifiche ed integrazioni ai decreti legislativi 25 maggio 2017, n. 90 e n. 92,

	<p>recanti attuazione della direttiva(UE) 2015/849, nonché attuazione della direttiva(UE)2018/843 che modifica la direttiva(UE) 2015/849, relativa alla prevenzione dell'uso del sistema finanziario ai fini di riciclaggio e finanziamento del territorio e che modifica le direttive 2009/138/CE e 2013/36/UE.</p> <ul style="list-style-type: none">- Decreto 11 marzo 2022, n. 55. Regolamento recante disposizioni in materia di comunicazione, accesso e consultazione dei dati e delle informazioni relativi alla titolarità effettiva di imprese dotate di personalità giuridica, di persone giuridiche private, di trust produttivi di effetti giuridici rilevanti ai fini fiscali e di istituti giuridici affini al trust.
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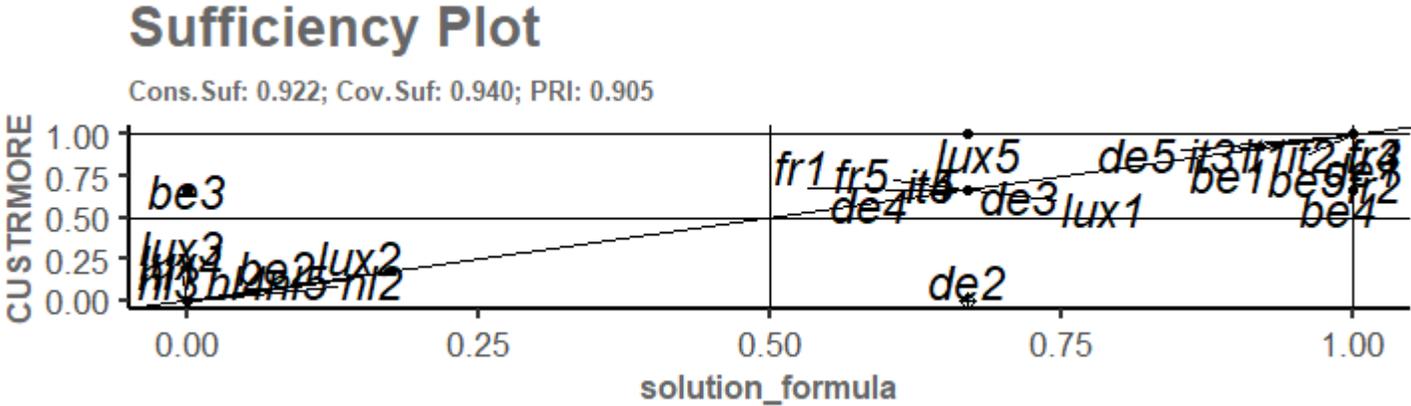
Table 2': Outcome of customisation analysis and case-studies

	Customized restrictiveness	Institutional fit	Policy fit	Tax tradition	Number of veto players	Political preference
be1	Added	Good	No	Neutral	Low (2)	Favourable
be2	Removed	Good	Yes	Neutral	Low (2)	Neutral
be3	Unchanged	Good	Yes	Neutral	Low (2)	Neutral
be4	Unchanged	Good	No	Neutral	Low (2)	Neutral
be5	Added	Good	No	Neutral	Low (2)	Neutral
de1	Added	Good	Yes	Restrictive	High (5)	Favourable
de2	Removed	Good	Yes	Restrictive	High (5)	Neutral
de3	Unchanged	Good	Yes	Restrictive	High (5)	Neutral
de4	Unchanged	Good	No	Restrictive	High (5)	Neutral
de5	Added	Good	Yes	Restrictive	High (5)	Favourable
fr1	Unchanged	Poor	Yes	Neutral	High (3)	Neutral
fr2	Unchanged	Poor	Yes	Neutral	Low (1)	Favourable
fr3	Added	Poor	Yes	Neutral	Low (1)	Favourable
fr4	Added	Poor	Yes	Neutral	Low (1)	Favourable
fr5	Unchanged	Poor	No	Neutral	Low (1)	Neutral
it1	Added	Average	Yes	Neutral	Low (1)	Favourable
it2	Added	Average	Yes	Neutral	Low (1)	Favourable
it3	Added	Average	Yes	Neutral	Low (1)	Favourable
it4	Unchanged	Average	No	Neutral	Low (1)	Neutral
it5	Unchanged	Average	Yes	Neutral	Low (1)	Neutral
lux1	Unchanged	Average	No	Agressive	High (4)	Neutral
lux2	Removed	Average	No	Agressive	High (4)	Unfavourable
lux3	Removed	Average	No	Agressive	High (4)	Unfavourable
lux4	Removed	Average	No	Agressive	High (4)	Unfavourable
lux5	Added	Average	No	Agressive	High (4)	Neutral
nl1	Removed	Good	No	Agressive	Low (1)	Unfavourable

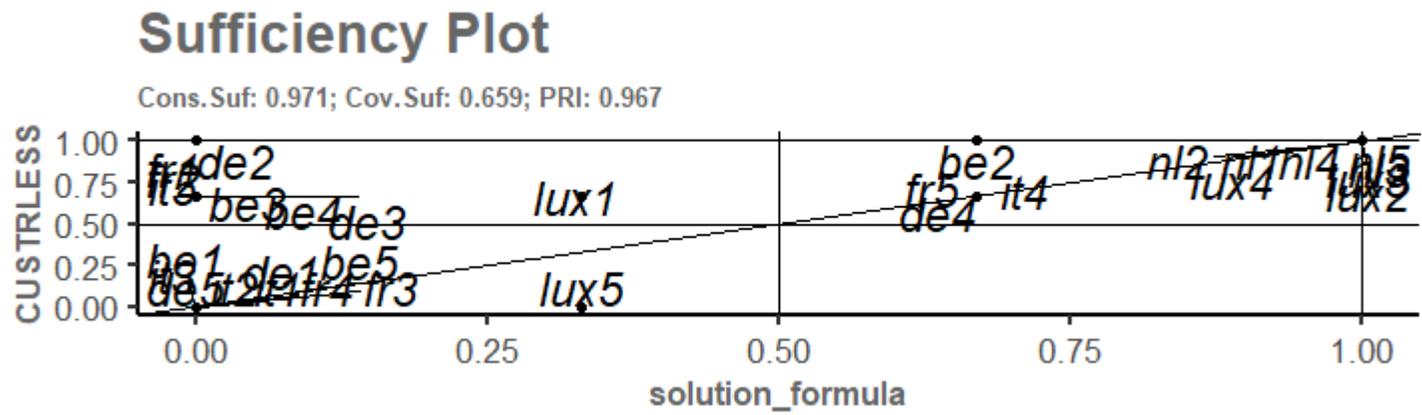
nl2	Removed	Good	Yes	Agressive	High (4) Neutral
nl3	Removed	Good	Yes	Agressive	High (4) Unfavourable
nl4	Removed	Good	No	Agressive	High (4) Unfavourable
nl5	Removed	Good	No	Agressive	High (4) Unfavourable

Qualitative Comparative Analysis:

Plot 1: Sufficiency plot for CUSTRMORE



Plot 2: Sufficiency plot for CUSTRLESS



R replication file (in word format):

```
##### QCA for Mathieu_ version2 #####

#Clear your workspace before starting to work:
rm(list = ls())

#install.packages("admisc")
install.packages("admisc")
install.packages("Rtools")
install.packages("SetMethods")
install.packages("psych")
install.packages("tmvnsim")
#install.packages("SetMethods")
#install.packages("Rtools")
#Load the required packages
library(psych);
library(base);
library(QCA);
library(SetMethods);

#Set your working directory.

#Load the raw dataset

mydata <- read.csv2("mathieu_ET.csv", row.names=1, header = TRUE)
mydata

#Refine data/correct skewness issues

mydata["lux2", "CUSTRMORE"] <- 0
mydata["lux3", "CUSTRMORE"] <- 0
mydata["lux4", "CUSTRMORE"] <- 0
mydata["lux1", "INSTIFIT"] <- 1
mydata["lux2", "INSTIFIT"] <- 1
mydata["lux3", "INSTIFIT"] <- 1
mydata["lux4", "INSTIFIT"] <- 1
mydata["lux5", "INSTIFIT"] <- 1
mydata$TAX[mydata$TAX == 0.67] <- 0

# get descriptive statistics

describe(mydata1)

#skewness check

skew.check(mydata1)

#Problem solved : no conditions are highly skewed

#####ANALYSIS OF NECESSITY#####

### testing for single necessary conditions
# thresholds to be passed are consistency 0.9, coverage 0.5, RoN 0.5

colnames(mydata1)
```

```

nconds <- mydata[c("INSTIFIT","POLIFIT","TAX", "VETO","POLI")]

# single necessary conditions for CustrMORE
QCAfit(nconds, mydata$CUSTRMORE, necessity = TRUE,neg.out = FALSE)

# single necessary conditions for ~CustrMORE
QCAfit(nconds, mydata$CUSTRMORE, necessity = TRUE,neg.out = TRUE)

# single necessary conditions for CustrLESS
QCAfit(nconds, mydata$CUSTRLESS, necessity = TRUE,neg.out = FALSE)

# single necessary conditions for ~CustrLESS
QCAfit(nconds, mydata$CUSTRLESS, necessity = TRUE,neg.out = TRUE)

###exploratory necessity analysis (single NCs or necessary
disjunctions)#####

# CustrMORE
superSubset(mydata, outcome = "CUSTRMORE",
             conditions = "INSTIFIT, POLIFIT, TAX, VETO, POLI",
             incl.cut = 0.9, cov.cut = 0.5, ron.cut=0.5)

# ~CustrMORE
superSubset(mydata, outcome = "CUSTRMORE",
             conditions = "INSTIFIT, POLIFIT, TAX, VETO, POLI",
             incl.cut = 0.9, cov.cut = 0.5, ron.cut=0.5, neg.out=TRUE)

# CustrLESS
superSubset(mydata, outcome = "CUSTRLESS",
             conditions = "INSTIFIT, POLIFIT, TAX, VETO, POLI",
             incl.cut = 0.9, cov.cut = 0.5, ron.cut=0.5)

# ~CustrLESS
superSubset(mydata, outcome = "CUSTRLESS",
             conditions = "INSTIFIT, POLIFIT, TAX, VETO, POLI",
             incl.cut = 0.9, cov.cut = 0.5, ron.cut=0.5, neg.out=TRUE)

# export results of necessity as table into CSV called necOUT.csv

nec1 <- superSubset(mydata, outcome = "CUSTRLESS",
                   conditions = "INSTIFIT, POLIFIT, TAX, VETO, POLI",
                   incl.cut = 0.9, cov.cut = 0.5, ron.cut=0.5,
neg.out=TRUE)
nec1

write.csv2(nec1$incl.cov, "necOUT.csv")

# XY plots for these SUIN conditions,

pimplot(data=mydata, results=nec1, outcome="CUSTRLESS", neg.out=TRUE,
necessity=TRUE, all_labels = TRUE, jitter=TRUE)
pimplot(data=mydata, results=nec1, outcome="CUSTRMORE", neg.out=TRUE,
necessity=TRUE, all_labels = TRUE, jitter=TRUE)
#different way to do the plot

```

```

# for ~TAX + ~VETO
mydata$NC1 <- compute("TAX + VETO", mydata)
xy.plot("NC1", "~CUSTRLESS", data = mydata,
        labs = rownames(mydata),
        necessity=TRUE, jitter = TRUE)

# for ~TAX + POLI
mydata$NC2 <- compute("~TAX + POLI", mydata)
xy.plot("NC2", "~CUSTRLESS", data = mydata,
        labs = rownames(mydata),
        necessity=TRUE, jitter = TRUE)

# for ~VETO + POLI
mydata$NC3 <- compute("~VETO + POLI", mydata)
xy.plot("NC3", "~CUSTRLESS", data = mydata,
        labs = rownames(mydata),
        necessity=TRUE, jitter = TRUE)

#how many / which cases are not members of this condition set?
rownames(subset(mydata, NC3 < 0.5))

#####analysis of sufficiency####
##### sufficient conditions for CustrMORE#####
colnames(mydata)

##check for deviant cases consistency in kind

ttOUT <- truthTable(mydata, outcome="CUSTRMORE", "INSTIFIT, POLIFIT,
TAX, VETO, POLI",
                    incl.cut=1, n.cut=1, sort.by="incl, n",
decreasing=TRUE,
                    complete=TRUE, show.cases=TRUE, dcc=TRUE)
ttOUT

# we set the raw consistency threshold at 0.75. This includes 1 deviant
case consistency in kind de2 in row 28-- it is always only a minority
of the case (1 of 4) and it allows us to cover 10 more cases

###limited diversity: 12 out of 32 logically possible truth table rows
are empirically observed

#build truth table
ttOUT1 <- truthTable(mydata, outcome="CUSTRMORE", "INSTIFIT, POLIFIT,
TAX, VETO, POLI",
                    incl.cut=0.75, n.cut=1, sort.by="incl, n",
decreasing=TRUE,
                    complete=FALSE, show.cases=TRUE)
ttOUT1

# export truth table as CSV table called "ttOUT1.csv"
write.csv2(ttOUT1$tt, "ttOUT1.csv")

#conservative solution for CustrMORE
csOUT1 <- minimize(ttOUT1, details=TRUE, show.cases=TRUE)
csOUT1

```

```

# there are 2 conservative solutions (slight model ambiguity). they
only differ in the role of VETO respectively TAX in the last path.

#parsimonious solution for CustrMORE
psOUT1 <- minimize(ttOUT1, include="?", details=TRUE, show.cases=TRUE)
psOUT1

#intermediate solution for CustrMORE
#directional expectations: INSTIFIT, POLIFIT, POLI
# No untenable assumptions
isOUT1 <- minimize(ttOUT1, include="?", details=TRUE, show.cases=TRUE,
dir.exp = "INSTIFIT, POLIFIT, POLI")
isOUT1

#there are 2 intermediate solutions (slight model ambiguity). they only
differ in the role of VETO in the first and last path.
isOUT1
csOUT1

# export solution as table into html (to copy-paste into word and
format accordingly) called "isOUTCOME1.html"
stargazerSol(results = isOUT1, outcome = "CUSTRMORE",
              type = "html", show.cases=TRUE, out = "isOUTCOME1.html")

# plot the intermediate solutions
# plot solution terms
pimplot (data = mydata,
         outcome = "CUSTRMORE" ,
         results = isOUT1,
         all_labels = TRUE,
         jitter = TRUE,
         fontsize = 6)
#there is DCK cases, in the lower right quadrant, that require
discussion (de2)
# the cases in the upper left are unexplained cases

###simplifying assumptions for parsimonious solution for CUSTRMORE

SAOUT1 <- psOUT1$SA$M1
SAOUT1

# export SAs into CSV table called SAOUT1.csv
write.csv(SAOUT1$M1, "SAOUT1.csv")

# no need to check easy counterfactuals--we know no such assumptions
were made for the IS

#### sufficient conditions for CustrLESS####
colnames(mydata)

##check for deviant cases consistency in kind

ttOUT <- truthTable(mydata, outcome="CUSTRLESS", "INSTIFIT, POLIFIT,
TAX, VETO, POLI",
                   incl.cut=1, n.cut=1, sort.by="incl, n",
decreasing=TRUE,

```

```

                                complete=TRUE, show.cases=TRUE, dcc=TRUE)
ttOUT

# we set the raw consistency threshold at 0.92. This includes row 23
and excludes row 21, which has 50% DCCK and so has the following row.
No DCCK cases will be included.

#build truth table
ttOUT2 <- truthTable(mydata, outcome="CUSTRLESS", "INSTIFIT, POLIFIT,
TAX, VETO, POLI",
                                incl.cut=0.92, n.cut=1, sort.by="incl, n",
decreasing=TRUE,
                                complete=FALSE, show.cases=TRUE)
ttOUT2

# export truth table as CSV table called "ttOUT2.csv"
write.csv2(ttOUT2$tt, "ttOUT2.csv")

#conservative solution for CustrLESS
csOUT2 <- minimize(ttOUT2, details=TRUE, show.cases=TRUE)
csOUT2

#parsimonious solution for CustrLESS
psOUT2 <- minimize(ttOUT2, include="?", details=TRUE, show.cases=TRUE)
psOUT2

#intermediate solution for CustrLESS
#directional expectations: TAX, VETO
# no untenable assumptions
isOUT2 <- minimize(ttOUT2, include="?", details=TRUE, show.cases=TRUE,
dir.exp = "TAX, VETO")
isOUT2

csOUT2

# the conservative and intermediate solutions are identical. This means
that no counterfactual assumptions were easy and hence, used for the
intermediate solution.

# export solution as table into html (to copy-paste into word and
format accordingly) called "isOUTCOME2.html"
stargazerSol(results = isOUT2, outcome = "CUSTRLESS",
              type = "html", show.cases=TRUE, out = "isOUTCOME2.html")

# plot the intermediate solution

pimplot (data = mydata,
         outcome = "CUSTRLESS" ,
         results = isOUT2,
         all_labels = TRUE,
         jitter = TRUE,
         fontsize = 6)
#there are no DCCK cases
# the cases in the upper left are unexplained cases, there are many.

###simplifying assumptions for parsimonious solution for CUSTRLESS

```

```
SAOUT2 <- psOUT2$SA$M1  
SAOUT2
```

```
# export SAs into CSV table called SAOUT2.csv  
write.csv(SAOUT2$M1, "SAOUT2.csv")
```

```
# no need to check easy counterfactuals--we know no such assumptions  
were made for the IS
```