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**Anti-money laundering regulatory compliance by
private sector art market actors: learning,
experience, and interaction**

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Submitted in fulfilment of the requirements for the degree of
Doctor of Philosophy

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Abstract.

With the adoption of the EU's Fifth Anti-Money Laundering Directive (2018/843) on 30 May 2018, art market actors were explicitly added to the list of obliged entities to the extent that they store (within free zones and customs warehouses), trade, or act as an intermediary in the trade of works of art where the value of the transaction or linked transactions amounts to at least EUR 10,000. AML regulation essentially relies on market actors and their ways of managing risk to regulate economic crime, thereby working together with private sector actors on public matters. Through this collaboration, private governance regimes are created. These private governance regimes are shaped by and evolve with the experience and interactions of their actors. The collaboration is between private sector actors and also between national governments and international regulators.

This doctoral thesis analyses how the regulatory changes have impacted art market actors in Germany, how they have worked to address them, and what kind of organisational thinking is necessary to do this effectively. Getting involved in achieving public goals can be quite an abstract thing for art market actors and is sometimes viewed as counter to their purposes as profit-seeking private market actors. When designing private regulatory regimes, the experience, willingness, and attitude of those private actors are an essential part of their effectiveness. Upon examining this niche market in terms of how its actors learn, experience, and interact with regulatory compliance, I am drawing out generalisable lessons towards regulation.

This thesis adopts a socio-legal framework centred on regulatory discretion and social embeddedness. It is based on qualitative interviews conducted with art market actors in Germany between June and October 2022 and my professional experience in AML and sanctions compliance. Drawing on the generated data, I contribute new empirical knowledge on how AML compliance is learned, experienced, and shaped through interaction in the private sector art market. This thesis is thus about collaborative regulation and governance regimes, and how findings from learning, experience, and interaction can be used to understand why AML regulatory compliance takes specific forms and how to increase the relevance and practicality of the AML framework.

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Author's Declaration.

I declare that, except where explicit reference is made to the contribution of others, this dissertation is the result of my own work and has not been submitted for any other degree at the University of Glasgow or any other institution.

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Signature: _____

Abbreviations.

AFC	Anti-Financial Crime
AML	Anti-Money Laundering
AMP	Art Market Participant
ANPRM	Advance Notice of Proposed Rulemaking
ARML	Art-related Money Laundering
BADA	British Antique Dealers' Association
BAMF	The British Art Market Federation
BVDG	Bundesverband Deutscher Galerien und Kunsthändler e.V. (Federal Association of German Galleries and Art Dealers)
CDD	Customer due Diligence
CFT	Combating the Financing of Terrorism
CINOA	Confédération Internationale des Négociants en Œuvres d'Art (International Confederation of Art and Antique Dealer Association)
DNFBP	Designated Non-Financial Businesses and Professions
EAMC	European Art Market Coalition
EU	European Union
FATF	Financial Action Task Force
FinCEN	Financial Crimes Enforcement Network
FIU	Financial Intelligence Unit
GwG	Geldwäschegesetz (German Anti-Money Laundering Act)
HMRC	His Majesty's Revenue and Customs
KGSG	Kulturgutschutzgesetz (German Cultural Property Act)
KYC	Know Your Customer
MLRO	Money Laundering Reporting Officer
RAM	Responsible Art Market
SAR	Suspicious Activity Report
StGB	Strafgesetzbuch (German Criminal Code)
TEFAF	The European Fine Art Foundation
UK	United Kingdom
UN	United Nations
UNODC	United Nations Office on Drugs and Crime
US	United States of America
VAT	Value Added Tax

Chapter 1 Introduction

Like any PhD student I am sure, halfway through this project, I came close to giving up. I had started out with the Criminology department of the University of Glasgow's School of Social and Political Sciences. Driven by my practical experience and the need to define money laundering in the art market to enable art market actors, financial institutions, and law enforcement to effectively detect this crime, I was aiming to define art-related money laundering in the form of typologies. These typologies could then be used by art market actors but also the financial services industry to detect and effectively prevent money laundering through the art market. I had defined three ways through which I believed I would be able to achieve this goal: Firstly, the use of existing typologies which were identified by the Financial Action Task Force (FATF)¹ and other official bodies for similar circumstances and markets could be leveraged to apply them to the art market either directly or indirectly. As a second step, I would look at the characteristics of the art market to derive specific typologies. Thirdly, I would look at actual (prosecuted) cases in a structured way to develop common factors and patterns to derive typologies, thereby also validating the theoretical findings of the first two steps. After two years, I effectively only completed the first step which was published in the form of conference proceedings (Stoll, 2022). I realised that there just were not enough tried and published cases for abstraction and deriving patterns to use in a structured way for red flags. I then talked to a former acquaintance of mine from the art market who—and he was not the first to say this—told me point-blank that any red flag I discussed with him would just not be suspicious, but rather be a normal art market transaction. In his opinion, a money laundering transaction is not distinguishable from a perfectly normal transaction in the art market. The lack of data paired with the transfer of my primary supervisor to another university led me to believe that this was not a project that could achieve its goals. Around the same time, the EU published its fifth AML Directive (2018/843) explicitly extending the regulatory requirements to the art market (beyond the requirements already in place for high-value dealers). Money laundering through the art market had become a topic of increased awareness in the

¹ The FATF is the most important intergovernmental body to set standards and promote effective implementation of legal, regulatory, and operational measures for combating money laundering and terrorist financing. As an intergovernmental organisation, the FATF sets standards for AML compliance and supervises the implementation of those standards. The FATF's 40 recommendations for money laundering and nine on terrorist financing have become the international standard (Unger, 2013). 'FATF recommendations are not formally binding but are widely adopted by members and form the basis of the European Commission's money laundering directives' (Tsingou, 2014, p. 144). The FATF also uses direct hierarchical measures to enforce non-members compliance with its rules, as so-called naming and shaming system which has shown to be very effective: Through its evaluation system, the FATF becomes increasingly important in money laundering policy (Unger, 2013). The FATF regularly publishes typology papers and reports on current trends and developments. The FATF is critiqued for lacking a constitution and transparency with regards to who is behind the policies and procedures implemented by the FATF (Alldridge, 2016).

international press (Bowley and Rashbaum, 2017), fuelled by a few high-profile cases², leading to regulators in the EU and the US discussing extended AML regulation for the art market (Mashberg, 2019). What I had been talking about for years now became the reality the art market would face. The change in the regulatory landscape opened the question of how the art market now deals with these obligations as opposed to how they concern themselves with money laundering in the form of self-regulation, and without external requirements. This provided a new focus for my research, and I ended up moving to the School of Law and with the move of faculties also rethinking and redefining the scope of my thesis—from looking at the crime to looking at those who are required to aid in its prevention. Instead of looking at art market actors as criminals or complicit in a crime, I look at them as compliant (or non-compliant) businesses. Instead of searching for money laundering, I look for regulatory compliance behaviour. While such difficulties and change in direction are common in any long-term project, the lack of data and inability to apply already existing money laundering techniques to the art market also shows how very different the art market is from other markets. It is thus, necessary to re-think the regulatory framework originally written for the financial services industry to also fit the art market. To do so, this thesis adopts a socio-legal framework centred on regulatory discretion and social embeddedness.

When someone commits a crime for economic gain, naturally, they will want to enjoy that profit (Levi and Reuter, 2006). The processing of those criminal earnings to disguise their illicit origin is called money laundering. A successful money laundering process enables the criminal to use the illegally gained funds without jeopardising their source and risking detection and prosecution (Levi and Reuter, 2006). The UN Vienna 1988 Convention was ‘the first international instrument to address the issue of proceeds of crime, and to require States to establish money laundering as a criminal offence’ (United Nations Office on Drugs and Crime, 2001, p. 3). Its definitions of money laundering have informed statutes globally (Alldridge, 2016). Article 3.1(b)(i) of the Convention describes money laundering as the conversion or transfer of property, knowing that such property is derived from any offense(s), for the purpose of concealing or disguising the illicit origin of the property, or of assisting any person who is involved in such offense(s) to evade the legal consequences of their actions (United Nations, 1988). In that sense, money laundering is an act following an independently committed crime

² Two examples of such high-profile cases are the continuous sale of fakes by the Knoedler gallery over a period of 15 years (Jomeen, 2022) and the concealment of assets in form of wrongful declaration of an artwork’s worth by Brazilian banker Edemar Cid Ferreira (Chu, 2022).

that resulted in the obtainment of funds, the so-called predicate crime (Levi and Reuter, 2006; Gilmour, 2016). The term predicate crime covers a wider range of criminal offences committed before the actual money laundering with their exact definition depending on respective national law. The definition of predicate crimes naturally has an impact on the definition of money laundering as a crime: The wider the definition of the predicate crime, the more proceeds of those predicate crimes will fall under the definition of money laundering.³

Money laundering typically consists of three stages, also called the money laundering cycle:

- The placement of illegally obtained funds into a bank account or onto a pre-paid card,
- the layering to conceal the origin of these funds through multiple transfers,
- and the integration of the illegally obtained funds into the legal economy (United Nations Office on Drugs and Crime, 2023).

High-value goods, including art, can be used in all three stages of the money laundering cycle (Burroughs, 2019). This theoretical three-stages-model is widely accepted in academic research (Buchanan, 2004; Levi and Reuter, 2006; Unger, 2007; Schneider and Windischbauer, 2008) and frequently used in law enforcement (Gilmour, 2023). In general, detecting money laundering is easier in the earlier stages (Ulph, 2011). Due to the model's focus on placing cash in the financial system, however, it has little application to most money laundering scenarios, especially when the money is already in electronic form when the laundering begins (van Koningsveld, 2013; Cassella, 2018; Gilmour, 2023).⁴ The UNODC, while keeping the three-stages-model, widens the definition of the placement phase by characterising it as the 'movement of funds from direct association with the crime' (United Nations Office on Drugs and Crime, 2023), thus moving away from the strict placement of cash. At the same time, they acknowledge that 'in reality, money laundering cases may not have all three stages, some stages could be combined, or several stages repeat several times' (United Nations Office on Drugs and Crime, 2023). It could also be argued that if a money launderer used the illicit funds in the illegal economy to further illicit business activities, they would not need to place it in the legal economy. However, ultimately, if—as with any business activity—their goal was a luxury lifestyle of sorts, placement and using the funds they obtained legally, would be their goal (Levi and Reuter, 2006).

³ While the predicate crime offences at the beginning concentrated on drug related crimes, the definition has continuously been widened and 'the current enforcement programme seems committed to bringing all activity in the black or grey economies under the classification of money laundering' (Alldrige, 2016, p. 3).

⁴ Gilmour (2023), Matanky-Becker and Cockbain (2022), and Soudijn (2016) offer a more detailed account of the academic debate on the three-stages model.

There are two ways in which money laundering involves art⁵. Firstly, art crime, such as art theft or the illegal excavation of antiquities, can be the predicate crime producing proceeds that need to be laundered, either through the art market or through other means. This is called a crime *against* art (Hufnagel and King, 2019). Secondly, proceeds of any non-art related predicate crime may be laundered through the art market—making it a crime *through* art (Hufnagel and King, 2019). This thesis exclusively addresses the latter, the crime of money laundering through art and the art market (Purkey, 2010; Mosna, 2022) in the form of art-related money laundering (ARML). While art crime can be the predicate crime for money laundering through the art market, the AML regulations do not differentiate money laundering according to the predicate crime. Rather, the regulations focus on the different sectors that are required to follow the regulations to prevent their misuse for money laundering purposes. I have defined ARML in a previous publication as follows: ARML is the process of disguising the proceeds of crime and moving value through the use of art transactions at domestic or international level in an attempt to legitimise their illicit origins (Stoll, 2022). Art transactions are transactions with art as the main subject (goods or services). Since the art market is inherently a part of the international trade (Stoll, 2022), this definition of ARML is built on the FATF’s definition of trade-based money laundering: ‘Trade-based money laundering is defined as the process of disguising the proceeds of crime and moving value through the use of trade transactions in an attempt to legitimise their illicit origins’ (Financial Action Task Force, 2006, p. i). Considering the international nature of the art market, art transactions can be either carried out domestically or on an international level.

A general connection between money laundering and art has been noted in multiple accounts (Snaith, 1998; Brodie, Doole and Watson, 2000; Mackenzie, 2011; Chappell and Hufnagel, 2014; Giroud and Boudry, 2015; Oosterman, Mackenzie and Yates, 2022). This connection is generally not contested even if the number of publicly tried cases is still small (Hill, 1996; De Sanctis, 2013; Turner, 2024). Publications further assess the characteristics and vulnerabilities of the art market to the misuse for money laundering purposes (Roth, 2016, 2014; Steiner, 2017; Purkey, 2010; Mashberg, 2019), discuss the few public cases (Hill, 1996; De Sanctis, 2013), and analyse ways to launder money through the art market (Massy, 2008; Purkey, 2010; Chu, 2022; Mosna, 2022).

⁵ The term art and how it will be used in this thesis is explained in Chapter 2.1.

An introduction to the legal and regulatory AML obligations for art market actors in the EU can be found in works published just after the EU issued their fifth AML Directive (2018/843) (Burroughs, 2019; Dagirmanjian, 2019; Hufnagel and King, 2019; Brodie and Yates, 2022). More recently, Chu (2022), Jomeen (2022), Mosna (2022), Turner (2024), and Jerzyk (2025) conducted more in-depth analysis of the AML obligations and their effectiveness. They found the current AML framework to fail in sufficiently preventing money laundering through the art market (Chu, 2022; Turner, 2024) and propose an expansion of the AML regulations to require art market actors to submit suspicious art market transaction reports to an intergovernmental organisation (Chu, 2022).

Despite the increased attention in recent years which can be attributed mainly to the regulatory changes, AML regulatory compliance in the art market is still quite an understudied topic and comparatively little is known about how newly regulated sectors such as the art market experience and operationalise AML regulation.

1.1 Research Relevance

In this thesis, I research a regulation that has been extended to a sector whose structures and practices differ fundamentally from the financial services industry for which the regulation was originally designed. By studying the German art market as a regulatory field, this thesis addresses a current and underexplored regulatory development thereby contributing to broader debates about the reach, design, and future direction of AML governance in Europe. It responds to the growing tendency to expand AML obligations to non-financial sectors without a corresponding analysis of how such regulation is understood, learned, and applied in practice within these non-financial markets.⁶

Through examining how AML regulatory compliance is learned, experienced, and interacted with in the German art market, this thesis contributes to a more nuanced understanding of regulation as a social process rather than a purely legal one. Rather than treating compliance as a static outcome measured against statutory requirements, I observe and highlight the everyday practices, interpretations, and adaptations through which AML regulation becomes meaningful—or, in some cases, remains disconnected from art market realities. In doing so, this thesis situates itself within socio-legal scholarship emphasising learning, experience, and

⁶ A critique that Brodie and Yates (2022) expressed in their analysis of the EU regulations.

interaction as central to understanding how regulation functions beyond the formal law. The empirical focus on the German art market allows this thesis to shed light on the specific challenges posed by AML regulation in a sector with limited prior exposure to formal (financial) compliance regimes. These challenges include the disruption of relational transactions through KYC due diligence procedures, the commercial importance of confidentiality in contrast to the required transparency of the regulation, the limited availability of sector-specific typologies, and the absence of institutionalised compliance infrastructures comparable to those found in the financial services industry. The art market's unique characteristics are perceived to complicate the practical application of AML obligations thereby exposing tensions between regulatory assumptions and market practices. By analysing how art market actors navigate these tensions, this thesis offers insights into the limits of transposing financial-sector compliance models onto fundamentally different markets. While the purpose of this research is not to provide a normative critique of AML regulation as such, it demonstrates where regulatory expectations struggle to gain practical traction and where adaptations or additions are required to render AML regulatory compliance workable in the German art market. In doing so, this thesis provides perceptions of the practical relevance of AML regulation and the conditions under which it becomes more workable in non-financial markets.

A key contribution of this thesis therefore lies in confirming that AML regulatory compliance cannot be understood solely by reference to statutory texts, formal obligations, or enforcement structures. Instead, it must be analysed through the practices, relationships, and forms of legal knowledge that shape how regulation is translated into practice.

From my professional experience as an internal auditor of AML and sanctions compliance programs at an international bank, I know that the experience of regulators often defines their expectations. Often a regulator comes in and sets their expectation bar according to what they have seen in the market; this practice is called regulatory discretion (Schmidt and Scott, 2021). Best practice is defined by their experience of auditing other banks. This learning curve, this collaborative thinking, this peer learning is what this research taps into. This research did not collect evidence for non-compliance but collected evidence of how art market actors think compliance could be improved in a way that allows them to share learning. Compliance documents, such as a risk analysis, a policy, procedure, or description of a control can be an example of the specific output of this collaborative learning.

Legal scholars have long recognised discretion as an unavoidable feature of rule application, particularly in areas characterised by open-textured standards and risk-based regulation

(Hawkins, 2002). In the AML context, obligations such as conducting a risk assessment, designing internal controls, and reporting suspicious activity require obliged entities to exercise judgment rather than to follow prescriptive rules. Building on Black's (2008) analysis of regulatory discretion, this thesis shows how discretion is exercised not only by supervisors, but also by private art market actors and regulatory intermediaries tasked with interpreting and operationalising AML requirements.

Importantly, this thesis brings these two theoretical strands together by demonstrating how discretion is exercised within socially embedded markets. In the art market, discretionary judgments about risk, customer behaviour, and appropriate compliance responses are shaped by relational knowledge, reputational considerations, and shared market norms. This interaction complicates regulatory expectations of exercising discretion as it would happen in financial markets.

Through this combined theoretical framing, this thesis contributes to broader debates on regulatory intermediaries, private governance, and the limits of transposing regulatory models across sectors. It demonstrates that social embeddedness and discretion are not peripheral concerns but central analytical concepts for understanding how AML regulation is learned, experienced, and interacted with in practice. By empirically grounding these concepts in the art market, this thesis offers a framework that is relevant beyond the sector examined, providing tools for analysing regulatory compliance in other relationship-based and non-financial markets.

The relevance of this thesis also extends to contemporary regulatory and policy concerns. In general, AML regulation utilises market participants and their ways of managing risk to regulate economic crime, thereby working together with private sector actors on public matters (Ulph, Tugendhat and Glister, 2023). With AML regulation, private sector actors are not merely subjects of regulation but are involved in achieving public goals, thereby requiring them to take on an active role in crime control (Levi and Reuter, 2006): Protecting society from crime and protecting the stability and integrity of the financial system (Directive (EU) 2018/843). Through this, private governance regimes are created. These private governance regimes are shaped by and evolve with the learning and experience of their actors, as well as with their interactions: Between the private sector actors, but also between government and international regulators. All these interactions shape and culminate in discretion. Yet the processes through which this learning and experience occurs—particularly in newly regulated non-financial sectors—remain underexplored in academic literature. While art market actors have been consulted during

regulatory processes, such as through the FinCEN⁷ call for comments in 2021, their lived experience of compliance and the ways in which regulatory understanding develops have not yet been the subject of sustained scholarly attention. This is likely due, at least in part, to the relatively short period since AML obligations became applicable to the art market in January 2020. In this sense, my findings are relevant for regulators insofar as they demonstrate how AML obligations are filtered through intermediaries and internal practices, and how misalignment between regulatory assumptions and market realities may undermine both acceptance of the regulations and meaningful compliance. Consequently, the relevance of this research extends beyond the art market as a standalone case.

The significance of this thesis is further underscored by recent geopolitical developments. On 24 February 2022, Russia formally started its invasion of Ukraine.⁸ Since then, Russia and Ukraine have fought over Ukrainian territories and continue to fight to the present day. As a response to Russia's war of aggression, several international sanctions have been imposed on Russia, including targeted sanctions against individuals, companies, and organisations as well as economic sanctions against Russia and its actions (European Council and Council of the European Union, 2024b).⁹ These sanctions are in addition to those in place since Russia's annexation of Crimea in 2014. In practice, this means that it is prohibited for anyone in the market to make funds or assets directly or indirectly available to sanctioned individuals, companies, or organisations (European Council and Council of the European Union, 2024b). The economic sanctions which include several import and export restrictions mean that market actors cannot sell or buy certain products to or from Russia (European Council and Council of the European Union, 2024b). Private actors are therewith directly engaged in enforcing the sanctions imposed on Russia. Without them following the sanctions and stopping business with sanctioned parties or stopping trade in sanctioned goods, these would not be effective in

⁷ The Financial Crimes Enforcement Network (FinCEN), Treasury, published an ANPRM to seek for public comments on the implementation of Section 6110 of the Anti-Money Laundering Act of 2020 (the AML Act) which added 'person engaged in the trade of antiquities, including an advisor, consultant, or any other person who engages as a business in the solicitation or the sale of antiquities' to the definition of 'financial institution' subject to the regulation (Financial Crimes Enforcement Network, 2021). Although geographically out of scope for this thesis, this is an example of involving the art market in the regulatory process.

⁸ The detailed events that led to this invasion are not discussed here. For further reading on those events see for example Kasinska-Metryka and Palka-Suchojad (Kasińska-Metryka and Pałka-Suchojad, 2023); the role of the West is discussed by Hedlund (Hedlund, 2023); and for an analysis of the international sanctions against Russia see for example Abely (Abely, 2024).

⁹ At the time of writing, the EU has just published its 19th sanctions package and is preparing for the 20th sanctions package.

practice. The art market has been explicitly implicated in sanctions evasion as illustrated by a US Senate investigation which alleged that in the months after the US imposed sanctions on two Russian individuals in 2014, they illegally acquired art and antiquities worth more than USD 18 million (Permanent Subcommittee on Investigations, 2020). The two sanctioned individuals thereby appear to have evaded sanctions through their transactions with the art market, rendering the sanctions imposed on them at least partially ineffective. Thus, the events of the past four years in Ukraine and corresponding sanctions against Russia draw out at the highest level what those public goals are, and just how heavy public responsibilities weigh. While private actors may regard these regulations as tick-box, something they just must do, these events shine a light on just how important these regulations are and how important their effectiveness is. AML and sanctions compliance are thus, not merely bureaucratic exercises but integral to the enforcement of international legal and political objectives. Against this background, understanding how AML and related obligations are learned and applied in practice becomes particularly significant. While art market actors may perceive AML obligations as formal or administrative requirements, recent events highlight the broader public stakes attached to their compliance practices. This thesis therefore contributes to understanding how private actors engage with public goals that may appear abstract or misaligned with their commercial objectives. When designing private regulatory regimes, the experience, willingness, and attitudes of those private sector actors are an essential part of their effectiveness. This doctoral thesis taps into this line of thinking, and analyses data collected on learning, experience, and interaction of private sector art market actors with AML compliance.

Besides its academic benefits, this research is relevant to stakeholders in that it opens access to the experience and best practices of peers. Art market actors were added as obliged entities to the money laundering regulations as recently as 2020. These regulations have historically focused on the financial services industry. As such, art market actors lack the decades-long compliance experience of banks. It is therefore essential to understand how they learn, experience, and interact with AML compliance—how they are complying (or not complying) with the regulations. By looking at this very specialist, niche market, we can draw out generalisable points on regulatory compliance. Through understanding regulatory compliance, we can understand the limits of regulations and how to remedy those. By recognizing experience to improve compliance (Héroux and Roussy, 2020), recognizing collaboration and peer learning without evaluating good or bad, and recognizing interaction between the public and the private

actor, I observe the nuances of regulatory compliance behaviour. As a benefit, this research may result in guidance and best practices private sector art market actors and their supervisors may use to enhance AML regulatory compliance practices.

1.2 Research Objectives and Questions

The research objectives of this thesis are:

- 1) To understand the art market as a regulatory field, and how its nature and structure align with AML regulation.
- 2) To understand how art market actors in Germany have learned about the AML regulations and continue to learn about the practical application of the AML requirements, and how this understanding of the creation and distribution of legal knowledge influences practical AML compliance in this sector.
- 3) To explore how art market actors in Germany have adapted their internal practices to comply with requirements from the AML regulations, and what these adaptations reveal about the relevance and practicality of the AML regulatory framework.
- 4) To understand the nature and extent of the interaction between the art market and the regulator during the development and implementation of the relevant AML regulations in Germany and how this interaction and its consequences are perceived by the art market.
- 5) To understand the German supervisory approach for the art market regarding AML regulation, and how this set-up impacts supervisory practices and compliance behaviour in the art market.

I developed the research questions based on these research objectives to explore regulatory compliance of the art market with AML regulations. Such an alignment between research objectives and research questions ensures that the study remains focused on generating actionable knowledge that benefits stakeholders and promotes regulatory compliance in a constructive and collaborative manner.

The overarching research question is divided into sub-research questions that are answered in each empirical chapter of this thesis. The sub-research questions are structured along the three key themes: learning, experience, and interaction. Through addressing these three themes and using the art market as a case study, I seek to contribute to a deeper understanding of the nuances regulatory compliance can take—without critiquing or undermining current efforts.

This approach shifts the emphasis from identifying flaws to fostering understanding and developing pathways for meaningful regulatory compliance. The three themes are complemented by understanding the nature and structure of the art market as a regulatory field and exploring the set-up of AML supervision of the art market. It is important to note that I did not aim at covering the entirety of observable compliance behaviour or at presenting a grand solution for effective AML regulation, but rather to focus on nuances and instances of compliance in this niche market.

I have defined the overarching research question as follows:

How is AML regulatory compliance learned about, experienced and applied in practice by private sector art market actors, and interacted with through engagement and supervision in the German art market since the implementation of the EU's fifth AML Directive in form of the German AML Act?

The sub-research questions are defined for each chapter.

Chapter 6 The Regulated

How does the socially embedded, trust-based structure of the German art market align with the requirements for art market actors as set forth in the applicable AML regulations?

Chapter 7 Learning

How do trade associations as regulatory intermediaries shape regulatory learning through the creation and distribution of legal knowledge on AML requirements among art market actors in Germany, and how does this learning process influence the practical application of AML obligations in the sector?

Chapter 8 Experience

How have art market actors in Germany adapted their internal practices to comply with AML obligations, and what do these adaptations reveal about the relevance and practicality of the AML regulatory framework?

Chapter 9 Interaction

To what extent and in what ways did art market actors interact with regulators during the development and subsequent implementation of the EU's fifth AML Directive, and how do art market actors perceive the consequences of limited or inadequate interaction for their compliance practices?

Chapter 10 The Regulator

How does the current AML supervisory approach to the non-financial sector in Germany in terms of organisational and operational set-up influence supervisory practices and compliance behaviour?

Justification for these research questions lies in the need to better understand how private sector actors engage with and shape regulation through the nuances of regulatory compliance, recognising that compliance is best understood through an empirical, interpretive analysis of regulation in practice. AML regulation represents a critical part of financial regulation where private sector compliance directly contributes to global efforts against money laundering as a crime. The art market, traditionally associated with informality and intransparency, provides a compelling context for examining how regulatory frameworks are internalised, adapted, and operationalised. A context which I know much about as a trained art historian and having worked in auction houses in Germany and the UK.

These questions are intentionally framed not to critique current efforts but to provide a constructive conversation about regulatory compliance practices. By focusing on understanding rather than criticism, my study seeks to identify pathways of enhanced regulatory compliance that benefit both the private and the public actor. As such, the conclusion to this thesis includes recommendations for art market actors as well as for supervisors. As part of my job as an internal auditor, I audited the bank's AFC compliance programs, including the AML compliance program. Over the years, I gained first-hand knowledge and experience of how a financial services institution as an obliged entity applies AML regulation. While my position as an AML internal auditor at a bank brings valuable experience with it, through my job I also believe that AML regulation is right and makes sense. The purpose of this research is to record the reaction of a group of people who may view the regulatory provisions as counter to their purposes as profit-seeking and private actors. These views are important to understand regulatory compliance.

1.3 Organisation of this Thesis

In Chapter 2, I examine the general structure and characteristics of the art market and introduce them to the reader. The aim is to conceptualise the art market as a regulatory field with distinctive structural characteristics that shape compliance dynamics. This chapter thus, creates the foundation for understanding how the art market as a marketplace functions. I start

off with the definition of works of art in the respective regulations and what this means in the context of AML regulation. In the second part of this chapter, the art market actors relevant to the purpose of this thesis are introduced: Auction houses, art galleries and art dealers, intermediaries, and trade associations which represent one or all these actors. The concept of an art market transaction is explained in the third section of this chapter. An art market transaction may be the very simple exchange of an artwork and money between the buyer and the seller, or it may involve various intermediaries adding to its complexity. This complexity of an art market transaction impacts how AML regulatory compliance is carried out. Further, I will analyse some common market themes that are essential to my understanding of the art market. The art market transaction as a basis, together with the characteristics of the art market, will be picked up in the subsequent analytical Chapters 6 to 8.

Chapter 3 situates the art market within the AML regulatory framework. It traces the regulatory changes and corresponding legal discussions relevant to the art market at the European level, with particular attention to the German implementation. This chapter establishes the legal and regulatory context for the empirical analysis that follows. Somewhat perceived as dry, it is important to understand the regulatory obligations art market actors are facing as a basis for observing their regulatory compliance behaviour. I therefore lay out the legal and regulatory obligations for art market actors regarding money laundering in the EU, specifically Germany. While doing so, I consider the general development of adding art market actors explicitly as obliged entities as well as the latest regulatory developments relevant to my empirical study. Reflecting the focus of the empirical work for this thesis on discretion and the regulatory dialogue, this section concentrates on the law-making process and the discussions around the implementation of the regulations in the EU and Germany. This legal discussion, together with the understanding of the art market as a regulatory field provided in Chapter 2, thus provides the basis for the analysis in Chapters 6 to 10. The second part of this chapter discusses art market efforts of self-regulation. It is important to understand that and why self-regulatory attempts have failed to deliver the desired results in the art market. Guidance documents as part of the practical application of the regulation are introduced and analysed in the third part of this chapter. Finally, I present the supervisory structures in Germany with the 16 states being responsible for defining AML supervision. This lay-out is the basis for the empirical Chapter 10 of this thesis.

Chapter 4 sets out the theoretical framework that guides the empirical analysis undertaken in this thesis. It introduces regulatory discretion as the central analytical concept and situates its exercise within the socially embedded and trust-based structure of the art market. This chapter further explains how AML regulation, designed as a risk-based regime, relies on judgement and

interpretation by both regulators and regulated businesses. It further develops social embeddedness as the structural context within which discretion is exercised and clarifies how these two concepts interact. By combining these perspectives, in Chapter 4 I provide the conceptual foundation for analysing how AML regulatory compliance is learned, experienced, and interacted with in the art market.

In Chapter 5, I introduce the methodology for the empirical work that informs the analytical work in this doctoral thesis. My research design aligns with the socio-legal theoretical framework centred on discretion and social embeddedness and builds on the research objectives and research questions as introduced in Chapter 1.2 of this thesis. In the data and methods section of this chapter, I show how close personal contact and snowball sampling were the main drivers in identifying and recruiting participants to my empirical study—in a relational market this should not come as a surprise. The interview questions that were developed based on the research questions are explained in detail: The questions as well as the analysis of my qualitative research data is structured in the three sections learning, experience, and interaction, mirrored in the structure of this thesis. I conclude the chapter with a short section on the ethical considerations, limitations of the empirical work conducted, and notes on how data collected from the empirical work is used.

The gathered qualitative data was analysed using thematic analysis whereby the text was grouped into themes. These themes were guided by the research questions for this project and are mirrored in the overall structure of this thesis into the themes learning, experience, and interaction, but also the themes observed within the gathered research data.

Chapters 6 to 10 present the empirical findings. Chapter 6 looks at the art market and its actors as *the regulated*. Regulated in the context of this thesis by AML regulations that require businesses to comply with certain obligations set out in those regulations. This chapter concerns general observations on the art market that stand on their own but also impact the subsequent analysis of the empirical data collected. Taken together, I answer the sub-research question on how the art market as a regulatory field aligns with the AML regulation. My research data shows that art market actors believe themselves to be unique based on art being unique and different from other commodities or utility items. I observe a very different ecosystem with the art market—an exclusive market which is highly dependent on dense personal relationships. Art market actors are trying to preserve those relationships over fulfilling their regulatory obligations. Fulfilling the regulations is even perceived as damaging relationships and therefore the market, the source of their income. Another important theme I observe in my research

study, is the role information and knowledge play in the market structure: They are perceived as assets and play into the information asymmetry of the art market. In any market, actors need to increase revenue to thrive and survive—the art market is no different. Under this axiom, I analyse the pricing mechanisms, and the crossroads art market actors find themselves at between business and art. Between art as a unique good with values beyond economic value and business by which the art market actor turns these unique objects into revenue. With the AML regulations, art market actors now not only find themselves at the crossroads between business and art, but also regulation. These structural characteristics present significant challenges for AML regulation. Artworks are considered unique, mobile, difficult to value, and embedded in narratives constructed by experts, making regulatory oversight dependent on specialist knowledge. High-value transactions, sometimes conducted through multiple intermediaries in multiple jurisdictions, create vulnerabilities to money laundering and sanctions evasion. The art market's transnational nature means that individual actors routinely operate across borders, interacting with overlapping regulatory regimes. The combination of high financial stakes, expertise-driven information asymmetries, and reliance on informal norms creates an environment where formal legal requirements may play only one part in shaping behaviour.

Chapter 7 on learning begins with exploring the role of trade associations and experts. The central argument is that trade associations and AML professionals can be considered regulatory intermediaries in the context of the AML regulation. Trade associations are often formed by actors who have been in the market for a long time, and as such, possess specialised industry experience and knowledge the regulator may not. Through their specialised experience and knowledge, they are an essential component in the regulatory process, for example by interpreting the law, thereby translating it into practice. This translation can also be seen as a process of shaping the law. Members of trade associations further expect them to lobby on their behalf. In their intermediary role, trade associations not only shape the law through their translation of it, but also shape the industry and industry standards by influencing what compliance with those regulations looks like. As such, trade associations fulfil multiple roles for the regulated and the regulator in the regulatory process. This chapter is thus, concerned with how these roles influence the practical application of AML regulation in the art market. The experience art market actors have collected towards compliance with the AML regulations are analysed in Chapter 8 of this thesis. Understanding what money laundering is shapes the risk analysis art market actors perform which in turn, is the basis for the design of safeguarding measures. The implementation of safeguarding measures is a requirement of the AML regulations. These safeguarding measures are meant to protect the compliant business from its

misuse by criminals for money laundering purposes. Customer Due Diligence (CDD) measures are part of these safeguarding measures. I explain two examples of obstacles in the practical application of the AML regulations and how art market actors have overcome them. In one case, an art market actor introduced formal contracts with their intermediaries to reaffirm the trust that is perceived to be lost through CDD measures. In another case, an auction house introduced a procedure of asking their customers beforehand how much they plan on spending at an auction to be able to perform the CDD before the transaction is concluded—a timeline that is required by the law. In these cases, AML regulation is not perceived to align with market realities. There are many other peculiarities of the art market that I have discussed in Chapters 2 and 6 of this thesis, which lead me to believe that there may be different modes of KYC already in the market. One of the pillars of these different modes of KYC are the longstanding, close relationships that often have a different, more personal, flavour than the customer relationships, for example, a bank maintains. In general, the customer relationships at a bank are of a more formal nature. Often, one relationship manager is responsible for up to 500 customers, sometimes even more. A bank may also introduce a customer service centre overseas which serves a large part of their customers. In this case, there is no designated relationship manager for each customer. For high-end clients, the customer relationship is of course different and much more like what I have observed in the art market: A close, personal relationship that is groomed over years. In conclusion, I argue that an art market actor may in many respects know their customer better than a bank ever will—at least for the larger part of the bank's customers. We need to reflect on what this means for the relevance of AML regulation to the art market and on the objectives of the regulation to conclude whether one mode of KYC is more effective in achieving those objectives than the other.

Chapter 9 explores the interaction between private art market actors and the public regulatory actor during the development and subsequent implementation of the EU's fifth AML Directive. Feedback from the market mainly shows that the regulations are perceived as an administrative burden, especially to small businesses. Art market actors have further reported that they are feeling misunderstood by their regulators. In these first two sections of Chapter 8, I review how this feedback from the market influences their exercise of regulatory discretion and consequently, the form their AML regulatory compliance takes. In the following sections, I analyse how and why the regulation is perceived to only fit the financial services industry—which it was developed for. I further examine how art market actors and supervisors apply a tick-box approach. I put the critique of regulating art market actors into the context of the wider critique on AML regulations. Lastly, I look at how trust is developed between the supervisor and the supervised through interaction and collaboration.

In Chapter 10 on supervision, I look at *the regulator*. In Germany, supervision of the non-financial sector is placed with different institutions in the 16 federal states. Often, this leads to German supervisors—by design—only dedicating a small part of their time to AML supervision. Supervisors have reported unanimously the difficulties of identifying the businesses they need to supervise—one might call this a pre-requisite to supervision. As a solution to this problem, the supervisors each came up with different strategies on how to identify their supervised businesses, ranging from searching the internet to walking past shop windows. Another observation concerns the extent of stakeholder engagement which also highly depends on the motivation and engagement of the individual supervisor. I conclude this chapter with final observations on the risk-based approach to AML supervision of the non-financial sector in Germany and how these influence compliance behaviour.

Chapter 11 brings together the empirical findings from Chapters 6 to 10 and discusses their implications for AML regulation in the art market. In it, I systematically assess how regulatory discretion operates across the different sites of AML governance and how social embeddedness shapes learning, experience, supervision, and interaction. This chapter is structured around key themes emerging from the empirical material I collected, including the role of trade associations as regulatory intermediaries, the limited understanding of art-related money laundering in the market, the reliance on trust-based relationships, the ambiguous position of private actors in achieving public policy goals, and the impact of supervisory maturity on regulatory compliance behaviour. Through this discussion, I reflect on how AML regulation works in a socially embedded, non-financial market and situate the art market as a case study for broader debates on regulatory compliance, private governance, and risk-based regulation. The final Chapter 12 concludes the thesis by summarising the main findings of each chapter and drawing together the key theoretical and empirical contributions of the study. It revisits the central research questions and reflects on how the analysis of learning, experience, interaction, and supervision contributes to a deeper understanding of AML regulatory compliance in the art market. The chapter outlines the main implications of the findings for art market actors and supervisory authorities and identifies the broader contributions of this research to regulatory compliance and socio-legal scholarship. I conclude with reflections on the limitations of the study and suggest directions for future research on AML regulation in non-financial, relationship-based markets. Finally, I propose recommendations for art market actors and supervisors to enhance the relevance and practicality of AML regulatory compliance in the art market.

Chapter 2 The Nature and Structure of the Art Market

2.1 Introduction

And then begins a perfectly staged show. A mixture of a casino, a boxing arena and an Oscar ceremony. The ball starts rolling, the bidding begins. The auctioneer sets the rhythm. He determines the dramaturgy of the bidding and stimulates competition among bidders. The suspense increases. When a work of art cannot find a bidder, a whisper ripples the surface of tense silence. When the hammer falls at any astronomical sum, thunderous applause rolls through the hall (Piroschka, 2007, p. 136).

Bidding at an auction is a real thrill. I absolutely loved it. In the years I worked at auction houses, I assisted clients with telephone bidding in three languages, German, English, and Mandarin. And I remember being so nervous every time, trying to listen to the prices they were at, translating them from Chinese into English or vice versa, and then I would just wait, wait for the client to say 'yes'. In the millisecond after they said 'yes', my hand would jump up with the paddle. You do not want to lose the bid for your client because you were too slow, shedding a bad light on the auction house.

It is not just the thrill of auctions that makes the art world an exciting place. There is something about it—about the people in it, about artworks—that excites, a spark that warrants engagement. 'The art world is a sphere where many people don't just work but reside full-time. It's a *symbolic economy* where people swap thoughts and where cultural worth is debated rather than determined by brute wealth' (Thornton, 2009, p. xii).

The purpose of this chapter is to lay the conceptual foundations of the art market as a regulatory field in the context of the AML regulations and to understand what distinguishes it from other markets and why, consequently, a different regulatory lens might be needed. This groundwork is necessary to answer the research question of how the socially embedded, trust-based structure of the art market aligns with the requirements for art market actors as set forth in the AML regulations—which will be done in Chapter 6 of this thesis.

I start off with the definition of artworks, followed by the definition of art market actors and an introduction to the most important art market actors. The nature of art market transactions and how profit is created through art market transactions is explained in the third section of this chapter. The last chapter introduces some common art market themes that further the understanding of the art market as a regulatory field in the context of the AML regulations.

In general, the art world is seen as a very tightly knit community and hard to get in for outsiders. It is built on dense, personal relationships and networks that have grown over time and are vital

to survive and thrive in this market. This is also the very reason it is a market with an ‘inside’ and an ‘outside’. While the art world includes everything and everyone related to art, for the purposes of this thesis, I refer to the art market¹⁰ as the place where artworks are bought and sold, the commercial activity (Thornton, 2009).

Inherently, once I start talking about an art *market* where artworks are bought and sold, I have a financial connection. Actors in this market can be active participants in the purchase or sale of an artwork, or they can be passive participants, not necessarily involved on a regular basis (though possible), such as art critics who directly or indirectly influence prices. Much has been written about the art market, especially its development and history (North and Ormrod, 1998; Hulst, 2017; Savoy, Guichard and Howald, 2018; Avery-Quash and Huemer, 2019), pricing mechanisms (Velthuis, 2005b; Findlay, 2014; Coslor, 2016), and the rise of the contemporary art market (Belting, 2009; Horowitz, 2011; Adam, 2014, 2017), to only name a few. One may argue that there is not just one art market, but many art markets, which differ according to the respective artworks that are traded. This understanding of art markets as multiple smaller markets may help when analysing the risks an art business faces to be misused for money laundering purposes. This is because the risk differs depending on the specific artwork, or rather, category of artwork. It may also differ in the nature of its clients.¹¹ In any case, the art market is a complex construct in need of definition at the start of any analysis. In the sense of the word, a market is the place where two or more parties can exchange goods or services. Markets are thus, more of an abstract concept and not necessarily a physical marketplace or a distinct geographical area one can visit (Swedberg, 2003). Every product has an assigned economic value for which it can be traded (either against another good of comparable value or against the economic value in currency). In a more social conception of markets, markets are defined as ‘the mechanisms and places of coordination and exchange’ (Black, 2013, p. 402). In these places, market actors interact with their behaviour, and those interactions are shaped by the social networks in which the actors are situated (Black, 2013). Considering the focus of this thesis on learning, experience, and interaction of actors as well as the socially embedded nature of the art market made of dense personal relationships, a more social understanding of markets will be of use. For now, let me define it simply as follows: The art market is the (virtual or physical) place where artworks are bought and sold.

Specifically, the art market consists of a primary and secondary market. The primary market trades artworks directly from the source, such as a gallery or dealer representing and selling

¹⁰ The terms art market, art trade, and art economy will be used interchangeably in this thesis.

¹¹ A risk assessment considers the size and nature of the business, geographical risk, customer risk, distribution channels, product risk (BAMF, 2023a).

an artist's works, thereby providing direct payment to the artist for their skill and time, plus the cost of bringing the work to the market (Findlay, 2014; Stoll, 2019). The dealer generates profit by buying from the artist (taking title to the artwork) and selling at a higher price or by taking the work on consignment and earning a commission when the work is sold (can be both, from the artist and the buyer) (Findlay, 2014). An artist selling their work directly would also be part of the primary market as it is the first time an artwork is sold directly from the source. However, this is rare as most artists do not possess the distribution networks and access to collectors such as galleries and dealers do. The secondary market trades art and antiquities through resale, meaning that the works have changed owners at least once between the originator and the current owner. Again, the dealer generates profit by buying from the seller and offering the work for a higher price or by taking the work on consignment and earning a commission when the artwork is sold. I introduce how prices in the art market are generated in section 2.4.2 of this chapter.

2.2 Artworks

Neither the EU nor the German legal system operates with a single definition of works of art. Instead, three separate regulatory domains—tax law, cultural-property protection law, and AML law—deploy conceptually different understandings of what constitutes an artwork, each shaped by its specific regulatory objectives. For the purposes of analysing AML regulatory compliance in the German art market, it is therefore necessary to trace how these definitions interact, where they diverge, and how their combined effects produce a fragmented yet functionally significant legal notion of art.

Although the art market and artworks as a commodity are diverse, the AML regulations must be explicit in including certain art market actors as obliged entities while excluding others. Furthermore, the AML regulations are risk-based regulations (Tsingou, 2018) which leave the extent of certain requirements to comply with, such as CDD requirements (e.g., simplified, enhanced) up to the businesses (Mosna, 2022). The extent of those measures is supposed to be based on a risk analysis and the risks the businesses are exposed to. Defining artworks in this context is important as the definition impacts the exposure to risk: Compliance will likely differ for art market actors handling different types of art as the markets for different types of art differ—the players will differ (quality and quantity), and the prices will differ—leaving art businesses with different levels of risk and therefore, different levels of regulatory compliance. Different levels of money laundering risk derive from different financial and legal

characteristics (Brodie and Yates, 2022) the different types of cultural objects entail. I analyse how art market actors have handled the definitional difficulties in the analytical Chapters 6 and 7.

At the time of my fieldwork, the EU with its fourth AML Directive (2015/849) amended by the fifth AML Directive (2018/843) did not provide an EU-wide standardised definition of artworks (Brodie and Yates, 2022) leaving it up to each of the 27 Member States to develop (or re-use) their own definitions. Instead of defining works of art, the fifth AML Directive expanded its scope functionally focusing on who deals in artworks when it added persons trading, acting as intermediaries in the trade of, or storing works of art at or above EUR 10,000 to its list of obliged entities.¹² As such, the Directive appears to treat works of art as an already known concept without explicitly referencing that concept. The Directive further focuses on the market function as a distinguishing factor of who is obliged and who is not as it covers the business activities trading, intermediating, storing, and the value threshold.

Although the fifth AML Directive does not provide a definition of works of art, there is an art definition that can be found in the EU's VAT Directive: The Directive 2006/112/EC provides the most concrete (and narrow) definition of works of art on an EU-level in Annex IX, Part A. Therein, works of art are defined by registering object types in an enumerative and medium-bound list, including pictures, collages and similar decorative plaques, paintings and drawings, original engravings, prints and lithographs, original sculptures and statuary, tapestries and wall textiles, individual pieces of ceramics, enamels on copper, and photographs—each focused on the execution by the artist themselves and by hand.

It should be noted that this is a tax-related definition in its purpose used for calculating taxes and applying margin schemes and reduced tax rates specifically for persons trading in works of art. A focus on the medium and the production process therefore seems reasonable. The VAT Directive distinguishes works of art explicitly from collectors' items and from antiques. Collectors' items are defined as postage or revenue stamps, postmarks, first-day covers, pre-stamped stationery and the like, and collections and collectors' pieces of zoological, botanical, mineralogical, anatomical, historical, archaeological, palaeontological, ethnographic or numismatic interest (Annex IX, Part B). Antiques are defined as 'goods, other than works of art or collectors' items, which are more than 100 years old' (Annex IX Part C). The definitions differentiate collectors' pieces via the archaeological value from collectors' items which are

¹² The expansion to art market actors in the EU's fifth AML Directive is discussed in more detail in Chapter 2.2 providing a citation of the legal text where relevant.

more than 100 years old, their primary value being archaeological not age. Although the EU did not explicitly connect the term works of art in the fifth AML Directive with the definition in the VAT Directive, it is the template many Member States used for their AML regimes.

This is the case in Germany, where the GwG itself does not define art objects. Instead, the Interpretation and Application Guidance in relation to the German Money Laundering Act ('Auslegungs- und Anwendungshinweise zum Geldwäschegesetz') clarifies that for the determination of the application of the AML regulation, the definition of art objects ('Kunstgegenstände' in German) according to No. 53 of Appendix 2 to Section 12 Paragraph 2 Numbers 1 and 2 of the VAT Act ('Umsatzsteuergesetz' (UStG) in German) is to be considered (Regierungspräsidien in Hessen, 2023). Other Member States, such as France (via the French Intellectual Property Code), refer to copyright law instead. Therefore, the definition of art varies from country to country with the different definitions providing their own challenges in the application of AML regulations thereby forming part of the regulatory problem (Turner, 2024). Due to these differences, the regulations may be applicable to an art dealer with business in one European country, but not the next.

Germany amended the EU VAT definition of works of art by reducing the list. Germany's VAT Act defines art objects for the reduced VAT rate via the following list: Paintings and drawings, collages and similar decorative works, original engravings, woodcuts and lithographs, and original products of sculpture in all materials (No. 53 of Appendix 2 to Section 12 Paragraph 2 Numbers 1 and 2). Considering its purpose being fiscal rather than cultural or aesthetic, this definition again determines eligibility for reduced VAT rates and margin schemes. As a result, the concept is both enumerative and medium-bounded. The borrowing of this definition by the AML regulation achieves simplicity, but also produces notable blind spots. Tapestries and wall textiles, ceramics, enamels on copper, design objects, digital art without a sculptural carrier, photographs, and most installations fall outside its scope unless they can be forced into one of the listed tariff categories. As such, it is up to interpretation whether the AML regulations are to be applied for art dealers selling or buying any of these objects. Additionally, unlike in other markets, an art market actor may buy or sell artworks from multiple of those categories. As such, they would need to determine the applicability of the AML regulation on a transaction basis.

A second and much broader concept is found in the Kulturgutschutzgesetz (KGSG), Germany's comprehensive cultural-property statute. Here, §2 KGSG defines cultural property ('Kulturgut' in German) as any movable object or group of objects of artistic, historical, or archaeological

value, supplemented by further value categories such as ethnographic, palaeontological, numismatic, or scientific significance. Unlike the VAT Act, the KGSG is medium-neutral and value-oriented. It focuses not on the mode of artistic production but on the object's cultural importance, whether designated as national valuable cultural property or meeting statutory age or value thresholds for export control. As such, the KGSG easily accommodates artistic media omitted from the VAT Act, such as photography or multimedia installations, and recognises the cultural relevance of objects beyond traditional fine art categories. Yet the KGSG regulates preservation and circulation rather than market transactions and its definitional breadth does not directly determine AML obligations in the art trade. It is also not the intention of this thesis to determine whether it should.

With regards to soft law, the FATF's typology report for money laundering and terrorist financing in the art and antiquities market acknowledges that there is no standard, universally accepted definition of works of art (FATF, 2023). Therefore, the report uses a broad and pragmatic description, basically combining art, antiquities, and cultural objects by collectively using the term cultural objects (FATF, 2023). Of this widened definition, art is merely one type. As forms of art the following items are listed: paintings, drawings, collages, decorative plaques, or similar pictures executed by hand, original engravings, lithographs or other prints, sculptures or statues, sculpture casts, tapestries or other hangings, ceramics, enamels on copper, photographs, digital art such as NFTs (FATF, 2023). Comparing this list to the EU VAT list, the FATF essentially took the list and added digital art to it, thereby effectively turning the VAT definition, albeit with an extension, into international AML soft law.

While the term cultural object is used for all three categories, the report clearly states that there are still differences in these items, specifically regarding their vulnerabilities and risks (FATF, 2023).

The definition of artworks for VAT purposes and also the FATF's soft law definition for AML purposes differentiate—unsurprisingly—from art historical or aesthetic understanding as Hemels (2020) argues using the example of photographs. The difficulties in defining art already start with the question of whether to focus on the production process as the basis for a definition or the object as the result of the production process. In other words, is it the artist, the artistic process, or the artwork that makes it art? When trying to define art, one will always find cases which will only meet some of the criteria used in the definition and cases which will not meet

any of the criteria (Becker, 2008).¹³ This holds true for any such definition one can come up with and any such set of criteria. From a sociological perspective, certain members of the art world are treated by the art world as capable of defining what art is and what art is not, and once they have decided that something is art, others act as though it is (Becker, 2008; Danto, 2013). Thus, it is the art world itself that determines what art is (Danto, 2013). Davidson (2025) confirms this by informally stating that much of what he appreciates might not be called art by the ‘important people who stand guard at its portals’ (p. 432). Moreover, it is the context in which art is consumed and ‘the associated processes and languages of interpretation and classification that inform and frame those contexts’ (Stevenson, 2023, p. 14). Davidson (2025) adds to this thought by saying that art is not a characteristic of an object, but a relationship between that object and a person who interacts with it.

The art market is a unique market. Unique in large part due to the object and its production process (Bourdieu, 1993, 1996). There is this romantic fantasy of an artistic genius producing artworks the common human is unable to produce. The life of an artist is assumed to be so very different from a normal life in a nine-to-five-job. Becker argues against this romantic vision of a creative genius add towards art as the result of a collective production process (Becker, 2008). Art, however, may still be considered ‘the product and domain of genius and so somehow sits apart from/outside the grubby arenas of politics and everyday life and cultures’ (Stevenson, 2023, p. 14 et. seq.). Born in this idea of specialness is the price of an artwork and the pricing mechanisms. Unlike in other markets, there is no objective market price and depending on expert opinion, the price for an artwork may differ immensely. I discuss the value mechanisms in more detail in Chapter 2.4.2. Additionally, one might say that culture is not a fixed entity (Davidson, 2025).

Thus, the art-status of an object depends on the intention and the art historical context, not (just) the actual material form—as is the basis of the VAT Act. Including the intention in such a definition naturally accommodates new form of art and new media which static, fiscal definitions do not—at least not without explicitly mentioning them. The legal definition of artworks for the purposes of AML regulation needs to align with art market practices, not just financial tax purposes. It is further the purpose of this thesis to understand how art market actors in Germany have learned about and adapted their internal practices to comply with AML regulatory requirements. I would therefore propose to move away from a statutory object-based list towards a wider working definition for this thesis, combining the VAT and cultural

¹³ When considering the production process of art and the making of art and the art market comprising dense personal relationships and networks, one will be hard-pressed to look beyond Bourdieu and Becker (Bourdieu, 1993; Becker, 2008).

property regulations, soft law, and sociological considerations of art discussed here. This way, I am able to include a wider range of art market actors into my study, coming from the regulatory field in question, the art market, and not merely the financial definition. At the same time, the working definition covers relevant VAT regulations which are currently used for the definition of artworks relevant to the AML regulations.

As such, for the purposes of this study, artworks are objects that

- (a) are the product of creative or aesthetic expression by an identifiable maker or workshop,¹⁴
- (b) fall within categories typically defined as artworks in EU VAT (Directive 2006/112/EC) or cultural property regulations (Regulation (EU) 2019/880 on the introduction and the import of cultural goods, Council Regulation (EC) No 116/2009 on the export of cultural goods), such as (but not limited to) paintings, drawings, prints, sculptures, photographs, tapestries, ceramics, enamels and comparable objects, and
- (c) can be legally traded through specialised art market channels, such as art dealers, art galleries, auction houses.

This working definition is directly tied to the VAT definition currently in use for AML regulations while offering the advantage of expansion to cultural property regulation which is more fitted to the art market. As such, art objects that do not fit the narrow (and fiscal) VAT categories are also included. At the same time, the focus remains on market-mediated transactions as intended under German and EU AML law. Freeport storage is explicitly out of scope for this thesis. Settling on the EU legal framework instead of the German legal framework allows for extended coverage while keeping its relevance to the German art market.

The focus on the legal trade is especially important when considering antiquities. Since there is no legal opportunity to excavate, export, or trade antiquities in most jurisdictions, they are, in general, considered ‘dirty’ themselves and in need for laundering due to their origin from (illegal) excavations (Brodie and Yates, 2022). We are thus, in the realm of crimes *against* art and this project is only concerned with crimes *through* art as defined by Hufnagel and King (2019). It is also very unlikely that illicit antiquities are used to clean illicit gains due to their illicit origins. This is due to these illicit origins posing an additional threat of detection and prosecution. As such, it is far more likely that legal objects within a legal trade are used for money laundering purposes (Brodie and Yates, 2022). Antiquities on the other hand, may

¹⁴ While I am aware that artworks without an identifiable maker or workshop are traded in the art market, value is in large part created through (at least attribution to) such an identifiable maker or workshop (as demonstrated in Chapter 2.4.2 of this thesis). One might find this a more suitable framework to define artworks relevant to AML regulations compared to the value threshold of EUR 10,000 discussed in Chapter 3.1 of this thesis.

provide terrorist financing (Vlasic and DeSousa, 2018), a criminal activity, although related to money laundering, is not the focus of this thesis. Recognizing this, I have excluded money laundering through antiquities from this thesis.

This working definition deliberately does not try to settle the philosophical question of what art is, but instead it anchors the concept of art in existing EU regulations while at the same time—and acknowledging market developments—it is broad enough to cover AML-relevant categories such as digital art and photography which currently are not covered by all relevant regulations.

2.2 Art Market Actors

When looking at money laundering as a crime in general, and ARML more specifically, naturally, I would be looking at art market actors as either potential victims, criminals, or complicit¹⁵ to criminals. Instead, I focus my research on regulatory compliance, looking at art market actors as businesses who must comply with money laundering regulations and thereby, contribute to the goals of these regulations. This is also why the concept of an art market actor for this research is derived from the legal definition of an art dealer as referenced in the relevant EU AML regulations. In general, art dealers, art galleries, and auction houses are considered the main actors in the art market. Other actors, often more indirectly involved, include collectors, museums, art fairs, art experts, art consultants, art logistic companies, art insurers, art lenders, art funds, and restorers. All actors can act as buyer, seller, or intermediary in a transaction with art as the underlying good or service. They can also act as producers of art or warehouse operators. It is this involvement in an art market transaction that I focus on since this is what makes an art market actor a regulatory subject with AML compliance responsibilities. This involvement in an art market transaction gives art market actors unique insight and information into whether and how the art market may be misused for money laundering purposes (US Department of the Treasury, 2022; Turner, 2024). Information that is not available to the bank that settles the transaction.

¹⁵ In an earlier work I have found that an application of existing money laundering typologies identified by the FATF only worked if the art market actor assists in the money laundering process (Stoll, 2022). For example, the over- or under-invoicing of an artwork, a common trade-based money laundering typology, is only possible if the art market actor—whether knowingly or unknowingly—issues an incorrect invoice.

The legal definition of an art dealer is derived from Article 1(1) point (c) of the EU's fifth AML Directive (849/2018) which adds to the list of obliged entities:

Persons trading or acting as intermediaries in the trade of works of art, including when this is carried out by art galleries and auction houses, where the value of the transaction or a series of linked transactions amounts to EUR 10 000 or more

In addition, the following group of obliged entities also relates to the art market:

Persons storing, trading or acting as intermediaries in the trade of works of art when this is carried out by free ports¹⁶, where the value of the transaction or a series of linked transactions amounts to EUR 10 000 or more (Article 1(1) point (c))

By way of implementing the EU's Directive, in the German Money Laundering Act, obliged entities according to section 2 (1) no. 16, are defined as traders in goods, persons acting as intermediaries in the trade of works of art, and persons storing works of art, where this storage is carried out by free ports. As such, the German definition adds little to the definition of art market actor, rather, it aligns with the EU.

The FATF uses the term art market participant in their recent typology paper on money laundering and terrorist financing in the art and antiquities market possibly derived from the UK regulations¹⁷ which are discussed in this context (Financial Action Task Force, 2023).¹⁸ Though there is no explanation given for the use of the term by the FATF, in various chapters, the term market participant is used, e.g., when discussing money laundering and terrorist financing vulnerabilities linked to different market participants (Financial Action Task Force, 2023). It seems likely that the consideration of art businesses as participants in the art market as well as the UK's lead led to the use of this term. Any of the aforementioned definitions has the purpose of capturing relevant actors by its regulations. It is important to understand the definitional differences and their impact for the analysis of my findings.

My intention with this chapter is to detail different kinds of market participants and other actors as the nature and structure of the art market serves as the foundation to understand the findings of the empirical study conducted for this thesis. As explained in Chapter 1.2, my objective is to perform a regulatory analysis of the way in which private sector art market

¹⁶ The role of freeports is outside the scope of this thesis. For a detailed discussion on freeports, how they are regulated, their role in the art market, but also how they may be misused for criminal purposes see the works of Zarobell, Tanico, Helgadóttir, and Saleeby (Zarobell, 2017b, 2020; Tanico, 2022; Helgadóttir, 2023; Saleeby, 2023).

¹⁷ The UK's Money Laundering and Terrorist Financing (Amendment) Regulations 2019 uses the term art market participant (AMP).

¹⁸ The typology paper was developed by a project team with experts from 27 jurisdictions and international organisations (Financial Action Task Force, 2023). Besides case studies and country examples, the study also considered responses from art businesses, academics, and trade associations that responded to a questionnaire (Financial Action Task Force, 2023).

actors are expected to carry out public obligations and the way that the regulation attempts to get private actors to do so by requiring them to assess risks, perform CDD, and keep records. This is the core of this doctoral thesis which leads me to interview these actors and to find out how they experience that. Experts and regulators play an important role in shaping obligations, particularly through dialogue and peer learning (as explored further in Chapter 7). In my research, I am thinking about an extended group of market actors. Therefore, this dissertation combines art market participants who are subjects of the obligations with some wider perspectives. Thus, for this thesis, I use the term art market actor. This term includes all market actors who by way of business participate in art market transactions in which artworks are bought or sold. These are art dealers, art galleries, art intermediaries, auction houses, and (although not engaging in these transactions by way of business) collectors. This means that I also included art market actors who trade in artworks priced below EUR 10,000.

Actors act within a market in various ways, whereas the participant participates actively in economic activity. This research further encompasses a range of actors indirectly involved in the art market with interests and investments, including experts in the art market as well as supervisors for money laundering compliance in the art market. To me and for this thesis, the distinction between participants and actors is not as important as the kind of work that these actors need to do. They are not just selling and buying artworks, thereby participating in the art market, but they are now required to protect a public good: Protecting society from crime and protecting the stability and integrity of the Union's financial system (Directive (EU) 2015/849). That kind of public private divide, the delegation of tasks and the systems that business actors use to monitor these things, are analysed in this thesis.

The advantages of settling on the term art market actor compared to the legally defined terms include the encompassing of the threshold as well as the extension to include actors who have certain interests and investment in art market transactions and art market AML compliance.

2.2.1 Auction Houses

The role of auction houses is to provide a platform for buying and selling art. For providing this platform and services that come with it, such as cataloguing, describing, and authenticating the artworks, the auction house earns commission: Usually, the auction house takes a commission from the seller and the buyer of the artwork. More recently, auction houses have expanded their services to include financial services, including lending, but also consulting services. Auctions are public and accessible for all buyers and sellers, and comprise most of the secondary market (Velthuis, 2005b; Coslor, Crawford and Leyshon, 2020). In 2022, sales at

public auction of fine and decorative art and antiques amounted to USD 26.8 billion, marginally below the figure for 2021 (McAndrew, 2023). In addition to public sales, auction houses also conduct private sales. Private sales of auction houses were estimated at just under USD 3.8 billion adding to the total sales value of auctions houses, including public and private sales, of USD 30.6 billion (McAndrew, 2023). The art market has a long-standing history with the major (British) auction houses having been established in the 18th century (Sotheby's in 1744, Christie's in 1766, Bonhams in 1793, and Phillips in 1796). Three of these auction houses also dominate the market: All of the top 50 artworks by lot price sold in 2022 were at Christie's, Sotheby's, and Phillips, and all sold at prices of above USD 30 million (McAndrew, 2023). In total, the top five auction houses accounted for almost 55% of the value of global public auction sales in 2022 (McAndrew, 2025).¹⁹

2.2.2 Art Galleries and Art Dealers

Art galleries and art dealers offer art as a commodity and through this, are involved in buying and selling art. Though there is a distinction between art galleries and art dealers that is also used in this thesis, not all businesses strictly follow this distinction. An art dealer deals in the secondary market with artworks from artists who are no longer alive, while an art gallery represents living artists thereby dealing in the primary market. An art gallery might, however, also sell works they acquired from another art market actor that have been in the market before, and an art dealer might also sell art directly from an artist—although this case will be rarer. Art galleries and art dealers are private businesses, often owned and operated by 'a single, often charismatic, figure' (Zarobell, 2017a) whose name the gallery or dealership usually holds (Velthuis, 2005b). The business model of a primary gallery consists of representing artists, organising exhibitions, and selling those works for a commission between 40% and 50% of the selling price (Velthuis, 2005b). While some artists have a primary gallery which exclusively sells their work, many artists work with several galleries at a time (Velthuis, 2005b). In 2022, the dealer²⁰ sector was made of close to 300,000 businesses, covering the primary and secondary

¹⁹ The Art Basel and UBS art market report includes sales of fine and decorative art, antiques, and antiquities (McAndrew, 2025). Fine art includes paintings, sculptures, works on paper (including watercolours, prints, drawings, and photographs), tapestries, installations, as well as film, video, digital art, and other new media, whereas decorative art, antiques, and antiquities includes furniture and decorations (in glass, wood, stone, ceramic, metal, or other material), couture (costumes and jewellery), ephemera, textiles, other antiques, and antiquities (McAndrew, 2025). We encounter, thus, yet another definition of artworks.

²⁰ McAndrew uses the term art dealer to encompass both, the art dealer as well as the art gallery as the terms are used in this thesis. Of the respondents to her survey, 45% worked in the primary market, 13% worked in the secondary market, and 42% worked in both markets (McAndrew, 2023).

markets for art and antiques, most of them being small businesses, both in terms of employment and sales (McAndrew, 2023).²¹ This is an important feature when considering who will take on compliance tasks in an art business. The majority of art dealers reinvest their retained earnings to fund their business activities (The European Fine Art Foundation (TEFAF), 2018).²² Most of the dealers (71%) operated from one gallery or business premises in one country (McAndrew, 2023). An art dealer's business model is often built around the specialisation in one or a few art fields where they maintain a high level of expertise (McAndrew, 2023). In fact, in 2022, the majority of art dealers (63%) focused on one sector of the market only (McAndrew, 2023). This focus on one specific part of the art market allows the dealers to build deep personal and institutional knowledge and networks (McAndrew, 2023). This shows how very dependent on close personal connections the art market is. It can thus, be considered a socially embedded market. Just one of the factors that makes it unique and different from other markets under the same regulation. It is therefore important to look at the social interactions of the art market and how it is made of dense personal relationships when considering regulatory compliance. Fostering those networks, in-person contact is considered the most important factor in a sale with 82% of sales carried out face-to-face in 2022 (47% gallery sales, 22% overseas fairs, 13% local fairs) (McAndrew, 2023).²³ Contrary to this practice, the TEFAF art market report²⁴ notes an expansion of the art market from that niche, connoisseur-driven collectibles market to a multi-billion global industry, partly due to more wealth and a growing art market infrastructure (TEFAF, 2018).

Although artists sometimes consign their work directly to an auction house, thereby effectively cutting their galleries or dealers out of the sale (Horowitz, 2011), traditional market practices consider the art dealer as the intermediary between collectors and artists. This can be seen as improving the effectiveness of the market through reducing knowledge gaps (on the side of the collectors) and reducing the search and inspection costs of transactions for collectors

²¹ This statement is supported by the FATF's assessment of the art market: 'Most dealers have a small annual turnover and only a minority regularly sell art and antiquities of high value' (Financial Action Task Force, 2023, p. 13).

²² The report is based on 142 interviews with dealers and galleries who participate in the TEFAF art fairs and are based all over the world (TEFAF, 2018).

²³ The Art Basel and UBS art market report includes sales of fine and decorative art, antiques, and antiquities (McAndrew, 2023).

²⁴ TEFAF was established in 1988 and is an international organisation for fine art, antiques, and design (TEFAF, 2024). TEFAF runs two art fairs internationally and publishes an annual art market report based on interviews with dealers and galleries who participate in those art fairs (TEFAF, 2024).

(McAndrew, 2021). At the same time, one of the most important roles of a dealer or gallerist centres on nurturing and supporting the careers of the artists they represent. Dealers or gallerists working in the primary market work closely with their artists to promote and develop their careers over time, seeing themselves as patrons who seek to establish a firm market for their artists (Velthuis, 2005b). They establish prices for the artist's work, support its production, control the supply, and act as important gatekeepers, administrators, and promoters, especially for artists that may not be well established (McAndrew, 2021). It is in this complex and socially embedded market consisting of dense networks that I examine how actors learn, experience, and interact within AML regulatory compliance.

2.2.3 Intermediaries and Other Actors

Both, auction houses as well as art dealers or art galleries can act as intermediaries in art market transactions. Since personal connections are important in the art market, to reach the right seller or right buyer, an art market actor might need the help of another art market actor as an intermediary. At the same time, an art market actor keeps their personal connections confidential out of self-interest.

While not directly involved in the art market transaction, there are also many actors in the art market who contribute to art being bought and sold in various ways. Consider for example, the way in which curators, museums, or institutions, but also art critics, art advisors, academics, and collectors contribute to and influence art prices. These actors may through their actions in the market add or subtract value. Consider also the many actors involved in facilitating or handling the sale or purchase of an artwork such as art logistic companies, art insurers, or freeports. All these actors add to the market without being relevant in the sense of the regulation. How they add to regulatory compliance in this market is analysed in this thesis. They shape or inform regulatory practices, although they are not obligated entities themselves. As such, it is important to look at how they understand compliance through their learning, experience, and interaction, and how this influences regulatory compliance and in turn, regulation.

2.2.4 Trade Associations

Another important actor in the art market when looking at regulation are trade associations. A trade association is commonly regarded as an organisation that supports businesses of a specific

trade or a specific part of the trade in representing their interests and protecting their rights. Trade associations are often nationally organised. Many associations require their members to adhere to certain standards they have set, thereby self-regulating the trade. At times, and most likely to have more impact, trade associations join forces to form an overarching (international) trade association. Trade Associations often assume the role of a regulatory intermediary, a term that I introduce in the context of the regulator–intermediary–target (RIT) framework in Chapter 7 of this thesis.

In Germany, the main trade associations for businesses in the art market are the Federal Association of German Galleries and Art Dealers (Bundesverband Deutscher Galerien und Kunsthändler e.V. (BVDG)) and the German Art Dealers Association (Kunsthändlerverband Deutschland e.V.). Membership is restricted to include only galleries, editors, and art dealers who deal full-time and predominantly with fine and/or applied art from the 19th to 21st centuries (BVDG, 2024b). The BVDG understands itself as a political advocate to represent the interests of its members towards the cultural industry, politics, and the public: ‘The BVDG sees it as its most important task to provide information about the work of galleries and art dealers in such a way that both decision-makers and the public gain an understanding of the activities and commitment of galleries and art dealers’ (BVDG, 2024b). This is done for example by participating in working groups and other committees or discussions relevant to the decision-making process. The association further provides a platform to foster exchange and discussions between members. In addition, the BVDG offers information relevant to the trade and maintains a legal hotline for its members.

The Kunsthändlerverband Deutschland e.V. also stresses the commitment of its members to a high standard of art education and its own code of conduct in accordance with principles of fair competition, fair business conduct and the protection of cultural assets (Kunsthändlerverband Deutschland e.V., 2024b). The website concludes with a pledge that its community guarantees ‘outstanding quality of offerings and professional expertise’ (Kunsthändlerverband Deutschland e.V., 2024b).

As a global organisation, the Confédération Internationale des Négociants en Œuvres d’Art (CINOA) is based in Brussels and represents the international art and antiques trade. CINOA regularly publishes their perspectives on current topics and consultations on their website, including opinions on regulatory initiatives. Similar to its national counterparts, CINOA aims to

protect, preserve, and promote art and antiques through setting benchmark sector standards for responsible trade, leading international advocacy efforts and serving as an information network for its member associations (CINOA, 2024). CINOA maintains its own code of ethics which members are asked to adhere to. The advocacy efforts are based on a proactive approach to influence and shape legislation before it is adopted (CINOA, 2024). The involvement of organisations such as CINOA adds another layer of social complexity to the regulatory process. It also motivates my choice of respondents to my study which I explain in more detail in Chapter 5 of this thesis.

While trade associations play an important part in advocating for and representing the interests of the art market towards any number of counterparts, their role in collecting data and organising market actors also simplifies and channels contact from counterparts towards the trade. As an example, the annual art market report compiled by Claire McAndrew under the sponsorship of Art Basel and the UBS bank primarily draws on data gathered from dealers that are either members of dealer associations or who participate in art fairs. This is due to them being accessible through those channels (McAndrew, 2025). It also means that art market actors who are not members of a trade association are most likely not represented in those reports and thus, operate at the margins of the market. I come back to the role of trade associations in Chapter 7 of this thesis.

2.3 Art Market Transactions

In general, an art market transaction can be described as the sale or purchase of an artwork between at least two parties. The two main marketplaces for this trade are the public auction and the private sale. While at public auction, in theory, everyone can purchase the offered artwork since it is publicly offered²⁵, at a private sale, selected buyers are approached.

In any private sale, the most basic art transaction involves a seller and a buyer. The seller trades the artwork for an agreed sales price and the buyer transfers that price in exchange for the artwork. The art dealer or art gallery can act as both, the seller, and the buyer, depending

²⁵ There are, of course, certain import or export restrictions when it comes to artworks (especially antiques and antiquities) that are seen to be of national importance to a state. These restrictions will not be factored into this discussion.

on their stock of artworks and their business strategy. Products traded include any number of artworks subject to the individual specialization of the art market actors involved.

One of the characteristics of the art market as explained above, is the use of intermediaries that work on commission or a set fee depending sometimes on the nature of the service that is provided. Services may range from the mere consulting services on taste and creation of a collection to the facilitation of the actual sale. It is not unusual to have one or multiple intermediaries between the actual buyer and seller.

The nature of auction house transactions is analysed using the formerly publicly traded auction house Sotheby's and their last published annual report for the year 2018 before they were taken private²⁶. The auction house has organised its operation under two segments: An agency segment and a finance segment. The agency segment earns commissions and fees by acting as an agent for clients wanting to sell their artwork through either public auction or private sale. This commission is received from both the buyer and the seller, and is calculated as a percentage from the hammer price of the artwork sold at auction (Sotheby's, 2019). The seller's commission often depends on the nature of the relationship with the auction house, for example if the auction house is interested in more pieces from the seller's collection, they are more likely to reduce the commission. Sotheby's agency segment further earns revenues from the sale of artworks that are owned by the auction house. Prior to offering a work of art for sale, the auction house usually performs due diligence activities to authenticate and determine the ownership history and condition of the artwork (Sotheby's, 2019). This due diligence often depends on the information provided by the seller as well as the resources available to the auction house (in terms of time and effort spent by auction house staff, but also in terms of access to databases).

In the simplest transaction an auction house may be involved in, a client sells their artwork through Sotheby's via public auction. In this case, three parties are involved: The seller, the auction house, and the buyer. While the seller trades their artwork for a sales price minus commission to the auction house, the buyer trades a sales price plus commission for the artwork.

²⁶ Sotheby's was acquired by Patrick Drahi in 2019 taking the company private again ('Patrick Drahi kauft Auktionshaus Sotheby's - "Als Investor hochwillkommen"', 2019). Since it was no longer listed on the New York Stock Exchange, Sotheby's was no longer under the obligation to publish an annual report. The business model is thus, no longer as transparent as it was before, and may have changed since.

When the artwork is sold via private sale, the same parties are involved, although the buyer may not have to pay a commission and the commission range for the seller may be higher due to the difficulties of arranging the sale. Any private sale in the art market is highly dependent on maintaining the right relationships, knowing the right collectors who want to sell their artworks, and knowing the right buyers to interest them in the sale. This reinforces the importance of relationships in the art market and its socially embedded nature. In such a private sale, the auction house facilitates the sale without involving the public. Any number of intermediaries can be involved in an auction sale on both sides of the table. These relationships add only to the already complex market. It is for this market complexity, research into regulatory compliance becomes important to understand how actors learn, experience, and interact in this regulatory field. Ultimately, this adds to our understanding of regulation for we cannot think about regulation without thinking about regulatory compliance.

One of the key developments within the art market of the past two decades is the move of art market actors into the financial services sector, for example with auction houses providing financing services secured by works of art. Sotheby's finance segment earns interest income and associated fees through art-related financing activities by making loans that are secured by works of art (Sotheby's, 2019). In such a transaction, a client wants to obtain immediate liquidity from their artwork and thus, secures a loan from the auction house putting the artwork up as sole collateral. The auction house offers two types of loans: Firstly, term loans secured by artworks that are not intended for sale. These term loans have an initial maturity of one year with the option to renew for an additional year and may generate future auction or private sale consignments through the establishment of a beneficial relationship with the client obtaining the loan. A variable market rate of interest is earned by the auction house. Secondly, the auction house makes consignor advances secured by artworks that are contractually committed to be offered for sale at auction (Sotheby's, 2019).²⁷ With this practice, Sotheby's offers a niche service with accepting a work of art as sole collateral for loans (Sotheby's, 2019). While banks and auction houses have been active in this field for decades, the real change has been the arrival of specialised lending firms which offer the owner up to 50% of the value of the artwork with the possibility of keeping it on their wall (Adam, 2017).

This move into the financial sector adds to the complexity of the art market as art market actors (auction houses in this case) add financial services to their product range. They further

²⁷ As mentioned in the footnote above, Sotheby's is no longer a publicly traded company. The business model is thus, no longer as transparent as it was before, and may have changed since.

assume roles originally not intended in the art market. These financial services roles and products expose art market actors to extended money laundering risk while they offer them further insights into their clients' behaviours. Although they perform financial services, they are not regulated as financial services institutions. They also do not maintain the regulatory experience financial services institutions have collected over years. It is in this context we need to consider art market actors and their regulatory compliance behaviour. Of course, any regulatory obligation depend on the nature of the art market transaction as well as the value of the artwork involved. As such, it is of utmost importance to understand the nature of potential transactions art market actors undertake to be able to understand what regulatory obligations will apply. This is explored in more detail in Chapter 3 when analysing the legal and regulatory obligations for art market actors with regards to AML.

2.4 Art Market Themes

There are certain characteristics and themes within the art market that contextualise the findings from my qualitative research. The following section provides a short account of those intricacies of the market.

2.4.1 The importance of Supply

One of the major drivers within the art market is supply: In contrast to other industries, the problem in most cases lies not in finding buyers for your product and creating demand, rather the problem is to find desirable works of art for sale, especially in the secondary market (Adam, 2017). In theory at least, on the primary market, there is endless supply as living artists keep creating and producing new works. Mindful of the concept of supply and demand, galleries usually try to control the market for their artists through rationing it. The secondary market however, by definition, consists of limited inventory (Adam, 2017). Once the artist is dead, the supply is limited and works can only be re-produced within a certain set of rules, e.g., through the issuing of print editions. All artworks that are in private hands are potentially available for sale in contrast to works accessioned by public museums, which are considered off the market as they are unlikely to be sold again (Findlay, 2014). The more works by one artist are in public museums, the smaller the supply for the market and the higher the value of those works still available for sale (Findlay, 2014). Consequently, finding the right artworks is a key concern and a priority of art dealers over time (McAndrew, 2023). In the primary market, artists are the key

source of inventory, while in the secondary market private collections and auctions are considered the main source (McAndrew, 2023). In fact, often 50% or more of the property offered at auction is dealer-provided (The European Fine Art Foundation, 2018). The limited supply is also a source of value. It is therefore questionable, whether art market actors would be motivated to opt towards endless supply: ‘Real or imagined, rarity is the *ne plus ultra* when art is sold. Not only does it justify the price, it also suggests an exclusive club of ownership’ (Findlay, 2014, p. 21). This exclusivity can be seen as a motivating factor for collectors to buy art. I will pick up the topic of exclusiveness in chapter 6 of this thesis. To create value, art dealers might even artificially limit supply.

2.4.2 Value Mechanisms

In the primary market, the price of a new artwork is the result of mutual discussion between the artist and the art dealer or art gallery (Findlay, 2014). In general, no baseline of value and prices can be derived from former sales as the work is entering the market for the first time. What makes one work more or less expensive than the other is usually size (artists are assigned a multiplying factor) and—in some rarer cases—the cost of manufacture which will be passed on to the first buyer of the work (Findlay, 2014). The most diminishing factor in pricing, and also the biggest difference to the valuation of art in the secondary market, is the fact that an artist may not yet be established and no opinion has yet been formed about which type of work is better or more desirable than the other (Findlay, 2014). Consequently, characteristics of an artwork such as size, medium, and colours used, become more important when creating the price of an artwork in the primary market.

In the secondary market, the market value of an artwork is the result of considering attributes such as provenance, condition, authenticity, exposure, and quality (Findlay, 2014). In fact, the modern understanding of art assigns extraordinary importance to the originality and authenticity of artworks (Gramlich, 2016). Originality is important and special about art as a commodity; no two works are the same (except for prints which are numbered). It is this originality that creates value of the artwork:

On the one hand, art has little intrinsic economic value (beyond the cost of its materials and the time taken to produce it), sometimes appears purposefully anticommercial, and is often deemed ‘priceless’; on the other hand, and perhaps as a direct result of these negations, it can generate immense symbolic and commercial dividends (Horowitz, 2011, p. 1).

How are these symbolic and commercial dividends created? Unlike the belief of classical political economy (Swedberg, 2003), production is not more important than the market when

it comes to deciding the price of artworks. Rather, '[t]he price of art [...] is governed by supply, demand, and marketing' (Findlay, 2014, p. 21). Despite the artistic and social value assigned to art, the trade in artworks is—as with the trade in any good—driven by the need to grow monetary value. Auction houses and private dealers or galleries are businesses with a business strategy: 'Marlborough Fine Arts was the first to introduce marketing strategies in promoting recent art when it opened a New York gallery in 1963' (Belting, 2009, p. 62). Marketing has become more important to the trade as it now highly influences prices (Findlay, 2014). Art galleries and auction houses employ public-relations personnel. 'Auction house marketing has the prime purpose of selling the auction house itself to future sellers, their most valuable constituency. In the process they hope to add value to the items they are promoting' (Findlay, 2014, p. 34). One such an example is described by Silver when the publication of an article following the acquisition of the Euphronios krater²⁸ by Bunker Hunt after it had been on loan for less than a year at the J. Paul Getty Museum scoring Hunt 'a prestigious bibliography entry for an auction catalogue if he ever needed to sell off the piece' (Silver, 2009, p. 137). While art market actors create value, they also create artists and collectors as another form of value creation in the art market (Coslor, Crawford and Leyshon, 2020): 'Great works do not just arise; they are made—not just by artists and their assistants but also by the dealers, curators, critics, and collectors who 'support' the work' (Thornton, 2009, p. xiv), thereby creating artists and collectors (Coslor, Crawford and Leyshon, 2020).

2.4.3 Internationality

The art market is an international market and art market transactions are frequently carried out in international context. In 2015, total world art exports reached USD 28.91 billion (The European Fine Art Foundation, 2017). In 2022, exports of art and antiques went up to USD 33.4 billion (The European Fine Art Foundation, 2017). This shows an immense increase in the amount and value of art traded between countries. Zarobell (2017a) explains the increased globalisation of the art market through the pursuit of market leading positions which are mostly reached by attending international art fairs, opening galleries abroad, and partnering with international dealers to show that they are at the top of their game. With art transactions being carried out across borders, the differences in laws and regulations between countries are of

²⁸ The Euphronios krater is a red-figure calyx krater made in Athens circa 515 BC which was bought by the Metropolitan Museum of Art in 1972 (Brodie, 2012). It is now considered to have been excavated illegally and was restored to Italy in 2006 (Brodie, 2012).

importance as they can be exploited. An obvious example would be to either move artworks to or use artworks in a country that does not extend money laundering obligations to the art market. Another example would be to take advantage of the differences in legal definitions with certain art crimes being a predicate crime to money laundering in one country, but not another.

2.4.4 The Importance of Provenance

The art market has been criticised for lacking a level of due diligence to question the originating source of the money used to purchase art, as well as the origination of the artwork to be sold (Gill and Tsirogiannis, 2011; Tsirogiannis, 2015, 2017). The English Oxford Dictionary defines provenance as the record of ownership of a work of art or an antiquity which is used as a guide to authenticity or quality. Provenance information also includes the exhibition and publishing history of the artwork. When an object is offered for sale, documentation to demonstrate and prove an object's authenticity and provenance is essential for its value. Obtaining it from the seller is standard practice in the major auction houses. For the auction house, this can be a very difficult check to perform at times, depending on how much provenance the source provides. In practice, provenance information is often simply not available as objects have been in private hands over decades. Auction houses and art dealers need to rely on documentation provided by the owner (Zarobell, 2017b). From my personal experience, efforts put into evaluation, description, and photographs of the item are also related to the estimated value of the piece, keeping in mind that the auction house is a company that must work effectively to be able to succeed. Frequent readers of auction catalogues may have noticed that provenance can at times be a very vague concept: 'From a European collection', 'Property of an English gentleman', or 'From a private collection' are typical provenance references in auction catalogues (Stoll, 2019). These decisions depend on the privacy concerns of the owner of the respective artwork as well as on marketing considerations, e.g., presenting the artwork as attractive to potential buyers as possible (Stoll, 2019). The owner of an artwork often does not wish to see their name printed in an auction catalogue as they may not want the public to know of them selling their art collection, e.g., due to financial difficulties (Stoll, 2019). The auction house may have an interest in leaving the name off the catalogue when the owner is an art dealer themselves in which case the provenance information would reflect badly on the artwork and decrease its value (Stoll, 2019). In case the owner has agreed on publishing their name, it can be beneficial to the saleability of the artwork to publish the name of the collection it used to be in, thereby adding to its value (Stoll, 2019).

The names of collectors with reputations for great taste and acumen such as Louisine Havemeyer, whose collection forms the core of the Metropolitan Museum of Art's Impressionist galleries, may have a premium effect on the price of a work, just as works, equal in any other respect, that have been owned by the notorious, such as the Nazi war criminal Hermann Goering, may appeal to fewer buyers. Practically speaking, infamous former owners usually disappear from a provenance unless there is significant published evidence of their former ownership (Findlay, 2014, p. 40).

Purely social factors, such as the reputation of a seller can make products differ from one another (Chamberlin, 1933) and thereby explain the role of provenance in pricing which is often described as positive (Cannon-Brookes, 1994; Russell, 2004; Findlay, 2014). It was customary, for example, for a collector of Chinese art to add their seal onto the artwork. Some of the classical Chinese scrolls have dozens of red seals on them, each one adding to the history of the artwork, and quite visibly adding to the artwork itself. Of course, depending on who the owner was and their status, they also added value to the scroll. In this sense, I can apply Becker's theory of artworks being a collective activity, a cooperation to the making of Chinese classical scrolls (Becker, 2008; Danto, 2013). Like in the case of illegally excavated antiques, an enormous power lies with the consumer, and demand causes supply. Brodie (2014) performed a data analysis to determine whether in the case of provenance, the market would eventually regulate itself through the cumulative expression of buyer preferences. Per contra, he states that the idea of market self-regulation appears not to be supported by empirical data (Brodie, 2014). Findlay agrees as far as exhibition history goes: From his experience, '[a] distinguished exhibition history and inclusion in books do not on their own significantly enhance commercial value' (Findlay, 2014, p. 40). Regarding the collecting history, however, he finds that it can have a positive or negative impact on how someone will pay for the work (Findlay, 2014). The degree to which provenance impacts value remains, however, hard to quantify. Nonetheless, provenance is an important feature in the art market which adds to the analysis in later chapters.

2.5 Chapter Summary

This chapter provides the conceptual foundation of the art market as a regulatory field to be studied, especially to understand how the nature and structure of the art market align with the requirements for art market actors as set forth in the AML regulations, which will be explored in Chapter 6 of this thesis. It is also a necessary foundation for the other chapters, albeit to a lesser extent.

The EU's AML regulatory framework does not provide for a definition of artworks. As such, Member States have had to come up with their own legal definition or refer to an existing one. Often, the existing VAT definitions have been used which mostly are based on the EU's VAT framework in Directive 2006/112/EC. The VAT definition due to its purposes for financial tax calculation is a fiscal one that does not align with the art historical, sociological, or aesthetic considerations of artworks. Depending on the jurisdiction, certain types of artworks such as photographs or digital art may not be included. As such, this thesis has developed a working definition of artworks to combine the various legal definitions with a wider art historical and aesthetic perspective, thereby broadening the field for this empirical study.

The main art market actors considered in this thesis are auction houses, art galleries and art dealers, intermediaries to art market transactions, and trade associations. Art market transactions are the sale or purchase of an artwork between two or more (in the case of intermediaries) parties on the two main marketplaces, the public auction and private sale. Depending on the nature of the art market transaction, various participants in the sale or purchase of the artwork are exposed to varying degrees to the risk of being misused for money laundering purposes and thus, must comply to a different extent with AML regulation.

I introduced four art market themes in this chapter: Firstly, supply is more important than creating demand as there is finite (legal) supply on the secondary art market and on the primary market—at least with the artworks in high demand. This feature may be used for value mechanisms. The creation of value in the art market itself provides the subject of an intensive study. It is the market and its actors that create the value of an artwork. While there are certain qualitative factors that will impact pricing, there is no objective market price for an artwork. This feature of the art market can be exploited for money laundering purposes.

The art market is further an international market, meaning artworks often cross borders and an art market actor may operate in multiple jurisdictions with different AML regulatory frameworks. Lastly, provenance is an important feature in the art market. While provenance is an important aspect of each artwork, the impact on value is not quantifiable. It may be preferable to intentionally leave out parts of an artwork's provenance for marketing purposes thereby obscuring the ownership records for this artwork.

These art market themes present parts of the market's vulnerability to be misused for money laundering purposes and also provide features of the art market that may impact the willingness or capabilities of its actors when it comes to complying with AML regulation.

Chapter 3 Legal and Regulatory Background

3.1 Introduction

The purpose of this chapter is to introduce the main legal and regulatory framework relevant to AML compliance in the German art market. Specifically, I lay out the obligations that AML regulations impose on German art market actors. To understand the AML regulatory requirements art market actors need to comply with (including soft law) is the necessary basis to answer the research question on how art market actors have adapted their internal practices to comply, and what these adaptations reveal about the relevance and practicality of the regulatory framework—which will be done in Chapter 8 of this thesis.

I further identify the assumptions the AML regulatory framework makes about market behaviour and introduce the consultation process during development of the regulations in this chapter. These assumptions together with the consultation process will inform the research question on interaction between art market actors and regulators during the development and implementation of the EU's fifth AML Directive and the perceived consequences of this interaction for compliance practices—which will be answered in Chapter 9 of this thesis.

An introduction to the supervisory set-up in Germany is included in this chapter to provide the foundation for understanding how this organisational and operational set-up influences supervisory practices and compliance behaviour—the research question which will be answered in Chapter 10 of this thesis.

Finally, understanding the regulatory objectives informs Chapters 6 and 9, as well as the discussion in Chapter 11.

I focus on the relevant regulations and changes to those regulations—insofar as the changes are relevant to art market actors—from 2018 to the time of fieldwork in June 2022. The choice to focus on the EU, specifically Germany, in this study was motivated by the fact that the EU was the first regulator to add art market actors explicitly to the AML regulations. Although the European, including the German, art markets are small when considered in a global context, they are uniquely positioned with EU regulators being regulatory pioneers in AML efforts. The geographic choices I made may limit the applicability of my findings, especially considering the US held 43% of the global art market share in value in 2024, the UK came in second place with 18%, China follows with 15%, while Germany represents a mere 3% in value of the global art market share (McAndrew, 2025). As such, the largest parts of the art market—at least geographically—are not included in the participants of my research study. However, the advanced AML legal framework of the EU and Germany, together with their global influence

makes it an ideal case study for understanding the evolution and challenges of AML regulatory compliance in the art market.

In addition to so-called hard law, in most jurisdictions either the regulator, trade associations, or other trade bodies issued some form of guidelines for the practical application of the law, so-called soft laws. For the purposes of this thesis, I discuss the guidance document issued by the German supervisor for the non-financial sector, the Interpretation and Application Guidance in relation to the German Money Laundering Act. Finally, I introduce the supervisory set-up for money laundering compliance in the German art market.

A list of the main regulations is included for better overview in the Appendix.

3.2 Money Laundering Obligations for Art Market Actors

3.2.1 The European Union

The EU regulates the prevention of money laundering and terrorist financing through directives which must be implemented in national law by Member States. The provisions of the EU's second AML Directive (2001/97/EC) applied only to financial services institutions. With the EU's third AML Directive in 2005, however, the focus expanded to the misuse of the trade system and, subsequently, dealers in high-value goods, such as works of art, were covered if cash payments are made to them of EUR 15,000 or more. The reason for this expansion can largely be traced back to the FATF which published a report on trade-based money laundering in 2006 (Financial Action Task Force, 2006). The report concludes that policymakers have given trade-based money laundering little consideration (Financial Action Task Force, 2006). Along with the EU's fourth AML Directive (2015/849), enacted on 25 June 2015, a natural or legal person trading in high-value goods (including art) must perform defined CDD measures for cash transaction above the threshold of EUR 10,000. The CDD measures include verifying the identity of the contracting party, identifying the beneficial owner, assessing, and monitoring the purpose and intended nature of the business relationship, and, in cases where transactions appear suspicious, clarifying the origin of the funds.

To distinguish whether an actor falls under the regulatory obligations, the EU introduced monetary thresholds.²⁹ If a business conducts transactions below that threshold, they will not

²⁹ See for example the EU's Third AML Directive (2015/849) which defines as obliged entities in Section 1 Article 2 (1) (e) 'other persons trading in goods to the extent that payments are made or received in cash in an amount of EUR 10 000 or more, whether the transaction is carried out in a single operation or in several operations which appear to be linked'.

be obliged to comply with the regulation's requirements. Such a threshold may present difficulties for businesses who engage in transactions below and at or above the threshold as they would have to comply with the requirements for certain transactions only.

On 19 April 2018, the fifth EU AML Directive (2018/843) was adopted, giving Member States 18 months for incorporation into national legislation. The Directive requires persons trading in works of art to verify the identities of their customers before entering a transaction equal to or greater than EUR 10,000, regardless of the payment method. Specifically, the following points were added to the fourth AML Directive (2015/849), Article 2 (3):

- (i) Persons trading or acting as intermediaries in the trade of works of art, including when this is carried out by art galleries and auction houses, where the value of the transaction or a series of linked transactions amounts to EUR 10 000 or more;
- (j) persons storing, trading or acting as intermediaries in the trade of works of art when this is carried out by free ports, where the value of the transaction or a series of linked transactions amounts to EUR 10 000 or more;

To turn back to the discussion about the monetary threshold, note the lack of limitation to cash payments. The rule implies that the threshold of art market actors applies regardless of whether the payment is made with or without cash. As mentioned before, this creates challenges for businesses engaging in transactions below and at or above the threshold.

Art galleries and auction houses are specifically highlighted as being part of the definition of 'persons trading or acting as intermediaries in the trade of works of art'. 'The expansion of the AML regime to include art dealers has been attributed to the failure of regulation and the vulnerabilities inherent in the market to laundering' (Hufnagel and King, 2019, p. 1). The term 'work of art' is not defined in the Directive leaving it up to the Member States to define their understanding of works of art, including the types and values. As established in Chapter 2.1 of this thesis, while the EU's Directive fails to define 'work of art', Germany's AML Act refers to the definition of 'work of art' in the VAT Act which includes art but not antiquities. Remember, in the case of the EU's AML regulations, the threshold for high-value dealers (including dealers in arts, antiquities) was set to EUR 15,000 in the second Directive and then lowered to EUR 10,000 in the third Directive. This means that for antiquities, the threshold of EUR 10,000 applies only in the case of cash transactions (as for all high-value dealers). Insofar as the antiquity is deemed to be an artwork, the rules for artworks apply (Regierungspräsidien in Hessen, 2023). The difficulties this brings have been critically analysed by Brodie and Yates: Most problematic are the different definitions, and correspondingly, the different applications of a law with similar purpose because 'different types of cultural objects also have different

financial and legal characteristics’ (Brodie and Yates, 2022, p. 97) and thus, the effectiveness of these regulations seems to be questionable (Brodie and Yates, 2022).

3.2.2 Germany³⁰

Germany implements the EU’s AML Directives via the German Money Laundering Act (‘Geldwäschegesetz’, abbreviated as GwG). As such, the Germany Money Laundering Act was amended to transpose the EU’s fifth AML Directive (2018/843).³¹ A first draft bill (‘Referentenentwurf’ or referee draft) dates to 20 May 2019. The German Ministry of Finance collected and published statements from trade associations and other representatives of the various obliged entities with regards to the draft bill (Bundesministerium der Finanzen, 2019b). Representing the art market, the German Art Trade Interest Group (Interessengemeinschaft Deutscher Kunsthandel) gave their view on the draft bill (Berking, 2019). After taking the collected feedback into account, a revised government draft was published on 9 August 2019 by the Federal Ministry of Finance (Bundesregierung, 2019a). This draft bill was introduced and discussed at the Federal Council of Germany (Bundesrat) in August 2019.³² After changes were recommended by the responsible committees and plenary requests, the Federal Council of Germany decided on the bill on 20 September 2019 (Bundesregierung, 2019c). The resolution is composed of recommendations also relevant to the art market: The Federal Council recommended adding a definition for the term *commercial* to address practical concerns especially voiced by supervisory authorities (Bundesregierung, 2019c). Specifying this term is important in defining who is obliged under the Act. Section 1 paragraph 23 of the GwG, for example, defines a person acting as an intermediary in the trade of works of art as someone who *commercially* acts as an intermediary for purchase agreements for works of art. The

³⁰ Whenever an official English translation of the bill or draft bill was available, I used the wording of this official version. If no official translation was available, I translated the law to the best of my knowledge considering the available official versions of the law. An official English version is understood to be published by the German government or governmental bodies.

³¹ Amendments to the GwG are unnecessary when the Regulation 2024/1624 comes into force on 10 July 2027.

³² Most of the time, bills and items for discussion are drawn up by the Federal Government. A bill is initially transmitted to the Bundesrat (Federal Council of Germany) which in general has a period of six weeks to deliver its comments on the bill. The bill is then forwarded to the German Bundestag (German Parliament) with the Bundesrat’s comments. Laws are debated and adopted in the German Bundestag, making it Germany’s most important democratic forum. As a rule, bills are debated three times in the plenary of the Bundestag, the so-called readings. The detailed work on legislation takes place in the permanent committees as well as working groups formed by parliamentary groups. The final vote is held during the third reading and afterwards, if the bill has gained the necessary majority in the plenary of the Bundestag, it is transmitted to the Bundesrat as an act. Once the bill is approved by the Bundestag and the Bundesrat, it needs to be printed, signed, and published. This law-making process is described on the website of the German Parliament (Deutscher Bundestag, 2024).

Federal Council further recommended adding the following sentence to section 2 paragraph 1 number 16: ‘This also applies to domestic branches, subsidiaries or establishments of traders in goods, persons acting as intermediaries in the trade of works of art and persons storing works of art, where this storage is carried out by free ports’ (Bundesregierung, 2019c). The reason for this was stated to be that non-domestic art dealers are legally equated and therefore German law would be applicable (Bundesregierung, 2019c).

The draft bill went to the German Parliament (Bundestag) on 9 October 2019 with its subsequent publishing on 19 December 2019 (Bundesministerium der Finanzen, 2019b). Not all recommendations made by the Federal Council of Germany (Bundesrat) were realised which the Federal Council noted in its printed resolution. Neither the definition of commercial nor the addition of international art dealers was included in the final bill. The reasons behind this decision are not traceable in the documentation of the discussions.

Beyond the comment of the German Art Trade Interest Group, the art market or representatives from the art market were not traceably involved in the law-making process. Whether this was an oversight or on purpose is not transparent. In any case, this approach mirrors the supervisory approach in Germany. German supervisors have not actively been preparing to get to know and understand the art market as I show in Chapter 10 of this thesis on supervision. This lack of structured engagement directly impacts regulatory compliance.

In the following section I discuss the relevant changes to the art market from the first draft bill to the final law by comparing the referee draft dating to 20 May 2019 (Bundesministerium der Finanzen, 2019a), the government draft as of 9 August 2019 (Bundesregierung, 2019a), and the final bill that was published on 19 December 2019 (Bundesministerium der Finanzen, 2019b). I also discuss the comment from the German Art Trade Interest Group where applicable.

The referee draft proposed the addition of the following definition with regards to the art market:

Addition of the following paragraph 23 to part 1 section 1:

(23) For the purpose of this Act, a person storing works of art is someone who commercially stores works of art, regardless of in whose name or on whose account.

In the draft bill (‘Regierungsentwurf’ or government draft) as well as the final bill, the definition was extended to include intermediaries in art market transactions:

(23) For the purposes of this Act, a person acting as an intermediary in the trade of works of art is someone who commercially acts as an intermediary for purchase agreements for works of art, including as an auctioneer or gallery owner. For the purposes of this Act, a person storing works

of art is someone who commercially stores works of art. It is not relevant on whose behalf or on whose account the activity defined in sentences 1 or 2 is performed.

Although the EU's fifth AML Directive (2018/843) has 'persons trading or acting as intermediaries in the trade of works of art' as obliged entities in its text (Article 1 paragraph 1 (c)), intermediaries were not included in the definition section of the referee draft. The explicit mention of auctioneers or gallery owners in the GwG mirrors the EU Directive which also highlights these art market actors with 'including when this is carried out by art galleries and auction houses' (Article 1 paragraph 1 (c)). Regarding auction houses, the explicit mention makes sense in this respect since auction houses often trade on commission. This means they trade in their name but on someone else's behalf or even in someone else's name on someone else's behalf (as intermediaries). Galleries might also work on commission, again, trading in their name but on someone else's behalf (not actually owning the artwork themselves). The mention of auctioneers and galleries in the Directive is thus a clarification. In accordance with this definition, the following addition was proposed by the referee draft to section 2 (1):

(16) Traders in goods and persons storing works of art, where this storage is carried out by free ports.

This proposal is again extended to include intermediaries in art market transactions so that the final bill reads:

(16) Traders in goods, persons acting as intermediaries in the trade of works of art and persons storing works of art, where this storage is carried out by free ports.

While in the EU Directive there is no separation of definition and the list of obliged entities, the German GwG is structured differently. After defining the three relevant terms in section 1 (a) trader in goods, (b) intermediary in the trade of works of art, and (c) person storing works of art, these three groups of persons are then listed as obliged entities in section 2. The definition of intermediary in the trade of works of art as cited above does not directly exclude certain institutions or persons (Center for Art Law, 2023). The extension of the obligations to the art market, more specifically to intermediaries in art market transactions and those storing works of art is—of course—based on the EU's fifth AML Directive (2018/843). According to the Directive, those obliged in the art sector are only obliged if the value of a transaction or a series of related transactions amounts to EUR 10,000 or more. The expansion of the group of obliged entities was therefore implemented within the system that already existed for traders in goods (Bundesministerium der Finanzen, 2019a). Thus, the group of obliged entities was expanded to include the above-mentioned groups of persons, regardless of the threshold amount (section 2 (1) no. 16). However, according to the corresponding provisions of the EU's Directive, individual obligations only apply if individual transactions exceed the respective threshold amount. The thresholds are anchored in section 4 (4) and (5) and section 10 (6) and

(6a) as discussed below. This means that there is the obligation to report suspicious activity for all obliged entities, regardless of the transaction value of the respective transaction and thus also for low-value transactions, insofar as there are indicators for money laundering or terrorist financing. Before the changes through the EU's fifth AML Directive (2018/843), persons trading in works of art were already subject to money laundering obligations as traders in goods. In this respect, there is no extension in the Directive, however, risk management and CDD obligations have so far been largely limited to transactions with cash payments of at least EUR 10,000, while the threshold now applies to these new obliged entities regardless of whether the payments are made in cash. Thus, the German GwG specifies the applicability in the case of specific transactions under each of the obligations. For example, section 4 GwG on risk management requires obliged entities to have in place effective risk management systems that are appropriate for the nature and size of their business. The referee draft adds paragraph 5 to section 4 as follows:

(5) Obligated entities as defined in section 2 (1) no. 16 must have in place an effective risk management system

1. as traders in goods

a) when trading works of art, including as intermediaries or auctioneers, in transactions with a value of EUR 10,000 or more or

b) as traders in goods

aa) when trading precious metals such as gold, silver and platinum when making or accepting cash payments of at least EUR 2,000 themselves or through third parties or

bb) when trading other goods, making or accepting cash payments of at least EUR 10,000 themselves or through third parties, and

2. persons storing works of art in transactions of EUR 10,000 or more.

For obliged entities under Section 2 Paragraph 1 Number 16 that are the parent company of a group, the requirements according to § 9 of sentence 1 remain unaffected.

The referee draft differentiates traders in works of art from traders in precious metals and other goods of a certain value, while traders in works of art, intermediaries and auctioneers are treated the same. The government draft on the other hand, structures the obliged entities differently. The government draft provides for section 4:

(5) Obligated entities as defined in section 2 (1) no. 16 must have in place an effective risk management system.

1. if they act as a trader in goods in the following transactions:

a) Transactions relating to works of art with a value of EUR 10,000 or more,

b) transactions relating to valuables as defined in section 1 (10) sentence 2 no. 1 in which they make or receive cash payments of EUR 2,000 or more themselves or using third parties, or

- c) transactions relating to other goods in which they make or receive cash payments of EUR 10,000 or more themselves or using third parties, and
- 2. if they act as intermediaries in the trade of works of art and persons storing works of art in transactions of EUR 10,000 or more.

For obliged entities under Section 2 Paragraph 1 Number 16 that are the parent company of a group, the requirements according to § 9 of sentence 1 remain unaffected.

The government draft as well as the final bill distinguish clearly between traders in goods (art, precious metals, other goods of a certain value) and intermediaries in the trade of works of art as well as art storers. This seems a lot more structured and logical than the referee draft. No changes were made to the final bill except the deletion of the last sentence. The final bill instead adds group-wide procedures to the effective risk management system so that it reads: ‘(5) Obligated entities as defined in section 2 (1) no. 16 must have in place an effective risk management system, including group-wide procedures’ leading to the same outcome of group-wide applicability. The same changes were made to the obligations under section 10 paragraph 6 due diligence requirements.

Accordingly, art market actors (as in traders in works of art, intermediaries in art transactions, and persons storing works of art) are required to evaluate the risks of money laundering and terrorist financing associated with the business activities they engage in (section 5 risk analysis). To do so, they must document, regularly review, and update (if necessary) the risk analysis. Art market actors are further required to implement appropriate business- and customer-related internal controls and safeguards in the form of principles, procedures, and controls to manage and mitigate the risks of money laundering and terrorist financing (section 6 internal controls and safeguards). These internal controls and safeguards include CDD requirements (sections 10 to 17), reporting obligations (section 43 (1)), document retention requirements (section 8), appointing a money laundering reporting officer (section 9), as well as initial and ongoing training of employees on AML. All controls and internal safeguards are to be appropriate to the nature and size of the individual businesses and based on the performed risk analysis. The GwG only requires businesses from the financial sector to appoint a money laundering officer. However, the supervisory authorities for the non-financial sector are required to order businesses dealing with high-value goods to appoint a money laundering officer through a so-called general ruling (Allgemeinverfügung) (Regierungspräsidien in Hessen,

2023). According to the general ruling of the Regional Council Darmstadt³³, art dealers, art intermediaries, and persons storing works of art must appoint a money laundering officer if on 31 December of the previous year they employed at least ten employees and have not, as a business policy, decided to not conduct transactions above the threshold of EUR 10,000 (Regierungspräsidium Darmstadt, 2020a). This business policy would have to be effectively ensured by respective policies, procedures, and internal controls (Regierungspräsidien in Hessen, 2023). The money laundering officer must be reported to the Regional Council Darmstadt once appointed (Regierungspräsidium Darmstadt, 2020a). The risk management system and the due diligence requirements are only necessary in transactions exceeding the EUR 10,000 threshold.

3.3 Self-regulation

The art market discussed self-regulation as early as January 2012 when Christ and von Selle, on behalf of the Basel Institute of Governance, published the working paper, *Basel Art Trade Guidelines* (Basel Institute on Governance, 2012), which was developed based on meetings with key industry players. The paper is not solely directed at the risk of the art market being used for money laundering but, rather, certain art market actors engaging in unethical or illegal behaviour in general. It proposes standards on the identification of seller and buyer, the due diligence before sale, source of funds, after-sales responsibility, and conflict management. Regarding the identification of seller and buyer, for example, the standard for disclosure requires that the identity of the seller and the buyer be known to each other and to all intermediaries involved. For auction houses, this would include the disclosure of the name of the buyer to the seller and vice versa; however, not necessarily the disclosure to the public. The art market actor is further required to only deal with buyers whose source of funds can be established as legitimate. It is unclear, however, how ‘legitimate’ is defined and what the ‘adequate and reasonable measures’ to determine the legitimacy are. Requirements like these, even in 2012, were still below standards for other industries, such as the financial services industry. Yet, despite the initial interest in self-regulation, the working paper was received and commented on negatively by art market operators, and no industry-wide accepted guideline has resulted thereof (Basel Institute on Governance, 2012). As the subject of the art market

³³ Supervision is decentralised in Germany and determining the structure the responsibility of each of the 16 federal states. Details are described in section 3.4.1 of this thesis below. In the federal state Hesse, supervision lies with the three Regional Councils.

being used for money laundering and terrorist financing became more prominent, the Basel Art Trade Principles on AML (Basel Institute on Governance, 2018), a green paper for consultation, was issued in January 2018. According to these principles, art market operators are required to establish their risk profiles and implement a risk-based approach. They are further required to implement and perform KYC standards for all transactions, as known to be standard practice within the financial services industry, including the identification of the contractual party and the identification of the beneficial owner. Additionally, the provenance history as well as the provenance of funds must be established. Red flags must be determined, and suspicious activities reported. Same as before, the reaction of art market actors was reluctance, and the paper never surpassed the status of a consultation paper (Basel Institute on Governance, 2018).

The Responsible Art Market Initiative (RAM) was formed in 2015 as a not-for-profit initiative aimed at raising awareness amongst art market actors of risks faced by the art market and to provide practical guidance and a platform for the sharing of best practices to address those risks (RAM, 2024). The initiative consists of art dealers, lawyers, and consultants (RAM, 2024). RAM published a set of guidelines and toolkits that art businesses are encouraged to follow voluntarily (RAM, 2024). The set of principles includes guidelines on combatting money laundering and terrorist financing, an art transaction due diligence toolkit, guidelines for experts authenticating works of fine art, and a toolkit for art market intermediaries (RAM, 2024). While the formation of the RAM initiative was likely also aimed at preventing government regulation through self-regulation, it is not traceable from media reports and their website whether and how many art businesses have committed to following the guidelines and toolkits. The reception of this self-regulation initiative within the art market is also not traceable. Unlike with the Basel Art Trade Guidelines, for which the authors have published the resistance of the art market. This resistance of the art market to self-regulatory attempts were mirrored in the commentary to the extension of the AML regulations to the art market as discussed above. The reasons for this resistance as well as strategies to deal with this, employed by experts, consultancy firms, and supervisors are analysed as part of the empirical work in Chapters 6 to 10 of this thesis. How self-regulation was received and (not) accepted in the art market already provides an indication as to why AML regulatory compliance may not come naturally to art market actors and why it is therefore important to ask whether AML regulation is relevant and practical.

3.4 Practical Application of the Law

Official guidance documents apply—or rather attempt to apply—the regulatory requirements to the art market. The money laundering regulations were not originally written for the art market, but for the financial services industry. One could argue therefore, that it is really knowledge from the financial sector that is being translated into the art market.

This section introduces the official guidance document in Germany to lay the foundation for the empirical work conducted which, amongst others, asked art market actors whether and how they made use of guidance documents. This raises the key question of learning and the work of translating legal texts into actual material and organisational practices, i.e., what makes it easier and what makes it harder, which is explored in Chapter 7 on learning.

The money laundering supervisory authorities for the non-financial sector of the 16 federal states in Germany jointly develop the so-called Interpretation and Application Guidance in relation to the German Money Laundering Act. The first relevant version I used for this thesis, and which was (not in all cases) known to the participants of my research study was published in June 2020, in the year the transposition of the EU's fifth AML Directive came into effect (Regierungspräsidium Darmstadt, 2020b). The guidelines contain 18 pages and state that they are based on the last update of the GwG as of 12 December 2019, though art intermediaries and persons storing works of art are already mentioned as obliged entities³⁴ (Regierungspräsidium Darmstadt, 2020b). This shows that the supervisory authorities of the 16 federal states took roughly six months to update the guidelines—which by the time they were published were already outdated. The guidelines, although developed jointly by the supervisory authorities of the federal states, are published by each supervisory authority individually. It is not my intention to compare the potential changes that an individual federal state supervisory authority may have made to the guidelines, therefore I am only discussing the guidelines as they were published by the supervisory authority in Hesse³⁵, more specifically the Regional Council Darmstadt. To account for the changes to the list of obliged entities, the guidelines were updated in December 2020, roughly one year after art market actors were

³⁴ The structure of the German GwG only added art intermediaries and persons storing works of art in freeports specifically to the list of obliged entities as art dealers were already applicable under the term high-value dealer. The addition to high-value dealers was to clarify that for dealing in artworks, the threshold of EUR 10,000 applied irrespective of the payment method (when before it was only for cash transactions and all high-value goods).

³⁵ Hesse is one of the 16 German federal states.

explicitly added to the money laundering regulations (Regierungspräsidien in Hessen, 2020). This time, the guidelines were published as a combined version by the three Regional Councils of Hesse (Darmstadt, Kassel, and Gießen) and consists of 70 pages. The most current version of the guidelines was published in May 2023 with 76 pages (Regierungspräsidien in Hessen, 2023). The June 2020 version explains the basic requirements of the GwG that need to be complied with. Beyond listing the obliged entities in the non-financial sector and above which thresholds the requirements apply, there is no sector specific guidance on the 18 pages (Regierungspräsidium Darmstadt, 2020b). The December 2020 version, by contrast, comprises a section on specific characteristics of high-value dealers, art intermediaries, persons storing works of art, and real estate agents as obliged entities in the non-financial sector (Regierungspräsidien in Hessen, 2020). Since the May 2023 version is the most current, it is this version, I introduce in the following paragraph. Chapter 1.8 of the guidelines specify the terms art intermediary ('Kunstvermittler' in German) and person storing works of art ('Kunstlagerhalter' in German) (Regierungspräsidien in Hessen, 2023). An art intermediary is a person who commercially acts as a broker in contracts for the sale or purchase of artworks. A person storing works of art is only obliged when the storage occurs in a freeport, which for Germany would be the freeport in Bremerhaven or the freeport in Cuxhaven (Regierungspräsidien in Hessen, 2023). As mentioned in Chapter 2.1, the term work of art is clarified as being based on No. 53 of Appendix 2 to Section 12 Paragraph 2 Numbers 1 and 2 of the German VAT Act. So far, the guidelines only repeat what has already been established by the GwG itself and which I discussed earlier in this chapter as well as in Chapter 2 of this thesis. The guidelines, however, clarify that the threshold applies to the final price an artwork is sold or bought for, and not the limit price that was advertised or the amount the auction house receives (Regierungspräsidien in Hessen, 2023). Beyond this specification relevant to the art market, the guideline explains the requirements of the money laundering regulations without further specificities of the art market. Whether these explanations are specific enough or sufficient will be analysed in Chapters 7 and 8 of this thesis.

3.5 Supervision

The EU's fourth AML Directive (2015/849) provides certain requirements with regards to supervision of AML compliance. Article 48 paragraph 1 requires Member States to require competent authorities to monitor effectively and to take the measures necessary to ensure compliance with the Directive. To do so,

Member States shall ensure that the competent authorities have adequate powers, including the power to compel the production of any information that is relevant to monitoring compliance and perform checks, and have adequate financial, human and technical resources to perform their functions. Member States shall ensure that staff of those authorities are of high integrity and appropriately skilled, and maintain high professional standards, including standards of confidentiality, data protection and standards addressing conflicts of interest (the EU's fifth AML Directive (2018/843)).

These requirements provide the basis for the organisational and operational set-up of supervisory authorities which I will assess for Germany in Chapter 20 on supervision. With regards to the supervisory approach, the fourth AML Directive requires the application of a risk-based approach to supervision (Article 48 paragraph 6). This risk-based approach entails the assurance that supervisory authorities shall:

- (a) Have a clear understanding of the risks of money laundering and terrorist financing present in their Member State;
- (b) have on-site and off-site access to all relevant information on the specific domestic and international risks associated with customers, products and services of the obliged entities; and
- (c) base the frequency and intensity of on-site and off-site supervision on the risk profile of obliged entities, and on the risks of money laundering and terrorist financing in that Member State.

A focus on reviewing the risk assessments of obliged entities when conducting audits is required by Article 48 paragraph 8:

Member States shall ensure that competent authorities take into account the degree of discretion allowed to the obliged entity, and appropriately review the risk assessments underlying this discretion, and the adequacy and implementation of its internal policies, controls and procedures.

Note here that discretion is an embedded concept to AML regulation.

On 7 May 2020, the EC published an action plan for a comprehensive EU policy on preventing money laundering and terrorism financing (European Commission, 2020). One of the six priorities or pillars is bringing about AML/CFT supervision on EU level. The Commission identified a lack of consistent approaches to supervision of obliged entities in the proposal of the sixth AML Directive (2021/0250(COD)). The Commission explains how its 'approach to risk-based supervision is harmonised through a common risk-categorisation tool in order to avoid divergent risk understanding in comparable situations' (European Commission, 2021b).

Section 3 Articles 29 to 38 exclusively concern provisions towards supervision of compliance with the Directive. The new provisions include a clarification on the tasks and powers of supervisors. More specifically, Article 29 of the Directive concerns the powers and resources of the supervisory authorities, including a specification of tasks such as regularly assessing and

monitoring the money laundering and terrorist financing risks the obliged entities are exposed to as well as conducting all the necessary off-site, on-site, and thematic investigations, and any other inquiries, assessments, and analyses necessary to verify that obliged entities comply with the requirements (to name the most important examples). Interestingly, and potentially due to the current Russia-Ukraine war, the supervisory authorities are now also tasked with monitoring compliance by obliged entities regarding their obligations in relation to targeted financial sanctions (Article 29 paragraph 4 (f)). The requirement for the dissemination of relevant information to obliged entities is defined in Article 30. The information shall include the supra-national risk assessment, national or sectoral risk assessments, and relevant guidelines, recommendations and opinions issued by the new EU Authority for Anti-Money Laundering.

Risk-based supervision is regulated in Article 31 of Section 3. The clarification of risk-based supervision includes the requirement of guidelines on the characteristics of a risk-based approach and regulatory technical standards on a methodology for assessing and classifying the inherent and residual risk profile of obliged entities. The following articles concern the disclosure to the respective FIU (Article 32): The supervision of obliged entities operating under the freedom of establishment and freedom to provide services (Article 33), provisions related to cooperation in the context of group supervision (Article 34), requirements concerning the exchange of information in relation to implementation of group policies in third countries (Article 35), the establishment of AML/CFT supervisory colleges (Article 36), and finally, provisions regarding the cooperation with financial supervisors in third countries (Article 37) and regarding the oversight of self-regulatory bodies (Article 38).

In Germany, the Federal Financial Supervisory Authority (BaFin) oversees financial institutions and their compliance with AML regulations. According to Section 50 Number 9 of the GwG, the responsible body under Federal or *Land* law ('Bundes- oder Landesrecht') is responsible for supervising those responsible in the art sector. This means that supervision of the non-financial sector, including of art market actors, is decentralised and lies with the 16 federal states. To stay with the example of the federal state Hesse, the three regional councils have been designated by the federal state government as the responsible supervisory authorities for money laundering regulation. In other federal states, however, the responsibility for money laundering supervision may lie with a higher level, such as the senate, or a lower level, such as the public authority of district towns or even district-free towns. There is no consolidated list of supervisory authorities available, however, a recent mutual evaluation report of the FATF

estimated there to be over 300 supervisory authorities in Germany (Financial Action Task Force, 2022b). The high number of supervisory authorities results from the various governmental levels the responsibility for AML supervision is placed with. In general, the responsible Chamber of Industry and Commerce ('Industrie und Handelskammer') informs about the respective supervisory authority in each of the federal states. In federal states where supervision is distributed among various town authorities, sometimes a list of contacts is available on their website (one example would be Rhineland Palatinate).

Supervisory authorities are required to collect certain statistics and make them available to the Federal Ministry of Finance in electronic form. Section 51 (9) of the GwG provides:

To document their supervisory activity, the supervisory authorities are to retain the following data in the form of statistics:

1. Data on the supervisory activity per calendar year, in particular:
 - a) The number, measured in full-time equivalents, of persons employed in the supervisory authority who are entrusted with supervising the obliged entities under section 2 (1);
 - b) the number of on-site inspections and other inspection measures taken, broken down according to the obliged entities under section 2 (1) that they concerned;
 - c) the number of measures under letter (b) in which the supervisory authority found a breach of duties under this Act or to a regulation adopted on the basis of this Act, as well as the number of cases in which the supervisory authority gained knowledge of such a breach by other means, and
 - d) the nature and extent of legally binding measures taken by the supervisory and administrative authority in response; this includes the number
 - aa) of cautions issued,
 - bb) of fines imposed, including the respective amount, broken down according to whether, and to what extent, a publication under section 57 was made,
 - cc) of orders for the removal of money laundering officer or members of senior management,
 - dd) of withdrawals of licences ordered,
 - ee) of other measures taken;
 - e) the nature and extent of measures taken to inform the obliged entities under section 2 (1) of the due diligence requirements and internal safeguards that they are required to comply with;
2. the number of suspicious transaction reports pursuant to section 44 filed by the supervisory authority per calendar year, broken down according to the obliged entities under section 2 (1) that they concerned.

Unfortunately, those statistics are unavailable to the public. They will, however, likely be used by the Federal Ministry of Finance to coordinate central efforts with regards to supervision in Germany. It is likely, for example, that the Ministry might use them for setting certain focus

areas for supervision. Though this assumption has not been confirmed during fieldwork as we will see in Chapter 10 of this thesis on supervision.

3.6 Chapter Summary

This chapter set out the legal and regulatory background against which AML compliance in the German art market is understood in this thesis. Its purpose is not to evaluate the effectiveness of the regulatory framework, but to establish the formal obligations, regulatory assumptions, and institutional structures that shape how German art market actors encounter and engage with AML regulation in practice. By mapping the development of the EU and German AML regulatory regimes, this chapter provides the necessary foundation for the empirical analysis that follows in Chapters 6 to 10 of this thesis.

The inclusion of art market actors within the scope of AML regulation represents a significant regulatory shift. While art market actors were already partially subject to AML obligations as traders in high-value goods, the EU's fifth AML Directive (2018/843) fundamentally altered the scope and intensity of these obligations by removing the cash-payment limitation and explicitly targeting persons trading or acting as intermediaries in the trade of works of art. The German implementation largely followed the structure of existing regulation for high-value goods, extending established compliance concepts—risk assessment, customer due diligence, reporting obligations, and internal controls—into a market for which they were not originally designed. This approach reflects a broader tendency within AML governance to transpose regulatory models developed for the financial services sector onto non-financial markets with limited sector-specific adaptation—as I show in Chapter 3.4 on the practical application.

My analysis of this part of the AML regulatory process further illustrates the limited and opaque nature of interaction between regulators and the art market during the development of the German AML regulation. I will explore what the consequences of this are in Chapter 9 on interaction. While trade associations were formally invited to comment on draft legislation, their input appears to have had only a marginal and largely untraceable impact on the final legal text. The absence of a clear rationale for accepting or rejecting proposed amendments, combined with the lack of structured engagement with art market actors, suggests that regulatory assumptions about market behaviour were not systematically tested against market realities. This observation is particularly relevant for the empirical chapters 6 to 10 of this thesis examining regulatory discretion.

In addition to hard law, this chapter highlights the role of soft law in form of guidance documents in shaping the practical application of AML obligations. The evolution of the German Interpretation and Application Guidance demonstrates both the reliance of supervisory authorities on generic, finance-oriented compliance frameworks and the gradual, though limited, attempt to address sector-specific characteristics of the art market. The delayed and incremental development of this guidance underscores the challenges of translating abstract regulatory requirements into workable practices for newly regulated sectors which I will analyse more in Chapter 7 of this thesis. It further raises questions about how art market actors are expected to learn and operationalise compliance in the absence of tailored instruction.

Finally, the chapter outlined the fragmented supervisory landscape in Germany, characterised by decentralised responsibility across federal states and a high number of supervisory authorities. This organisational and operational set-up has important implications for supervisory practices, consistency, and regulatory expectations, which are explored empirically in Chapter 10 of this thesis. The combination of decentralised supervision and evolving guidance creates a regulatory environment in which discretion and interpretation are unavoidable.

Chapter 4 Theoretical Framework

4.1 Introduction

This chapter defines and justifies the key analytical concepts that guide the empirical analysis performed in Chapters 6-10 of this thesis. I further clarify how these concepts help to address the research questions as set out in the introduction to this thesis.

As explained in Chapter 1.2, it is the aim of this thesis to develop an in-depth understanding of how AML regulation is learned, interpreted, and applied in practice within the German art market as a distinct regulatory field. Using the art market as a case study, I explore how the sector's socially embedded and trust-based structure aligns with AML requirements, how legal knowledge on AML regulation is created and disseminated, how actors adapt their practices in response to AML obligations, and how interaction with regulators and supervisory authorities shapes AML regulatory compliance behaviour. Structured around the interconnected themes of learning, experience, and interaction, and complemented by an examination of the characteristics of the art market and the German supervisory set-up of the non-financial sector, this study seeks to contribute to a nuanced understanding of AML regulatory compliance in the German art market that emphasises practical relevance and meaningful engagement rather than critique of non-compliant behaviour.

The theoretical framework of the thesis is grounded in socio-legal scholarship that conceptualises compliance as a dynamic and interactive process. In line with this perspective, I assume that AML regulatory compliance is continuously shaped by the evolution of discretion through learning, experience, and interaction. Within this understanding of compliance, the theoretical framework centres on regulatory discretion as the primary analytical concept and situates the exercise of discretion within the socially embedded and trust-based structure of the art market.

These two concepts are selected because they directly address the core empirical problem examined in this study, namely how AML regulation acquires meaning in practice within a non-financial market that is characterised by and based on dense, personal, and long-standing relationships. AML regulation as a risk-based regulation (Tsingou, 2018) relies on judgement, interpretation, and contextual assessment by obliged entities, but also by supervisory authorities. Regulatory discretion is thus, inherent to the AML regulation and as a concept provides the analytical means to examine these interpretive processes. Social embeddedness explains the structural conditions under which discretion is exercised and why discretionary interpretation in the art market takes the forms I observed in my fieldwork.

4.2 The Concept of Discretion

Regulatory discretion is the central analytical concept in this thesis. I understand discretion to be the interpretive space within which regulations are applied in practice (Black, 2002; Hawkins, 2002).³⁶ Compliance as a matter of human judgment depends on the interpretive behaviour of supervisors who each see and make sense of the world in different ways (Hawkins, 2002). Their discretion is significant in that they will find varying degrees of compliance or non-compliance and will have to respond to it (Hawkins, 2002). Discretion arises where regulations cannot or do not exhaustively specify how they should be applied across diverse contexts and must therefore be interpreted by regulated businesses (Black, 2002; Hawkins, 2002). Discretion happens when regulations employ open-textured standards such as ‘appropriate measures’ or ‘enhanced due diligence where necessary’. Such standards require judgement. As Galligan (1986) notes, discretion is exercised whenever a decision-maker must choose between several permissible courses of action within the boundaries set by law. Hawkins (2002) similarly emphasises that discretionary reasoning is inseparable from the day-to-day work of regulators, who necessarily interpret and prioritise within conditions of incomplete information, competing demands, and institutional constraints. In this sense, discretion is not exceptional, it is routine and intended by the regulation.

Often, regulation is broad and intentionally leaves regulators with the task of applying and enforcing it as well as with developing guidance for the regulated (Parker and Nielsen, 2009). Consequently, the meaning of regulation is left to the regulators’ discretion (Parker and Nielsen, 2009). Supervisors differ in the quality of their assessments (Van Wingerde and Bisschop, 2022) depending on their knowledge and experience. Regulatory governance scholarship highlights that supervision is shaped by organisational structures, resource constraints, and sectoral familiarity (Hawkins, 2002). These dynamics are particularly salient in the non-financial sector, where supervisory authorities may have limited experience with market-specific practices. The framework of regulatory discretion allows this thesis to examine supervision as an interpretive practice rather than a purely technical function. This is essential for addressing the research question concerning the role of supervisory approaches in shaping compliance behaviour which will be answered in Chapter 10 of this thesis.

Importantly, discretion is exercised not only by supervisory authorities but also by the regulated businesses themselves. Black’s (2002) work on regulatory governance demonstrates that regulated entities participate actively in constructing the meaning of regulation by interpreting

³⁶ This understanding follows socio-legal accounts of discretion that conceptualise regulation as an interpretive practice carried out by both state and non-state actors (Galligan, 1986; Hawkins, 2002; Black, 2002).

rules, designing internal controls, and making judgements about proportionality and risk. This insight is particularly relevant for AML regulation, where the requirement to conduct risk assessments, implement tailored measures, and identify suspicious activity effectively delegates substantial interpretive responsibility to private actors as obliged entities. Regulatory intermediaries, such as trade associations and consultants, further shape discretionary interpretation by translating regulation into sector-specific guidance, offering advice and training, and coordinating shared understandings within a professional community.

4.3 Risk-Based AML Regulation

Discretion as the central concept of this thesis is closely linked to the design of AML regulation as a risk-based³⁷ regulation (Tsingou, 2018) instead of a rule-based regulation. Risk-based regulation because the extent of due diligence measures to be applied and internal controls to be implemented depends on the risk the individual business faces. As such, there is no one way to comply—instead the way in which organizations comply depends on the organization itself (this is inherent to the regulation) and is continually developed based on learning, experience, and interaction the organization develops with complying (or not complying; the same processes can, of course, develop for sustained non-compliance). The regulation thereby delegates significant interpretive responsibility to both, the regulator and the regulated businesses and replaces uniform rule application with assessments of likelihood, impact, and proportionality (Black and Baldwin, 2012). In doing so, risk-based regulation structurally embeds discretion.

Within this framework, AML also exhibits features of meta-regulation, in that it seeks to regulate how organisations regulate themselves by requiring them to conduct risk assessments, establish internal controls, and reflect on their own compliance practices (Parker, 2002; Black, 2008). Meta-regulation, also called enforced self-regulation or management-based regulation, is based in this thesis on Black (2012) conceptualising it as a dynamic regulatory strategy under which regulators do not prescribe how to comply, but require obliged entities to develop their own systems for compliance and to then demonstrate compliance to the regulator (Black,

³⁷ For regulators and firms, risks are often unknown and may be better described as uncertainty (Black, 2012; Baldwin and Black, 2016). Although Black and Baldwin are more concerned with the risk-based approach of enforcement, it can also be applied to how firms apply a risk-based approach to regulatory compliance. Risk-based regulation is also a strategy for working with limited resources and thus, called resource-based regulation (Black, 2012; Baldwin and Black, 2016).

2012).³⁸ Rather than prescribing substantive outcomes, meta-regulatory obligations focus on processes, documentation, and organisational reflexivity. This regulatory design does not reduce discretion; it redistributes it by responsabilising private actors to interpret regulatory goals and translate them into internal governance arrangements. The combination of risk-based regulation and meta-regulation therefore provides the institutional logic through which discretion is structurally embedded in AML governance. Responsibilisation thus, clarifies how discretion is distributed under risk-based regulation, shifting interpretive responsibility onto private actors while reshaping supervisory practices.

4.4 Social Embeddedness as the Structural Context of Discretion

While regulatory discretion is the primary analytical concept of this thesis, the forms it takes are shaped by the social context in which it is exercised. Thus, social embeddedness provides the complementing concept for this thesis. I use it to explore the structural context within which regulatory discretion is employed. The concept of social embeddedness stems from Granovetter's critique of undersocialised views of economic action, in which he argues that economic behaviour is embedded in concrete and ongoing systems of personal relations rather than governed solely by market logic or individual rationality (Granovetter, 1985). In embedded markets, market actors rely on relational knowledge, reputation, and long-standing ties to navigate uncertainty and evaluate risk (Granovetter, 1985; Uzzi, 1997). These relational configurations shape expectations, influence behaviour, and constitute the social infrastructure through which exchange becomes possible (Granovetter, 1985; Zelizer, 2012).

The art market can be considered such a socially embedded market. Individuals and their actions are embedded in social networks: Indeed, sales and purchases constituting artists' careers are embedded in networks formed of dealers, collectors, and galleries (Granovetter, 1985). As set out in Chapter 2 of this thesis, Becker (2008) conceptualises art production and exchange as collective activities governed by shared conventions, while Velthuis (2005b) demonstrates that value and pricing mechanisms are inseparable from personal relationships with artists, collectors, and institutions art dealers and moral expectations. Bourdieu (2010) highlights how symbolic capital and insider knowledge structure authority and access within cultural fields. Thornton similarly documents how status, reputation, and insider access circulate through elite networks, shaping participation and value in contemporary art (Thornton, 2009). Thus, embeddedness is a basic feature of the art market that shapes pricing

³⁸ The definitions of meta-regulation vary. For a detailed definitional debate see Coglianese and Mendelson (2010).

and value mechanisms, access to business opportunities, and the meanings attached to expertise (Becker, 2008; Bourdieu, 2010; Velthuis, 2005b; Thornton, 2009).

This socially embedded structure of the art market may have significant impact on AML regulatory compliance and how regulatory discretion is exercised in this context. The concept of embeddedness shapes how actors perceive and respond to regulatory requirements. In the art market, personal relationships often substitute formal verification, having art market actors rely on familiarity, reputation, and long-standing knowledge of customers rather than documents (Becker, 2008; Velthuis, 2005b). Since AML regulation requires formal transparency, it may be seen as disrupting the relational work that sustains trust and facilitates exchange within these markets (Zelizer, 2012).

In this thesis, social embeddedness therefore serves as the analytical backdrop against which regulatory discretion operates. It explains why regulatory discretion in the art market is exercised through relational knowledge, reputation, and experience rather than through impersonal procedural reasoning. Embeddedness as a concept further helps clarify why AML obligations do not map neatly onto the art market, how legal knowledge circulates within relational networks, and why compliance practices diverge from intended outcomes. This perspective is central to addressing the research question on alignment between AML obligations and art market practices which will be answered in Chapter 6 of this thesis. It explains why formal requirements of transparency and documentation are perceived as disruptive and why discretionary judgement is seen as necessary to maintain market functioning. Understanding embeddedness as the basic feature of the art market is thus essential for analysing how AML regulation is learned, experienced, and interacted with in this newly regulated non-financial sector.

4.5 Interrelations and Supporting Perspectives

As explained earlier in this chapter, discretion functions as the primary analytical concept for this thesis. The concept of discretion is able to capture the mechanisms through which AML obligations are interpreted, prioritised, and enacted by different regulatory actors, private and public. Discretion also explains how regulatory meaning is developed in practice, including how judgement is exercised by art market actors, intermediaries, and supervisory authorities. Social embeddedness operates as the structural context within which discretion is exercised. It explains why discretionary interpretation takes particular forms in the art market, namely why interpretation is relational, experience-based, and informed by trust and insider knowledge.

Embeddedness does not compete with discretion as an explanatory concept, but it conditions the forms and limits of discretionary judgement.

Supporting perspectives are integrated throughout the chapters to help explain nuances observed during the qualitative fieldwork. For example, regulatory intermediary theory explains how discretion is exercised collectively through trade associations as regulatory intermediaries that translate AML obligations into art market specific guidance. The empirical work performed for this thesis thereby tests the RIT (regulator, intermediary, target) framework in practice (Abbott, Levi-Faur and Snidal, 2017a). The inclusion of intermediaries in the analytical framework is essential for addressing the research questions concerning regulatory learning and knowledge distribution which will be answered in Chapter 7 on learning. It allows the thesis to examine how AML obligations are interpreted collectively and how shared understandings of compliance emerge within the art market. Discretion, in this sense, is distributed across the regulatory system rather than concentrated at a single point.

Discretionary interpretation of regulation is inherently interactive. Meanings of compliance emerge through ongoing engagement between regulators, regulated entities, and intermediary actors rather than being derived directly from legal texts. Parker and Nielsen (2009) demonstrate that regulatory meaning is constructed through interaction, negotiation, and shared understandings within regulatory fields. This interactional perspective is central to the research questions concerning learning and interaction. It suggests that regulatory knowledge is acquired not only through formal instruction but through dialogue, guidance, and experience. Where interaction between regulators and regulated actors is limited, discretionary interpretation is shaped primarily by market norms and intermediary guidance.

While this thesis centres on regulatory discretion as the primary mechanism through which AML obligations acquire meaning in practice, its findings are also compatible with socio-legal accounts of legal endogeneity³⁹. Legal endogeneity describes how organisations internalise legal requirements and translate them into formal procedures and compliance structures that come to stand in for legal meaning itself (Edelman, Uggen and Erlanger, 1999). Rather than constituting a separate theoretical framework, legal endogeneity is treated here as a complementary perspective that illuminates how discretionary interpretation is stabilised within organisations over time through formal documents.

³⁹ Legal endogeneity focuses on constructing the meaning of law. It shows how legal rules in regulatory governance arrangements are shaped by values, norms, and beliefs of stakeholders (Talesh, 2009, 2015). Legal endogeneity theory further suggests that the meaning of law is often shaped by businesses (Edelman *et al.*, 1991). As such, the subjects of the law can help shape the meaning of it and thus, compliance programs can become endogenous to the law (Hock and Dávid-Barrett, 2022).

These perspectives do not introduce additional core concepts. Instead, they refine my empirical analysis of how regulatory discretion operates within the art market and across different empirical sites thereby allowing for sufficient analytical depth to address the research questions as set out in Chapter 1.2 of this thesis.

4.6 Justification for the Theoretical Framework

The art market was only recently added to the AML regulatory framework. As such, the primary analytical challenge is not to assess whether art market actors comply with AML obligations, but to understand how these obligations are learned about, interpreted, experienced, and operationalised in practice.

The introduction of AML regulation imposes significant new demands on art market actors, requiring them to adapt their practices to mitigate risks associated with financial crimes. Due to the currentness of these regulatory changes, understanding the nuances of regulatory compliance behaviour is especially important. This not only allows us to understand how and why art market actors comply (or do not comply) with the AML regulations, it further provides a framework to analyse how art market actors integrate the regulatory requirements in their operational processes and governance structure—as a live example.

AML regulation is designed as a risk-based regime that deliberately relies on judgement and contextual assessment rather than prescriptive rules. Regulatory discretion therefore provides the appropriate analytical concept for examining how AML obligations acquire meaning in practice. It allows the analysis to move beyond formal legal requirements and to focus instead on how art market actors, regulatory intermediaries, and supervisory authorities interpret their responsibilities and exercise judgement. This is particularly important in a market that is characterised by heterogeneous actors, informal practices, and limited prior experience with financial regulation.

At the same time, the framework recognises that discretion is not exercised in a social vacuum. The art market is a socially embedded market in which trust-based relationships, insider knowledge, and long-term personal connections structure economic exchange. Social embeddedness therefore provides the necessary contextual grounding for the analysis, explaining why discretionary interpretation in the art market takes relational and experience-based forms.

This thesis thus, provides insights into the motivations and mechanisms underlying the compliance behaviour of art market actors in a relatively new field to allow conclusions on the relevance and practicality of AML regulation for the art market.

Overall, I believe that this framework is particularly well suited to studying a regulatory field that is still in formation, such as AML regulation in the art market. As mentioned before, this research did not collect evidence for non-compliance. Instead, I examine how art market actors understand AML obligations and how they believe compliance could be improved through shared learning and practical adaptation. This is not an oversight, but a deliberate analytical choice. In an early stage of regulatory implementation, discretionary interpretation and peer-based learning play a central role in shaping how regulation is understood and enacted. Studying these processes provides insight into how regulatory meaning is constructed before practices become fully stabilised. Compliance documents, such as a risk analysis, a policy, procedure, or description of a control can be an example of the specific output of this collaborative learning. Additionally, discretion provides a lens through which the interaction between supervisory authorities and the supervised businesses and how this interaction shapes compliance behaviour and ultimately, regulation, can be explored. This learning curve, this collaborative thought, this peer learning is what this research taps into.

The theoretical framework informs the analysis of the three core themes of the research:

Learning.

Regulatory discretion provides the lens through which regulatory learning is examined. Learning is understood as a process through which art market actors acquire, interpret, and contextualise knowledge about AML obligations rather than as the passive reception of legal rules. For example, art market actors may learn about AML regulations from the regulator while also drawing insights from peer networks or trade associations. These learning processes involve discretionary judgement, as actors determine which regulatory expectations are relevant and how they should be applied within their specific organisational and market contexts.

Experience.

Experience refers to how regulatory discretion is exercised and refined through organisational practice. As art market actors implement AML obligations, they develop internal processes and controls that reflect their market norms and practices as well as their evolving understanding of regulatory expectations. For instance, art market actors may adapt their internal practices

not only to meet AML legal requirements but also to align with industry standards or even to further their business objectives. Thus, these adaptations are shaped not only by the AML regulation but also by embedded market norms and professional experience.

Interaction.

Interaction captures the relational dimension of regulatory discretion. AML regulatory compliance is shaped by ongoing, and often uneven, interaction between private sector art market actors and supervisory authorities. This theoretical framework thus, allows for analysis of how such interactions, or the absence thereof, evolve and shape discretionary interpretation of the AML obligations. In particular, it provides a basis for analysing how limited interaction with regulators influences reliance on intermediaries and peer networks, and how this affects the development of shared understandings of compliance within the art market.

One of the strengths of this theoretical framework is its practical relevance. By focusing on discretion as the space between the written regulation and the compliance outcome in a socially embedded, non-financial market, I am able to capture the interpretive, relational, and context-dependent nature of AML regulatory compliance. This focus aligns closely with real-world regulatory challenges. At the same time, the framework is sufficiently flexible and can be applied to other sectors and regulatory contexts.

While this framework provides a comprehensive foundation for this study, it also has limitations that must be acknowledged. It does not seek to evaluate the effectiveness of AML regulation or to measure compliance outcomes. Nor does it aim to fully capture the unique cultural and operational nuances of the art market. Instead, it provides a focused analytical lens for examining how AML obligations are learned, experienced, and interacted with through discretionary interpretation within a socially embedded market. AML regulation further represents a dynamic regulatory environment. The ever-rapidly changing regulatory landscape may require supplementary theories or models to address evolving challenges.

In this sense, the theoretical framework provides a coherent basis for addressing the research objectives set out in Chapter 1.2 of this thesis. By applying this theoretical framework, this study seeks to contribute to a deeper academic understanding of how AML regulatory compliance is learned, experienced, and shaped through interaction in a non-financial, relationship-based market. This study further seeks to contribute to practical efforts to enhance AML regulatory compliance in non-financial markets.

By looking at how the concept of compliance is learned, experienced, and interacted with in this niche market, that is the art market, we can ultimately engage with regulation. It is with this goal, the empirical work for this thesis contributes evidence in the understudied context of AML regulation in the art market. Evidence of compliance behaviour that helps us understand the social nuances that happen in the regulatory process. We need to think about how businesses can and will comply already when writing regulation. And understanding how compliance is learned, experienced, and interacted with by private actors is the basis to understanding compliance.

4.7 Methodological Implications

The theoretical framework adopted in this thesis reflects an interpretivist epistemology that treats legal meaning as constructed through practice. Therefore, I apply an interpretivist or constructivist approach (Hesse-Biber, 2017; Liamputtong, 2020) considering compliance as learned, experienced, and interacted within regulatory fields, in this case the art market, by regulated actors (Jordanoska and Lord, 2022). Such an approach adopts the view that the meaning of compliance can only be understood through the lived experiences of the regulated—rather than pre-defining the concept of compliance and then testing it (Jordanoska and Lord, 2022). Compliance at its core is about social engagements and perceptions which is why qualitative research methods are particularly useful to explore compliance (Pautz and Rinfret, 2022). Socio-legal scholarship has shown that compliance does not concern regulation as such, but rather how actors respond to regulation and decide how to implement it (Parker and Nielsen, 2011). Compliance practices are therefore not uniform or self-evident, but emerge through interpretation, experience, and interaction. This thesis conceptualises compliance as the empirical terrain in which regulatory discretion becomes observable. Rather than asking whether AML obligations are complied with, it examines how compliance is understood, enacted, and justified by different actors. This approach aligns with socio-legal accounts that emphasise the socially constructed nature of compliance and reject binary distinctions between compliance and non-compliance (Parker and Nielsen, 2009). By focusing on discretionary interpretation rather than formal compliance outcomes, the thesis avoids evaluative claims about effectiveness or enforcement success and instead provides a descriptive and analytical account of how AML regulation is governed in practice.

Because regulatory discretion operates through interpretation and experience, qualitative, in-depth interviews are particularly suited to capture art market actors' perspectives and reasoning processes. Consequently, regulatory discretion is examined in this thesis through

detailed accounts of how art market actors learn about, understand and interpret AML regulation, how discretionary judgments are formed and revised through experience, and how art market actors interact with the regulation, their peers, intermediaries, as well as their supervisors. Social embeddedness is examined through narratives of trust, relationships, and market norms that inform regulatory interpretation.

4.8 Chapter Summary

This chapter set out the theoretical framework that guides the empirical analysis undertaken in Chapters 6 to 10 of this thesis. It defines and justifies the key analytical concepts through which I examine how AML regulatory compliance is learned, experienced, and interacted with in the German art market. Grounded in socio-legal scholarship, the framework conceptualises regulatory compliance as a dynamic and interactive process shaped through learning, experience, and interaction rather than as a static or purely rule-based outcome.

Regulatory discretion is the primary analytical concept. Discretion is conceptualised as the interpretive space within which AML obligations acquire meaning in practice, arising from the open-textured nature of regulation and the design of AML regulation as a risk-based regime. The chapter explains that discretion is inherent to AML regulation and is exercised not only by supervisory authorities but also by regulated businesses and intermediary actors. By framing discretion as a routine and structured feature of regulatory governance rather than an exception, the framework provides a means to analyse how judgement, prioritisation, and interpretation shape compliance practices across different regulatory sites.

Social embeddedness is the structural context within which regulatory discretion is exercised. Drawing on economic sociology and art market scholarship, the chapter demonstrates that the art market is characterised by trust-based relationships, reputational knowledge, and long-standing personal ties. These features shape how AML regulation is perceived, interpreted, and operationalised. Social embeddedness explains why discretionary interpretation in the art market takes relational and experience-based forms and why formal requirements of transparency and documentation may be perceived as disruptive to established market practices.

In this chapter I further clarify how discretion and embeddedness interrelate and how supporting perspectives, including regulatory intermediary theory and legal endogeneity, refine the empirical analysis without introducing additional core concepts. Together, these

perspectives allow for a nuanced examination of how regulatory meaning is developed, shared, and stabilised across the art market regulatory field.

I justify the suitability of this theoretical framework for studying AML regulation in a newly regulated non-financial sector. By focusing on how AML regulation is learned, experienced, and interacted with rather than on measuring compliance outcomes or effectiveness, the framework aligns with the empirical focus and methodological approach of this thesis. It provides a coherent basis for analysing the empirical material generated through qualitative interviews and for addressing the research questions set out in Chapter 1.2. The following chapter builds on this framework by outlining the methodological approach and research design through which these analytical concepts are operationalised in the empirical study performed for this thesis.

Chapter 5 Methodology

5.1 Introduction

This chapter lays out the methodology for this research study and the analysis of collected data. This thesis adopts a qualitative research design to examine how AML regulation is learned, experienced, and interacted with in the German art market. Given the focus on regulatory learning, internal practices, and the lived experience of compliance, a qualitative approach is particularly suited to capturing the meanings, assumptions, and adaptations through which AML obligations are operationalised in the art market. Rather than measuring compliance against predefined benchmarks, this methodology is designed to explore how regulatory expectations are understood and enacted by private sector art market actors subject to them. This aligns with and is anchored in the theoretical framework which focuses on the concepts of regulatory discretion and social embeddedness. This research is exploratory in nature. Art market actors were only relatively recently brought within the scope of AML regulation, and little empirical research exists on their compliance experiences. The aim is not to identify instances of non-compliance or to evaluate individual art market actors, but to understand how regulatory learning unfolds and how this shapes the practical application of AML obligations. In doing so, the methodology aligns with the broader objective of the thesis: to contribute knowledge that can inform more context-sensitive and workable regulatory approaches to AML.

The next section lays out the research design adopted in this thesis, which combines doctrinal and empirical methods to observe AML regulatory compliance behaviour. The empirical core of the thesis consists of semi-structured interviews with art market actors, experts, and supervisors involved in AML regulatory compliance in the German art market. This interview-based approach allows for in-depth engagement with participants' experiences, perceptions, and problem-solving strategies, and provides access to forms of practical knowledge that are not readily observable through documentary analysis alone. Interviews were complemented by an analysis of relevant legal instruments, regulatory guidance, policy documents, and industry materials, which together form the context within which compliance practices emerge. This section explains the rationale behind employing a mixed-methods approach (Hesse-Biber, 2010) with doctrinal and empirical research, describes the methods for data collection and analysis, and provides justification for the use of thematic analysis.

The data and methods used for this qualitative research project are explicated in the succeeding section three of this chapter, including a detailed description of the interview

questionnaires. Ethical considerations, such as obtaining informed consent and notes on anonymity, are addressed in the subsequent section. The chapter concludes with the limitations of this research and notes on the use of the collected qualitative data.

5.2 Research Design

This research takes an interpretivist or constructivist view (Hesse-Biber, 2017; Liamputtong, 2020) to explore the ways in which regulation is understood and applied through researching regulatory compliance. This approach aligns with its theoretical focus on regulatory discretion and social embeddedness. Because the research examines how AML obligations are interpreted and enacted in practice, rather than whether they are formally complied with, in-depth interviews provide the most appropriate method for accessing art market actors' perspectives, reasoning, and experience. My analysis focuses on how regulatory meaning is constructed through discretionary judgement within a socially embedded market context.

Because risk-based regulation operates through discretionary assessment and prioritisation, qualitative methods are particularly suited to examining how AML obligations are interpreted and enacted in practice (Black and Baldwin, 2012).

Considering the understudied nature of this topic focusing on the application and more specifically, regulatory compliance of AML regulations within the art market (as established in Chapter 1 of this thesis), qualitative research appeared much more useful than quantitative research as there are simply fewer theories available to be tested. While a literature review is an essential part of every research project, considering media reports as well as research reports from private companies on the art market and research reports conducted by the governments of Germany broadened my understanding of the field and helped with the identification of potential participants in the study.

As such, this thesis applies a mixed methodology: doctrinal and empirical research. The doctrinal method involves the analysis of AML regulations and related legal frameworks to draw logical conclusions about the reasoning behind these regulations as established in Chapter 3 of this thesis. Complementing this is the empirical component which aims to understand how these regulations are learned, experienced, and interacted with by private sector art market actors. By combining these methodologies, the research aims to provide a comprehensive view of both the theoretical underpinnings and practical applications of AML regulation which materialises in regulatory compliance. The empirical component of this research is based on qualitative data

collected through in-depth semi-structured interviews. These interviews were conducted with three distinct groups engaged in the regulatory compliance process:

- Art Market Actors, including art dealers, art galleries, and auction houses,
- knowledgeable experts, including art lawyers, members of law enforcement agencies, and representatives from relevant associations, and
- supervisors responsible for AML supervision of the art market.

The objective was to develop a sample that can provide detailed accounts and information on how compliance with AML regulations is experienced and shaped in the art market. The understandings of AML regulatory compliance that are collected in this project can be seen as having ‘a value in itself’ (Parker and Nielsen, 2009, p. 52).

Separate interview guides were developed for each group of participants. For art market actors, the guide was prepared prior to the interviews and was used consistently across all participants. For knowledgeable experts and supervisors, the guide was developed iteratively during fieldwork, informed by insights gathered from the initial interviews. Despite these differences, all interviews were structured around three core themes: learning, experience, and interaction. The gathered data was analysed using thematic analysis whereby the texts were grouped into themes. As defined by Clarke and Braun (2017), thematic analysis is ‘a method for identifying, analy[s]ing, and interpreting patterns of meaning (‘themes’) within qualitative data’ (Clarke and Braun, 2017, p. 297). This method was chosen for its flexibility (Clarke and Braun, 2017).

The thematic analysis process involved:

- The familiarization with the collected data through transcription and note review,
- the generation of initial codes based on my research questions and identified patterns,
- the organisation of codes into themes guided by my research questions, and
- the refinement of themes through an iterative process, allowing for research questions to evolve if necessary.

While thematic analysis is guided by the research questions, one of the advantages of thematic analysis is that the research questions are not fixed, and it may change during the analysis process. Braun and Clarke further argue that thematic analysis ‘should be considered a method in its own right’ (Braun and Clarke, 2006, p. 78). Besides the flexibility, thematic analysis is also a method quite accessible to an early-career researcher like me.

5.3 Data and Methods

The research methods applied to the research project led to a wealth of data. In total, 19 in-depth qualitative interviews with art market actors, experts, and supervisory authorities were conducted from July to November 2022. Interviews were carried out face-to-face, online, and on the telephone. All but two interviews were audio-recorded and later transcribed. The two interviews that were not audio-recorded were documented with detailed notes. Interviews lasted between 30 and 90 minutes with an average length of 60 minutes. Of the 19 interviews, seven were conducted with art market actors, making up for 37% of the sample. Art market actors included art galleries, art dealers, and auction houses. Eight interviews (42%) were conducted with experts in the field with one expert also working as an art dealer. The remaining four interviews (21%) were conducted with regulatory supervisors. Although supervisors had not been in my original research plan, once it became clear that I would focus not only on how art market actors learn and experience regulatory compliance, but also how regulatory compliance is shaped by interaction, I extended the participant group to include supervisors as well. Since it is not just the shared experience and interaction among peers that influences and ultimately shapes compliance, but also the interaction between the regulated and the regulator, the supervised and the supervisor that forms how regulations are complied with. These interactions guide the exercise of discretion and how and to what the extent regulations are complied with. Geographically, 16 interviews were carried out with participants situated in Germany, two interviews with participants situated in the UK, and one interview was conducted with a participant situated in the United States, however, with business relations in Europe. Both, the UK and the US interviews were with participants who as experts either maintain business relations in Europe or monitor the EU AML regulatory landscape as part of their profession. These interviews are not the heart of the study but rather serve to inform it.

Collected research data was complemented by information gathered through literature review. For instance, the websites of supervisory authorities contain a wealth of information and guidance on supervision and compliance with AML regulations. Whenever suitable, such information was consulted for further analysis of the identified themes in the research data. This was also to mitigate the limitations of a small set of participants. While such a small sample may provide richer data as the time that is spent with each participant is longer and the relationship I as the researcher built with the participant grows more personal (all advantageous for collecting a wealth of data), a small set of participants may impede the generalisability of findings. It is therefore important to complement the qualitative data with other sources. I pick this up in section 5.5 on limitations.

5.3.1 Sampling

The objective was to develop a sample that provided detailed accounts and information on how compliance with AML regulations is experienced and shaped by the art market in Germany. Interviews were conducted with three participant groups: art market actors (art dealers, art galleries, auction houses), experts (art lawyers, art advisors), and supervisory authorities (supervisors, other authorities such as the Financial Intelligence Units). Participants for those three groups were identified in two ways: Firstly, through my personal interest and professional experience in the art market, I maintained a few contacts in the art world that I thought may agree to participate in the project. My professional experience with AML compliance further guided my sample selection. Using the snowball sampling method, participants identified other contacts to take part in this research. In general, the art market is seen as a very tight community and hard to get into for outsiders. Due to the elite nature of this market, Miekcz's work was quite helpful, for example, regarding the importance of inside knowledge and the researcher's positionality (Miekcz, 2012). Using snowball sampling provided an informal way of identifying further participants from such a hard-to-reach population. Secondly, through literature review and media research, knowledgeable experts in the field were identified and approached.

In the end, participants in the study mainly came through personal contacts or recommendations: I contacted 57 art market actors in total, 18 through personal relations that developed over the period of the fieldwork. Of the 39 I contacted without having personal relations, none agreed to an interview (making up for a 0% success rate). All seven interviews came out of the 18 art market actors I contacted with some form of personal relation or recommendation (roughly 40% success rate). I would often write in the subject of the email 'contact through [name]' to get them to even read the email. Regarding the experts, I contacted 30 experts in total, thereof five through personal connection or recommendation. Four of the five that were recommended to me agreed to an interview (80%), while three of the 25 cold contacts participated in the study (12%).

I sent information on the study to 66 German supervisors in the 16 federal states which I worked off several lists that were available online for each of the federal states. Out of the 66, 13 responded (roughly 20%), and four agreed to an interview (6%). While some responded that they were unable to participate due to lack of experience in the art sector or staff shortage, others saw themselves unable to respond to such a request to maintain their impartiality as supervisors.

The German Financial Intelligence Unit (FIU) was contacted via email and agreed to answer a couple of questions in written form as well as send through their art market related typology paper.

Overall, contacting potential participants through either personal connection or through personal recommendation of one of the other participants proved much more fruitful than cold-contacting people. My experience with this study also showed that once it ‘clicked’ and I got those two or three respondents to see that the study was not as bad as they thought it would be, they agreed to recommend me to others or even talk to others to participate. Of course, this did not always work out. However, looking at the mere numbers, I only gained access to six interviews without personal relation or recommendation, three being experts and three being supervisors. One could argue that both groups, the experts as well as the supervisors, have a motive to look for a platform to share their experience, the experts probably more so.

5.3.2 Interview Questions

The questions were based on an interview guide for each of the three participant groups. A detailed interview guide for art market actors and supervisors was developed and used for all in-depth interviews. The interview guide for knowledgeable experts was then developed during fieldwork and was based on the information collected from the initial two interviews with art market actors. All questions were asked within the same three themes: learning, experience, and interaction. Most questions were open questions (e.g., How do you learn about what the new AML regulations require you to do practically?) with a couple of questions that would allow for some form of comparison (e.g., Which of the obligations have you found the easiest and which the most difficult to implement and why?). Concluding the interview, I would ask participants whether there are any documents they would like to or could share with me for the study. This allowed me to collect documentation to enrich the qualitative interviews and observations obtained from them.

As preparation for the different parts of my empirical research—learning, experience, and interaction—the following section is a broad summary of the detailed interview guides.

Every interview started off with a set of introductory questions to establish a baseline for understanding the answers to the more specialised questions in the three sections learning, experience, and interaction. These introductory questions asked participants for a quick run through their CVs, a description of their current position as well as their business, and asked

for the years they have been in the art business. The description of their business encompassed number of staff, area of expertise, and type of clients. While number of staff and years in business created more of a formal baseline for me to understand the respondents' experience in the business and the size of the business, the purpose of asking the respondents for their type of clients and their specialisation was to get data that would already help me qualify the money laundering risk the respondents' businesses would face and to relate their responses to this understanding. If the respondents were unsure how to respond to the question for their type of clients, I would assist them with geographic attributes (local, regional, national, international), organisational attributes (private, corporate, institution) and time attributes (regular, irregular, new, longstanding). In many cases, the introductory questions were answered exhaustively by experts who often came from a more diverse background regarding their education and career stages than art market actors who often had been in the same business for the duration of their professional career. Especially the exhaustive responses from experts helped solidify certain themes within the art market: certain structures, certain practices, certain characteristics of the actors. Likewise, supervisors were asked for their educational and professional background as well as for their length of experience with AML supervision.

Learning

In the learning part of the interview, participants were asked how they learn about the regulations and what the regulations require them to do. Specifically, art market actors were asked how they find out about the regulation, whether they are part of a network or professional association, and whether they regularly consult a lawyer. To find out how they learn about the obligations the new AML regulation requires them to comply with, I asked them whether they read the regulations themselves, whether they perform internet research, talk to other market actors, consult guidance documents, or approach their supervisory authority for advice. I also asked them about the trainings they took with regards to AML compliance and how they informed themselves about what money laundering is and what it could be in the art market specifically. As a final question for this section, I asked art market actors whether they were in contact with other markets that may be affected by AML regulation and whether this had any implications for their business. Similarly, in the first section of the interviews on learning, I asked participating supervisors how they would learn in what way the legal requirements for money laundering are to be interpreted practically as well as how they would inform the supervised businesses of that understanding and what specifically needs to be done

to comply. Subsequently, supervisors were asked whether and what kind of training related to AML in the art market they had completed.

Experience

The first question of the experience part of the interviews focused on experience with compliance and asked participants to describe their reaction to the new AML regulation. The next questions relate to the changes of processes and controls art market actors made based on the new obligations. In this context, I asked participants which of the new obligations they found the easiest and which of the obligations they found the hardest to implement. The subsequent questions asked participants for the implications on their business of the new AML regulations: They were asked to consider effects on staff, clients, and revenue. To get market actors to reflect on their role, I then asked them what they thought their contribution was to the public objectives AML regulations aims to achieve.

All participants, including experts and supervisors, were asked how they would describe the risk of the art market being misused for money laundering purposes based on their personal experience and what situation they would find suspicious considering their normal business practices. Most art market actors described their normal business practices in the first part. The next questions related to whether and how the AML regulations changes participants' perception of what they consider suspicious. I then asked them what this understanding of money laundering is based on and whether there were any cases or encounters with money laundering in the art market they could describe in anonymised form.

Finally, participants from the art market were asked about their experience with submitting a Suspicious Activity Report (SAR), whether the systems and controls they put in place to comply with the regulation help to identify suspicious activity, and whether they have received feedback after submission. As the final question of this interview section, supervisors were asked whether they thought either the art market or them as supervisors were lacking anything to effectively prevent the misuse of the art market for money laundering purposes.

Interaction

The last part on interaction concerned art market actors' and experts' interaction with the supervisory authorities: Starting off with whether they knew who their supervisor was, whether they knew them personally, and how often they speak to them, to questions whether there were any other official bodies participants communicated with, such as the FIU. I finished the

interview with asking participants whether they could think of any innovations developed by their business in response to the regulation which they thought works well and could or should be shared with peers. Correspondingly, the interaction part for supervisors concerned questions around the registration process for supervision, regular or ad hoc contact between supervisors and the supervised, and the process of a money laundering audit as well as how each of the obligations is assessed. I further asked supervisors how they would handle a tick-box approach, non-compliance, rejection, or bad attitude towards compliance or them as supervisors, and whether the regulations in their opinion give enough leeway to account for differences in the market with regards to the size of a business or the range of products. Finally, supervisors were asked for their communication with other official bodies, such as the FIU, whether they could think of any changes or innovations the art market has developed in response to the money laundering regulations, and whether they would share such best practices with other businesses under their supervision.

5.4 Ethical Considerations

This research project was approved by the University of Glasgow's College of Social Sciences Research Ethics Committee under the application Number 400210191 on 28 June 2022. The research was not subject to external funding. Informed consent was obtained in written form from all individual participants in the study.

5.4.1 Note on Anonymity

Throughout the analysis of the collected empirical data, I use the gender-neutral third-person pronoun 'they' along with its forms 'them', 'their', 'theirs', and 'themselves' due to it allowing for further anonymity which is important for a study such as this one with a small sample size. When conducting research within the art market, a market that consists of many small ('one-man'-) businesses, this becomes even more important.

5.5 Limitations

The empirical data collected during this research study provided a wealth of data for critical analysis. While qualitative data is quite rich and provides for detailed accounts and

observations, there are also certain limitations that come from a small qualitative sample. It should be noted that the interviews do not provide a generalisable view of the art market but rather offer practical insights into the business and compliance practices of the participants interviewed that can allow to draw generalisable learnings. Interpretivism may limit the perspective of the world as lived experiences are often considered without analysing the causal powers of social structures that exist independently of the experiences of research subjects (Jordanoska and Lord, 2022). The shortcomings of qualitative data analysis do not enable measurement, testing, and theory expansion (Jordanoska and Lord, 2022).

Additional limitations include the subjectiveness of the accounts that is further limited by my perception as the researcher. What needs to be considered a (widely accepted) limitation can also be seen as a strength: Art market actors, experts, and supervisors explained and described their experience with AML compliance, a field which I have been working in for eleven years now. Every question I asked and every reply I got, I analysed through my unique experience, first in the art market and then with AML compliance. This means that I could relate quite easily to the art market actor who works with beautiful objects and is often quite different from a financial services professional. On the other hand, I could relate to the difficulties of compliance and communication with a supervisor which I experienced first-hand at the bank. That back and forth, that quite delicate relationship, that anxiousness of not meeting the regulators' expectations, and getting a finding for it, that's all something I experience now working inside a compliance department. The approach of a supervisor, of auditing someone, of forming an opinion of the regulations, an expectation of compliance with the regulations, is something that I too, can understand through my previous work as an internal auditor. Through this understanding, participants opened to me during the interviews and spoke quite freely. The analysis and interpretation of the collected data was filtered through my experience. This is, of course, a bias to consider as my experience and my personal relations with participants may have distorted my perspective. By situating my findings within the wider literature and setting it against studies performed by other academics in the discussion chapter, I have tried to address this bias.

5.6 Notes on Data Used

All German interviews were translated to English by me to the best of my knowledge, including the translation of proverbs or figures of speech. Translated replies are marked as citations for accuracy and since they are direct translations of the original responses. In case the respondent

did not agree to the citation of direct quotes, their answers were paraphrased based on notes taken during the interview(s) and translated. All responses taken from interviews held in English are also marked as citations, however, fill words (e.g., uh, uhm) as well as duplicate words were removed for increased readability. Any indications to the identity of the interviewee were removed and are discernible by brackets, for example, [expert] instead of their name or [city] instead of their place of business. Where necessary, additional information such as abbreviations was added in brackets. For instance, where a participant mentioned the FIU, I have added [Financial Intelligence Unit].

5.7 Chapter Summary

In this chapter I set out the methodological foundations of the thesis and explained how the research design, data collection, and analytical choices align with the overarching aim of developing a nuanced understanding of AML regulatory compliance in the German art market. Anchored in an interpretivist research approach, I justified the adoption of a qualitative methodology as particularly suited to examining how AML regulation is learned, experienced, and interacted with in practice. Rather than assessing compliance against formal legal benchmarks, the methodological approach taken in this thesis prioritises the perspectives, interpretations, and discretionary judgements of those subject to and responsible for supervising AML regulation. This focus reflects the theoretical framework of the thesis, which emphasises regulatory discretion and social embeddedness as central to understanding regulatory compliance in non-financial markets.

This chapter further explained the rationale for combining doctrinal and empirical methods. Doctrinal analysis provides the legal and regulatory context within which AML obligations for the art market have developed, while empirical research enables an exploration of how these obligations are understood and operationalised by private sector art market actors, experts, and supervisory authorities. By situating empirical findings within their regulatory and institutional context, the methodology supports my objective of contributing context-sensitive and practically relevant insights into regulatory compliance.

At the core of the empirical component are semi-structured, in-depth interviews with three participant groups: art market actors, experts, and supervisory authorities. This multi-perspective design reflects my interest in regulatory compliance as a relational and interactive process, shaped not only by the regulated but also by intermediaries and regulators. The inclusion of supervisory authorities, while not part of the original research plan, emerged as a

necessary methodological extension once the importance of interaction for shaping compliance practices became apparent. This adjustment illustrates the exploratory nature of my research and the flexibility inherent in qualitative inquiry.

Next, this chapter detailed the sampling strategy and demonstrated the challenges of accessing a socially embedded and elite market such as the art market. The reliance on personal contacts and snowball sampling was not only a pragmatic response to issues of access but also consistent with the research focus on trust, networks, and informal structures within the art market. The difficulties encountered in recruiting participants, particularly through cold contacts, further underscored the relevance of social embeddedness as an analytical lens and reinforced the value of insider knowledge and positionality in this qualitative research.

In terms of data analysis, this chapter justified the use of thematic analysis as a flexible and rigorous method for identifying patterns of meaning within qualitative data. The analysis was, of course, guided by the research questions and structured around the three central themes of learning, experience, and interaction, while remaining open to the emergence of new insights through iterative engagement with the data. This approach allowed the research questions to evolve in response to the empirical material, rather than constraining the analysis within rigid analytical categories. I also acknowledge my role as the researcher in shaping the analytical process and situate this positionality as both a potential source of bias and a methodological strength, given my professional experience in both the art market and AML compliance.

Ethical considerations are addressed in detail, reflecting the sensitivity of the research context and the importance of trust, anonymity, and informed consent in a study involving a small and potentially identifiable participant group. I pay particular attention to anonymity and the use of gender-neutral language, recognising the heightened risk of identification within a market characterised by small businesses and close professional networks.

Finally, I critically reflect on the limitations of the chosen methodology. While the qualitative design does not allow for generalisable conclusions or causal explanations, it provides rich, practice-oriented insights into regulatory compliance as it is experienced and negotiated. These limitations are framed not as weaknesses but as inherent features of an interpretivist approach, which prioritises depth, context, and meaning over measurement and prediction. By situating the empirical findings within the broader literature in later chapters, I seek to mitigate these limitations and strengthen the analytical contribution of the study.

Chapter 6 The Regulated

6.1 Introduction

For a brief period after my university graduation, I worked at one of the major auction houses in London. My role was a small one. I was first an intern, then a junior cataloguer in the Chinese Art department.⁴⁰ And I remember those days just before the auction catalogue went into print when my boss would lay out pages with all the pieces we had gathered and described on the floor or on a big table and decide which one to put on the cover, which ones to put on one page or the other, and so on. One very good piece put together with a not so interesting piece might rub off on the latter and spark interest with the right people. I will never know whether this holds true, but it felt like these decisions on how the catalogue was composed made all the difference to whether an item would sell or not. It was also a job that we were not part of; it was the job of the department head to take these weighty decisions. Appearance matters. Perception matters. Relations matter.

Based on the nature and structure of the art market as set out in Chapter 2 of this thesis, this chapter examines how the socially embedded, trust-based structure of the art market aligns with the requirements for art market actors as set forth in the AML regulations.

6.2 A Unique Market⁴¹

Four of the interviews were held in person in Germany, all four of them being with art market actors. They received me on their official premises, places filled with artworks, each a unique gallery space depending on their specialisation⁴²: The contemporary art galleries being white open spaces, while ‘older’ art was often cramped together in peculiar arrangements, pieces from different periods combined. The perception of a certain exclusivity of the art market is reflected in the observed behaviours and beliefs of art market actors. A common belief is the one that the art market is different from other markets in that art as a commodity is different (Throsby, 2001). Different in that both, artists and society, generally believe that ‘the making

⁴⁰ The hierarchy in larger auction houses consists of the department head, senior specialist, (junior) specialist, cataloguer, junior cataloguer, intern, and administrative staff.

⁴¹ The majority of this section is part of a publication of conference proceedings (Stoll, 2024b).

⁴² It is this gallery setting, Velthuis (2005b) uses to demonstrate how cultural values codetermine which social and cultural contexts (in this case which gallery architecture) are legitimate for conducting exchange in the art market thereby effectively restraining the art market through culture (DiMaggio, 1997). Deviating from the norm would compromise an art market actor’s legitimacy (Velthuis, 2005b).

of art requires special talents, gifts, or abilities, which few have' (Becker, 2008, p. 14). Through these special gifts and the activities necessary to make art, artworks are effectively distinguished from craft items or industrial products (Becker, 2008). The artwork embodies those special rare powers and by examining it, audiences see that someone special made it (Becker, 2008). Because their commodity is different, art market actors see themselves as different (Thornton, 2009). The art market is not just a mere market for buying and selling a commodity, but a complex system involving artists, collectors, advisors, galleries, dealers, and auction houses (Throsby, 2001). Furthermore, art is unlike other commodities in that it holds aesthetic⁴³ and symbolic value⁴⁴ and, more importantly, is (in its ideal sense) not originally designed or intended to be a commodity, a position which is often emphasised by art market actors. There are of course exceptions and artists who we know did produce very much for the market and with the intention to satisfy a market. One very prominent example of an artist producing for the market is Picasso who was highly engaged in selling himself and his art (FitzGerald, 1996). In fact, one could arguably observe a commoditization of the market which materialises also in cooperation between artists and brands such as the Louis Vuitton collection with Jeff Koons or hotels working exclusively with artists to decorate their venues (Adam, 2017). While highly commoditised, it still gives the feeling of having something special, something unique in that it is not from the ordinary summer collection, but it was created as part of a special collection designed exclusively by one famous artist. Companies commoditise this exclusivity, selling the feeling of having something others do not. In a world where people are looking to distinguish themselves from everyone else, culture has become the ultimate commodity to provide people with innovative, different, authentic, and unique objects and experiences (Bauer, 2008). It is a different feeling working at a desk surrounded by artworks. A setting that is often replicated by corporations like banks who distribute their corporate collections in their offices to represent the values of the company and create an aesthetic setting. Private and corporate collectors have different motives for building their collection,

⁴³ Hulst calls the development of objects from utility to aesthetic value a process of objectification (Hulst, 2017). By calling an object beautiful, the transformation towards holding aesthetic value takes place in that its quality and significance become independent of the needs of the subject (Hulst, 2017). The object is no longer replaceable by anything else performing the same service, it becomes unique, and its value cannot be replaced (Hulst, 2017).

⁴⁴ There is a wide range of academic discussions on the aesthetic and symbolic value of art, including aesthetic formalism (intrinsic value of art) and experience (value of art dependent on the aesthetic experience of the viewer) built on and informed by works from Bell (Bell, 1916) and Merleau-Ponty (Merleau-Ponty, 1960) which have since been expanded, as well as cultural identity (art symbolises cultural significance) argued for by MacDonald (Macdonald, 2013) leading to the position that one needs to understand the socio-cultural milieu in which an artwork was created to be able to understand its significance (Panofsky, 1955).

including philanthropy and gaining prestige (Velthuis, 2005a)—prestige that shows and that wants to be seen.

Through the certain aesthetic uniqueness which art as a commodity is thought to bring to the market, a culture of *being above it* developed, which culminates in perceived social predominance. As Horowitz (2011, p. 21) noted before: ‘But artworks also have important symbolic values, linked to the social status⁴⁵ and prestige of ownership, that distinguish the art economy from other markets.’ Owning artworks is voluntary, not necessary, and is determined by means and desire with desire being learned—and taught by art market actors (Findlay, 2014). This echoes Bourdieu’s (1986) idea of artworks as objects that embody cultural capital. The embodied cultural capital of artworks and the distinction one achieves by owning it might explain the appeal of consuming luxury in the form of artworks. It’s the idea of the artwork, the knowledge that it is unique, and it belongs to me that makes it worth my money. There is indeed a large body of literature on cultural capital in the art world (Bourdieu, Darbel and Schnapper, 1991; Bourdieu, 1993, 1996; Griswold, 1996; Peterson and Kern, 1996; Thornton, 2009; Horowitz, 2011), however, I want to make no more than a note here without furthering the academic discussion in this respect.

The feeling of being separate from the ordinary, the replicable welds people together and thus, the art market relies heavily on deep personal connections: It is a complex social system with its own rules, norms, and values (Becker, 2008), hierarchies, and power dynamics (Thornton, 2009). These dense personal connections and social relationships form networks that are the basis of how the art market functions (Velthuis, 2005b; Thornton, 2009). At times, these relationships are even framed like family ties (Velthuis, 2005b). The structure of these networks affects who succeeds and who remains marginalised (Granovetter, 1995). How very deeply personal the relationships are in the art market and how very niche and small, since you cannot have such dense personal relationships with everyone, is explained by an expert in Germany: ‘If you’re a good art dealer, then you excel at having good contacts. That means you have close ties to good collectors, and they buy from you once or they sell from you once, and you have good ties to other collectors who always sell, others always buy’ (I11/E/GER). The good ties to collectors are built on trust:

⁴⁵ In fact, it is this understanding of artworks as status symbols, the FATF notes in their typology paper as a vulnerability to money laundering: Criminals who have built up significant wealth may seek out high-value goods (Financial Action Task Force, 2023).

Art trading differs significantly from other commercial activities. As a mediator of original works of art, this profession is not only aimed at making a profit, but also fulfils a cultural task. The art dealer is not only a merchant, but also an advisor. The relationship between art dealer and art buyer therefore requires a particularly high level of personal trust (Kunsthändlerverband Deutschland e.V., 2024a).

This description of the role of an art dealer and trust being the prerequisite of the relationship between the art dealer and the buyer of an artwork is supported by the TEFAF art market report 2017 which discovered the foundation of the art market depending fundamentally on quality and trust: Key to this are maintaining reputation and credibility, to ensure longevity, stability, and resilience (The European Fine Art Foundation, 2017). Relationships have been described as ruling the art market, especially in the primary market, where even if a collector had the money to buy an artwork, they may not have the connections to access it (Schneider, 2018). In many cases, an art collector would have a more personal relationship with their art dealer than with their bank manager (Fincham, 2023). To this point, Coslor Crawford and Leyshon (2020) have found that priority was granted to known buyers who could be trusted. An expert emphasises the importance of those relationships to the source of their income—and thus, their career: ‘This connection to the buyers and sellers, i.e., the collectors, is actually the asset which a good art dealer can capitali[s]e’ (I11/E/GER). In fact, Velthuis found that the personal relationships with artists, collectors, and institutions art dealers maintain influence pricing and value (Velthuis, 2005b). It is in this socially embedded market, regulatory discretion is exercised when complying with AML regulations. But first, let us look at how this socially embedded, trust-based structure of the art market aligns with the requirements for art market actors as set forth in the AML regulations.

6.3 Disrupting the Market⁴⁶

When dealing with an elite, it is very important how you treat them. One expert illustrates: ‘Everyone in a gallery is treated like a powerful collector, whether you’re an administrative employee or a big businessman, you’re always addressed as a collector and not as a customer or buyer, everyone is always a collector [...]’ (I04/E/GER). Here it is interesting to note the power of words in this description of the market: ‘Collector’ is used instead of ‘customer’ or ‘buyer’. The use of these words moving away from the commercial, from the transactional side of a market towards the ideal of a client—as Coslor, Crawford and Leyshon (2020) have found

⁴⁶ The majority of this section is part of the publication of conference proceedings (Stoll, 2024b).

patrons or more traditional collectors to be the preferred buyers. A similar procedure can be observed in auction house catalogues where an object usually stems from the ‘property of a gentleman’ or the ‘property of a lady’ instead of the property of a—simple—man or a—simple—woman. When everyone is trying to be unique, to be bespoke, to belong to the elite, complying with technobureaucratic and mundane documentation requirements does not fit the picture. In fact, such matters are seen as mere banalities: ‘And through the Money Laundering Act, banalities come into play and procedures that are most damaging to the market’ (I04/E/GER). Documentation requirements and other bureaucratic procedures seemingly do not fit with the way art market actors think or with the conventions in place. For instance, one expert explicitly differentiates the art market from bureaucracy:

The civil servant is just a civil servant and for him bureaucracy is somehow part of life. It is his existence, his professional life. For someone who has a completely different business, in the cultural sector, like us, who is so overloaded with such demands, they naturally see things in a completely different way. First and foremost, they see how much time it eats away from the actual work and what troubles one gets into (I06/E/GER).

Interestingly, the expert here notes that the professional and private life are made inseparable by equating the bureaucrat’s existence with their professional life. The unfathomable importance of paperwork and the time it takes is negatively recorded by the market, it is perceived as an unnaturalness, a distraction from the core of their activities, a burden. It further does not fit with the self-perception of being unique and socially predominant. The requirements of the AML regulations are perceived by art market actors as unnecessary burdens adding to the bureaucratic ‘overload’ already placed on them.

However, regulation matters to markets (Riles, 2010). While regulations may not automatically dictate market behaviour, they do provide scripts, processes, and routines that influence behaviour (Black, 2013). These crossroads are not just visible from inside the market, but also from the outside. An expert from Germany describes their way into the art market:

And that’s how I got into the art market without having the faintest idea about it. Because as an art historian you usually have no idea about the art market or you have a great aversion to it, because in German intellectual history, there is what I now think is a completely wrong separation of market and intellect. [...] Unfortunately, the consequence of this is that there is a strict aversion to everything that has anything to do with the cultural market, especially in politics, and in extreme cases in cultural politics. Culture is always good when it is subsidised or owned by everyone, which of course is never the case. What hangs in the museum may be viewed by everyone, but it does not belong to everyone (I06/E/GER).

This experience the expert describes with a culture of being above such things as rules of business, making money, of being completely separated from the market side of things

coincides with my own experience as an art history graduate working in the market. Although the art history degree is a prerequisite for getting a position in the art market, the studies are somewhat detached from the market experience. While we study all these great names in the history of art, it is quite unlikely we will ever hold anything like them in our hands. Come to think of it, the one big thing that is missing from art history studies is prices and the financial valuation rather than an artistic valuation: How do you value art? How do you find out whether something is real or fake? I remember my first week as an intern in a smaller auction house in Germany when I was taught to look at a painting under UV light to determine whether it was restored. Of course, studying art history does mean studying the great names, the developments of art through the times, and the importance of a work for example to the evolution of perspective or Chiaroscuro, none of which will necessarily be reflected in its price.

Essentially, we see a market that constantly faces the choice between the private and public realm with commerce, values, and prices being the private realm and regulations being the public realm. Art market actors relate regulation to banalities and bureaucracy which is perceived as a burden. I observed a resistance to the idea of contributing to public objectives, an annoyance with doing bureaucracy and regulatory compliance, while at the same time, art market actors are based in countries within Europe, within countries that provide a certainty through their regulatory frameworks. Certainty that they achieve through contracts being enforceable, through governments being stable, and through fraud being prosecuted. It is interesting to see how art market actors do not relate this bureaucracy to their cultural realm which they deliberately chose, and which provides a certainty they heavily rely on, but rather to total banality and unnecessary burden. Their very business model is based on these strong ideas of public duties, regulatory compliance, and enforcement agencies.

One of the core requirements of the AML regulations is the identification and verification of a customer (as part of the KYC due diligence). This core requirement is perceived by the art market to invade the customer's life; the banality of asking for documentation is believed to introduce an awkwardness into an exclusive market: It is perceived as socially awkward to ask for an ID and with asking for an ID intrude into the customer's life: 'I mean, that was the big problem at the beginning with the request for ID documents. Some really thought, I'm dying, I can't do that, I can't ask my customer for this, because that's something extremely personal, isn't it? This was understood by many as an intrusion' (I06/E/GER). The expert describes how compliance with this regulatory requirement felt extremely personal to art market actors and how it felt as overstepping boundaries, boundaries they maybe were not even aware of. AML

regulation requires formal transparency, thereby disrupting the relational work that sustains trust and facilitates exchange within these markets (Zelizer, 2012). The social relationships the art market is built on, resembling family ties, is based—like any friendship—on what information we want to offer each other voluntarily. To intrude further into the personal lives of those relationships in this case is portrayed as overstepping boundaries. Another expert adds: ‘And the art dealer would ask questions and say, you know, he doesn't want to kill the sale, but we want to be able to work with the client again’ (I18/E/US). The expert here describes the fear of scaring clients away by intruding and asking—what are perceived to be—overtly personal questions. Another expert further emphasises this intrusion and the fear of scaring clients away through description of the sales process as extreme:

And that is an extreme thing, such a business initiation, let's say at a fair with a new art interested person, to whom we first make it clear that the works of art we have to offer are somehow interesting. [...] This is a highly sensitive process, and then there comes this shock, so to speak, asking them to first show an identity card. [...]. And I think that's extremely destructive to the fragility of a situation like this. We just don't sell rolls or black pudding; that's the big difference (I06/E/GER).

Here we notice again the distinction between artworks and other commodities. As this quote shows, however, the value of art as a unique commodity and distinct from other, ordinary commodities, is not self-explanatory, but rather needs to be made clear to the prospective buyer. In fact, the whole process of showing how unique and interesting art is, is designated ‘highly sensitive’ and ‘fragile’ and thus, vulnerable to interruption. Interestingly, this argument is also used by the trade association CINOA in their position paper on the EU's fifth AML Directive: ‘It is important to understand that art market businesses handle unique objects, which are often sold to buyers who act on impulse. A buyer can be lost if the transaction is not concluded easily and swiftly’ (CINOA, 2018). Such a negative impact on the sale process was reported in a study of AML compliance in the real estate sector (Zavoli and King, 2021). Besides the delay in the sale, a compliant real estate business may also be perceived as ‘kind of a pain for people to buy through’ (Zavoli and King, 2021, p. 757). This perception is similar to the narratives reported to me by German art market actors. Some argue that obtaining information through AML compliance is intrusive—just look at activities such as tracking account movements: Kuldova (2022, p. v) phrases it as dramatic as the state giving private actors ‘the authority and power to collect intelligence, investigate, and manufacture suspicion’, all ‘in the name of the undisputable good, in the name of the elimination of all the things we can agree are evil’. We not only understand the necessity of doing so when it is framed in the context of anti-money laundering, anti-terrorism, anti-fraud, anti-corruption (Kuldova (2022, p. 6) calls these policies ‘anti-policy regimes’), we even get used to this intrusion into our private lives,

this collection of our private data, this investigation into our personal undertakings. For instance, an art gallerist explains:

Because they are people well-known to me, we rarely sell to people I never see again or with whom I never speak to again, but if I am at a trade fair and I want to buy a painting and then they ask me to show my passport, of course, once that is more established, it's all okay again and people learn to deal with it, but there may still be people who don't like it (I02/AG/GER).

Asking for proof of identity is perceived to be a violation of the sense of trust that is the very basis of and holds together the networks in the art market. According to this account, this act creates an uncomfortable situation that needs to be dealt with, and that people need to get used to first. For these situations do interrupt the very practices of the market. A German expert describes how customers perceive requests for ID and for the personal information an ID contains as irritating:

And that's how it is with art in relationships, in families, it is kept a secret how much money went into an art collection. And these things come to light through AML compliance, for example, the date of birth of a buyer or their actual name. Most people have some elegant name for the public, they're called Gisele instead of Gisela, and they don't want to show their ID. I feel the same way, I buy something, we've known each other for a thousand years and then I need to show them my ID [...] and that annoys me (I06/E/GER).

Notice the portrayal of a unique elite with not just any ordinary name (Gisela), but a chic, fashionable name (Gisele) that is surrounded by a bit of mystery, including their exact age being unknown, possibly their place of birth being unknown, maybe even their nationality being unknown. They want to maintain that aura, that sense of anonymity in that they can create this persona who has a fancy name and remains 39 for a very long time. This is, of course, an exaggeration. Nonetheless and to the point, perception matters. With the requirement to show an ID card or passport, these secrets come into the open and are no longer private, showing how AML requirements not only do not align with the socially embedded, trust-based structure of the art market, but disrupt it. In modern times, privacy is a luxury and as such, the elite expects a certain extent of privacy. With privacy not being an absolute but a contextual and socially embedded concept, certain values and expectations of specific contexts need to be considered when designing privacy policy (Nissenbaum, 2010).

6.4 Knowledge and Information Asymmetry⁴⁷

Knowledge distinguishes the art market from other parts of society. A UK expert explained that there is a *traditional modus operandi* in the art market based on elitist knowledge: ‘A lot of players in the art market, in the best sense of the word, this is an observation rather than a judgment, are snobs. They are aesthetic snobs, they are intellectual snobs, they are to a certain extent social snobs, and they have an established certain way of doing it’ (I16/E/UK). According to the Cambridge English dictionary, a snob is defined as a person who respects and likes only people who are of a high social class and/or a person who has extremely high standards who is not satisfied by the things that ordinary people like. The word in general has a negative connotation. It entails a distinction from something or someone beneath the subject itself. A distinction from ordinary people who like ordinary things. The ‘established certain way of doing things’ (I16/E/UK) forms the link to tradition and traditional practices which are typical for the art market and perhaps only known to the art market. Becker observed a mutual understanding in the art market of how things work and how things are done (Becker, 2008). He calls this body of mutual understandings *conventions* (Becker, 2008). Playing with and maintaining conventions only art market actors know differentiates them from the rest of society (Becker, 2008). An outsider may not completely understand the artwork due to them lacking the conventions needed to understand it (Becker, 2008). The artwork therefore is only made available to an exclusive audience (Becker, 2008). Conventions, comprising knowledge and practices, do not provide fertile ground for regulations. According to the expert, this elitist knowledge needs to be accumulated and shown once accumulated. The distribution of knowledge can be considered a fact of social organisation (Becker, 2008), again differentiating the elite from the rest of society.

The more knowledge you have, the better, because this elitist knowledge is an asset in the market. That includes knowledge about collections and who currently owns what, it includes contacts to sellers, but also to buyers, and it includes knowledge on artworks—art historical knowledge to know the value of an artwork. Once artworks are in a private collection, very few people know who owns them since most collectors value their privacy (Zarobell, 2017a). This knowledge can be considered a competitive advantage and contributes to the market’s information asymmetry. Art market actors who are in possession of this knowledge might be sought out by collectors looking for certain artworks and even paying a premium for that

⁴⁷ The majority of this section is part of the publication of conference proceedings (Stoll, 2024b).

knowledge (Zarobell, 2017a). Much of the art market relies on relationships with key collectors, either for supply of artworks to be sold or for purchases (Fincham, 2023). Disclosing the names of buyers or sellers to the public diminishes the value of those relationships in that now anyone in the market may contact them. Case in point, an expert almost idolises the process of knowledge accumulation: ‘I’m a believer that dealing is a progressive process in that you learn as you go along and as you go along, if you’re engaged in what you’re doing, you become a better dealer. And to me that’s what it’s all about’ (I18/E/US). An accumulation of knowledge is also perceived favourably by market actors when collectors show it. For instance, the same expert explains what the traits of a great collector in their eyes are:

There’s a great collector, when he came into your gallery, looked at an object and asked questions and questions and questions. That’s what a great client does. Now, there are people that are uncomfortable, that are shy, that don’t do that. But most really good clients do that. And we encourage them. Because we know a lot about what we’re doing, and we want to give that knowledge to the person (I18/E/US).

The expert classifies client behaviours as good (great) and (implicitly) bad which supports the findings on how gallerists categorise collectors by Coslor, Crawford and Leyshon (2020): Preferred (good) buyers acted in ways which were judged to be appropriate by gallerists. Knowledge sharing is spoken of in these statements as almost altruistic, again invoking the notion of the art market being above the marketplace. One could almost go so far to say that the art dealer in these quotes sees themselves as philanthropic in their own sense (compared to a collector who sponsors the arts and promotes themselves as a patron of the arts (Coslor, Crawford and Leyshon, 2020)). In this case, the art dealer generously shares their knowledge with worthy clients to let them take part in this exclusive world. And they enjoy it too; they see the knowledge sharing part as a pleasure. This is a theme Coslor, Crawford and Leyshon (2020) have observed in their qualitative study on the gatekeeper role of art gallerists and their categorization of buyers. Through these categories, the socialisation and education of new buyers is supported and provides ‘a positive template and heroic narrative’ (Coslor, Crawford and Leyshon, 2020, p. 961). Furthermore, the categories proved critical for decision-making processes in protecting the market and values in the market (Coslor, Crawford and Leyshon, 2020). Thus, art dealers and gallerists create values, but also create collectors and create taste. What collectors demand is what they have learned to enjoy and want which is the result of their education and experience (Becker, 2008). Becker further argues that aesthetics provide a theoretical rationale for the selection of collectors, and consequently, aesthetic value arises from the consensus of the participants in an art world (Becker, 2008). The making of collectors also entails training appreciators to be collectors by adding to the appreciation of an artwork elements such as pride and confidence in displaying their taste (Becker, 2008).

Knowledge can significantly impact one's position in the art market (Bourdieu, 2010). Knowledge and information are an important, if not the most important asset in the art market: Information is power. If you have the power to get information, you can use this information. In my interviews I observed that AML compliance has an impact on the organisation of the market in that it changes the structures of the art market.

The information obtained through AML compliance—so the opinions I observed—may directly or indirectly be used for business purposes. Addresses may be used to send catalogues: 'That's also the problem in the art market, a lot of people have celebrity status, and it annoys me that people keep coming up to me or I get mail that I shouldn't have received despite data protection regulations. I am constantly getting catalogues from artists, and I would just love to shop anonymously' (I06/E/GER). While the expert explained how they found receiving catalogues for marketing purposes annoying, they also stated that with people knowing their name and them showing up at an artist's vernissage, they create value:

Because I show up somewhere and then these value-adding processes are also favoured, which is why I very often don't go to openings that I wanted to go to, because I don't think I want this artist to be hyped just because I was at the opening. And with money laundering compliance, you are constantly identified, and it is always clear who you are. And that is bad for the market (I04/E/GER).

Reputation is a value-creating factor. An expert showing up and looking at a painting might be perceived as a justification for more value, might be perceived as a justification for originality. One could argue that AML compliance here works against the market and indirectly influences the embedded value-creation processes.

As established in Chapter 2.4.4, provenance is important for value creation. Artworks are joint products of all the people who cooperate via an art world's characteristic conventions to bring them into existence (Becker, 2008). If we consider the making of an artwork not to stop with its final brushstroke, but rather extend it—like Becker suggests—to include the people who emotionally react to the artwork, the museums who provide exhibition space, and the critics for providing the rationale for its existence, we might extend this process of making an artwork even further and quite literally include the making of its provenance through the various owners that add to its (collecting) history, and with it, to its importance, its visibility to the public, and also its value. The expert further explained how the market functions with regards to provenance:

They bought something, by a well-known artist, [...] they bought a canvas for DM 100,000 and the DM 100,000 were handed over at the petrol station in [city] [...]. The picture was of course

genuine and came directly from the studio, but the problem is that [the artist] had a gallery connection with [the gallery] and this picture naturally never ran through [their] papers. Now the artist is dead and the people who bought it are at the end of their lives themselves, and they are now planning to open a foundation, [...] and then they come to my office and say write an appraisal of the collection [...]. And I tell them, the [...] picture is worth nothing because you can't trade it. If you put it up for auction, [the gallery] will say it's a fake. [...] And you won't get any further with scientific methods, you can't say, that's not [the artist's] brush stroke, because that's not [the artist's] brush stroke at all, because he was ill and his assistants painted the pictures, especially towards the end of his life. That doesn't make it any less real, because with art, it doesn't matter whether you made it yourself, it matters that you authorised it and it is authorised, but you'll never get an expertise in this lifetime. And [...] this picture is worthless. [...] And this principle that something that is objectively genuine still has a provenance issue in the art market, also if something is left unsold at auction, for example, it doesn't matter why [...]. And these situations are so variable, that naturally, if you want to stay in business and make money off an artwork you bend the provenance in such a way that it looks like value creation and not value destruction (I04/E/GER).

There are a couple of important observations I want to highlight from this short recollection. First, the expert explains that it doesn't necessarily matter whether someone produced an artwork themselves, rather, it is important that they authorised it. This is nothing new, many artists maintained a workshop with students who often completed works designed by the artists or painted some of the less important parts of the pictures, like the landscape in the background. It further fits with Becker's theory of artworks being a collective activity (Becker, 2008). In this case, the artists cannot authorise the painting anymore, so it needs to be authorised by an expert, a specialist on the artist, here, the authorised gallery the artists had a contract with. The enormous powers experts and specialists hold are illustrated by this example. They can be seen as gatekeepers to the market. Insider knowledge and expertise is needed to identify the value of an artwork. With art experts and art dealers possessing that knowledge and expertise, they hold a central role in the art market with them on the one hand identifying, but on the other hand also creating value. They also seem to judge their clients as good or bad clients, thereby making the market and limiting the market further to a group of clients of their choice.

Second, the expert elucidates how important the provenance of an artwork is to its value. This is a very similar observation to the first one, seeing that in the example, the passing through the authorised gallery is part of its provenance, however, provenance also includes the sale and purchase history of an object. The expert explains how the fact that an artwork is left unsold at an auction has a negative effect on its perceived value and on its estimated price. There are a variety of reasons why an object may be left unsold, and some cannot necessarily

be influenced by the auction house or the expert, for example, the consignor may withdraw the item due to a disagreement in the family. The reasons may seem innocent in the sense that they have nothing to do with the estimate of the piece but would still influence the subjective price at the very moment the object is again up for sale. Recollecting my short introduction on the marketing decisions taken for the auction catalogue, those shine in a different light considering the importance of whether an item sells or not towards its value. Auction catalogues therefore often do not include such ownership history in their provenance. Auction houses may also leave the information on a sale off the provenance information if the hammer price was below the current estimate. This narrative demonstrates how omitting the information of the withdrawal, the item going back unsold, the value-decreasing factor, is justified. This quote thus, allows some insight into the value creation of an artwork; highly dependent on an expert's opinion so that these market actors, art experts, art advisors, art dealers, become somewhat important to the functioning of the market. If they leave the market, the market is left without an essential piece of the puzzle, almost as if their leaving could destroy the market. Art market actors are generating and justifying values for art as the commodity. The value is partly based on subjective knowledge which drives the market. In some sense, they act like custodians, like guardians of wealth. If they are not there, the market collapses.

We have established that dealing in art is based on a set of very personal relationships. Personal also in the sense that it may be hard to separate professional from private life. If we remember the social relationships resembling family ties (Velthuis, 2005b), separating the professional from the private life seems challenging. And this separation may be a non-desirable one too. An expert describes: 'Anyway, dealing as a business is a way of life more than anything else' (I18/E/US). When asked what they meant by this statement, the expert, who is also an art dealer in the US, further explained:

It's all-consuming because in essence, dealers are always looking for product, always. And product comes in many different venues, obviously, there are auctions and auctions are worldwide. [...] You know, it's everywhere. And staying on top of things is time consuming. [...] And of course, you're always learning. You go to museums, you go here, there, and everywhere (I18/E/US).

I observed here in this interview that the uniqueness of this elite is not confined to their professional lives. The professional and the private intersect in their relations—an observation Thornton also made in her account of the art world (Thornton, 2009). Building personal relationships takes time, looking for supply—another important feature of the art market is the

limited supply in the secondary market—takes time. Regarding the temporality of the market, the lifespan of an artwork is a long one and there are long-term implications of a sale towards the value of said artwork with provenance, for example, adding to its value. On the other hand, short-term events, such as the unsold item at an auction, also have long-term implications towards its value in that it will take years for the art market to forget about this value decreasing event. Another aspect of the temporal considerations in the art market concerns the long-term relationships that are built on trust and on very personal connections. They likely span not just the duration of an art market actor's professional career, but also the extent of their natural life.

These features of social embeddedness the art market displayed in my fieldwork do not provide fruitful, ready-to-be-applied ground for the formality of AML regulations. On the contrary, regulatory discretion towards application of AML regulation will take an entirely different form in such a non-financial, socially embedded, and trust-based market than it will take in the financial services industry.

6.5 Chapter Summary

One of the first types of feedback to the study I got was a phone call from one of the art market actors I had contacted. I expected resentment⁴⁸ to answering questions regarding AML regulation, of course, and I got it. When I contacted them via email, they called back to say that they were not going to take part in the study. They took the time and action to give me a call showing that they had something to say about this; something they wanted me to know even if it was just to say that they were actively not taking part in the study, almost as if they wanted me to know that they were going to boycott it. From their perspective, they do not need the AML regulations; they see themselves as an honest business. As regulated subjects, we generally perceive the regulations as above us regulating certain situations, telling us right from wrong. In this case, however, the art market actor has their own idea of right and wrong. How does the socially embedded, trust-based structure of the art market align with the requirements for art market actors as set forth in the AML regulations? Through the AML regulation, private art market actors are required to pursue public or regulatory objectives while trying to survive and thrive in a market space. A market space that is largely based on trust and informality equally materialised in dense personal relationships. Market actors are

⁴⁸ Coslor, Crawford and Leyshon (2020, p. 950) conducted an empirical study within the art market and call art market actors 'difficult-to-access elites' based on Odendahl & Shaw (Odendahl and Shaw, 2001).

trying to have a successful business while at the same time fulfilling public goals, both of which have the potential to go against each other. The public regulation disrupts the trust that was built through time in close relationships; it is perceived to introduce an awkwardness into the informal interactions the art market is based on. Naturally, art market actors are trying to avoid this awkwardness, are trying to avoid making their counterpart feel uncomfortable to not interrupt the relationship which will result in a sale or purchase that furthers their private objectives. With the market consisting of these informal relationships, the consequences of introducing an awkwardness into the connections seem much larger than just stopping that one sale; they might disturb the relationship to a point where no future business will happen, where the awkwardness may unsettle the wider net, impact reputation beyond repair.⁴⁹

This chapter has built on Chapter 2 of this thesis and shown that the art market is organised around a socially embedded, trust-based structure in which elitist knowledge, discretion, and long-term personal relationships are central to market functioning. Knowledge operates as a key asset, producing information asymmetries that enable art market actors to act as gatekeepers who not only identify but actively create value. Through their relationships with collectors, market actors reproduce conventions, cultivate taste, and define appropriate market behaviour, thereby sustaining an exclusive social order that blurs the boundaries between the professional and the private.

These characteristics sit in structural tension with the requirements imposed by AML regulation. While the art market relies on selective disclosure, anonymity, and expert judgement embedded in personal trust, AML frameworks are premised on transparency, traceability, and formalised information flows. This chapter demonstrates that AML compliance does not merely add an administrative layer to existing practices, but intervenes in the very mechanisms of the art market. Identification requirements and information collection are perceived by market actors as disruptive, insofar as they undermine client anonymity, alter reputation dynamics, and interfere with socially embedded processes of value creation.

In conclusion, I argue in this chapter that the socially embedded structure of the art market only partially aligns with AML requirements. AML regulation reshapes the organisation of the art market by formalising relationships that are traditionally personal, revealing a fundamental tension between regulatory rationality and the art market's established conventions of trust.

⁴⁹ This section is part of a publication of conference proceedings (Stoll, 2024b).

Chapter 7 Learning

7.1 Introduction

Regulation is an inherently dynamic process, unfolding as actors learn about their circumstances, relationships, and outcomes, and adapt accordingly (Abbott, Levi-Faur and Snidal, 2017a, p. 287). When I conducted my first interview with one of the art market actors, they had prepared themselves. They took time out of their busy days—the latter being the main reason many respondents gave for not taking part in the study—and I took this as a significant investment. They had what they called their ‘money laundering file’ with them. The file was one of those standard Leitz folders, a big one, filled with maybe 20 pages of paper. I asked about the nature of those papers, and it was everything they had collected in relation to money laundering since the introduction of the AML regulations for high-value dealers in 2008. The set of papers contained a leaflet from the German federal states titled ‘Do you know your customer? Obligations from the money laundering regulations’ dated 2012 with an addition of three short handwritten notes consisting of: 1. Trade register excerpt and ID of the payee for a GmbH (Gesellschaft mit beschränkter Haftung, a limited liability company), 2. ID of payee and 3. contact FIU in case of suspicion. They also had a leaflet from the German federal states on when and how to submit a suspicious activity report dated 2014, and the two-page announcement for a money laundering audit in 2016. Writing this chapter, I feel that this black Leitz folder quite metaphorically stands for some of my findings. Just like one folder amongst many, AML paperwork to art market actors feels like one of many bureaucratic regulations they must comply with. It is almost empty except for roughly 20 pages, just like copying the ID of a customer is about 5% of the KYC process a bank undertakes for every customer. This is, of course, a very broad generalisation of the understanding of AML regulatory compliance art market actors showed in my research study and I explain the nuances focusing on learning about the regulations in the following sections.

The purpose of this chapter is to answer the following research question as set out in Chapter 1.2 of this thesis: How do trade associations as regulatory intermediaries shape regulatory learning through the creation and distribution of legal knowledge on AML requirements among art market actors in Germany, and how does this learning process influence the practical application of AML obligations in the sector?

Building on the theoretical framework developed in Chapter 4, this chapter analyses regulatory learning as a discretionary process through which AML obligations are translated into practice.

I show how discretion is exercised collectively through trade associations and other intermediaries, and how socially embedded networks structure the creation and circulation of legal knowledge within the art market.

Most art market actors I talked to get their information on new regulations from their accountant or through a membership in a trade association. Interestingly, none of the art market actors that participated in my study got their information on AML regulation from their supervisor. This may have been expected considering the socially embedded structure of the market relying on personal ties rather than formal communication channels with their supervisory authorities.

Trade associations and AML professionals can be considered regulatory intermediaries in the context of the RIT framework. The RIT framework understands regulation as a three-party-system with the regulator (R)⁵⁰ making the regulation, a regulatory intermediary (I), and the target (T) of the regulation (Abbott, Levi-Faur and Snidal, 2017b). There is a significant body of research on the RIT framework. This research demonstrates that intermediaries are essential to the effectiveness of regulation, while at the same time, they create complications, for example, by pursuing their own objectives (Abbott, Levi-Faur and Snidal, 2017a). Thus, understanding the goals and objectives of intermediaries helps understanding of how they fulfil various roles in the regulatory process (Abbott, Levi-Faur and Snidal, 2017a). Applying the RIT framework to AML regulation in the art market, intermediaries identified through my empirical research are for-profit actors, such as (compliance) consultants, and not-for-profit actors, like trade associations. Some intermediaries, such as lawyers, may also be technical practitioners and have no intrinsic interest in the regulatory problem (Abbott, Levi-Faur and Snidal, 2017a). Although trade associations can be considered not-for-profit actors, representatives from the trade (and targets of the regulation) often hold senior roles as a voluntary activity. To analyse the role trade associations play in the context of AML regulation, I apply the RIT framework showing how discretion is exercised collectively, using the example of the German trade association BVDG. Regulatory intermediaries are distinct from intermediaries in the art market who I introduced in Chapter 2 of this thesis and who are involved in an art transaction and therefore, in the understanding of the RIT framework, targets of the regulation. They are not, however, regulatory intermediaries in the context of AML regulation, thereby in-between the regulator and the targets of the regulation. In some cases, they might assume the dual role of

⁵⁰ While the use of the term ‘regulator’ suggests a single authority, often, regulation emerges out of network of interactions (Lytton, 2017). In the context of AML regulation in Germany, the national regulator is already bound by the European regulation in the form that a European Directive must be transposed into national law. The term regulator in this thesis includes the supervisory bodies who are responsible for money laundering supervision of the art market.

intermediary and target. Trade associations are often made of art market actors and experts who have worked in the art market for a long time. They thereby possess industry experience and knowledge which the regulator may not. As with any model, the RIT framework presents realities in a simplified way which allows for generalisation, but may not adequately represent the more complex realities in every way (Abbott, Levi-Faur and Snidal, 2017b). The roles of regulator, intermediary, and target are not always clear-cut, but may overlap: For example, when targets perform the role of intermediaries (Havinga and Verbruggen, 2017). Intermediaries often have access to superior information on how the regulation works in practice which is valuable for facilitating and monitoring compliance (Auld and Renckens, 2017). Especially in the early stages of a regulation, intermediaries can hence be considered co-regulators (Auld and Renckens, 2017). Regulators are dependent on gaining an understanding of the art market to regulate, but also supervise it effectively. However, the regulatory intermediaries in this context do not have a formal relationship to the regulator in form of a contract or similar arrangement. They were not asked to take on this role, although the regulators may actively seek their advice.

Intermediaries can also assume the role of the target in that the money laundering regulation allows the outsourcing of the tasks a Money Laundering Reporting Officer (MLRO) must fulfil. In the case of consultants, it is therefore not uncommon for them to provide the entire range of MLRO tasks to an art market business. Especially in the case of smaller businesses, this proves advantageous as the art market actors need not concern themselves with a topic that is not within their specialisation. While the BVDG is a not-for-profit organisation, there are regulatory intermediaries in the art market such as experts and consultants who offer such services to regulatory targets. In these cases, they, in their function as regulatory intermediaries, may also sometimes monitor compliance with the rules due to their expertise of the regulated industry and access to targets (Abbott, Levi-Faur and Snidal, 2017b). The following sections look at the roles and effects of introducing regulatory intermediaries, such as the BVDG, into the regulatory process of compliance with AML regulation to analyse how they influence compliance practices.

7.2 Translating the Regulations into Practice

Professionals and experts play an important role in shaping governance. One of the themes I observed in my study is that trade associations fulfil the role of explaining the regulations to their members and translating it into market practicable guidelines. By doing so, trade associations create and distribute legal knowledge. They are not telling the art market actors

what to do; they are telling them what the regulations are, what compliance looks like, thereby exercising regulatory discretion and informing them almost like counsels. Some trade associations employ their own lawyers. One could say trade associations are looking at the regulations through the filter of the market, forming the lens through which the art market considers the regulations. As such, they apply and form discretion in the structural context of social embeddedness.

The BVDG was founded in 1966 by two art gallerists, and the current board is composed of three art market actors: Two art gallerists and one art dealer (BVDG, 2024a). In this case, the regulatory intermediary consists of targets of the regulation and could therefore be considered identical to the target (Abbott, Levi-Faur and Snidal, 2017c). Embedding targets into the organisation of an intermediary may facilitate learning and continual improvement. The trade association as the intermediary can further be considered pursuing the interests of the market (and not just one individual target). In fact, the objectives of the BVDG are stated on their website as the representation of the cultural-political and economic interests of art galleries and art dealers (BVDG, 2024b). At the same time, the board members may also pursue their own private interests through the trade associations whenever they do not overlap. An important aspect of the RIT framework is that intermediaries must be understood as pursuing their own private interests (Abbott, Levi-Faur and Snidal, 2017b). While the board of the BVDG is made of art market actors, the director position is held by an expert with—presumably—no personal business-related stake in the art market. This may provide some autonomy from its members (Abbott, Levi-Faur and Snidal, 2017c). Regulatory intermediaries may also be connected in a chain or in more complex ways (Havinga and Verbruggen, 2017). The BVDG is itself a member of the European association F.E.A.G.A. (Federation of European Art Galleries Associations).

Intermediaries play important roles in the regulatory cycle: They are involved in the implementation of rules through interpreting them for specific circumstances, thereby translating them into practice, and providing advice to targets (Abbott, Levi-Faur and Snidal, 2017b). They explain to their members what the regulatory obligations are and adapt the regulations to the specific circumstances of the art market (Abbott, Levi-Faur and Snidal, 2017c). This leads to my observation that art market actors who are members of trade associations are generally more informed and more compliant than art dealers who are not

members of a trade association. Some art market actors were completely unaware of the AML obligations; not unaware that there was a change in regulation, but unaware of what those regulations entail. Coincidentally or not, they were not a member of a trade association. Those associations hold an important part in educating market actors on the regulations and what the regulations require them to do, thereby creating and distributing legal knowledge. An art market actor emphasises this observation: ‘Most of the time, it is the association that interprets the regulations which are absolutely incomprehensible, at least for the layman, and the association translates them into tangible bits and pieces’ (I05/AD/GER). Especially where regulations are broad or ambiguous or where they apply to diverse sectors, regulatory intermediaries take on this role (Abbott, Levi-Faur and Snidal, 2017c). This hypothesis is supported by my findings with AML regulation being applied to other industries than the financial services industry, such as the art market, and therefore, the need for translation. Additionally, as explained in Chapter 4 of this thesis, AML regulation displays features of a meta-regulation with the risk-based approach leaving room for interpretation and application to various circumstances. A risk-based approach as opposed to a rule-based approach means the CDD measures that are applied by private market actors depend on a risk analysis. Risk-based instead of rule-based money laundering regulation leaves more room for private organisations to define the standards they apply. By translating the regulations into practice, thereby effectively shaping compliance in the market, intermediaries hold a certain power in the regulatory cycle. It is unlikely that it suits their interests to recommend non-compliance, however, they are in a position of power for negotiating (lobbying) to pursue the interests of their members. Trade associations often depend on specific persons, much like the trade. This is potentially due to their size and the size of the market.

Intermediaries often possess specialised knowledge and experience with regards to regulation and how to implement it (Abbott, Levi-Faur and Snidal, 2017c). Due to this knowledge and experience, sometimes, intermediaries are also perceived by targets of a regulation to have greater legitimacy in performing certain activities than the regulator (Abbott, Levi-Faur and Snidal, 2017c). The value of those translations into practice performed by trade associations is also noted by another art market actor: ‘The guideline is very well prepared by lawyers who have worked through the whole thing. This is one of the reasons I am a member of [trade association], because as far as legal questions go, they always inform us very well’ (I17/AG/GER). They actually directly state that the practical translations of the regulations, the counsel of trade associations is the reason they are a member. It appears that trade associations play an important role for compliance in the art market, not just advocating on

their behalf, but also providing practical advice and fostering dialogue between members and regulators. They directly shape the form regulatory discretion takes in the German art market.

The BVDG has created an information leaflet accessible to members only⁵¹: ‘Basic information on dealing with the new money laundering regulations and money laundering prevention for members of the BVDG’ (BVDG, 2020). With this leaflet, the BVDG also makes available forms in Microsoft Word for documenting CDD procedures. I want to highlight a couple of points I noticed when reviewing the leaflet in the following section.

The leaflet emphasises that during an audit, the necessary documents must be available; defined as necessary are the risk analysis and documentation of business partners (BVDG, 2020). In that regard, the trade association decided upon reviewing the regulation, which parts are the most important and therefore must be followed. One could argue, they prioritise the obligations of a regulation thereby steering which will be complied with (and potentially which ones can be disregarded) and in what order.

Regarding the retention of documentation, the BDVG informs their members in the leaflet of the contradiction between the money laundering regulations and the Act on the Protection of Cultural Property⁵²: Whereas paragraph 8 number 4 of the German Money Laundering Act requires obliged entities to retain documentation for a minimum of five years and delete them after ten years, paragraph 45 of the Cultural Property Protection Act requires that documentation of certain transactions be retained for 30 years (BVDG, 2020). Interestingly, the leaflet does not provide a solution, but rather states that this is an unsolvable conflict (BVDG, 2020). This contradiction has not yet been addressed beyond the trade association’s information. With legal pluralism—meaning multiple norms exist concurrently (Tamanaha, 2021)—private actors may face conflicting regulations demanding conflicting behaviour (Rooij, Wu and Li, 2022) like in this case of recordkeeping requirements.

⁵¹ The information leaflet including the attachments were provided to me by the BVDG for use in this dissertation. There will be no copy attached to this thesis.

⁵² The Act on the Protection of Cultural Property (Kulturgutschutzgesetz (KGSG) in German) entered into force on 6 August 2016. The Act aims to protect cultural objects with significance for Germany as well as objects categorised as national property by other countries (Minister of State for Culture and the Media, 2024). According to the website of the German Minister of Culture and the Media, the Act marks the first time the regulator combined all regulations on the protection of cultural property into one single piece of legislation (Minister of State for Culture and the Media, 2024). The reactions of the market to the Act and what the Act means to the art market will be discussed later in this chapter.

The leaflet stresses that the risk analysis needs to be tailored to the art business, documented, and regularly reviewed (BVDG, 2020). As examples for risks specific to the art market, the leaflet provides a low risk situation (a long-standing, domestic private customer buys an artwork and pays via wire transfer), medium risk (a new client from within the EU buys an artwork at a fair and pays cash below EUR 10,000), and high risk (a new corporate customer incorporated in a third country buys online or via telephone with involvement of a third person) (BVDG, 2020). The risk examples are likely helpful to art market actors by providing situations specific to the art market that are likely to occur and can be further tailored to specific situations. However, they may at the same time also be limiting in that the art market actor may not look beyond those examples. The trade association in this case interprets the letter of the regulations (low, medium, high risk) and translates it into practice in the art market. Doing so, the trade association also shapes how their members think about risk and thus, think about the regulation itself. There is, of course, a constant feedback process through learning: The members of the trade association learn when they apply the guidance and the regulations in practice and provide feedback to the trade association who itself learns through their members.

In addition, the trade association provided a sample text in the appendix to the leaflet for informing customers on the obligation to cooperate in the context of the German Money Laundering Act which can be used by art market actors and sent to their customers. This customer information states the necessity of obtaining certain documentation in the process of performing CDD even if someone has been a valued customer with or even a friend of the art market actor for many years. The sample text is thus, tailored to the industry and their customers. It explains the regulatory obligations to the customer in a way that they will understand them through the lens of the industry. This process can be understood through the supporting concept of legal endogeneity, which describes how organisations internalise legal requirements and translate them into formal procedures and compliance structures that come to stand in for legal meaning itself (Edelman, Uggen and Erlanger, 1999).

As an appendix to the information leaflet, the BVDG offered forms for the documentation of CDD measures, one for natural persons and one for legal entities. The form provides a set of options to choose from for the reason of the CDD (transactions that fall under the AML regulation or because there is a suspicion), for the ways to retain identification documents, and for the beneficial owner; it even provides a set of reasons for increased risk leading to enhanced CDD. The form is thus, customisable to a certain extent depending on the situation the transaction is embedded in.

These documents formalise the regulations further while at the same time they (are intended to) simplify compliance with the regulations for obliged art market actors. The forms thereby also address the extent to which the individual art market actors may be unfamiliar with the details of the regulation. They can place reliance on their trade association and use those forms without having to read the regulation themselves. It seems unlikely that a member of this trade association will read the regulations to see whether the documentation template covers it to the letter. Instead, the individual art market actor places its trust in the trade association. The forms could therefore also be considered obviating the need for legal knowledge for the individual art market actor (Riles, 2011). They embody the legal knowledge of the trade association while at the same time they embody the understandings and norms of the art market (Riles, 2011)—at least to the extent the trade association perceives them as such. The need for legal knowledge is satisfied beforehand during the development of those forms and by an organisation within the market. The trust is placed in the trade association and their knowledge instead of market individuals (Riles, 2011). The trade association itself can be considered interested in the benefit of the market and not the benefit of each individual market actor. It can be seen here as a particularly strategic actor in collaborative networks as it translates public regulatory discourse into business discourse and vice versa (Parker, 2002).

If we consider such a form a legal framework for art market transactions that fall under AML regulations, basically a form of private regulation (Riles, 2011), the form enables the compliant execution of an art market transaction. The form's power is hereby based upon the trust of art market actors in a trade association (Riles, 2011). Unlike the master agreement Riles (2011) analyses in the context of her fieldwork in the derivatives⁵³ market, the set of forms here does not regulate the relationship, it does not address the limitations of the regulation, rather, it is

⁵³ In the context of decentred regulation, private governance, and the interactions between different actors, the work of Riles provides an important framework. Riles presents the critical view of the derivatives market that considers the market a world unto themselves where everyone knows everyone and it's in everyone's interest to play by the customary rules (2011). In this view, the derivatives market works in the absence of state regulation (Riles, 2011). A distinct feature of law is the possibility to simplify and place limits on social, political, and analytical relations: Instead of two parties trusting each other based on a common understanding and knowledge about culture, economics, and politics, the law—be it public or private law—sets limits to and simplifies the 'messy complexities' of the global derivatives market (Riles, 2011, p. 55). It would also explain in simple terms why private regulation is successful in certain markets (Riles, 2011). For many observers, private governance is also seen to be more efficient in being tailor-made to the specific industry (Riles, 2011). An application of Riles' research in the derivatives market to the art market may seem farfetched at first. However, I would not be the first to do so: Vulnerabilities in the derivatives market were found to be similar to vulnerabilities in the art market, such as the involvement of several jurisdictions, the market having large entry barriers but very few controls once entered, complex transactions, and the need for sophistication and high net worth (Hill, 1996). Private governance uses private actors to carry out public policy. Public law and private law, public legal knowledge and private legal knowledge are linked: To understand private law, one must understand public law as well (Riles, 2011). Seeing private and public not always in conflict opens up new possibilities for collaboration between the two (Riles, 2011).

a practical application, an extension of the regulation. The forms fill the gaps the law intentionally leaves for individual application. They standardise the procedure of CDD the regulation requires in a tailored way for the art market. Standardization means that something is reproducible to the same standard by people with not necessarily the same experience or the same knowledge. These forms can be considered technologies of standardisation (Riles, 2011). At the same time, the forms represent the legal translation process by embodying the legal knowledge of the trade association.

Trade associations are an important regulatory intermediary and fulfil the role of translating the regulations into practice. They collect feedback from their members on practical roadblocks and try to overcome them either by interpreting the regulations themselves or by contacting the regulator on behalf of their members. One of these practical roadblocks in implementing the regulations was raised to me during my fieldwork. In the auction trade, many people present themselves as prospective buyers before an auction, which may be a very short period. An auction house explained how this makes it almost impossible administratively to identify everyone quickly and in line with the requirements, so they had suggested during the law-making process a different time window and suggested it be only done with the actual buyer (actual business partner) since not everyone that registers for an auction also spends EUR 10,000 on something and this is not known before the auction (I15/AH/GER). In their experience, many registered bidders do not come at all and never become active buyers, so identifying hundreds of people in three days is just an impossible administrative task (I15/AH/GER). This account tells a story of the practicability of the regulations. In this case, we have special circumstances, we have a different kind of actor, a different kind of business that comes with its own specialities. To the letter of the regulation (Directive (EU) 2015/849), the client is someone who the obliged entity establishes a business relationship with (Article 11(a)) or who they carry out an occasional transaction with (Article 11(b)). The CDD needs to be completed before establishing a business relationship and before the occasional transaction is carried out (Article 14(1)). According to Article 3(13), a business relationship means a business, professional, or commercial relationship which relates to the professional activities of the obliged entity, and which is expected, at the time when the contact is established, to have an element of duration. The practical question that arises in the context of auction houses is the timing of the CDD: When a bidder registers for auction, is that already the point in time when they enter a business relationship with the auction house or carry out an occasional transaction? The auction house reported that they attempted to solve this practical question

with asking their customers beforehand how much money they were planning on spending at the auction (I15/AH/GER). If they planned on spending more than the threshold of EUR 10,000, the auction house would perform the CDD beforehand, thereby rectifying the administrative process (I15/AH/GER). Theoretically, if this was known to potential bidders at auction, they could circumvent this. This would, of course, not prevent the auction house from their obligation to perform CDD before the bidder buys the object.

Having trade associations or other intermediaries—both non-state actors—translate the regulation into practice, thereby shaping the form regulatory discretion takes, can be advantageous in that those actors are likely more familiar with the industry that is being regulated, thus, possess specialised knowledge and expertise, and are therefore more capable of applying the regulations to this specific industry. An example of this can be seen with the customer information template the BVDG made available to its members, and which is tailored to the art market specific client. This regulatory translation process might, however, also distort the intentions of the regulation. Finally, regulatory intermediaries have their own intentions and pursue their own private objectives. It may be in the interest of a regulator to ensure these objectives align with the intentions of the regulation or at least to create the motivation for regulatory intermediaries to pursue the objectives of the regulation and consequently monitor the translation process. This leads me to think about the power such regulatory intermediaries hold in translating the regulations and with it, forming what AML compliance is and what it looks like in the art market. To unpack this thought, in addition to the work performed for this thesis, further research into this power and its effects is needed.

7.3 Shaping the Regulations⁵⁴

Feedback from intermediaries can contribute to the evolution of regulations over time (Auld and Renckens, 2017). The feedback may be based on their own experiences with the interpretation and implementation of the regulation or on the view of targets they represent (Auld and Renckens, 2017).

⁵⁴ German documents have been translated by me to the best of my knowledge. The translations are marked as citations.

The German FIU first published⁵⁵ typologies of money laundering and terrorist financing in the art and antiquities market in July 2019 (FIU Deutschland, 2019). In March 2021, the German Art Trade Interest Group, an association which the BVDG is a member of, sent a memorandum with comments and suggested changes to the FIU regarding their typology paper from July 2019 (Interessengemeinschaft Deutscher Kunsthandel, 2021). In December 2022, the FIU published⁵⁶ a revised version of the money laundering and terrorist financing typologies related to the art and antiquities market (FIU Deutschland, 2022). Typology papers result from the activity reports available to the FIU (I20/FIU/GER). In addition, other sources of information may also be used in individual cases and depending on the topic, supervisory authorities may be consulted before publication (I20/FIU/GER). There is, however, no general alignment of typology papers with third parties outside of the regulatory system (I20/FIU/GER). During my fieldwork, experts expressed their doubts regarding the typology paper and whether in their opinion it adequately represented the art market. For example, one expert calls the typology paper in parts ‘complete nonsense’ and uses the words ‘strange’ and ‘imprecise’ in connection with the paper:

And there are somehow very strange things, for example, red flags in connection with the pricing. [...] For example, it is defined as conspicuous if a buyer offers an object with an unclear or incomplete provenance. This is complete nonsense. [...] I just want to say that everything that is found here to be negative can be perfectly legal. And what is found to be positive can very well also represent a source of danger. [...] This is extremely imprecise, this paper, and it really needs to be changed at some point (I06/E/GER).

Comparing the two versions of the typology paper, I conclude that the FIU has indeed considered the memorandum sent by the trade association in some accounts—though not all. I demonstrate this using a couple of examples of observed amendments to the 2019 version.

The first section concerns red flags regarding the people involved. Here, one red flag states: ‘The purchase or sale of objects is carried out by a company, although this is not part of its business purpose’ (FIU Deutschland, 2019). The German Art Trade Interest Group addressed this in their memorandum with the following note: ‘There are many companies that collect art (Deutsche Bank, Hypo Vereinsbank, Kulturkreis der Deutschen Wirtschaft, Eon, etc.). The art has no connection to the company’s business purpose’ (Interessengemeinschaft Deutscher

⁵⁵ It should be noted that the German FIU’s typology papers are not published, but rather made available to the businesses registered with the FIU. I received this typology paper from the FIU upon signing an agreement on the use of FIU publications within academic work. There will thus, be no copy available in this thesis.

⁵⁶ I received this typology paper from the FIU upon signing an agreement on the use of FIU publications within academic work. There will thus, be no copy available in this thesis.

Kunsthandel, 2021). In the updated version of the typology paper, this red flag was refined and supplemented with another red flag:

The purchase or sale of works of art or antiques (hereinafter referred to as 'objects') is carried out by a small or medium-sized company, although this is not part of its business purpose.

The purchase or sale of the objects is carried out by a small company that was only recently founded and in which the people involved have no clear experience in the art and antiques trade (FIU Deutschland, 2022).

This specification takes up the remark from the art market that there are indeed instances where the fact that a company whose business purpose is not art, purchases art, is not considered suspicious. It is acknowledged that what was originally considered as suspicious might be normal business practice in the art market and as such, the typology paper needed refinement. This refinement likely not only stems from the trade association's information, but also stems from analysis of SARs the FIU has received. Specifying that the suspicion lies in the size of the company, the number of years the company has been in business (a pointer to their experience), and the art market experience the people who are involved in the transaction demonstrate, seems likely to have come from actual cases. This specification also gives the art market something to work with: A distinction from what they consider normal business practice (a company buying art although they do not deal with art themselves) to suspicious (a small company buying art although they are not an art business). The red flag now not only considers what is normal practice in the art market, but also the characteristics of the art market. While art businesses are often small businesses and so, of course, they buy art, other small businesses usually do not have the funds to finance an art collection as a luxury. The red flag also taps into money laundering as a crime and the most important factor of money laundering: The question of where the money comes from.

Another example where the FIU seems to have taken the suggestions from the German Art Trade Interest Group is a red flag related to the object that is being sold or purchased:

Concealing the provenance of an object, e.g., by using descriptions such as 'a gentleman's collection' or 'private collection' without there being a plausible explanation for this (FIU Deutschland, 2019).

The German Art Trade Interest Group suggested to delete the anonymous provenance descriptions with the explanation:

The art dealer is not allowed to reveal the names of the sellers for data protection reasons. The customer base is the dealer's asset and is therefore not given to the competition. Finally, collectors have safety concerns when it becomes known what treasures they keep in their home. All seller and buyer data is documented by the dealer and stored for 30 years. The authorities

can resort to this at any time, but not the buyer (Interessengemeinschaft Deutscher Kunsthandel, 2021).

In the 2022 version of the typology paper, the FIU has deleted the anonymous provenance descriptions in line with the trade association's suggestion. It now reads: 'Concealing the provenance of an object without there being a plausible explanation for it' (FIU Deutschland, 2022). To me this demonstrates an increased understanding of how the art market functions. It is an acknowledgement of the basic characteristics of the art market, particularly the importance of contacts as an asset and the implications of giving those assets to the competition. In addition, the use of such anonymous provenance descriptions—a common practice in the art market as was discussed in Chapter 2—is no longer considered a red flag for money laundering or terrorist financing.

There are, of course, many instances where the FIU has not made any changes according to the suggestions of the German Art Trade Interest Group. Furthermore, there are additions and deletions that cannot be traced to the trade association's memorandum thereby confirming the development process of such a typology paper as the FIU explained it.

Regulatory intermediaries such as the BVDG hold specialised information that can and should be utilised by the regulator to shape the regulation to better fit the industry it is regulating. Regulators should be aware of the role regulatory intermediaries play in the creation and distribution of knowledge and tap into these to in turn influence these learning processes. The practical application of AML obligations in the art market is directly shaped by regulatory intermediaries. A regulation that does not fit will have a hard time achieving its objectives. Shaping—thereby developing the regulation is therefore an essential step in the regulatory process.

7.4 Lobbying

Intermediaries support the regulatory process by creating a dialogue between regulators and targets of a regulation and providing feedback to regulators about the views of targets (Abbott, Levi-Faur and Snidal, 2017b). Consequently, an important role of trade associations in the art market is lobbying on behalf of their members. Trade associations seek to engage with and represent the businesses and other stakeholders within the trade. They strive to best represent most of their members because they survive on their members. The more members they have, the more funds they have through the membership fee, but also the more weight they carry because they represent a larger portion of the market. The number of members they represent

also goes towards their legitimacy. As non-state actors, trade associations do not automatically own legitimacy, but rather they have a particular need for it and need to be actively supported by their members (Black, 2008). Trade associations may also be considered to seek to fulfil legitimacy claims of their members.

An expert describes this role and their expectations towards trade associations as follows:

And what the trade association should be doing, more than anything else, is focusing on talking with politicians, somehow grabbing their attention, and saying, 'Yes, we need rules, but we need better rules. We need rules that are actually focused on how the market functions' (I18/E/US).

What this expert wants the trade association to do is to bridge the gap between a theoretical policymaker and the practical market, between someone who makes the rules and someone who needs to follow them while still surviving. More so than surviving, a business would obviously want to make money worthwhile and increase their market share. They simplified this statement further into the interview with: 'And anyway, the goal is to try to bring a certain amount of sense, a common sense, really, to how laws are' (I18/E/US), suggesting that, from their point of view, what the regulation lacks is common sense and that it is the trade association's task to bring that common sense into the regulation and bridge the detachment of the regulation from practice.

As far as the process of lobbying is concerned, it doesn't differ from that of other industries in that the association gets to comment on a draft bill. An art dealer explains:

The trade association usually gets the draft regulation that affects the art market directly from the ministries or the responsible offices [...]. The trade association then comments on it here and there and it is discussed. Most of the time before a regulation is enforced, it's discussed. That's what happened with the Cultural Property Protection Act, and it was the same with the Money Laundering Act. Sometimes with greater, sometimes lesser success (I14/AD/GER).

When I heard the art dealer in this case explain the process, I felt already a certain resignation with the process and the success of the process, or maybe even more of a detachment from the whole process, as they explained it quite unemotionally as something that is just the way it is. This was mirrored by other art market actors, albeit more emotional, in that they felt that the art market had undergone quite a few regulatory changes over the past years. For instance, an art dealer recalls:

But unfortunately, that's the way it is now, unfortunately, nobody cares at all whether another art dealer goes out of business or not, politicians don't care at all. That is also one of the reasons why I left [trade association], because in my opinion what they are doing is completely pointless. Because they represent an elite group of 300 people, so if you think that any politics will take them into account, I think that's relatively hopeless. Nothing has happened either. Of course, they always advertise it differently, but in the end, we now have the worst cultural property

protection laws⁵⁷, we have money laundering laws, all these things went into effect (I05/AD/GER).

Further to the resignation, we find no detachment at all, in fact, there is the quite emotional sentiment that regulations are made without ever thinking about those who must comply with them, and objectives are pursued by regulators (politicians) with no understanding of the costs. The regulations are perceived as putting people out of business, as destroying the market by burdening businesses to the point where they cannot but shut down. The regulatory obligations interfere with their income and therefore with their livelihood. The resignation of the art dealer collaterally goes towards the trade association and the trade itself with numbers too small to have a voice, without any weight to even lobby and try to influence politics and law-making. This, they find, is evidenced by the way the KGSG as well as the AML regulation have panned out.

The KGSG which is mentioned here was and still is quite controversial in the art market. It represents probably the most significant regulatory change for the art market before the AML regulations became effective in 2020. The Act protects cultural property from being exported, it restricts illegal trade in cultural property, and facilitates the recovery of cultural property that was illegally exported. It does so by placing due diligence requirements⁵⁸ on market actors. The Act thus, represents a comprehensive reform as the existing legislation was not merely combined, but also amended significantly. This led to significant reactions in the art market and controversial debate during which the Act was amended several times (Gesley, 2016; Zentner, 2016). Art market actors argued that the Act would destroy Germany's art market (Neuendorf, 2015), a sentiment which is supported by the statements from art market actors I cite here. The Act not only impacts art dealers and galleries, but also collectors as market actors. A well-known German collector evaluates the KGSG in an interview with the German Cultural Council as a bureaucratic nightmare: 'The KGSG is full of contradictions and pitfalls. It is extremely unfortunate to have to realise that art collecting is now only possible with the assistance of lawyers' (Falckenberg and Brühem, 2020). Supporters of the Act underline the necessity due to Germany's role in the illegal trade in cultural property (Habermalz, 2015).

⁵⁷ The KGSG entered into force on 6 August 2016 and aims at protecting cultural property from Germany as well as other countries (Minister of State for Culture and the Media, 2024).

⁵⁸ In addition to the general due diligence requirements in Section 41 KGSG, Section 42 KGSG states that commercial dealers are obliged: 1. to establish the name and address of the alienor, deliverer, acquirer or ordering party; 2. to provide a description and an illustration that can be used to establish the identity of the cultural property; 3. to examine the provenance of the cultural property; 4. to examine documents proving the lawful import and export; 5. to examine bans and restrictions regarding import, export and trade; 6. to examine whether the cultural property is registered in publicly accessible registers and databases; and 7. to obtain a written or electronically transmitted declaration of the deliverer or alienor stating that he or she is authorised to have the cultural property at his disposal.

While the due diligence requirements are mandatory according to the KGSG, they mainly address the object being sold or purchased (except for the name and address of the transaction participants); the AML regulation (in a very simplified way) focuses on due diligence regarding the customer (in general) and their source of funds and source of wealth. Coming back to the distinction Hufnagel and King (2019) make with regards to the type of art crime, the KGSG addresses crimes against art while the AML regulations address crimes through art (though not as their primary way of laundering money). While both regulations were introduced to the art market to enhance transparency and prevent its misuse for criminal purposes, due to their different objectives they may also contain contradicting obligations as I noted earlier in this chapter.

The sense in the market of regulations being too much for the businesses to handle and businesses closing is mirrored by the account of an expert in Germany:

And that's my fear too, this extreme thorough regulation of the art trade [...]. Nobody wants money laundering, nobody wants illegal trading, nobody wants counterfeiting. But the regulations go far beyond their goals [...]. And this will mean in the long run, only the big ones will survive. There are already many small art dealers and galleries dying. Of course, there are many different reasons. The regulations are not the only reason, but one of the reasons is that the dealers say they cannot do it all (I11/E/GER).

Although the regulations are described here as not being the only reason for small art businesses closing, they are perceived as a burden, as too much to take on. These personal statements of the art dealers, and the experts, seem very emotional, understandably so when the livelihood of people is the concern. An expert recalls a study that was done amongst art dealers in a city in Germany in 2019:

[T]he last question was, if you had to do it all over again, if we went back 20 years, would you become a gallery owner again? And 80% said: 'No, we wouldn't do it anymore'. You can hardly make a living from art sales anyway; unless you have really popular artists who you sell well because they are well-known or particularly original [...] (I06/E/GER).

The expert here describes how it is difficult to make a living for the average art dealer unless you are at the top and have the most sought-after product. The result of the study was also that the majority of art dealers asked would choose a different profession if they had to do it all over again. An art dealer explains:

Because I believe it is a ready-made mindset that prevails in politics and that's lobbying you need to do, but if you don't have a lobby, you can't do any lobbying. And 300 art dealers are simply not a lobby. I understand that too. In times when someone gets fired for accepting a

bottle of wine for EUR 50 you can't expect art dealers who enrich themselves—which is the fictional mindset about the art trade in politics—as a young, cutting-edge gallery on the verge of ruin you're okay, but art dealers are all criminals (I05/AD/GER).

This quote shows even more emotions towards the picture that politicians are perceived to have of art dealers: The 'fictional mindset' towards the art market is observed to be quite negative through to art dealers being criminals, enriching themselves unlawfully. This negative mindset is believed to be the reason for the money laundering law, for obliging art market actors to comply with the money laundering law. At the end of this quote, we also find the inherent conflict of business and art: Is it bad to make money from art thereby enriching yourself? Should art be this higher good, completely detached from banalities such as money? A more moderate and more positive stocktaking is shown by the first art dealer who almost detached themselves from the emotions of the game with lawmakers:

Things are going quite well there, however, naturally, politics are not wishful thinking, it's always about compromises and sometimes you get a better compromise, sometimes the compromise isn't what you wanted. I think it's good that we were able to make a difference (I14/AD/GER).

One might argue this account is a much more realistic one too. Laws cannot make everybody happy; some discussions you will lose, some you will win, and the nature of a compromise is not to everybody's liking. I want to emphasise here how one art dealer found the lobbying so unfruitful for the art market that they resigned and left the trade association, while the other art dealer found the lobbying to make a difference, and overall, to yield positive results. The following expert account can be seen as putting these personal views into perspective in that the regulatory process is just that—a process with a learning curve for all actors from lawmakers to compliant businesses:

Because that's actually the only thing that helps us, that we can talk to people who have so many projections about the art market in their heads, but don't know it at all. All I can say is that I've been working in this field for 30 years now and I'm always learning new things, because logically my picture shifts, complements itself, corrects itself. This is a highly complex, difficult market, which of course also has its own laws due to its objects, but these are not negative per se, but are just peculiar, which are simply specific. And this specificity is often not understood, although if you listen, you can understand it very well [...] (I06/E/GER).

With experience and through the regulatory dialogue, regulatory actors continue learning and understanding grows, understanding of the market that is being regulated, understanding of what the purpose of the regulation is, and understanding of how compliance can be achieved most effectively. Of course, lobbying isn't something that is art market specific. Every industry has its own lobby, and the lobby is needed to represent the interests of that industry. The dialogue between regulators and targets—be it with or without intermediary involvement—is

necessary to make good and feasible law. The art market is a heterogenous market with many different actors whose numbers may be too low to hold weight against other trade associations, such as the ones from the banking or the insurance industries. Some form of lobbying, however, is necessary to shape the practical application of the regulation which can sometimes, depending on the type of market and the type of businesses, be too generic to apply to the specific characteristics such a market may hold. Trade associations are an integral part of this dialogue and through their collective exercise of discretion they shape the practical application of AML regulatory compliance. A constant dialogue would help with this observed disassociation, especially considering that supervision allows for some leeway in the application of the law.

7.5 Safeguarding Reputation

I have established the role of trade associations as regulatory intermediaries essential to the regulatory process in translating the regulation into practice thereby creating and distributing legal knowledge and shaping compliance through directly shaping the practical application of AML obligations. In addition, trade associations seem to act as some form of guardian of ethical behaviour, some form of quality label in that they see themselves as promoting an ethical culture. I only briefly touch upon this subject as it holds some relevance with regards to the perceived necessity of governance regulation in the market while it can also be considered a form of private law. Trade associations can be regarded as non-state regulators (Black, 2008) in that they make their members adhere to a code. An expert explained:

Our role is, we have some quite tight objectives, but it is to promote and safeguard the transparent and compliant transaction of art and keeping the good name of the art trade alive and well. And that is incredibly relevant in the case of AML [...] (I16/E/UK).

The trade association in this case is seen to safeguard the reputation of the entire market. As established before, reputation matters in the art market. It is the importance of reputation, the FATF (2023) notes in their typology paper as the reason the risk of negative publicity from involvement in a sale linked to money laundering as a strong deterrent. To safeguard the reputation of the market, the association would have to implement some form of quality control over their members. Depending on the trade association, it might not be a simple case of filling out a membership application, but rather an agreement to abide by the trade association's privately created rules. These rules are a form of private law. These private law rules are only legally meaningful insofar a court holds them enforceable (Riles, 2011). The distinction between private conduct and regulation and state action is fictional in that any private

regulation is always dependent on state legal institutions for enforcement (Riles, 2011). Private regulation can thus, be seen as an artifact of state power in that it only exists because the state is willing to enforce it if necessary (Riles, 2011). There are, however, other mechanisms of enforcement that do not come from the state but from within the market itself, such as market shares and reputational damage. In this view, the art market works in the absence of state regulation. It would also explain in simple terms why private regulation is successful in certain markets (Riles, 2011). An expert explained that there is a trade association that is essential to doing business at shows, but very hard to get into:

And that show required you to be a member of [trade association], and [trade association] is probably the most difficult group to get into as a dealing group in [country]. [T]he importance of being a member of a dealer group was made clear to me during the international show (I18/E/US).

Due to the rules of becoming a member, the trade association seems to act as a custodian of ethical behaviour and a quality label. And the pressure to comply with the association's soft regulation by publishing non-disclosure or revoking membership effectively hardens this soft regulation (Abbott, Levi-Faur and Snidal, 2017c). The success of such soft regulation depends highly on the relationship of the trade association to its members which requires knowledge, capacity, and motivation in the same way government regulation is assumed to be effective (Black, 2001). Private governance may even be seen to be more efficient in being tailor-made to the specific industry (Riles, 2011). The role of the trade association as a private regulator is emphasised by the expert: 'Well, there is something to be said for organisations, they're asking their members to follow more or less an ethical path in what they do' (I18/E/US). In fact, they even believe: 'All the members for that matter, tend to be focused on doing things the right way' (I18/E/US). This is also the reason why—through this quality label—they feel safe transacting with other members of the same association. The expert describes:

I would feel secure buying something from somebody in Sweden, some English furniture from a photograph, if they're a member of the association. To me, because they're members of my organisation, I know that to them the regulation is important (I18/E/US).

The quality label the expert describes here is not necessarily related to AML compliance, but rather constitutes the understanding of ethical and lawful behaviour of this expert. While the regulation appears to be important to them, nobody is immune to mistakes. The expert justifies this by describing:

And there's always a caveat because sometimes knowledge isn't broad enough to know everything. And so, you buy something, and you think it's right, you sell it, and then ten years later you think, 'Oh my God, oh my God, I sold a fake', or I sold something that, you know, and

it's going to happen, it's definitely going to happen. It happens to everybody. To me that's not an ethical lapse. It just is the way the world works (I18/E/US).

While this accounts for mistakes made by ethical art market actors, in the expert's opinion, there are also market actors out there that act dishonestly. However, they are convinced that those actors would not be members of a trade association:

And there are dealers out there that do that. There's no question in my mind that that's going on, but not for members of organisations. Because you can get away with it once, you can get away with it twice, but beyond that, it gets really hard. So, I strongly believe in the value of organisations, strongly believe in them (I18/E/US).

The value of trade associations in guarding ethical principles could almost be seen as a neighbourhood watch set-up. An organic system that developed over time, a system of lawyers, experts, dealers, where relationships are important and what binds them together. Hardin (2006) describes how individuals can be motivated to act morally using the example of a farmer called Bodo and his life in a French village portrayed by Axel Leijonhufvud (1996)⁵⁹. In this case, the community in the small village enforced its morality as a set of compulsory norms, compulsory due to the structure of the small community which one had to obey if one wanted to be a part of it (Hardin, 2006). While this enforcement of norms by the community did not guarantee perfect compliance, it demanded a fine for noncompliance: 'At the extreme a cheater might have to leave the community and find another place to live' (Hardin, 2006, p. 7). Bodo interacted only with the 80 adults in his village. These relationships formed a rich network organised by shared norms that were locally, spontaneously enforced (Hardin, 2006). In our complex lives today, we have many different relationships in many different contexts, a society of networks (Hardin, 2006). Hardin argues that those relations are regulated through trust, the trust that the other party will reciprocate because they want to maintain the relationship and vice versa—the encapsulated model of trust (2006). Basically, these different networks which make up the associations work a little like Bodo's village, in that anybody in the network that will cheat anybody else in that network, will likely be excluded from it, with the difference that being excluded is not as life-threatening as it might have been in Bodo's village (Hardin, 2006). The art market, of course, is not a closed community like Bodo's village was. Looking at trade associations, however, we might see a similar form of community which educates its members and motivates them in some form or another to act morally. In addition, the 'reputation mechanism' is used to enforce rules of the market. Basically, if someone breaks the rules, it is made publicly known that that someone is dishonest and broke the rules (Swedberg, 2003). The role trade associations as professional organisations fulfil with regards

⁵⁹ Leijonhufvud based his invented character on a real one unearthed by British historian Eileen Power (1963).

to safeguarding reputation also contains the aspect of policing of boundaries: By deciding on membership, they also decide who is in and who is out. People in the market are looking out for each other, watching each other and the transactions that are happening. The whole market with its associations and its actors, a mutually evolved system, appears to be very relational which is how the ethical behaviour is motivated and controlled in the market. While this may well be the image the trade association wants to cultivate and portray to the outside, it is clear though, that this is the ambition. In any case, the example of Bodo's village also offers a way to re-conceptualise how we are thinking of regulation. Interrelations, including the expectation of trust among social relations, are important and carry immense force in markets that are highly dependent on and sustained through social structures and family(-like) ties (Macaulay, 1963; Black, 2013). Such mechanisms are important when considering the role trade associations play in shaping regulatory learning and considering how influential they are the forms AML regulatory compliance takes in the art market through exercising discretion collectively.

7.6 Chapter Summary

Trade associations operate as regulatory intermediaries shaping regulatory learning in the German art market through the creation, translation, and distribution of legal knowledge on AML requirements. This learning process informs the day-to-day practical application of these requirements. Anchored in the RIT framework (Abbott, Levi-Faur, and Snidal, 2017b), the chapter conceptualises regulation as a dynamic and iterative process in which learning as the collective exercise of discretion occurs across regulators, intermediaries, and regulatory targets. Empirically, it demonstrates that the majority of art market actors who participated in the study do not learn about AML obligations directly from their supervisory authorities, but rather through intermediaries—most prominently trade associations and, to a lesser extent, professional advisors such as accountants and consultants. This confirms the expectation set out in Chapter 4 of this thesis that market actors in a socially embedded market would rather turn to their peers and social relations than to official regulatory bodies when in need of advice on AML regulatory compliance.

The chapter first shows that trade associations play a central role in translating the rather abstract and finance-oriented AML regulation into market-practicable knowledge, thereby collectively exercising discretion. Through guidance documents and explanatory leaflets containing specific risk examples, customer communication templates, and standardised CDD

forms, trade associations actively construct an industry-specific understanding of AML regulatory compliance. This translation process does not merely disseminate legal rules; it frames them through the lens of the nature and structure of the art market, prioritising certain obligations (such as documentation and risk analysis) while leaving others comparatively underdeveloped. As a result, trade associations shape how art market actors learn to perceive risk, understand regulatory expectations, and operationalise everyday compliance. Membership thus becomes a decisive factor in regulatory learning, with non-members displaying fragmented or superficial understandings of AML obligations.

Secondly, the chapter illustrates how this learning process is embedded in feedback loops between trade associations, their members, and regulators. Trade associations aggregate experiential knowledge from their members' encounters with AML requirements and use this knowledge to refine guidance internally or to engage regulators externally. The analysis of the German FIU's typology papers demonstrates how feedback from trade associations contributed to more nuanced regulatory understandings of art market practices, particularly by distinguishing genuinely suspicious behaviour from routine market conventions. In this way, regulatory learning is not unidirectional but iterative, with intermediaries mediating between legal abstraction and sector-specific reality.

The chapter further highlights that the role of trade associations in regulatory learning extends beyond interpretation into shaping normative expectations. By offering standardised forms and templates, they effectively embed legal knowledge into technical artefacts that allow art market actors to comply without engaging directly with statutory texts. These documents function as technologies of standardisation (Riles, 2011) that both simplify compliance and subtly delimit the scope of regulatory understanding, fostering reliance on intermediary expertise and trust in the trade association's judgment. Regulatory learning and the exercise of discretion thus becomes a collective activity.

Finally, the chapter situates regulatory learning within the broader processes of lobbying and reputational governance. Through dialogue with regulators, trade associations seek to align AML requirements with the practical realities of the art market, while simultaneously promoting ethical norms and safeguarding the sector's reputation. These activities reinforce learning by framing AML compliance not only as a legal obligation but as a marker of professionalism and market legitimacy. In this chapter I conclude that trade associations are pivotal drivers of regulatory learning in the German art market: they shape how legal knowledge is created, distributed, and internalised, and in doing so, decisively influence how AML obligations are understood in the art market and applied in practice.

Chapter 8 Experience

8.1 Introduction

Art market actors have had to comply with the extended (simply put irrespective of the payment method as set out in Chapter 3 of this thesis) AML regulations in Europe, specifically Germany, since January 2020. During this—albeit—short implementation period, they have already gathered experience with the practicalities of compliance. This chapter addresses the research question as set out in Chapter 1.2 of this thesis: How have art market actors adapted their internal practices to comply with AML obligations, and what do these adaptations reveal about the relevance and practicality of the AML regulatory framework? This is done by examining how regulatory discretion is exercised and refined through organisational experience. Drawing on the concept of social embeddedness, I analyse how art market actors adapt AML obligations in ways that reflect existing trust-based relationships, professional judgement, and market norms, thereby also illustrating how discretionary interpretation becomes stabilised through practice.

8.2 Understanding Money Laundering and Assessing Risks

The understanding art market actors have of money laundering is an essential component of compliance. This understanding forms the basis of their risk assessments, on which internal safeguards and the extent of due diligence measures rely. One of the consistent themes during the interviews with art market actors I observed was their understanding of what money laundering is or could be. The understanding of what money laundering is, is essential to the compliance procedure. If one does not know what money laundering would look like, one does not know what to look for in everyday business transactions. The understanding of money laundering is also the basis for performing the risk analysis (section 5 GwG). The risk analysis of a business needs to be updated on a regular and ad hoc basis, for example, when relevant circumstances change. Generally, it concerns customers, geographies, and products. While every risk analysis considers those three categories, naturally it needs to be different for every business and there is no tick-box approach. One art market actor recalls the process of developing the risk analysis: In general, doing the risk analysis did not feel difficult to them, they first did it by themselves and had it checked by a third-party service provider afterwards. What was difficult for them was to draw the line and assess the level of risk, whether it is a medium risk or a high risk. Most of the cases were perceived to be easy, but the details were

more difficult to them. This is where they found the industry experience of a third-party service provider to be helpful. There were no significant deviations from the risk analysis after the service provider had checked it, however, the differences were in the details because it was simply difficult to assess; for example, what does it mean if you have 40% instead of 25% international sales, just doing this based on gut feeling wasn't easy (I15/AH/GER). This case illustrates an interesting take on who the author of such a risk analysis is. In this case, this complex piece of work emerged through collaborations between an external service provider and an art market actor. The experience external service providers bring to the table through seeing more than one business was perceived to be helpful and was combined with the assessment of the market actor. Through this collaboration, the law was put into practice. This process needed the expert as a regulatory intermediary as established in Chapter 7 of this thesis, to translate the law into practice. Here it was not the law that was shaped, but rather the industry and the understanding of the private art market actor. While no specific internal practice had to be adapted in this case, their way of thinking about their own customers, the geographies they do business in, and their products had to be thought about in a different way to produce the risk analysis. At the same time, the risk assessment is viewed through the lens of this specific market, exercising discretion as intended by the regulation.

For obliged entities to be able to detect suspicious activity, they need to know what is suspicious in their daily business. If they do not know what to look for, how is their compliance supposed to effectively prevent the misuse of the market for money laundering purposes? Banks usually develop patterns they look for in their business transactions. These patterns are based on various publications, such as the ones by the FATF or the national FIUs, and these publications in turn are based on actual cases of money laundering the regulatory bodies have seen. Turning back to the art market, if there is only a handful of actual cases, developing generalisable patterns is of course not easy. However, it is hard to imagine what the art market is supposed to look for if there are no generalisable patterns, no translation of the money laundering cycles placement, layering, integration into the art market.

In February 2023, the FATF published a typology paper for money laundering and terrorist financing in the art and antiquities market (FATF, 2023). The paper emphasises the need for jurisdictions and entities to understand the specific types of risks they may face and the relative significance of those risks given the wide variety of artworks, market participants, and markets themselves (FATF, 2023). During the interviews, I observed that some market actors understand money laundering to be relevant over a specific amount (most of the time over the amount the

respective art dealer deals themselves in) and with cash (most of the time when the art dealer does not accept cash themselves). For example, one art market actor expressed their understanding as follows:

I also think that due to the sums in which we move as small and medium-sized galleries, which move up to a maximum of EUR 100,000, if at all, then I think that [money laundering] happens very rarely. I also think it's not really worth it for people, I suppose (I17/AG/GER).

The FATF (2023) typology paper would support this understanding in that case studies showed high-value cultural objects⁶⁰ to be more vulnerable to money laundering since they can serve as substitutes for large amounts of value. A recent Amber Alert issued by the UK's National Crime Agency (NCA) further states that many elites and other High Net Worth Individuals possess considerable artworks and may be linked to high-risk jurisdictions such as Russia (NCA, 2024). Meanwhile, one art market actor told me that money laundering would not work with them as they do not accept cash (I19/AG/GER). It would appear that what the market looks for is cash and high sales and purchase prices. From their knowledge through media reports, through interaction with other market actors and the supervisory bodies they have encountered, their understanding of money laundering has formed, and it has come down to cash and high amounts. When asked what money laundering in the art market could look like, an art market actor explained how they would do it and why one would have to operate with large sums:

If I wanted to do it [money laundering] on an investment level [...], then I would have to, but that would be my intuition, buy very, very broadly, and quite a lot. So, then I would really have to operate with seven-figure amounts [...]. Because then the probability is there and with a trained eye or a trained feeling for what artists must be able to do to possibly be successful, because the problem is always that as soon as someone is already successful, the price is high again, so it works yes, like on the stock exchange. That means I must go in very, very broadly and buy a lot [...] (I02/AG/GER).

This account shows a limited understanding of what money laundering is, not just regarding the high transaction value, but also the general description of buying emerging artists and waiting for them to be successful to make profits when reselling. That is not necessarily money laundering, rather it describes an investment strategy in the art market. I observed here that the perception of money laundering is highly dependent on their own business practices and embedded market norms, and shaped by their own understanding. Consequently, for money laundering to work in the art market, it must work alongside and in the established relational channels. This makes it almost indistinguishable from business as usual and completely

⁶⁰ Note that the FATF uses broad working definitions of the terms art, artwork, or work of art, antiquity, and cultural object as discussed in Chapter 2.1 of this thesis (FATF, 2023). However, most money laundering cases considered in the typology paper involved art (FATF, 2023).

unsuspicious transactions in the market. Throughout the interviews, experts and market actors were almost unable to define exactly what they found suspicious or which case they had experienced that seemed suspicious. In this regard, it seems they did adapt their internal practices to accommodate a different understanding of money laundering—one that could actually happen within their business. The regulatory framework, in this case the understanding of money laundering in other markets, cannot be readily applied to the art market. Rather, it does not seem relevant to the art market at all. As mentioned in Chapter 1 of this thesis, I have attempted elsewhere (Stoll, 2022) to apply trade-based money laundering typologies and typologies from related markets, such as the diamonds and the real estate market to the art market. While at first glance, those typologies seem to be readily applicable to the art market, upon closer look, one might conclude that although they are possibilities, they do not adequately represent the characteristics of the art market. We are thus, in need of a deeper understanding of ARML to accommodate for the practicalities and realities of the art market and reach relevance of AML regulation to the art market.

8.3 Formal Contracts to Reaffirm Trust⁶¹

The art market is constructed of dense personal relationships. As such, contacts are an important if not the most important asset. Disclosing every party and their contact information in a transaction as is required by the AML regulation poses the risk of this information being misused. Another art market actor may, for example, approach the customer themselves and therefore bypass their original counterparty. An art market actor explains:

When it comes to money laundering, the understanding is not there with us, but certainly not with the regulator either, they have no idea that it is very difficult to ask for an ID from someone based in China, who works with an art advisor whom they trust, and who says I want to buy paintings for my client, for an institution or a private museum, and then being very, very careful about releasing the name. In general, out of self-interest, art advisors are like that. So, an advisor will usually not tell you who the buyer or the seller is because there is always the fear of being scammed (I02/AG/GER).

This notion is confirmed by an expert in the market: ‘That means it is a no-go in the art trade to disclose these names. That just doesn’t work’ (I11/E/GER). The problem described here is that contacts are an asset in the art market. An asset which is built over time in dense relationships that are based on trust. Giving up one’s contacts means giving up one’s assets.

⁶¹ The majority of this section was presented in Utrecht as part of the Workshop ‘New Developments in Art Law I’ at the *Ius Commune Conference 2024* (Stoll, 2024a).

Much like in the diamonds industry, profitability depends largely on an art market actor's network of contacts and secrecy is therefore highly valued (Bernstein, 1992). To preserve those networks of contacts, the diamonds industry has created extra-legal rules with reputational damage as a form of sanctions as established dealers promise cooperation to those who cooperate and punishment to those who do not (Bernstein, 1992). This only works when a large number of dealers are willing to adhere to those industry norms (Bernstein, 1992). Furthermore, these extra-legal rules trump legal rules when market participants find that complying with industry norms advances their own self-interest (Bernstein, 1992). It is interesting that on the one hand, relationships are considered dense and personal and based on trust which would allow us to think they would hold and on the other hand, the fear of losing those contacts and thereby losing business and one's standing in the market is so prevalent. However, as established in Chapter 4 of this thesis, this is a feature of embedded markets, when market actors rely on relational knowledge, reputation, and long-standing ties to navigate uncertainty and evaluate risk (Granovetter, 1985; Uzzi, 1997).

While information asymmetry is not something that is intentionally addressed by the AML regulation (it is not the purpose of CDD), information asymmetry is the basis of business for art market actors. To deal with this problem, an art market actor had the idea to draw up contracts with advisors in which they commit to not contact the clients of the advisor even if the details are disclosed, thereby adapting their internal practices:

It becomes problematic when an advisor is part of the transaction and I need the address of their client. Because this is their asset. I'm thinking of committing myself to not contact their clients, to draw up a small contract to get the names and address (I17/AG/GER).

The contracts assure their business partner that they are not going to use the information obtained through the business relationship to pursue their own self-interests. For relationships that have existed a very long time through which the trust is deep enough, no formal contract is needed. Instead, the relationship can be considered deep enough for both parties to adhere to the agreements made based on trust. This observation confirms Granovetter's (1985) argument concerning the role of concrete personal relations in generating trust and discouraging malfeasance. Personal relationships in the art market often substitute formal verification, instead relying on familiarity, reputation, and long-standing knowledge of clients (Becker, 2008; Velthuis, 2005b). However, for relationships that either have not been established a very long period of time or where the trust is simply not yet established enough, the art market actor thought about introducing formal contracts to create or reaffirm that trust

which is tested through the money laundering obligations and the disclosures required by them. Contracts are usually closed to achieve one's ends (Feinman, 2000). The art market actor in this case is trying to handle complications and make their business partner feel comfortable and safe with the transaction and the compliance requirements the transaction underlies. They are trying to rebuild the trust with a formal contract.

There is a large body of literature on relational contract theory. Relational contract theory considers extensive long-term relationships as a distinct form of contracting—namely relational contracts (MacNeil, 2000). Consider external norms such as norms of the trade as relevant to understanding relational contracts (Feinman, 2000). Relational contracts reinforce behavioural norms that are the basis for preserving and continuing a relationship (Macneil, 1983). This type of agreement between parties that focuses on building and maintaining long-term relationships rather than short-term transactions. Trust, communication, and cooperation between the parties involved is important. Relational contracts can be more effective than traditional, transactional contracts in certain circumstances, such as when there is a high degree of uncertainty or when the parties involved are interdependent. This is because relational contracts provide a framework for ongoing cooperation and problem-solving, which can help to reduce transaction costs and increase the likelihood of mutually beneficial outcomes.

However, there are also potential drawbacks to relational contracts, such as the risk of opportunistic behaviour by one party, the difficulty of monitoring and enforcing the terms of the contract, and the potential for conflicts to arise when the parties have divergent interests or goals. Though unlike relational contracts which are informal, the art market actor is deliberately introducing a formal contract to reaffirm the trust their partner puts into them—and apparently may not have. To rebuild the trust the regulation disrupts and rebuild the relational contract. These types of contracts essentially enforce the public regulation that is already in place with the GDPR (General Data Protection Act). In contrast to what Riles calls collateral, a private market-based alternative to government regulation (Riles, 2011), these contracts are not an alternative, but an addition to the government regulation which apparently is unable to effectively protect market actors in the case of information privacy. It addresses the limits of state regulation in the context of a global market. Its impact goes beyond national borders while its power is based upon the trust of the counterparties in a market organisation. To turn back to the AML regulation in the art market which is seen to be counterproductive to how the market functions. A contract is therefore drawn up in this case to make up for the limitations of the regulation that result from the misunderstandings of the market. Internal practices are adapted to overcome the ways in which the regulation goes against the practicalities of the art market. The art market actor continues:

I work with two advisers that I know and who simply know me, they are friends. They know that I would never approach their clients myself without asking them, so I get the addresses. But if I don't know the advisers, I think that's the biggest problem, that you can't do the deal because you can't get the addresses (I17/AG/GER).

When the relationship is strong enough and built on enough trust, there is no need for a formal contract. Rather, industry norms based on trust and informal sanctions, such as discontinuation of the relationships and reputational damage, are sufficient to handle the disruption of the market that comes with the AML regulation.

This example shows how one art market actor adapted their internal practices, not just to comply with AML obligations, but to be able to comply with AML obligations while not losing their business. This is necessary because the AML regulatory framework is only relevant to the art market insofar as it goes against structures of the market. The regulation does not accommodate the practicalities of the socially embedded, trust-based art market. Discretion in this case is not exercised in the sense that the regulation is interpreted in a specific way, but rather, market practices require changes, require adaption, require judgment.

8.4 The Case of Identification at Auctions⁶²

Article 14 paragraph 1 of the EU's Fourth AML Directive (2015/849)⁶³ requires 'that verification of the identity of the customer and the beneficial owner take place before the establishment of a business relationship or the carrying out of the transaction'. When asked how the trade association had been part of the development of the German AML law, the German expert explained:

The problem with auction houses is that when they start an auction and people bid on objects, they never know for what price an object will be sold. [...] So, they don't know to what extent they need to collect customer data in advance, just because an object which has been evaluated at EUR 3,000 will suddenly sell for EUR 15,000 (I06/E/GER).

The Interest Group German Art Trade, a partnership incorporated under civil regulation with the purpose of representing the common cultural policy concerns of its members to the public, politicians, and administrators in Germany as well as in the EU, has adopted a formal position regarding the German AML regulation (Berking, 2019). The statement is one of a total number of 50 statements published on the website of the German Federal Ministry of Finance

⁶² The majority of this section was presented in Utrecht as part of the Workshop 'New Developments in Art Law I' at the *Ius Commune Conference 2024* (Stoll, 2024a).

⁶³ This paragraph remained unchanged with the EU's Fifth AML Directive (2018/843).

(Bundesministerium der Finanzen, 2019a). While the statement contains general comments on the size of the German art market (2% of the international art market) and the size of German art businesses (small with less than 5 employees in most cases), the statement also encompassed the problem of identification at auction (Berking, 2019).

The German Money Laundering Act section 11 paragraph 1—in accordance with the EU’s AML Directive as stated above—requires the CDD to be performed before the business relationship is established or before the transaction is carried out. The bill specified in section 11 paragraph 2 that intermediaries must fulfil their CDD as soon as the contracting parties have a serious interest in carrying out the arranged legal transaction and the contracting parties have been sufficiently identified. There is no room for discretion in this case, the law is clear with regards to the timing of carrying out CDD. Auction houses would fall under the definition of intermediaries as they work on commission and in most cases never obtain legal title to the artworks. There are of course exceptional cases in which auction houses act as art dealers buying and selling art, however, this is not common practice.

Interestingly, the regulation specifies exceptions for public auctions held by courts or other authorities where the CDD may be performed after or at acceptance of a bid (section 2 paragraph 3 and 4). The interest group’s statement therefore offered a similar addition to the draft bill which would allow auction houses to perform CDD at the latest after acceptance of a bid, but before accepting payment and transferring the artwork (Berking, 2019). While these additions were not accepted in the regulation, in effect, art intermediaries were taken out of section 11 paragraph 2, thus, not having to fulfil CDD as soon as there is a serious interest in carrying out the transaction. Although this is not what the interest group was hoping for, it does seem like a simplification.

The difficulty of this, however, lies in the amount of people at an auction which makes it almost impossible for the auction house to identify everyone quickly and in line with the requirements, so they had requested a different time frame and requested that it would only be done with the actual business partner since not everyone that registers for an auction spends EUR 10,000 (I15/AH/GER). To make the letter of the regulation more operable, the auction has established the practice of asking beforehand through an online questionnaire how much money people want to spend, and some do let them know. This doesn’t work on every platform, but many let them know and then they can see in advance whether video identification is necessary or not (I15/AH/GER). This strategy makes up for the limitations of the law, makes it more practical. The explanation of an art dealer comes to mind how it does not happen that people just come in from the streets and buy something, the purchasing process is at times a lengthy one. The process relies on the acquisition of specialised knowledge and not every interested party is a

buyer. This is different to other sectors. An art market actor explains: 'Because they are people well-known to me, we rarely sell to people I never see again or with whom I never speak to again' (I02/AG/GER), confirming the socially embedded, trust-based nature of the art market. In this example, an art market actor again adapted their internal practices to be able to comply with the AML obligations in a way that accommodates for the practicalities of the market. From a legal endogeneity perspective, the development of such checklists, templates, and standardised documentation can also be understood as a process through which discretionary interpretations of AML obligations are formalised and rendered organisationally legible.

Interestingly, in the UK as an example, in their consultation, HMT recognised exactly this potential problem of identifying customers before concluding the sale at auction asking respondents for views on the practicability of conducting CDD in all cases where there is a realistic possibility the relevant threshold will be met (HM Treasury, 2019). Another challenge the HMT recognised around auctions is the difficulty in predicting the eventual price of an artwork and therefore the challenge in determining beforehand whether the threshold of conducting CDD is met (HM Treasury, 2019), again, exactly the problem the German art market actor provided. The timing of carrying out CDD measures was explicitly addressed in the UK by way of the latest BAMF AML Guidelines: Part I paragraph 63 specifies that while a transaction may be agreed before CDD is performed, the CDD must be carried out before the transaction is concluded, meaning the artwork is released and the transfer of title completed (BAMF, 2023a). Applied to auctions, CDD measures must be applied to the successful bidder prior to the release of the artwork even if it may not be possible to apply CDD measures to every bidder who registers to bid prior to a sale (BAMF, 2023a). This applies of course only where the nature of a delay in providing CDD information does not suggest that the customer is deliberately being evasive, or there are any other red flags. In these cases, 'the AMP should consider whether to enter into the transaction with the customer at all and determine whether to make a suspicious activity report' (BAMF, 2023a, p. 16).

The simplification in the UK for auction houses to perform CDD before the transactions is concluded, meaning payment is received, the artwork is released, and the title transferred, allows for practical application of the regulation to the art market. It is based on consideration of business practices specific to the art market and represents a translation of a standardised regulation into practice through the BAMF guidelines. The UK can thus, be seen as one example where a trade association exercised discretion through the lens of the socially embedded art market. These adaptations are shaped not only by the AML regulation, but also by embedded market norms and professional experience. While German auction houses at least in once case have adapted their internal practices and developed workarounds to reduce the number of CDD

they perform on non-customers, this is obviously not an ideal scenario. Preferable to every art market actor developing their own solution would be a uniform guidance by the regulator. Whether the German supervisory authorities will work on a more relevant and practicable approach tailored to the different sectors, thereby also acknowledging the differences in the non-financial sector, remains to be seen.

8.5 Different Mode of KYC⁶⁴

Recognizing that the art market is a network of interpersonal connections, the current AML regulatory framework in some sense is not relevant to the practicalities of the art market as it does not capture it all. Under the assumption of the AML framework, technology plays the bigger role: Customer data is collected and stored in sophisticated KYC tools, customer ratings are based on elaborate customer risk scorings. In the art market reality, knowing your customer is much more interpersonal. The question at the beginning of every KYC process is the one of who actually is your customer? This question may have a different answer in every sector. In the art market, new clients are often introduced by the artists himself or by another contact (I19/AG/GER). It is very rare that a new customer has no relation to the art gallery. If the context of the customer is already established, how new is this customer to the art market actor? How effective is it to ask them for their ID when you already know so much more about them? I will come back to this. For now, let's look at the structure of the art market. One might argue that there is not one art market, but there are various smaller niche markets structured by the type of artworks. There is a dense network around Chinese artworks, for example, there may be a completely different, even smaller, network around British 19th century drawings. An art market actor explains how they know their small community of English furniture dealers and buyers:

The clients of the very top dealers of English furniture are known to me. They don't buy from me, but they're known to me. There are no new clients sort of developing. And if there is a new client developing, the dealer will try to keep them under wraps, and it will happen, it will last for maybe a year or two, and then all of a sudden, the dealer widens their vision, and they start looking at other dealers. And that's how it happens in my world. And it probably is the same way in the painting's world. You get somebody who, for example, is interested in a 19th century French artist, while all the dealers who deal in 19th century French art, within a year or two will know who that person is because you see them at auctions, you see them in galleries, you see

⁶⁴ The majority of this section is part of the publication of conference proceedings (Stoll, 2024b).

them in shows. [...] There are very few people around, when you go to a fair or auction gallery, there are very few people you don't know, you know, and if you don't know them and they're major buyers, it's only a matter of time before you do know them. [...] We are such a niche market, you know, the art world is very niche, and the antiques world is even tinier. And the porcelain and silver worlds are even tinier (I18/E/US).

In this case, the art market actor feels like they already know all the clients that would buy art from them. The various niche art markets tend to be quite specialised, and clients would generally be interested in one or some of those niche markets. How would you perform KYC on someone you already know? An art market actor explains:

What I find completely exaggerated is, of course, when we are dealing with clients that we know personally, where we are in constant personal exchange. This is also a matter for interpretation how I do the identification, it doesn't always have to be the ID card, it can also be that I have a close association with someone, or I have known someone since childhood, then I simply have to document this, I simply have to say, I already know the woman with whom I went to kindergarten. So, I have no doubt that it actually is that woman. This is sometimes time-consuming, and I find it unnecessary for regular clients (I14/AD/GER).

The formalities that are introduced with the AML regulations are perceived to be unnecessary. The purpose of KYC is to allow businesses to understand their customers, to better understand their objectives, and thus, reduce the risk from suspicious activity and being misused for money laundering purposes. When relationships in the art market are formed over years, the value a formal KYC process adds is questionable. These accounts confirm that personal relationships often substitute formal verification and art market actors instead rely on familiarity, reputation, and long-standing knowledge of clients (Becker, 2008; Velthuis, 2005b). An art market actor recalls:

Last week we had such a case, it was a new customer that I didn't know who bought for a relatively high amount, and so I wrote to him. But then he immediately sent his identity card, more than requested, heating bill, electricity bill, so that I could verify his address. But honestly, that's so stuffy, he's an academic who's been working in the field for 30 years, well-respected person, museum contact (I05/AD/GER).

The client in this case was known in the market, was a respected person in the market and thus, the formal KYC procedures are perceived to be unnecessary, without any added benefit.

One market actor reports how they would always google a new client: 'To be honest, I do now and have always when I get a business card, people are always googled, we do want to know who we're dealing with' (I14/AD/GER). It appears that in the art market, a different mode of KYC is established: Through the relational niche nature of the market, clients are closer to the

businesses than they might be in a bank. A market actor often has a one-on-one close-knit relationship with their client. A relationship that often developed over years. New clients are often introduced by someone already known. For instance, an art market actor clarifies:

You always know the customers, so I don't see the point of copying an ID card. We have top-class customers in our gallery, and you don't want to scare them away by being too bureaucratic. Just imagining that, honestly with some people, it really wouldn't work at all. We usually know personal details, i.e., address and place of work, but we don't ask them for their salary or where the money comes from. That would be really uncomfortable for me. Even if we sent them an invoice and it is not paid within a certain period, we are reluctant to ask where the money is and we don't send any reminders either, because it's all an upscale clientele and you simply know that the money doesn't matter, they are solvent, but something probably came up. I'm sure they just forgot to pay, and you don't want to scare away your customers (I19/AG/GER).

This is further emphasised by an art gallery: 'I know where my clients live, I know where the paintings are hanging, and I know where most of the paintings I sold are located now' (I02/AG/GER). The gallery elaborates:

All transactions are based on trust, for example, we sometimes deliver the artwork without having received the money. [...] We deliver the works via courier, sometimes we also visit the customers' homes, so if they have various works of art, they cannot decide which one they want or to advise on how the works should be hung. Of course, with institutions, we try to help form the presentation within the rooms as well (I19/AG/GER).

In addition to decorating their homes, delivering the artworks to their homes, art market actors reportedly know what kind of person they have in front of them. A German expert claims:

Art dealers are sensitive people who, I think, can see pretty quickly who they are facing. Quite simply because they also have a socially trained eye. Why? Because they need to move in extremely divergent social milieus. They move in the world of artists, which is often a precarious world. And they move in the world of collectors. And that is of course a completely different economic milieu. It is quite a prosperous, wealthy milieu. That means they move at two completely different ends of society, and they also have a lot to do with craftsmen. And those usually pretty well grounded, too. They simply have an eye, and they don't want to exchange ideas with someone who has a purely pragmatic relationship to art (I06/E/GER).

The same expert describes the relationship between an art market actor and their client: 'Because the relationship between a gallery and its client is usually quite personal. Not always, but very often' (I06/E/GER). Essentially, based on the dense relationships that are formed in the art market, a different mode of KYC has developed. Art market actors do not understand why they need to copy the ID when they know so much more about their client which is never going to be as good as the ID. In this context, the AML regulatory framework, again, does not seem relevant to the art market and requires shaping to account for market norms.

8.6 Chapter Summary

In this chapter, I analyse how art market actors have adapted their internal practices to comply with AML obligations. Compliance practices are fundamentally shaped by art market actors' understanding of money laundering and risk. Risk assessments, which form the cornerstone of AML compliance, require art market actors to reconceptualise their customers, products, and geographies through a regulatory lens that is often unfamiliar. I found the understanding of money laundering art market actors displayed in my study to be restricted to high amounts and cash transactions. In this way, the regulatory framework, or in this case the understanding of money laundering, can only partially be applied to the art market. This limited conception reflects the difficulty of translating financial-sector typologies into a relational market where illicit activity is hard to distinguish from legitimate business practices, thereby calling into question the substantive relevance of existing AML frameworks for the art market.

Secondly, the chapter builds on the observations from Chapter 5 on how AML requirements have disrupted established trust-based relationships and shows how art market actors have responded by introducing formal mechanisms to preserve them. The obligation to identify customers and beneficial owners conflicts with the central role of confidentiality and information asymmetry in the art market, where contacts constitute a core economic asset. To manage this conflict, one art market actor has adapted their internal practices by introducing formal contracts with advisors, committing not to misuse disclosed customer information. These contractual arrangements are not substitutes for regulation but compensatory tools that address perceived gaps in the AML framework, particularly its failure to protect market actors against the commercial risks associated with disclosure. Thus, these adaptations are shaped not only by the AML regulation but also by embedded market norms and professional experience. Where long-standing relationships exist, informal norms and reputational sanctions continue to govern behaviour, suggesting that AML compliance is layered onto, rather than replacing, existing relational governance structures.

The chapter then examined the case of customer identification at auctions, illustrating the mismatch between statutory timing requirements for CDD and the operational realities of sales at auction houses. One auction house has responded by developing workarounds—such as pre-emptive inquiries into bidders' intended spending—to reduce the number of unnecessary identifications. These adaptations expose the limited practicality of uniform AML requirements when applied to diverse business models within the art market.

Finally, I argue that art market actors may apply a different mode of KYC than the one assumed by the AML framework. In a market characterised by small, interconnected networks and long-

term personal relationships, KYC is frequently based on social knowledge, repeated interaction, and reputational awareness rather than on formal documentation. Formal identification procedures are perceived as adding little value where clients are already well known within the market, and in some cases as actively undermining trust. This divergence reveals a fundamental disconnect between the AML regulation—premised on transactional anonymity and technological monitoring—and the relational reality of the socially embedded, trust-based art market.

The adaptations examined in this chapter show that the participants in my study have largely sought to accommodate AML obligations in ways that minimise disruption to existing practices. While these adaptations demonstrate a degree of flexibility and creativity, they also expose the limited alignment of the AML regulatory framework with the nature and structure of the art market.

Chapter 9 Interaction

9.1 Introduction

This chapter looks at the interaction between the art market and the regulator to answer the research question as stated in Chapter 1.2 of this thesis: To what extent and in what ways did art market actors interact with regulators during the development and subsequent implementation of the EU's fifth AML Directive, and how do art market actors perceive the consequences of limited or inadequate interaction for their compliance practices?

Focusing on interaction between art market actors and supervisory authorities, I analyse how regulatory discretion is shaped through, and in the absence of, direct engagement with regulators. I demonstrate how limited interaction reinforces reliance on socially embedded networks and intermediaries as analysed in Chapters 7 and 8 of this thesis, thereby influencing how AML obligations are interpreted and enacted in practice.

9.2 Limited Interaction with the Market

The EU's fifth AML Directive (2018/843) followed the ordinary legislative procedure which involves the joint adoption of legislative acts by the European Parliament and the Council of the EU following a proposal from the EC (European Union, 2024b). The proposal for the EU's fifth AML Directive was adopted on 05 July 2016 (European Union, 2024a). In this original proposal, art market actors are not considered (European Commission, 2016). Opinions were collected as part of the regular process from the Economic and Social Committee, the European Data Protection Supervisor, and the European Central Bank, naturally, none of which discussed the art market specifically (since it had not been mentioned) (European Union, 2024a). The first reading included various discussions with the addition of art market actors as obliged entities mentioned for the first time in the analysis of the final compromise text with a view to agreement dated to December 2017 (European Commission, 2017). The Directive was then signed by the President of the European Parliament and by the President of the Council roughly six months later on 30 May 2018 (European Union, 2024a). Though the EU did not publish market opinions in this case, and thus, it is unclear whether a consultation with the art market has taken place, CINOA has published a position paper on their website dating to April 2018—shortly before the EU's fifth AML Directive was adopted (CINOA, 2018). Any changes to the proposal due to this position paper were highly unlikely, simply due to the timing of it. In fact, CINOA in their position paper explicitly states that stakeholders had not been consulted about the

proposed revision of the EU's fourth AML Directive and that they were surprised to see the art market impacted in this way (CINOA, 2018). In a later paper on the proposal for a Regulation of the European Parliament and of the Council on the prevention of the use of the financial system for the purposes of money laundering or terrorist financing, CINOA even claims:

In AMLD1, 2, 3 and 4 the trade in artworks was not mentioned, neither was it included in the Commission's proposed amendments in document *COM (2016) 450* final that have led to AMLD5. '*Persons trading or acting as intermediaries in the trade of works of art*' were added as obliged entities at the last minute to the AMLD5 by the European Parliament, without any prior consultation with the trade and without an impact assessment having been performed (CINOA, 2021, p. 2).

This confirms their earlier statement about the lack of a consultation with the market. Consequently, CINOA recommends to 'publish AML regulatory guidelines and technical standards at least 12 months before the regulation goes into force, including a definition of a "customer" as it applies to the art market' (CINOA, 2021, p. 4).

Unlike with the EU's fifth AML Directive, from July to November 2021, the EC publicly asked for feedback on their proposal for a Regulation of the European Parliament and of the Council on the prevention of the use of the financial system for the purposes of money laundering or terrorist financing (European Commission, 2021a). The proposed Regulation is part of the EU's package of legislation to strengthen the EU's AML and CTF rules. Three art market actors have responded to the proposal: The European Art Market Coalition (EAMC), CINOA, and the Antiquities Dealers' Association, British Antique Dealers' Association (BADA) (European Commission, 2021a). The EAMC is 'strongly opposed' to the conversion of the AML Directive into a regulation due to their belief that it will lead to 'further formalisation of rules that have too great a practical impact for the art market' (European Art Market Coalition, 2021). CINOA states that 'it has been a source of some confusion to us as to why small shopkeepers should also be required to carry out detailed customer due diligence on the very same parties who have been checked by gatekeepers, particularly if those gatekeepers operate from the same jurisdiction as the art gallery' (CINOA, p. 2). BADA, although a member of CINOA, wanted to make an additional statement (BADA, 2021). In this statement, they prominently criticise the regulations being based on a lack of information: 'The point we wish to make in this submission is that we find it entirely unacceptable that the policies of many of the world's governments, inter-governmental bodies and international organisations are being justified with information that originated from a single, unsubstantiated three-line quote given to a British newspaper journalist more than 29 years ago' (BADA, 2021, p. 7). The art market apparently feels deeply misunderstood and misrepresented in the regulation. The position paper from CINOA confirms

this in that it concludes with the notion that the proposal is ‘built on the false assumption that terrorism financing relies on transactions involving the art market within the EU’ (CINOA, 2018).

This feeling of being misunderstood is something that I encountered during most interviews for my study. Certain business practices which are perceived by the regulators as suspicious or noteworthy are considered normal business practices in this highly specialised and unique art market. A German expert states: ‘Because that’s actually the only thing that helps us, that we can talk to people who have so many projections about the art market in their heads, but don’t know it at all’ (I06/E/GER). The expert has understood the problem and wants to address being misunderstood by explaining the market, by talking to the regulators, and opening the dialogue. This shows the wish for interaction, for giving feedback and explaining the art market to the regulator. Another expert provides:

We would like the MEPs [Model European Parliament] to get a semblance of understanding to how dealers work. I think if you took a hundred people off the street and said, ‘What do you think antique and art dealers do?’ And I think they’d say that most of us are dilletantes who basically buy something for X and sell it for 10X and live very comfortably. And that may be true for some people, but it’s certainly not true for me and it’s not true for most dealers that I know (I18/E/US).

One of the core difficulties with introducing thresholds, and that exists generally with regulations (as mentioned before), is that one size does not fit all, and multiple realities need to be covered. Any threshold will be a compromise and cover things that may not have to be covered, and at the same time also misses things that should have been covered. The expert conveys the feeling of being misunderstood not just by the regulators, but also by the public. We again see the perception that art market actors are the victims; the others do not understand them. The regulators are seen as not listening, in turn they are talking to the art market actors through the regulations but are not heard. The interaction with the public, but also the regulator is reportedly experienced by art market actors as one-sided, leading them to feeling misunderstood and wanting to share their side. Combined with the unawareness of suspicious activity we explored in an earlier chapter, one could almost argue for an embedded ignorance in the art market. This tradition of secrecy and discretion within the art market presents a challenge to regulators (Burroughs, 2019). And the regulation has a problem as it always comes against the discussion and norms of the market. The conflict of the outside versus the inside, the public realm versus the private realm, manifests itself in this struggle between compliance and business, between regulation and commerce. Regulators are perceived to merely see the market from the outside; they do not see what makes up the market, such as

the dense relationships thereby increasing the art markets perceived resistance to adopt and follow AML regulatory compliance practices. This opens the question about regulation itself and how the art market can effectively be regulated.

9.3 Perceived Misalignment with the Market

None of the art market actors I talked had been in personal contact with their supervisor or other regulatory bodies. Contact, if any, went through external service providers and trade associations (who make up some of the experts I talked to), rather than through direct dialogue. This lack of personal contact may have led to the feeling of being misunderstood that was described above. One auction house highlighted that it would have been good if there had been contact as the general feeling is that the entire legislation included goods dealers and art dealers, but without understanding what that means in practical terms (I15/AH/GER). They felt that there is no proper understanding of the business as such, but rather the understanding is inspired by vague ideas from film and television, and specialist knowledge of the industry is rather thin (I15/AH/GER). This is where trade associations tap into. The question whether the media reports and the regulators' reply in form of adding art market actors to the money laundering laws are exaggerated has not been definitively answered. Throughout this time of discussion of the topic, certain sentiments seem to have developed. For instance, an expert recalls the interaction with the regulators to be hostile:

I also notice it when I am in contact with the Ministry of Finance or the FIU. And I keep saying, 'I think you're overestimating the problem.' I receive almost hostility, because they always feel like I'm trying to cover something up and like I'm trying to downplay the problem. And I don't want to downplay anything, I said to them, if there is a problem and we have data on it, I'll be the first to say, dear art dealers, please tackle this. It doesn't affect me, I don't deal in art, I don't care. But there's a real hostility to it and that's what I'm so amazed about because I think if you don't have any data, you can't deal with the art trade like that. And as I said, the reaction that always comes is 'We just don't have enough yet, we have to dig further, and you always just want to cover it up, you see, you deny that there is money laundering in the art trade' (I11/E/GER).

While the regulator side feels like the art market is hiding something, the art market feels misunderstood and wrongfully accused. This feeling of being misunderstood adds to what is perceived as a regulatory burden. And the amount of paperwork and bureaucracy is perceived to overshadow the benefits and objectives of the regulation. An expert adds:

To make a bureaucracy friendly is just a function of understanding what the dealer, what the person who's being affected by the regulation needs to do, and to look at it from their point of view. That's all you need to do (I18/E/US).

This is supported by a German expert who asks to let art market actors go by their business again as opposed to compliance:

It just makes me want to finally let the galleries work again. And treat them gently and don't confront them with all these allegations. Because from my point of view that is the real drama, that is really meaningless, without cause, as they say, simply all these insinuation practices, all these allegations have been made in the world (I06/E/GER).

The appeal to treat art galleries 'gently' emphasises the sensitivity of art market actors we have observed in earlier chapters. The expert continues saying exactly that:

This is a highly complex, difficult market, which of course also has its own laws due to its objects, but these are not negative per se, but are just peculiar, which are simply specific. And this specificity is often not understood, although if you listen, you can understand it very well, because, as I just said, a lot also depends on the fact that you work with unique items that don't exist in large quantities and which therefore have a specific pricing history that has extreme volatility (I06/E/GER).

The expert suggests that the regulators do not listen and therefore do not understand the specifics of the art market, bringing us to Brodie and Yate's (2022) criticism of poor understanding and lack of research being the basis of the current legislation calling into question the costs and benefits of the regulation. Another practical account of an art gallery provides their perception of the regulation:

Ultimately, we've got a problem with implementation, as always, we probably wrote a regulation and the costs of the regulation are always assessed in the back and of course, there are none, since writing a regulation doesn't cost anything. And I think that's also the problem with this legislation, they want to solve a problem and just cause people extra work. I don't think they had a plan on how they wanted to solve the problem, but just wanted to start off somewhere without a plan, without knowing what to do and what would work (I02/AG/GER).

The art gallery in this statement portrays the process of writing the regulation to achieve certain objectives, but without considering the practicalities of the market. Implicitly, the regulation cannot achieve its objectives if it is written "without a plan" (I02/AG/GER) and without considering the field it is trying to regulate. The perceived lack of interaction, lack of asking the market whether the regulation would fit its practicalities, reportedly results in high costs for the market ('just cause people extra work' (I02/AG/GER)) and low achievement of objectives ('they want to solve a problem' (I02/AG/GER)). The German art gallery here refers to the costs of a new regulation which are in fact assessed at the end of any new regulation in Germany. The costs are usually estimated for public budgets, for the economy, and for citizens.

In the case of the German AML Act implementing the EU's Fourth AML Directive (2018/843), the draft bill dating to October 2019 estimated the recurring compliance costs for real estate agents, art intermediaries, and tax associations for ongoing risk management at EUR 91,639.39 (calculating an estimated time of 72 minutes for 3,028 businesses) and the compliance costs for ongoing CDD at EUR 882,935.39 (Bundesregierung, 2019b). One-off compliance costs for the design of an effective risk management were estimated at EUR 1,753,666.20 and for the design of CDD at EUR 1,632,585.24 (Bundesregierung, 2019b). The costs are estimated according to the complexity of the obligation, the estimated time implementation will take, and the number of businesses that need to comply (Bundesregierung, 2019b). Whether these costs which are calculated by the German government based on very theoretical considerations represent the actual compliance costs of those businesses, might be a subject for further study.

Art market actors in my study portray the interaction with the regulator to be limited and inadequate. The allegation made here is that the legislator is not interested in their announced objectives but is perceived to only want to cause extra work. This is then relativised by saying they did want to achieve the objectives but didn't know how and felt like they needed to start somewhere. The sarcastic undertone that I observed in this interview to me shows resignation. It also shows the sentiment towards the lawmakers who ultimately do not bear the cost of compliance, who are seen to not care about the cost of compliance. This is mirrored by an earlier statement from an art dealer, saying that '[...] nobody cares at all whether another art dealer goes out of business or not [...]' (I05/AD/GER). This feeling of being misunderstood has an impact on the acceptance of norms which in turn impact the potential of the law in reaching its objectives. It may explain why actors in socially embedded non-financial markets rather turn to their peers or trusted relations than the regulator, why they would rather exercise tick-box compliance rather than meaningful compliance. Likewise, the expectations of the market towards the regulator and their fulfilment have an impact on the acceptance of norms. An art market actor explained to me how they thought the regulation is unimportant:

The regulation doesn't play a big role for most of the market. As a first step, regulators should see where in the market it applies and where it is necessary. Then they should inform people who are in the market. And then ask people who are affected whether they are affected and if not, why (I02/AG/GER).

They conveyed a feeling of the regulation being too abstract and done by people who do not know the market. They continue with: 'I think the acceptance of norms has a lot to do with whether those that are affected or are addressees of the norm understand and find themselves in what is expected of them' (I02/AG/GER). Again, there is the feeling of not being adequately

represented by the regulation, of not ‘finding themselves’ in the regulation. The question arises whether the objectives of the AML regulation are too abstract for the private art market actor to relate to. We further find us at the distinction between the outside, the ones that do not know the market, and the inside, the ones that know the market. Without ever having talked to the regulator, this art market actor assumes the regulator doesn’t know the market from how the regulation is written. The translation of the regulation into practice, the exercise of discretion, is steered by the different goals the supervisor and the supervised have. These different goals of supervisors and the supervised is related to the acceptance of norms. If my goal is to prevent money laundering and my supervisor’s goal for me is to follow the letter of the law, be it preventing money laundering or creating a paper trail, this directly translates to my acceptance of the regulation and my future compliance with the law. If I see the purpose in the regulation and my supervisor supports this purpose and audits me according to this purpose, my acceptance of the regulation will likely increase. Art market actors find themselves at the crossroads between art and business and regulation.⁶⁵ A regulation that was originally written for the financial services sector—a fact that is perceived by art market actors to culminate in the limited and inadequate interaction potentially leading to limited compliance or tick-box compliance.

9.4 A Misaligned Regulation?

This section examines how art market actors describe their limited and inadequate interaction with the regulator, how this leads to a perceived misalignment, and how this perceived misalignment impacts their attitude towards the regulation and regulatory compliance. In addition to the formal consultation processes which I explained in the first section of this chapter and the feeling of being misunderstood, the analysis here highlights how interaction is experienced through regulatory categorisation, administrative procedures, and supervisory expectations.

We established earlier that art market actors thrive on being unique, being a niche market, and they are not used to formal procedures. A UK expert explains:

And remember there's a culture of we're above it [all], we don't like control and everything else, but they're also just in the sign-up procedures, ambiguities. So, confusion, you know, these art dealers are used to the intricacies of old masters, but put them onto an HMRC website, or indeed

⁶⁵ Compare again how Verhage (2011) showed compliance as a constant battle between commercial interests and adherence to rules.

someone working in the art world, just trying to self-identify what their status is, you know, a drop box comes up and, you know, are they dealing in non-cash transactions? Just the classifications and the definitions and everything else, you know, begged lots of questions (I16/E/UK).

The undertone of this account to me seems humorous, almost belittling the art market actor with their inability to handle formalities. An inability they might be proud of since formalities are perceived as banal and not something one would want to spend one's time with. A German expert adds to it: 'I know galleries that don't even have a real computer' (I04/E/GER). Nowadays, not having a computer probably separates you from the masses since life without a computer seems almost unmanageable. Being special, unique, and unlike the masses is what characterises the self-conception of the art market. Naturally, not having a computer, being above such banalities seems to fit right in. An expert based in Germany recalls that the art trade was invited for discussions together with other high-value dealers as well as the gambling sector. For an exclusive niche market, this almost felt like an insult. They recall:

And there is also the FIU, and they used to have all the goods dealers relevant to money laundering, i.e., the jewellers, the gaming machines, the horse betting, so I thought I was in the totally wrong film, being invited together. Which is a huge mistake, in my opinion, real estate trade, used car trade, so I also thought what do we actually have to do with this scene?! (I06/E/GER)

The way the expert phrased it and described the real estate trade, the used vehicle trade as 'this scene' reflects almost a devaluation. This account conveys the feeling of wanting to have nothing to do with 'this scene'. Interestingly, the exact same thing happened in the UK, as an example, and was used by a UK expert to their advantage. The expert describes:

So, I'm kind of promising the competitive element, because in one of these consultation sessions with the Treasury, I sat around the table, and everybody introduced themselves and we were put into the same box, this was for consultation on economic crime, with lawyers, accountants, the property sector, art, and then, insult, the gambling sector, Well, I just had to go back to my members and go, 'Do you know what the Treasury did? They labelled us for the gambling sector. I mean, how evil is that? They have misjudged, you know, we've got to show them we're better' (I16/E/UK).

Here, too, the comparison with other sectors, such as the gambling sector, is described as an insult and as proof of the regulators not understanding the market and the peculiarities of the market. Despite the differences to the financial services sector, but also to other sectors such as the real estate and gambling sectors, the art market now was put together with them in the pot of obliged entities of the money laundering regulations.

Moving beyond the observed unwillingness to deal with bureaucratic formalities, there are other practical hurdles that come naturally through a regulation that was originally written for the financial sector, combined with limited and inadequate interaction between the art market and the regulator. I explain a few that I have encountered during my qualitative fieldwork.

For one, the regulation is experienced as too broad and lacking focus. An expert explains:

And the regulation will be written in broad terms. And it isn't specific, it doesn't focus on anything. And the splash effect of the regulation goes much further that wasn't necessarily intended. [...] But as far as we're concerned, we feel that the regulation should be better focused (I18/E/US).

The expert complains here of the regulation being too broad and the effects such a regulation will have through this broadness not being considered in the thought process. Overall, and I think that's the pain point that is addressed by the expert here, the regulation is written very broadly to fit more than one industry; it is not focused on one specific industry, and this is observed to be cumbersome for a focused implementation towards shared objectives.

Art market actors and experts further named the CDD as one of the challenges they face. Proper customer identification includes of course, knowing their name, but also their circumstances, their reasons for buying, their usual transaction pattern, basically everything you would need to know to be able to determine what behaviour would be suspicious. While proper customer identification goes well beyond copying an ID card, most art market actors found this to be the most difficult part. An expert emphasises this:

Difficult and a lot of work is making a copy of the ID card, especially when it comes to selling overseas. So, someone sees something in the auction catalogue and places a written bid, then you have never seen them, and they need to go through the PostIdent⁶⁶ procedure so that they can bid with you because you have never seen them. [...] That's just tedious. Or you have to get 200 copies of ID cards and after the auction you need to destroy 199 of them. [...] The big ones can do it, but it was a huge effort and it's difficult for the small ones. And if they do it on paper, then you have quite a lot of folders and then you have to keep the folders somewhere (I11/E/GER).

This report also highlights some of the peculiarities of the art market that are not accounted for by the law, such as the point of identification at auction when many people register, but only one wins the bidding and actually buys the work of art. The other relates to the internationality of the market and a lot of the business having transferred online and to overseas business. In contrast, supervisors state that copying the ID is the easiest part, whereas for some art market actors this seemed to be the most difficult task threatening to destroy the

⁶⁶ PostIdent is a method of identification and verification offered by the German post (Deutsche Post, 2025).

business deal, the relationship with the client. For instance, one supervisor stated: ‘This obligation to make a copy of your passport surely is no problem at all. Once a transaction is over EUR 10,000, you simply make a copy of their passport. And that surely is not a problem’ (I13/S/GER). This statement shows complete confidence in what they were saying, the complete belief that copying an ID card or a passport is the easiest thing about the money laundering obligations. Another supervisor supported this by saying:

And the easiest is of course the identity card. So, I think that’s really the simplest case, that the contractual partner is a natural person, and you have their ID. And that’s what got around the most, that you just have to do it. Whether it’s always the right person, where you have a copy or maybe it’s just the person appearing and not just the contractual partner or whatever, is an open question, but I think that’s pretty well in people’s heads by now (I12/S/GER).

An art gallery agrees: ‘Copying the ID card is easy, not technical, it is just uncomfortable’ (I02/AG/GER). The art gallery here illustrates that while the process of copying an ID card or a passport is of course not rocket science, the implications that it brings towards the relationship between the buyer and the seller, the disruption of this relationship by signalling a lack of trust, is what makes it difficult and hard to comply with in the art market. An expert further elaborates:

Basically, the most banal thing is what the regulator sees as a banality, the biggest hurdle is identifying the person, because nobody feels like doing that. And the moment you know who it is, so if you know my name, you google me and then you know, [...] it’s clear where the money comes from. Then you know the company straight away, you know straight away what it’s all about. I mean you’d have to be really stupid not to find out. And the sources where the money comes from are actually revealed very quickly if you know who it is. But the hurdle that someone is willing to show you their ID card is a psychological hurdle in the first place. A gallerist I’ve worked with for over 20 years says you don’t believe how difficult it is to get serious people you’ve known for a long time to hand out an ID card. And that’s just hard (I04/E/GER).

This perhaps quite dramatic account emphasises the delicate nature of asking someone for their ID which would introduce all those banal facts such as their age, their real name, etc. What seems to the outsider as such a simple task, to the art market actors feels like the most difficult. We encounter again, this different understanding of someone on the inside of the market and someone at the outside of the market which would ask for further collaboration and better (in terms of quantity and quality) interaction between the regulated and the regulator to bridge that gap.

The art market actor feels like they are special. The regulators do not treat them as special, on the contrary, they are treated like everyone else. Remember the perceived insult of putting the gambling sector at one table with the art market that was reported by two respondents. Such accounts affect how the regulation is accepted by the art market. The nature of the regulation leaves room for interpretation. A lot of discretion in the work is not captured by the law; the AML regulation and its compliance is discretionary and subjective. The intricacies of the art market lie mainly in the relationship with the customers. Remember how I observed earlier that they are in their clients' houses arranging the artworks. The relationships are built over generations, businesses are in the family, the sons, daughters, they are godparents to their children. In this situation with dense relationships, we need to think what compliance means without damaging the market in the way that it is set up. This criticism of the AML regulation in the context of the art market is not new. In fact, Brodie and Yates (2022) go so far as to conclude that these legislative shortcomings are due to poor understanding of the crimes to be regulated because of an inadequate evidence base on account of limited research. Consequently, the effectiveness of the regulation is called into question (Brodie and Yates, 2022). Independent of the art market, the AML regulations have long been critiqued for their lack of evidence-base and ineffectiveness. Money laundering as a crime and the AML industry as a bureaucracy have grown rapidly and in unforeseen ways without clear articulation of why money laundering should be a crime (Alldridge, 2016). Any negative aspects of making money laundering a crime and enforcing it, such as the large sums spent on a global surveillance and reporting system without being able to measure its effects, have been disregarded (Alldridge, 2016). Alldridge (2001) even goes so far as to state that non-compliance would not endanger the bank beyond the regulatory fines: 'There is little or no evidence for the claim that, leaving aside the effects of the AML regime itself, allowing banks to launder money for clients endangers the banks in question or the financial system more generally' (Alldridge, 2016, p. 13). Due to this, Alldridge (2016) considers the EU's claims that their interventions are to safeguard its financial markets as policy-based evidence making. However, with the moral obligations that come with the anti-policies (Kuldova, 2022), the reputational damage that comes with the publication of a bank allowing its clients to launder money through their business, is of immense scale and thus, another motivational factor for the banks to comply.

9.5 Tick-box Approach

This section concerns the observed consequences of the limited and the perceivably misaligned interaction of the art market with the regulator and the regulation regarding compliance practices.

I came across the expectation of the art market towards the regulator assuming that with implementing a regulation that requires you to follow formal procedures, the regulator would provide forms to fill out to follow those formal procedures. Instead, the money laundering regulation is a risk-based regulation (Tsingou, 2018), not a rule-based one. And as such, there is no one-size fits all approach. It is the nature of the money laundering regulation to be broad, to ask the obliged entity to think about the risks inherent to their specific business. Providing a form would therefore not be feasible to the objectives of the law. An art dealer contemplates:

Well, the interesting thing is that you always expect [...] some sort of official form, because it is a legal requirement. And I asked the lady from the FIU for some guidelines. But then she says, 'No, there's no guideline, I can't give you one, and there won't be a guideline.' So, the association developed one where the essential questions simply need to be ticked off. [...] So, we did it quite informally and renew it every two years by simply ticking it off [...]. But it surprised us a bit, to be honest, because normally you would expect the authorities to have a flood of forms and that would also be helpful for us. Basically, there is a system, but they don't give you a system to use, you have to create it yourself. We thought that was pretty stupid, to be honest (I14/AD/GER).

The difference between a rule-based and a risk-based approach is purportedly not known to this art market actor. Considering the missing guidance through some sort of official form, the art market actors in this case have developed their own form that can be used by them and re-used by other actors. They developed their own re-usable tick-box approach to make up for the failures they saw in the regulation and with the regulators. One could argue that this goes against the intention of the regulation and that there is a reason there are no official forms provided to be used by everyone. This notion could have been explained in some form of interaction between the regulator and the regulated. Because the intention behind a risk-based regulation is that one size does not fit all. Instead, one would want businesses to reflect on their exposure to risk and adjust internal controls accordingly. Moreover, producing documents only for the benefit of the regulator and for demonstrating compliance, but not actually for the purposes of the regulation does not contribute to the effectiveness of said regulation. In fact, Black (2012) explains how the financial crisis demonstrated that regulators were not relying on firms' internal controls, but rather on a skilful representation of those controls. On the other hand, we are talking about very small businesses with similar business models that must assess

their risk according to (in the law) pre-defined categories. A form just provides the framework to be filled.

While the art dealer was unable to provide me with their form for the risk analysis, they did provide me with their form to document the performed CDD. Two forms, to be exact, one for natural persons and one for legal persons. These forms were developed by the trade association and distributed to their members. The forms simplify the documentation of the purchase or sale of an artwork to fulfil the requirements of the German AML regulation as well as the German Cultural Property Protection Act. Those two regulations have been combined and the forms adjusted to meet both requirements. To start with, the form allows for two reasons the documentation is done: You can either tick the box for transaction over EUR 10,000 or you can tick the box for suspicion. The form then stipulates the documentation of the details of the sale or purchase: Invoice or order number, invoice or order date, and information on the artwork. In the next section, information on the seller or buyer is collected: Name, date of birth, nationality, address, passport details. Another tick box gives the art market actor the choice between a physical copy of the passport was done and is attached or a digital file of the passport was saved. For a legal person the passport is replaced by a copy of the commercial register entry. The next section of the form is dedicated to the identification and verification of the ultimate beneficial owner. The last section concerns the degree of due diligence that needs to be carried out. There is a box to be ticked for situations where not enhanced due diligence is necessary. If this box is ticked, the form is completed. If enhanced due diligence is deemed necessary, the form provides four possible reasons: The risk analysis identified enhanced risks, the contracting party is a politically exposed person, the contractual partner is situated in a high-risk country, and the transaction is a particularly complex, large, unusual transaction or the contractual partner is obviously not interested in the work of art but in the transaction itself. The last reason especially allows for interpretation by the art market actor. Any measures taken can be documented in this section, as well as any difficulties encountered when identifying the ultimate beneficial owner. Overall, the form seems to provide quite a quick and easy method of documenting the CDD performed for relevant transactions. It also represents an answer to handle public compliance by private market actors. This is a core response to CDD requirements and has been in place at banks for years and which I also observed in supervision: All participants were asked whether they thought the regulation gives enough leeway to account for differences in the market, for example, considering the size of businesses or the range of products. One supervisor responded:

Difficult. So, it is of course a very demanding approach from the regulation to apply to everyone. [...] Sometimes I think to myself that this is one of the reasons why the regulation is kept so

general and vague, which means that the regulation is not always well understood and that these interpretation instructions are really needed. So, enough wiggle room, I think, in part (I09/S/GER).

When there isn't enough wiggle room so to say, one may see businesses applying a general, tick-box approach. One supervisor reported how they handle such tick-box approach when they come across it:

That depends, as a rule there are deficiencies that can be identified and then there are indications. Of course, I can't force anyone to live it properly and do it for a whole day, five or six hours, to prevent money laundering. That depends on how serious the defects are. But the probability that things will then be forgotten or shortened is high. And then we give you the relevant information. Our approach is also to show how to make it as lean and fast as possible. Our documentation forms are structured in such a way that you can get through with ticking boxes. So, you don't have to fill out anything in writing, just tick the box. So, if they have all the IDs, they can get through with ticking boxes. And when those responsible see how quickly this can actually be done, they are often grateful. So, we show ways how to do it quickly. But certain duties simply must be fulfilled (I09/S/GER).

Interestingly enough, the supervisors themselves in this case have developed a tick-box approach, an easy way to comply. Of course, tick-box does not (always) equal compliance and especially with a risk-based regulation, one may argue that tick-box is exactly the wrong approach. Nonetheless, in this case, the supervisor actively participates in the act of compliance in that they offer not just advice, but also shortcuts through forms that can easily be used by businesses. The active role the supervisor takes on here shows engagement and effort on the supervisor's part. It further shows how regulatory compliance, including supervision, is a collaborative process. Tick-box attempts can be the result of such collaboration and not necessarily show a lack of engagement with the regulations.

I want to highlight two thoughts from this section: The first concerns the—arguably inherent—misalignment of the AML regulation with the specificities of the art market and the role interaction may play towards bridging this gap. The art market may develop tick-box approaches when perceiving the regulation as an unnecessary burden and the interaction failing to convey the purpose of the law. The second thought concerns the active engagement and interaction of one supervisor I observed: In this case, the supervisor worked with the supervised to develop a way to handle the unnecessary burden while still contributing to the objectives of the law, thereby exercising discretion not just through the lens of the market, but also through the lens of the regulation. Both thoughts highlight the importance of interaction in achieving meaningful compliance.

9.6 Interaction to Inform Regulatory Practice

During the interviews I observed a—perhaps obvious—difference in motive as well as objectives the supervised and the supervisors pursued. For instance, an expert from the UK stated:

If you talk to an art dealer, their primary concern is that they are going to be accused of and potentially get the public humiliation of being labelled a money launderer. So, they get incredibly concerned about the actual risk of money laundering, and that they're going to, you know, unwittingly, have transacted with a money launderer, and then they'll be exposed. And it's not even the fine or the threat, it's their reputation. It goes back to this point of snobbery. Whereas if you deal with either the treasury or the HMRC, the enforcement agencies, it's all about the process, almost irrespective of the consequences. It's, you know, well if a money launderer gets through, but you have followed the process to the letter and you've documented it and you've shown that you've done this and everything else, all is forgiven. I mean, I'm making a little bit of a joke, but, you know, there is a gap (I16/E/UK).

The expert describes an almost perfect market actor who not only wants to follow the letter of the regulation but wants to contribute to the objectives of the law. They also describe the relation between the art market actor as a snob and their reputation. Compared to earlier accounts, there seems to be some ambiguity about whether art market actors want only to follow the process and use an easy tick-box approach or whether they want to substantially engage with the public purposes of the AML regulations. Interestingly, the allegation that the supervisor only cares about the process compared to the actual objectives of the regulation was supported by a statement from a German supervisor when asked whether there is anything in their opinion, the art market is missing to effectively prevent the misuse for money laundering purposes answered with:

No, actually it's the same as with other high-value goods dealers. If you ask about the origin of the money, money laundering is only about cash payments. So, if you then ask why cash and you get their ID card, then the art dealer is completely off the hook. Even if it still turns out to be money laundering afterwards, then he has already fulfilled his obligations, so he won't get in trouble. I couldn't think of anything that could be done additionally for the art market (I13/S/GER).

This statement may allow the observation that supervisors just want them to follow procedure, whereas art market actors want to prevent money laundering. This contrasts the observations I made in the previous section regarding the tick-box approach to regulation by the regulated. Perhaps too broad a generalisation, it allows insight into the self-conception of the art market as well. The self-conception of wanting to fight against money laundering while supervisors are too much of bureaucrats to support this. Is this just good marketing on the art market's part or could we perhaps go back to what we established earlier, that reputation is one of the most

important assets in the art market as the dense relationships that sustain the market depend on it and ask ourselves: Is reputation more important than procedure? But wouldn't following the procedure lead to good reputation and not following the procedure in turn lead to bad reputation? If we're talking about following the process, the letter of the law, without so much as caring whether we prevent money laundering with following the process, can we still talk about the effectiveness of the law in achieving its objectives? Turning back to the power of reputational damage and reputation being a key asset in the art market that is built on close relationships, let's look at the traditional deterrence approach. This approach as the basis for the command-and-control strategies assumes that deterrence motivates through fear of punishment or rational calculations of potential costs of sanctions versus the perceived benefits (Parker and Braithwaite, 2003). It only applies in some circumstances, and the deterrent effect of sanctions highly depends on their certainty, severity, celerity, and uniformity (Parker and Braithwaite, 2003). Corporations add other factors when thinking about compliance or non-compliance, such as the indeterminate costs of bad publicity on the firm's reputation or the maintenance of legitimacy (Parker and Braithwaite, 2003). Such informal sanctions are often triggered by formal sanctions (Parker and Braithwaite, 2003) and generally have a greater deterrence effect (Paternoster and Simpson, 1996) thereby emphasising the deterrence effect this may have due to the importance of reputation in the art market.

In addition to the observed perception of different motives, the supervised and the supervisors use different vocabulary and interpret the regulation differently. A UK expert explained:

But if they have given an invoice or issued an invoice and issued their bank account details, the person who's buying the good can transfer the goods into the account. And in financial services terms that could be seen as having accepted the money. We were arguing that that is not the end of the deal, but the end of the deal actually is when the dealer physically delivers the work of art, and the title changed it in that, they don't necessarily have control of that, but you may not want to lose the deal, so you get the money (I16/E/UK).

This different understanding of the supervisor and the supervised that is described here is specific to the art market. The timing of carrying out CDD measures was addressed in the UK guidance: Paragraph 63 stipulates that in general, CDD measures must be carried out prior to the completion of a transaction. In the case of the art market, the conclusion of the transaction results in the release of the work of art and the transfer of title, this means that at art fairs, a transaction can be agreed ahead or at an auction, CCD does not need to be performed on every bidder, but only the successful bidder and before the artwork is released. The reflection in the UK guidance is an example of the regulatory process in the UK with regards to money laundering

in the art market and supervision of its compliance. The problem was identified, namely, when is a transaction completed according to the letter of the law. This was then addressed with the HMRC as the responsible supervisor and was resolved through discussion and adjusting the guidance document. While for a bank or insurance, the definition of completion of a transaction might be quite clear as the time when the money is transferred, art market transactions hold different characteristics. These characteristics which are not accounted for in the regulation can be and must be addressed by implementation guidance which of course is agreed with the official regulatory and supervisory body. Otherwise, the guidance wouldn't hold during a money laundering audit. The UK guidance is published by the BAMF who is the main trade association in the UK and according to their website, 'represent the interests of the UK's large and diverse art and antiques market in its contacts with government' (BAMF, 2023b). The guidance could therefore essentially be called a piece of private regulation which aims at filling the gaps in the law, the state-based regulation. To engage a trade association which is trusted by the market may work towards the legitimacy of the regulator and the regulation. In this context, Riles (2011) has contributed foundational work advancing socio-legal understandings of global financial markets.

To illustrate similarities and differences of state-based and private regulation, Riles (2011) describes two approaches to policymaking using the examples of the early twentieth century American regulatory state and the Japanese financial bureaucracy's so-called 'administrative guidance' in the swaps industry to illustrate the different forms the use of technical knowledge in law-making can take. Riles' (2011) first example concerns a reformation project of the Uniform Commercial Code (UCC) in 1951: The American regulation of collateral is governed by Article 9 of the UCC and its reform wanted to propose a new set of rules for collateral. The objective was to propose a regulation that served the needs of the market and for that, the drafters obtained information directly from the market (Riles, 2011). Consequently, the UCC project sought to mix other forms of technical market expertise, such as finance, merchant relations, and ethnography, with legal expertise (Riles, 2011). It depended on the conception that regulation should be a means to an (economic) end (Riles, 2011). The legal expert, in this view, is a master planner who confidently draws on different kinds of expertise to solve problems with the aim of making regulation conform more to market participants' daily business (Riles, 2011). Riles (2011, p. 95) further argues that this approach is also the foundation of the state's legitimacy: 'Legitimacy depends on effectiveness in solving real world problems'. The neoliberal reforms in Japan in the 1990s and 2000s in the form of the resolution of the problem of regulating netting in the derivatives market are used by Riles (2011) as the second example. In the case of netting regulation, the aim of the regulators was to give legal

effect to already established, informal market practices (Riles, 2011). The Japanese policymaking practice called administrative guidance basically describes nonbinding and private dialogues between the regulator and the client:

One of the striking elements of the policy process is the bureaucracy's extensive use of private parties to assist with its work. Japanese bureaucrats call on the staff of private sector entities they regulate to conduct research on particular questions, they summon them to explain particular transactions, products, or economic problems they seek to understand, and they even involve them [...] in the process of drafting laws and ordinances (Riles, 2011, p. 97).

In both examples, the regulators use market knowledge to inform their regulatory practice, thereby involving the market, collaborating with the market. While this increases the practicability of the regulatory approach, it also increases the acceptance of the regulation in the market. I would further argue, that involving the market in the regulatory process also increases the trust between the regulator and the regulated. According to Parker and Braithwaite (2003), a significant theme is the importance of trust in securing compliance: The trust between the regulator and the regulated party builds efficiency and improves the prospect of compliance. First, the encapsulated interest conception assumes that the trusted person has an interest in maintaining a relationship with the trusting person and this interest gives the trusted person an incentive to be trustworthy (Hardin, 2006). In this conception, trust depends on ongoing relationships and is thus, a relational concept (Hardin, 2006). Second, the trustworthiness of the trusted person is grounded in moral commitments or third, in the trusted person's character or disposition to be a relevant kind of person one can trust (Hardin, 2006). By involving the market and building on their knowledge, I would argue that the regulator shows not only that they trust the market and their knowledge, but also that they have the right intentions towards the market. Both of Riles' (2011) examples demonstrate an impulse toward collaboration, toward a way to integrate market participants' perspectives into regulatory practice, and toward using the meetings between regulators and market participants to shape those perspectives. '[i]n both cases, the point of contact—the basis for collaboration—was the mutual respect the two sides—state actors and market representatives—had for one another's legal expertise, and the shared vocabulary, the shared set of technical practices' (Riles, 2011, p. 108). The mutual respect that will build towards mutual trust. This collaborative approach can also be seen in the earlier example of defining the time of completion of a transaction for the art market. The UK regulatory and supervisory body here turns to the market to make the regulation more practicable, to tailor it to the market. This tailoring is done through collaboration. Monitoring and steering—what Parker and Braithwaite call regulation in the new regulatory state—is also used by companies in the form of benchmarking: 'Everyone is learning how to continuously improve by monitoring everyone else' (2003, p. 124). The state not only

steers more, but steers in a way that is mindful of the steering done by business organisations and learning by monitoring and partially decentralised steering increasingly replaces command-and-control (that state-cantered process of legislative action combined with administrative enforcement) (Parker and Braithwaite, 2003). This new regulatory state recognises that policy outcomes are not solely the product of central government, but a complex interaction between law, local government, administrative agencies, the voluntary sector, the private sector, schools, and families, each of whom interact with one another (Parker and Braithwaite, 2003). Any regulatory intervention that attempts to change social institutions will face a so-called regulatory trilemma of effectiveness, responsiveness, and coherence: That means it is either irrelevant or produces disintegrating effects on the social are of life or on the regulatory law itself (Teubner, 1987).

Based on the increasing involvement of multiple public and private actors and their differing understanding of regulation and compliance with said regulation, public authorities increasingly depend on information by private actors to establish the extent of compliance (Van Wingerde and Bisschop, 2022). Van Wingerde and Bisschop (2022) illustrate this using the example of AML regulation which is built on the responsabilisation of private actors, the obliged entities in regulation. AML regulation is risk-based in nature and thus, the form compliance takes for individual obliged entities depends on the risk assessment they perform (Van Wingerde and Bisschop, 2022). Regulators have since realised that the ways in which obliged entities operationalise the AML regulation in practice are not sufficient to prevent money laundering (Van Wingerde and Bisschop, 2022).

One of the limitations of the responsabilisation of businesses and thus, the privatization of governance is that businesses can interpret the regulation in a way that is favourable to them (McBarnet, 2001; Van Wingerde and Bisschop, 2022). For regulators to understand whether businesses are motivated by deterrence and therefore may follow more of a tick-box approach to regulation or whether they are motivated by a normative commitment to comply, detailed knowledge of the market and how it operates is required (Van Wingerde and Bisschop, 2022). It is further imperative for regulators to understand how businesses shape compliance in practice (Van Wingerde and Bisschop, 2022).

Through AML regulation being a risk-based regulation, regulatory bodies depend on ‘the cooperation and information of regulated businesses to gain sufficient insight into how businesses operate, how they have organi[s]ed their compliance processes, how their internal controls function, and the result thereof’ (Van Wingerde and Bisschop, 2022, p. 65). To some extent, it is at the regulated businesses’ discretion when and how they inform the regulator

and they thus control the information they relay to their regulator (Van Wingerde and Bisschop, 2022).

The observed differences between the regulated and the regulator are solved by collaboration, by guided interaction, which is based on mutual respect and mutual trust. This mutual trust improves regulation by increasing the practicality of the regulation using market knowledge when making, but more importantly in this case, applying the regulation.

9.7 Chapter Summary

This chapter analysed a recurring theme in the accounts of art market actors, namely the perception that regulators do not sufficiently understand the art market as a distinct field. Art market actors consistently emphasised that they operate in a niche market characterised by informality, personal relationships, and a resistance to bureaucratic formalities. The interaction during the development and subsequent implementation of the EU's AML framework was perceived by art market actors to be limited and inadequate, themed by misunderstandings and misalignment. Several participants to my study recalled being invited to meetings together with sectors such as gambling or used-car trading. These encounters were experienced as devaluing and as showing a lack of differentiation in regulatory thinking. Importantly, these encounters did not resolve misunderstandings but instead made them more visible. These misunderstandings also make me question the effectiveness of the work trade associations do as regulatory intermediaries. Such a question may be subject to further study.

Secondly, art market actors conveyed the feeling that the regulation was written for the financial sector and therefore, lacks the applicability to the art market. The perceived consequences of limited interaction become particularly tangible in the way art market actors approach AML regulatory compliance. Participants described the regulation as being written in broad terms and designed to apply across multiple industries. This breadth was experienced as shifting interpretive responsibility onto the regulated. Furthermore, the regulation can even be seen as damaging the structures of the market. Brodie and Yates (2022) have already observed the regulation showing a poor understanding of the crimes to be regulated, calling the effectiveness of the regulations into question. This criticism can be tied with the wider criticism of AML regulation in general, most prominently by Alldridge (2016) who argues that the AML regulation has risen without answering why money laundering should be a crime.

Specific guidance for and increased interaction with the art market is needed to enhance the practicability of the law, thereby also enhancing the potential for the regulation to be

effective. As a potential consequence to the limited and inadequate interaction, art market actors have developed quick and easy ways to comply, for example through tick-box forms. Rather than a tick-box approach, if the regulation is understood (potentially through specific guidance), the purpose of the regulation to encourage reflexivity of obliged entities' circumstances and related risks may be reached more effectively.

While the degree of compliance certainly depends on the degree of understanding the regulation by the regulated, I would argue that it also depends on the regulated accepting the regulation and the regulator. This acceptance is based on mutual respect and mutual trust. Increased collaboration and interaction would improve the regulation and thereby also its effectiveness. Although not all cases analysed in this chapter concern the direct interaction of the regulated with the regulator, they do concern what is not being said at the intersection between the regulated (the private) and the regulator (the public); they record the absence of interaction. In this absence, it seems natural for art market actors to rely on their socially embedded networks and intermediaries, rather than the regulator.

Chapter 10 The Regulator

10.1 Introduction

This chapter explores the role of the counterpart to the regulated—the regulator. In this chapter, I integrate empirical findings with the theoretical perspective outlined in Chapter 4 of this thesis to examine how the current AML supervisory approach to the non-financial sector in Germany influences supervisory practices and compliance behaviour. I thus, examine regulatory discretion from the perspective of supervisory authorities, analysing how organisational and operational structures, limited resources, and sectoral expertise shape supervisory practices in the non-financial sector in Germany. By situating supervisory discretion within the socially embedded characteristics of the art market, I explore how regulatory expectations are prioritised, communicated, and enforced in practice, and how this prioritisation, communication, and enforcement practices impact AML regulatory compliance in the art market.

I explain the organisational and operational set-up of supervision in Germany in the first section of this chapter. The chapter then continues with the identification and registration process or rather the lack thereof. In the next section, I analyse the training supervisors received on the art market and AML supervision in general. I discuss the level of stakeholder engagement in the following section of this chapter considering it furthering the mutual understanding between supervisor and supervised. The last section concerns the risk assessment as an essential part of a risk-based approach to supervision.

10.2 Organisational and Operational Set-up

As established in Chapter 3.5 of this thesis, AML supervision of art market actors in Germany is decentralised. Businesses from the non-financial sector were added to the EU's third AML Directive (2005/60/EC) as early as 2005. Consequently, AML supervisors of the non-financial sector have been doing this since the implementation of that regulatory addition. Through the de-centralisation of supervision, the responsibility for AML supervision of those non-financial sector businesses is situated on different organisational levels in the 16 federal states. This stems from the legislative competence (Gesetzgebungskompetenz in German) as it is defined and anchored in Germany. Legislative competencies are divided between the federal government and the governments of the federal states (Bundesministerium der Justiz, 2024). This means that the German Bundestag cannot pass laws for which the federal states are

responsible, and vice versa (Bundesministerium der Justiz, 2024). The division of legislative responsibilities is also regulated in the German constitution: The basic rule for legislative competence is that the federal states have the right to legislate unless the German constitution grants legislative competence to the federal government (Article 70 paragraph 1 of the German Constitution) (Bundesministerium der Justiz, 2024). As I have observed during my research, money laundering supervision in some federal states lies with the Senate⁶⁷ or the state government, and thus, the highest administrative level; in others it is embedded with district cities, a low administrative level.⁶⁸ One might argue that the administrative level directly translates to the importance a federal state places on the money laundering supervision of the non-financial sector. In some cases, however, the level of organisation might also result from the general set-up in the federal state or the personnel available. These varying levels of administrative levels the supervision lies with also result in further fragmentation: In case a federal state has one state government, AML supervision of the non-financial sector would be centralised for this federal state. If a federal state has placed supervision with rural districts and district-free cities, there may be 50 different supervisors in one federal state.

There is no comprehensive list of supervisors available upon open-source research. When I gathered information for my empirical study, I went federal state by federal state to understand which administrative level the supervision was placed in. I then reviewed the available websites (if there were any) and collected the supervisors and their contact information per federal state. In total, I was able to identify 66 supervisors with available contact information (authority or individual). However, the FATF mutual evaluation report on Germany from 2022⁶⁹ states that there are over 300 supervisors of the non-financial sector (FATF, 2022a) and one of the participants in this study confirmed 330 as the number of individual supervisors (I10/S/GER). This makes me question how obliged entities are supposed to know who their supervisor is, unless they are contacted by them.

⁶⁷ Only three federal states in Germany have a so-called Senate (Berlin, Bremen, Hamburg). In all other federal states, the federal state government is called state government or land government. The responsibilities of each federal state government are anchored in the federal state constitution. Details can be found on the individual websites of the respective federal states.

⁶⁸ Each of the federal states has its own administrative structure. The larger federal states are divided into governmental districts. Every federal state except Berlin, Bremen, Hamburg consists of rural districts, district-free cities, or cities that are districts in their own right. Details can be found on the individual websites of the respective federal states.

⁶⁹ The FATF conducts regular mutual evaluations of countries' level of compliance with the 40 recommendations and the level of effectiveness of their AML/CFT system (FATF, 2022a). This report summarises the anti-money laundering and counter-terrorist financing measures in place in Germany as at the date of the on-site visit in November 2021 and provides recommendations (FATF, 2022a).

The decentralised approach as well as the respective administrative level that was tasked with AML supervision of the non-financial sector in each federal state have implications for the number of staff and the tasks the supervisors may have to fulfil besides AML supervision. The lower the administrative level, the less staff will be available. I observed that the lower administrative levels (e.g., the district-free cities) often have one person responsible for AML supervision of the non-financial sector while carrying out multiple other tasks. One German supervisor describes the operational set-up in their federal state as follows:

The money laundering prevention team is part of the Public Safety and Order Department, so the house is divided into departments, and the Public Safety and Order Department includes cemeteries, explosive ordinance clearance, fire protection, and money laundering prevention (I12/S/GER).

These different tasks of the Public Safety and Order department in this federal state seem very much disparate and it is questionable how one person can fulfil all these dissimilar tasks without adequate training. The tasks of a German AML supervisor in the non-financial sector may be diverse and unrelated to one another. One supervisor describes this decentralised supervision as problematic for supervisors, but also the supervised:

The biggest problem in the supervisory area is that there are no central structures in Germany. [...] We have around 330 different authorities in Germany in the field of supervision. [...] [I]t can be that several agencies do this part-time or on the side. And that's a big problem. Above all, for us as the supervisory authority, but also for the obliged entities if they want to comply with the rules (I10/S/GER).

The supervisor describes this operational set-up of supervisors having multiple state-related tasks with just one of them being money laundering supervision. While in some of the federal states, money laundering supervision is big enough for its own department and supervisors are solely responsible for money laundering supervision in the non-financial sector (as opposed to also being responsible for fire protection and such), the non-financial sector is diverse as well and businesses to supervise are manifold. The implications of this set-up not only relate to the time and effort available to supervise and the level of expertise each individual supervisor has, but also the form of regulatory discretion that is exercised. Another German supervisor describes this set-up further:

We supervise the entire trade in goods or certain sectors of the trade in goods. The focus is on the car trade, because there is simply a large number of dealers that we have here. And of course, precious metal dealers, then also jewellery and watch shops, because they are simply expensive, you can easily get over the EUR 10,000 threshold. And of course, the art and antiques trade are included as well (I09/S/GER).

In fact, the supervisors I talked to all stated that the art market makes up very little in numbers of their supervised businesses. For instance, one supervisor stated: 'I calculated that the art trade makes up 1.3% of the businesses I supervise' (I13/S/GER). This could mean that instead of specialists, supervisors rather are generalists, which may give them a broader picture into businesses but may also lead to them lacking specialist knowledge in the specifics of the specific industries they supervise. Additionally, one may argue that some supervisors do not only lack specialised knowledge of the art market, but also of AML supervision in general, if they carry out many other unrelated tasks. Through the lack of specialisation, the knowledge on AML compliance may be too general to account for the specifics of each business in the non-financial sector. Indeed, one of the key findings of the FATF mutual evaluation report on Germany in 2022 was that the large number of supervisors for the non-financial sector as well as 'a lack of knowledge of the extent and features of the extensive supervisory population (approximately 1 million entities) create major difficulties in ensuring a consistent risk understanding' (Financial Action Task Force, 2022a, p. 161). While in a rule-based approach, specific knowledge may not be required, AML regulation is risk-based and thus, allows for individual application and demands the exercise of discretion. In fact, the reason AML regulation is risk-based lies with the money laundering risk a business faces being different when the businesses vary in size and business model for example. When asked how they dealt with the difference in the art market, one supervisor explained:

This is a problem for us, but also for every other authority. I must familiarise myself with the market first. If I work at the Federal Aviation Authority, I should know about commercial aircrafts. If I work in the art trade, then I first must familiarise myself with that. Yes, that's a very large area because, as I said before, we're also responsible for newspaper dealers, car dealers, and real estate agents. Something is always lost because the supervisory authority does not have the knowledge it needs, it first must work it out. It would be really good if we had central structures. So, for example, if I were the head of the car dealership unit at the Federal Money Laundering Agency, well, I could spend my whole day asking this question. And now I'm doing that, but I also need to take care of the art market (I10/S/GER).

The supervisor describes exactly that problem of lacking specialist knowledge. If those responsible for enforcing the rules do not understand the activity that is being regulated, the rules will be un-enforced (Black, 2012). Furthermore, the supervisor describes how they would approach it in that they first would learn about the market they supervise before supervising. From open-source research and the data I collected, such an approach was not taken by the federal state supervisors. Instead, supervisory authorities received the task of supervising the non-financial sector in AML compliance without specialist training on the regulation or the industry and without first familiarising themselves with the businesses they supervise. This

relates to some of the justifications of private governance as discussed in Chapter 7 when looking at the role trade associations play in the regulatory framework. Through the superior knowledge of companies about their own businesses (compared to the outsider knowledge state actors might have) they are arguably better positioned to govern themselves. As mentioned before, private governance regimes can thus be seen as more efficient in that they are tailormade to the specific industry (Riles, 2011). In addition to a lack of specialised knowledge, the decentralised approach makes coordinated efforts difficult, especially with so many supervisors. The FATF found this to be a challenge ‘resulting in an overlap in supervisory responsibilities and multiple obligations reporting entities have to address, and inhibiting a broader risk-based approach to DNFBP [designated non-financial businesses and professions] supervision’ (Financial Action Task Force, 2022a, p. 161).

It is not my intention to judge here the decentralised set-up of supervision in Germany. Rather, I want to point out the advantages and disadvantages of this supervisory strategy. A decentralised approach accounts for geographical differences and diversified focus—not just on the larger businesses that are assigned the higher risk. On the other hand, a centralised approach allows for better resource allocation and economies of scale. Additionally, coordinated strategies towards training and guidance, the application of a risk-based approach, and the exercised of discretion are much easier in a centralised approach. We should, however, not forget that the decentralised approach in Germany is also based largely on the way the German government is set-up with legislative competence (Gesetzgebungskompetenz in German) residing with the federal states. This organisational and operational set-up directly influences supervisory practices, thereby also impacting compliance behaviour of obliged entities. Without a coordinated approach, the level of compliance will differ in each of the supervisory districts. Obligated entities may receive different answers to their questions, and the compliance behaviour will likely differ because of that. I will explore this impact further in the following sections.

10.3 Registration and Identification

There is no requirement for art market actors to register as supervised businesses under the AML regulations in Germany. This presents the supervisory authorities with the significant difficulty of identifying who they are to supervise. For instance, a German supervisor criticises:

What for me is a big point of criticism in the whole thing is that we don’t have access to the business registration data. This is due to data protection reasons. We have often criticised that, but nothing is done about it. [...] You are supposed to perform the task of supervision, but you

don't get access to the database. It's a paradox. I always hoped that we would be audited by the FIU, then I would have brought that up (I13/S/GER).

The supervisor here states that in their opinion, the basics for doing their job properly are not given. They go even so far as to say that they would report this problem if ever asked. The lack of access to registered businesses to supervise is deprecated by another supervisor when asked what they thought the greatest challenges were with the non-financial sector compared to the financial sector:

Firstly, that we don't know the businesses we supervise, we don't have a database. The BaFin knows who they supervise. Of course, they have an approval process, so, they simply know who they must supervise. That's just not the case with us. Even if we had a database of all high-value dealers in our district, it would of course be outdated again tomorrow. And then we would have the high-value dealers, but we still wouldn't know if they also do cash transactions over EUR 10,000 (I12/S/GER).

Unlike big financial institutions who already must register for a banking license with their supervisory authority, the Federal Financial Supervisory Authority (BaFin), art businesses are often small businesses who may go out of business much faster and without much notice outside of the industry. Having access to a business database would only solve part of the problem as it does not tell you whether the business does relevant transactions above the threshold. Without the requirement to register for AML supervision, the problem will likely remain unsolved.

When asked whether they had encountered any art market specific cases they could describe— anonymously of course—one supervisor replied that they did not have any art-related cases yet due to the low numbers of art market actors they supervise:

We checked a business one time, and they didn't have any cash transactions over EUR 10,000. Thus, they don't fall under our supervision. We now still have about 12-13 businesses, and I've looked at more than half, it's possible that some will be deleted from my list as well. It's quite like jewellers; I do field work sometimes and look at the shop windows. Quite often, with the jewellers it's merely fashion jewellery, like the most expensive ring is EUR 400, thus, I deleted them from my list. I still need to do the same with the art dealers (I13/S/GER).

The identification process described here seems to be trial and error by starting off with a list and checking off the businesses on the list whether they should stay or be deleted from the list. Not to mention that looking at a shop window is unlikely to result in an accurate statement of whether the business does relevant transactions above the threshold as it might not have all items for sale out in the window. As a result of the de-centralised organisational set-up, each individual supervisor develops their own supervisory practices. This includes finding individual solutions to difficulties such as identifying businesses to supervise.

With a set definition and a monetary threshold, the identification of businesses that fall under the threshold naturally becomes more difficult than just identifying businesses that trade artworks in general. A German supervisor explained:

I think we've only had three art dealers. But this also depends on their relevance. [...] There are also galleries, if you walk past the shop window and see, EUR 399 and EUR 500 and the other one costs EUR 50. That is not the target group of the money laundering law. And of course, we always have to say that due to the limited resources we have to be careful who we audit, that we don't burn our strength, if possible, but only go where there is a chance that someone will have transactions that trigger obligations (I12/S/GER).

This account shows again the difficulty for supervisors in Germany to find the businesses they need to supervise. Note the level of due diligence the supervisor shows with putting the effort in of researching businesses to supervise—arguably via a creative method.

Besides the approach of physically checking out shops, internet research is also used. For instance, when I asked them how they identify the art market actors under their supervision, a supervisor almost playfully replied:

Google is our best friend. I once sent around a link that I found by chance, where there is a list of all gallery owners or something. [...] But that is the case with practically all our obligated entities, that we use the internet to see who is there. And then you just google for suitable terms like gallery, art trade or whatever. The problem starts where someone comes up with great fantasy names. So, if someone's name is [name] Art Deco, we won't find them right away (I12/S/GER).

The businesses that they googled, and thought were relevant, are kept in a list of businesses to supervise:

We keep a list of around 400 obligated entities. It was a list that a colleague had originally started, i.e., to write down those who were obliged entities. And then I picked it up and added filters so that you can also filter [...]. And on this basis, the 6-months plan is done. So, we'll decide which industry we're going to focus on within this six-month period, which industry we can neglect, for example, we might also look at companies that have appointed money laundering officers (I12/S/GER).

Any such list needs to be maintained which can be quite an effort, especially if businesses that close do not inform the supervisors and businesses that open are not obliged to inform their supervisors. This challenge was raised by another German supervisor:

We search the Internet, we also find others during raids with the police, for example, for car dealers and jewellers. If the police in [city district], for example, want to carry out a check in the area on a day, then ask us whether we want to come along. Then we search Google Maps to see which jewellers are in that area. And then they are audited. But we don't have a register.

That would also go beyond our capabilities. Because such a register would need to be maintained, even if it were fully digitised (I10/S/GER).

While a register of businesses to supervise would certainly simplify the identification process as well as the planning process for compliance audits, the downside of any register is the maintenance work that is required to keep it current. All the German supervisors I interviewed reported that knowing who it is they are required to supervise is one of the biggest challenges—and such a basic one. They all approach this challenge in a different way depending on their scope and resources—a feature that is inherent to a decentralised set-up of supervision. The exercise of discretion here becomes even more diverse.

As an example of a centralised set-up, under the UK's ML Regulations 2019, the HMRC became the centralised supervisory authority for AMPs (HM Revenue & Customs, 2023). Businesses operating as AMPs under the ML Regulations need to register with the HMRC (HM Revenue & Customs, 2024). The HMRC then carries out approval checks or a fit and proper test on the responsible people included in the application (HM Revenue & Customs, 2022). Accordingly, the HMRC maintains a register of supervised businesses.

Compare this example of a centralised register with the decentralised, highly fragmented approach of randomly checking out shop windows for objects the businesses sell and that would fall above the EUR 10,000 threshold in Germany. While I would want to be careful to draw conclusions towards effectiveness of supervision, the professionalism and with it, maturity, of the two processes of identifying the businesses to supervise is certainly on a different level. The lack of a registration process and, correspondingly, the lack of a central registry of businesses to supervise could also be considered a lack of right equipment which was noted by the FATF as one of the characteristics for supervisors to be effective (FATF, 2021). Consequently, the mutual evaluation of Germany has found supervision in general to be limited due to the large population of supervised businesses and the additional challenge of coordinating the large number of supervisors (FATF, 2022a). This was found to result in an overlap of supervisors' responsibilities (FATF, 2022a). This organisational structure, the resource constraints, and the sectoral familiarity because of the decentralised set-up all shape supervisory practices and impact compliance behaviour. Once more, art market actors may be more likely to refer to their peers and trade associations rather than a supervisor they have never been in contact with—and that they would hardly find upon internet research.

10.3 Training

An important part of exercising regulatory discretion when supervising AML regulated businesses is the familiarity with the regulatory obligations, but also with the supervised sector. This is in large part due to the risk-based nature of AML regulation which makes discretion an inherent feature. With regards to learning on the supervisors' side, I asked them how they find out how the legal requirements for money laundering are to be interpreted in practical terms. A supervisor answered the question with:

[...], it is essentially learning by doing. It's hard for someone young like you to understand. But ten or eleven years is not a long time in administrative life. That means the area is still very young. We still have relatively little literature and relatively few external service providers (I10/S/GER).

The remark made here relates to the law-making and supervisory process being lengthy and needing time to be refined and fit for purpose. This process comprises of the experience supervisors make. For instance, one supervisor explained:

We have a certain wealth of experience through audits. And we also have experience with companies of different sizes and know roughly what you can or may expect. Especially when it comes to the risk analysis, there are no specifications as to how detailed it needs to be, how many pages, etc. There is of course a basic structure that must be adhered to. But they fill it, there is a certain level of freedom, i.e., we do it based on our wealth of experience. So, we say that if a company is of a certain size, you expect a certain scope. A small one-man operation can keep this relatively concise. There are many of those in the art trade, but also the watch and jewellery trade are made of many small one-man businesses (I09/S/GER).

This statement on learning by doing and the level of expectation—and thereby discretion—forming through what one has seen with other businesses is supported by another German supervisor as follows:

We learn through exchange, through practice, learning by doing, also through exchanges with lawyers. This has rarely been a problem in the areas in which we have previously supervised more intensively. [...] But these are things that still matter, depending on the industry. And that shows that we are still relatively at the beginning in this area of supervision (I10/S/GER).

The supervisor states that in their opinion there is much to do and still time to pass before a certain level of maturity has been reached with regards to the law, but also the supervisory and enforcement processes.

To be able to understand what the supervisors' interpretation of the law may also be based on, trainings the supervisors undertake are important. Therefore, the final question of the section

on learning asked supervisor whether and what kind of training related to anti-money laundering in the art market they had completed. As a result, none of the German supervisors I talked to had completed any training specifically on money laundering, let alone specifically on money laundering in the art market. For instance, one supervisor reported: ‘No. That’s because we haven’t found anything yet. We take part in training courses, take part in specialist conferences. The differentiation between conferences and training is often blurred.’ (I10/S/GER) Another supervisor supported this statement with:

We have no training courses on specific interpretation issues. We do not attend training courses in this sense. There is training, there is a certain market for training service providers. But in our opinion, the target group seems to be primarily the private sector, especially the banking sector. This is now not aimed specifically at authorities and supervisory authorities (I09/S/GER).

While the supervisor had searched for external training opportunities, mainly because there are no internal trainings offered, they have been unable to find any. To me, this shows again that any supervisor approach, any expertise, depends on the individual supervisor and their level of engagement. In the absence of a centralised strategic approach, discretion will always differ across the different federal states. And with it, the level of compliance. Interestingly, another supervisor explained how they would approach supervision in an ideal world:

Well, I haven’t done it that way in practice, but my approach would be to first see how important the market is in our district. That would be the very first step, just to take a look. And we used to always seek contact with associations, then simply exchanged views with the associations and just looked, what can they tell us, where are their worries, where are their problems in this context, to what extent can they also support us, be multipliers. That was how we approached the subject earlier. I can’t even remember how things went with the art dealers. There are no courses, there are no seminars that we can specifically attend, an administration seminar or anything, not even generally on the Money Laundering Act, let alone on new groups of obliged entities. I mean, we’re not the centre of the German art trade and therefore didn’t approach the market as specifically as we might have done with a committed group that was more in focus (I12/S/GER).

Based on my observations during fieldwork, supervisory discretion is exercised largely based on accumulated experience from other sectors and through learning by doing, rather than through structured knowledge of the art market or targeted training. The supervisors’ accounts show that expectations towards compliance are not derived from central and fixed standards, but are formed relationally and comparatively, based on what supervisors have previously encountered in audits of businesses from other sectors. While this allows for flexibility and proportionality, particularly regarding small, one-person businesses that are frequent in the German art market, it also means that supervisory benchmarks remain implicit, uneven, and

dependent on individual experience—which it always will to an extent (Hawkins, 2002). However, especially the lack of formal training opportunities for supervisory authorities in relation to money laundering in general and in the art market specifically, limits the development of sector-specific expertise. This constrains supervisory discretion to what is administratively feasible and familiar, rather than what is necessarily most responsive to the specific risks and practicalities of the German art market. As a result, supervision remains at an early stage of maturity, characterised by exploratory engagement and rather than strategic oversight.

As such, this supervisory set-up influences compliance behaviour by more likely encouraging cautious, minimalistic, tick-box approaches that focus on formal requirements rather than substantive risk assessments and meaningful compliance. Where supervisors themselves perceive the field as new and underdeveloped, compliance expectations potentially are correspondingly modest. In this sense, the current organisational and operational set-up of AML supervision in the German non-financial sector directly shapes how discretion is exercised on both sides and limits the extent to which AML regulation can meaningfully engage with the socially embedded realities of the art market.

10.4 Stakeholder Engagement

The relationship between a supervisor and their supervised lives off a mutual understanding. On the one side, the supervisor needs to understand the market to address the challenges the market faces; on the other side, the art market needs to understand the obligations a supervisor places on them representatively of the law, to interact with the supervisor effectively. In fact, the FATF in their guidance document on risk-based supervision has noted the positive influence on entities' behaviours through targeted guidance and feedback to be one of the characteristics of an effective risk-based supervisory framework (FATF, 2021).

While there are obvious benefits in active stakeholder engagement for the supervised in that they can get their problems across, the challenges they face, and they have a direct contact for questions, the supervisors also benefit greatly by learning the trade which—one might argue—makes their supervision more targeted. As the FATF noted, the development and maintenance of a good understanding of money laundering risks at the sectoral and entity level to be one of the characteristics for effective risk-based supervision (FATF, 2021). To understand the risks on the sectoral and entity level one must first and foremost understand the sector and the industry. The understanding of the art market, but also of the risks the art market faces of

being misused for money laundering purposes, and of course the understanding of what money laundering is and what it would be in the art market, are the prerequisite for supervision. This understanding is the basis for the supervisors to assess whether a business has analysed their money laundering risks properly, whether they have implemented the right measures, whether they comply with the regulation beyond ceremonial, tick-box compliance, and whether they ultimately contribute to the overall objective of preventing the misuse of the art market for money laundering purposes. Due to this, the intricacies of each individual business must be considered to comply, but also to supervise with supervision being a mirror of the level of compliance and vice versa. This also raises important questions about the collaborative public-private nature of AML regulation and seems slightly surprising from a legal perspective (concerning the presence of private businesspeople in learning and not lawyers, or judges, or more regulators). The adequate equipment with the expertise, powers, discretion, and tools needed and adequate resources was also mentioned by the FATF as one of the characteristics of an effective risk-based AML supervisory framework (FATF, 2021). Supervision is a collaborative process with both sides profiting from active engagement through shared knowledge and expertise which is the basis for the risk-based approach to supervision. In turn, I would argue here, the more mature the supervision, the higher the level of regulatory compliance and in turn, the more effective the regulation.

Due to the decentralised approach to supervision in Germany, like other activities such as identification of supervised businesses, the level of interaction highly depends on the individual supervisors. When asked whether they inform art market actors that they are supervised by them, a supervisor replied:

Yes and no. Whenever we have the capacity, we write to companies that have registered in the business database that we exist and that they have obligations. We would like to do this systematically, but our digitisation is still too bad for that (I10/S/GER).

This statement indicates that communication and contact between the supervisor and the supervised is highly dependent on the available capacities of the supervisor as well as the level of engagement of individual supervisors. In this case, they would actively contact the supervised whenever they found out about them (through their business registration) and when they had the capacity in that moment to do so. Another supervisor explained that they aim to do the same as well as maintain a current website with information on the money laundering regulations: 'If there are any changes to the law, we will post them on our website for the obliged entities' (I13/S/GER).

The active information sharing with the supervised from the supervisor is not stipulated by the regulation or by a central strategy but depends on the attitude of the individual supervisor towards their tasks. For instance, a German supervisor responded:

Art market actors will only be informed by us that they are subject to the obligations when the audit is announced. So, we don't inform all companies widely that they fall under the obligations of the Money Laundering Act, the numbers are simply too large for that. We kind of do that via the platforms, but the individual company only finds out when they are audited (I09/S/GER).

Another supervisor in Germany told me about their newsletter service when asked whether they communicated regularly with the art market actors under their supervision. They explained:

For example, if someone reports a money laundering officer to us, they are regularly informed about this service, but otherwise many people who have simply heard about it or find it by chance or whatever, also register. So, this is also a way that we then communicate with the obligated entities. So, for example, if we say, attention, the FIU has a new typologies paper for the industry or something, so just give them a bit of information. That and our homepage of course (I12/S/GER).

I found that most of the supervisors I talked to were very much engaged and very active within their possibilities. With the decentralised approach, however, individual actions do not reach all and can hardly be called a strategy towards supervision. It seems like the state—or rather the respective federal states—leave the supervisors very much to their own devices rather than providing for a centralised strategy. One supervisor even shared this observation before we started the interview:

I have no questions upfront, just an observation. You sent the study to many, if not all, federal states. Some said internally that they would not take part in the study. I can't quite understand that. It may be that many of the colleagues are overburdened and understaffed, but in general I think that such questions should be answered. [...] But I also think that such talks are important because they also serve as a preventive measure, and they are also taken up and noticed by others. So, I think it's basically a kind of work that can help both sides (I10/S/GER).

This attitude towards supervision and stakeholder engagement was mirrored by some German supervisors as well. Of course, the more engaged supervisors are also more likely to participate in this study. Considering this, we can assume that the level of engagement with other supervisors and the time and resources they have are much lower. These results must be viewed considering this notion as well as the small number of participants (four supervisors) out of 330 supervisors in Germany. Therefore, the picture that is portrayed here—like with any qualitative work—cannot be generalised for all supervisors in Germany. And certain limitations, like the one who would likely participate in this study, need to be considered when analysing the results.

Active collaboration also includes training and guidance for the supervised businesses. In a qualitative study on enforced self-regulation, prescription, and conceptions of compliance within small businesses in the UK, Fairman and Yapp (2005) established that UK local authorities generally operate under a compliance-oriented approach to enforcement. They further found evidence to support the superiority of educative approaches with regards to effectiveness in ensuring compliance (Fairman and Yapp, 2005). In fact, in their opinion, educative approaches of providing advice and training allowed businesses to internalise rules and to ‘make sense’ of regulatory requirements (Fairman and Yapp, 2005). However, none of the German supervisors stated that they had offered any form of training to supervised businesses. Some were asked to speak on conferences, webinars, or the like which they were happy to do:

I don't want to advertise that I would like to recommend them, but there is, for example, a German society for the prevention of money laundering, where we occasionally give lectures for which we are not paid, we do that as part of our work. And with such lectures, we also learn something (I10/S/GER).

And some explained that they would be happy to answer any questions if there were any: ‘I don't know the art dealer associations. However, if they had a question, they could contact me, but I don't know any associations’ (I13/S/GER). Others in turn stated that they were regularly receiving questions and answering them: ‘When there is a change in the law, the phone hardly ever stands still, and emails and inquiries come in. We answer the inquiries, but there is no newsletter’ (I09/S/GER). The German supervisors I talked to generally offer training and assistance to a varying degree, from active participation in conferences to answering inquiries. To connect the internal capacity for self-regulation with the internal motivation for self-regulation as one of the main principles legal institutions need to follow for effective meta-regulation, increased public access to information on legal responsibilities is essential (Parker, 2002). Furthermore, legal liability and disclosure standards must be tied to incentives for, but also (maybe even more importantly) guidance on, appropriate standards for self-regulation processes (Parker, 2002). To engage with the supervised and to guide the supervised towards higher levels of regulatory compliance can thus be considered an essential part of supervision. Within the German set-up, maintaining close contact and a constantly open dialogue with the art market appears nearly impossible considering all the other tasks the supervisors also need to fulfil. The wide range of industries does also not allow for building specialist knowledge in just one industry, for example, the art market.

Supervision is exercised through discretion that is built on sector understanding, yet interaction, communication, and guidance are dependent on individual supervisory capacities and engagement within a decentralised framework as observed here in Germany. Where contact exists, it is ad hoc and mediated by available resources; where it does not, businesses

typically learn of their obligations only at an AML audit (or if they are informed by their trade associations as observed in Chapter 7 on learning). Training and educative support for the supervised are thus, uneven and largely informal. The implications of this set-up are likely leaning towards simplified, tick-box rather than meaningful compliance based on sector-specific understanding and communication between the supervisor and the supervised.

10.5 Risk-Based Approach and Supervisory Discretion

The FATF (2021) in their guidance document on risk-based supervision stated that supervisors play an essential role in protecting the financial and other sectors from misuse for money laundering purposes. They do so by increasing awareness and understanding of money laundering risks, facilitating and encouraging best practices, enforcing and monitoring AML compliance, and taking appropriate measures when deficiencies are identified (FATF, 2021). Their role is important even in private governance regimes as they are essential in shaping regulatory compliance. To perform this role effectively and efficiently, supervisors must implement a risk-based approach (FATF, 2021). Put differently, supervision is expected to operate through prioritisation, proportionality, and judgement—thereby exercising discretion—rather than uniform prescription.

Beyond the National Risk Assessment (Federal Ministry of Finance, 2024), there is no specific analysis for the art market publicly available which would allow for a centralised risk-based approach to supervising the art market for AML compliance in Germany. It is up to every individual supervisor to establish their individual risk-based approach. This decentralised supervisory approach in Germany therefore shifts the practical burden of interpretation onto individual supervisors without offering a central strategy (as far as I observed in my fieldwork). For example, one supervisor explained:

We keep a list of around 400 obligated parties here. [...] And on this basis, the planning for half a year is made. So we'll see which industry we're going to focus on this six-month period, which industry can we neglect, we'll also look at companies that have appointed money laundering officers. So I've already tried to include that in the list, saying that one of the selection criteria is whether the companies have money laundering officers, because the fact that they have one is not necessarily a guarantee that they will too do particularly well, but at least they are relevant, otherwise they wouldn't have an AML officer. Ergo, that is then in turn a selection criterion for us (I12/S/GER).

The supervisor here elaborates on their risk-based approach which focuses on relevant entities in a specific industry. Such an approach allows for the drawing of comparisons between

different businesses from the same industry that would therefore face similar risks. At the same time, it relies on locally available indicators and individual experience. This, however, represents merely one approach that one supervisor takes. The FATF in fact found that risk-based supervision in Germany differed considerably between those supervisors and that the supervisors generally did not consider all relevant risk factors and variables in their risk-based approach and supervisory strategy (FATF, 2022a). In other words, discretion is present but unevenly informed and exercised differently. This brings us back to the lack of training and guidance offered to supervisors in the non-financial sector in Germany and their unrelated and sometimes conflicting tasks. The FATF even goes so far as to say that ‘the impact of supervisory engagement in DNFBP sectors is unclear’ (FATF, 2022a, p. 162). Consequently, they recommend enhancing supervision of the DNFBP sectors by ‘[a]dopting measures to develop a consistent approach to DNFBP supervision that goes beyond co-ordinating risk information and moves towards more harmonised supervision in line with the risk-based approach, including by considering a mechanism for oversight of DNFBP supervision across Germany’ (FATF, 2022a, p. 163). They further recommend ‘[e]nhancing the sources of information available to DNFBP supervisors to strengthen their risk-based approach’ and ‘[c]onsidering a more vigorous risk-based approach to the broad range of obliged entities in the non-financial sector to focus on high or medium risk activities’ (FATF, 2022a, p. 163). The FATF’s recommendation here reads less as a change in principle and more as a call to supply the missing conditions for exercising discretion consistently. The purpose of applying a risk-based approach is to focus the constrained resources on the highest risks (Black, 2012). I would argue that such an application of a risk-based approach requires knowledge and experience about the specific risks as well as the methodology of risks and controls. Thus, I would frame it as an information problem caused by the structural set-up, rather than an enforcement problem. This notion is confirmed by the FATF’s recommendation towards making more information available (FATF, 2022a). As such, it comes as no surprise that supervisors in my study pointed to the limits of what can be achieved in practice.

In general, supervisors also reported that they were lacking adequate resources (in terms of quantity) to effectively fulfil their supervisory roles. This finding is supported by the FATF when they concluded their mutual evaluation with the statement that ‘supervision in general is limited due to the large supervised population and a critical lack of resources for the supervision of almost all DNFBP sectors’ (FATF, 2022a). As mentioned before, a risk-based approach to supervision is often to deal with finite resources and allocate the limited resources to the highest risks (Black, 2012). There are advantages and disadvantages to such a risk-based

approach which will not be discussed in detail here.⁷⁰ What matters for my argument though, is the precondition for it to work. Therefore, I want to focus on and stress the prerequisite for the risk-based approach to supervision to be effective which is that the responsible supervisors need to understand the activity that is being regulated (Black, 2012). Learning about the sectors they supervise is an essential element of how supervisory authorities are equipped. The understanding of money laundering risks is not just something the supervisory strategy should be based on, but it is also an essential part of the level of compliance by a business as set out in Chapter 8.2 of this thesis. In a socially embedded market, this understanding must include not only the formal risk categories but also the relational context in which obligations are enacted. Knowledge of the workings of the trust-based art market is essential to exercise discretion and achieve meaningful compliance.

The current AML supervisory approach to the non-financial sector in Germany (decentralised, with limited resources, and reliant on individual risk assessments) directly shapes supervisory practice and compliance behaviour in the art market. Discretion is central as intended by the AML regulation but unevenly supported with guidance, and information to supervisors was reported to be limited. The absence of a consistent risk picture in this case seems to limit the capacity of supervision to mature and move beyond tick-box performance towards meaningful compliance.

10.6 Chapter Summary

The current AML supervisory approach to the non-financial sector in Germany comprises of a decentralised set-up with each of the federal states being responsible for supervision. This leads to a high number of supervisors, each situated on a different organisational level. Any supervisory practice therefore highly depends on the individual supervisor. This includes also the level of stakeholder engagement: There is no regular contact set-up and no regular communication channels are established. There is also no central identification or registration process for supervised businesses from the non-financial sector, including the art market. With no requirement to register, establishing communication channels admittedly becomes more challenging. Many supervisors that participated in my study maintain a website to distribute information and have reported to receive and answer calls when new regulations come in. However, there is no explicit, coordinated training offered to art market actors or obliged entities from other non-financial sectors.

⁷⁰ For further reading see Baldwin and Black (2016).

Supervisors on the other hand, reportedly were also not provided with any specific training regarding AML supervision in general or the art market specifically upon taking on their task. In addition, each federal state publishes their own version of a general guidance document for the non-financial sector (as set out in Chapter 3.4.2 of this thesis). This document is not specifically tailored to the art market, and it was reportedly developed by the supervisory authorities without industry involvement.

While for supervisory practices this means they highly differ depending on the individual supervisor tasked with supervision, their staffing level, other unrelated tasks, their education and experience, and their motivation, in turn, compliance behaviour will highly differ as well, depending on the collaboration between supervisor and supervised and the requirements the individual supervisor sets out.

As such, this chapter demonstrated that Germany's decentralised AML supervisory approach not only shapes the level of supervision but fundamentally influences the compliance behaviour of art market actors. The structural deficiencies identified in this chapter, such as fragmented supervision, inconsistent stakeholder engagement, and generic guidance, may contribute to the emergence of superficial compliance strategies as I have found to be present in the art market in Chapter 8.4. My findings emphasise the need for change of non-financial AML supervision that addresses strategic coordination, sector-specific expertise, and continuous dialogue between supervisors and the art market. A need that mirrors the recommended actions by the FATF which ask for increased resources, a consistent approach to supervision, and enhanced information sources available to supervisors (FATF, 2022a). Whether and to what extent these recommendations were implemented at the time of writing and potentially already show effect cannot be answered by this thesis and will have to be the subject of further research.

Chapter 11 Discussion

11.1 Introduction

Do you think money is laundered through the art market? This was the most common question anybody I talked to about my research asked. It is also the question I do not have an answer to as this thesis took a different turn (which I explained in Chapter 1). Would it matter for art market actors to know since they have already been added to the AML regulations, and so far, no group of obliged entities has ever been taken out of the regulations? The answer is yes, it would. It would matter for art market actors to know that there is a reason they follow these due diligence requirements that disrupt their client relationships and are seen as counter to their business purposes. Thus, I find compliance to be an important area to focus on to understand what the limitations of regulation are and how to remedy them.

The measurable impact of the AML regulations on the art market has yet to be analysed in more detail and could be the subject for further quantitative research. Art market actors complained about the multitude of regulations they now need to follow. This perception confirms the set-up with increased regulation for markets that has been termed regulatory capitalism (Levi-Faur, 2005, 2017; Braithwaite, 2008). Of course, ‘increased regulation will seldom be popular amongst those being regulated; it does, after all, create additional burdens for them’ (Fincham, 2023, p. 344). One of the worries of art market actors that were stated in the interviews during my fieldwork was the burden the regulations place especially on small businesses in terms of administrative and bureaucratic procedures now required (e.g., I06/E/GER). I have found that art market actors are not trained in AML procedures and thus, lack adequate knowledge of the how-to. Many businesses in the art market are small businesses that cannot afford to hire a compliance professional. Trade associations have voiced the same complaint (CINOA, 2018; European Art Market Coalition, 2021) as ‘most market businesses are SMEs with turnovers of well under [EUR] 1 million and this would add a disproportionate burden to their time and expenses in administrative terms, while potentially losing them business’ (CINOA, 2018). As such, one might argue the regulations impact competition in the market and force out small and mid-size market participants (Fincham, 2023). This is nothing specific to the art market. Alldridge (2008) who is one of the more critical academics of the AML regulations explains how because of economies of scale, ‘large organizations see regulation as a means of threatening smaller competitors’ (p. 440). Whether small-size art market actors have gone out of business since the introduction of the AML regulations to the art market could be the subject of further study.

Drawing together the empirical findings from Chapters 6 to 10 of this thesis, this chapter systematically assesses how regulatory discretion operates across the different sites of AML governance within the socially embedded art market. I reflect on how discretion as an inherent feature of the risk-based AML regulation works when learning, experiencing, and interacting with AML compliance. I also discuss the influence of the socially embedded and trust-based nature and structure of the art market on the practical alignment between AML obligations and art market practices. Seen through this lens, social embeddedness does not merely describe the context in which regulation is applied, but it actively shapes how regulatory discretion is exercised and with it, the form AML compliance takes. In the art market, trust-based relationships, information asymmetry, an inside and outside of the market, and reputation shape how legal knowledge is learned, how compliance expectations are interpreted, and which forms interaction with regulators take. Embeddedness thus operates as a structuring force across learning, experience, and interaction.

11.2 The Power of Trade Associations as Regulatory Intermediaries

I have found in my research study and analysed in Chapter 7 of this thesis that legal knowledge in general is gathered through trade associations in the art market. This includes information about new regulations such as the AML regulations as well as guidance on how to interpret those new regulations. In cases in which art market actors are not members of trade associations, they are less likely to know about the AML regulations and corresponding risks. In a socially embedded art market where information flows through trust-based relationships, this observation confirms the role of trade associations as the primary interpreters and thereby creators of regulatory meaning in this specific context. Social embeddedness can therefore be seen as conditioning how regulatory learning occurs. Because trust-based relationships and insider knowledge form part of the core nature and structure of the art market, art market actors tend to turn to their social networks, their peers, or their trade associations for guidance, rather than to the regulator. Learning becomes socially mediated by field-specific norms and identities (Bourdieu, 2010), reflecting what Zelizer describes as relational work (Zelizer, 2012) and what Becker conceptualises as the diffusion of conventions across an art world (Becker, 2008). Consequently, the best way to reach art market actors and communicate important issues to them is through their trusted trade associations. While this simplifies communication channels by reducing it to one single channel (though multiple trade associations would have to be addressed), it also creates a certain power dynamic anyone

communicating through it needs to be aware of. Considering trade associations filter the law through their market lens into practicable bits, they directly influence what—in their opinion—good and bad compliance look like. Trade associations thus, assume the role of regulatory intermediaries, not only informing their members, but also translating the law into practice thereby effectively shaping the law. Discretion is exercised collectively by trade associations in that it is less the decision of a single person than shared beliefs coming to life in the form of guidance documents, workshops, and templates provided by the trade association. Again, this reinforces their power over regulatory compliance. Discretion in this context is a useful analytical tool to explore how AML regulation is collectively interpreted by trade associations in the art market. As mentioned before, it is the assumption of this thesis that compliance is the result of a negotiation process between the regulator and the regulated (Edelman *et al.*, 1991; Reichman, 1998; Parker and Nielsen, 2009). Regulatory intermediaries such as trade associations can act in this capacity. They may require standards that go beyond the regulatory requirements or provide frameworks to fill gaps in the regulation (Parker and Nielsen, 2009). My research confirmed the roles, and the power regulatory intermediaries assume in exercising discretion. As we can see from the example of trade associations in the art market, they also act as guardians of ethical behaviour for the market by implementing and enforcing a code of ethics among their members. Through deciding on membership, they enforce their boundaries and thus, become non-state regulators (Black, 2008). Their legitimacy stems from proximity in the way that their members (through being members) already recognise them as credible voices on market conduct, so their compliance translations are readily accepted and internalised. They were even reported as sought after by the participants to my study who did not want to directly have to interact with the regulation itself. It seems that in the German art market, practical compliance more often will resemble the trade associations' opinion or template than the regulation or the supervisory understandings. This dynamic is reinforced by the way authority is constituted within the field itself. As Thornton (2009) found, expertise and legitimacy in the art world are distributed through reputational games, symbolic contests, and insider recognition rather than through formal hierarchy. Trade associations occupy a privileged position within these structures, allowing their interpretations of compliance to be recognised as competent, appropriate, and market-conform.

Trade associations in the art market further engage in an active dialogue with the regulator on behalf of their members and, one might argue, to support their legitimacy claims and ensure their survival. Whether they would go out of business if they are unsuccessful in lobbying for their members could be subject to further research. Through this engagement with the regulator, trade associations not only shape regulation, but they also shape the industry by

increasing regulatory understanding among their members. Non-members, by contrast, sit at the margins of this loop and predictably display more limited compliance practices. This was confirmed by the findings of my study.

Another role of trade associations in the art market in the context of regulatory compliance that I want to emphasise in this discussion is the filling of gaps of the regulation (Parker and Nielsen, 2009). In doing so, they define the scope of discretion available to art market actors. They define what of the obligations definitely must be done, what may be done, and what is left to individual judgement or can even be left out. In this respect, I observed that trade associations provide their members with formal guidance or sample documents which formalise the regulations and simplify compliance for their users. Such documents embody legal knowledge of the trade association but also the understandings and norms of the art market thereby functioning as a form of private regulation. Especially where state regulation is lacking, private actors may establish their own systems to address risks, ensure accountability, and maintain legitimacy (Schepel, 2005). Such sample documents, as I observed and documented in this thesis, can be seen as a demonstrative example of private governance that addresses risks because state regulation is lacking the same. By developing standardised documents to be used by their members (and only by their members which adds to their legitimacy claim as well as represents the reason for their existence), trade associations act as private regulatory actors. By making it available only to their members, they further influence regulatory behaviour: only a paying member will be able to access the standardised documents and therefore simplified compliance procedures. Only their members will then be able to produce regulatory compliance in this specific way. Standardisation means that something is reproducible to the same standard by people with not necessarily the same experience or the same knowledge. Such documents can be seen as technologies of standardisation:

The document can travel across national borders, from one trading environment and one regulatory system to another, and the preprinted form allows documentation staff in a bank in one country to engage in a routine of completion that involves collaboration with someone else they have never seen, in a different jurisdiction, thousands of miles away (Riles, 2011, p. 59).

These guidance documents operate as technologies of standardisation that convert practice into repeatable routines. In this case of sample documents the trade association offered to its members from the art market, we also see a standardised, pre-printed form to be used by different actors with different business models. The form is adjustable to the different circumstances while ensuring compliance with the requirements of the law. It crosses borders at least within the EU whose AML framework allows for quasi-standardised regulation across its member countries. The trade association hereby assumes part of the compliance role for its members. Trade associations here also serve as the answer to my research question on how art

market actors learn from and interact with peers on AML compliance. They employ lawyers, clarify questions with the regulator, and educate their members on best practice compliance practices. Learning is thus, understood as a process through which art market actors acquire, interpret, and contextualise knowledge about AML obligations rather than as the passive reception of legal rules. These learning processes involve discretionary judgement, as actors determine which regulatory expectations are relevant and how they should be applied within their specific organisational and market contexts. And trade associations assume an important role in exercising regulatory discretion collectively. Regulators need to be aware of this power dynamic when using trade associations as a communication channel. Establishing a structured dialogue with trade associations is not a nice-to-have, but it is necessary to be able to shape discretion in the intent of the regulation without explicitly prescribing it. This also means that regulators can actively influence the way compliance and ultimately with it, the regulation, is shaped through communication with trade associations. They can engage in a regulatory dialogue with these regulatory intermediaries. It is this social complexity of regulatory compliance I believe we get to better understand here by looking at the socially embedded art market and how regulatory discretion is exercised in it in the context of AML compliance. This allows us to ultimately better understand regulation. The key contribution of this thesis is the nuanced analysis of AML compliance in the art market thereby adding to regulatory compliance literature in the confirmation of discretion as inherent to the AML regulation and confirming its impact on compliance. I have been looking at how people are thinking about compliance in this niche market that is the art market, how they are learning about regulatory compliance, how they are experiencing it, and how they are interacting in this field of tension—through the lens of regulatory discretion.

11.3 Limited Understanding of ARML on Both Sides

In my research study I observed that the understanding of ARML in particular that art market actors have is very limited; limited in fact to transactions over a certain amount and the use of cash. I further observed that some art market actors only have a vague idea of what money laundering is in general. This limited understanding of money laundering may for example point to ineffective education by the trade associations as sources of legal knowledge for art market actors. Whether this is the case, or the reason lies somewhere else goes beyond the scope of this thesis. The understanding of money laundering and ARML, however, has a direct impact on AML regulatory compliance in that it is the basis for applying a risk-based approach and also for

reporting suspicious activity. If market actors do not understand money laundering, they do not know what to look for in their normal business practices and thus, they would not recognise suspicious activity. Seen through the lens of regulatory discretion, the risk-based AML regulation assumes that obliged entities translate the obligations into context-specific judgements—thereby exercising discretion. When learning is anchored in longstanding relationships as is the case in the art market, such translation is filtered through existing market conventions. Embedded understanding of normal behaviour shapes what is noticed, questioned, or ignored, thereby narrowing discretion toward thresholds that are already meaningful within the field, such as cash use or high amounts. At the same time, the socially embedded and trust-based nature of the art market raises the perceived social costs of formally reporting suspicion, reducing the number of escalations into SARs. In fact, one of the participants to my study talked about exactly such a situation: ‘So, if I knew somebody who was money laundering, would I report them? Because I wouldn't absolutely know, it would be a suspicion, I probably wouldn't’ (I18/E/US). Add the observed limited understanding, and the low number of SARs filed by art market actors come as no surprise. According to the German FIU, dealers in goods filed a total number of 1.746 SARs in 2023 (Generalzolldirektion, 2024). This makes up for 0.5% of the total number of SARs filed in Germany. In relation to only SARs filed by the non-financial sector, dealers in goods account for 16.8%. Compared to 2021 (782) and 2022 (1.386), the number of filed SARs steadily increased (Generalzolldirektion, 2024). Again, art market actors only constitute a part of dealers in goods and so the actual number of SARs filed by art market actors will be much lower. Although the number of filed SARs by art market actors has been increasing every year in Germany, it seems relatively low, especially when compared to the entirety of SARs filed. This can mean one of two things: Either money laundering is not happening in the art market and there is nothing to report, or art market actors are not reporting what they should. The reasons for the latter are manifold. This low relative volume of SARs from high value dealers (including the art market) can be considered the outcome of discretion in a socially embedded market: limited knowledge on AML narrows the exercise of judgement as described above, while dense personal relationships raise the social price of formal reporting. In such settings, discretion moves toward least-disruptive compliance or tick-box compliance, prioritising the continuity of personal relationships over formal escalation. My findings would support this with art market actors being unaware what to look for. However, and considering Barro and Rausch's (2024) findings towards a large number of filed AML SARs being cash related, one might also conclude that there is no other type of money laundering happening in the art market and art market actors report exactly what is happening. In any case, the low number of reported SARs point to the AML regulations being irrelevant to the art market (either

because they are unnecessary or because they are not being followed). Looking back at the research question on how art market actors have reacted since the new AML regulations were imposed on them, when considering the number of filed SARs, it is questionable whether they have reacted at all. Barro and Rausch (2024) confirm this notion by considering the sparse reporting of suspicious activity and transactions by art market actors to the Dutch FIU and calling into question the validity and effectiveness of fighting financial crimes via the art market. Interestingly, in the UK, the FIU report explicitly states: 'The UKFIU makes no comment as to the relative volume of reports from different sectors. It is for the sectors and their supervisors to assess if the volume of SARs submitted is proportionate to the risks their sectors face' (National Crime Agency, 2023, p. 7). As such, we would have to relate the number of SARs with the risk of the art market being misused for money laundering purposes. One such way could be to compare the national risk assessment of each sector with the number of SARs filed by each sector to discover any discrepancies. Since such a comparison goes well beyond the scope of this thesis, it is for further research to do exactly that.

Barro and Rausch (2024) in their study analysed 27 SARs filed by a Dutch bank in connection with the art market finding that 67% of them (18 SARs) were cash related. They conclude that 'cash use appears to be a recurring pattern of these art-related transactions' (Barro and Rausch, 2024, p. 240). This confirms the understanding I found prevalent in my study among art market actors of money laundering being possible in the art market only with cash (or high amounts). However, this is not enough. The numbers in the Barro and Rausch (2024) study and my own findings contradict my experience as a compliance professional and show a limited understanding of money laundering among members of the art market. Money laundering takes many different forms and as soon as new typologies have been identified through case studies new forms are developed by criminals. For the art market specifically, the lack of typologies has been discussed earlier as a problem for identifying ARML (Stoll, 2022). Considering regulatory intermediaries such as trade associations are integral shapers of discretion, their translations of law into practice effectively define the applied knowledge in the sector. Strengthening sector-specific guidance through working together with trade associations can therefore expand the discretion set toward non-cash typologies of ARML.

We must consider though that it is in their (Barro and Rausch, 2024) methodology that the findings are dependent on the financial institution's understanding of the art market and of risks in the art market as the financial institution would only file a SAR for activity they find suspicious. Their understanding of suspicious activity in the art market may be far away from

the understanding of suspicious activity an art market actor has. In fact, I have spoken about this and a case study I encountered at a German bank at ARCA's annual conference (Stoll, 2017). What I concluded from my case study was that while there are AML controls in financial services institutions and coverage of the art market is included, these controls are not customised to the art market (Stoll, 2017). Furthermore, the ability to even identify art market transactions, let alone suspicious ones, is limited to banks (Stoll, 2017). It is unlikely that when someone transfers money for an artwork they acquired, they are referencing this by stating in their wire transfer 'this is for painting xyz' (Stoll, 2017). More likely, the reference will include an invoice number or a transaction reference (Stoll, 2017). Another possibility for the bank to identify art market transactions would be to filter for recipients of payments that are active in the art market (Stoll, 2017). In fact, Barro and Rausch (2024) took a similar approach and identified art-related transactions exactly in this way, by filtering for the word 'painting' (in Dutch) and for art market actors as parties to the transactions. The case studies of Barro and Rausch (2024) reinforce the urgency for information exchange between the financial sector and the art market. The ability and knowledge about art market related transactions in the financial services industry is limited, and as such, the art market should be the first control and risk-based AML measures should be applied (Stoll, 2017). Structured knowledge exchange would function as an instrument for shifting embedded discretion towards earlier and more accurate detection of ARML. It seems of utmost importance for the art market to have a clear understanding of money laundering in general and ARML in particular while at the same time, the knowledge of art market practices and correspondingly suspicious art market practices related to money laundering needs to be increased in the financial services industry. The first steps towards collaboration were taken in the Netherlands by facilitating knowledge exchange between the financial sector and the art world (Barro and Rausch, 2024). Other countries, such as Germany, should follow this example. One might even think about a state-sponsored information exchange. This would offer the regulator an opportunity to increase their knowledge as well. Such knowledge could be used to shape policy and to influence in nuanced ways regulatory compliance. This may be a better form for regulation to take.

Additionally, structure (and perhaps state-sponsored) information exchange between the art market and other obliged sectors may be helpful. For I found that none of the art market actors I talked to had been in contact with other regulated sectors. On the contrary, being compared to and placed together with the gambling sector was perceived as an insult. Consequently, I conclude that art market actors thus far do not learn from other markets—such as the real estate and jewellery sectors—which have previously adapted their policies and processes to ensure compliance with AML regulation. There is a wealth of knowledge and experience

available that art market actors currently do not make use of. Exchanging information with other sectors could be very beneficial to both parties.

Overall, the observed patterns from my study are consistent with the assumptions of how discretion in a socially embedded market would operate: Especially with limited knowledge and experience, fewer and narrower SARs are reported in this risk-based framework than there would be in a rule-based framework. Targeted, (potentially) state-sponsored interventions that expand the art market's experience and knowledge and reduce the relational cost of formalised reporting would likely improve the meaningfulness of AML regulatory compliance in the art market.

11.4 Market Relationships Rely on Trust

I have discussed two practical examples of art market actors encountering and solving practical problems with the application of the AML regulations in Chapter 8 of this thesis. These examples answer the research question (to an extent) about the steps art market actors have taken to comply with the new regulations. The trust between parties is integral to the functioning of the socially embedded market and, as I have established in this thesis, it is challenged by the AML requirements. The art market's perceived specialness and the importance of relationships and trust are the source and foundation of the resistance towards bureaucratic banalities such as the AML regulations. Embeddedness further shapes the practical experience of AML compliance. Integrating AML obligations requires art market actors to reconcile formal regulatory expectations with the relational norms that structure everyday work in art galleries and auction houses. Requests for identification or probing the source of funds may be perceived as intrusive or potentially damaging to the customer relationship. As a result, compliance measures are adapted within existing practices rather than applied uniformly. Read through the analytical lens of regulatory discretion, such disruption pushes art market actors to exercise judgement in ways that minimise relational friction, narrowing compliance to the least intrusive compliance practices and to tick-box compliance. The contracts introduced by an art market actor to re-establish trust can be seen as a form of private governance in addition to government regulation which in this case does not fit the market needs. They can therefore be considered as discretion-structuring devices that transform risk-based AML obligations into stable, relationally acceptable routines, thereby re-embedding compliance within market practice rather than standing against it. One might also think of these contracts as technologies of standardisation (Riles, 2011) similar to the sample document provided by trade associations

to their members. These contracts—although not yet used as such—could be standardised for different relational models: between art market actors when they act as intermediaries to a transaction or even between art market actor and customer. We might even think of these contracts as what Riles (2011) calls collateral, a private market-based alternative to government regulation. Regarding these contracts, collateral recalibrates discretion: instead of deciding whether to ask, actors decide how to apply a pre-agreed clause, reducing the relational costs that otherwise suppress formalisation and compliance. Collateral in the eyes of Riles (2011) is a way for market participants to obviate the need for knowledge and trust; one could say in that the need is satisfied beforehand and by an organization within the market. The trust is placed in the standardised contract and the legal knowledge it embeds instead of market individuals. Although in this case, the contracts are not an alternative but an addition to the government regulation which apparently is unable to effectively protect market actors in the case of information privacy. Riles (2011) argues that a distinct feature of law is the possibility to simplify and place limits on social, political, and analytical relations. Instead of two parties trusting each other based on a common understanding and knowledge about culture, economics, and politics, the law sets limits to and simplifies the ‘messy complexities’ of the global market. In this case, the law is unable to assume the role of trustee; instead, trust needs to be rebuilt through a standard contract between the two parties. Interestingly, such contracts would only be enforceable by law and by relying on the legal system (which was found not to be trustworthy by the market); a paradox since the law was unable to create the trust in the first place. Market actors do not trust the law and instead trust a private governance tool embedded in the law. In this way, the contract as collateral is similar to law as it must rely on the legal system to be enforceable and therefore, to be effective. It must further rely on the legal system as it is born out of it. However, the law did not account for certain market practices, is lacking, and as such, must be complemented by private governance, by technologies of standardisation, by collateral (all enforceable by the law) to bridge the gaps between the theoretical law and the practices of markets.

Barro and Rausch (2024) report the art market being allegedly dependent on personal relations in need of protection by practices of anonymity and secrecy with secrecy being the guarantee of trust between parties (Velthuis, 2005b; Rausch and Yates, 2022). Secrecy insofar as contacts and long-established relationships are part of the business model of art market actors. Information on collectors and close ties are an asset in the market. As such, keeping this information secret is a vital part of maintaining this asset and staying in business, a notion that

my research confirms. The art market actor in my example is aware of this and developed a form of private governance to make up for the market understanding the regulation is lacking; to reaffirm trust. The contracts thus, embed trust in the market. Put differently, contracts address the tension between embeddedness and transparency by making requests appear procedural rather than personal. While the case of formal contracts relates to the relationship with intermediaries to a transaction, basically other art market actors, it also applies to the customers of art market actors. The intersection of the personal and the private may be seen as a reason for art market actors to be opposed to investigating their customers whom they have personal relationships with—which may also be seen as the basis for their different mode of KYC. This different mode of KYC is precisely embedded discretion in action: long-standing relational knowledge is treated as an alternative for formal verification of identity, raising the perceived threshold for when intrusive checks feel valid. I found the customer relationships in the art market to be different from the one in banks, at least the mass of private customers. A compliance professional in a bank does not have a personal relationship with the client, whereas in the art world, they may have because they are also the dealer assuming multiple roles due to it being a small business. Future research should consider taking a closer look at the dense personal relationships the market is made of as they are not without their contradictions. On the one hand, those close personal relationships resemble family ties, while at the same time, they do not want to share their real name or their real age and consider personal questions to be crossing boundaries. Rather than a monetary threshold which the regulation currently has, one could explore the level of depth of the relationship as a better factor to distinguish on which type of transactions and which type of relationships enhanced due diligence needs to be performed. The law very much focuses on formal aspects of business relationships, such as thresholds. This is counter to the nature and structure of the art market which is very informal and based on trust and relationships.

This problem of the regulation not being understood by the art market was already raised by Brodie and Yates (2022) who observe poor comprehension of the activities the law wants to regulate and attribute this to limited research and an inadequate evidence base. Such a lack of understanding undermines policy and legislation, potentially raising questions about their proportionality in terms of balance between cost and benefits (Brodie and Yates, 2022). As established earlier in this section, art market actors have found the regulation to be untrustworthy and, therefore, have developed their own private governance to make up for this. Such lack of the regulation does not increase the level of compliance. This also clarifies

why regulatory intermediaries such as trade associations matter: credible, sector-specific translations can restore perceived fairness and usability, thereby widening the practical exercise of discretion. To gain industry cooperation, regulators may need to align their messages with the industry frame (Gilad, 2014). Market actors may then re-frame these messages leading to regulators having to decide whether this re-framing is acceptable as it may lead to some changes (Gilad, 2014). As a suggestion for policy improvement, involving the market (perhaps as we have established earlier in this chapter) through trade associations may prevent laws being written that are not easily adaptable by the market and lead to the writing of laws that are viewed as relevant and practicable. In conclusion and accepting discretion as an important feature of risk-based AML regulation, regulators must reshape discretion via sector-specific standards and work with embeddedness by lowering the social cost of doing compliance in a socially embedded market.

11.5 The Ambiguous Role of Private Actors in Achieving Public Policy Goals

I found the most interesting research question for this thesis to be the one asking how art market actors reflect on their role in the fight against money laundering, and what the limits of their organisational thinking, processes, and responsiveness are. Most interesting because I, as a compliance professional, have never reflected on my role in this way. Asking others to do so forced me to think about it as well. Do I believe I am doing good by showing up to work every day? This reflexive question mirrors the central assumption of this thesis in that regulatory compliance is not merely a legal task, but a process of meaning-making through discretion. In the art market, where compliance has not been framed as a moral obligation, but a bureaucratic burden, this question exposes the limits of regulatory assumptions about motivation and responsibility.

With the EU's fifth AML Directive (2018/843) and the corresponding national law, art market actors found themselves in the position of legal subjects. While they had been attempting self-regulation (with limited success as I have explained in Chapter 3 of this thesis), they are now required to comply with external regulation. My findings highlight the dilemma of a private actor with private goals suddenly being engaged in and tasked with achieving public goals for the greater good. Public goals that are abstract and hard to grasp for any one person. According to the Directive, 'the integrity of the Union financial system is dependent on the transparency of corporate and other legal entities, trusts and similar legal arrangements' (Directive (EU) 2015/849 no. 4). This delegation of responsibility assumes that private actors are able—and

willing—to translate abstract public objectives into concrete organisational practices. My findings suggest that this translation is neither self-evident nor neutral but mediated by the market’s social embeddedness and the art market actors’ own understanding of their role. Essentially, private actors—in the case of the art market often one-person businesses—are being engaged in ensuring the soundness of the EU’s financial system by being transparent. In the EU’s sixth AML Directive, the role of private businesses is explicated in that ‘all obliged entities act as gatekeepers of the Union’s financial system’ (Directive (EU) 2024/1640 no. 7). These goals are not only huge goals for private actors to help achieve, but they are also hard to break down, let alone measure. Will they ever be reached? Can we imagine a time when we would call the EU’s financial system safe? When all businesses are as transparent as humanly possible? It is in the AML regulation that transparency is painted as ‘moral’ and discretion as ‘immoral’ (Kuldova, 2024). This belief in transparency as key to fighting crime and the commodification of these regulations has driven growing markets for audit, accountancy, consulting, compliance, and tech firms (Kuldova, 2024); what Kuldova (2022) terms the compliance-industrial complex. Especially compliance has taken a turn past risk management and intelligence gathering towards ethical guidelines and business for good agendas (Kuldova, 2022, 2024). The compliance-industrial complex thrives due to the anti-policies (anti-money laundering, anti-bribery, anti-corruption, etc.) (Kuldova, 2022). Anti-policies target crimes that due to their immorality ‘nobody in their right mind could be for’ (Kuldova, 2024, p. 100). This is also their source of legitimacy; being against the crimes that are harmful to society (Kuldova, 2024). It is this circle Kuldova (2022, 2024) continually criticises. The anti-policies are translated into regulations that create compliance markets and nobody who is part of this market has an interest in advocating for less anti-policies, less regulation, less compliance products. Although these compliance systems have failed to deliver substantial results, it is this failure that, according to Kuldova (2024), is their success as it stimulates the demand for even more of the same. The compliance-industrial complex (Kuldova, 2022) is constantly expanding with consultants being inserted into the government (Shore, 2024). It is fuelled by

hundreds of thousands of workers across the globe, across the private, non-profit, and public sectors, who *reproduce* these ideologies, *translate* governance and regulatory imperatives and best practices into consultancy, audit, and compliance products, and software; it depends on professionals lobbying and advocating for regulations and policies that align with these visions, in turn creating markets for their services, effectively commodifying the very regulation they advocate for (Kuldova, 2024, p. 94).

This commodification of regulations requires further study into the societal consequences that arise (Kuldova, 2024). It is at this point that I want to come back to my personal reflection and agree with Kuldova’s assessment. Any new regulation that requires us (as the Compliance

department) to set up new processes to avoid more fines adds to our legitimacy and the safety of our job. Interestingly, this is not how art market actors feel since they have reported a detachment from the discussions of morality over their trust-based relationships (remember the one account of not reporting their peers). In fact, regulation is perceived as banal and unnecessary and some of my findings have confirmed how irrelevant it is to the market. This perception can be understood as the outcome of a misalignment between regulatory and market rationality. Within the art market's socially embedded nature, regulation is evaluated less in terms of abstract public benefit and more in terms of its impact on relationships, reputation, and everyday business practices. Where regulation fails to resonate with these embedded logics, it is experienced as external, bureaucratic, and detached from art market realities. Of course, art market actors agree that money laundering should not happen in the art market, however, I observed the widely held belief that it does not happen in the art market, and as such, there is no need for this regulation or further transparency for the purpose of crime fighting. The regulation is perceived to be irrelevant to the art market. If money laundering was to happen in the art market, one expert explains, this would have to include the art market actor:

But the field, if it's going to attract a criminal who wants to money launder, it would have to be on a very personal basis, I would've thought. In other words, there would have to be some sort of partnership developed between the criminal and the dealer (I18/E/US).

This view illustrates how art market actors locate money laundering risk within personalised and relational scenarios rather than within systemic market practices. Such an understanding reinforces discretionary judgements grounded in trust and familiarity and narrows the scope of what is considered suspicious in everyday transactions. I have argued elsewhere that the already published money laundering typologies most likely to be applicable to the art market in many cases would only work if the art market actor colluded with the money launderer (Stoll, 2022). In this case, we must question the effectiveness of the AML regulations as I have done:

The effectiveness of current policymaking assumes that information carriers such as financial services institutions, and now also art market actors, are objective parties with no interest in the money laundering offence. Policymaking with input from insiders would violate the element of trust in the market which is one of its defining elements and the basis for its success (Stoll, 2022).

This exposes a core tension in the regulatory model, namely the expectation that socially embedded insiders can function as neutral. The reliance on insider discretion to generate intelligence simultaneously presumes and undermines the trust relations on which the market is built. Through many popular scandals the art market is seen by regulators as a facilitator of crime and thus, in need of regulation (Kuldova and Østbø, 2024). Paradoxically, at the same

time, they are seen as instrumental in crime fighting and through regulation are enlisted in this process by preventing, detecting, and gathering intelligence on said crime (Kuldova and Østbø, 2024). The regulator considers the suspect markets to be instrumental and engages them in the fight against financial crime (Kuldova and Østbø, 2024) by tasking them with intelligence gathering on behalf of the state and thereby effectively tasking them with the policing of the social (Kuldova, 2022). This shift reconfigures art market actors from relationship-based intermediaries into quasi-regulatory agents, without providing the institutional distance that characterises policing or supervision in other sectors. Exercising discretion under these conditions becomes particularly fraught, as it risks destabilising both personal relationships and professional identities. As such, once more, we should criticise the relevance of the AML regulation to the art market. A cynic might argue now (such as Kuldova (2024) has before) that questioning its relevance will only lead to more of the same. This cynicism reflects a broader concern identified throughout this thesis, namely that expanding regulatory scope without analysing and addressing embedded market structures may reproduce formal compliance while failing to generate meaningful engagement. From this perspective, discretion contracts rather than expands, as actors retreat to minimally invasive interpretations of their obligations.

The all-inclusive approach of engaging multiple (public and private) international actors in the fight against money-laundering by preventing, detecting, investigating, and reporting potential money laundering cases has been called an AML complex (Verhage, 2009, 2011, 2017) which as explained before was then further enhanced by including all anti-policies to the compliance-industrial complex (Kuldova, 2022). The ever-growing compliance industry (Alldridge, 2016) as part of the AML complex provides services and tools in addition to the AML regulations, thereby marketing AML compliance as a product for sale (Verhage, 2017). With the explicit addition of the art market to the AML regulations, the compliance industry has developed in this specialised area as well: legal experts provide services specifically for the art market and new tools were developed specifically for the art market, such as platforms for easier CDD. Compliance professionals find themselves continually at the crossroads between that commercial compliance industry and their role in crime-fighting and crime prevention (Verhage, 2017). Their role has recently been extended to include a personal liability risk. If a money laundering officer does not ensure that money laundering prevention is properly carried out in the company, they are subject to a personal liability risk (Glötz and Joschko, 2019). A German case

ruling from 2018 has set precedent in this respect: The case⁷¹ before the Higher Regional Court of Frankfurt involved three fines imposed on the money laundering officer of an international bank which had not promptly complied with its obligation to report suspicious transactions to the FIU in accordance with Section 43 of the Money Laundering Act (Glotz and Joschko, 2019). So much for the personal motivation of a compliance professional. With regards to the companies themselves, AML compliance in the financial services industry was found to be mainly aimed at preventing risks, but particularly reputational and regulatory risks (the risk of getting fined or excluded from operating in the sector), and not per se money laundering risks (Verhage, 2009). As such, the protection of reputation is the main motive in the financial services industry for investments with regards to AML compliance (Verhage, 2011). The banking industry has changed since the implementation of the AML regime: it was hostile to the expense, the controls, and with it, the changes it would require to the bank's relationship with its customer at first (Alldridge, 2016).

The AML industry has further changed the relationship between professionals and their clients. Due to the duty to inform the authorities, the professionals are increasingly characterised 'not only as failing in a duty to inform but as him/herself being complicit in criminality' (Alldridge, 2016, p. 18). Any appeals to the confidence between the bank and the customer were rejected and once the AML regime had secured its existence in the banking industry, it was expanded to other industries (Alldridge, 2016). One could argue that this almost mirrors the findings of this thesis and the maturity state of AML regulatory compliance in the art market. If we continue this line of thinking, AML compliance in the art market will mature as well, and in a decade or so mirror the current compliance state in the financial services industry. However, seeing the lack of relevance and alignment of the AML regulation with the nature and structure of the socially embedded art market, if AML compliance in the art market is to mature, it will not do so through the simple accumulation of rules. Rather, a recalibration of how discretion, trust, and responsibility are understood within this particular regulatory field that is the art market is necessary.

11.6 The Maturity of Supervision Impacts Compliance Behaviour

In my fieldwork I observed that art market actors feel misunderstood by public perception, but also by the regulator. They felt insulted when they were put at the same table as the gambling sector. Another observance that contributed to this finding is the mismatch in perception

⁷¹ Decision of 10 April 2018, Ref. No. 2 Ss-OWi 1059/17, Retrieval No. 210406.

between which of the requirements would be difficult and which easy to implement for the art market. Part of this feeling may stem from the fact that art market actors were not (in a documented and traceable way) consulted when they were added as obliged entities to the EU's fifth AML Directive. The burden of compliance was reported by many art market actors as observed by other scholars (Zavoli and King, 2021). This puts the risk of losing the support of the private actor engaged in public policy goals in the long run (Zavoli and King, 2021), as private actors are more likely to comply when they feel like they are treated fairly, and their concerns are not ignored (Tyler, 2003). Such findings of frustration in the market of not being heard or seen by the regulator have a negative impact on the acceptance of norms and therewith, on compliance behaviour. I would argue that the level of engagement a regulator maintains with their regulated subjects is an indicator for the maturity of the regulatory system. Embeddedness also influences interaction with supervisory authorities. Limited direct engagement between regulators and art market actors, combined with strong internal norms, means that regulatory meaning frequently develops inside the market rather than through sustained dialogue with supervisors. In Germany's decentralised supervisory landscape, embeddedness amplifies these dynamics: actors rely on internal networks for interpretive guidance, while supervisory expectations are removed from market practicalities due to the lack of knowledge. The absence of early, structured engagement fuelled by honest interest narrowed the exercise of regulatory discretion to what was administratively convenient, while the socially embedded nature of the art market interpreted this narrowing as distrust, thereby weakening the acceptance of the AML regulations. In furtherance of the concept of responsive regulation, leading scholars ask regulators to be really responsive in that they need to respond to a firm's attitudinal setting, meaning the broader institutional environment, the different logics of regulatory tools and strategies, the regimes' own performance, but also (and most importantly for my argument's sake) to changes in each of these elements (Baldwin and Black, 2008). This ask would support my argument of higher engagement between regulator and regulated as desirable. It is also something that was found earlier by Tsingou (2018) who argues that aspects of AML regulation rely on private sector practice. Compliance is not a fixed concept, but rather a dynamic one (Rooij, Wu and Li, 2022), and it depends on the meaning individual actors assign it in practice (Parker and Nielsen, 2009). In this sense, supervisory maturity is the capacity to understand the regulatory field and to steer discretion accordingly. Interventions that acknowledge relational routines elicit cooperation, while interventions that ignore them provoke resistance, for example in the form of tick-box compliance (which would still be better than non-compliance, but likely not help reaching the regulation's objectives). Regulators thereby influence money laundering in the art market through AML regulation,

supervision, and enforcement. From what I observed in my study, I would argue that in Germany, the level of market engagement depends very much on the individual supervisor and more importantly, on the resources the supervisors were provided with. Needless to say, that none of these supported a strategic communication effort. It is not only the negotiation process with an outcome of the shape compliance can take that needs to support the achievement of the regulation's goals, but also communication channels that regulators should make use of. In socially embedded markets, communication channels are the infrastructure of discretion in that they supply shared understandings and make risk-based judgments practicable. One could even assess supervisory maturity by the quality of these channels, the regularity of contact, clarity of written guidance, and the availability of case-based interpretations, rather than by enforcement outputs alone. I found compliance with AML regulation to be shaped by the interaction between art market actors and their supervisors. The experience of regulators defines their expectations. In fact, the in-depth qualitative study by Fairman and Yapp (2005) found compliance to be 'an outcome, the terms of which are negotiated in an enforcement inspection' (p. 515). In line with this, they assessed the compliance process as 'heavily reactive, with businesses responding to external intervention rather than initiating action' (Fairman and Yapp, 2005, p. 515). These findings not only mirror my own experience as an internal auditor first and then a compliance professional, but were also confirmed by my own observations in this study. Supervision of art market actors in Germany is federal and not done by AML specialists, so the expectations will most likely be quite low at the beginning and develop with what they see from art market actors. In this way, market participants also influence what they are regulated by. This reciprocal learning dynamic reinforces my argument: Where supervision is inexperienced and the market is socially embedded, both sides default to defensive discretion, meaning checklists for the regulator, relationship-preserving minimalism for the regulated. Every actor within this framework learns from their experience and transfers this experience towards their future actions. This is supported by Tsingou (2018) who found through interviews with US officials in the public and the private sector that if a supervisor has seen a compliance practice in one financial institution, they may demand it from others; a concept she calls regulatory creep. In the case of the art market and with the market consisting of people who do not know money laundering and supervisors being people who do not know the art market, we are confronted with two sets of actors with two different kinds of knowledge. In this hybrid functionality that both actors need to suffice, they need to enhance their knowledge and solve their misunderstandings to find common ground on which they can view and work with regulation. Closing this asymmetry requires co-produced, sector-specific

translations of the rules to allow discretion to travel across relational settings without exhausting the embedded trust the art market structurally depends on.

I have observed art market actors' expectations in Germany lying well beyond what the supervisor offers, such as the expectation for standardised forms to simplify compliance. Whether these expectations are justified or not does not matter in the eyes of the supervised. In fact, it would be the task of market engagement to overcome these perceptions.

De-centred regulatory regimes are characterised by interdependencies (Black, 2008). The regulator requires a certain market knowledge to supervise businesses and evaluate their level of compliance. Especially with the AML regulation where one-size does not fit all (although they try to make it as such with standardised forms), such knowledge is the foundation of supervision. In turn, the regulated art market actors require the regulator's knowledge on money laundering and compliance practices in general. They profit from a well-educated supervisor who also has extensive knowledge of compliance practices at other institutions. This can, of course, also widen their expectations. I would argue for AML to be a collaborative risk based private governance approach. A risk-based approach as opposed to a rule-based approach as the customer due diligence measures that are applied by private market actors depend on a discretion. Risk-based instead of rule-based money laundering regulation leaves more room for private organizations to define the standards they apply. It brings together the expertise of relationship managers, compliance professionals, and internal auditors, who are all integral to how money laundering risk is assessed. Compliance professionals are particularly strategic actors in collaborative networks as they translate public regulatory discourse into business discourse and vice versa (Parker, 2002). This collaboration is an essential part of how AML regulation works.

The way in which businesses comply with the AML regulations impacts their ability to reach their objectives. Complying not just with the letter of the law through a tick-box approach but thinking about and analysing risk to tailor measures to this risk will impact the extent to which the regulations succeed in achieving their goals. From what I heard of supervisors and art market actors in Germany, both sides are satisfied with the tick-box approach. Moving beyond this stage will require re-configuring discretion through co-produced, sector-specific standards and working with the embeddedness of the market, not merely by adding more rules. Considering this, regulations are only bureaucracy, and they are only a burden with no effect. This does not go towards the intentions of the law as a risk-based rather than rule-based regulation and leads me to believe that continuing down this road, AML compliance in the art

market in Germany is never going to mature. This is it. The letter of the law is being followed, and everyone is happy with everybody following the letter of the law. And no one is getting blamed if the law is not effective because everyone was following it to the letter. Instead, and being cynical, there needs to be more of the same (Kuldova, 2024). Others before me have questioned the effectiveness of AML regulation (Harvey, 2008; Ferwerda, 2009; Saperstein, Sant and Ng, 2015; Alldridge, 2016), and it is not within the scope of this thesis to provide a definite answer. Instead, my findings offer insights into the nuances AML compliance takes in the art market and how these nuances impact the relevance of the AML regulations to the art market.

It is in the very nature of AML regulation to be in a constant crossover between the public and the private, and how this creates both potential and need for private-public collaborations. The new regulatory state articulated by Parker and Braithwaite (2003) recognises that policy outcomes are not solely the product of central government, but a complex interaction between law, local government, administrative agencies, the voluntary sector, the private sector, schools, and families, each of whom interact with one another. Any regulatory intervention that attempts to change social institutions will face a so-called regulatory trilemma of effectiveness, responsiveness, and coherence. That means it is either irrelevant or produces disintegrating effects on the social life or on the regulatory law itself (Teubner, 1987). Viewed through the lens of regulatory discretion, this trilemma is particularly acute in socially embedded markets such as the art market, where regulation must operate through actors whose primary orientation is relational rather than administrative. German supervisors have not actively been preparing to get to know and understand the art market as I showed in this thesis. This lack of structured engagement directly impacts regulatory compliance. I would therefore propose a review to enhance the German approach to AML supervision with regards to the non-financial sector in general and the art market more specifically. Trade associations, experts, and compliance professionals also take on a policing role in AML compliance in that they are engaged in crime prevention and crime detection. As such, interaction not just with private art market actors but also other actors in this field, namely trade associations, compliance professionals, and other experts, is essential to this approach. We need to find a way to integrate market participants' perspectives into regulatory practice, and to use meetings between regulators and market participants to shape those perspectives (Riles, 2011). Over time, the German supervisory approach may reach more maturity. Only once supervisory discretion is informed by sustained engagement with the art market's relational structure can meaningful compliance begin to develop.

11.7 Chapter Summary

This chapter discussed how AML regulation is learned, experienced, and applied in the socially embedded art market through the exercise of discretion. Rather than asking whether money laundering occurs in the art market, the chapter and this thesis focus on how art market actors understand their regulatory obligations, how they comply in practice, and what these patterns of compliance reveal about the limits of the AML regulation. Drawing together the empirical findings from Chapters 6 to 10, this chapter systematically applied the concepts of regulatory discretion and social embeddedness to the art market as a newly regulated field. I showed that discretion, inherent to risk-based regulation, structures how art market actors learn about AML obligations, interpret risk, and interact with regulators. At the same time, the dense, trust-based nature of art market relationships conditions how these obligations are perceived and enacted, often creating tension between formal regulatory expectations and everyday art market practices.

In this chapter I highlighted the power of trade associations as regulatory intermediaries, demonstrating that they are central sites of legal knowledge, learning, and translation. Trade associations not only disseminate information but actively shape compliance by filling regulatory gaps through guidance documents and standardised tools that function as forms of private governance. Through these mechanisms, discretionary interpretation of AML obligations is exercised collectively, reinforcing the influential role of intermediaries in shaping how regulation operates in practice. It is this influence that should be used by regulators to advance regulation and regulatory compliance.

I further examined the limited understanding of AML on both sides of the regulatory relationship. My empirical evidence showed that art market actors primarily associate money laundering with cash transactions and monetary thresholds, a narrow understanding that constrains risk assessments and potentially contributes to consistently low levels of suspicious activity reporting. This finding is confirmed by Barro and Rausch (2024) who come to the same conclusion. However, I rather interpret the low reporting levels as an expression of discretion constrained by limited knowledge and by relational norms that raise the social cost of formalising suspicion in a trust-based market.

Art market relationships rely on trust and AML requirements disrupt these relationships. Art market actors respond by developing private governance solutions, such as contractual arrangements and standardised documents, which recalibrate discretion in ways that preserve relationships while satisfying formal requirements. These practices illustrate how compliance is adapted to embedded contexts.

I also explored the ambiguous role of private actors in achieving public policy goals, highlighting the tension between expectations that art market actors act as neutral gatekeepers and the relational realities of their market. The moral framing of transparency within AML regulation sits uneasily with the art market's social logic, leading to scepticism, detachment, and ultimately, minimalist (tick-box) compliance—or even non-compliance.

Finally, this chapter examined how the maturity of supervision impacts the shape compliance takes in the art market. My findings from Germany showed that limited engagement, decentralised supervision, and resource constraints reinforce tick-box compliance. I argue that supervisory maturity lies in sustained engagement, knowledge exchange, and the capacity to exercise discretion in sectorally informed ways. AML compliance in the art market is unlikely to mature through the accumulation of rules alone. Instead, supervisory maturity depends on rethinking discretion through working with embedded market structures and fostering collaborative, risk-based private governance that supports meaningful rather than merely formal compliance.

Chapter 12 Conclusion

In February 2024, almost a year and a half after I completed the fieldwork for this thesis, I was invited to an art fair in Germany. When I met some of the participants of my research study, they told me about the developments that had taken place in the time since we last spoke. The increased frequency of regulatory exams and the increased scrutiny of supervisors were mentioned. When one participant talked about them having to perform CDD measures on other art market actors, we bounced off ideas about reliance that I had come across in the UK. They also asked about my work, how far I had come, when I would publish, and whether I could send them a copy. This thesis and the work that was done for it is interesting to them; it is relevant to the art market in its current state.

In this thesis, I argue that AML regulation of the art market is structurally misaligned with the market's socially embedded, trust-based nature and structure, and that meaningful compliance can only be achieved through a collaborative approach that integrates market practices and perspectives into the design and interpretation of AML regulation.

Methodologically, this thesis adopts a socio-legal approach that treats AML law not as a self-contained normative system, but as a regulatory intervention embedded within a specific social field that is the art market. Drawing on qualitative analysis of art market practices and art market actor perceptions, this thesis examines how AML regulation is learned about and interpreted, experienced and applied in practice, and interacted with thereby being shaped by private and public actors. Rather than assessing AML regulation solely by its formal objectives, this thesis evaluates its practical operation in light of the lived realities of the art market. This approach allows me to expose gaps between legal design and market structure and to assess how collaborative, market-informed regulatory practices can enhance compliance beyond a tick-box model. As such and much in the same spirit as Barro and Rausch (2024), this empirical study contributes knowledge of the inner workings of the art market and how art market actors in the past few years have learned, experienced, and interacted with the AML regulations. I summarise my key findings and corresponding recommendations structured according to the chapters of this thesis in the following sections.

Chapter 6, on the art market, answers the research question of how the socially embedded, trust-based structure of the art market aligns with the requirements for art market actors as set forth in the AML regulations. First and foremost, the art market was represented by study participants as being different from other markets. In fact, it was found to be unique through

art as a commodity being unique and different from other commodities. Art is not originally intended to be a commodity—at least in its ideal sense—and its production process requires special talents. A specialness that art market actors emphasise. This social predominance separates art market actors from the ordinary, but more importantly, it welds them together in a complex social system with its own norms and values. The dense social relationships are based on trust and form the foundation of how the art market functions. Such close-knit networks further lead to an inside-the-market versus outside-the-market dynamic. Outsiders may not understand the conventions—knowledge and practices—that are the norm on the inside. Art market actors such as art dealers can be considered gatekeepers in this inside versus outside the market. They assume the role of teacher and guide into the market thereby effectively creating collectors, but also creating taste. The market gives them enormous power as experts creating and shaping the market. The boundaries of which are reinforced by elitist knowledge that is honed and cherished by art market actors. Even more so as knowledge is considered an asset in the market, contributing to the value-creating information asymmetry. Here it is not only the knowledge about art, but who owns certain artworks and the ways to contact them. While art market actors like to highlight their uniqueness, there is no denying that for any market to thrive, businesses must be successful. Market mechanisms such as driving demand after unlimited supply and driving prices of limited supply are necessary. As such, art market actors find themselves constantly at the crossroads between art and business. Regulation is perceived as banal and unnecessary by art market actors. This resistance towards the bureaucracy that is AML compliance is interesting, considering it is exactly this bureaucracy that provides certainty through regulation in countries such as Europe, the UK, and the US. Countries many art market actors chose as their place of business. The perceived burden results from the niche nature of the art market composed of dense personal relationships, qualities that sit uncomfortably with formal AML regulation. On the contrary, such regulation is seen not only as an administrative burden, but to introduce an awkwardness into relationships which are necessary for the market to function. Furthermore, the information obtained through AML regulation, for example on the end buyer, can be exploited to cut the art market actor out of the chain. Hence, AML regulation reinforces information asymmetry which is the source of status and power in the market. Consequently, one could argue that AML regulation is set out to ruin the very structure of the art market. The findings of this thesis mirror Jerzyk's (2025) thoughts on the high costs of due diligence which are counter to how the market functions: The negotiations over the best possible price of an artwork rarely leave room for additional compliance costs (Jerzyk, 2025). Thus, due diligence does not fit the transactional structures

of the market (Jerzyk, 2025). How art market actors will react to this disruption will lay the basis for their shaping of regulatory compliance.

I can only speculate as to what the implications are for AML regulations considering this. For one, the willingness, the attitude of obliged entities to fulfil their obligations not just to the letter of the regulation and with a tick-box approach but to think about the risks they face and tailor their regulatory approach to those risks, has an impact on the extent the law is able to reach its objectives. With a market based on such close personal ties, AML regulation needs not only to be aware of these relationships, but also to use and tap into them to achieve its objectives. Consequently, AML regulation needs to consider the intricacies of the market it attempts to regulate. It should seek to integrate market participants' perspectives and actively shape those perspectives.

Art market actors as subjects of AML regulation play an important role in the regulatory process. I propose to extend the collaboration with market participants to be able to identify more such gaps between the regulation and the characteristics of the market. Chu (2022) similarly proposes regulators to work with art market actors to determine the threshold of artworks that may pose a money laundering risk for each jurisdiction. Again, in the spirit of cooperation between the public and the private actor, Chu (2022) further initiates that regulators should work together with art market actors to determine the standard body of information to provide to the intergovernmental organisation that can be reasonably obtained by an art market actor. I have found art market actors to be willing participants in tailoring the regulation to the art market. It is essential for the public and the private to collaborate to identify challenges and develop solutions. This not only shapes the regulation and the understanding the public actor has of the market, but it also shapes the private actors' attitude towards AML compliance. When regulators use market knowledge to inform their regulatory practices, not only is the practicability of the regulation increased but also acceptance of the regulation by art market actors. Increasing the regulatory dialogue would further increase mutual trust between both parties, the public and the private actor. Jerzyk (2025) agrees and urges reforms to aim at providing standard practices that will facilitate rather than disrupt the market's functioning. For example, I have found that a part of the regulatory problem is a definitional one as there is no EU-wide definition of artworks to distinguish which art market actors fall under the list of obliged entities. I propose to extend the existing definitions of art from the VAT Acts of the various countries to be consistent, but also reflect the current state and trends of the art market, such as to include digital art. With Regulation 2024/1624⁷², the EU has addressed the

⁷² Note that it is not a Directive, but a Regulation, meaning it is directly applicable to the member states without first having to be transposed into national law. The regulation comes into force on 10 July 2027.

first part of this regulatory problem (and arguably created a new one) and changed the term works of art to cultural goods. Article 2 No. 1 (56) of Chapter 1 Section 1 consecutively defines cultural goods as goods listed in Annex I to Council Regulation (EC) No 116/2009⁷³. Cultural goods as listed in this annex⁷⁴ are covered by the regulation only if their value corresponds to or exceeds certain financial thresholds (between EUR 0 and EUR 150,000 depending on the object). Considering the list of cultural goods has been known to the market since its introduction in 2009, art market actors are already familiar with the legal definition of cultural goods. Additionally, any differences between definitions in national law have thus, been eliminated. As I have demonstrated, introducing financial thresholds into the art market—arguably an effective regulatory tool for defining the scope of the regulation—comes with its own problems as pricing and valuation is a complicated topic in the art market⁷⁵. Furthermore, the term cultural objects that is used in this regulation is much wider than the term works of art that is used until then. The impact of widening the definition while still not addressing current problems regarding digital art (Mosna and Soana, 2023) remain to be seen.

Chapter 7, on learning, considers trade associations in the art market as regulatory intermediaries in the context of the RIT framework consisting of regulator, regulatory intermediary, and target of the regulation as applied by Abbott, Levi-Faur, and Snidal (2017a). I use this framework to answer the research question of how trade associations as regulatory intermediaries shape regulatory learning through the creation and distribution of legal knowledge and how this learning process influences the practical application of AML regulation in the art market. Most art market actors I talked to in Germany learned about the AML regulation—or any other for that matter—through their membership in a trade association. I have found art market actors who were not members to be less informed. This led me to conclude that trade associations assume an important role in the regulatory learning process of art market actors. In this sense, my findings confirm the regulatory scholarship on regulatory intermediaries. As part of their role as regulatory intermediaries, trade associations explain the regulations to their members thereby translating them into practice. With AML regulation

⁷³ Council Regulation (EC) No 116/2009 of 18 December 2008 on the export of cultural goods.

⁷⁴ The listed cultural objects include archaeological objects, pictures and paintings, watercolours, mosaics, original engravings, original sculptures, photographs, manuscripts, archives, collections of specimens, antique items, toys and games, glassware, articles of goldsmiths' or silversmiths' ware, furniture, musical instruments, clocks and watches, articles of wood, pottery, tapestries, carpets, wallpaper, and arms (Annex I to Council Regulation (EC) No 116/2009).

⁷⁵ Discussed extensively by scholars such as Velthuis (2003, 2005b).

having been written for the financial services sector and leaving considerable room for interpretation through their risk-based approach as meta-regulation, there was a need for regulatory intermediaries which has been fulfilled by trade associations. This process of translating the law into practice, of exercising discretion can be seen as shaping governance which gives trade associations certain powers in the regulatory cycle. Shaping through highlighting certain aspects of a regulation to be important while neglecting others. By prioritising different requirements of a regulation, they steer which requirements are complied with by their members and in what order. I use the example of the typology paper published by the German FIU to demonstrate how feedback from trade associations has shaped the understandings of the FIU regarding the money laundering typologies and risks in the art market (FIU Deutschland, 2022).

Any assistance the trade association provides, be it in form of guidance or sample documents, is tailored to the art market and can thus, directly be applied and used by their members. Sample documents formalise the regulations further while at the same time they simplify compliance with the regulations for their users. Members rely on the trade association when using such sample documents which not only embody the legal knowledge of the trade association but also the understandings and norms of the art market. In this context, they function as a form of private regulation whose power resonates from the trust art market actors place in their trade association.

Trade associations are often made of market actors who possess industry experience and knowledge the regulator does not. Such an embedment of targets in the organisation of an intermediary may facilitate learning and continuous improvement through practical experience and a constant feedback process with their members. Having trade associations translate the regulation into practice can be advantageous due to their unique position and knowledge of the industry. As trade associations and the people that represent them have their own intentions and pursue their own private objectives, it may be in the interest of the regulator to ensure those objectives align with the regulatory objectives.

Another important role of trade associations as regulatory intermediaries is in creation of a dialogue between regulators and targets of a regulation. They seek to engage with and represent the businesses of the market. This is partially also to ensure their own survival since the more members they have, the more funds they obtain through membership fees, but also the more weight they carry when negotiating regulation. This supports their legitimacy claims. With experience and through the regulatory dialogue, regulatory actors continue learning and understanding on all sides grows. Therefore, the trade associations not only shape regulation, but they also shape the industry by increasing regulatory understanding.

Finally, trade associations seem to act as some form of guardian of ethical behaviour in the market. They can be regarded as non-state regulators (Black, 2008) as they make their members adhere to their own code of ethics. Mechanisms of enforcement may be state-based or internal to the trade association as the pressure comes from other members. Such pressure can be compared to a neighbourhood watch situation. Additionally, the trade association enforces its boundaries by deciding on membership and who may carry their quality label.

In conclusion, trade associations as regulatory intermediaries are essential to compliance with the AML regulations. Regulators should be aware of those different roles trade associations assume and use those roles towards achieving the public objectives the regulation claim to strive towards. For example, I would recommend opening a constant dialogue between the regulator and the various trade associations. This would foster understanding on both sides as I have demonstrated with the example of the German FIU. It would further increase understanding and acceptance of regulation on the side of the regulatory target, the art market. Regulators may also want to review and endorse guidance and documents developed by trade associations to shape compliance beyond the letter of the law.

Chapter 8, on experience, answers the sub-research question on how art market actors in Germany have adapted their internal practices to comply with AML obligations and what these adaptations reveal about the relevance and practicality of the AML framework. Here, I observed that not only is there a lack of money laundering typologies specific to the art market, but the understanding of ARML that art market actors showed during my fieldwork also remains superficial and limited to transactions over a certain amount or in cash. In fact, some art market actors only had a vague idea of what money laundering is in general, less even what it would be in the art market. Their understanding is based on the business practices of and the cases already encountered by the individual art market actor. I determined that for money laundering to work in the art market it would have to work alongside and in established relational channels. This makes it almost indistinguishable from business as usual and completely unsuspecting transactions in the market. In addition to ARML being hard to detect when it works alongside established business practices and relational channels, the limited understanding of ARML art market actors showed further hinders detection and therefore, reporting. Essentially, the understanding of ARML has a direct impact on the effectiveness of the regulation as it is also the basis for the risk-based approach to compliance with the AML regulation. With the observed limited understanding, the low number of SARs filed by art market actors come as no surprise. This leads to the conclusion that there is a need for specific trainings in the art market on

ARML. Such a training would have to be jointly developed between art market actors who understand the business practices and the characteristics of the market, and either the regulator or money laundering experts who understand money laundering as a crime and the forms it may take.

During the short implementation period of the AML regulations, art market actors have already encountered and addressed certain practical obstacles when applying AML regulation as a financial regulation to the peculiarities of the art market. I demonstrate this in two examples. In a market that relies on information asymmetry and profits of contacts that were established through dense relationships over time, disclosing every party to a transaction poses the risk of the obtaining party misusing the received information. One art market actor I interviewed started drawing up contracts with advisors in which they commit to not contact any clients that were disclosed in the transaction due to the AML regulation. These contracts fulfil the purpose of reaffirming the trust which is an integral part of the art market, and which is challenged through the AML regulation. These contracts can be seen as an addition to the government regulation which in this case is unable to effectively protect market actors in the case of information privacy. The second example concerns the identification of customers at auction. The AML regulations require the verification of the identity of the customer to be carried out before carrying out the transaction. The difficulty for auction houses lies in the number of bidders they may have for artworks sold. Upon registration, the auction house does not necessarily know which item the registered bidder is interested in. It does not seem feasible to carry out CDD on 100 registered bidders when only one person will effectively purchase the artwork. One German auction house has established the practice of asking their bidders beforehand whether they are planning on spending more than the EUR 10,000 threshold. If so, they perform CDD on that bidder. In the UK on the other hand, the BAMF guidance explicitly addresses the problem of identification at auction in that it specifies that CDD must be completed before the artwork is released and the transfer of title is completed. The definition of carrying out a transaction as given by the AML regulation was translated to the art market. In the case of an auction, this means that CDD can be carried out on the successful bidder before the purchased artwork is released. This example demonstrates the importance of regulatory intermediaries in the process of translating the law into practice. It also shows the necessity of collaboration between private and public actors to tailor the regulation to an industry that it was meant to address when it was written. This process is necessary for effective compliance and effective regulation.

I found the customer relationships in the art market to be different from the one in banks, at least the mass of private customers. The art market is made of many smaller niche markets

depending on the type of artwork. Collectors and dealers in the specific type of artwork are well known to each other. Due to the form of customer relationship between an art market actor and their customer, I would argue that there is already a different form of KYC in the art market: The art dealer knows their customer for years and builds a dense relationship with them, they visit their customer's home to consult on and hang the artwork, customers are often introduced by other customers whom they have known for years on a personal level, and new customers are often googled. Due to the heightened attention on the art market, however, many banks have started their process of de-risking and either terminated their customer relationships with art market actors or flagged them as higher risk. Additionally, I have observed that art market actors want to rely on banks performing their due diligence as they see them as much better placed to do so. Both these observations raise the need for conversation between the two obliged industries to find common ground and eliminate any gaps in compliance that may be exploited for money laundering purposes. In this sense, the discretionary adaptation of AML obligations observed in this chapter also reflects processes of legal endogeneity, whereby internal compliance practices come to embody organisational understandings of regulatory requirements. Although elements of legal endogeneity are visible in organisational compliance practices, the thesis demonstrates that AML governance in the art market is more accurately understood as a process of discretionary interpretation shaped by embedded social relations across the regulatory lifecycle.

Chapter 9, on interaction, has found a lack of consultation with art market actors when adding them to the EU's fifth AML Directive. The sub-research question of how this lack of interaction is perceived by art market actors and what the consequences of limited or inadequate interaction for their compliance practices is, is answered in this chapter. Whether the limited interaction was due to the regulator not asking or the market not replying is not traceable with available resources. I further observed that art market actors repeatedly conveyed the feeling of being misunderstood by public perception, as seen in the media for example, but also by the regulators and their supervisors. As one example, in discussions with the regulator, art market actors are being put together with other non-financial sectors, such as the real estate sector or the gambling sector, which was perceived as an insult, a devaluation. The mismatch in perception of which requirements are difficult to implement is another example of the mutual misunderstanding. A German supervisor thought that copying the ID card is the easiest thing, while this process step was reported by several art market actors as being most uncomfortable. Due to the mistrust such requests for personal information carry, dense personal relationships

may be destroyed. This feeling of being misunderstood and the fulfilment (or lack) of expectations the market expresses towards the regulator can be traced in the responses to limited and inadequate interaction between the regulator and the regulated.

Considering the limited understanding of AML and the unawareness of suspicious activity I observed in Chapter 8, I would almost argue for an embedded ignorance in the art market. The conflict of the outside versus the inside, the public realm versus the private realm, manifests itself in this struggle between compliance and business, between regulation and commerce. Regulators merely see the market from the outside; they do not see what makes up the market, such as the dense relationships. This opens the question of regulation itself and how the art market could effectively be regulated. We thus need to reconsider what compliance means without damaging the market. Without better understanding of the art market and of the crime of money laundering in the art market, the regulation is bound to remain out of touch.

During my fieldwork I observed art market actors developing a tick-box form for documenting CDD requirements. While this is an efficient method of compliance by private art market actors, often a tick-box approach follows the letter of the law but does not achieve its objectives. Collaboration between the regulator and the private actor when developing such tick-box forms would support the intentions of the regulation by requiring an active engagement. When regulators use market knowledge to inform their regulatory practices, not only is the practicability of the regulation increased but also acceptance of the regulation by art market actors and therewith legitimacy. Increasing the regulatory dialogue would further increase mutual trust between both parties, the public and the private actor.

In this chapter I have demonstrated that, from the perspective of art market actors, AML compliance is not primarily a technical exercise but a relational one. The regulation leaves significant discretion while providing only limited guidance on how this discretion should be exercised in relationship-based markets. In the absence of sustained interaction or tailored guidance, art market actors are left to reconcile regulatory expectations with market norms internally, often without direct supervisory support.

Chapter 10, on supervision, answers the research question of how the current AML supervisory approach to the non-financial sector in Germany in terms of organisational and operational set-up influences supervisory practices and compliance behaviour. I analyse Germany's decentralised approach to AML supervision of the art market which based on the legislative competence (*Gesetzgebungskompetenz* in German) as it is defined and anchored in Germany. This decentralised set-up leads to a high number of supervisors, each one of them situated on

a different organisational level. Any supervisory practice therefore depends on how the individual supervisor performs it. As such, I did not observe a structured, uniform approach to stakeholder engagement and collaboration with the industry. While one supervisor in Germany has reported that this is what they aim to do, the current operational set-up does not allow for this. There is no regular contact set-up and no regular communication channels are established. Stakeholder engagement is highly dependent on the approach each individual supervisor takes. Communication between supervisor and supervised is complicated by the lack of a central identification or registration process for supervised businesses from the non-financial sector, including the art market. Supervisors often do not know the number of businesses they supervise. There is further no central strategy to educating the non-financial sector. The amount of training and guidance the art market is given, again, depends on the individual supervisor and their level of engagement.

Supervisors on the other hand, reportedly were also not provided with any specific training regarding AML supervision in general or the art market specifically upon taking on their task. It is therefore safe to assume that knowledge of the art market is limited among supervisors.

Sector-specific guidance is published by the supervisory authority of each federal state—though they are in large parts the same—and applies to the non-financial sector as a whole as opposed to the art market specifically. This document is not specifically tailored to the art market, and it was reportedly developed by the supervisory authorities without industry involvement.

While for supervisory practices this means they highly differ depending on the individual supervisor tasked with supervision, their staffing level, other unrelated tasks, their education and experience, and their motivation, in turn, compliance behaviour will highly differ as well, depending on the collaboration between supervisor and supervised and the requirements the individual supervisor sets out. My findings thus, support and expand the FATF's mutual evaluation report of Germany (FATF, 2022a) in that the large number of supervisors leads to a fractured approach to supervision. Although a lack of consistency is inherent to the supervisory approach in Germany and its set-up with legislative competence with the federal states, I argue that a strategic monitoring and oversight concept increases the level of maturity. Germany's decentralised AML supervisory approach not only shapes the level of supervision but fundamentally influences the compliance behaviour of art market actors. In this way, I confirm the regulatory scholarship on discretion. In Germany, every decentralised supervisor I talked to tries to overcome the difficulties that arise from the organisational and operational set-up. While they each do so individually, a coordinated and structured approach would significantly increase maturity and effectiveness. I consider the engagement with the supervised and guidance of the supervised towards higher levels of regulatory compliance an essential part of

supervision. Perhaps a conversation between supervisors from different countries would further the level of maturity of each supervisory authority as they benefit from experience others have made before them.

In Chapter 11, the discussion chapter, I systematically assessed the application of discretion and social embeddedness as the theoretical framework for this thesis. Applying the analytical framework of regulatory discretion and social embeddedness, I built on the notion that discretion is inherent to the risk-based design of AML regulation. At the same time, the dense, trust-based nature of art market relationships conditions how these obligations are perceived and enacted, often producing tension between formal regulatory expectations and everyday market practices. Compliance emerges not as a fixed outcome, but as a negotiated practice shaped by experience, interaction, and shared understandings.

A central theme (building on Chapter 7 of this thesis) concerns the power of trade associations as regulatory intermediaries. Trade associations were shown to function as primary sites of legal knowledge and translation, shaping compliance by interpreting open-textured legal requirements, filling regulatory gaps, and providing standardised tools that function as forms of private governance. Through these mechanisms, regulatory discretion is exercised collectively rather than individually, reinforcing the influential role of intermediaries in determining what compliance looks like in practice and highlighting the need for regulators to engage with these actors in a structured and reflexive manner.

The limited understanding of money laundering and ARML among art market actors holds important implications for risk-based compliance and suspicious activity reporting. Empirical evidence suggests that narrow conceptions of money laundering—primarily associated with cash and high-value thresholds—constrain the exercise of discretion and contribute to low levels of reporting. These patterns can be interpreted as the combined effect of limited sector-specific knowledge and relational norms that raise the social cost of formalising suspicion in a trust-based market. I showed in this thesis that AML requirements disrupt established relational practices and how art market actors respond by developing private governance solutions, such as contractual arrangements and standardised documents. These practices recalibrate discretion in ways that preserve relationships while satisfying formal requirements, illustrating how compliance is adapted to embedded contexts rather than imposed upon them.

The role of private actors in achieving public policy goals can be considered ambiguous. Art market actors are tasked with translating abstract public objectives into concrete organisational practices, yet their understanding of money laundering risk and their

market-embedded identities complicate this role. The moral framing of transparency within AML regulation sits uneasily with the art market's social logic, often leading to scepticism, detachment, and minimalist compliance.

Findings from the German supervisory approach indicate that decentralised supervision, limited resources, and uneven engagement reinforce tick-box compliance. Supervisory maturity is conceptualised not in terms of enforcement intensity, but as the capacity to engage with the social field, facilitate learning, and steer discretion in socially informed ways.

In May 2020, the European Commission adopted an action plan to increase the effectiveness of the EU policy regime on preventing money laundering and terrorism financing. Following the Action Plan, on 20 July 2021, the European Commission proposed a sixth Directive on money laundering and terrorist financing (Proposal for a regulation of the European Parliament and of the council on the prevention of the use of the financial system for the purposes of money laundering or terrorist financing, COM/2021/420 final) a new AML package. The package proposes to establish a single rulebook directly applicable to private entities and an Anti-Money Laundering Agency (AMLA) that will strengthen EU-level supervision and support the work of Financial Intelligence Units⁷⁶ (European Commission, 2020). The Directive aims to harmonise the definition of predicate offences against money laundering across all Member States. 'With the new package, all rules applying to the private sector will be transferred to a new directly applicable regulation, while a directive will deal with the organisation of national competent authorities fighting against money laundering and countering the financing of terrorism (AML/CFT)' (European Council and Council of the European Union, 2024a). On 31 May 2024, the European Council adopted the package of AML rules (European Council and Council of the European Union, 2024a).

EU directives must be transposed into national law by member states within a timeline set in the respective directive. EU regulations, on the other hand, are directly applicable in all member states. By adopting Regulation (EU) 2024/1624 of the European Parliament and of the Council of 31 May 2024 on the prevention of the use of the financial system for the purposes of money laundering or terrorist financing, starting from 10 July 2027, the AML regulation directly applies to obliged entities. Any differences due to Members States transposing minimum requirements to varying degrees stricter, are thus, eliminated. The implications of those changes for the art market remain to be seen.

⁷⁶ A Financial Intelligence Unit (FIU) is a central national agency responsible for receiving, analysing, and transmitting suspicious activity reports to the competent authorities (International Monetary Fund, 2004).

As part of the package of AML rules adopted in May 2024 and to strengthen AML supervision in the EU, the AMLA was created (European Commission, 2024). The decentralised EU agency will coordinate national authorities to ensure the correct and consistent application of EU rules and will be fully staffed and operational for direct supervision by 2028 (European Commission, 2024). As of mid-2025, recruiting of AMLA staff is still ongoing (Anti-Money Laundering Authority, 2025). The effects of this new supervisory authority and their engagement with the art market will have to be subject to further study.

As part of my job as a compliance professional, I go to conferences and workshops regarding money laundering and sanctions compliance. I was at one on sanctions some months ago and noticed that although the regulations were written for financial services institutions, many of the questions and sometimes even complaints mirror what I have observed during the fieldwork conducted for this thesis. Topics discussed were the effectiveness of the regulations and whether it was actually worth the burden put on banks, guidance documents coming way after the fact (in the case of the EU's sanctions packages, the guidance is published days, sometimes months after the package, and often only too broad to apply for everyone even in the financial services industry), and lack of support from the regulators. Of course, not all problems are the same. I also made a note during the panel discussion reflecting on the importance of such formats. I take many decisions with regards to sanctions compliance every day. For many, I rely on my own experience and the experience of my team and my co-workers; however, learning about how peers handle the same challenges with regulatory compliance, learning about their operational outputs, and comparing ideas and notes, is essential to my job. I can only imagine—or rather have observed and demonstrated in this thesis—how essential it is for art market actors who only just entered this world of AML compliance.

While I have found no evidence of money laundering in the art market, this was not the intention of this thesis. What I have found is evidence of various facets of compliance in the art market. My contribution with this thesis is the analysis of how the regulated understand regulation through their learning, experience, and interaction and how this influences compliance. I am confirming regulatory compliance theory with this work on compliance and discretion in the context of this niche market. By looking at compliance through the concept of discretion, my specific personal lens, and from my professional experience and engagement with the art market, I can draw out generalisable lessons about regulation. Talesh (2015)

confirms this line of argument especially when the boundaries between public and private actors are increasingly blurred through collaborative governance, it is important to understand how regulatory actors—public and private—construct the meaning of law. Academic arguments have concrete effects on markets as they are taken on by market participants and regulators as justifications or criticisms of their actions (Riles, 2011).

The problem I want to highlight is that this niche market was just added to the AML regulation, a regulation originally written for the financial services sector, without understanding the intricacies of this market. It is therefore essential to study how the market is complying with it. By looking at the complexity and social layering of compliance, I find there to be nuanced explanations why people comply with certain requirements or do not comply with others. There is reason to believe that these conclusions have a wider applicability, but it resides with future research to determine their specific relevance. Perhaps we need not to rethink the conceptual foundations of regulations as we must ask ourselves whether it is really the purpose of AML regulations to be directly applicable to each sector and to account for the specificities each of the obliged sector brings.

The provided analysis comes, of course, with its limitations. The narratives presented in this thesis must be approached critically in that they present the experience and opinion of selected private and public actors; not the one of the masses. They must also be considered in light of any potential self-interest every actor follows. This may be addressed by conducting further quantitative research based on and to confirm the qualitative findings in this study.

A qualitative study such as this one is further limited by the timeframe in which it was conducted. It may well be that both, art market actors and supervisors, have since developed and co-constructed—to stay with Gilad's (2014) term—AML regulatory compliance in the art market. Additionally, while my own personal experience in the art market but also the field of compliance provides an insightful lens, it also presents certain limitations that are anchored in my personal and professional beliefs. These must be considered critically when continuing academic work with the findings of this thesis.

Within the scope of this thesis, I conclude the following recommendations for art market actors:

- Use trade associations and communication to further the regulator's understanding of market characteristics.

- Collaborate with national and international industry actors for sharing of information and experience.
- Establish regular communication and collaboration with supervisory authorities.
- Strengthen the risk assessment as the basis for risk-based AML compliance tailored to the individual business.

Additionally, the following recommendations apply to supervisory authorities:

- Follow a strategic approach to supervisory activity based on a risk assessment for every individual sector subject to supervision.
- Invest in training of supervisors in methods of supervision for AML regulation as well as in characteristics of specific industries.
- Increase stakeholder engagement along established communication channels.
- Collaborate with the specific industry on official guidance and potentially on forms to simplify compliance with regulatory requirements (e.g., forms to document CDD).
- Collect and use structured data on supervised entities to inform the rolling risk assessment as well as general supervisory activity.

Appendices.

The following section contains a curriculum vitae, the list of references, a list of interviews conducted for the empirical work of this thesis, and a list of the most relevant regulations to this thesis.

Curriculum Vitae

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List of Interviews

- I01/AH/GER (2022). Interviewed by Katharina Stoll. July 2022, video call.
- I02/AG/GER (2022). Interviewed by Katharina Stoll. July 2022, video call.
- I03/E/GER (2022). Interviewed by Katharina Stoll. July 2022, video call.
- I04/E/GER (2022). Interviewed by Katharina Stoll. July 2022, video call.
- I05/AD/GER (2022). Interviewed by Katharina Stoll. August 2022, in person.
- I06/E/GER (2022). Interviewed by Katharina Stoll. August 2022, telephone call.
- I07/E/UK (2022). Interviewed by Katharina Stoll. August 2022, video call.
- I08/E/GER (2022). Interviewed by Katharina Stoll. August 2022, video call.
- I09/S/GER (2022). Interviewed by Katharina Stoll. August 2022, video call.
- I10/S/GER (2022). Interviewed by Katharina Stoll. August 2022, video call.
- I11/E/GER (2022). Interviewed by Katharina Stoll. August 2022, telephone call.
- I12/S/GER (2022). Interviewed by Katharina Stoll. October 2022, in person.
- I13/S/GER (2022). Interviewed by Katharina Stoll. August 2022, telephone call.
- I14/AD/GER (2022). Interviewed by Katharina Stoll. August 2022, video call.
- I15/AH/GER (2022). Interviewed by Katharina Stoll. September 2022, video call.
- I16/E/UK (2022). Interviewed by Katharina Stoll. August 2022, video call.
- I17/AG/GER (2022). Interviewed by Katharina Stoll. September 2022, in person.
- I18/E/US (2022). Interviewed by Katharina Stoll. November 2022, video call.
- I19/AG/GER (2022). Interviewed by Katharina Stoll. November 2022, in person.
- I20/FIU/GER (2022). Questionnaire. November 2022, email.

List of Legislation

The following list contains the main anti-money laundering regulations relevant to this thesis. The list is—of course—non-exhaustive and merely a condensed overview of the most relevant laws and regulations that are discussed throughout this thesis.

Council Directive 91/308/EEC of 10 June 1991 on prevention of the use of the financial system for the purpose of money laundering (herein the EU's first AML Directive)

Directive 2001/97/EC of the European Parliament and of the Council of 4 December 2001 amending Council Directive 91/308/EEC on prevention of the use of the financial system for the purpose of money laundering (herein the EU's second AML Directive)

Directive 2005/60/EC of the European Parliament and of the Council of 26 October 2005 on the prevention of the use of the financial system for the purpose of money laundering and terrorist financing (herein the EU's third AML Directive)

Directive (EU) 2015/849 of the European Parliament and of the Council of 20 May 2015 on the prevention of the use of the financial system for the purposes of money laundering or terrorist financing (herein the EU's fourth AML Directive)

Directive (EU) 2018/843 of the European Parliament and of the Council of 30 May 2018 amending Directive (EU) 2015/849 on the prevention of the use of the financial system for the purposes of money laundering or terrorist financing (herein the EU's fifth AML Directive)

Directive (EU) 2024/1640 of the European Parliament and of the Council of 31 May 2024 on the mechanisms to be put in place by Member States for the prevention of the use of the financial system for the purposes of money laundering or terrorist financing, amending Directive (EU) 2019/1937, and amending and repealing Directive (EU) 2015/849 (herein the EU's sixth AML Directive)

Regulation (EU) 2024/1624 of the European Parliament and of the Council of 31 May 2024 on the prevention of the use of the financial system for the purposes of money laundering or terrorist financing (herein Regulation 2024/1624)

Geldwäschegesetz (Gesetz über das Aufspüren von Gewinnen aus schweren Straftaten) or Money Laundering Act (Act on the detection of proceeds from serious crimes) (herein German Money Laundering Act or GwG (German abbreviation))