The European fight against terrorism financing: Professional fields and new governing practices

Wesseling, M.

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Chapter 2.

The European Field of Governing

At noon on September 13, a passing agent ducked his head into Dennis Lormel’s office. He said that someone had called from the Omaha FBI office. A company named First Data Corporation, with a huge processing facility out there, wanted to help in any way it could. A red-eyed Lormel looked up from his desk. “Oh, that’s big” he said, breaking into a weary smile. “That could be very, very big.” [. . .] First Data is one of the world’s largest processors of credit card transactions, a company with 6.5 billion in revenues and a global reach. [. . .] “Inside that company” he told the young agent, “is a gem.” Western Union. [. . .] Now sitting in his office, Lormel told the young agent to get him a number for First Data, and he chewed over an idea: “We need to turn this company into a deadly weapon.”

— R. Suskind (2007, pp. 11-13)

2.1 Introduction

As the quote from Suskind’s book illustrates, the American response to 9/11 led to new configurations in which public and private authorities cooperate closely in combating terrorism financing with the ambition to turn the instruments of this combat into “deadly weapons.” National intelligence and law-enforcement agencies quickly asserted the potential for exploiting the massive sets of financial data collected for commercial purposes. In turn, globally leading financial services companies such as the American payment company First Data Corporation, or the banking cooperative SWIFT were willing to provide American police and intelligence agencies with access to their databases. Moreover, new laws adopted in the name of the War on Terror further expanded the involvement of private authorities by obliging them to monitor strictly financial transactions and to report suspicious behaviour.

Although the setting of Suskind’s book is in the US, the War on Terror did not lead to new forms of cooperation and innovative investigation methods only in this part of the world. The European Union adopted a number of measures to combat terrorism financing. In fact, one of the most recent initiatives, officially launched in 2011, the European Terrorism Finance Tracking System (TFTS), is a European equivalent of the American programme that analyses transaction data provided by SWIFT. The FATF Special Recommendations, which shape the European efforts in the field of combating terrorism financing, all require the
involvement of a wide range of private, and to a lesser extent public, authorities mainly in the banking and financial sectors. For instance, the EU’s Third AML/CFT Directive obliges services providers in or related to the banking and financial sectors to further enhance the registration and monitoring of their customer’s financial data and to report ‘suspicious’ transactions to Financial Intelligence Units (FIUs). On the basis of UN resolutions 1267 and 1373, which have both been transposed into EU law, banks and financial services institutions have to freeze all transactions and accounts of individuals and entities listed on international, European, and national lists of terrorism suspects. In addition, financial services providers, including money transfer services, have to make sure their wire transfers are accompanied by accurate and meaningful information on the money sender.

The involvement of private companies in the European fight against terrorism financing increasingly blurs the distinction between public and private authorities and their respective responsibilities. It also raises questions about the character of this cooperation. Are private companies as figurative deadly weapons only instrumental for law-enforcement services or is a more complex picture of cooperation and interests emerging? Furthermore, if public and private authorities reinforce their cooperation in the name of the fight against terrorism financing, what are the implications for our understanding of European governance processes?

Moreover, the adopted measures translate into new practices aimed at combating terrorism. In this respect, the question can be raised how ordinary businesses in the banking and financial services sectors take security action in the War on Terror. In what sense are they considered to be deadly weapons? What new practices, procedures, calculations, and tactics did banks and financial services companies adopt in the name of the European fight against terrorism financing? What do CFT measures exactly attempt to govern? How do these practices shape this fight? So far, these daily practices through which the European fight against terrorism is governed remain mostly invisible and unexplained.

The purpose of this chapter is to provide a theoretical framework and a methodology to examine what is governed in the name of the fight against terrorism financing and how this is done. Taking up the Foucauldian notion of governmentality and Bourdieu’s field theory, it is argued that the initiatives taken in the name of the European fight against terrorism financing create a new field of governing. This field is a transnational field of professionals that cuts across the division between the public and private sectors. Its focus here is on EU and European decision-making but the actors operating in the field are situated in the public and private sectors on various geographic levels. Through the notion of a European
professional field, public-private cooperation in combating terrorism financing can be studied. This theory also permits us to analyse how power is exercised through technologies, tactics, and practices that are at work in the field. Furthermore, this framework aims to make visible both the expansion of public actors who took up responsibilities for governing this new fight and the cooperation between banks and financial service providers on the one hand and law-enforcement agencies, governmental bodies, and international organizations on the other.

However, it is important to stress that the definition of a European field of governing terrorism financing goes beyond the emergence of new governance structures because it does not just imply the changing relations between European (and national) institutions as policymakers and the financial and banking sectors as being regulated. Following Foucault’s (1991) definition, the scope of the word ‘government’ goes beyond the political realm and must be interpreted more broadly, as ‘the practices of government are [. . .] multifarious and concern many kinds of people: the head of a family, the superior of a convent, the teacher or tutor of a child or pupil [. . .]’ (p. 91). In other words, the exercise of power takes place throughout society and must be understood as “productive” (Brown, 2006, p. 72), and “fragmented” and “dispersed” (Larner & Walters, 2004, p. 4). Understood in this way, the field of governing has broad implications because it affects banking practices and the mundane transactions and civil liberties of citizens.

In order to study the new field of governing and the governing practices this thesis considers two sets of literature; European integration theory and Surveillance Studies. The remainder of this chapter is organized as follows. The next section presents an overview of influential theoretical lenses through which European integration has been studied. The discussion of these theories and their critiques helps to place the European field of governing terrorism financing in a broader theoretical framework of European Studies and International Relations, it explains how field theory contributes to the study of the European Union, and it develops the analytical possibilities of the proposed field of governing. The following section introduces the key concepts in Surveillance Studies literature and discusses the financial surveillance practices and their main concerns. Next, building on these two bodies of literature the concept of governmentality is introduced and it is explained how this concept has value for studying the European fight against terrorism financing. Subsequently, it discusses how field theory can contribute to the understanding and to the operationalization of governmentality. Next, the methodology used in this thesis is explained in more detail. The last section of this chapter proposes two maps of European fields governing the fight against terrorism financing.
2.2 Theorizing the European Union

Scholars in International Relations and European Studies have proposed a multitude of theories explaining European integration. In this ‘mosaic of integration theories’, each theory can be understood as ‘a stone that adds to the picture that we gain of the EU’ and ‘each approach contributes to the emerging picture in its own limited way’ (Wiener & Diez, 2009, p. 19). The different colours of the stones that constitute the mosaic represent the different approaches of the European integration theories. For instance, some theories study European integration as a process while others look at the outcomes of integration or try to define the European Union as a political entity. Additionally, the mosaic metaphor suggests that European integration theories are complementary in that they study or emphasize different aspects of the same phenomenon, creating one picture. The purpose here is not to provide a comprehensive overview of all the separate stones of the mosaic but to discuss four great debates in which European integration theories can be broadly divided but that are not necessarily mutually exclusive.

A first set of theories on European integration is mainly concerned with the normative questions of what European integration should ideally achieve and how this should be realized. These theories emerged between the two world wars and just after World War II, when institutionalized European cooperation was in its infancy. Jean Monnet and Robert Schuman, founding fathers of European integration, were inspired by ‘functionalism’ as described for instance in *A Working Peace System* by David Mitrany (1966). Functionalists strive for peaceful international relations through the creation of specialized international organizations in which experts solve international problems and enhance social well-being in a politically neutral manner, making governments redundant. Two points of critique against this theory are relevant for our analysis of the field governing the European fight against terrorism financing. First, far from disappearing, governments have reproduced their power struggles within international organizations. Secondly, and very importantly, decisions are never purely ‘technical’. They are always based on relations of power and reflect politically motivated choices that favour certain groups over others.

‘Federalism’ is another important theory on European integration that emerged during and after World War II. Advocated by Alitiero Spinelli, another founding father of the European Union, but also by contemporary politicians such as Joschka Fischer (2000) and Guy Verhofstadt (2005), federalists are in favour of the transfer of most of the powers of national governments to a European government. Although federalism still has some support
throughout Europe and some argue that the EU already resembles a federation (see, e.g., Burgess, 2009), to date most EU governments and citizens do not favour the creation of a ‘United States of Europe’.

A second group of theories emerged between the 1960s and the early 1990s in reaction to the various initiatives for closer European cooperation. These theories were mainly concerned with the driving forces of the integration process. Dominated by International Relations scholars, two schools can be distinguished: neo-functionalism, theorized by, among others, Ernst Haas, Leon Lindberg, and Philippe Schmitter, and intergovernmentalism, represented by Stanley Hoffman. Neo-functionalism modernizes the functionalist assumptions, adding political elements and emphasizing the role and socialization of elites. European integration is believed to be incremental and self-sustaining through “spill-over” processes (Haas, 1958). Cooperation in the steel industry, for example, would favour common legislation and cooperation in related sectors such as the automobile industry. In contrast with functionalism, neo-functionalism does not consider cooperation as a controlled process leading to a pre-established goal but rather as a sequence of unplanned developments.

The many critics of neo-functionalism, including at a later stage Haas himself, point out that European integration is characterized by phases of stagnation and intensification instead of a gradual spill-over process. In their view, spill-over can describe integration processes but cannot explain why the integration process evolves as it does. Another important criticism of neo-functionalism stresses the absence of international political or economic developments in the evolution of European integration (see for example Haas 1975, Hoffman, 1966, Rosamond, 2000, Smith, 2004). In light of this thesis, it is evident that the European field of governing terrorism financing cannot be understood without taking into account the terrorist attacks in the US, Madrid, and London or the public reactions on the revelation of the SWIFT affair.

Intergovernmentalists on the other hand reject the idea of spill-over. According to this school of thought, national governments always remain the ‘gatekeepers’ to integration, aligning the speed and level of European integration with their national interest. For this reason the integration process is not fluid but rather discontinuous, depending on the political will of member states to ‘pool’ their sovereignty. During the 1990s, the assumptions of intergovernmentalism were refined by Andrew Moravscik, who coined the term liberal intergovernmentalism (LI) (1993, 1995). He follows a more systematic three-stage approach and combines the intergovernmentalist idea of the convergence of national preferences with regime theory. The adjective ‘liberal’ refers to the importance Moravscik gives to economic
cooperation and national political processes in defining national interests. Throughout the 1990s LI was a central theory in European integration studies in relation to which other scholars positioned themselves (Pollack, 2000, p. 5, Smith, 2004, p. 20).

Three main criticisms have been raised against (liberal) intergovernmentalism and will also be taken into account in this thesis. First, it is argued that its focus on power struggles and ‘grand bargains’ between states overshadows the prior process of negotiation and cooperation among lower-ranking national (and European) officials. Hence, the changes in positions and the early stage bargaining remain invisible in (liberal) intergovernmentalism approaches. Second, liberal intergovernmentalism tends to overestimate the role of states and underestimate the influence and power of the European Commission, the European Parliament, and the Court of Justice of the EU. A third issue concerns the assumption that interests of the state overlap with the interests of powerful socio-economic actors. Although it may be the case in some situations, critics argue that interests may differ on, for instance, geopolitical or ideological questions. A general criticism of both neo-functionalist and (liberal) intergovernmentalist theories concerns their exclusive focus on the binary question whether the integration process is dominated by supranational or intergovernmental decision-making (Smith, 2004, p. 10). Adopting field theory and a governmentality approach implies the rejection of such a dichotomy.

A third debate, initiated by political scientists and scholars in comparative politics, emerged in the 1980s around the core question of the current nature of the EU as a political system. These approaches share a more actor-oriented and detailed analysis of the legislative, executive, and judicial behaviour of the European Union and often use case studies. However, within the variety of accounts a simplified distinction can again be made between scholars who study the political system on the EU level in similar terms as on the national level, such as Simon Hix (see, e.g., 2008), and others who try to link the national and international politics in one theoretical framework based on the notion of governance. My focus here will be on the latter type of theories.

Governance can be defined as ‘the exercise of authority with or without the formal institutions of government’ (Rosamond, 2000, p. 109). Governance theories, such as policy network analysis (Falkner, 2000, Peterson, 2009), neo-institutionalism(s) (Jupillé & Carporaso 1999, Pollack, 2005, 2009) and multi-level governance (Hooghe & Marks, 2001) do not all share the same concepts or theoretical toolbox but rather share a set of assumptions. They usually emphasize the move of authority away from formal institutions and highlight the importance of individual actors in the functioning of European decision-making dynamics. In
particular the concept of ‘multi-level governance’ (MLG) introduced by Liesbeth Hooghe and Gary Marks became very popular in the 1990s (Piattoni, 2009). Their view is that ‘European integration is a polity-creating process in which authority and policy-making influence are shared across multiple levels of government—subnational, national and supranational’ (Hooghe & Marks, 2001, p. 2). They emphasize that aside from the powerful role of states, other actors, for instance regional governments, members of the Committee of Permanent Representatives to the EU (Coreper), lobbyists, and the European Parliament all exercise power over European decisions. Instead of a ‘two-level game’ between the state and the European level, MLG theorists stress ‘the existence of overlapping competencies among multiple governments and the interaction of political actors across those levels’ (Marks et al. 1996, p. 41). In contrast to the ‘grand theorizing’ that characterizes the first two sets of debates, MLG and other governance theories do not aim to offer a general theory of the EU. MLG rather focuses on specific policy areas and emphasizes the variability, complexity, and fluidity of the European policy system.

Largely a response to the perceived weaknesses of liberal intergovernmentalism, MLG also has shortcomings. Despite their attention to a variety of actors, these studies often investigate the pre-existing institutions and legal distinctions between agencies and institutions, while overlooking the overall inter-institutional context in which they operate (Bigo, 2007, p. 7). Another critique is MLG’s relative blindness to power struggles and political contestation. MLG, like ‘spill-over’, provides a metaphor for describing the European political framework but it does not explain the political significance of this framework. It cannot explain why and how European integration occurs and how Europe becomes a legitimate space for political action.

A fourth debate consisting of critical and constructivist approaches to European integration emerged during the 1980s and 1990s. These approaches do not explain European integration but rather question the ontological and epistemological assumptions on which traditional approaches have been built. They consider political culture, struggles, contestations, and discourses. Constructivist approaches emphasize that ‘the interests of actors cannot be treated as exogenously given or inferred from a given material structure’ and that analysis thus needs to include ‘the social construction of interests and identities’ (Risse, 2009, p. 146).

Critical theories go one step further and question the construction and also the legitimacy of the social order. These approaches focus on the domination of individuals or groups by other individuals or groups and investigate how that domination might be
overcome. Marxist and neo-Gramscian theories concentrate on economic domination, post-colonialist approaches highlight the domination of the West, and feminist approaches emphasize the domination of masculine over feminine values. From a Marxist perspective Holman shows for instance how the eastern enlargement of the EU in 2004 led to the domination of a coalition of transnational capital and international institutions in Central and Eastern Europe due to ‘the absence of an indigenous capitalist class, the denationalization of the respective economies, the dominant role of transnational social forces in imposing neo-liberal restructuring on the post-1989 managerial elites, and the neo-liberal underpinnings of the European Union's (EU) enlargement strategy’ (2004, p. 208).

Poststructuralist (or discursive) approaches differ from these critical theories in that they do not focus on a specific type of domination. They rather question the forms of domination that are present in (political) discourses more generally (Bailey, 2011, p. 41). They study the practice of making and reproducing meanings and are interested in knowing who is in control of these processes. Belsey illustrates the significance of post-structuralist questioning through the relatively simple example of the words ‘democracy’ and ‘dictatorship’. When Western children learn to use these words, they absorb the values their culture assigns to these forms of government at the same time. Without having to be explicitly taught, they learn that dictatorship is oppressive and democracy so precious that it is worth fighting for (2002, pp. 3-4). By destabilizing language, meaning, and social institutions, poststructuralists attempt to reveal power structures that are taken for granted. Through discourse analysis poststructuralist scholars try to ‘find the structures and patterns in public statements that regulate political debate so that certain things can be said while other things will be meaningless or less powerful or reasonable’ (Waever, 2009, p. 165). Central figures that are usually associated with this loosely-knit intellectual movement include, for instance, Foucault, Deleuze, Lacan, and Derrida.

Taking into account the strengths and weaknesses of the various European integration theories discussed above, this thesis situates itself within the third and fourth sets of debates. This chapter develops a theoretical framework to analyse the nature of the European field of governing terrorism financing that emerged since 9/11. In doing so, it speaks to the governance theories by building upon the critique of multi-level governance. Mapping the European field of governing terrorism financing implies looking beyond the formal legal frameworks and pre-established institutions and taking into account economic, societal, and political developments. It is also inspired by questions raised in the fourth set of debates, most notably post-structuralism. The governmentality perspective that will be introduced in section
2.4 draws attention to the production of meaning and the way in which power is distributed and operates. In addition, mapping the participants of the field provides a snapshot of power relations between different participants and also makes it possible to visualize power struggles and political choices.

2.3 (Financial) Surveillance Studies after 9/11

A second body of literature that is relevant for the study of the European fight against terrorism financing is surveillance literature. Surveillance studies is a multi-disciplinary enterprise studying the practices of focused, systematic and routine attention to personal data, such as financial data, for purposes of influence, management, protection or direction, and the potential privacy and civil liberties questions that follow from these practices (Lyon, 2007). The amount of surveillance literature has substantially increased after 2001 in order to make sense of the attacks and the avalanche of security initiatives in response to these and subsequent terrorist attacks.

Scholars in surveillance studies have found that contrary to the enormous impact of the 9/11 terrorist attacks on world politics, they did not dramatically alter the understanding and practices of surveillance. New trends in surveillance have led to exciting research on themes for instance related to borders and migration, the use of surveillance technology such as biometrics and CCTV and, of course, governance through the risk and link analysis of personal data as discussed in this thesis. Yet, the surveillance measures introduced after 9/11 and the theorizing of these measures are not disconnected to the world prior to the attacks. ‘The surveillance systems proposed after 9/11 have the strongest possible connection with those in place before that date’ (Lyon, 2003, p. 23). In fact, the attacks rather revealed and accelerated surveillance trends that were already developing in the 1990s and before, according to this body of literature (ibid.).

From its inception in the 1970s and to a large extent still today, two metaphors or concepts have been absolutely central to surveillance studies: Big Brother and the panopticon. In George Orwell’s novel Nineteen Eighty-Four, Big Brother represents a central yet invisible authority, able to constantly control the citizens of Oceania mainly through omnipresent two-way ‘telescreens’. Permanently watching over and manipulating its citizens, Big Brother deprives citizens of any privacy and freedom. Michel Foucault, on the other hand, theorized Jeremy Bentham’s panopticon: a circular prison with a central watching tower in the centre.
Foucault emphasizes that analogue to the panoptic prison a surveillance model can be distinguished, exercising disciplinary power on individuals and on society.

Both metaphors refer to a surveillant ‘eye’ controlling their subjects for undesired behaviour through continuous and pro-active observation. In Nineteen Eighty-Four the two-way telescreens are omni-present in workplaces, public spaces and even inside people’s houses. Likewise, the panopticon allows watchers to observe all inmates individually while remaining unseen themselves. Subjects are thus completely transparent to their observers but they cannot see them. Another similarity between Big Brother and the panopticon is the exercise of surveillance by a central authority; the figure of Big Brother or the (inner) Party and the watchers in the prison tower. Yet, when the panopticon is understood as a disciplinary model instead of a prison it allows for ‘the penetration of regulation into even the smallest details of everyday life through the mediation of the complete hierarchy that assured the capillary functioning of power’ (Foucault, 1995, p. 198). Hence, according to Foucault the panopticon is a model for exercising power suitable for a wide range of institutions in society. As a disciplinary model the panopticon does not constitute one central state authority, the central power is located within for instance the hospital, the school or the workplace.

Despite the similarities, the two concepts are certainly not completely overlapping with each other and each have their own focus. Orwell’s novel touches upon a number of themes among which the use of technology for surveillance purposes, the totalitarian society resulting from this surveillance and its consequences for civil liberties are particularly evoking for studies of surveillance. The pyramid-shaped centralized state surveillance characterized by heavy bureaucracy through extensive record-keeping in relation to new technologies depicted in the novel, inspired surveillance research in the 1970s and 1980s (Lyon, 2003, p. 29, 2006, p. 13). After 9/11, Big Brother remained at the heart of surveillance theory as a metaphor to be either explanatory or to be dismissed. Yet, from a theoretical perspective the Big Brother metaphor has limited explanatory power since it has not been developed much beyond the initial themes of the novel and, as Lewis summarizes, at present ‘there is no centralized hierarchical power watching and recording our every action’ (2005, p. 102).

Foucault’s panopticon on the other hand has proved a ‘rich and multifaceted concept’ (Lyon, 2006, p. 4). It has led to an enormous amount of theoretical work analysing, applying, adapting or contesting the concept both prior and post 9/11. In fact, Haggerty enumerates almost twenty (!) neologisms inspired by the panopticon (2006, p. 26). It is not the purpose to describe all these concepts or to assess all facets of Foucault’s theorizing of the panoptic
mechanism here, but rather to discuss a few key aspects that are central to the disciplinary power exercised through the panopticon and some of its derivatives.

First, as shortly indicated above, visibility is crucial to the panopticon. The panopticon is a machine for dissociating the seeing/being seen dyad: ‘in the peripheric ring, one is totally seen, without ever seeing; in the central tower, one sees everything without being seen’ (Foucault, 1995, pp. 201-202). The architecture of the panopticon facilitates the observation of many inmates by few guards. Moreover, objects of observation are constantly visible as individuals to their observers. An important consequence of this visibility is that it ‘induces (…) a state of conscious and permanent visibility that assures the automatic functioning of power’ (ibid., p. 201). In other words, because subjects expect themselves to be watched, they will adhere to certain expectations of normality or desired behaviour. Disciplinary power precisely works through the awareness of being observed.

Analysis is a second aspect through which the disciplinary power of the panopticon works. Visibility serves the purpose of recording, distributing, examining, diagnosing, assessing, separating, classifying, mapping, comparing and thus, subjecting each individual to a targeted form of control or surveillance. In this process behavioural norms become established through a distinction between the normal and abnormal. According to Foucault discipline normalizes in the sense that ‘it breaks down individuals, places, time, movements actions and operations (…) into components’. Then it ‘classifies the components thus identified according to definite objectives’. ‘Third, discipline establishes optimal sequences or co-ordinations’. ‘(…) [it] fixes the processes of progressive training and permanent control and finally, on the basis of this it establishes the division between those considered unsuitable or incapable and the others’ (2007, pp. 56-57). From the perspective of the subject it constitutes a ‘power over the mind’ (Foucault, 1995, p. 206) ‘designed to encourage an inmate to reflect upon the minutia of their behaviour in a subtle and on-going effort to transform their selves in prescribed directions’ (Haggerty, 2006, p. 25). On the level of the individual, disciplinary power produces (to a certain extent) the self-subjection and disciplining of individuals to the system. As a societal model on the other hand the panoptic mechanism can be applied to a range of institutions including: the army, the church, schools, workplaces, hospitals and of course prisons. In these institutions disciplinary power arranges power in a preventive, homogeneous and efficient manner.

However, the Big Brother and panopticon metaphors have also met substantial criticism. Scholars have argued that the Big Brother and the panopticon metaphors are too restrictive to study today’s surveillance practices (Lyon, 1994, 2006, Haggerty, 2006, Lewis,
They assert that although the 9/11 attacks did not fundamentally change our understanding and the practices of surveillance, they justified: (1) an intensification, (2) integration and (3) globalization of surveillance sustained by (4) the increased use of cutting edge technology (Lyon, 2003). These four trends imply that through intensification, surveillance became more generalized and has created an atmosphere of permanent suspicion. Moreover, limits on the reach and scope of surveillance practices, for instance safeguarding privacy, have often been suspended. In addition, high-tech solutions allow for matching of dispersed sets of data over long distances.

New developments in surveillance practice led to either modifying the existing concepts or dismissing them completely. In fact, the numerous new ‘opticons’ identified by Haggerty are all attempts to adapt the initial concept of the prison to better fit contemporary surveillance practices. The ‘electronic panopticon’ (Lyon, 1994) and the ‘superpanopticon’ (Poster, 1995) are examples in which an attempt was made to integrate the proliferation of monitoring and investigation via electronic databases. Other scholars avoid the words Big Brother and panopticon and referred to these novel practices of surveillance as ‘dataveillance’, a blend of the words data and surveillance. (Amoore & De Goede, 2005, 2008b, Bigo 2006, Clarke, 1988, Haggerty, 2006, Levi & Wall, 2004).

In contrast to the vast body of literature on surveillance, there is surprisingly little literature specifically on financial surveillance. In authoritative work in surveillance studies (for instance Lyon, 2003, 2006) the financial aspect is virtually or completely absent. Nevertheless, among scholars studying the financial war on terror, there is a small group implicitly or explicitly focussing on financial surveillance. Several authors aim to shed light on the dynamics of financial surveillance.

Ibrahim Warde (2007) argues that after 9/11 free market fundamentalism that has become predominant in the 1990s had to be united with a ‘national security fundamentalism’. He argues that these contradicting logics of openness and deregulation on one hand, and surveillance and suspicion on the other, became compatible with each other through the notion of “gated finance”. This implies that ‘[a]s in gated communities, for a community to enjoy all freedoms, it had to be walled off from its messy surroundings. Outside those gates, ceaseless scrutiny would prevail’ (Warde, 2007, p. 109). Hence, after 11 September the free and open system of finance continued to exist for the financial institutions, businesses and citizens in the main industrialised countries while countries, businesses and individuals in or just connected to the rest of the world, especially the Islamic world, were considered risky
and placed under more scrutiny and surveillance. This latter group suddenly faced major restrictions and barriers and even exclusion from the global financial system.

From a similar perspective yet observing more continuity before and after 9/11, Peter Shields (2005) contends that liberalization of cross border financial flows and the innovations in IT led to a “loss-of-control narrative” with respect to the U.S. War on Drugs and subsequently the War on Terror. The storyline of this narrative is that besides the benefits of financial deregulation, increased openness of the financial system provides terrorists, drug traffickers and other criminals with new opportunities to commit crimes and to evade the eye of law enforcement. For this reason, increased financial surveillance is justified to ‘regain’ control over the financial system. As underscored by Shields, in the loss-of-control narrative the problem is presented as purely technological and procedural, leading to ever more surveillance to ‘close the technology gap on criminals’ (2005, p. 496). He convincingly argues that this logic successfully narrows down the scope of policy analysis and benefited certain institutional interests. Yet, the proliferating surveillance measures, or “finance warfare” (Shields, 2004) have not reduced the flow of illicit funds or terrorist attacks over the last decades.

The European regulatory initiatives are central to the work of William Vlcek. In relation to the broader field of surveillance studies, he introduces the term ‘financial panopticon’ (2008) or the discrete panopticon (2007, p. 102). While these notions are not yet fully developed, he argues that after 2001 financial surveillance has increased in scope and in intensity. He shows that on the one hand, suspicious transaction reporting duties have been imposed on new professions outside the finance and banking sectors and on the other hand, that the number of suspicious transaction reports has tremendously increased (2008, pp. 26-27). This increased monitoring and (in case of suspicion) reporting of financial transactions nationally and internationally appears to lead to what he calls a ‘financial panopticon’. He uses the term ‘discrete panopticon’ to emphasize that the under the EU’s Third AML/CFT Directive it is forbidden to inform clients that a transaction considered suspicious has been reported. Hence, this surveillance occurs in a covert manner. According to Vlcek the institutionalisation of CFT measures, such as UNSCR 1373 and 1617 give rise to the financial panopticon exerting a disciplinary power on a global scale (2007, p. 100).

While scholars studying financial surveillance often focus on particular aspects of the financial system and its regulation or on specific geographic zones or entities (charities for instance), there seems to be a quite common understanding about the practices that can be labelled as financial surveillance. Although there is a growing amount of literature on
financial surveillance and the informal banking sector, in particular ‘hawala’ banking (Atia, 2007, De Goede, 2003, Passas & Maimbo, 2008, Vlcek, 2010), the focus here is on the formal (Western) financial system. Concentrating on the formal banking sector, financial surveillance can be defined as ‘interrogating normal financial transactions of citizens and non-citizens in an attempt to identify the future terrorist’ (Vlcek, 2007, p. 100), money launderers or other types of criminals. In addition to their transactions, clients themselves are also subject to banking scrutiny.

Surveillance literature, including the works on financial surveillance, highlights two main concerns of surveillance practices: the violation of fundamental rights and exclusionary practices. Most critical and conventional scholarly work discusses concerns with regard to civil liberties, and in particular privacy. However, the precise meaning and the value of privacy is often left implicit. Aside from the slightly superficial debate on having (or not) something to hide, there is something more fundamental at stake when privacy is violated. Roessler explains lucidly that the value of privacy lies in the fact that, if privacy is a precondition for an autonomous life and if an autonomous life is at least one of the necessary conditions for a life that is good or rewarding, then the protection of privacy is necessary for a rewarding life (2005, p. 18). Surveillance through the collection of for instance biometric, travel, financial or other personal data, may lead to undesired access and interference in personal data of individuals. In other words, “informational privacy” may be violated through the lost control over personal information leading to a restriction of autonomy and freedom (Roessler, 2005, 2008).

However, due to the invisibility of the measures and the intangibility of their consequences it is often rather difficult to point out which civil liberties are at stake and how privacy is violated through financial surveillance techniques. Levi and Wall (2004) emphasize that financial surveillance restricts privacy in its three most common understandings; as the right to be left alone, in terms of control of one’s identity and as a right to be autonomous. In addition, it can be added that, the accumulation of surveillance intensive AML initiatives eroded traditional presumptions of financial privacy (Amicelle & Favarel-Garrigues 2009, p. 62, Shields, 2005, p. 490, 492), financial surveillance measures may be disproportionate in the sense that they may lead to harsh decisions on [innocent] customers (Amicelle & Favarel-Garrigues, 2009). More generally, it is argued that financial surveillance turns citizens into suspects deprived from their anonymity if they do not pay cash (Levi & Wall, 2004, Vlcek 2008).
Increased social exclusion is another important concern evoked in surveillance literature. Scholars have pointed out that the explanatory force of the panopticon and Big Brother seems to have shortcomings with regard to the societal effects of power. In contrast to the disciplinary effects of the panopticon over all subjects, they emphasized the exclusionary effects of surveillance. Bigo (2006) has referred to the exclusionary effects of surveillance, in physical or legal terms as a ‘ban-opticon’. He argues that today’s surveillance practices do not discipline and potentially transform all but they ‘deal with the notion of exception’ ‘surveillance for all but the control of only a few’ (Bigo, 2007, p. 6).

With regard to financial surveillance several scholars have highlighted that Know Your Customer obligations such as official identification documents and residence requirements, as well as a certain regular income to cover the costs of maintaining an account, exclude certain groups from participating in the formal banking sector. This may for instance be the case for migrant workers, recent immigrants, students, the unemployed, the homeless (Vlcek, 2007, p. 108, Amoore & De Goede, 2005, p. 154) and Muslims or those related to the Islamic world (Warde, 2007, p. 111). While it is not uncommon for poorer population groups in developed states to have neither a passport nor a proof of residency, this problem may be even more acute in developing countries (Amoore & De Goede, 2005, pp. 155-156). In addition, when individuals or institutions from developing countries have the necessary documents, financial institutions in the West often approach them with suspicion considering them (a too) high risk (Warde, 2007, pp. 110-114).

Building on the Surveillance Studies literature and its critiques, this thesis proposes an examination of the European fight against terrorism financing beyond the state as surveillant eye. Despite the fact that many scholars have moved beyond the iconic metaphors, contemporary surveillance literature often continues to be concerned with the state as the central authority carrying out surveillance. In this sense the panoptic gaze or Big Brother are certainly alive. Brouwer (2006), for instance highlights the quest for increased interoperability and integrated control through the support of new technologies in her analysis of databases related to border control in Europe (SIS, VIS, Eurodac). The study focuses on surveillance through national databases ‘allowing [national] authorities to collect more information’ (p. 138). Similarly, in his study on biometrics and European databases, Bonditti (2007) addresses their increased use by national authorities in particular the intelligence, police and customs services. While it is true that with regard to the crossing of borders national authorities play an important role and the SIS, VIS, and Eurodac databases are managed by customs and police services, this state-centred view appears to overshadow the growing contribution of
and entanglement with private authorities in providing surveillance. For example: the transfer of PNR data by airline companies or the development of biometric technology by private companies. Examining the fight against terrorism financing through the notions of governmentality and the professional field makes it possible to include a broader range of institutions and individuals that exercise power over society.

Second, the critique on surveillance practices can be extended and becomes more fundamental by broadening the angle of enquiry. For instance, Lyon argues that a surveillance society can be considered as ‘unjust and unfree’ (2003, p. 6). Contemporary surveillance, be it for instance CCTV, PNR or financial transaction monitoring, emphasizes individual behaviour. In combination with a culture of suspicion in which individuals are supposed to watch over each other and report anything suspect, surveillance undermines mutual trust and social solidarity. At the same time, it becomes more difficult to deviate from ‘the norm’. On the other hand, surveillance alters society since it withdraws trust and morality from social interaction transferring this responsibility to technological security devices. This implies that ‘surveillance (…) is deeply de-socializing as it disengages its subjects (…) from social belonging’ (Lianos quoted in Los, 2006, p. 84). In addition, despite its focus on individual behaviour and social interaction, surveillance technology is incapable of exactly reproducing the social considerations taking place amongst human beings since it is based on the programming of binary codes and the aggregation of a-contextual information that is analysed at a distant location.

The analysis of the European fight against terrorism financing through the theoretical notions of ‘governmentality’ and the ‘professional field’, allow us to go beyond a state-centric analysis of this fight and to establish its broader implications. The next sections will explain these theoretical tools in detail.

2.4 Governmentality

This section discusses the concept ‘governmentality’ which Michel Foucault introduced in his 1977-1978 lectures at the Collège de France entitled ‘Security, Territory and Population’ (2007, p. 115). During his lectures Foucault did not provide a finished or rigid theoretical framework of governmentality but indicated possible tracks for future research. Inspired by Foucault, numerous scholars have carried out research using the concept either in a general manner or following more closely the definitions given during the lectures (see, e.g.,
From a general perspective, governmentality draws attention to the way in which power is shaped. Contrary to governance approaches such as multi-level governance that ask who holds power, Foucault is interested in asking what governance governs and how it does so. Being a combination of the words ‘government’ and ‘rationality’ (or according to some ‘mentality’ (Dale, 2004, pp. 178-179)), governmentality highlights the modes of thought that underpin practices of governing. It examines how governing involves ‘the production of particular truths’, drawing upon specific representations, knowledges, and expertise, and “how the history of these truths offers critical insights about the constitution of our societies and our present” (Larner & Walters, 2004, p. 2). In other words, the general understanding of governmentality focuses on ways in which a specific element of reality is represented and how this representation is inherently problematic as it is always bound up with power relations.

Foucault offers a more specific understanding of governmentality as being the result of a process that can be traced back to eighteenth-century Europe, by which the exercise of power has become gradually governmentalized. In this context, governmentality can be understood as:

the ensemble formed by institutions, procedures, analyses and reflections, calculations and tactics that allow the exercise of this very specific, albeit very complex, power that has the population as its target, political economy as its major form of knowledge, and apparatuses of security as its essential technical instrument. (Foucault, 1991, pp.102-103, 2007, p. 108)

Following this definition, governmentality is a form of exercising power that is currently prevalent. However, it does not replace the other two mechanisms of power distinguished by Foucault: the legal or juridical mechanism and the disciplinary mechanism. These three forms of exercising power can co-exist, as ‘we could say that sovereignty is exercised within the borders of a territory, discipline is exercised on the bodies of individuals, and security is exercised over the whole population’ (Foucault, 2007, p. 11). The objective of this specific and complex form of power is to maintain itself and assure the survival of the state by governing over the population through the apparatus or mechanism of security. In order to make this form of control over the population possible, knowledge of the economy, broadly defined by Foucault as ‘all the processes revolving around population’ (2007, p. 106), is indispensable.
Studying the European fight against terrorism financing in line with this definition of governmentality means considering it as an apparatus exercising a specific form of power and implies examining the institutions, arts, techniques, and tactics that are mobilized in the fight. The meaning of ‘institutions’ is perhaps slightly confusing here, as Foucault also suggests going beyond the institution (see chapter 3) and highlights the importance of ‘free[ing] relations of power from the institution in order to analyse them from the point of view of technologies’ (2007, p. 118). To bridge this ambiguity, the word ‘institutions’ must be understood in a broad sense that includes not only formal institutions but all the participants in the field of governing. In order to emphasize this more fluid and informal understanding of the word institution and to avoid confusion, I rather use the word ‘participant’.

The exercise of power through procedures, analyses, calculations, and tactics can be summarized as arts or techniques of government, although Foucault did not exactly define these terms during his lectures. Examples of these techniques of government are, for instance, norms, regulation, and discipline. Fejes (2008) suggests that the arts of government attached to the apparatus of security can be understood as practices that intend to shape the conduct of the population by working through its desires, aspirations and beliefs. This expresses itself through multiple tactics such as regulations and standardizations of people’s conduct.

Concrete examples of techniques and arts of governing have been proposed by Foucault and other scholars through the use of case studies. For instance, Hindess (2004) contends that liberalism is to be understood not only as an ideology or political philosophy but also as a technique of governing. This implies that populations can be (partially) governed through the promotion of liberty. Likewise, Dean (2004) states that the domestic arts of government are based on liberalism in relation to political economy, which means that ‘rather than an act or decision on the part of the sovereign, governing [. . .] is about the subtle manipulation of the laws of production, consumption and distribution’ (p. 53). Considering the nature of governing in the European Union, it can be argued that harmonization (Barry, 1993) and the Open Method of Coordination (OMC) (Dale, 2004) are examples of arts of European government. The latter, for instance, is a form of government developed by the EU in the context of the Lisbon Agenda. It entails the use of means such as benchmarking, setting guidelines and peer review to further ambitious economic and social policies. Dale emphasizes that this method of supranational governance is ‘more than a merely technical device,’ as its introduction reinforces the idea that the European institutions have decision-making powers in these areas and that they can act effectively outside the conventional legislative decision-making process; this is the so-called community method (p. 175). The
strength of this focus on arts or techniques of governing is that it highlights the connection between the political, bureaucratic, and operational spheres, often taken for granted or artificially separated in EU studies.

Larner and Walters (2004) have made an important contribution to the debate by extending Foucault’s concept of governmentality to international concerns. Although Foucault and more general governmentality studies have mainly focused on the exercise of power within states, Larner and Walters assert that governmentality is not necessarily conceptually limited to the state. They argue that examining global governmentality contributes to ‘focussing more fully on the various ways in which governance at the level of the world has been problematized’ (Larner & Walters, 2004, p. 5). Global governmentality allows us to study and question power relations beyond the nation-state while taking economic, social, and political aspects into consideration. Moreover, the (global) governmentality perspective makes it possible to render visible a broader range of participants acting in the European field governing the fight against terrorism. It entails rejecting the assumptions of pre-existing political scales above and within the nation state and questioning the power constructions that produced these scales instead. In the words of Larner and Walters, it involves ‘problematizing the constitution, and governance of spaces above, beyond, between and across states’ (p. 2).

Walters (2004) offers an inspiring case study on the governmentality of the EU that combines the three approaches to governmentality described above. First, he explores the discursive framing of Europe. In which different ways has ‘Europe’ been explained and understood? What are the rationalities and mentalities that underpin political thinking and the policies of European integration? To answer these questions Walters takes the writings of the neofunctionalist Ernst Haas as example. He shows that Haas’s ideas on the governance of Europe are strongly inspired by the dominant societal discourses of the 1950s and 1960s and how these ideas make possible a particular style of governance, based on technocratic decision-making, modernization, and supranationality. A competing but less successful mentality of European government during the 1960s was for instance the idea of a European free trade area.

Secondly, Walters (2004) interrogates European governance at the level of its changing practices. He suggests the analysis of technologies of European government at three levels. The first level of analysis concentrates on micro-practices to describe the mundane techniques that have brought European integration into being. This includes ‘tabulations’, for instance, through scoreboards that show each member state’s progress with implementing
certain measures, making European integration calculable; ‘temporalization’ by means of setting out timetables and deadlines; and ‘geo-spatializations’ mapping out ‘Europe’ in specific ways (p. 161). A second level for analyzing the technologies of European government is what Walters calls ‘the machine’, after Foucault’s ‘apparatus’. By this he means ‘relatively durable arrangements of bodies, technologies, practices, instruments and spaces’ (p. 162). From this perspective, European integration can be understood in terms of different interconnected machines that form a new regime of governance. Examples of such machines are the welfare machine and the social market machine. A third level of analysis involves thinking about the EU as a site of novel ways of governing, ‘a laboratory of governmental arts and techniques’ (p. 165). Examples of political innovations that are specific to the EU are for instance comitology and the capacity for supranational law-making. But also practices of harmonization as argued by Barry and the development of a denationalized form of citizenship have been central technologies of European government.

This thesis adopts Walter’s dual approach to the governmentality of the EU, combining historical and empirical analysis. The analysis of the EU’s fight against terrorism financing must therefore be broadened beyond the decision-making institutions on the national and European level to the understanding of a transnational field also encompassing international organizations such as the FATF and the UN agencies as well as institutions within nation-states such as police and intelligence agencies. The governmentality approach also recognizes that non-state actors such as businesses, experts, NGOs, and citizens are all engaged in forms of governmental activity, both in relation to themselves and to others (Barry, 2004, p. 196). The inclusion of transnational entities such as the financial and banking sectors into this theoretical framework is indispensable, as private actors are increasingly expected to govern at a distance and participate in the War on Terror. Like governance theories, the theory of governmentality makes it possible to study the complex forms of governance between High Street retail banks and the institutions of the European Union.

2.5 Field Theory

One of the criticisms of governmentality studies concerns their strong focus on processes and the absence of identifiable actors in these processes (Larner & Walters, 2004, p. 4, Dale, 2004, pp. 184-185). The statements of Foucault quoted in the previous section seem to confirm his emphasis on the analysis of techniques of governing and a certain reticence in
the study of institutions. Yet, the possibility for analysing a broad and diverse range of participants opened up by the concept of governmentality is in fact one of its strengths. The governmentality perspective on the role of participants in the European fight against terrorism financing can be fleshed out by adopting a more actor-oriented analysis. Field theory, which shares a number of important assumptions with governmentality, offers such a theoretic lens.

Pierre Bourdieu developed the notion of field (champ) in order to examine the exercise of power beyond institutional and legal boundaries, and to study the consenting and conflicting relations of actors in a particular social space (inter alia 1983, 1992, 2005). A champ can be defined as

> a field of forces within which the agents occupy positions that [. . .] determine the positions they will take with respect to the field, these position takings being aimed either at conserving or transforming the structure of relations of forces that is constitutive of the field. (Bourdieu, 2005, p. 30)

Thus, instead of studying individuals or institutions, for instance the European Commission or a national parliament, Bourdieu suggests examining a ‘field of politics’, an invisible structure of relations among a range of individuals and institutions. Countless fields can be distinguished. Bourdieu for instance explored the fields of politics, social science, journalism (2005), and religion (1991) but also fields such as German philosophy (1991) and cultural production (1983).

Like governmentality, field theory considers a heterogeneous set of participants, in Bourdieu’s terminology ‘agents’, irrespective of institutional, legal, and, we could add, geographic boundaries. Fields are social universes with a certain degree of autonomy with respect to other fields. Bourdieu (2005) makes clear that studying the field of for instance philosophy should not only involve the texts of a philosopher but should also include a larger social context, for instance other philosophers, and the caste of commentators, publishers, and universities. What holds a field together is the fact that ‘each field obeys certain specific and more general rules and is structured by conflict of those who want to maintain their power and others who want to take over this power’ (Bourdieu, 1992, p. 171). In other words, a field makes visible what power relations exist within the field and how the field is structured by the relative positions taken by the actors.

Didier Bigo has developed field theory further by analysing the ‘field of professionals of management of unease’ (2005, 2006) and the ‘field of EU internal security agencies’ (Bigo et al. 2007). Bigo et al. (2007) define a field (referring to the field of professionals of security) as ‘a bordered and fragmented social space that, in spite of its heterogeneities, can be
analysed as being structured by a set of common beliefs, practices and meanings’ (p. 8). The field is structured by professional and/or bureaucratic power relations and struggles over specific social resources, called ‘capital’ by Bourdieu, determining what is at stake in this field. The positions of the social actors in the field and the relational and relative positions between these actors can be mapped by analysing their discourses, practices, institutional characteristics, and objective positions (ibid., pp. 8-11).

This theorisation draws attention to another parallel between governmentality and field theory. Both approaches emphasize the importance of representation in terms of discourses, common beliefs, and meanings. In fact, Bigo’s work can be understood as a way to operationalize what Foucault called ‘the ensemble of institutions, procedures, analyses and reflections’ (Foucault, 1991, pp. 102-103), and establishes a link between actors and processes.

It also provides an indication of how power is exercised in the professional field. In his study on the field of professionals of the management of unease, Bigo (2006) distinguishes four non-mutually exclusive dimensions in which the field may operate. First, the field can be understood as a ‘field of force’. This implies that pressure is exercised on the actors in the field to share a specific definition and reading of a problem, pulling actors together like magnets and creating a homogenization of the field. Secondly, the field can be one of struggle. This means, as alluded to above, that actors in a field do not share the same beliefs and interests and use their resources to compete with other actors in the field. A third understanding concerns the field as a field of domination. In this case, one field dominates over others by its participants claiming superior expertise on a certain issue and imposing their view and definition of this issue. As a consequence of the domination of one field, alternative views are excluded. Finally, the field can entirely or partially shift into a new transversal field. This term refers to the demarcation of a space beyond the nation-state but without inscribing it into an international or European space. It expresses that the field (of (in)security) ‘is deployed at a level that is reducible neither to the national political field nor to a level between two nations or the European level’ (Bigo, 2006, p. 29). In this thesis, Bigo’s typology will be taken into account to characterize the exercise of power in the European fight against terrorism financing.

If the European fight against terrorism financing is understood in terms of a transnational field, some practical questions immediately arise. A first question is how to determine which participants are part of the professional field. Although governmentality and field theory open up analysis to ‘new’ participants, the social space of the field is not
unlimited but bordered and fragmented. These two features are important since they allow us to value hierarchies, underscore processes of exclusion and inclusion, and help distinguish between central and peripheral actors (Bigo, 2007, p. 8). The exact borders of the field are however difficult to define in black and white; rather they emerge from the analysis of formal and informal relations between actors, for instance through the study of legal documents and interviewing key actors in the field. Moreover, the field is not homogeneous, but on the contrary, a heterogeneous set of actors. The field of security professionals for instance includes: police, the military, customs officers, judges, and border guards. Furthermore, field theory does not consider institutions as a monolithic bloc but as a collection of individuals who are also subject to inter-institutional power struggles. Within the European Commission for instance, Direction General (DG) Home Affairs, DG Justice, and DG Relex (Foreign Affairs) may have differing priorities, views and interests in the fight against terrorism. These inter-institutional turf wars have been widely discussed in the European studies literature (inter alia Den Boer, 2003, Dijkstra, 2009, Spence 2012).

Secondly, to understand what is at stake in a particular field it is important to render visible the social practices between actors in the field such as ‘professional and/or bureaucratic struggles, power relations and bordering mechanisms’ (Bigo et al., 2007, p. 8). Although the various actors are interdependent and brought together in one social space, their interests may diverge and they may not share a coherent set of beliefs (Bigo, 2006; Bigo et al., 2007). Yet, even if they do not agree on the same possible solutions, actors in the field largely share a common definition of the problem. For example, privacy groups and national governments may disagree on privacy safeguards that need to be included in a counter-terrorism law or international agreements but agree on the privacy issues involved.

Last but not least, the borders of the field as well as the definition of what is at stake are mobile and evolve over time, as ‘[t]he fundamental thing is that any action undertaken by one agent to shift the economy of forces in his favour has repercussions on all the other actors as a whole’ (Bigo, 2006, p. 24).

Building on this discussion of field theory, in the European field of governing terrorism financing there are three new directions for the analysis of the field: the inclusion of the private sector, vertical analysis of the field and a focus on technology. First, considering the importance of the use of commercial data to the fight against terrorism financing, the inclusion of private authorities seems indispensable for the analysis of this fight. In current research on the European Union inspired by field theory, private actors are often absent. Indeed, Bigo acknowledges that ‘our understanding of these private actors is still incomplete’
(2006, p. 26) and has not yet received extensive scrutiny (2007, p. 10). This gap in existing literature will be addressed here as private actors are taken seriously as part of the field of governing the European fight against terrorism financing.

A second new direction is the focus on a vertical rather than horizontal field of relations. The field of the EU internal security agencies assessed by Bigo et al. (2007) is concentrated —for practical reasons rather than principled ones— on the European level. Consequently, what becomes visible from mapping the field of EU internal security professionals are the power relations between them. This focus on actors operating on the same geographic level is what I describe as horizontal. The objective of this thesis is to examine the fight against terrorism financing from the inception of CFT measures to implementation, output, and monitoring, including decision-making and decision-makers at an international, European, and national level in the public and private sectors. This approach from Brussels to banks is what I would call a vertical analysis.

A thorough investigation of all 27 EU Member States is impossible here. Yet, the objective is not to give a complete overview of all actors involved in the field but to understand by which actors and what practices the European fight against terrorism financing is governed and how international, European, and national efforts translate into daily security practices. Even though incomplete, examples from various countries will illustrate the ways in which the fight against terrorism financing produces new modes of governing within the EU and what the political and societal implications of this fight are.

Thirdly, an important aspect of Bigo’s analysis of the field is the understanding of this field as relational and transversal (Bigo et al. 2007, p. 8, Bigo & Toukala, 2008, p. 14, Bigo, 2011). This means looking at the value-based assumptions, discourses, and rules of the game that have been established among the participants of the field. Instead of following an exclusively institutional, sectoral, or national approach, field theory highlights the similarity of the professional and educational backgrounds and the motivations of, as well as the solidarity or struggles among, the participants in the field. Although this is a very interesting approach and shared values and social trajectories of participants are also visible in the field governing the European fight against terrorism financing, I will put less stress on relative positions and social trajectories. Instead, given the centrality of financial data in this thesis and the crucial role of databases and analytical software programmes for governing terrorism financing, more attention is given to the role of technology. Scholars in science and technology studies, notably Donald MacKenzie and Bruno Latour, have argued that ‘the process of creating and adopting technologies is complex, interactive and political’ (Mort,
2002, p. 17). They show that technologies are not appearing and developing in a neutral and static manner but are shaped and given meaning by human beings and society as a whole. They highlight that technologies have histories and may embody specific knowledge and values. In turn, technology also shapes and alters society. This approach to studying technology corresponds with and enriches the governmentality and field approaches described above. The last section of this chapter proposes two separate fields of governing the European fight against terrorism that are mapped along the theoretical assumptions discussed in this section. However, in the next section I first discuss the methodology adopted in this thesis.

2.6 Methodology

The discussion of governmentality and field theory leads us to the following three research foci that have inspired the methodological framework of this thesis. First, the general understanding of governmentality draws our attention to representational practices. How does a problem emerge? How is it defined? Which aspects are subject to political contestation and which are not? This is developed in more detail in the next chapter through the Foucauldian notion of genealogy. There, I discuss the way in which the European fight against terrorism financing is represented, and what construction of truths this involves.

Techniques of governing are a second research focus. Foucault’s detailed definition of governmentality emphasizes the study of governing practices. Which money and what behaviour is precisely targeted through CFT measures? What kind of governing practices emerged in the fight against terrorism financing? What are the political and societal implications of these practices? From this perspective, power is exercised through technocratic and technological processes at the micro level dispersed over a range of public and private actors. Special attention is given to the role of technology, in particular risk and link analysis software and international financial databases.

The professional field is a third research focus in this thesis. Field theory contributes to governmentality by providing a more actor-oriented approach. Analysis of the professional field highlights who is participating in the European field of governing terrorism financing. How have interests and understandings developed and diverged in the field? What are the tensions and problems?

The following paragraphs explain the choice for case studies, documentary research, textual analysis, and elite interviewing as suitable methods in relation to these research foci.
They also describe how these research tools have been used and reflect on the limitations of these methods.

2.6.1 Case Studies

As mentioned in the introduction, the ‘SWIFT affair’ and the EU’s Third AML/CFT Directive have been selected as case studies in this thesis. The use of case studies is very suitable for the type of research carried out in this thesis for three reasons. First, case studies are a preferred method when the research focuses on a contemporary topic with a real life context (Yin, 2009, p. 2). This is precisely the case when exploring the practices created in name of the European fight against terrorism financing. When the Data Wars project, carried out by Durham University and the University of Amsterdam and of which this dissertation is part, started in 2008, there was little academic information available on this fight and even less on the daily practices set in motion. Concentrating on these two specific case studies has helped to gather and open up a lot of detailed information.

Secondly, case studies are useful for investigating social processes (Swanborn, 1994, p. 316). By concentrating on a specific case it becomes possible to analyse interaction on the micro level. This can include, for instance, the creation and reproduction of meaning, the emergence of disagreements, the different steps in the decision-making process, or the mapping of the various perspectives and motives of participants. The analysis of social processes taking place in these two case studies has been crucial for studying the exercise of power in name of the European fight against terrorism.

Thirdly, a case study allows for a thorough investigation of a complex issue (Swanborn, 1996, p. 38). Contrary to a causal model that measures specific pre-defined variables among a significant set of respondents at the moment of the survey, a case study considers a range of meaningful features or causes of one specific case over a certain period of time. In other words, case studies can offer a holistic approach (Swanborn, 1996, p. 26, Yin, 2009, p. 4). This holistic aspect of the case study also explains why case studies have been used very frequently in studies of governmentality.

The selection of the case studies must respond to the core concepts of the research question (Klotz, 2009). The SWIFT affair and the Third Directive have been selected as case studies because these are the main ways in which the war on terrorism financing has taken shape in Europe. They are both examples of the use of personal financial data for security and, more specifically, counter-terrorism purposes in Europe. Both are also part of a broader
turn to commercial databases for security purposes and fit in a spectrum of examples such as the PNR and e-border cases investigated by the British research team of the Data Wars project, and the use of telecommunication and internet data, and even purchase information.

Yet, the two case studies also have important differences. First of all, the Third Directive is a legal framework concerned with suspicious transaction reporting that has never raised much societal or political controversy. It is a rather specific and detailed instrument that requires specific entities mainly in the banking and financial sectors to comply with certain counter-terrorism requirements. Because of its seemingly undisputed character and the fact that the Directive mainly affects the internal organization of a specific group of businesses, it has been largely invisible. The SWIFT affair on the other hand has been highly visible and controversial as it entailed the transfer and surveillance of international wire transfers, that were initially illegal according to European law. In this case, the US and European political scenes play an important role. The difference between the two cases is important to provide a more complete understanding of the practices at work through the European fight against terrorism financing. The next section discusses the qualitative research tools adopted to investigate the two cases.

2.6.2 Documentary Research and Textual Analysis

In addition to the study of academic literature, this thesis is based on extensive documentary research. This includes the analysis of: official reports from public and private authorities, press releases, political statements, laws, policy documents, (transcripts of) parliamentary hearings and debates, international press articles, internet blogs and journalistic books. These have been very valuable sources for examining the way in which the European fight against terrorism financing has been defined and represented. Documentary research helps in reconstructing events, tracing decision-making procedures, and examining the range of arguments and opinions held by the participants governing the European fight against terrorism financing. In addition, documentary research helps to shed light on the techniques of governing. For instance, legislative texts prescribe the action required from banks and financial service providers and banks’ annual reports often mention which steps have been undertaken by the bank to comply with the law. Journalistic works, on the other hand, were crucial to reconstructing the practices developed in the Terrorism Finance Tracking Program (TFTP). In chapter 4 documents have been used more systematically for a textual analysis in order to investigate how participants in the field governing terrorism financing supported or
contested the TFTP. This section discusses the potential pitfalls of documentary research and the adopted methodology for textual analysis.

Although (official) documents appear to constitute stable and objective evidence, they are in fact socially produced for a certain purpose on the basis of certain ideas, theories, or principles (Atkinson & Coffey, 2004, Bryman, 2008, Gilbert 2008). For this reason, it is important to reflect on the interpretation and meaning of documents. Scott (1990) distinguishes four criteria for assessing the quality of documents. First, the authenticity of the documents needs to be established. Given the fact that most documents used in this thesis are of very recent date and available through libraries or on the official websites of the investigated public and private authorities or media outlets, it is not very likely that these are falsified or wrongly copied. In this sense authenticity has not been a matter of concern. Authenticity can also be an issue of concern when the authorship of the articles is unclear (Bryman, 2008, p. 525). However, in the context of this thesis, this has not been problematic.

Secondly, the credibility of the texts merits consideration. One can for instance wonder whether the quotes from anonymous sources in journalistic books or articles are reliable. But also official statements made by politicians and government officials can be biased and in strong contrast with for instance the actual legal arrangements. The credibility of the text can be assessed by reflecting on the following questions: Who produced the document? Does the author have an interest in distorting the truth? And why, when, and in what context was the text written? (Gilbert, 2008, p. 294). Although it is unquestionably important to know if statements or documents can be attributed with certainty to a person or organization, it must, however, be stressed that the aim in this thesis is not to establish the credibility of texts in the sense of being representative of the truth. In fact, it is through the confrontation of differences in the presentation and interpretation of arguments and facts that the rationalities that underpin the European fight against terrorism become visible and can be understood.

A third criterion is the representativeness of the document or the set of documents. This issue has been especially important with regard to the textual analysis discussed below. In general it can be said that with the help of Internet search engines and public databases a wide range of documents published by public and private actors have been consulted on each of the case studies. Nevertheless, it must be noted that only official and publicly available documents have been consulted. Internal or confidential correspondence, minutes, and memos fall beyond the scope of this research.
Last but not least, Scott (1990) states that the meaning of the document needs to be established. In this respect, a distinction can be made between the literal meaning and the interpretative understanding. According to him, ‘at its simplest, interpretation requires an understanding of the particular definitions and recording practices adopted and of the genre and stylisation employed in the text’ (p. 30). The hermeneutic process of interpretation goes a step further as it also involves ‘interpretative understanding of individual concepts, appreciation of the social and cultural context through which the various concepts are related in a particular discourse and a judgement on the meaning and significance of the text as a whole’ (Scott, 1990, p. 31). Hence, in order to interpret the meaning of the text it is important to investigate the situation and the intentions of the author as well as the societal context in which the text was written. This kind of interpretative research can be carried out through textual analysis.

Chapter 4 offers a textual analysis of the debates concerning the SWIFT affair in, respectively, the US and the EU. There are various approaches to textual analysis ranging from semiotics to more quantitative forms of context analysis. In chapter 4 the approach followed by Huysmans and Buonfino (2008) has been adopted. In their article they have investigated how and in what instances British politicians represent or contest nexuses between terrorism and immigration. For their analysis, they selected all parliamentary debates on terrorism that took place in the House of Commons and the House of Lords during a certain period. The dates they have chosen include the debates following 9/11 and the Madrid bombings. They also included some key debates held in 2005 especially debates that took place after the London bombings, to verify of any important changes had taken place. In a first stage Huysmans and Buonfino have searched the written transcriptions of the parliamentary debates through *Hansard*, the edited verbatim reports of the proceedings of the British parliament, using the keyword ‘terrorism’. Then, they refined their search through words related to immigration. Next, debates containing both themes were read for meaning, structure and connection with other themes. As such they analysed how certain dangers were politicized and how insecurity was framed around the migration/terrorism nexus (2008, p. 768).

Chapter 4 investigates how and at which moments the SWIFT affair was (de)politicized in the US and in the EU. The main sources for this analysis are newspaper articles. Two different considerations explain this choice. Aside from the fact that journalists initially revealed the SWIFT affair, so far most information has been published by the press. Moreover, newspaper articles are also a place where the multiple participants involved in the
field (political leaders, privacy groups, law-enforcement officers, and spokespersons from SWIFT) are made to interact and different opinions can be traced. While other sources, including parliamentary debates, international agreements, court rulings, and the study of the relations between the participants in the field, are also taken into account and enhance our understanding of the SWIFT affair, they are far less comprehensive with regard to the quantity of information and often offer a less all-round view on the affair.

However, the importance of investigative journalism for our analysis of the SWIFT affair provokes some reflection on the value and the risks of using media sources. Gilbert emphasizes that the media are selective in what they decide to publish and from what angle they report on issues (2008, p. 289). This selectivity and even self-censorship is illustrated in the discussion of the revelation of the SWIFT affair in chapter 4 and is also discussed in the context of the discussion of the SWIFT programme as a black box in chapter 5. In addition, it must be kept in mind that newspaper articles may contain errors in the facts they present, they may be subject to distortion at the level of the editor, the journalist, or the initial source, and they are written with a specific audience in mind (Gilbert, 2008, p. 289). These potential risks have been carefully taken into account in the examination of newspaper articles.

The textual analysis of the debates on the SWIFT affair in the US and in the EU is based on newspaper articles available in the Lexis-Nexis newspaper database between 23 June 2006—the revelation of the Swift affair—and 31 August 2010, the month during which the latest US-EU agreement was adopted. This database contains all major and regional American and European newspapers as well as Canadian, Australian, and Asian newspapers. All English, French and Dutch newspapers offered in the database have been included in the search and have been systematically investigated (for a complete overview see Annex 2). I believe that this comprehensive approach, yet with a focus on the leading US and EU newspapers, constitutes a representative selection for the analysis of newspaper articles.

The articles on the SWIFT affair have been selected through searching for the acronym “SWIFT.” Subsequently, all articles containing the word ‘swift’ but referring to for instance a specific car, football clubs or doing something rapidly instead of to the SWIFT affair were filtered out. Additional searches were made using the words “banking data.” The next stage involved reading the articles and searching for and listing the arguments made in relation to the SWIFT affair. Which words were used? Which themes were raised in the debate? Which arguments were used to defend the various views held in the SWIFT affair? Which solutions were proposed to ‘solve’ the SWIFT affair?
A last comment with regard to document research is the fact that organizations’ official documents usually disregard social interaction and struggles, as they are considered irrelevant or undesirable for the final version of the document. For this reason Atkinson and Coffey (2004) argue that documents have a distinctive ontological status, in that they form a separate reality, which they refer to as a “documentary reality.” In order to complement and question the “documentary reality,” interviews with key persons have been carried out.

2.6.3 Elite Interviewing

Qualitative interviews have been a preferred methodological tool for understanding the construction of meaning in, as well as the practices and struggles of, the professional field of governing terrorism financing. This form of interviewing helps to discover the reasoning, motivations, attitudes and opinions of the respondent with respect to a certain subject. Qualitative interviews are also useful to unfold the content and pattern of daily practices and experiences (Gilbert, 2008, Kvale, 1996, McCracken, 1988). Furthermore, interviewing can provide insights into organizational and institutional processes and can make connections between different individuals and organizations visible (DeVault & McCoy, 2003).

The interviews carried out for this research project have been extremely valuable in reconstructing the social interaction that has taken place between different participants in the field of governing as produced through the European fight against terrorism financing. They provided insight into the self-definition of participants in the field and the problems they encountered. The interviews provided information about the way in which issues have been solved, how ideas evolved, or how they remained points of disagreement and contestation. Interviews were also an important tool to understand how measures for combating terrorism financing have been translated into daily practices and how the technologies used for this purpose operate.

The approach taken in selecting respondents and carrying out the interviews can be qualified as elite interviewing, which is a distinct form of qualitative interviewing. Despite the use of the word elite, this form of interviewing ‘can be used whenever it is appropriate to treat the respondent as an expert about the topic at hand’ (Leech, 2002, p. 663). An elite interview is therefore ‘an interview with any interviewee who in terms of the current purposes of the interviewer is given special non-standardized treatment’ (Dexter, 1970, p. 5).

In practice, the interviews were semi-structured around a set of major open-ended questions in order to guide the conversation. The advantage of semi-structured interviews is
that they allow the interviewer to ‘alter the sequence of questions and probe for more information’ (Gilbert, 2008, p. 246). They also leave more freedom for the respondent to illustrate his or her answers with examples or anecdotes or to touch upon related issues. The questions of the interviews can be divided between a core set of introductory questions—Gusterson speaks of “icebreakers” (2009, p. 104)—and thematic questions that were asked of everyone. For example, most interviews started with the question, ‘Can you describe your role in [organization X or situation Y]?’ After establishing the role and practices of the interviewee and the situation, other general questions were, ‘What is your opinion on the usefulness of financial data for combating terrorism?’ and ‘Do you believe that security practices based on financial data will remain of key importance in the future?’ Depending on the expertise of the interviewee the questions concentrated either on the Third Directive or on the TFTP and in some cases on both topics.

In addition, more tailored questions were asked in relation to the particular function and expertise of the respondent. For instance, ‘Can you explain how a financial transaction becomes seen as suspicious?’; ‘When do you send a suspicious transaction report to the Financial Intelligence Unit?’; ‘What are according to you the most important improvements that are needed to render the TFTP acceptable?’ and, ‘Can you give examples of how your government tried to influence the FATF negotiations?’

Furthermore, it must be stressed that ‘a non-standardized approach is valuable where the subject matter is sensitive or complicated’ (Gilbert, 2008, p. 248). Such was precisely the case with the Third AML/CFT Directive and the SWIFT affair, which were both surrounded with certain levels of secrecy and arrangements little known beyond circles of financial specialists and a small group of European officials. Open and non-standardized questions are well adapted to these situations as they leave some leeway to the interviewee to choose his or her own words and interpretation of the situation to respond to the question.

For the purposes of this research project, 28 elite interviews with key persons were carried out (for an anonymised list, see annex 1). Key persons or respondents for interviews were selected through three strategies. First, important public and private actors such as the European institutions, banks, and non-governmental organizations were mapped and key persons within these organizations were identified and contacted. Secondly, a ‘snowball method’ was used, asking the first (and most visible) key informants for further contacts in the field governing the fight against terrorism financing. Thirdly, evaluating the preliminary results of the interviews and the literature survey of the case studies, a last set of respondents was interviewed in order to cover certain specific topics in more depth.
All interviews were tape-recorded and subsequently transcribed, except for two cases in which the interviewees preferred not to be recorded. In these two cases only handwritten notes were taken. Compared to note taking, recording allows a more thorough examination of the respondent’s answer because of the possibility to repeat to hear the complete answer in the original wording. As such, the context remained intact and could be verified or played back in later stages of the research. It was important to conserve the exact wording of the answers because of the sensitivity of the subject on the one hand and in order to compare the opinions and positions of the different actors carefully on the other. On a few occasions the respondent wished to speak off the record. However, the ‘off the record’ information or statements relevant to this research also became available in public documents at a later stage of the research project. Interviews took place on location in Amsterdam, Brussels, London, Paris, and Washington D.C. in English, French and Dutch. Two interviews were carried out and recorded by telephone. The duration of the interviews was on average between one hour and one and a half hours. In order to guarantee the anonymity requested by some interviewees, all respondents were assigned numbers and divided into broader professional categories.

As interviewing is a social activity and the interviewer and the interviewee will react to each other’s appearance, declarations, and behaviour, the methodology of interviewing also merits some reflection. Qualitative interviewing literature widely recognizes ‘interviewer effects’, that is, the influence of the interviewer on the interviewee. Respondents can be influenced by the appearance and language of the interviewer (McCracken, 1988, pp. 25-26) as well as by the interviewer’s behaviour and conduct of the interview (Gilbert, 2008, p. 256), which can for instance be too formal or too informal. Attempting to minimize the interviewer effects, a professional and open style was adopted during the interviews.

Another important, but less acknowledged, pitfall of the interview as methodological tool is the decreasing distance from the research object that may affect the interviewer. This could be called the ‘interviewee effect’. For the use of elite interviews as part of a research project, the interviewer is entirely dependent on the interviewees to share their time and knowledge. Moreover, the activity of elite interviewing may create empathy for the interviewee as the interviewer and the interviewee spend a considerable amount of time discussing a topic in which they are both interested and they often have coffee together. The willingness of the interviewees to participate in the research project and the attempts of the interviewer to understand the opinions and situation of the interviewee may consciously or unconsciously affect the independence and objectivity of the interviewer’s analysis. Awareness of the occurrence of interviewee effects as well as the anonymisation of
interviewee’s statements help to maintain an appropriate distance and independence towards the interviewee.

According to Latour (2000), the structure of the interview as a methodological tool (i.e., where the interviewee responds to the questions of the interviewer) may also influence the objectivity of the research outcomes. He argues that the results of a research interview might be distorted because the interviewees’ objections to the researchers’ questions or the research agenda are not accurately taken into account (p. 116). Yet, instead of ignoring the objections raised because they do not follow the research agenda or because they embarrass the interviewer, these objections can provide new insights into the research topic or alert the interviewer to his or her erroneous assumptions about the interviewee (Tanggaard, 2008).

Another concern is the reliability of the response to the interview questions. It is important to keep in mind that respondents are not obliged to give objective and truthful answers (Berry, 2002, p. 680). They can also be tempted to give politically correct answers, answers anticipating what interviewers want to hear (Gilbert, 2008, p. 255), or to exaggerate their own role (Berry, 2002, pp. 680-81). These issues were considered when deciding to send the interview questions and a short introduction of the research project to respondents ahead of the interview. To limit the influence of these documents on the response of the interviewee these documents were phrased in a rather open and general style. Yet, considering the chances of biased answers through prior knowledge of the questions versus the advantages of prepared and reassured respondents, the latter was deemed more important. Moreover, since the topics discussed in the interviews were often considered as sensitive by respondents, I believe it is desirable from an ethical perspective to assure a high level of transparency towards respondents. Furthermore, the same questions were asked of several persons of the same professional group, making it possible to compare the responses. It must be stressed however, that one of the objectives of carrying out interviews in this research project was also to discover the interviewees’ (biased) views on a particular situation or practice as well as their opinions on their role and the roles played by others.

The sensitivity of the information discussed during the interview was also at stake with respect to the request of many respondents—in particular some of the lower ranking ones—for anonymity. This does not only protect the respondent in his professional environment, but as McCracken highlights; it also permits respondents to speak with more candour (1988, p. 27). Indeed, for the present research, it is not the identity of the respondent that is relevant but the role of this person within a specific institution or professional category and the larger professional field.
2.7 Mapping the Participants of the Professional Fields

This section presents two maps of European professional fields of governing terrorism financing. For this mapping exercise, the field can be defined as a relational space that encompasses all private and public, national and international participants that are involved in standard setting, decision-making, implementing monitoring, or otherwise influencing the EU’s measures to combat terrorism finance. These maps help visualize at a glance the heterogeneous set of public and private participants operating in the field and also provide an overview of the key persons that have been analysed in this thesis through interviews and documentary research. As in (most of) the field maps produced by Bigo et al. (2005, 2007), the participants in the field are divided over two axes. Yet, the meaning given to the axes differs. The horizontal axis contrasts representational with operational power. In short, representational power involves the contribution to the production of particular truths, while the operational power entails the daily practices carried out to execute the law. The vertical axis reflects different geographic scales and is comparable to the vertical division of the field map of European Security Agencies (Bigo et al., 2007). However, instead of a transatlantic, European and national level, the field maps in this chapter distinguish between a local, national, and an international/transatlantic level for the SWIFT affair and a local, national, and international level for the Third Directive. In addition, it must be emphasized that the axes on the map are not impenetrable dividing lines and interaction and influence between representational and operational powers as well as between geographic scales occurs.

These maps are limited because they provide a snapshot of the professional field at a certain moment in time, while in reality the field is continually evolving as participants may enter or leave the field at some point. Moreover, the distinction between groups of participants is in reality messier than the maps may suggest for at least two reasons. First, during the interviews it became clear that it was not uncommon for interviewees to have gained professional experience in for instance both banking and law-enforcement environments. One of the interviewees had even combined three different positions in the field as he had worked on anti-money laundering cases within the national police, for a major international bank, and as a consultant and trainer on AML-CFT issues. This finding is in accordance with the works of, for instance, Favarell-Garrigues et al. (2008, 2009) considering the professional trajectories of professionals fighting dirty money. Secondly, organizations pictured on the map are not unitary actors but consist of different services and individuals that may have conflicting interests. Furthermore, like all models, the positioning of participants on
the map is to a certain extent a simplification as the field is in constant flux and relative positions may change.

Despite these weaknesses, the value of the maps is that they help us visualize the fragmented and heterogeneous set of participants that operate in the European field of governing terrorism finance. Contrary to certain more conventional models of European governance, these field maps make it possible to transcend the divisions between national and international actors on the one hand and public and private actors on the other. In addition these maps also reveal something about the techniques of governing that are used in the field.

Although this thesis speaks of a European field of governing terrorism finance, each case study has a distinct professional map. This choice has been made for analytical purposes. The overview of and relations between participants of each case study are easier to grasp in separate maps. A comparison of the separate maps shows that there is some overlap between the two maps, notably in the section in the upper right showing international representational powers such as the European institutions. Yet, including the participants of the two case studies into one European field of governing could also lead to confusion because certain participants are specific to only one case study. The Financial Intelligence Units for instance are absent in the field map of the SWIFT affair as they have no role with regard to this case study. On the other hand, privacy and civil liberties groups have not mobilized themselves in response to the EU’s Third Directive. These considerations have to be taken into account of in the professional field maps described below.

2.7.1 The Professional Field Map of the SWIFT Affair

Most participants in the SWIFT affair are positioned in the upper left quadrant of the map which indicates that they exercise representational power acting on an international, or, to be more precise, transatlantic level (see figure 2.1). In this field map, to exercise representational power means being involved — as a decision maker or as a stakeholder— in the development of CFT policies and through this involvement advancing or contesting particular discourses and practices regarding (the fight against) terrorism financing and the use of financial data. It includes the US government and in particular the US Department of Treasury and the European institutions. The European Data Protection Supervisor (EDPS) and the Article 29 Working Party of national privacy commissions of the EU member states were also actively involved in the SWIFT affair. This quadrant also includes non-state actors such as civil liberties groups that have mobilized themselves regarding this case in several
countries, the largest international banks that have been aware of the TFTP, consultancies, and last but not least SWIFT representatives who were directly involved in the development and negotiation of the TFTP.

The representational powers at the national level that are involved in the SWIFT affair, represented in the lower left quadrant, include the Ministries of Finance in the EU member states. Some of these ministries and national central banks or financial services authorities were aware of the TFTP since before the revelation of the programme. All were involved in the negotiations with the US following the publications on the SWIFT affair. Other participants at the national level include national parliaments that discussed the affair as well as national privacy commissions in all member states and in particular the Belgian Privacy Commission. Privacy and civil liberties groups have also been engaged at a national level. Journalists who have revealed or investigated the TFTP are considered representational powers as their reporting structured the SWIFT affair. They are positioned at the national level on the map as they work for leading national newspapers and write for national audiences to begin with. However, their contribution to the way in which the SWIFT affair became represented had a global reach in some cases.

Participants holding operational power, shown in the quadrants on the right, are involved in the implementation of CFT policies and actually attempting to track terrorists and their financiers. However, these participants are not mere ‘executers’; it must be stressed that these activities have a political dimension and are structured by certain beliefs and values. In the SWIFT affair, the thousands of nationally implanted correspondence and investments banks that make use of SWIFT’s financial services network, SWIFTNet FIN, can be qualified as operational powers. SWIFTNet FIN is located on different servers around the globe, and supports the vast majority of international transactions between banks worldwide; as this network needs maintenance and development it can also be seen as an operational power. Furthermore, the CIA played a crucial role in developing the TFTP and analysing SWIFT’s financial data. Another important private sector participant is the Booz Allen Hamilton Corporation. In 2010 Europol also acquired a role in the TFTP.

2.7.2 The Professional Field Map of the EU’s Third Directive

As in the SWIFT affair, most participants in the professional field map of the EU’s Third Directive are representational powers operating on the international level (see figure 2.2). However, in this map the focus is rather on international organizations such as the UN,
the Council of Europe, and the FATF, instead of the US authorities. Of course this map also includes the EU institutions. In addition to the European Commission, the Parliament, and the Council, the European Court of Justice has also had some power in this professional field. The private actors present in this part of the field consist of national and international professional interest groups such as the European Bar Association, and various associations representing the banking and financial services sectors. International banks are also represented at the European and international levels. Internationally operating consulting firms such as John Howell and Deloitte are also part of the professional field.

On the national level there is again some overlap between the participants of the two case studies. With regard to the Third Directive, national parliaments, Ministries of Finance, and national banks and financial services authorities were involved in negotiating and/or monitoring the Third Directive. National central banks and financial services authorities also have responsibilities in monitoring compliance with the Third Directive. There is also a minor role for the ministry, often either the Ministry of the Interior, Justice, or Foreign Affairs, that determines the blacklisting of individuals suspected of terrorism.

The professional field map of the EU’s Third Directive includes more actors on the national and sub-national operational level compared to the SWIFT affair. First of all, it comprises the Money Laundering Reporting Officers (MLRO) who are operating in all the local bank offices spread throughout the EU member states. These local banks are in turn controlled, supported, and monitored by the national legal and compliance departments of banks. These are for instance located in ‘the City’ of London, and along the ‘Zuidas’ in Amsterdam. Nationally operating consultancy and training companies can also be considered operational powers as they are for instance asked to assist banks or other financial services providers with the implementation of the Third Directive. Their work can be interpreted as more representational when consultancies advise governments or banks on strategies to shape or influence a legislative proposal. The operational powers from the public sector on the national level that deserve particular attention are the Financial Intelligence Units. They gather, analyse, and may exchange the suspicious transaction records issued by banks.

Operational powers on the international level include mutually cooperating European FIUs facilitated by FIU.net and Egmont Secure Web. These are virtual networks that make the exchange of suspicious transaction reports among the members of the network possible. In relation to these networks but especially to the practices for combating terrorism financing carried out within banks, international software companies providing specialized transaction monitoring programmes must be included as important operational powers operating on the
international (or transnational) level. Worldcheck, Mantas, and Fiserv are examples of leading providers of financial risk analysis software. A global network of FIUs known as the Egmont Group, is another operational power on the international level.

A final consideration with regard to both professional field maps is the inclusion of academic scholars on the map. Latour (2005) has argued that social scientists defining and studying specific groups are by no means independent observers but also part of the groups they help bring into existence (pp. 30-34). During this project, the influence of academic work on the European field of governing terrorism finance became visible when the European Data Protection Supervisor Peter Hustinx referred to the work of the privacy scholar Paul de Hert during an interview, when a member of the European Parliament mentioned the work of Marieke de Goede in her conference speech, or even from the academic books displayed in the offices of some of the key persons who were interviewed. More generally, European institutions and national governments have regularly invited scholars such as Nikos Passas and Loretta Napoleoni to hold speeches or write reports on terrorism financing. Nevertheless, academic scholars are not included on the maps because aside from these few examples their influence on the representation of the European fight against terrorism financing and the practices developed in the name of this fight is difficult to quantify. Moreover, including academics as one group of participants would be an oversimplification as they may hold heterogeneous and even opposing views on the subject. However, the influence of academic work on the understanding of terrorism and terrorism financing has explicitly been included in the next chapter, which considers the genealogy of terrorism financing.

2.7.3 Governmentality and the EU’s Fight against Terrorism Financing

The theoretical framework and the methodology described in this chapter inform the analysis of the governance practices that have emerged in the name of the European fight against terrorism financing. Looking at the professional field maps of the SWIFT affair and the Third Directive and their description, three elements of governmentality in the EU’s fight against terrorism financing already become apparent. First, the maps make visible a shift towards informal and ad hoc forms of governing. The FATF is illustrative in this sense as it was created by the G7 and does not have any international legal standing. According to one of the interviewees, the success of the FATF as a central player in the international war on terrorism financing can be explained by its informal character and the use of peer pressure instead of binding legal instruments (interview 19). The FATF governs the financing of
terrorism rather through processes of standard setting, benchmarking mechanisms, and establishing best practices and stimulating their adoption (Heng & McDonagh, 2008).

The Egmont Group of FIUs is another informal international network that meets on a regular basis. Like the FATF, to which it is closely linked, the Egmont Group was created in response to a specific anti-money laundering context and extended its mandate to include terrorism financing after 9/11. According to the European Commission, the Egmont Group ‘has become a genuine international forum and, though having no official status, has become an essential element in the international fight against money laundering’ (quoted in Gilmore, 2004, p. 79). This tendency towards ad hoc and informal ways of governing has also been highlighted in a more general context by the former Dutch Minister of Foreign Affairs Ben Bot (AIV, 2010, p. 6).

Secondly, the field maps make clear that in the fight against terrorism financing power is exercised through cooperation between representatives of the public and the private sectors. Either as operational power or as a representational power, in this thesis it is argued that private authorities are more than passively serving as a ‘deadly weapon’ instrumental to law-enforcement agencies. Private authorities, most notably banks but also software producers, professional associations, journalists, consulting firms, and civil liberties groups are closely involved in shaping and legitimizing discourses and practices about (combating) terrorism financing.

Thirdly, the field maps make the importance of financial databases for the collection and international exchange of data as a technique of governing visible. The inclusion of these databases in the field map highlights their existence, which is often taken for granted in other theoretical frameworks, but also their agency in the professional field. Their presence raises questions how technology opens up possibilities and helps in shaping and structuring the fight against terrorism financing.

Building on these three elements—a tendency towards ad hoc and informal ways of governing, public-private cooperation, and the agency of technology—the governmentality of the EU’s fight against terrorism financing and the corresponding professional fields will be examined in more detail in the following chapters. The next chapter investigates the emergence and representation of the European fight against terrorism financing.
Fig. 2.1 Professional field map of the SWIFT affair

- US Government/UST
- European Commission
- European Parliament
- Council (of the EU)
- Ministry of Finance/Ministry of Economy
- National Central Banks/Financial Services Authorities
- National Parliaments
- Privacy International
- ACLU
- International Banks
- EDPS
- SWIFT
- CIA, FBI and other American Intelligence and Law Enforcement Agencies
- Booz Allen Hamilton Inc.
- EUROPOL
- SWIFTFinNet
- Art. 29 Working Group
- National Privacy Commissions
- National Central Banks/Financial Services Authorities
- National Parliaments
- Privacy and Civil Liberties Groups
- Journalists
- National Correspondence and Investment Banks
- National Governments
- Local
- International/Transatlantic
- US Government/UST
- European Commission
- European Parliament
- Council (of the EU)
- Ministry of Finance/Ministry of Economy
- National Central Banks/Financial Services Authorities
- National Parliaments
- Privacy International
- ACLU
- International Banks
- EDPS
- SWIFT
- CIA, FBI and other American Intelligence and Law Enforcement Agencies
- Booz Allen Hamilton Inc.
- EUROPOL
- SWIFTFinNet
- Art. 29 Working Group
- National Privacy Commissions
- National Central Banks/Financial Services Authorities
- National Parliaments
- Privacy and Civil Liberties Groups
- Journalists
- National Correspondence and Investment Banks
- National Governments
- Local
- International/Transatlantic
Fig. 2.2 Professional field map of the Third Directive

Operational power

International

UN CTC and 1267 Committee
FATF
European Commission
European Parliament
European Court of Justice
CoE-MONEYVAL
International Professional Interest Groups
International Banks
Top Consulting Firms

Egmont Group of FIUs

Software developers

FIU.net

National

National Central Banks/ Financial Services Authorities
National Legal and Complicity departments
Consultancies and training companies

Financial Intelligence Units

Local

AML/CFT Officers in local banks

Ministry of Finance/ Ministry of Economy
Ministry of the Interior/ Ministry of Foreign Affairs
National Parliaments
Council (of the EU)

Representational power

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