

Reintegrating the question of intention: Investigating “counter-performativity” and the “problem of description” in the financial industry

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Abstract:

This article draws on the concepts of “counter-intentionality” and “saturated phenomena” developed by phenomenologists to analyse how performative processes can fail in organizations. To make our point, we investigate the case of new transparency requirements for European investment firms following the implementation of the Markets in Financial Instruments Directive (MiFID) in 2007. Using an ethnographic study conducted in an investment firm between 2006 and 2009, we show a case where implementation of the normative text is counter-performed, that is, deployed in a significantly different way from the intention initially expressed by the regulator. Drawing on the work of Jean-Luc Marion, our analysis reveals three different forms of the counter-intentionality found in performativity processes. The first reveals itself in the form of *alteration*, and is generated by interactions between the investment firm and its consultants. The second takes the form of *disappointment* and concerns interactions between the investment firm and local regulators. The third, *resistance*, stems from interactions between functions within the firm. This study with its focus on the concept of counter-intentionality contributes to the organization studies literature in two different ways. Firstly, by delineating counter-intentionality using the concept of saturated phenomena, rather than by straightforward reference to counter-performativity, it provides a more detailed understanding of the conditions for infelicitous performativity. Secondly, we contend that counter-intentionality advances understanding of the question of description (Muniesa, 2014), which has recently been shown to be crucial for making sense of performative processes in organizations.

Keywords: Compliance function, counter-intentionality, MiFID, performativity, saturated phenomena

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Introduction

Over the past ten years interest in the concept of performativity has grown in management and organization studies, renewing the standard approaches to communication and interactions within organizations (Cooren, 2004; Cooren and Fairhurst, 2004; Taylor and Van Every, 2000), conceptions of accounting (Quattrone, 2009; Skærbæk and Tryggestad, 2010), and the understanding of strategy and decision-making practices (Cabantous et al., 2010; Cabantous and Gond, 2011; Kornberger and Clegg, 2011). More recently, scholars in the field of management and organization studies have specifically used the performativity concept to redefine concepts of modularity (D’Adderio and Pollock, 2014) and performance (Guérard et al., 2013), to study routines (D’Adderio, 2008, 2011 and 2014; Wright, 2014), to explore how performativity sheds light on the way strategy theories come into being (see for instance a forthcoming special issue of *Long Range Planning*), and to understand how words actually do things in organizational settings (Cooren, 2012; Putnam and Cooren, 2004; Vaara et al., 2010). In social studies of finance, performativity has been extensively used to make sense of the role of economics in the construction of contemporary markets (Callon, 1998; MacKenzie, 2003 and 2004; MacKenzie and Millo, 2003).

As already noted by De Goede (2005: 24), although performativity is a core theme of social studies of finance, “the precise meaning and significance of financial performativity is under debate”. Recent bibliometric research on performativity studies is also frequently unclear about what performativity means, despite the growing interest in the concept in organization and management studies (Cabantous and Gond, 2014). Taking stock of the abundant literature

on performativity, Muniesa (2014) presented four distinct philosophical problems associated with the notion. One is the problem of description, “about the kind of thing a description produces” (2014: 17), and Muniesa underlines that performativity studies struggle with the problem of description – for the process that connects “statements that describe a reality that is exterior to them” with “statements that are meant to instantiate or effect their own reference” (2014: 18) remains largely unquestioned (Muniesa, 2014). In this article, we intend to tackle the under-theorization of this relationship in order to improve our knowledge of performative processes in organizations.

Crucial to these processes regarding “the kind of thing a description produces”, MacKenzie (2004 and 2006a) depicts counter-performativity as instances where the practical use of an aspect of economics makes economic processes less like their depiction. MacKenzie and Spears (2014) subsequently note that there are many mechanisms of counter-performativity, corresponding to the “multiple ways in which the practical use of a model can undermine its empirical adequacy” (MacKenzie and Spears, 2014: 19). They build a typology of such mechanisms and identify three forms of counter-performativity (“model gaming”, “models [being] undermined by the effects on the market for the underlying asset” and “deliberate counter-performativity”). But broadly speaking, such attempts to understand counter-performative processes have so far voluntarily avoided analysis of agency through language (see Didier’s attack in MacKenzie 2006a, focusing on linguistic matters). It is true that studies dealing with performativity in organizations do not share a similar understanding of the concept: for instance, the enactment of theories in organizational life can be related to founding works by Callon (1998) and MacKenzie (2006a and 2006b), whereas the performative power of discourses can be traced back to a more orthodox reading of speech-act theories by Austin (1962 and 1970). Yet, as language and discourse play a pivotal role in the performative constitution of organizations (Cooren, 2004), they remain crucial to our understanding of the performative process at work within descriptions in organizations, for instance when practical uses of a rule make processes less like their initial depiction (D’Adderio, 2008: 784).

In what follows, we suggest that the starting point for addressing the issue of description in relation to performativity should be the question of linguistic and discursive agency, using concepts drawn from the phenomenological tradition such as “intentionality” (Husserl, 1976; Lévinas, 1983 and 1998) and “saturated phenomena” (Marion, 2002a, 2002b, 2008). These

together give rise to the concept of “counter-intentionality”, depicting a specific case of counter-performativity where the reactive intention of market actors distorts the regulator’s initial intention even as, paradoxically, it puts that intention into practice. Drawing on ethnographic fieldwork conducted in an investment firm, we show how the implementation of a new transparency regime after the adoption of the Markets in Financial Instruments Directive (MiFID) in Europe entailed significantly different effects from the intention initially put forward by the regulator. These can be credited to the counter-intentional effects at play.

The rest of this article proceeds as follows. The first section refers to the concepts of intentionality and saturated phenomena to address the question of performativity. The second section provides contextual elements related to MiFID’s main objectives, with a specific focus on its new transparency requirements, and how they impacted the investment firm observed. This is followed by a presentation of our research method in the third section: an ethnographic study conducted at the time when the new transparency regime required by MiFID was put in place. The fourth section presents our results and identifies three different instances of saturated phenomena in the context of MiFID’s implementation. In the fifth and final section we discuss our results and our contribution to the literature on performativity.

Conceptual background

Reintegrating the question of intention

Contemporary developments regarding performativity were originally fostered by discussions in the anthropology of science and technology, following a thread linking Hacking (1983), Pickering (1995) and Galison (1997) to Callon (1998), and can be traced back to Austin (1962). Meanwhile, the concept of performativity has become a topic of interest in a wide diversity of research fields: cultural studies (Bell, 1999 and 2012); gender studies (Barad, 2003 and 2012; Bell, 2008; Butler, 1988, 1997 and 2010; Dolan, 1993; Haraway, 1991); cultural geography (Clark et al., 2004; Nash, 2000; Rose, 1999); cultural economy and economic sociology (Aspers, 2007; Barry and Slater, 2002; Callon, 2010; Esposito, 2013; Pryke and Du Gay, 2007; Slater, 2002; Svetlova, 2012). Two distinctive outlines of performative processes are detectable in organization studies. On the one hand, scholars have

used performativity as a core theme for the emerging field of social studies of finance (MacKenzie and Millo, 2003; Muniesa and Callon, 2009), in the wake of Callon (1998). These researchers tend to focus on the way financial techniques developed through academic theories, such as mathematical modelling, have an effect on reality when they are put into practice by means of material tools. MacKenzie (2006a: 29), considering that the reference to Austin could be read as suggesting that the performativity of economics was a linguistic matter, focused on “Barnesian performativity” (whereby “practical use of an aspect of economics makes economic processes more like their depiction by economics”, see MacKenzie, 2006a: 31) rather than on “Austinian performativity”. Yet understandings of performativity focused on Austin’s *How to do things with words* (1962) are now being used in organizational research, for instance in the field of strategy, where discourses enacting what they refer to are analysed explicitly from a performativity perspective (Cooren, 2004; Cooren and Fairhurst, 2004; Kornberger and Clegg, 2011). In this article, we adopt a phenomenological perspective and build upon the role of intentions in performative processes to address the problem of description in organizations.

While Austin (1962 and 1970) emphasised the felicity conditions of the performative utterance, linguistic and discursive acts can result in failures because of the contexts in which they take place; therefore, contexts can have an impairing effect on the power of performative utterances. As stated earlier, MacKenzie (2004 and 2006a) uses the concept of counter-performativity to address situations in which the practical use of an aspect of economics makes economic processes less like their depiction. MacKenzie and Spears (2014) have recently extended this definition to identify situations where such differing processes can happen. They consider how models “became embedded in organizational practices” in investment banking, considering “the interplay between the organizationally embedded uses of [such concepts]” and their counter-performativity (MacKenzie and Spears, 2014: 4). Building on these views, and following Cooren (2004), Cooren and Fairhurst (2004) and Kornberger and Clegg (2011), we see a need to investigate how normative discourses have an effect on reality, drawing on the phenomenological tradition in what follows to make this point.

Derrida, proposing an alternative reading of Austin’s approach inspired by the phenomenological tradition, insists on the fact that description supplements reality, explicitly referring to writing as opposed to speaking (Derrida, 1982). Written signs stabilize intentions,

leaving a trace of an intention even when its authors are gone: “a written sign carries with it a force that breaks with its context, that is, with the collectivity of presences organizing the moment of its inscription. [...] But the sign possesses the characteristic of being readable even if the moment of its production is irrevocably lost and even if I do not know what its alleged author-scriptor consciously intended to say at the moment he wrote it, i.e. abandoned it to its essential drift. As far as the internal semiotic context is concerned, the force of the rupture is no less important: by virtue of its essential iterability, a written syntagma can always be detached from the chain in which it is inserted or given without causing it to lose all possibility of functioning, if not all possibility of ‘communicating’, precisely.” (Derrida, 1982: 377).

Here, we see how Derrida moves towards a refined understanding of intentionality, taking into account the force carried by the written text. This leads us to understand a normative text (a regulation or a procedure) as a device carrying an intention, waiting to be actualized in the process of its implementation.

Addressing the problem of description through the concepts of intentionality and counter-intentionality

In what follows, we refer to the term ‘intentionality’, used in phenomenology to qualify the basic feature of the constitutive consciousness – a foundational structure of the *cogito* thought of as a living act having effect (Husserl, 1950). Recently, intentionality has been supplemented with the concept of ‘counter-intentionality’, which identifies the repercussions triggered by the deployment of intentionality (Marion, 2008: 75). Following decisive advances by Lévinas (1969) on the question of the other, Marion has suggested that the other person, in order “to take the status of a me other than me”, needs “to manifest me in exercising on me an intentionality as original as mine” (Marion, 2002b: 78). This is radically evident by reference to the face: “the face [of the other] arises – a counter-intentionality that does not manifest itself in becoming visible but in addressing its look to me”. It exposes me rather than it is exposed to me, immediately generating the perception of my responsibility for the other. This movement, “going against intentionality and the will, which intentionality does not succeed in dissimulating, signifies not the disclosure of a given and its reception, but the exposure of me to the other, prior to every decision” (Lévinas, 1998: 141). Through the

topical example of the other person's face, Lévinas highlights the reactive effect of intentionality, a point discussed at length by Marion.

In this article we use the notion of intentionality to qualify the underlying purpose of a performative utterance, keeping in mind that every such utterance is an utterance towards something, with a view to accomplishing something. In that respect, counter-intentionality can only derive from a perceived effect happening retroactively, in reaction to the initial intentional movement. The felicity and infelicity conditions of speech-acts and their related performative or counter-intentional effects must therefore also be understood from the perspective of their underlying intentions. Performative utterances are the interface providing access to the enunciator's intention, just as the counter-intention could be understood as the response to this intention by the receiver of the enunciation (whatever his ontological status). Similarly to counter-intentionality in phenomenology (Marion, 2002a and 2002b), which is the trace of resistance met (or *en-counterred*) in the course of an intentional deployment, our understanding of counter-intentional utterances highlights adverse effects on the reality they help to enact. For us, counter-intentionality is the movement in response to an intention in a performative process; it addresses the 'call' for enacting contained in the normative text. The question of intentionality appears as central to performativity, to the extent that performative discourses are setting up a reality that can be either different from or aligned with the initial intention.

Now that we have established the intentional and counter-intentional features of performative utterances, we need a conceptual apparatus to depict such effects. We use the saturated phenomenon concept developed by Marion: he uses the term "saturated" for phenomena that distort the categories through which a phenomenon receives its meaning. More precisely, saturated phenomena overflow the subject, disrupting the Kantian categories through which meaning is assigned to the manifold of intuition. As Marion explains (2008: 34), the saturated phenomenon "exceeds the categories and the principles of understanding – it will therefore be invisible [sic] according to quantity, unbearable according to quality, absolute according to relation, and incapable of being looked at [*irregardable*] according to modality". Such phenomena "[saturate] all meaning and [...], due to this saturation, [provoke] an event whose unpredictability escapes any production or reproduction" (2008: 80). The counter-intentionality at work in saturated phenomena shatters the categories used by the subject to make sense of reality. According to Marion, "the chief characteristic of the experience of the

saturated phenomenon [...] is always a contrary experience, or rather, one that always counteracts” (2008: 136). Such counteractions happen often, and take three different forms: alteration, disappointment and resistance. First, when facing a saturated phenomenon, “intentionality is [...] turned back on itself, no longer indicating the signification of a definite object but the limits of its own aim, disqualified precisely by intuitive excess” (2008: 137); it is therefore *altered* at its core. Second, the saturated phenomenon triggers “bedazzlement”, which happens as a result of the “fulfilment of another signification besides that intentionally aimed at, a sort of displaced fulfilment, at an unforeseeable distance from the fulfilment that intention awaited and foresaw” (2008: 138); it therefore *disappoints* the intention initially expressed. Thirdly, the saturated phenomenon is apparent “by the very perturbation induced by the reception of its excess [...] the ordeal of excess [being] actually attested by the resistance [...] that it imposes on the one who receives it” (2008: 138); it thereby provides the trace of *resistance*.

Table 1. Performative effects and intentionality

Expected effect	Differing effect
<p>Barnesian Performativity</p> <p>‘Practical use of an aspect of economics makes economic processes more like their depiction by economics’ (MacKenzie, 2006a)</p>	<p>Counter-performativity</p> <p>‘Practical use of an aspect of economics makes economic processes less like their depiction by economics’ (MacKenzie, 2006a)</p>
	<p>Counter-performativity comes from the interplay between the organizationally embedded uses of models (MacKenzie and Spears, 2014)</p>
	<div style="display: flex; justify-content: space-between;"> <div data-bbox="783 1464 1102 1877" style="border: 2px solid black; padding: 5px;"> <p>Counter-intentionality exerted by actors exceeding (<i>altering, disappointing and resisting</i>) the initial depiction offered by the normative text, and underlined using the ‘saturated phenomenon’ concept</p> </div> <div data-bbox="1107 1464 1417 1877"> <p>‘Multiple mechanisms of counter-performativity’ (MacKenzie and Spears, 2014)</p> </div> </div>

Drawing on these three characteristics, we argue that normative texts share the features of a saturated phenomenon: when being implemented, they generate some counter-intentionality, triggering *alteration*, *disappointment* and *resistance*, displacing the intentionality initially expressed by their author. To grasp the discursive and linguistic agency that appears in a performative process, Callon (1998) referred to the notion of “overflowing” and MacKenzie (2006a and 2006b) to “counter-performativity”. We favour the “saturated phenomenon” concept and suggest that the features of saturated phenomena can be used as a hermeneutic device for making sense of what happens when normative texts are put into practice. We contend that considering normative texts as saturated phenomena can serve our purpose and provide a critical reading of the performative power of such texts. This understanding, expressed with reference to the concept of counter-intentionality, can make sense of the problem of description identified by Muniesa (2014) and explain cases where counter-performativity is at work.

Using the concept of counter-intentionality, we address the problem of description (Muniesa, 2014) to improve our understanding of performative and counter-performative processes in organizations. This leads us to ask the following research questions:

- In cases where there is a difference between the intentions conveyed in MiFID and their expression once put into practice, how do counter-intentional mechanisms actually work?
- To what extent does MiFID and its implementation constitute an exemplary case of a saturated phenomenon?

An ethnographic study focusing on the implementation of a normative text

Context

At the beginning of our inquiry in 2006, European financial markets were about to witness a sea change in their organization, resulting from the implementation of MiFID on 1 November 2007. At the time, MiFID was a new regulatory package intended to take market integration in Europe to the next level by removing the monopolies still active in some EU member States, and creating a “market for markets” (Hautcoeur and Riva, 2013: 327). To achieve this, the directive set new standards and requirements with regards to the issue of transparency. In

contemporary financial markets, transparency on prices, quantities and volumes is a prerequisite for efficient operation of the markets (see European Commission, 2006, “Market transparency”, art. 17-34, and for a discussion, Finance Watch, 2011 and Kinsley, 2009). MiFID set out two forms of transparency rules: pre-trade transparency rules focusing on the disclosure of prices and volumes available from different execution venues, and post-trade transparency rules providing information on completed transactions. These rules were extensively discussed during the drafting of the directive at legislative level, but remain one of the most disputed topics in MiFID, for they deal with the very core of a financial market’s activity: the shaping and dissemination of information. As MiFID created a favourable context for new, alternative trading venues, the issue of transparency became a pivotal element for market operators and regulators. When MiFID came into force in November 2007, it resulted in a complete reconfiguration of the market space, with former public actors (regulated markets) coming under challenge from new private actors (alternative execution venues).

Table 2. Changes on French financial markets due to MiFID

Topic	Before MiFID	After MiFID	
Execution venues	Monopoly held by the regulated market (Euronext)	Competition between the regulated market (Euronext) and alternative execution venues	
Alternative execution venues	None on Euronext-related market segments	As of 31 December 2010	Registered in France (elsewhere in Europe)
		Regulated Markets	3 (89)
		Alternative Trading Systems	7 (143)
		A number of unregistered hybrid systems and platforms	
Transparency regime	Information disseminated by means of a centralized system belonging to Euronext	Transparency requirements differ according to the execution venue’s legal status, the place where the trade “happens” and the actors involved	

This reconfiguration of markets had three consequences. First, the same financial instrument could now be listed on different execution venues at different prices, obliging market participants to compare prices by aggregating fragmented information disseminated across several venues (regulated markets, alternative execution venues and data providers). Second, the transposition process took much longer than initially planned: between November 2007 and the end of 2009, the markets witnessed a slow movement towards MiFID adoption. This resulted in teething problems in the early weeks of the MiFID era, as local transposition of European-wide rules was almost impossible in some instances, even though transparency

remained a critical issue for orderly operation of the markets. Finally, the institutional setting itself was very complex: the normative text had to go through several layers of actors (the Commission and Parliament at European level, national Parliaments, regulatory agencies and local market participants at country level) whose different interests caused different receptions for the new requirements.

Data

Our article uses a case-study methodology (Eisenhardt, 1989; Feldman, 2000) to analyse the implementation of MiFID and account for the counter-intentional effects resulting from the transposition process. Our case focuses on the compliance department of Global Execution Services (hereafter GES), a brokerage company. This fieldwork is particularly relevant for the subject of this research, as this compliance department played a pivotal role in the local implementation of MiFID, offering a clear view of the successes and failures of the normative intentions expressed in the regulation. Data were gathered over three years, between September 2006 and October 2009, through a participant-observation study with one of us working as a compliance officer. Daily observation of internal organizational processes provided a rich collection of data.

During the 3-year period, despite a turbulent context resulting from the developing financial crisis, we managed to maintain open access to people involved in several different areas of GES (from commercial roles such as sales, analysts and traders, to support functions such as middle- and back-office, IT and organization, among others). Observations and daily discussions in the trading room were supplemented by analysis of internal documents such as codes of conduct and procedures, and a corpus of approximately 75,000 emails. Because of this privileged position in the company's trading room, we had access to regular meetings involving discussions with consultants, representatives of national and international regulatory agencies and professional bodies. Between June 2007 and January 2008, we attended precisely 28 meetings concerning the transposition of MiFID into internal policies and procedures, and the IT and organizational structure adjustments necessary to comply with the new requirements.

Table 3. Summary of data gathered

Source of data	Field-level data	Firm-level data
Field/entity (period)	Brokerage industry (2006-2014)	Global Execution Services (2006-2009)
Documentary research	Annual reports and press releases, codes of conduct, interviews in the press, regulatory agencies' websites	Internal documentation: annual reports, procedures and policies, 75,000 emails, and minutes from internal committees and meetings. Full access to the company's internal archives
Semi-structured interviews	Compliance officers, lobbyists, regulators	Compliance officers, sales and traders, top management (CEO)
Informal interviews	-	Analysts, back-office employees, compliance officers, corporate lawyers, middle and top management, sales, traders
Observations	-	One of us worked as a compliance officer for 6 years, and conducted a participant-observation study at GES between 2006 and 2009. During this period of time, we were involved in the transposition of MiFID at GES, with unrestricted access to draft documentation, and participated in most of the committees mentioned in the following section

Analysis of field accounts

Examining the counter-intentional effects of the normative text required close observation of the organizational processes at work during the different phases of internal transposition. Phenomenological inquiry, seeking to explore and examine phenomena as they unfold, makes it possible to describe experiences from an individual's point of view, entailing proximity to the phenomenon studied (Smith et al., 2009) – in our case, the team in charge of implementing MiFID at GES. Although phenomenological works have inspired ethnomethodology (Garfinkel, 2011: ix), some researchers such as Gill (2014: 13) stress the differences that can be observed between the two approaches: “Ethnomethodology examines how individuals organize and ‘account’ for their everyday activity (see Gephart, 1978) whereas phenomenology seeks to examine how people experience particular phenomena”. Phenomenology is thus a further, valuable option that is appropriate to examine how others ascribe meaning to, or make sense of, their particular experiences, rather than supplanting existing qualitative methods (Gill, 2014: 13) such as ethnomethodology (Pérezts et al., 2015).

Reading a phenomenon from the sole perspective of the person who actually experienced it first-hand in a fully embedded position exposes the resulting work to biases and the danger of hagiography. In our case, experiences reported from the field surveyed were thoroughly discussed with the other author to ensure a higher level of reliability. We thus took a similar approach to D'Adderio and Pollock (2014: 1820) in analysing our data. While the first author acted as an insider and personally took part in the processes described in the next section, the second author played the role of an outsider to the experiences recounted by the first author: as such, the second author took the role of the devil's advocate (Rerup and Feldman, 2011).

Results: intentionality and counter-intentionality at work

In this section, we detail how the effective implementation of MiFID on 1 November 2007 triggered situations where counter-intentionality developed in the forms of *alteration*, *disappointment* and *resistance*. While our fieldwork shows how difficult it is for a regulator to express its intentions sufficiently precisely to ensure that market participants comply in a homogenous way with the same requirements, we probed situations where market operators had no alternative but to generate counter-intentional reactions when reading and interpreting the normative text. In other words, we found that the lack of precision and gaps in the normative text generate counter-intentional reactions, with market operators playing an active role in shaping practices that go against the regulator's intention. In this section, we describe such situations where market actors deploy counter-intentional responses to the normative text.

Alteration

A first form of counter-intention is visible in the interaction between investment firms and their consultants. As is often the case when a new regulation is issued, market actors sought advice from consulting firms: not only because this gave them indirect information on their competitors, but also because it provided them with a way of strengthening their internal systems while at the same time demonstrating their willingness to adapt to the new environment. At GES, consultants were engaged to organize a MiFID implementation project

by identifying the activities that would be impacted by the directive. A steering committee was put in place with the task of assigning identified issues to dedicated sub-committees meeting weekly. One of these was a Compliance committee, comprising the compliance department from the head office in Paris, and local compliance managers from the European subsidiaries. Between June 2007 and January 2008, 28 weekly Compliance committee meetings took place, providing a forum for discussing the new transparency regime and the required changes to the organization, the information system and related procedures.

At the Compliance Committee's first meeting, it was made very clear that updating the procedures would be a major topic for the team, as recorded in the minutes:

“Particular attention will be paid to the drafting and updating of procedures.

Actions:

- Identify all procedures impacted by MiFID [...]
- Identify procedures to be updated or written in order to comply with MiFID requirements [...]
- Coordinate work on procedures for our subsidiaries and branches [...]

The team of consultants and GES' compliance department therefore began drafting a series of procedures covering transaction reporting issues. It soon became evident that MiFID was not clear enough when read in the light of GES' pan-European and multi-local organization. A series of painstaking technical discussions involving the consultants and compliance officers at the head office and European subsidiaries and branches led to a list of possible scenarios taking into account local translations of MiFID. Initially, this document was intended to provide guidance for other departments of GES: not only the front office that had to deal with customer queries related to transaction reporting, but also the IT department in charge of adapting the systems.

The exercise proved difficult: for instance, it was not clear where to “locate” a transaction: transactions could be located in the country where GES had a registered office (i.e. a separate legal entity such as a subsidiary, not a branch); but they could also be located in the country where the trader actually took the order before processing it. Another difficulty that soon appeared in writing the procedure was the specific case of Switzerland: although Swiss markets are not in the EU, some Swiss instruments are traded on alternative exchanges such as BATS Chi-X, meaning such transactions could end up being reported twice (once in

Switzerland and once to the competent European regulator), which would result in inaccurate information for market participants.

The consultants tried to help the compliance department as much as they could on this point, clarifying the different options that seemed acceptable under the regulation and the interpretive elements provided by European and local regulators (which diverged on certain questions). They thus helped GES arrive at an interpretation of the normative text, thereby formalizing the existence of counter-intentions altering the intention initially expressed in MiFID. While MiFID was still being discussed at European and local level, market operators had to organize and make decisions to adapt their systems, and provide their employees with clear paths for action. This brought out counter-intentions, expressing dissimilarities between the intention of the directive and the way that intention was interpreted in the light of the organizational context. Because the normative text contained principles in need of material expression, the initial intention formalized by the European regulator was somehow altered, that is, “affected by the rebound off an ungraspable objective [...] [a]ffected in return by what it intended” (Marion, 2008: 137). The intentions expressed in MiFID were in fact altered in their very reception by market operators active in the industry. This alteration corresponds to the counter-intentional effect triggered by the initial intention, displacing its locus at the time of interpretation.

Disappointment

A second form of counter-intention can be identified in the interaction between investment firms and their local regulators. As soon as MiFID was adopted, local regulators discussed how they would translate this European regulation into their national laws. In most countries, discussions involving the Parliament, the local banking commission and the local market regulator led to imperfect transposition of the directive. Some of these institutions were unwilling to lose their own framework, and began ‘gold-plating’ the initial text: that is, they decided to transpose the new principles by adding the new EU rules to their existing framework rather than replacing their existing rules by the EU rules, at the cost of a loss of transparency and undue over-regulation (e.g. although in another EU-related context, Haynes, 2009).

Deciding where to report completed transactions soon became the subject of discussions between regulators and participants: in almost every country, the issue was not fully resolved long enough before November 2007. The Italian CONSOB published a legislative decree in November 2007, while the Spanish CNMV did not manage to publish its requirements until July 2008. The Swedish and French regulators published scenarios in October 2007, and even the UK FSA (now the FCA), usually known for its rapid reactions, issued guidance as late as July 2007. When facing unaddressed situations generated by changing market contexts, market operators would request official advice from their local regulators, which were sometimes unwilling to provide it in writing. Once written, official advice would formalize an interpretation of the regulation and some regulators were not eager to take such a step: not only would it expose them locally, it would also prevent them from keeping a margin of appreciation for forthcoming enforcement measures on market incumbents.

Several situations at GES gave rise to discussions of this kind with the French AMF and the British FSA. For instance, GES' compliance department asked questions such as the following:

“Please find hereunder a summary of elements we discussed. Thank you very much in advance for confirming my interpretation.

1/ Communication between regulators:

- GES reports its transactions to the AMF. If GES reports transactions executed on the French, UK or Italian stock exchanges, the AMF transmits the reports to the British and Italian regulators whenever they contain a transaction on an instrument listed on those markets and / or on instruments monitored by those regulators.
- If an investment firm regulated by the FSA has a subsidiary in France, this subsidiary could choose to report all of its transactions to the AMF, which in turn will transmit these reports to the FSA.

2/ Case of an investment firm regulated by the FSA:

- An investment firm regulated by the FSA has an obligation to report transactions to the FSA.

- If such an entity asks GES to report transactions on its behalf, then GES would have an obligation to report such transactions to the FSA, not the AMF, using the formats required by the FSA.”

This message asks a series of questions covering different scenarios that were not made explicit in the directive, which simply contains a list of principles and format requirements for the reporting of transactions. When these principles were transposed into local regulations, some countries decided to adopt a relaxed regime, requiring less information from investment firms, whereas others decided to require information that was not initially mandatory. Because every investment firm is organized differently – for instance, the GES group of companies comprises several subsidiaries and branches – it was essential for GES’ compliance department to obtain written confirmation of its interpretation, so as to make sure GES as a whole would develop systems appropriate to deployment of compliant practices. After a couple of days, the compliance department received this answer from its local regulator, the AMF:

“I can confirm your interpretation, the only exception for case #2 being a UK branch located in France: in such a case, the branch can report all or a portion of its transactions to the AMF.

For case #1, the competent authority is determined by rules 9 and 10 of the European regulation => a transaction executed on a regulated market does not necessarily have to be reported to the authority regulating that market (for instance, a transaction on EADS executed on Euronext Amsterdam should be reported to the AMF, as Paris is ‘the most pertinent market with regards to liquidity’” [NB: an explicit reference to MiFID]

In making such an answer, the local regulator generates its own interpretation of the normative text, and because of its regulatory authority over market operators allows them to develop practices complying with that interpretation. Yet the initial intention of the text may be disappointed: not because of “a shortfall of all signification”, but rather because of “the fulfillment of another signification besides that intentionally aimed at, a sort of displaced fulfillment” (Marion, 2008: 138). In other words, the case for gold-plating, that is the maintaining by local regulators of layers of rules that should give way to the new EU rules, generates a counter-intention that ‘disappoints’ the European regulator’s initial aim by

fulfilling another intention. In extending the description, the local regulator diverges from the initial intention enunciated in MiFID.

Resistance

A third form of counter-intention is identified from the interactions occurring within GES, between the functions putting the normative text into practice. This study investigates relations between the compliance department, the IT department, and the front office (sales and commercial functions). With its new requirements for transaction reporting, MiFID created a new environment for accessing information: whereas information on completed trades used to be available on specific systems provided by data vending companies such as Bloomberg or Reuters, the creation of alternative trading venues required the ability to consolidate information on prices prior to their dissemination. Anticipating such needs, a consortium of banks decided to create a neutral reporting hub (an independent Trade Data Monitor), which was sold in 2007 to Markit, a company specializing in financial information services. This new trade reporting system, named BOAT, was soon to be adopted by the industry. Its use proved difficult for investment firms, however, as shown in the following email conversation:

[Question from a UK based trader to the MiFID trading coordinator]

“Trade reports for small cap stocks do not seem to be reported on BOAT. What is the universe of stocks covered by BOAT? When I cross stock on my trading station and have the ‘Trade Report’ box ticked I do not get any error messages, but it is neither reported on BOAT nor the LSE. [...]”

[Answer from the trading coordinator, on the French side]

“MiFID requires reporting of shares belonging to a list published by the European Committee (CESR List). This list does not contain all stocks, especially small caps, meaning there is no obligation to trade report them under MiFID, that is why BOAT does not publish these transactions, even if we send them”

[Reaction from the UK based trader]

“I reported a transaction in BARC LN (ISIN: GB031348658) today... This is a FTSE-100 company... 25k sold at 552 at 11:42ish... Nothing showing on

Bloomberg BARC XB...[...] I do not see any error message on the trading station. Am I doing something wrong?"

From this conversation, we can see how difficult it is for the trader to access information that used to be available before the new trade monitoring system came in. We also see that MiFID, by not requiring every transaction to be reported (some small caps not on the list of 'liquid shares' published by CESR for instance), focuses on the most liquid stocks in order to make sure that continuous information is available to market participants for these specific stocks. More specifically, the trader asks why the new system does not report transactions on shares that should in his opinion be reported, as they belong to the FTSE-100 and hence qualify as 'big caps'.

[Email from the compliance department to the trader concerned]

We (Compliance / Organization / IT) are due to draft a document that will give details on how to trade / transaction report, in order to explain the different cases that may arise. Concerning the problems you raise in your emails, please find hereafter the basic principle that should be followed, in order to comply with the applicable rules.

1/ BOAT should publish trades made in shares admitted to trading on a regulated market (RM), but transacted outside a RM or an alternative trading system (e.g. Chi-x). As you say in your first email, it appears that BOAT rejects and does not publish trades in some small caps (e.g. shares that are listed on the SETSm segment of SETS) or even big caps.

2/ Therefore, as regards the trades in EXPE (GB00B19NLV48) and BARC (GB0031348658), it is not normal that BOAT does not report these, as they are clearly shares listed on the LSE (segment SET1). There may be some reasons why BOAT decided to reject such trades in shares that do appear on the list published by CESR (which, to the best of my knowledge has been put in place for a different purpose). We need to investigate a bit further to understand that.

=> In the meantime, [...] the criterion that should be used when determining which trades should be reported is the listing of such shares on a regulated market, not whether they are on CESR's list. I'll check with the Legal dept and the IT how we could either have BOAT accept all of our trades in shares listed on a RM, or make it possible for you to trade report through another channel."

In this email describing how the rule should be put into practice, the compliance officer provides a description intended to clarify the rule and its underlying intention. However, in so doing, the compliance officer expresses the kind of resistance that is at work in the interpretive process. What transpires from the situation is a distortion of the intention initially expressed by the normative text. The interpretive descriptions produced by compliance officers, providing necessary guidance for market operators facing regulatory uncertainty, “never face the danger of being illusory [as] the ordeal of excess is actually attested by [...] resistance” (Marion, 2008: 138). In this third situation, the market operator and the compliance officer are “bedazzled” by their inability to make sense of the reporting rule while using a system developed with the specific purpose of complying with MiFID. By expressing their doubts as to what should be done in a description (the email exchange), they contribute to producing a textual exchange showing resistance to the intention initially expressed by the regulator, and stemming from the apparent misalignment between the text, its difficult interpretation, and the material setting in which the text applies.

Discussion and conclusion

In this article, we have used the concept of counter-intentionality to depict a specific case of counter-performativity where the reactive intention of market actors distorts the regulator’s initially expressed intention during the process of implementation itself. In our case study focusing on a brokerage company, the signs of counter-intentionality (or en-countering) are found in the course of MiFID performance, taking three different forms that we distinguish by reference to the notion of a “saturated phenomenon” – that is, an event providing “an excess of intuition over signification” (Marion 2002b: xxi), which can be identified by describing cases where an initial intention faces alteration, disappointment and resistance (Marion, 2008). By probing into interactions between GES, the investment firm, and its consultants, local regulators and internal functions, we have underlined how a normative initiative at European level is received, and how its implementation gives rise to a series of misalignments.

Description and agency in counter-performative processes

Our findings bring a deeper understanding of description and its effects in relation to the question of performativity (Muniesa, 2014). The counter-intentional mechanisms we reveal provide an unprecedented characterization of processes involving statements “that are meant to instantiate or effect their own reference” (Muniesa, 2014: 18). Such is the case with normative texts intended to shape practices: while the regulatory discourse often assumes that texts are stand-alone objects, we show that, on the contrary, normative texts generate counter-intentional effects precisely at the time of their expression: that is, when they are put into practice, using descriptions aimed at easing the transposition of ideas and intentions in a material setting. Making sense of the enactment of a normative text requires a close look at intentional and counter-intentional processes at work: these results show how actors’ agency develops practices that comply with the intention contained in the normative text, while simultaneously triggering counter-intentional effects that alter, disappoint and resist the initial intention.

This study contributes to delineation of a type of counter-performativity where *agencements* described by the initial intention have to be rearranged or even profoundly transformed in order to become successful (D’Adderio, 2008). Building on MacKenzie’s definition of counter-performativity (2003 and 2006), and Callon (2007) to improve the characterization of interactions existing between procedures and performances in cases where dissimilarities are noticed between the initial intention and the subsequent production, D’Adderio (2008: 776) notes: “while full prescription and mere description are always possibilities, most of the time (and especially in the case of complex organizations operating in conditions of uncertainty) there is performativity, implying some kind of dynamic adaptation between model and reality”. In our article however, counter-intentionality uncovers a specific case of infelicity, diverging from the idea of counter-performativity seen as the necessary failed construction of a material assemblage that would make a bridge standing firmly over the water collapse (Muniesa, 2014: 11). Our analysis helps to clarify the crucial dynamics that have so far been overlooked in the performativity debate, by shedding light on the influence of actors’ agencies in crafting counter-intentions triggered by intentions. It is our opinion that two main directions could now be taken to connect our results with current research on performativity, in order to further our understanding of the role of agency in counter-performative processes.

First, further research could focus on the potential sources of conflict between competing agencies and intentions in such processes, in the wake of D’Adderio and Pollock (2014). Their work focuses on performativity and the associated competition between multiple theories leading to the emergence of unexpected consequences: in our case, such struggles between actors expressing their intention in the performative process for deployment of a normative text appear clearly. As our study shows, the insightful role played by intentions in performative processes cannot be ignored, and performative struggles in relation to intention and counter-intention are promising areas for future investigation.

Second, our research echoes recent studies underlining the relevance of the concept of performativity for critical management studies, calling for critical researchers to stimulate the performative effects of language in order to induce incremental, rather than radical, changes in managerial behaviour (Wickert and Schaeffer, 2014). Drawing on a similar “critical performative stance”, other scholars have recently highlighted the challenges that academics face in performing the model of worker cooperatives by cognitively embedding actors through teaching (Leca et al., 2014). While these articles certainly improve the potential for critical management studies to concretely influence managerial activities, they overlook the concept of intention when dealing with performativity. In addition, as described by Muniesa (2014), all the research dealing with critical performativity shares the same distance from performativity. Our approach to performativity, in contrast, provides a promising way to bridge the gap between traditional approaches to the notion of performativity and critical readings of performativity. Scholars have shown that transforming management practices is a constant struggle, and that the difficulties of achieving even small changes should not be underestimated (King and Learmonth, 2015). Our study, by focusing solely on situations involving regulatory transposition processes, provides an insight into organizational performativity while at the same time making it clear that it should not be possible to leave intentions out of the debate – a situation that in our opinion has prevailed for too long in the performativity studies produced in organization theory. More specifically, by documenting how counter-intentional mechanisms effectively work, we provide a more detailed understanding of the ‘engines’ (Leca et al., 2014) required to implement the endeavours of critical management studies.

Making use of contemporary phenomenology in organization theory

In this paper, we have drawn on Jean-Luc Marion's phenomenological approach, through the use of the "saturated phenomenon" concept. Marion first developed this concept with reference to specific phenomena (such as the event, the idol, the flesh or the icon; see Marion, 2002a), but his recent texts underline the fact that saturation is rather "banal" (Marion, 2008: 119-144), and provides a way to make sense of the most basic situations we encounter in our everyday lives. More precisely, the idea of a saturated phenomenon opens up an interesting path towards situations where we find ourselves "bedazzled", either individually or collectively, by our inability to attach a signification to a perception. Importing this idea into the field of organization theory contributes a new way to make sense of struggles, misfires, and inextricable situations that always appear more complex once recounted with their details, rather than simply using it for the purpose of theorizing.

Because phenomenology is first and foremost a description-based method, it is an interesting tool for studying organizational settings. We contend that organization theory would benefit from a closer reading of contemporary phenomenologists such as Marion: while it is now quite common for organization theorists to discuss pragmatist philosophy (e.g. Bell et al., 2012; Muniesa and Linhardt, 2011) and pragmatists sociology (e.g. Reinecke, 2010), phenomenology – which managed to detach itself from the old Husserlian tradition of transcendental idealism – is still imperfectly understood and underexplored in organization theory. Contemporary phenomenology is certainly not necessarily about describing experiences of a powerful and tyrannical subject, for the distinction between subject and object has now been fully overcome by philosophers such as Marion, who have developed their theories with a view to making space for things and objects. In this respect, contemporary phenomenology should be seen as a legitimate candidate for discussing STS and ANT-embedded accounts of organizational phenomena, and not portrayed as unable to make sense of symmetrical anthropology (Harman, 2013; Latour, 2014; November et al., 2010). Recent developments in phenomenological thought involving the decentring of the subject (e.g. Henry, 2008 and Marion, 2011) dismiss such critiques. The opposite is true: phenomenology's proximity to more established tools such as organizational ethnography should provide a setting for organization theorists to engage and discuss seriously with contemporary phenomenologists. In the end, concepts such as 'saturated phenomena' can reintegrate topics such as intentions into material descriptions, thereby providing a way to make sense of pragmatist trials of explicitness while keeping in mind a political or ethical dimension that is not necessarily addressed by constructivist accounts of organizational

phenomena. In this respect, it is our contention that unforeseen counter-intentional effects triggered by the dissemination of intentions provides us with crucial insights into the nuanced features of intentionality, especially when looking into performative processes.

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