Europeanization and the Soft-Law Process of EU Corporate Governance: how has the 2003 Action Plan impacted on national corporate governance codes?

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Abstract

This study explores Europeanization, the interrelationship between domestic and EU-level policy activity. Specifically, it asks how domestic policy is affected by EU-level (soft-law) policy processes. This contrasts with the hard-law focus of most Europeanization research. Our empirical analysis seeks to determine the extent to which the European Commission's 2003 plan to enhance corporate governance delivered on its aim of 'co-ordinating corporate governance efforts of member states'. This study thus differs from most others on convergence in corporate governance regimes, which look for evidence of convergence *per se*, rather than convergence towards a specified set of principles. Applying content analysis and econometric tests to 95 corporate governance codes issued between 1992 and mid-2010, we find that the Action Plan has influenced member states' corporate governance policies. However, the degree of national policy alignment to the Action Plan's priorities depends on when the corporate governance code was issued, where, and by whom.

Introduction

European Union (EU) membership impacts on the member states in numerous ways. Europeanization is a term which, in essence, describes two features of countries' membership of the EU – the *process* by which EU decision-making manifests itself at the national level; and the *outcomes* of EU decision-making. Whilst this might imply a top-down process, the centrality of the member states in EU decision-making means that Europeanization can result in member states' pre-existing domestic policy and institutional preferences reflected at the EU level (see, *inter alia*, Cowles *et al*., 2001; Featherstone and Radaelli, 2003; and a summary in Mastenbroek and Kaeding, 2006, pp. 332-333).

Despite the recent expansion in research on Europeanization, much of it is still, albeit often implicitly, concerned with hard law. Yet over the same timeframe, ongoing EU integration have resulted in greater diversity in what constitutes EU decision-making. In particular, there has been a growth in soft law processes, manifested in particular through the open method of coordination (OMC). Here, there is no legal obligation to implement EU 'policy' domestically, because the EU process has not yielded any specific hard law to transpose (Saurugger, 2012). That said, soft law and the OMC are still intended to deliver policy change at the member state level (Trubek and Trubek, 2005). Our attention in the present paper is thus directed at this relatively underdeveloped area of the Europeanization literature. This provides the motivation for our over-arching research question: how is domestic policy affected by EU-level (soft-law) policy processes?

In our research we deliberately absent ourselves from hard-law areas of the Europeanization literature, such as compliance. Our empirical attention analyzes developments in EU corporate governance policy. We utilize a unique dataset of national corporate governance codes issued over the period 1992 to (mid) 2010, extracted from a detailed content analysis of 95 relevant national documents. A range of quantitative techniques are then used to determine whether and how the European Commission's 2003 Communication 'Modernising Company Law and Enhancing Corporate Governance in the European Union – A Plan to Move Forward' (Commission of the European Communities, 2003), impacted on domestic corporate governance policy-making. This Communication includes both hard law and soft law. Because our interest is exclusively in the soft law elements, we refer hereinafter to this Communication as the Action Plan. This is the title of the section (from page 10) which sets out a road-map to for 'fostering efficiency and competitiveness of business, and strengthening shareholders rights and third parties protection' (page 3), and where the soft law elements are primarily located.

Our data period is longer than that of earlier papers, as discussed below. This allows us to explore a range of empirical issues related to the impact of the 2003 Action Plan, expressed as specific research questions. Is there evidence that the Action Plan affected member states' corporate governance policy-making? Were policy responses coming from actors other than government and, if so, did this affect the nature of those policy responses? Were some member states more responsive to EU discussions than others?

The paper proceeds as follows. In Section I, we outline the relevant literatures on Europeanization, soft law and the OMC, and corporate governance policy. Section II describes the data and research design. Section III presents the data analysis, whilst Section IV concludes, offering suggestions for future directions research can take.

I. Literature Review

Europeanization 'is a process of change affecting domestic institutions, politics and public policy. Change occurs when political behaviour at the European Union (EU) level has a transformative effect on domestic political behaviour.' (Radaelli, 2012, p. 1). This captures both the process and outcome elements of Europeanization. Moreover Europeanization, so defined, can manifest itself in countries other than EU members, whether they be applicants (as we shall see later), or non-member, non-applicant countries having a formal relationship with the EU, such as the three non-EU members of the European Economic Area.

Egan (2012, p. xi) identifies three 'waves' of Europeanization research, from 'institutional adaptation to membership'; to the 'structural changes to domestic political systems that can be attributed to European integration'; to a 'third wave' which goes beyond 'administrative and institutional adaptation' to include work on 'transnationalism, partisan politics and party cleavages, as well as good governance and conditionality.' This last wave is 'more conscious of the political contestation that affects Europeanization as well as the contestation and oppositional responses to Europeanization which constrain the role and actions of the European Union (EU).' The growing range of EU-level institutional processes reflects, in part, this contestation as the numbers of member states, opinions, and areas of common policy interest have grown.

All three of Egan's 'waves' of Europeanization research relate to 'positive integration', whereby member states agree common laws and policies. But a distinction can be drawn between 'top-down' and 'bottom-up' processes. Egan's first two waves represent top-down processes. To an extent this is inevitable as member states have adapted what they do domestically, to collective policy-making within the EU. Yet even under the ordinary legislative procedure, member states are central to decision-making processes. This provides them with many opportunities to influence decision-making at the EU level. Thus we witness both 'Europeanization and domestication' (Bugdahn, 2005, p. 177).

One important development has been the introduction of the soft-law process of the OMC. This 'bottom-up' process has facilitated the discussion and coordination of policy areas that are of common interest, but which are deemed unsuitable for discussion under the ordinary legislative procedure – typically because of their domestic political sensitivity (Sabel and Zeitlin, 2008 talk of 'experimentalist governance'). The OMC is based on a three-step process:

- 'Jointly identifying and defining objectives to be achieved (adopted by the Council);
- jointly established measuring instruments (statistics, indicators, guidelines);
- benchmarking, ie comparison of the Member States' performance and exchange of best practices (monitored by the Commission).'[1]

The OMC is most closely identified with policy-making in the social and employment spheres, especially from 2000 with the establishment of the Lisbon Strategy (Heidenreich and Bischoff, 2008; Rhodes, 2010). That said, features such as benchmarking are seen before then, notably in the Broad Economic Policy Guidelines from 1993 (Deroose *et al*., 2008); and the European Employment Strategy, established in 1997. The OMC offers a third way of policy-making, between 'centralised harmonisation' and 'mutual recognition or regulatory competition' (Ashiagbor, 2004, p. 305; de la Rosa, 2005, p. 19), approaches which are not inevitably in opposition (Deakin, 2009, p. 229).

Moreover, Kay and Ackrill (2007) argue that there is evidence of convergence between the regulatory state and liberal-intergovernmental conceptions of the EU. They highlight the work of, respectively, Majone (see, *inter alia*, Majone, 1994; 1999) and Moravcsik (see,

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[1] http://europa.eu/legislation_summaries/glossary/open_method_coordination_en.htm, Europa Glossary of Terms, last accessed 30 January 2015.

inter alia, Moravcsik, 1993; 2002). This combines notions of an EU-level decision-making process, but one which is still dominated by member states.

In the present paper, we seek to analyze how such experimentalist governance is influencing domestic policy-making, with a particular focus on EU efforts to deliver greater co-ordination of national corporate governance codes. Corporate governance is 'the system by which companies are directed and controlled' (Cadbury, 1992, quoted in Commission of the European Communities, 2003, p. 10). Corporate governance policy addresses 'the problems that result from the separation of ownership and control, and addresses in particular the principal-agent relationship between shareholders and directors' (European Commission, 2003, p. 10). Those 'problems that result' have been seen globally and have included, in recent years, the collapse Enron (in 2001), Worldcom (2002), Parmalat (2003), and Lehman Brothers (2008).

Whilst corporate governance has long been a focus of policy and political attention, within the EU the UKs 1992 Cadbury Report is widely regarded as marking the starting point of rapidly accelerating interest in corporate governance. The Cadbury Report had as its backdrop a 'harsh economic climate … [exposing] company reports and accounts to unusually close scrutiny', citing also scandals involving BCCI, Robert Maxwell 'and the controversy over directors' pay' Cadbury, 1992, p.9). But this was not limited to the UK. 'Since the early 1990s, evidence has been accumulating of significant change in the regulation and practice of corporate governance in the nonliberal economies of continental Europe' (Barker, 2010, p. 1). Thus:

> over the last years [sic], corporate governance has been the subject of an increasingly intense debate. **Forty or so corporate governance codes relevant to**

> **the European Union have been adopted over the last decade**, at national or international level, with the aim of better protecting the interests of shareholders and/or stakeholders. (Commission of the European Communities, 2003, p. 10, emphasis in original).

The EUs corporate governance principles, as set down in the Action Plan, are:

i enhancing corporate governance disclosure

ii strengthening shareholders' rights

iii modernizing the board of directors

iv co-ordinating corporate governance efforts of member states

Prior to the EU Action Plan, in 1999 the Organization for Economic Cooperation and Development (OECD) published its 'Principles of Corporate Governance' (OECD, 1999), this following the Asian economic crisis of the late 1990s. Subsequently, in addition to the EU Action Plan, in the US the Sarbanes-Oxley Act was passed in 2003, with the OECD revising its principles the following year (OECD, 2004). The EU and OECD principles address essentially the same concerns, recognizing that there is no single correct way of dealing with corporate governance concerns. One key difference, central to the present paper, is that the Action Plan also makes explicit reference to the co-ordination of national policy efforts. Moreover, whilst the OECD promotes voluntary approaches, the European Commission recognizes the need for a combination of voluntary and legislative approaches (Commission of the European Communities, 2003, p. 12) – a difference which reflects the legislative powers of these two 'transnational institutions' (Aguilera and Cuervo-Cazurra, 2009, p. 381).

For the reasons set out above, we focus on the voluntary elements. Moreover, whilst the 2003 Communication covers a range of policy areas, including (hard) company law, the European Commission gave particular attention to non-legislative approaches. This follows calls for 'the European Commission to…come forward with a recommendation for a European code of best practice' (Lannoo, 1999, p. 292; see also van Apeldoorn and Horn, 2006, p. 18). The European Commission's soft-law approach was supported also by the now-defunct European Corporate Governance Forum (ECGF). It started from the premise that there was no need for an EU Code. Rather, it would seek to achieve 'coordination and convergence of national codes' (Collier, 2007, p. 279). That said, in the context of the OMC, even after a few years of operation the ECGF fell 'far short of a full information exchange, nor is there any effective benchmarking or peer review, as yet' (Deakin, 2009, p. 244).

There is an extensive literature on convergence in corporate governance measures (an excellent overview is provided by Yoshikawa and Rasheed, 2009; see also Aguilera and Cuervo-Cazurra, 2004; 2009; Lütz, 2004; Lütz and Eberle, 2008, amongst many). Yoshikawa and Rasheed identify three drivers of convergence: financial market integration, goods market integration and diffusion of codes and harmonization of accounting rules. The first two are particularly important in the EU context – although Yoshikawa and Rasheed do not make this specific connection. Moreover, these two drivers are powered by market forces, which may lead to a 'race to the top' rather than bottom (Deakin, 2009, p. 229), as globalization and the free movement of capital create incentives for countries to establish policy regimes which reassure and attract foreign investors (see also, *inter alia*, Enriques and Volpin, 2007; Ivaschenko and Koeva Brooks, 2008).

The present paper differs from this literature in one key way. Rather than looking for cross-country convergence *per se*, we seek evidence of convergence towards the corporate governance measures identified in the Action Plan. Market forces in general – and the Single European Market in particular – may contribute to convergence, but we are interested in the extent to which the member states' decisions have been influenced by the specific content of the Action Plan. We thus focus on the extent to which the EU policy debate 'steers' member states' actions. Policy and its implementation are negotiated between a 'government' and partners, including those in the public sector (Stoker, 2000, p. 98). Moreover:

> Steering involves government learning a different 'operating code' which rests less on its authority to make decisions and instead builds on its capacity to create the conditions for positive-sum partnerships and setting or changing the rules of the game to encourage what are perceived as beneficial outcomes. Governments, the advocates of steering suggest, can establish a framework for effective collective action and seek to guide that action towards 'desirable' goals and away from 'undesirable' goals.

If we replace 'government' with 'the EU', we argue that this conception of steering captures the essence of the OMC. In the negotiations between 'government' and public sector partners (member state governments) we see guidance emerge, such as in the Action Plan. That said, in the multi-level governance setting of the EU (see, *inter alia*, Stephenson, 2013), we can also observe that whilst the European Commission is helping to set the initial agenda for debate, the participation of the member states means they are helping to steer themselves and each other towards common goals (see also Bache, 2012, p. 632). Thus a combination of steering and cajoling, through the OMC, serves an important role in encouraging member states to take policy decisions in a given area, in a reasonable timeframe. This accords with Deakin's (2009) view of the OMC as an example of reflexive governance.

The limited literature that has thus far looked at the convergence of EU member states' corporate governance codes finds some supporting evidence. This stands in contrast to the prediction of Cernat (2004, p. 161), who believed differences across EU countries would continue because EU decision-making was 'poorly equipped' to advance convergence.

Cromme (2005, p. 363) saw a 'high degree of agreement' across the (then) 47 corporate governance codes in Europe, 'even though company law in the individual member states continues to be characterized by significant differences.' Cicon *et al*. (2012) analyze codes from 23 (mainly EU) countries. They too find some evidence of convergence, but they seek evidence of convergence *per se*, rather than towards the defined set of codes in the Action Plan. Similar to Cromme, they find a growing divergence of code content from national legal context. In addition, they find that the code issuer has an important impact on code content. We thus include this variable in our analysis, below.

Hermes *et al*. (2006) do look at convergence towards the criteria laid down in the Action Plan, and find that domestic codes are 'not in full accordance' (page 280) with it. Two limitations of their study, however, are that it was undertaken quite soon after the publication of the Action Plan; and they omit some countries that we are now able to include. Ivaschenko and Koeva Brooks (2008, p. 1) look for evidence of convergence, focusing narrowly on 'the dynamics of the voting premiums, a measure of the private benefits of control in a corporation'. They find evidence of convergence – and they find that countries which pursued national as well as EU reform initiatives produced 'higher and longer lasting benefits'. Mavrommati and Papathanassiou (2006) are, to the best of our knowledge, the only authors who have studied EU corporate governance policy with explicit reference to the OMC. They do not, however, analyse formally whether this has delivered policy convergence.

Certain features thus emerge from the literature that we seek to develop in the present study. Ambiguities exist over the extent of convergence in EU member states' corporate governance codes. This, in turn, raises questions about the extent to which soft law approaches can deliver policy convergence. Importantly, the above studies analyzing EU policy typically make no distinction between hard law and soft law. In the following sections, by utilizing a wider range of statistical tests, a larger dataset, and a longer timeframe, we seek to enhance understanding of whether the voluntary soft-law approach has delivered convergence in EU member states' corporate governance codes – and whether it has done so around the policy indicators set out in the 2003 Action Plan.

II. Data Description and Research Design

The Action Plan does not seek agreement on a single EU corporate governance code but, rather, to work towards 'a certain co-ordination of corporate governance codes in the EU…to encourage further convergence and the exchange of best practice.' (Commission of the European Communities, 2003, pp. 11-12; see also Zattoni and Cuomo, 2008, p. 2). That said, the Action Plan set out multiple individual priorities, towards which member states' measures should converge. The four over-arching principles of the Action Plan are set out earlier. The first three are sub-divided into 26 specific priorities. These have then been used as the basis for the content analysis of national policy responses – see below. In effect, this research seeks to determine the extent to which, as a result, the fourth principle in the Action Plan, 'co-ordinating corporate governance efforts of member states', has been achieved.

Our primary dataset is derived from a content analysis of 95 separate corporate governance codes and principles issued in EU member states, from the beginning of 1992 to the middle of 2010. The main source has been the website of the European Corporate Governance

Institute (ECGI, 2010) which maintains a database of the full texts of international corporate governance codes and guidelines (the complete list of the 95 national documents is available from the authors on request). In addition to corporate governance documents classed officially as ‘codes’, those listing corporate governance *principles and recommendations* are also included, because such documents include best practices of corporate governance, information relevant to the OMC.

Aside from hard-law instruments, we also exclude draft codes, and codes which focus on a narrow issue (e.g. the role of pension funds as shareholders in publicly traded companies; non-executive directors) or a specific type of organization (e.g. non-governmental organisations (NGOs), pension funds, government departments). The main reason is that these codes have limited scope and are precluded from even potentially addressing all priorities. Their inclusion could, therefore, bias the results. Thus, for example, whilst Ireland has published documents relating to corporate governance, they have been excluded from our analysis: IAIM (1999) focuses on share option schemes; CGAI (2008) relates specifically to the development NGO sector; and CGAI (2010) deals with independent directors of Investment Funds (see also Hermes *et al*., 2006).

Of the 95 codes issued, 36 were published before 2003 and the EU Action Plan, of which 20 were the issuing countries’ first codes. The majority of codes were therefore issued after the Action Plan was published. We also see that as first code issuance falls away, the number of revisions rises and remains high for several years (once started, countries continued to engage with corporate governance questions). Because the sample period finishes in the middle of 2010, the number of codes analyzed for that year is not comparable with previous years. These data are summarised in Appendix Figure 1 of the Online Appendix (see also Table 1).

The first code came in the UK with the Cadbury Report (Cadbury, 1992). The jump in code issuance seen in 1998, is mainly early-adopters revising existing codes. This revision process continues in subsequent years, but there is a jump in the number of countries establishing first codes in 1999, the year the OECD first published its principles. 2003 sees a new peak in the number of revisions issued, with only Finland and Lithuania issuing first codes. Between 2004 and 2007, five countries issue their first codes. Four are from central and eastern European (CEE) countries. The fifth is Luxembourg, by some way the last western member state to adopt a code (and a country described by Chhaochharia and Laeven, 2009, p. 408, as an offshore financial centre, alongside Bermuda and the Cayman Islands).

2008 sees a peak in the number of revisions, which may indicate an initial response from member states to one perceived cause of the economic crisis. Over the data period, the code amended the most times was the 2002 German Corporate Governance Code, The Cromme Code, although these revisions did not introduce significant changes in policy coverage, in the context of the Action Plan. Following Cicon *et al*. (2012), as noted earlier, we also distinguish between the type of code issuer. Of the 95 codes, 32 per cent had a stock exchange issuer, 25 per cent a government issuer (national legislature or government commission), 25 per cent an industry or trade association issuer, and 18 per cent a composite issuer, with representatives from at least two of the individual issues types.[2]

III. Quantitative Analysis of Member States' Codes

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[2] The present study does not classify every code issuer in the same way as Cicon *et al*.. For example Sweden's 2007 code was issued by the Swedish Corporate Governance Board and is classified by Cicon *et al*. as having an industry issuer. Its development involved two stages, including a group appointed by the Government, thus we have classified this as a composite issuer.

To enable the quantitative analysis of member states' codes, content analysis has been used (Singh *et al*., 2005; Werder *et al.*, 2005. The contents of the 95 corporate governance documents have been analyzed to determine whether or not they include each of the 26 corporate governance priorities identified from the Action Plan. The 26 priorities are summarised in Appendix Table 1 of the Online Appendix. A binary score has been applied – 1 if the priority is present, 0 otherwise. We do not adopt a *range* of zero to one, to avoid subjective evaluations (Giner, 1995). The values obtained for each corporate governance principle are then aggregated and converted to a percentage, to construct a 'Coverage Index'. This Index shows the percentage of priorities from the Action Plan contained in each national document.

In order to test for convergence in the coverage of EU priorities in national codes, we have applied the measures used by Starke *et al*. (2008). Regarding sigma-convergence (Barro and Sala-i-Martin, 1992), which refers to a reduction in the dispersion at a particular point in time, the measures used have been the range, standard deviation, and coefficient of variation. The Levene test (1960) for equality of variances in different groups, is used to assess the statistical significance of homogeneity of variance over time. With respect to beta-convergence (Barro and Sala-i-Martin, 1995), which occurs when the growth rate is higher in countries with lower starting levels, we use the catch-up measure utilized by Starke *et al*. (2008), i.e. the simple correlation between the starting value and the subsequent growth rate (or change) for the period of interest, using Pearson's r statistic.

Table 1 presents Coverage Index statistics by country and by year. Most commonly, the Index in a country is stable or increases over time. The former does not mean that a code does not introduce new information but, rather, that there is no change with respect to the Action Plan policy priorities. In some cases, the Index falls or fluctuates. One explanation, relevant to Finland, France and Greece, is that later codes were issued by industry or trade organization, with narrower corporate governance interests than a government. Another factor is that in, notably, Luxemburg, Spain and Sweden, some aspects of corporate governance are now addressed via legislation. Such a move would complement, for example, EU Directives on the harmonization of transparency requirements, in relation to information about issuers whose securities are admitted to trading on a regulated market; and on the exercise of certain rights of shareholders in listed companies.[3]

Insert Table 1 about here

Focusing on sigma-convergence between countries, statistical measures of dispersion by year are displayed in Table 1. This shows a significant rise in the mean Index over 1996 to 2004, for reasons outlined earlier. Another rise, from 2007 to 2008, marks the beginning of the global economic crisis. The trend in the standard deviation is more or less flat, whilst the range falls dramatically in 2002; and, from 2005, exhibits smaller fluctuations. The coefficient of variation exhibits volatility but, from 2002, at a much lower level, mirroring the rise in the mean. This indicates modest convergence across national codes.

Regarding beta-convergence, the negative sign of the catch-up measure (-0.45, in Table 1) shows that national codes with a lower initial Coverage Index have seen the Index grow more rapidly than national codes with a higher initial Index. This suggests that those countries whose codes initially did not align much with the EU priorities, have responded to

[3] See, respectively, Directive 2004/109/EC, published in the Official Journal of the European Union, L390, 31.12.2004, pages 38-57; and Directive 2007/36/EC, published in the Official Journal of the European Union, L184, 14.07.2007, pages 17-24.

this in subsequent revisions, resulting in the convergence between countries' codes seen over the period to 2010.

III.1 Codes Published Before and After the Action Plan

To explore this last finding further, we distinguish between countries whose first codes were published before and after the Action Plan (for which detailed statistics are presented in Appendix Table 2 of the Online Appendix). In most countries the Coverage Index for the last code is higher than the first code. Indeed, comparing first and last codes, we see that the mean is significantly higher, the coefficient of variation lower for the group of last codes than first code, the standard deviation is not significantly different between each group, and the range is higher. That said, this latter finding is explained by the very low Index score for the second (2001) Greek code, published before the Action Plan.

Five countries (Bulgaria, Estonia, Latvia, Luxembourg, and Slovenia) published their first code after the publication of the Action Plan. For three of these countries, the Index score is higher than the mean for all countries' first codes, with Estonia's only marginally below. This indicates that these late adopters introduced first codes that were much more in line with the Action Plan than the first codes of the early adopters of corporate governance principles.

Consistent with this, codes published before the Action Plan have a lower Index than codes published after. In the former group there is also less convergence than the latter group, shown by the higher range and coefficient of variation of the Index. The standard deviations for the two groups of codes, however, are not statistically significantly different from each other. It is important to note in interpreting these results that the group of codes published before the Action Plan includes the majority of countries' first codes. Thus whilst the corporate governance policies of late adopters began life with a strong alignment to the principles in the Action Plan, early adopters subsequently adapted their policies iteratively towards those principles.

III.2 Western Versus Central and Eastern EU Countries' Codes

This last point above may possibly be explained by differences between old and new member states. We therefore follow Hermes *et al*. (2006), and consider the differences that may exist between western European[4] and CEE[5] countries. Appendix Figure 2 picks out key information from Table 1, showing the date of publication of each country's first code but with western and CEE countries distinguished. This shows that, other than the UK, Bulgaria and possibly Estonia, there is a strong trend identifiable – that, on average, first codes published later have higher Indexes. This trend is particularly strong for the western countries. When looked at in isolation, there is a much less clear pattern evident amongst the CEE. That said, six of the countries that joined the EU in 2004 and produced their first code before or in 2004, have a much higher Index in those first codes than was the case with the western countries, a feature that also helps explain the positive trend overall.

Considering the codes by Action Plan priority, important differences exist between western and CEE countries. We find evidence that for the measures 'enhance corporate governance disclosure' and 'strengthen shareholder rights', the codes issued in the CEE countries had a considerably higher Index than those from western countries. The reverse is true for 'modernizing the board of directors'. This result is consistent with the findings of Hermes *et al*. (2006).

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[4] Austria, Belgium, Cyprus, Denmark, Finland, France, Germany, Greece, Italy, Luxembourg, Malta, The Netherlands, Portugal, Spain, Sweden, and the UK.

[5] Bulgaria, Czech Republic, Estonia, Hungary, Latvia, Lithuania, Poland, Romania, Slovakia, and Slovenia.

A possible explanation for these differences could be the timing of the first publication of codes by country. For first CEE codes published even before the Action Plan, learning may be taking place *vis a vis* existing western countries' codes. For example, Romania's first code was published in 2000, before the Action Plan but after publication of the OECD principles, and after 13 codes, including 7 first codes, had been published in western countries. The corollary of this is that we see, relatively, much larger increases in the Index for the codes of the western European countries after the Action Plan is published. Further details are provided in Appendix Table 3.

III.3 Multivariate Analysis

The foregoing analysis reveals several possible reasons that could explain the evolution of the Coverage Index between codes and over time. To analyze how these variables might impact on the evolution of the Index we undertake further, multivariate, quantitative analysis using Equation (1).

$$\begin{aligned} CoverageIndex &= \beta_0 + \beta_1 \cdot Western + \beta_2 \cdot After\_AP + \beta_3 \cdot After\_AP * Western + \\ &\beta_4 \cdot ExchangeIssuer + \beta_5 IndustryIssuer + \beta_6 \cdot CompositeIssuer + \beta_7 \cdot Order + \\ &\beta_8 \cdot Nrevision + \beta_9 \cdot Code + \varepsilon \end{aligned} \qquad \text{Eq. (1)}$$

The dependent variable is the Coverage Index. As the foregoing analysis has shown, relevant factors to include as independent variables are: whether the country is western or CEE ('Western' dichotomous variable); whether the code was published before or after the Action Plan ('After AP' dichotomous variable); and whether the Action Plan had the same influence on the codes from western or CEE countries ('After AP*Western' interaction variable). In addition, other variables that could affect the Coverage Index have been included as control variables. We include variables relating to the type of issuer, expressed with respect to

Government Issuer ('ExchangeIssuer', 'IndustryIssuer', and 'CompositeIssuer'); the number of codes issued in a specific country ('Nrevision' variable); and the order of code issued in the EU context ('Order' variable). Because the codes in the study include documents codes and principles, we include the variable 'Code' to control for this.

Equation 1 is estimated taking into account the possible relationship between codes issued in the same country, as they have a common history, culture and legal system. To relax the assumption that the observations are independent, the estimation clusters the data by countries. Table 2 presents our results. Consistent with our earlier findings, the Index is larger for codes issued by CEE than by western countries. There are not, however, significant differences between CEE Indexes published before or after the Action Plan. These results together suggest, first, that the CEE codes reflected what was already being addressed across the OECD and individual western countries' codes; but also that, second, the Action Plan arguably reflected the range of concerns covered by those individual codes, drawing a diverse set of emerging priorities into a single document. It is also interesting to note that, after the publication of the Action Plan, the codes of the western countries overall became more consistent with the Action Plan's priorities than those issued from CEE countries. Codes issued by a government commission align more closely to the priorities of the Action Plan than those issued by an industry association or national stock exchange.

Insert Table 2 about here

Table 2 also repeats the multivariate analysis using, as the dependent variable, each topic of the Coverage Index: enhancing corporate governance disclosure, strengthening shareholder rights, and modernizing the board of directors. It shows that issuer-type is a significant variable, affecting the level of the Coverage Index regardless of the topic analyzed.

IV Conclusions

Europeanization describes the impacts of EU membership on both the processes by which EU policy-making manifests itself at the national level, and the policy outcomes of those processes. Most of the literature on Europeanization has thus far focused on hard law processes and policies. The purpose of this paper has been to explore empirically whether soft law processes also have an impact on national policy-making. We have utilized a unique dataset on national corporate governance policy measures introduced at the national level, derived from a content analysis of 95 national documents issued between 1992 and (mid) 2010. In contrast to the extant literature on convergence in corporate governance regimes, our focus is not on convergence *per se*, but on whether EU member states' policies have converged towards a series of corporate governance policy priorities issued by the European Commission in 2003 – what we have referred to in this paper as the Action Plan.

In this analysis, we have employed a range of quantitative tests to determine whether convergence has taken place. These have provided the following answers to our research questions. There is clear evidence that the Action Plan has influenced member states' domestic corporate governance regimes. Early adopters of codes did so in response to multiple corporate governance concerns, with later revisions seeing national corporate governance regimes align more specifically on the contents of the Action Plan. Later adopters – principally but not exclusively the new member states – tended to establish national corporate governance regimes more in line with the Action Plan *ab initio*.

That said, we also find evidence that the old member states took their code revisions further, so that by 2010 their policy regimes had, on average, moved more in line with the new member states. This also suggests that, whilst some countries issued codes at a time (before

2003) when they were being guided by the initial OECD principles, policy revisions were ongoing, with measures converging progressively on those principles in the Action Plan. We also find evidence that code issuer has a significant impact on the nature of the policies put in place.

As we might expect *a priori*, given the nature of EU soft law processes, member states were influenced more by the Action Plan than were industry or stock exchange code-issuers, seen in government-issued codes being more closely aligned with the principles of the Action Plan than codes issued by other bodies. Moreover, this result might appear contrary to some of the Europeanization literature, which finds that in general, bottom-up developments get more 'buy-in' from non-state actors. In the present case, however, our findings are most likely explain by the greater breadth of state than non-state corporate governance codes.

This paper has thus provided important contributions to the existing literatures on Europeanization, policy convergence and corporate governance. We have analyzed whether soft-law processes in the EU can deliver policy convergence and found that they can. We have also made a novel contribution to the literature on convergence in national corporate governance regimes, by analyzing whether convergence has taken place towards a pre-determined set of corporate governance policy principles, rather than whether convergence *per se* has occurred. Again, we have found that it has.

The limitations of the present study suggest potential directions for future research. First, the empirical study is confined deliberately to a period which allows it to focus on the influence of the 2003 Action Plan on member states' corporate governance policies. Subsequent research could extend and test our results against recent EU policy developments (European Commission 2011; 2012). Second, this study is focused on soft law processes. Future research could complement this study by exploring the discussion process between hard-law regulations and directives, and soft-law elements of policy. Another limitation concerns the unit of analysis used in this study, i.e., the relationship between national policy and the EU-level. An important area for further research is to extend this study by including company-level data (building on, for example, Wójcik, 2006; Verga Matos and Faustino, 2012), in particular to analyze how EU soft-law processes affect corporate governance in transnational companies.

In sum, this study offers insights about EU soft law process, exploring the impact of the 2003 Corporate Governance Action Plan on national corporate governance codes, and opens a broad range of interesting research questions for further exploration of corporate governance and the dynamics of corporate governance convergence across the EU.

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Table 2: Multivariate Analysis of Factors Influencing the Coverage Index

Explanatory variables	Regression by Topics of Coverage Index			
	Coverage Index	Disclosure	Shareholders' right	Board of Directors
Western	-.18** (.05)	-.32** (.09)	-.14† (.07)	-.09† (.05)
After_AP	-.03 (.05)	-.14 (.08)	.06 (.07)	.01 (.07)
After_AP* Western	.11** (.05)	.25** (.08)	-.005 (.07)	.06 (.06)
Exchange Issuer	-.17** (.04)	-.20* (.09)	-.20** (.06)	-.13* (.05)
Industry Issuer	-.17** (.03)	-.18* (.08)	-.25** (.08)	-.12** (.03)
Composite Issuer	-.05 (.05)	-.04 (.11)	-.008 (.01)	-.08 (.05)
Order	.00 (.00)	.00† (.00)	.00† (.00)	.00 (.00)
N Revision	-.00 (.01)	-.03 (.02)	-.003 (.02)	.02** (.01)
Code	-.01 (.03)	-.02 (.05)	-.07 (.05)	.01 (.03)
Constant	.52** (.08)	.55** (.13)	.66** (.07)	.43** (.06)
$F_{9, 25}$	12.14**	9.92**	10.49**	15.84**
R^2	0.53	0.37	0.35	0.41

This table presents the results of the regression of Coverage Index in the second column and the topics of the Coverage Index in next three columns: using OLS, with Standard Errors adjusted for 26 clusters in country. Standard errors are in brackets. Number of observations is equal to 95. †p<0.10; *p<0.05; **p<0.01.

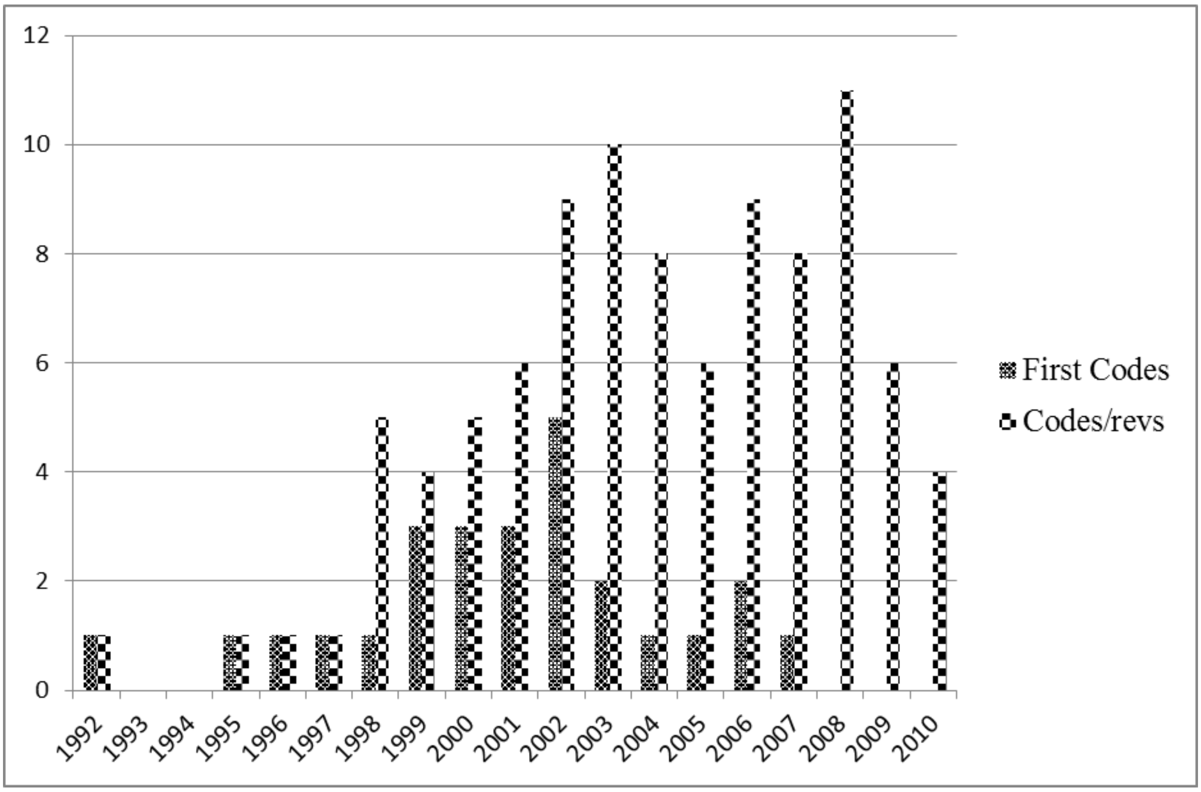
Table 1: Coverage Index, by Country, Year and Issuer Type

	YEAR																
EU MEMBER STATE	**1992**	**1995**	**1996**	**1997**	**1998**	**1999**	**2000**	**2001**	**2002**	**2003**	**2004**	**2005**	**2006**	**2007**	**2008**	**2009**	**2010**
WESTERN MEMBERS																	
Austria									34.62%m			34.62%m	42.31%m	46.15%m		53.85%m	
Belgium					11.54%t1 11.54%m						54%m					61.54%m	
Cyprus									34.62%s	34.62%s			34.62%s				
Denmark							19.23%t	34.62%s		34.62%s		34.62%s			34.62%s 34.62%s		42.31%s
Finland										50.00%m					42.31%t		
France		15.38%t			23.08%t	26.92%t			30.77%t	34.62%t	38.46%t				38.46%t 34.62%t		46.15%t
Germany							3.85%t 30.77%g	30.77%g	42.31%g	46.15%g		53.85%g	53.85%g	53.85%g	53.85%g	53.85%g	
Greece						34.62%g		7.69%									
Italy						7.69%s			19.23%s		34.62%t		26.92%s				
Luxembourg													57.69%s			50.00%s	
Malta								30.77%s				34.62%g					
Portugal						19.23%s				15.38%s			38.46%t	26.92%s			38.46%s
Spain			7.69%t		26.92%g					61.54%g	46.15%t		38.46%g				
Sweden								30.77%t			46.15%m			38.46%m	30.77%m	26.92%m	
The Netherlands				11.54%g						53.85%g					57.69%g		
United Kingdom	34.62%g				34.62%g		38.46%g			53.85%g			57.69%g		57.69%g		61.54%g
CEE MEMBERS																	
Bulgaria														23.08%s			
Czech Republic								61.54%m			76.92%m						
Estonia													30.77%s				
Hungary									42.31%s					46.15%s	50.00%s		
Latvia												38.46%s					
Lithuania										42.31%s							
Poland									38.46%t 23.08%t		23.08%t			30.77%s			
Romania							23.08%t									26.92%s	
Slovakia									50.00%s						69.23%t		
Slovenia											53.85%s	57.69%m		57.69%m			
OECD						38.46%					57.69%						
MEAN	34.62%	15.38%	7.69%	11.54%	24.04%	25.38%	24.52%	32.69%	35.58%	42.69%	47.86%	42.31%	42.31%	40.38%	48.08%	45.51%	47.12%
MAX	34.62%	15.38%	7.69%	11.54%	34.62%	34.62%	38.46%	61.54%	50.00%	61.54%	76.92%	57.69%	57.69%	57.69%	69.23%	61.54%	61.54%
MIN	34.62%	15.38%	7.69%	11.54%	11.54%	7.69%	17.31%	7.69%	19.23%	15.38%	23.08%	34.62%	26.92%	23.08%	30.77%	26.92%	38.46%
Range (MAX-MIN)	0.00%	0.00%	0.00%	0.00%	23.08%	26.92%	21.15%	53.85%	30.77%	46.15%	53.85%	23.08%	30.77%	34.62%	38.46%	34.62%	23.08%
Standard Deviation					0.10	0.12	0.10	0.17	0.10	0.13	0.15	0.11	0.12	0.13	0.13	0.15	0.10
Coefficient of Variation					0.40	0.49	0.39	0.52	0.26	0.31	0.32	0.25	0.27	0.31	0.27	0.33	0.21
Catch-up in Total. r= -0.4583, p<0.01.																	

Notes: g: code-issuer is a government institution (national legislature or government commission); t: code-issuer is an industry or trade association; s: code-issuer is a stock exchange; m: the code is issued by a group that contains representatives from at least two of the other groups.

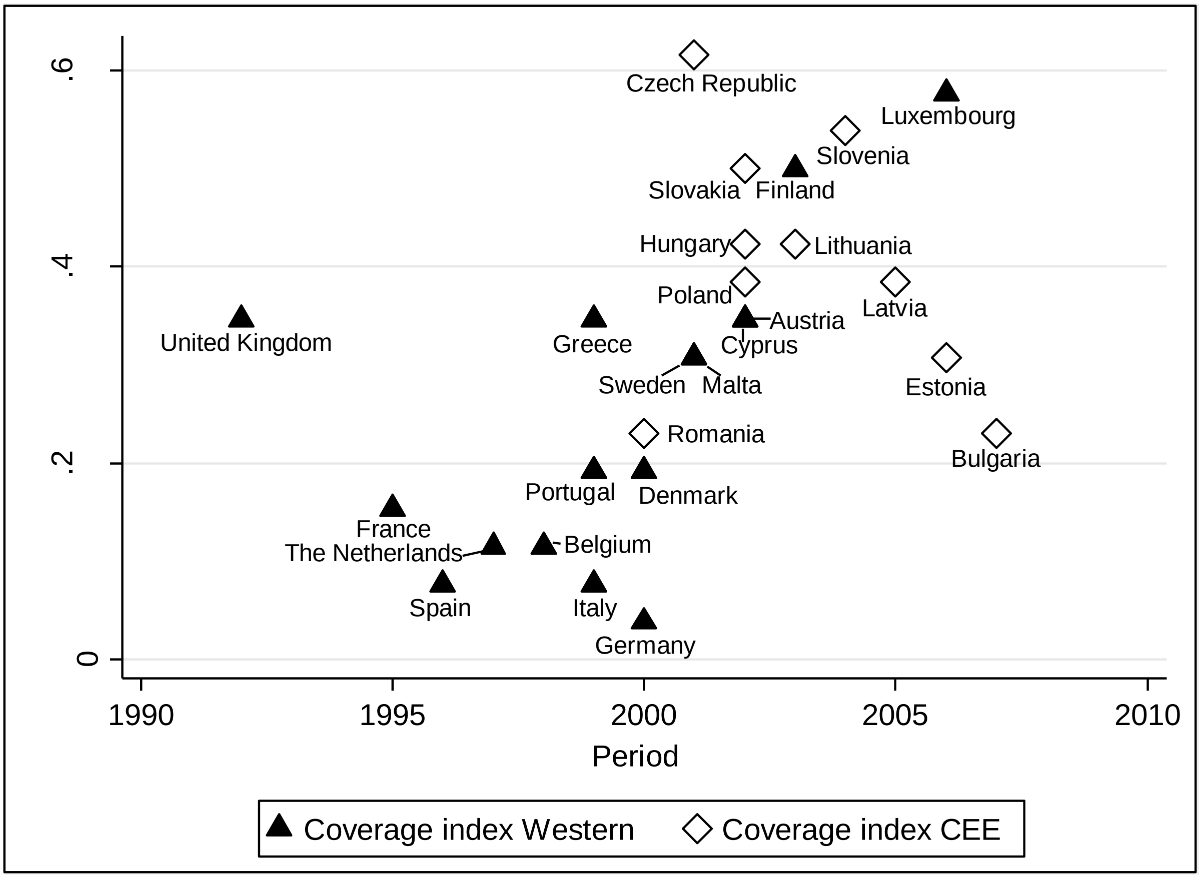
Online Appendix for:

Europeanization and the Soft-Law Process of EU Corporate Governance: how has the 2003 Action Plan impacted on national corporate governance codes?



Appendix Figure 1: Issue Dates for First Codes and Revisions

Note: Because the sample period finishes in the middle of 2010, the number of codes analyzed for that year is not comparable with previous years.



Appendix Figure 2: Coverage Index of First Codes, by Country

Appendix Table 1: Corporate Governance Priorities in the Action Plan

Priority code - Definition of EU corporate governance priorities
Topic 1 - Enhancing corporate governance disclosure
Annual Corporate Governance Statement (ACGS)
1.1. To include a description of the operations of the shareholder meeting and its key powers in the ACGS.
1.2. To include a description of shareholder rights and how they can be exercised in the ACGS.
1.3. To include the composition and operation of the board and its committees in the ACGS.
1.4. To include the shareholders holding major holdings, and their voting and control rights, as well as key agreements in the ACGS.
1.5. To include any direct and indirect relationships between major shareholders and the company in the ACGS.
1.6. To include the existence and nature of a risk management system in the ACGS.
1.7. To include reference to a code on corporate governance with which the company complies, or in relation to which it explains deviations, in the ACGS.
Information about the role played by institutional investors
1.8. To disclose their investment policy and their policy with respect to the exercise of voting rights in companies in which they invest.
1.9. To disclose to their beneficial holders at their request how these rights have been used in a particular case.
Topic 2 - Strengthening shareholders' rights

Access to information
2.1. Access to relevant information before the General Meeting.
Other shareholders' rights
2.2. Right to ask questions, to vote in absentia or to participate in general meetings via electronic means.
2.3. Provisions for cross-border participation in the General Meeting.
Shareholder democracy
2.4. The development of mechanisms to make sure that these existing rights can be exercised.
2.5. Principle of proportionality between capital and control (one share / one vote principle).
Topic 3 - Modernising the board of directors
Board composition
3.1. In areas where executive directors have conflicts of interests (remuneration, nomination or audit issues) decisions should be made exclusively by non-executive directors or supervisory directors who are in the majority independent.
3.2. Particular attention paid to the issue of the number of mandates that may be held concurrently.
3.3. To define the term "independence of directors".
3.4. Special emphasis on the audit committee, with a view to fostering the key role it should play in supervising the audit function.
Directors' remuneration
3.5. Disclosure of remuneration policy in the annual accounts.
3.6. Disclosure of detail of remuneration of individual directors in the annual accounts.
3.7. Prior approval by the shareholder meeting of share and share option schemes in which

directors participate.
3.8. Proper recognition in the annual accounts of the costs of such schemes for the company. (*NOTE: Special emphasis on the cost of variable remuneration schemes, not just the disclosure of detail of remuneration)*
Directors' responsibilities
3.9. To enhance the "collective responsibility" of all board members for financial and key non-financial statements. (*NOTE: Not just the responsibility of the directors)*
3.10. Introduction of a special investigation right, whereby shareholders holding a certain percentage of the share capital should have the right to ask a court or administrative authority to authorize a special investigation into the affairs of the company.
3.11. Development of a wrongful trading rule, whereby directors would be held personally accountable for the consequences of the company's failure.
3.12. Imposition of directors' disqualification across the EU as a sanction for misleading financial and non-financial statements and other forms of misconduct by directors.

Appendix Table 2: Coverage Index Statistics

	Coverage Index on codes published before and after the Action Plan		Coverage Index of the first and the last code published by each country[a]	
	Before	**After**	**First**	**Last**
Number of codes/principles	36	59	26	26
Mean	28.95%	43.61%	31.29%	43.20%
t-test[b]	t=-5.04** (p-value:0.00)		t=-15.55** (p-value:0.00)	
K-S test[c]	D = 0.40** (p-value: 0.001)		D = 0.33 (p-value: 0.10)	
Max	61.54%	76.92%	76.92%	61.54%
Min	3.85%	15.38%	7.69%	7.69%
Range (Max-Min)	57.69%	61.54%	69.23%	53.85%
Std Deviation	0.14	0.13	0.16	0.15
Levene Test[d]	F = 1.32 (p-value: 0.35)		F = 0.93 (p-value: 0.86)	
Coeff. of Variation	0.50	0.29	0.37	0.49
Catch-up			r= -0.55** (p-value: 0.003)	

† p<0.10; *p<0.05; **p<0.01

a: Bulgaria, Estonia, Latvia, and Lithuania each published only one code.

b: The t-test is a parametric test, which assumes that the data are independently sampled from a normal distribution, that determines if there is a significant difference between the means of two data sets. The null hypothesis indicates that the mean of group one equals the mean of group two. The results show that we can reject this hypothesis at p-value=0.01.

c: The Kolmogorov-Smirnov test is a non-parametric test on the equality of distributions. The null hypothesis is that the two-samples are drawn from the same distribution. The results show that we can reject this hypothesis at p-value=0.10.

d: The Levene Test (1960) [6] is a statistic used to assess the equality of variances in different samples, which does not require normality of the underlying data. The null hypothesis is that the variances of both samples are equal. The results show that we cannot reject the null hypothesis.

[6] Levene H. (1960) 'Robust tests for equality of variance.' In Olkin, I., Ghurye, S.G., Hoeffding, W., Madow, W.G. and Mann, H.B. (eds) *Contributions to probability and statistics* (Palo Alto, CA: Stanford University Press), pp. 278-91.