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The Global Diffusion of Stewardship Codes

Law Working Paper N° 526/2020
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We thank the participants of presentations of earlier versions of this work at the 1st Global Shareholder Stewardship Conference at KCL, and seminars at the LSE, the EUI and the University of Frankfurt for helpful comments.

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Abstract

In today's world, the transfer of laws and regulations between different legal systems is commonplace. The global spread of stewardship codes in recent years presents a promising, but yet untested, terrain to explore the diffusion of such norms. This paper aims to fill this gap. Employing the method of content analysis and using information from 41 stewardship codes enacted between 1991 and 2019, we systematically examine the formal diffusion of these stewardship codes. While we find support for the diffusion story of the UK as a stewardship norm exporter, especially in former British colonies in Asia, we also find evidence of diffusion from transnational initiatives, such as the EFAMA and ICGN codes, as well as regional clusters. We also show that the UK Stewardship Code of 2020 now deviates from these current models; thus, it remains to be seen how far a second round of exportation of the revised UK model into the transnational arena will follow.

Keywords: institutional investors, stewardship codes, diffusion of norms, legal transplants, content analysis

JEL Classifications: C38, K22

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The Global Diffusion of Stewardship Codes

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May Draft

An edited version of the paper will be published as a chapter in Global Shareholder Stewardship: Complexities, Challenges and Possibilities (Dionysia Katelouzou & Dan W. Puchniak eds, Cambridge University Press, Forthcoming)

Abstract: In today's world, the transfer of laws and regulations between different legal systems is commonplace. The global spread of stewardship codes in recent years presents a promising, but yet untested, terrain to explore the diffusion of such norms. This paper aims to fill this gap. Employing the method of content analysis and using information from 41 stewardship codes enacted between 1991 and 2019, we systematically examine the formal diffusion of these stewardship codes. While we find support for the diffusion story of the UK as a stewardship norm exporter, especially in former British colonies in Asia, we also find evidence of diffusion from transnational initiatives, such as the EFAMA and ICGN codes, as well as regional clusters. We also show that the UK Stewardship Code of 2020 now deviates from these current models; thus, it remains to be seen how far a second round of exportation of the revised UK model into the transnational arena will follow.

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[*] King's College London.

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I. INTRODUCTION

In a world of increasing economic, technological and legal globalisation, transfer of laws and regulations between different legal systems is commonplace. Contemporary comparative law refers to these as 'legal transplants' and often takes the perspective of a one-way transfer ('diffusion') from one country to another.[1] Corporate law and corporate governance have travelled extensively around the world by imitation, institutional investors' lobbying, economic pressure, or otherwise.[2] The UK has historically been a leading exporter of legal norms and principles, especially to former British colonial common law countries.[3] More recently, the 1992 Cadbury report and its successors have had a significant influence in the development of corporate governance codes even in countries with no colonial ties.[4] At the same time, the US has also been influential in the corporate law field, especially in investor-related provisions,[5] while the EU has been an exporter of harmonised/standardised corporate law models even outside the EU, such as in Turkey and Ukraine.[6]

The worldwide spread of stewardship codes in recent years presents a promising, but yet untested, terrain to explore and fine-tune the diffusion of stewardship norms. There is a widespread belief among investors and the public that many regulators and investor groups around the world have adopted a stewardship code ostensibly modelled after the UK stewardship code, mainly the 2012 version.[7] This diffusion hypothesis stems, in part, from the chronology of the development of stewardship codes and,[8] in part, from the

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1 See references in Part II.C below.

2 The literature here is voluminous. See, among others, Jeffrey Gordon, 'Convergence and Persistence in Corporate Law and Governance' in Jeffrey Gordon and Wolf-Georg Ringe (eds), *The Oxford Handbook of Corporate Law and Governance* (OUP 2018); AA Rasheed and T Yoshikawa (eds), *The Convergence of Corporate Governance: Promise and Prospects* (Palgrave MacMillan 2012); Mathias Siems, *Convergence in Shareholder Law* (CUP 2018).

3 Brian R Cheffins, 'Corporate Governance Reform: Britain as an Exporter' (2000) 8 Hume Papers on Public Policy 10; republished in Thomas Clarke (ed), *Corporate Governance: Critical Perspectives on Business and Management* (Vol. 1, Routledge 2004).

4 See e.g. Cally Jordan, 'Cadbury Twenty Years On' (2013) 58 *Villanova Law Review* 1; Ruth Aguilera and Alvaro Cuervo-Caruzza, 'Codes of Good Governance Worldwide: What is the Trigger?' (2004) 25 *Organization Studies* 415.

5 See the landmark article: Henry Hansmann and Renier Kraakman, 'The End of History for Corporate Law' (2001) 89 *Georgetown Law Journal* 439.

6 Michael Kort, 'Standardization of Company Law in Germany, other EU Member States and Turkey by Corporate Governance Rules' (2008) 5 *European Company & Financial Law Review* 379; Rilka Dragneva and Antoaneta Dimitrova, 'The Politics of Demand for Law: The Case of Ukraine's Company Law Reform' (2010) 12 *European Journal of Law Reform* 297.

7 Mark Cobley, 'UK exports shareholder stewardship to the world: From Milan to Tokyo to Kuala Lumpur, the UK's Stewardship Code is catching on worldwide' (*Financial News*, 15 April 2014).

8 The UK was the first country to introduce a stewardship code in 2010, the origins of which date back to 1991. See further Part III.A, below.

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capacity of the UK as a rule-generator and standard-setter in the area of corporate governance.[9] Both will be considered in this paper by employing the method of 'content analysis'.

In this paper, we collect information from 41 stewardship codes (including some earlier principles) published between 1991 and 2019[10] and systematically examine, with computational tools, whether formal diffusion of stewardship codes took place. While we find support for the diffusion story of the UK as a stewardship norm exporter, especially in former British colonies in Asia, we also find evidence of diffusion from transnational initiatives, such as the European Fund and Asset Management Association (EFAMA) and International Corporate Governance Network (ICGN) codes, and we report some regional clusters, such as Korea-Japan. To unpack the norm diffusion dynamics, we also examine how successfully the seven principles of the UK 2012 Code have travelled around the world and we find that the principles on escalating engagement activities and shareholder collective action travelled the least. Our findings therefore raise doubt to the one-way view of norm diffusion by the UK as well as the one-way view of norm-reception by policy and market actors of other countries or regional and international organisations.

These findings add to the existing academic literature in the field of comparative corporate law and corporate governance, albeit by adopting a novel methodology. Our findings also have implications for future shareholder stewardship policy and for future research on applying content analysis in the field of comparative corporate governance. For example, the analysis of these codes can contribute to the wider debate about the legitimacy and effectiveness of soft law in today's global economy. From a normative perspective, it may also show how far, despite the lack of a global regulator, it is possible to direct the behaviour of institutional investors in a uniform way.

The paper proceeds as follows. Part II will set out the scope and method of our analysis. Part III will consider precise textual patterns of diffusion, while Part IV will focus on the diffusion of the seven UK stewardship principles and provide some reasons to account for this phenomenon. Part V ends with a brief summary of the main findings and an outlook on future work in this area and the challenges that remain.

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[9] Cheffins (n 3).

[10] Our work includes the UK Stewardship Code 2020 as it was published on 24 October 2019, but not revised Japanese Code published on 24 May 2020 and the revised IRDAI (India) Code published on 7 February 2020.

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II. SCOPE AND METHOD OF ANALYSIS

A. SCOPE: STEWARDSHIP CODES ACROSS COUNTRIES

We evaluate the text of 41 documents that can be considered 'stewardship codes' as displayed in Table 1. For the purposes of this study, a stewardship code is defined as a non-binding set of principles, standards or best practices, that is accompanied by recommendations and suggestions directed to institutional investors (mainly asset owners and asset managers) and in some cases to service providers or the law-maker,[11] issued by public or private bodies, and relating to the oversight role of institutional investors to create long-term value for clients and beneficiaries and promote corporate sustainability, including engagement and monitoring of investee companies (corporate governance aspects) as well as their responsibilities towards their clients and end-beneficiaries, avoiding conflicts of interests and reporting duties (investment management aspects).[12]

Some of these documents are explicitly called 'stewardship codes', while some of the others use substantive terms, such as 'responsible ownership' or 'institutional investors' rather than 'stewardship', and/or refer to the document not as a 'code' but as 'principles' or 'guidelines'. To some extent, these differences indicate an evolutionary process from 'pure' self-regulation in terms of the degree of government/state involvement to more mandated forms of full or partial self-regulation, notably in the UK where, over time, the principles for the responsibilities of institutional investors, initially developed by the (now dissolved) Institutional Shareholders' Committee in 1991, became more formalised as a 'stewardship code' introduced in 2010 under the auspices of the Financial Reporting Council (FRC), and further revised in 2012 and 2019.[13] Another example of this evolution can be found in the Netherlands, where the Eumedion Best Practices for Engaged Share-Ownership of 2011 turned to a Dutch Stewardship Code in 2018.[14] Here the issuer of both documents is the same, but the change in the terminology reflects the incorporation of new stewardship obligations stemming from the revised Shareholder

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[11] This concerns the UK 2020 Code and the IGCN Global Shareholder Stewardship Principles, respectively: see Table 1.

[12] Note, however, that the recent UK Stewardship Code 2020 defines stewardship in a much broader way as: 'the responsible allocation, management and oversight of capital to create long-term value for clients and beneficiaries leading to sustainable benefits for the economy, the environment and society'. On the meaning of stewardship, see Dionysia Katelouzou, *Institutional Shareholders and Corporate Governance: A Shift to Enlightened Stewardship* (CUP, 2021, Forthcoming).

[13] See further https://www.frc.org.uk/investors/uk-stewardship-code accessed 15 March 2020.

[14] See further https://www.eumedion.nl/en/public/knowledgenetwork/best-practices/2018-07-dutch-stewardship-code-final-version.pdf accessed 15 March 2020.

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Rights Directive which was transposed in the Netherlands in June 2019.[15] Yet, in other instances, differences in the titles are merely of a terminological nature since some codes with different titles are, in fact, very similar in substantive terms and they all use a principles-based approach.[16] In the remaining of the paper, we will use the term stewardship code to refer to all these documents.

Table 1: Stewardship Codes Around the World

Country and year(s)	**Full name of Code**	**Drafted by**
Australia (ACSI) 2018	Australian Asset Owner Stewardship Code	Australian Council of Superannuation Investors
Australia (FSC) 2017	Principles of Internal Governance and Asset Stewardship	Financial Services Council
Brazil 2016	AMEC Stewardship Code	Associação de Investidores no Mercado de Capitais
Canada 2005	Statement of Principles Regarding Member Activism	Canada Coalition for Good Corporate Governance
Canada 2010	Principles for Governance, Monitoring, Voting and Shareholder Engagement	Canada Coalition for Good Corporate Governance
Canada 2017	CCGC Stewardship Principles	Canada Coalition for Good Corporate Governance
Denmark 2016	Stewardship Code	Committee on Corporate Governance of the Danish Business Authority
EFAMA 2011	EFAMA Code for external governance: Principles for the exercise of ownership rights in investee companies	European Fund and Asset Management Association

[15] Eumedion, 'Institutional investors establish the first edition of a Dutch Stewardship Code' (2017) <https://en.eumedion.nl/clientdata/217/media/clientimages/2017-09-press-notice-draft-stewardship-code.pdf> accessed 4 February 2020.

[16] For instance, the UK 2012 code and the Malaysian 2014 code are very similar, even though only the former uses the phrase 'stewardship' in its title. Also, the EFAMA and Italian codes (of any year) are similar, but only the former uses the term 'code'. For the similarity measures see Part III.B below.

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EFAMA 2018	EFAMA Stewardship Code: Principles for asset managers' monitoring of, voting in, engagement with investee companies	European Fund and Asset Management Association
Hong Kong 2016	Principles of Responsible Ownership	Securities & Futures Commission
ICGN 2003	ICGN Statement on Institutional Shareholder Responsibilities	International Corporate Governance Network
ICGN 2007, 2013	ICGN Statement of Principles on Institutional Shareholder Responsibilities	International Corporate Governance Network
ICGN 2016	ICGN Global Stewardship Principles	International Corporate Governance Network
India (IRDAI) 2017	Guidelines on Stewardship Code for Insurers	Insurance Regulatory and Development Authority of India (IRDAI)
India (PFRDA) 2018	Common Stewardship Code	Pension Fund Regulatory and Development Authority (PFRDA)
India (SEBI) 2019	Stewardship Code	Securities and Exchange Board of India (SEBI)
Italy 2013, 2015, 2016	Italian Stewardship Principles for the exercise of administrative and voting rights in listed companies	Assogestioni
Japan 2014, 2017	Principles for Responsible Institutional Investors	Council of Experts on the Stewardship Code, Financial Services Agency
Kenya 2017	Stewardship Code for Institutional Investors	Capital Markets Authority
Korea 2016	Principles on the Stewardship Responsibilities of Institutional Investors	Korea Corporate Governance Service
Malaysia 2014	Malaysian Code for Institutional Investors	Minority Shareholder Watchdog Group

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Netherlands 2011	Best Practices for Engaged Share-Ownership	Eumedion
Netherlands 2018	Dutch Stewardship Code	Eumedion
Singapore 2016[17]	Stewardship Principles for Responsible Investors	Stewardship Asia Centre
South Africa 2011	Code for Responsible Investing in South Africa	Committee on Responsible Investing by Institutional Investors in South Africa
Switzerland 2013	Guidelines for institutional investors governing the exercising of participation rights in public limited companies	Swiss Association of Pension Fund Providers, together with other associations
Taiwan 2016	Stewardship Principles for Institutional Investors	Taiwan Stock Exchange
Thailand 2017	Thai Securities and Exchange Commission Investment Governance Code	Securities and Exchange Commission, Thailand
UK 1991	The Responsibilities of Institutional Shareholders	Institutional Shareholders' Committee
UK 2002, 2005, 2007	The Responsibilities of Institutional Shareholders and Agents - Statement of Principles	Institutional Shareholders' Committee
UK 2009	Code on the responsibilities of institutional investors	Institutional Shareholders' Committee
UK 2010, 2012, 2020	The UK Stewardship Code	Financial Reporting Council of the United Kingdom
US 2017	Stewardship Framework for Institutional Investors	Investor Stewardship Group

Table 1 also contains information about the issuers of these codes. It can be seen that they range from regulatory bodies, stock exchanges and committees organised by them, to national, supranational or international investor associations and other investor-related

[17] Note that for Singapore we do not include in our analysis the Stewardship Principle for Family Businesses as our focus is on the ownership responsibilities of institutional investors. On these Principles, see Dan W. Puchniak, and Samantha Tang, 'Singapore's Puzzling Embrace of Shareholder Stewardship: A Successful Secret' *Vanderbilt Journal of Transnational Law* (forthcoming).

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groups.[18] Most of these codes relate to specific countries, but we also include six transnational codes, two drafted by the EFAMA and four by the ICGN.[19] Two investor associations in Australia and three public authorities in India have published stewardship codes meant to apply to specific sectors; yet, in substance, these codes address general issues of stewardship; thus, we included them in our analysis as separate observations.

The list of countries and codes in Table 1 is similar (though more comprehensive) to websites and other publications that have listed and compared stewardship codes.[20] By contrast, a table in the Corporate Governance Factbook of the Organisation for Economic Co-operation and Development (OECD) on the 'roles and responsibilities of investors' covers more countries than Table 1.[21] However, for some of these countries, this refers to binding laws, which do not fall under the scope of this paper. Some of the non-binding instruments mentioned by the OECD are predominantly about the investment management relationship between institutional investors and their clients – not their stewardship position as shareholders of companies. Finally, we exclude countries for which a stewardship code is not available in English,[22] given that our method – to be explained in the following – relies on textual measures of similarity.

B. METHOD: CONTENT ANALYSIS IN SOCIAL SCIENCES AND LAW

The method of 'content analysis' is frequently used across the social sciences. In a nutshell, it refers to the analysis of the 'informational contents of textual data' employing tools that are 'objective, systematic, and quantitative'.[23] The tools range from simple ones, such as counting the number of words, to complex forms of readability and

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18 See further Part IV.B below, suggesting categories of 'private' and 'public' issuers.

19 The UN Principles for Responsible Investment (PRI) <https://www.unpri.org> accessed 4 February 2020, also relate to some of the issues addressed in stewardship codes. However, as those Principles have a narrower focus, we exclude them in this paper (also having established that they overlap less than 1% with any of the 41 codes, applying the method described in Part III.B below).

20 European Corporate Governance Institute (ECGI), 'Stewardship Codes' <https://ecgi.global/content/codes-stewardship> accessed 4 February 2020; FCLTGlobal, 'Harnessing Stewardship Codes' <https://www.fcltglobal.org/research/tools/stewardship-codes/> accessed 4 February 2020; Alice Klettner, 'The Impact of Stewardship Codes on Corporate Governance and Sustainability' (2017) 23 NZBLQ 259.

21 OECD, 'Corporate Governance Factbook 2019' 106-111 <http://www.oecd.org/corporate/Corporate-Governance-Factbook.pdf> accessed 4 February 2020.

22 Notably this applies to the Norwegian 'Utøvelse av eierskap' <https://www.icgn.org/sites/default/files/Norwegian%20Stewardship%20Code.pdf> accessed 4 February 2020. For codes, included in this paper, also being available in other languages see Part IV.B below.

23 Philipp Mayring, 'Qualitative content analysis' (2000) 1(2) *Forum: Qualitative Social Research* Art. 20 <http://nbn-resolving.de/urn:nbn:de:0114-fqs0002204> accessed 4 February 2020; Stanley Baran, *Introduction to Mass Communication* (2nd ed., McGraw-Hill, 2002) 410.

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sentiment analysis via computational methods. The main advantage of content analysis is that it can provide quantitative measures of comparisons for qualitative information. For example, in political science a frequent example of content analysis provides measurements of the substantive orientation of documents in terms of left-right wing orientation.[24]

As legal rules are typically based on a particular text (legislation, case law, contracts etc), it is possible to use content analysis also in legal scholarship.[25] Yet, examples are rare: there is some research that employs content analysis for court decisions – notably in the US, for example, to map the political orientation of the opinions of the justices of the US Supreme Court.[26] Following a growing trend of quantitative research in comparative constitutional law, there are also some examples of research on constitutional texts using content analysis.[27]

In the present case, the raw material of our analysis is the 41 stewardship codes of Table 1. In this regard, some limitations of the application of content analysis need to be acknowledged. First, as this analysis can only consider existing codes, it not possible to answer the question of why some large economies, such as Germany and China, do not have such a code (yet).[28] Second, a textual analysis of stewardship codes does not

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[24] For an example see The Manifesto Project, 'Project description' <https://manifesto-project.wzb.eu/> accessed 4 February 2020. See also Justin Grimmer and Brandon M. Stewart, 'Text as Data: The Promise and Pitfalls of Automatic Content Analysis Methods for Political Texts' (2013) 21 *Political Analysis* 267

[25] For general discussion see Mark A Hall and Ronald F Wright, 'Systematic Content Analysis of Judicial Opinions' (2008) 96 *California Law Review* 63; Maryam Salehijam, 'The Value of Systematic Content Analysis in Legal Research' (2018) 23 *Tilburg Law Review* 34; Wolfgang Alschner, Joost Pauwelyn and Sergio Puig, 'The Data-Driven Future of International Economic Law' (2017) 20 *Journal of International Economic Law* 20.

[26] See e.g. Martin-Quinn Scores, 'Project Description' <https://mqscores.lsa.umich.edu> accessed 4 February 2020; Keith Carlson, Michael A. Livermore, and Daniel Rockmore, 'A Quantitative Analysis of Writing Style on the U.S. Supreme Court' (2016) 93 *Washington University Law Review* 1461. For two European examples see Jens Frankenreiter, 'Writing Style and Legal Traditions', in M. A. Livermore, and D. Rockmore (eds.), *Law as Data: Computation, Text, and the Future of Legal Analysis* (Santa Fe Institute Press 2019); Kody Moodley, Pedro V. Hernandez Serrano, Gijs van Dijck, and Michel Dumontier, 'Similarity and Relevance of Court Decisions: A Computational Study on CJEU Cases', in Michał Araszkiewicz and Víctor Rodríguez-Doncel (eds.), *Legal Knowledge and Information Systems* (IOS Press, 2019).

[27] See e.g. David S. Law, 'Constitutional Archetypes,' (2016) 95 *Texas Law Review* 153; David Law, 'Constitutional Dialects: The Language of Transnational Legal Orders' in Gregory Shaffer, Tom Ginsburg & Terence C. Halliday (eds), *Constitution-Making and Transnational Legal Order* (CUP 2019); Tom Ginsburg, 'Constitutional Specificity, Unwritten Understandings and Constitutional Agreement' in András Sajo and Renáta Uitz (eds.), *Constitutional Topography: Values and Constitutions* (Eleven International Publishing, 2010); András Jakab, Arthur Dyevre, and Giulio Itzcovich, 'Conclusion' in András Jakab, Arthur Dyevre, and Giulio Itzcovich (eds.), *Comparative Constitutional Reasoning* (CUP 2017).

[28] For possible reasons see Georg Ringe 'Stewardship and Shareholder Engagement in Germany' in Dionysia Katelouzou and Dan Puchniak (eds) *Global Shareholder Stewardship: Complexities, Challenges and Possibilities* (CUP forthcoming) and Lin Lin and Dan Puchniak 'Institutional Investors

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consider the application of the codes in practice; thus, for example, our findings can analyse whether and how the Kenyan code is similar to other codes, but not why Kenyan institutional investors have not subscribed to the code.[29] Third, the use of content analysis is unable to consider subtle nuances of the text (also noting that we rely on the English text for all codes for non-English speaking countries). Thus, given these limitations, we do not claim that this method is superior to more conventional tools of legal analysis – yet, as we show in the following, it can be a useful tool to uncover textual patterns in a systematic way.

C. CONCEPTS: LEGAL TRANSPLANTS AND DIFFUSION

The analysis provided in this paper is inspired by and contributes to core concepts of comparative law, in particular 'legal transplants' and 'diffusion', as well as the broader theme of 'legal families' and other taxonomies of legal systems.[30] The traditional focus of the literature on legal transplants is that norms of a particular piece of legislation are deliberately copied with minor modifications.[31] However, recent discussions have broadened the scope of discussion both as far as the object of the transplant and the procedure for the transfer is concerned: thus, transplants may not only concern the positive law but, for example, also case law or – as in the present case – non-binding codes.[32] It is also said that the process leading to a transplant may not be due to simply copying the rules but by means of a general legal and cultural influence.[33]

This latter notion of a broader foreign influence often uses other terms than that of a 'legal transplant', for example, referring to 'legal circulation', 'cross-fertilisation',

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and Stewardship in China' in Dionysia Katelouzou and Dan Puchniak (eds) *Global Shareholder Stewardship: Complexities, Challenges and Possibilities* (CUP forthcoming). Yet, in some countries elements of stewardship have been included in the corporate governance principles. See also Dionysia Katelouzou & Dan Puchniak 'Diversity in Stewardship' in Dionysia Katelouzou and Dan Puchniak (eds) *Global Shareholder Stewardship: Complexities, Challenges and Possibilities* (CUP forthcoming).

29 See Austin Ouko 'Stewardship Code in Kenya: Is the Nigh Here?' in Dionysia Katelouzou and Dan Puchniak (eds) *Global Shareholder Stewardship: Complexities, Challenges and Possibilities* (CUP forthcoming).

30 For these categories see further Part IV.B below.

31 For such cases see e.g. Helen Xanthaki, 'Legal Transplants in Legislation: Defusing the Trap' (2008) 57 *International & Comparative Law Quarterly* 659. For the history of legal transplants see John W. Cairns, 'Watson, Walton, and the History of Legal Transplants' (2013) 41 *Georgia Journal of International & Comparative Law* 637.

32 Though some stewardship codes include 'comply or explain' or other more coercive requirements; see Part IV.B. below.

33 See Mathias Siems, *Comparative Law* (2nd edn, CUP 2018) 232-241.

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'migration' or 'diffusion'.[34] Beyond comparative law, social scientists often also use the notion of diffusion, for example, in the innovation literature and in the fields of political science, public administration and organisational studies.[35] It has been suggested that legal research should follow this terminology.[36] Findings from these other disciplines can also be relevant for law; for example, research by political scientists and sociologists examines whether policy diffusion is a result of 'social construction, coercion, competition, or learning'.[37] A recent article on corporate governance codes also phrases their evolution as the 'diffusion of regulatory innovations', finding for example that certain models diffuse because standard setters aim to signal that they conform to international benchmarks but possibly also because they are motivated by efficiency considerations.[38]

This paper too uses the term diffusion as the main conceptual framework. As regards the types of 'diffusion', it only focuses on 'formal' diffusion and considers how far textual characteristics have diffused between stewardship codes. Thus, our systematic analysis does not imply that any such rules operate in a functionally identical way. Indeed, some codes that are formally similar function differently in practice, which is the phenomenon that has been coined 'faux convergence' and observed in the case of stewardship codes.[39]

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[34] For the different terms see e.g. Vlad F. Perju, 'Constitutional Transplants, Borrowing, and Migrations' in Michael Rosenfeld and András Sajo (eds), *The Oxford Handbook of Comparative Constitutional Law* (OUP 2012).

[35] E.g., Everett M Rogers, *Diffusion of Innovations* (5th ed., Free Press 2003); Erin R Graham, Charles R. Shipan, and Craig Volden, 'The Diffusion of Policy Diffusion Research in Political Science' (2013) 43 *British Journal of Political Science* 673.

[36] William Twining, 'Social Science and Diffusion of Law' (2005) 32 *Journal of Law and Society* 203; William Twining, 'Diffusion of Law: A Global Perspective' (2004) 49 *Journal of Legal Pluralism* 1.

[37] Frank Dobbin, Beth Simmons and Geoffrey Garrett, 'The Global Diffusion of Public Policies: Social Construction, Coercion, Competition, or Learning?' (2007) 33 *Annual Review of Sociology* 449.

[38] Carsten Gerner-Beuerle, 'Diffusion of Regulatory Innovations: The Case of Corporate Governance Codes' (2017) 13 *Journal of Institutional Economics* 271.

[39] Gen Goto, Alan K. Koh & Dan W. Puchniak 'Diversity of Shareholder Stewardship in Asia: Faux Convergence' (2020) *Vanderbilt Journal of Transnational Law* (Forthcoming). See also Katelouzou and Puchniak (n 29). Likewise, there may be cases where formally different rules have a functionally similar effect; for such a distinction in the 'convergence' literature see e.g. Siems (n 33) 264.

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III. EVIDENCE OF STEWARDSHIP DIFFUSION

A. THE SHAREHOLDER STEWARDSHIP MOVEMENT AND CITATION PATTERNS

The term 'stewardship' to refer to the corporate governance role of institutional shareholders was used for the first time by the UK's Institutional Shareholders' Committee Code of 2009.[40] In the academic literature, however, the same term can be found much earlier in the context of the stewardship theory of management, an alternative of the agency theory, which defines situations in which managers act as stewards in alignment with the objectives of their shareholders-principals.[41] Inherent in the term stewardship is the notion of accountability: accountability of managers in the context of the managerial stewardship theory, and accountability of institutional shareholders in the context of shareholder stewardship.[42]

Shareholder stewardship was formalised in the UK Stewardship Code introduced by the FRC in 2010. However, stewardship traces can be found much earlier in the UK in the early 1990s, albeit using different nomenclature. In 1991 (one year before the landmark Cadbury Report), the Institutional Shareholders' Committee (ISC), a private body comprised of four major institutional shareholder associations (insurance companies, pension funds, trusts and asset managers) published a statement of best practices on the responsibilities of institutional shareholders.[43] Although this ISC statement (along with its 2002, 2005 and 2007 versions) cannot be considered as thorough as subsequent stewardship codes, it is nonetheless important in the evolution of stewardship as it was the first document to define the responsibilities of institutional shareholders to use their influence as owners to ensure that the companies in which they have invested adopt good corporate governance standards. Historically, therefore, the UK was clearly the forerunner in the development of stewardship responsibilities for institutional shareholders.

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40 UK 2009 (see Table 1, above)

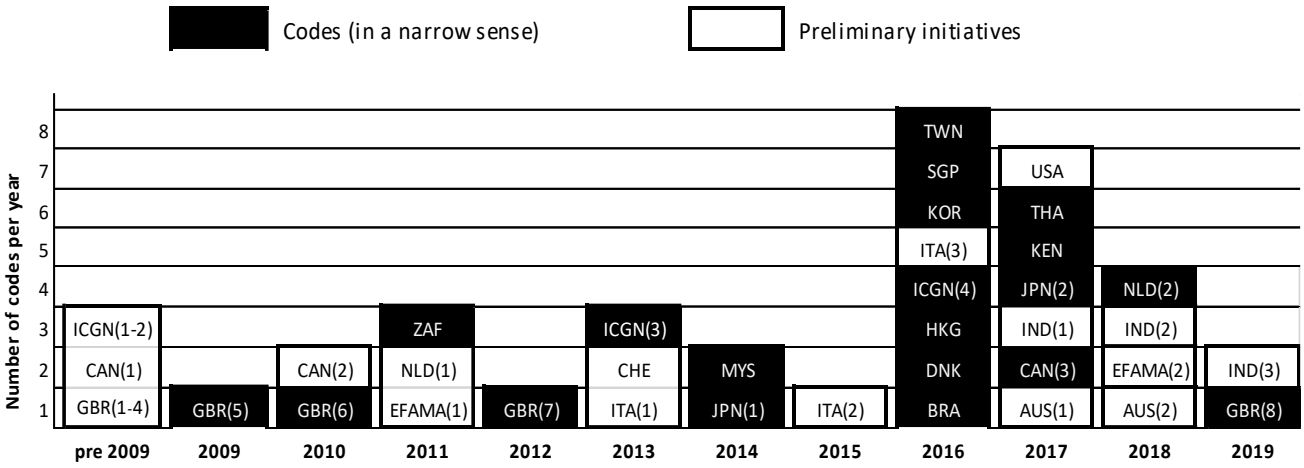
41 For the managerial stewardship theory, see James H Davis, F David Schoorman and Lex Donaldson 'Toward a Stewardship Theory of Management' (1997) 22 *The Academy of Management Review* 20.

42 For this distinction, see Katelouzou (n 12).

43 For the origins of stewardship, see Ibid.

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Figure 1: The evolution of stewardship codes[44]



To further understand the evolution of stewardship codes, Figure 1 distinguishes between preliminary stewardship initiatives and stewardship codes (in a narrow sense). A preliminary initiative is defined as a set of principles, standards or best practices relating to the stewardship role of institutional investors, but which is limited either in its scope (for instance, it applies to a specific group of institutional investors), in its content (for instance, it only refers to voting rights) or its drafting style (for instance, it is drafted as a policy statement or has no guidance even though it adopts a principles-based approach). This distinction is important for countries with more than one document referring to institutional shareholders' responsibilities, such as the UK, Canada and the Netherlands. All three countries adopted a stewardship code after implementing what can be termed as first-generation principles. But some countries such as India, Switzerland and the US have still to adopt what can be characterised as a comprehensive stewardship code. In the following, we treat all 41 documents as stewardship codes (in a wider sense).

From the timeline, shown in Figure 1, it is evident that the development and adoption of stewardship norms is a recent phenomenon. Only few counties[45] as well the ICGN adopted codes up to 2009. Then, between 2010 and 2015, eight countries addressed shareholder stewardship through the adoption of stewardship codes or preliminary initiatives. Over the same period the UK revised its code, while EFAMA adopted a code 'on external governance' to provide principles and best practice for asset managers in engaging with their investee companies. The period between 2016 and 2017 marked a

[44] Abbreviations based on UN standard. Worldatlas, 'Complete List of Country & Dialing Codes' <https://www.worldatlas.com/aatlas/ctycodes.htm> accessed 4 February 2020.

[45] Apart from those indicated in Figure 1, Norway had its first code in 2003 (see also n 22, above).

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spike in the evolution of stewardship codes with eleven more countries adopting stewardship codes or similar initiatives (whereas in 2018 and 2019 we only see new codes in countries that already had such codes previously[46]).

There may be various, interrelated, reasons explaining these developments. In the UK, for instance, the 2010 Code was adopted as a reaction to the financial crisis of 2007-8,[47] while in other countries different claims have been put forward. In Japan, shareholder stewardship was part of a broader government programme of economic liberalisation and sound corporate governance.[48] In Kenya it was part of a major reform of company and securities law designed to promote the country as the premier financial centre in central/east Africa.[49] The Indian codes are partly linked to the fragmented efforts to promote shareholder activism in India,[50] while other countries, such as Singapore, adopted stewardship codes to legitimise themselves as good standard promoters.[51] The presence of foreign institutional investors, the need to prevent the loss of investment incurred by ultimate beneficiaries, and the increasing calls for sustainability were also among the factors driving the adoption of stewardship codes.[52] Thus, using some of the terminology of the prior diffusion literature,[53] the diffusion of stewardship codes is due to some 'shared social constructs' but also forms of 'coercion' and 'competition' as far as issuers follow the 'leader' of the stewardship movement (i.e. the UK) or one of the international codes.

It is also possible to examine the citation patterns of the 41 stewardship codes vis-à-vis one another in order to identify traces of formal diffusion. Ten codes make specific references to foreign codes in their preambles, but in only two of them there is an explicit, visible influence by another code. All the Italian codes explicitly mention the EFAMA

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46 Here too, apart from the countries indicated in Figure 1, it concerns Norway which enacted a new code in 2019 (see also note 22, above).

47 See e.g. Paul Davies 'The UK Stewardship Code 2010-2020: from Saving the Company to Saving the Planet? in Dionysia Katelouzou and Dan Puchniak (eds) *Global Shareholder Stewardship: Complexities, Challenges and Possibilities* (CUP forthcoming).

48 See e.g. Gen Goto, 'The Logic and Limits of Stewardship Code: The Case of Japan' (2019) 15 *Berkeley Business Law Journal* 365-408.

49 Ouko (n 30) above.

50 Umakanth Varottil, 'Shareholder Stewardship in India: The Desirata' in Dionysia Katelouzou and Dan Puchniak (eds) *Global Shareholder Stewardship: Complexities, Challenges and Possibilities* (CUP forthcoming), also available <https://ssrn.com/abstract=3538037> accessed 16 March 2020.

51 Puchniak & Tang (n 17) above.

52 See e.g. Iris H-Y Chiu and Dionysia Katelouzou, 'From Shareholder Stewardship to Shareholder Duties: Is the Time Ripe?' in Hanne Birkmose (ed), *Shareholders' Duties* (Kluwer Law International, 2017) 131-152 and Dionysia Katelouzou and Alice Klettner 'Sustainable Finance and Stewardship: Unlocking Stewardship's Sustainability Potential' in Dionysia Katelouzou and Dan Puchniak (eds) *Global Shareholder Stewardship: Complexities, Challenges and Possibilities* (CUP forthcoming).

53 See Part II.C above.

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code as a point of reference,[54] while the Thai Code acknowledges that it 'derives from the principles set out in the UK Stewardship Code'.[55] The UK Code is also cited as a point of reference by the Danish Code,[56] the 2013 ICGN Code,[57] and the Dutch 2011 Code which also refers to transnational developments, including the EFAMA and ICGN Codes.[58] Generic references to other codes (but with no evidence of a direct influence) are also found in the Swiss[59] and Brazilian[60] codes as well as the Australian 2017 Code developed by the Financial Services Council (FSC).[61]

Thus, explicit comparative citation is, as expected, limited in the stewardship codes. But the absence of citation of foreign codes does not necessarily reflect the extent of foreign stewardship codes' influence, which may be unacknowledged in the final codes or to which reference may be made at other preparatory stages of the drafting process.[62] To better assess the formal diffusion of stewardship we examine below the language similarities among the codes.

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54 E.g. Italy 2016 (see Table 1, above), p 11: 'The adopted Principles are inspired by those contained in the EFAMA Code for External Governance'. See also Giovanni Strampeli 'Institutional Investor Stewardship in Italian Corporate Governance' in Dionysia Katelouzou and Dan Puchniak (eds) *Global Shareholder Stewardship: Complexities, Challenges and Possibilities* (CUP forthcoming).

55 Thailand 2017 (see Table 1, above), p 32.

56 Denmark 2016 (see Table 1, above), p 3: '…the Committee has sought to ensure that the Code is in line with leading foreign stewardship principles, notably including The UK Stewardship Code'.

57 ICGN 2013 (see Table 1, above), p 21 (endorsing the definition of 'stewardship' of the UK Code). The prior 2007 Code included an Annex with practical examples from national and international markets referring to the Canadian and UK codes.

58 Netherlands 2011 (see Table 1, above), p 2: 'The best practices are also in line to the greatest possible extent with international guidelines on the behaviour required of institutional investors, such as the UK Stewardship Code, the Statement of Principles on Institutional Shareholder Responsibilities from the International Corporate Governance Network (ICGN), the United Nations Principles for Responsible Investment (UNPRI) and the Code for External Governance of the European Fund and Asset Management Association (EFAMA)'. Both the EFMA and UK codes are also mentioned in the 2019 Norwegian code (see note 22, above).

59 Switzerland 2013 (see Table 1, above), p 12: 'In England, a document entitled "UK Stewardship Code" was published in July 2010 which formulates a specific code of conduct for institutional investors in the form of seven principles. Similar codes are currently in preparation in various other countries'.

60 Brazil 2016 (see Table 1, above), p 2: 'As in corporate governance codes that have proliferated all over the world after the 2001 crisis (more than 100 codes), at least 11 countries already have "stewardship / responsible investment" codes… The UK Stewardship Code, issued by the FRC – Financial Reporting Council, was launched in September 2012 and is the most advanced document in promotion and adherence terms'.

61 Australia (FSC) 2017 (see Table 1, above), p 7: 'Stewardship codes exist in other jurisdictions including the Netherlands, Switzerland, South Africa, Singapore, Japan and across Europe as articulated in the EFAMA Code for External Governance'

62 For the purposes of this study, we limit ourselves to the text of the final codes and we did not consider any preparatory materials from the drafting bodies (which usually may not be publicly available).

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B. MEASUREMENT OF IDENTICAL STRINGS OF WORDS

In a recent article, Allee and Elsig asked whether 'the contents of international treaties [are] copied and pasted?'. Specifically, they analyse preferential trade agreements, finding similarities of more than 90%.[63] In the present case, we pose a similar question for the contents of stewardship codes; yet, we also consider how far similar word patterns may be due to deliberate copying or at least a sign of a more indirect influence.

In order to get a realistic picture of how far the language of stewardship codes overlap, the texts of these codes have to be edited and formatted in a way that makes them comparable. Yet, this should not interfere with the substance of the texts, nor should it distort the writing style of the codes. Therefore, in this part of the analysis, we did not 'stem' words,[64] nor did we replace abbreviations or other idiosyncrasies of the codes.[65]

However, in order to make the texts comparable, we implemented the following adjustments. First, some of the codes are published in documents which contain further information that are not specifically related to shareholder stewardship, such as general information about the drafting body. We removed such text. Second, while the core elements of the stewardship codes are typically a number of principles together with specific explanations for each of these principles,[66] some of the codes also contain preliminary or supplementary remarks. As those additional remarks also contain meaningful information, for example, referring to the purpose of the code and providing definitions, they were generally included;[67] however, we excluded forewords by the panel chair in the codes,[68] listings of the participants of the drafting panel, and bibliographies or other lists of references. Third, given this decision, we also removed footnotes which provided mere references; yet, we retained footnotes with substantive explanations, notably in cases where a particular statement (e.g., a definition) could have also been included in the main text of a code. Fourth, some but not all the codes include a table of contents, and some but not all of them list the principles at the beginning and

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63 Todd Allee and Manfred Elsig, 'Are the Contents of International Treaties Copied and Pasted? Evidence from Preferential Trade Agreements' (2019) 63 *International Studies Quarterly* 603. For a similar example see Joshua M Jansa, Eric R Hansen and Virginia H Grey, 'Copy and Paste Lawmaking: Legislative Professionalism and Policy Reinvention in the States' (2019) 47 *American Politics Research* 739.

64 In contrast to the analysis in Part IV below.

65 Exception: EFAMA 2011 and the Italian codes use the abbreviation 'IMCs' for 'Investment Management Companies'; yet, as EFAMA 2018 then uses the full term, we also replaced IMCs by the full term in EFAMA 2011 and the Italian codes for reasons of consistency.

66 See also Table A.1 of the Annex on the differentiated word count of the codes.

67 In contrast to the analysis in Part IV below, which excludes everything not related to the Principles.

68 Namely, for Malaysia 2014 and South Africa 2011.

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then restate them with explanations later in the text. We removed such duplicates.[69] Fifth, minor formatting was applied in order to reduce the risk of 'false negatives'; for example, all spelling was changed to American English and all capital letters were replaced by small letters.[70]

Our comparison tool is the plagiarism detection software program 'WCopyFind',[71] which has been used before in empirical legal studies, notably in order to detect overlaps between court opinions in the US.[72] This program allows for pairwise comparison of documents to locate similarities in the language used. The 41 texts of the codes were uploaded in this programme with the aim of identifying identical strings. Following Allee and Elsig, we set the required length of the strings at different thresholds in order to check the robustness of the results. For the main analysis that followed we searched for strings of four or more words. This is a slightly lower threshold than the one used for the purposes of identifying plagiarism;[73] yet, while it is clear that students need to be given the benefit of doubt, a similar line of reasoning does not apply here. Moreover, using a lower threshold had the advantage that it was possible to compare similarities between pairs of codes where a higher threshold would merely exhibit identical 'nil results'.[74]

Using this method, for example, the codes of UK 2012 and Malaysia 2014 show an overlap of 501 words. Some of them well exceed the four or six-word thresholds. For instance, the phrase 'signatories are encouraged to review their policy statements annually, and update them where necessary to reflect changes in actual practice it should include contact details of an individual who can be contacted for further' is found in both codes, with the likely explanation being that Malaysia copied this phrase from the earlier UK code. Other identical strings of words are more ambiguous: for example, both have phrases such as 'should reflect the institutional' and 'how they will discharge'. A sceptic

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69 For Australia (FSC) 2017 we also excluded a summary table found in the preliminary remarks.

70 We also removed all bullet points while retaining numbers and punctuation marks.

71 Available at <https://plagiarism.bloomfieldmedia.com/software/wcopyfind/>.

72 See e.g. Paul M Collins Jr, Pamela C. Corley and Jesse Hamner, 'The Influence of Amicus Curiae Briefs on US Supreme Court Opinion Content' (2015) 49 *Law & Society Review* 917; Adam Feldman, 'Counting on Quality: The Effects of Merits brief Quality on Supreme Court Decisions' (2016) 94 *Denver University Law Review* 43. For another example see Rachael K. Hinkle, 'Into the Words: Using Statutory Text to Explore the Impact of Federal Courts on State Policy Diffusion' (2015) 59 *American Journal of Political Science* 1002.

73 Some discuss that a 'five-word rule' may be the strictest standard, see StackExchange, 'What exactly is the "five (consecutive) word" plagiarism rule?' <https://writing.stackexchange.com/questions/7546/what-exactly-is-the-five-consecutive-word-plagiarism-rule/7563> accessed 4 February 2020.

74 As a result, we identified 776 of such pairs (i.e. 50% of the total of 40*39= 1,560 pairs of codes), while a threshold of six words, as used by Collins, Corley and Hammer and Feldmann (n 72), would only identify 442 pairs (i.e. 28% of the total). Alle and Elsig (n 63) and Hinkle (n 73), also use four-word strings as one their specifications.

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may regard such a match of words as accidental and thus possibly a 'false positive'. Yet, there could also be cases of 'false negatives', for example, where a particular phrase is used in passive voice in one code and active voice in another one, thus not showing a match. Overall, the measurement of common strings of words should, therefore, be seen as a parsimonious proxy for a measurement of similarity among the codes, which also needs to be carefully interpreted.[75]

In the overall results, it is no surprise that the pairs of codes that overlap most are the ones from the same issuer: for example, Italy 2016 contains more than 90% of the text of Italy 2015; the same is the case for Japan 2017 and 2014, and for UK 2002, 2005 and 2007 the overlap is even above 98%. We also treat the Indian codes as deriving from the same issuer since SEBI, PFRDA and IRDAI are all regulatory bodies established by the Government of India; indeed, India (SEBI) 2019 and India (PFRDA) 2018 are very similar as the former includes 84% of the latter code.[76] The subsequent Table 2 excludes these same-issuer 'top' pairs of similarities and it only displays the highest ranked pair of codes of the same two issuers.[77]

Table 2: Most similar pairs of codes by common strings

Rank	Older code	Newer code	Common strings (in words)	All words of older code	All words of newer code	Overlap in older code	Overlap in newer code
1	UK 2009	EFAMA 2011	561	1392	1809	40.30%	31.01%
2	UK 2012	Malaysia 2014	501	2954	2967	16.96%	16.89%
3	ICGN 2013	Malaysia 2014	411	7228	2967	5.69%	13.85%
4	EFAMA 2011	Italy 2016	473	1809	2615	26.15%	18.09%
5	UK 2002	Canada 2005	382	1474	1136	25.92%	33.63%
6	UK 2012	Hong Kong 2016	372	2954	2232	12.59%	16.67%
7	ICGN 2016	Kenya 2017	323	5062	3735	6.38%	8.65%
8	Malaysia 2014	Thailand 2017	298	2967	3819	10.04%	7.80%
9	UK 2012	India (IRDAI) 2017	284	2954	964	9.61%	29.46%

[75] For instance, WCopyFind can only capture similarity of language (not of ideas or arguments) and wholly different words can have the same meaning.

[76] India (IRDAI) 2017 is more distinct, overlapping not more than 22% with the other two Indian codes; yet, the revised version of the IRDAI code (see n 10) will shift it closer to the other codes.

[77] For example, as the pair of UK 2009-EFAMA 2011 is ranked as 1st, the table excluded the pairs of UK 2012-EFAMA 2011, UK 2009-EFAMA 2011 etc.

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10	Korea 2016	Japan 2017	261	3231	4637	8.08%	5.63%

The most prominent result of Table 2 is that, in this top-ten list, the UK is five times the country of the code that has influenced a code from another issuer, with three referring to the 2012 Code and one each to the 2002 and 2009 Codes, respectively. In four instances the UK impacted on stewardship codes of common law countries (Malaysia, Canada, Hong Kong, India), but we also see diffusion to the EFAMA 2011. It is also noteworthy that the 2012 UK Code also had an influence on the Japanese 2017 Code (UK 2012-Japan 2017 follows at rank 11 of the most similar pairs[78]).

As regards the overlap between other codes, our data confirm the impact of the EFAMA on the Italian Codes, which has been mentioned explicitly in the latter.[79] The impact of the ICGN Code on Malaysia and Kenya is also not surprising as developing countries often pay close attention to recommendations by international bodies.[80] Table 2 also reveals two other highly overlapping pairs, i.e. Malaysia and Thailand, and Korea and Japan. This may be regarded as plausible as they refer to neighbouring countries; yet, they require some further explanations. With regard to the Thai code, our findings seem to confirm the impact of the UK Code (as stated in the Thai code itself) given that the Malaysian code was itself impacted by the UK code.[81] With regard to Korea-Japan, the direction of causality may actually be the reverse (from Japan to Korea) as there has also been a considerable impact from Japan 2014 to Korea 2016.[82]

As a robustness check, we also run WCopyFind with a higher threshold of requiring strings of six or more words. Here, the relationship between the pairs of the UK Codes and EFAMA, Malaysia, Canada, Hong Kong, and India retain a high number of common strings, as does the EFAMA and Italy pair.[83] For ICGN and Malaysia/Kenya the numbers drop by a bit more than half. [84] The largest reduction in the number of overlapping strings shows for the pairs of Malaysia-Kenya and Korea-Japan,[85] thus confirming the cautious interpretation of the previous paragraph.

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78 Overlap of strings: 255 words; as regards UK 2012-Japan 2014 the overlap is 219 words.

79 See Part III.A above.

80 On the impact of other international codes, such as the OECD Principles of Corporate Governance, on developing countries, see e.g. Mathias Siems and Oscar Alvarez-Macotela, 'The G20/OECD Principles of Corporate Governance 2015: A Critical Assessment of their Operation and Impact' (2015) *Journal of Business Law* 310.

81 The UK 2012-Thailand 2017 overlap is also fairly high (176 words); this difference between Thailand-Malaysia and Thailand-UK 2012 is mainly due to the fact that the Thai and Malay codes more frequently use the phrase 'institutional investors should …' (38 and 31 times) than the UK code (21 times).

82 Overlap of strings: 229 words.

83 Overlap of strings: 512, 343, 309, 271, 249 and 259 words.

84 Overlap of strings: 199 and 125 words.

85 Overlap of strings: 102 and 36 words.

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The codes examined here have different sizes,[86] which is bound to affect the extent of overlaps between pairs of code. Thus, Table 2 includes information about the percentage of common words as regards each of the two codes of each of the pairs. As expected, smaller codes have a larger overlap in terms of percentages compared to the overlap of larger codes (e.g., see the UK-India pair). Both percentages, however, need to be considered in interpreting the data. While it is clear that any influence will go in the direction of the older to the newer code, the overlap in the older code is also relevant: for example, assume that a newer code fully copied an older code while also adding further provisions making this newer code ten times larger than the older code. Here the overlap in the newer code is 10%; yet, only with the information that the overlap in the older code is 100%, it is possible to recognise this complete copying of the older code.

C. Network and Cluster Analysis Based on Common Strings of Words

The full information about the common strings of words forms a matrix displaying the overlap of each of the 41 codes with the other codes. Such a matrix can be visualised as a network and can be used for cluster analysis.[87] In this section we focus on the percentages of common strings per each code as a measure of similarity; thus, in the following chart the codes are the 'nodes' of the network and the percentage similarities are the 'ties' between these nodes.

[86] For the size of all codes see Table A.1 of the Annex.

[87] This section uses the social network analysis program UCINET, available at <https://sites.google.com/site/ucinetsoftware/home>.

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Figure 2: Network showing all >6% overlaps of pairs of codes

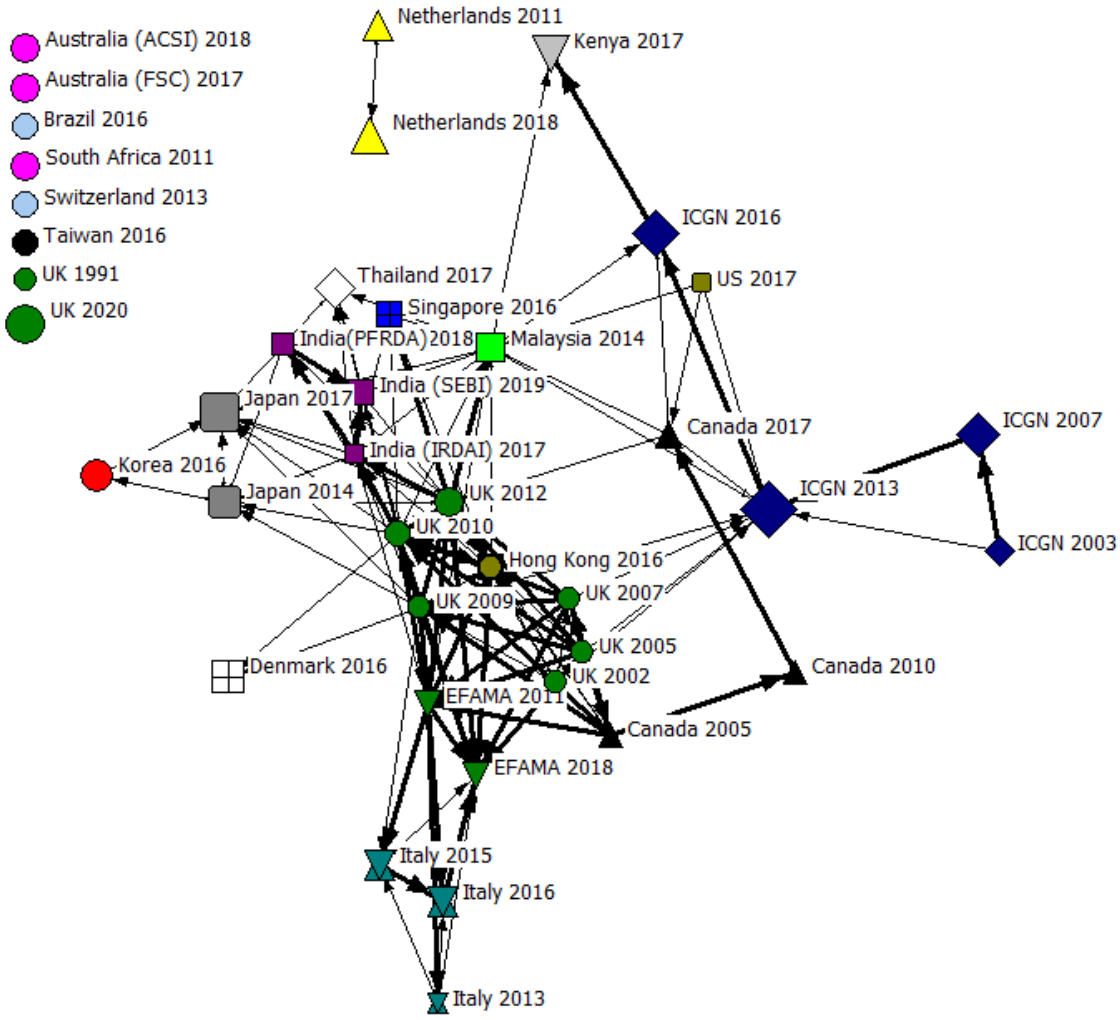


Figure 2 displays all country pairs where at least in one direction there is an overlap of more than 6% between the codes (see Table 2, above, applying a four-word threshold). A bold tie is used for pairs in which the 6% threshold is exceeded as regards both codes. The arrows of the ties indicate the possible diffusion from the older to the newer code. The size of each node reflects the different size of the codes,[88] the variations in shapes and colours of the nodes identify all codes of the same country, and the layout of the network reflects the similarities between pairs of nodes (i.e. the position of the codes is determined by their linguistic closeness to each other).

Figure 2 shows that eight codes are not connected to any other code; in addition, the two Dutch codes are only connected to each other. Different reasons account for these isolates. To start with, it is no surprise that UK 1991, being a very preliminary initiative,[89]

[88] See Table A.1 of the Annex.
[89] See also Part III.A above.

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is unconnected to the other codes. It is not only its drafting style with the lack of explicit principles and guidance but also its content with its sole focus on the corporate governance of investee companies identifying matters, such as the composition of the board, that should be a matter of concern to institutional shareholders, which isolate the early UK 1991 Code from subsequent codes. On the other extreme, the UK 2020 Code, representing a significant departure from the 2012 Code, is also an isolate. Being 32 pages long, the UK 2020 Code shifts the idea of stewardship in new directions not yet reflected in the other codes. For example, the UK 2020 Code, with its extended focus comprising of twelve principles aimed at asset managers and asset owners and six principles aimed at service providers, broadens stewardship across all assets other than listed equity, and puts emphasis on reporting specific stewardship activities and outcomes rather than just stewardship policies.[90]

South Africa 2011 also differs in substance from most of the other codes given its strong focus on the integration of issues of environmental, social and corporate governance (ESG) into investment management,[91] a trend, however, which has become more commonplace now.[92] As for the two Australian codes, which also differ from most of the other codes, their idiosyncratic language reflects the very particular institutional and market context in which the two codes were developed and the fact that both drafting bodies (the ASCI and FSC) already had a well-established local tradition of policy-making and governance activism to draw on.[93] Also, in issuing their codes, both the FSC and ACSI believed that they were taking different approaches from other stewardship codes as reflected in the language of both codes.[94]

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90 See Dionysia Katelouzou and Eva Micheler 'Stewardship in the UK: The Demand Side' in Dionysia Katelouzou and Dan Puchniak (eds) *Global Shareholder Stewardship: Complexities, Challenges and Possibilities* (CUP forthcoming).

91 See further Natania Locke 'Encouraging Sustainable Investment in South Africa: CRISA and Beyond' in Dionysia Katelouzou and Dan Puchniak (eds) *Global Shareholder Stewardship: Complexities, Challenges and Possibilities* (CUP forthcoming) (elaborating that CRISA was more informed by the UN PRI, mainly due the impact of the South African PRI Network). While the textual similarity between UN PRI and CRISA is less than 1% (see also n 19 above), an analysis of marker terms for 'responsible ownership', to be published in a corresponding paper, finds that these terms are indeed frequently used in the South African code.

92 See Katelouzou and Klettner (n 53) above.

93 See Tim Bowley and Jennifer G Hill 'Stewardship and Collective Action: The Australian Experience' in Dionysia Katelouzou and Dan Puchniak (eds) *Global Shareholder Stewardship: Complexities, Challenges and Possibilities* (CUP forthcoming), also available <https://ssrn.com/abstract=3530402> accessed 16 March 2020.

94 According to Australia (ASCI) 2018 (see Table 1, above), p 4: '[s]tewardship codes exist in numerous markets in the world, including a fund manager stewardship code in Australia. However, this is the first code to focus on the stewardship activities of Australian asset owners'. Also, Australia (FSC) 2017 (see Table 1, above), 7 states: 'unlike other stewardship codes which focus on asset stewardship and conflicts

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As regards the remaining isolated countries, Brazil, the Netherlands and Taiwan have in common that their codes may have originally been written in a language other than English. Thus, it could be due to variations of the translations into English (or possibly backward translations if some of their text was indeed translated from English) that they use a less 'mainstream' language. This finding is confirmed by the observation that two further non-English speaking countries, Denmark and Korea, are only loosely connected with the main network. Exceptions are then the codes of Italy, Thailand and Japan which, even though they were presumably originally written in a language other than English, form part of the network of Figure 2. For the three Italian codes and the Thai one this may be attributed to the fact that they all explicitly refer to foreign models in their codes.[95] As for the similarity between the Japanese codes and the UK ones, this should not be surprising given that Japan has a long tradition of copying business-law rules from common law countries.[96]

The main part of the network displays the UK 2012 Code at the centre, surrounded by other English-speaking (or common law) countries, in particular from Asia (i.e. Malaysia, Hong Kong, Singapore and India, which all enacted codes in the subsequent years). The US 2017, Kenya 2017 and Canada 2010 and 2017 codes are, however, less closely connected with this core.[97] Thus, it seems that within the group of English-speaking countries, trends for stewardship diffusion are particularly strong in Asia, but less so in other parts of the world (also noting again the outlier positions of Australia and South Africa).

Network analysis provides various tools to identify community structures.[98] Some of them rely on binary data, but for a valued network it is preferable to use tools that consider the full information of the dataset. Using such a method also has the advantage that it does not rely on a particular cut-off point (such as 6% in the network of Figure 1). The method applied here calculates 'hierarchical clusters'. This refers to a procedure that divides data into subgroups 'by successively increasing the tolerated level of within-cluster dissimilarity – (s)tarting with the lowest level of aggregation, where only identical

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of interest, the FSC standard takes a broader view and also includes the internal governance of the asset manager'.

95 See Part III.A above.

96 For the similarity see note 78 above and corresponding text. For transplants in Japanese business law see e.g. Hideki Kanda and Curtis J. Milhaupt, 'Re-Examining Legal Transplants: The Director's Fiduciary Duty in Japanese Corporate Law' (2003) 51 *American Journal of Comparative Law* 887.

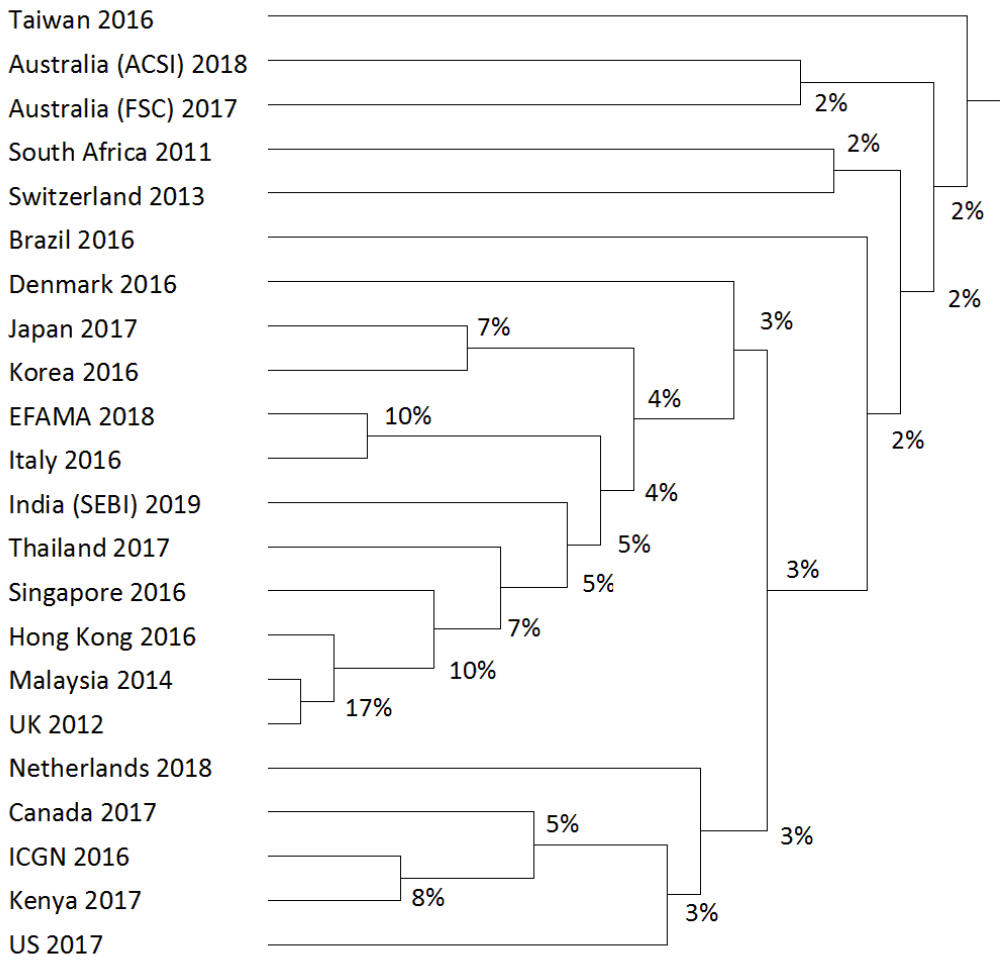
97 The Canada 2005 code, however, is still fairly close to the UK 2002 code. See also Table 2 above.

98 See, e.g., Anuška Ferligoj, Patrick Doreian and Vladimir Batagelj, 'Positions and Roles' in John Scott and Peter J. Carrington (eds.), *The SAGE Handbook of Social Network Analysis* (Sage, 2011); David Knoke and Song Yang, *Social Network Analysis* (2nd edn, Sage 2008).

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observations are clustered together, observations and clusters are merged until the sample is allocated into two groups that constitute the top of the hierarchy'.[99]

Figure 3: Hierarchical cluster of current codes



Specifically, Figure 3 uses hierarchical clustering of the current versions of the stewardship codes enacted by different issuers and in force in December 2019.[100] The previous versions of the codes were excluded since they are often very similar to current versions by the same issuer (and thus, they would dominate the cluster analysis and make all other possible clusters disappear). Thus, a limitation of this figure, compared to the network, is that it does not include information about the older codes that had been more similar to the other codes: for example, in Figure 2 (as well as Table 2), it can be seen that

[99] Michael Graff, 'Law and Finance: Common-law and Civil Law Countries Compared - An Empirical Critique' (2008) 75 *Economica* 60, 72.

[100] Thus, for the UK, we use UK 2012, not UK 2020. For India, we use the most recent code, India (SEBI) 2019. See also text accompanying n 77 above.

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EFAMA 2011 and India (IRDAI) 2017 had been closer to the UK codes than the more recent EFAMA and India codes; thus, here we observe a divergence over time from the UK 2012 model.

As with the network, the cluster analysis uses the percentages of common strings (in order not to reward or penalise according to the size of the codes). Yet, hierarchical clustering requires a symmetric matrix: for this reason, the data have been symmetrised averaging both sides of the matrix. These numbers showing the degree of similarity have then also been added to Figure 3: for example, it can be seen that Malaysia 2014 and UK 2012 are 17% similar, this being the average of the percentage numbers reported in Table 2 above.

In substance, the clusters based on low similarities of 3% or less should best be disregarded. Considering the codes only connected through such low-ranked scores, this includes all the isolated nodes of the network of Figure 2. Figure 3 shows that the main clusters are the ones of the UK and the Asian common law countries (Malaysia, Hong Kong and Singapore), thus here too confirming the network of Figure 2. This is then followed by Thailand 2017, and then subsequently India (SEBI) 2019, EFAMA 2018 and Italy 2016 (which also form a cluster), and then Japan 2017 and Korea 2016 (also a separate cluster).

A further way of analysing the position of codes within the network is to examine the 'coreness' of each node,[101] using the same information about current codes as in the cluster analysis performed above. Here, the UK 2012 has the highest value of coreness, followed by Malaysia 2014, Hong Kong 2016, EFAMA 2018 and Thailand 2017. At the other end, or at the periphery of the network, are South Africa 2011, Brazil 2016, Switzerland 2013, Taiwan 2016 and Australia (FSC) 2017.[102]

Overall, both the cluster analysis and the coreness of each node point again at the central position of the UK 2012 Code in the stewardship network, at the same time as it shows that stewardship diffusion took place among common-law Asian countries. In addition, it confirms the similarities between Italy and EFAMA and between Korea and Japan. To further understand the diffusion processes of stewardship we now turn to analyse the substantive orientation of the principles of the codes.

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[101] For the precise technical definition see Analytictech, 'network > core/periphery > continuous' <http://www.analytictech.com/ucinet/help/1gl1dj.htm> accessed 4 February 2020.

[102] The precise numbers for the 'coreness' of these countries are UK 2012: 0.454; Malaysia 2014: 0.397; Hong Kong 2016: 0.272; EFAMA 2018: 0.249; Thailand 2017: 0.246; and then: South Africa 2011: 0.112; Brazil 2016: 0.110; Switzerland 2013: 0.106; Taiwan 2016: 0.082; Australia (FSC) 2017: 0.076.

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IV. DIFFUSION OF UK-STYLE STEWARDSHIP PRINCIPLES

A. THE PRINCIPLES OF THE UK 2012 CODE ACROSS THE WORLD

One of the key findings of our content analysis so far has been the coreness of the UK 2012 Code in the stewardship network and the language similarities between the UK 2012 code and the codes of Asian common law countries. To further test the impact of the UK 2012 Code on the text of other codes, we use a set of words that are good 'markers' for each of the seven principles of this code (see Table 3) and then count how often these words are mentioned in each of the 41 codes. The choice to focus on the seven principles of the UK 2012 Code is reflective of the UK-inspired principles-based approach to corporate governance and stewardship that motivated many to talk about the 'the seven magic stewardship principles'.[103]

Table 3: 'Marker' words for principles of UK Stewardship Code 2012

Principle		Word
1	Institutional investors should publicly disclose their policy on how they will discharge their stewardship responsibilities.	*disclos*
2	Institutional investors should have a robust policy on managing conflicts of interest in relation to stewardship which should be publicly disclosed.	*conflict*
3	Institutional investors should monitor their investee companies.	*monitor*
4	Institutional investor should establish clear guidelines on when and how they will escalate their stewardship activities.	*escal*
5	Institutional investors should be willing to act collectively with other investors where appropriate.	*collect*
6	Institutional investors should have a clear policy on voting and disclosure of voting activity.	*vote*
7	Institutional investors should report periodically on their stewardship and voting activities.	*report*

[103] Dionysia Katelouzou and Henning Jacobsen, *Global Shareholder Stewardship Conference* (23-4 September 2019, Conference report) <https://www.kcl.ac.uk/law/assets/docs/global-shareholder-stewardship-conference-final-report.pdf> accessed 4 February 2020.

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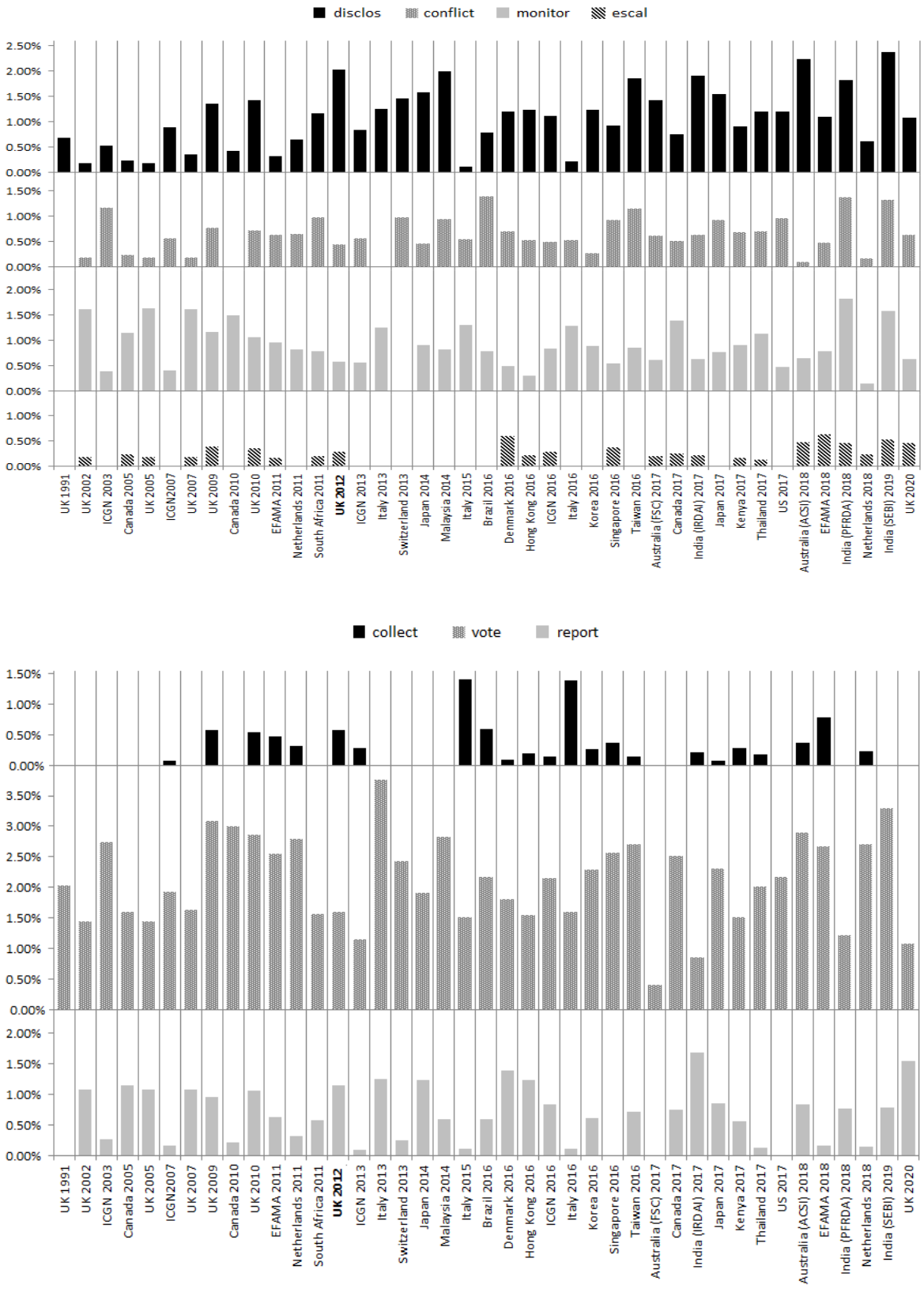
To calculate the frequencies, we first remove all stop-words and decompose all the words in the corpus into their roots,[104] by applying Porter's stemming method.[105] The analysis of the previous section included the recitals and some other preliminary information;[106] by contrast, the present analysis focuses only on the principles-related text of the codes, that is the core principles of each code and the accompanying text (guidance, recommendations, or related commentary).[107]

The most common marker word in the UK 2012 Code is *discl* (14 times), followed by *vote* (11 times), while the least common one is *escal* (2 times). Looking at all the codes, *vote* is the most common word marker (679 times) followed by *discl* (369 times), while *escal* is the least one (61 times). To some extent, such differences may reflect that some of the marker words (such as *vote*) are of a more general nature while others are more specific ones. Yet, we suggest that they reflect differences in substance. Voting is considered as an essential aspect of stewardship activities and the exercise of voting rights is a key expression of shareholders' rights and recognition of shareholders' responsibilities. On the other hand, while Principle 4 of the UK 2012 Code asks from the investors to establish clear processes on escalating their stewardship activities, especially when there are concerns about risks to long-term value, escalating engagement (for instance, through voting against managerial resolutions, requesting a general meeting, or proposing changes to board membership) is not advocated by seventeen other codes who adopt a more consensus-style language.

[104] For instance, 'disclosure' and 'dislcos' are collapsed to the same word 'disclos' for frequency counting.
[105] M F Porter, 'An algorithm for suffix stripping' (1980) 14 *Program* 130.
[106] See Part III.B above.
[107] See also Table A.1 of the Annex on the word count of the codes according to this measure.

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Figure 4: Relative frequencies of seven stewardship principles



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Figure 4 presents the results in detail in a chronological order. A common feature of all stewardship codes is that investors are expected to disclose information about their stewardship policy along with other policies (including conflicts of interests and voting). Out of the 41 codes examined, India (SEBI) 2019, Australia (ACSI) 2018 and UK 2012 are the three codes that refer most frequently to disclosure obligations, while the Malaysian, Taiwanese and the two first Indian (IRDAI 2017 and PFRDA 2018) codes also have very close frequencies to the UK 2012 Code, adding more evidence to the earlier Asian common law cluster.[108] Interestingly, earlier stewardship initiatives, including the first four versions of the UK Code, the two first Canadian codes, EFAMA 2011 and the first two Italian codes make less reference to disclosure. Stewardship codes, similar to corporate governance codes, are disclosure-based regulatory mechanisms which rely on transparency to encourage good stewardship practices. One would therefore expect that codes that emphasise on disclosure would also emphasise on reporting requirements (i.e. *report*). Indeed, India (IRDAI) 2017 is the code with the most frequent reference to reporting requirements also makes frequent references to disclosure. The UK 2012 Code itself also frequently refers to both disclosure and reporting obligations. However, earlier codes, such as UK 2002, 2005 and 2007 as well as Canada 2005, seem to emphasise on reporting rather than disclosure. An exception here is the UK 2020 Code which despite being the most recent code, it makes more frequent references to reporting rather than disclosure obligations, perhaps because its unique emphasis on the investment side of stewardship and the duties of institutional investors to their clients and beneficiaries.[109] But in overall, Figure 4 shows that *disclos* only became more frequent much later in 2012 or so and this may indicate a stronger emphasis on public disclosure.[110]

All but three codes (UK 1991, Canada 2010 and Italy 2013) include a principle relating to how institutional investors manage conflicts of interests that may affect their stewardship activities. In general, *conflict* appears less frequently in most codes,[111] perhaps due to its supporting nature to the rather overarching stewardship policy.

Monitoring of investee companies is recognised as an essential part of shareholder stewardship and all codes (except the very first UK Code and the Swiss one) mention the word *monitor* at least once. Monitoring includes both informal and formal activities,

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[108] See Part III.C above.

[109] On the investment side of stewardship see Katelouzou (n 17) above.

[110] We do not claim this increase of *dislcos* over time is only and necessarily attributed to the impact of the UK 2012 code. There has been a great emphasis on disclosure over the last decades, partly because of the spread of corporate governance codes; so it is likely that these general trends also explain the more frequent use of the word 'disclose' over time.

[111] An exception here is the Brazil 2016 code which mentions *conflict* 7 times and links the policy on conflicts of interest with other hard law requirements that protect the interests of the end beneficiaries. Other codes that mention conflict frequently are the India (PRFDA) 2018 and India (SEBI) 2019 codes.

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ranging from dialogue to attending annual general meetings. Despite the widely accepted merits of shareholder monitoring, the UK 2012 Code mentions *monitor* less frequently compared to all the earlier versions of the code (except the 1991 one). This suggests a gradual shift from a monolithic, corporate governance-inspired view of stewardship as a corporate governance tool of shareholder discipline to a more holistic approach to the responsibilities of equity-owning institutional investors,[112] and is associated with a movement away (at least in the UK) from stewardship as solely focusing on shareholder engagement.[113] But this untangling of stewardship from shareholder monitoring and engagement is not taking place outside the UK. Rather, the two more recent Indian codes (i.e. India (PRFDA) 2018 and India (SEBI) 2019) make more frequent references to *monitor* compared to the earlier India (IRDAI) 2017 Code.

Associated with this trend is the fact that *escal* (the word marker for escal-ation, escal-ate) is the least frequent word across all the codes. This refers to a set of best practices on when and how investors might take action when their monitoring or engagement reveal concerns about a company that are not appropriately addressed by its management. The UK 2012 Code ranks 10th, while EFAMA 2018 makes the most frequent reference to this principle, followed by Denmark and India (SEBI) 2019. 17 codes, including the earlier EFAMA Code, all the Italian codes, the two Japanese codes and the Korean and Malaysian codes, make no reference to the word *escal.* This is due to the way escalation of shareholder engagement and more aggressive forms of shareholder activism are perceived by different local markets. The Japanese codes, for instance, adopt a gentler language emphasising on 'constructive engagement' and dialogue, reflecting perhaps the 'internalist', 'firm-centric' focus of the alternative Japanese conception of the company as an organisation or a 'community'.[114]

Collect, the word marker for Principle 5 of the UK 2012 code, is also not well-perceived across the various codes. 18 codes, including all the Canadian codes, the four earlier versions of the UK Code, the 2014 version of the Japanese code, the two latest India codes and the 2020 UK Code, do not make any reference to shareholder collective action.[115] Similar to escalating activity, many codes prefer not to endorse collective engagement by institutional investors (there are eight codes that do not include any of

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[112] See further Dionysia Katelouzou, 'Shareholder Stewardship: A Case of (Re)Embedding Institutional Investors and the Corporation?' in Beate Sjåfjell and Christopher M. Bruner (eds), *Cambridge Handbook of Corporate Law, Corporate Governance and Sustainability* (CUP, 2019) 581-595.

[113] See also Davies (n 48) above.

[114] On the limits of hedge fund activism in Japan, see John Buchanan, Dominic Heesang Chai and Simon Deakin, *Hedge Fund Activism in Japan: The Limits of Shareholder Primacy* (CUP, 2012).

[115] But note that some codes, including the UK 2020, the India (SEBI) 2019 and the India (PFRDA) 2018 make references to collaborative rather than collective engagement. For the rationale behind this changing terminology in the UK, see Katelouzou (n 17) above.

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these two word markers). However, it is interesting to note that unlike the relatively low frequencies of *escal* across all codes, the most recent Italian codes mention *collect* 13 times each. This emphasis on shareholder collective action in the Italian context is not surprising if one considers the strategic role of *Assogestioni*, the issuer of the Italian stewardship principles, in facilitating collective engagement by institutional shareholders especially in relation to the appointment of a minority of the members of the management and the statutory auditors' boards.[116] Outpaced only by Italy 2015 and Italy 2016, EFAMA 2018 also refers to collect very often, which adds further support to the cluster identified above.[117]

Finally, all 41 codes, following Principle 5 of the UK 2012 Code, require institutional investors to develop a policy for voting. Among the codes that mention v*ote* most frequently are Italy 2013, India (SEBI) 2019, UK 2009, Canada 2010 and Australia (ACSI) 2018. While *vote* is the most frequent word marker in the UK 2012 Code itself, *vote* is mentioned more frequently in some of the previous versions of the code (that is, the 2009, 2010, 1991, and 2007 versions), and the UK 2012 Code ranks 30th in the frequency of this word marker. Interestingly, even though the importance attributed to the exercise of voting rights by institutional investors is such that there is no single code that does not mention the word *vote* at least once, it seems that more recent stewardship codes, such as the UK 2020 Code, place less emphasis on voting perhaps because of their expansive scope. But on the antipode is the India (SEBI) 2019 Code which makes the second most frequent reference to *vote* after the Italian 2013 Code. This may be striking as the other two Indian codes (i.e. India (PRFDA) 2018 and India IRDAI 2017) rank 37th and 41st in the frequency of the word marker *vote*, but it may be explained by the detailed guidance provided by the latest Indian code in relation to Principle 5 on voting policy and disclosure.[118]

B. UNDERSTANDING THE DIFFUSION PATTERNS

Our findings so far have revealed different diffusion patterns for the seven key principles of the UK 2012 Code. To understand these patterns, we now take into account a selected number of possible explanatory categories related to both the characteristics of the codes and the country of the code (thus, for the latter we exclude the ICGN and EFAMA codes).

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[116] On this coordination role performed by Assogestioni, see Strampelli (n 55) above.
[117] See Part III.C above.
[118] The Guidance to Principle 5 includes 22 references to the word marker *vote*. In total the India (SEBI) code refers to *vote* 28 times.

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Table 4 contains an overview of the categories with the precise coding available in the Annex.[119]

Table 4: Possible Explanatory Categories

Category	**Explanation**	**Source**
Type of the issuer	Private (1) or public (0) issuer. 'Public' is assumed if issuer was entirely composed of persons representing the state (including state-owned entities)	Own coding
Other languages	Codes that have also been published in another language (1); otherwise (0)	Own coding
Nature of code	Code (1) or preliminary initiative (0), see III.A above for details	Own coding
Enforcement mode	Categorical variable with (0) for codes of an entirely voluntary nature, (1) for codes following a 'comply or explain' approach and (2) for codes that have a mandatory element for a specific group of investors	Own coding
Legal family	Common law (1) or civil law (0), as defined in the comparative private law	Own coding
Global financial centre	Countries with cities that feature in the top 20 global financial centres (1); otherwise (0)	Long finance[120]

First, stewardship codes around the world emanate from different issuers, and this can influence the content and innovation of a code. Even though the codes' issuers can be classified into alternative categories,[121] we divide the stewardship codes into two groups based on the type of the issuer: public ones where the code's issuer is entirely composed of regulators or quasi-regulators and committees acting on behalf of the state, including

[119] Table A.2 of the Annex.

[120] Financial Centre Futures, 'The Global Financial Centres Index 20' (September 2016) <https://www.longfinance.net/media/documents/GFCI20_26Sep2016.pdf> accessed 4 February 2020.

[121] See e.g. Jennifer G Hill, 'Good Activist/Bad Activist: The Rise of International Stewardship Codes' (2018) 41 *Seattle University Law Review* 497 (grouping the stewardship codes into three categories depending on the issuer).

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state-owned entities,[122] and private ones which are initiated by entirely private industry participants, investor-related groups or associations and international organisations. The UK is only country where the type of issuer has shifted over time, but in other countries many issuers coexist at the same time.[123]

Next, we take into account whether the code has also been published in a language other than English. Due to our focus on linguistic diffusion, it is possible that such codes may use different words than the ones only written and published in English. A similar way of presenting this criterion may be whether English is the original or the translated language of a code. Yet, it cannot be excluded that in some of the non-Anglophone countries the two language versions of the code were co-drafted,[124] given that international (and Anglophone) investors are often the main audience of these codes. Thus, while it is possible that this criterion plays a role, it may also be the case that the unknown drafting history, as well as unknown differences in the mode of any translation,[125] influence any linguistic differences between these two groups of codes.

We also hypothesise that the nature and enforcement mode of the codes are, in most instances, decided before the drafting of substantive details (reflected in the word patterns). Thus, we distinguish between preliminary initiatives and codes based on the three previously mentioned criteria (drafting style, content and scope), as explained previously.[126] With respect to the enforcement mode,[127] even though stewardship codes, similar to corporate governance codes, are in general non-binding and fall into the category of soft rather than hard law, they vary in terms of their coerciveness.[128] Some codes, such as Brazil 2016 or Canada 2017, are completely voluntary, while others, such as Taiwan 2016 and Japan 2017, adopt the 'comply-or-explain' approach and have more coercive implications than traditional regulatory theories suggest. Other codes have

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[122] This includes Malaysia and Singapore given that various public bodies (Malaysia) and the country's sovereign wealth fund (Singapore) were the entities behind the issuer of these codes. See also Petrina Tan Tjin Yi, 'Institutional Investor Stewardship in the UK and Malaysia: Functionally Similar, Contextually Different' (December 18, 2018). NUS Law Working Paper No. 2018/032 <https://ssrn.com/abstract=3302969> accessed 16 March 2002 and Puchniak & Tang (17) above.

[123] See Table A.2 of the Annex for details.

[124] As done is some multilingual jurisdictions, see e.g. Silva Ferreri, 'Law, Language and Translation in Multilingual Contexts' (2015) *King's Law Journal* 271.

[125] In particular, whether the translation follows a functional or more literal mode. For references to the literature see Siems (n 33) 130-1.

[126] See Part III.A above.

[127] See also Dionysia Katelouzou and Konstantinos Sergakis 'Enforcement and Shareholder Stewardship: Perspectives from the EU' in in Dionysia Katelouzou and Dan Puchniak (eds) *Global Shareholder Stewardship: Complexities, Challenges and Possibilities* (CUP forthcoming).

[128] On the coercive elements of soft legal norms, see Dionysia Katelouzou and Peer Zumbansen, 'Corporate Governance as a Transnational Regulatory Concern: Charting the New Political Economies of Corporate Law Production' (2020) (in submission).

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different elements of coerciveness but equally cannot be flouted without consequences: for instance, India (SEBI) 2019 is mandatory for its members, the comply-or-explain approach of UK 2012 is mandatory for FCA-authorised asset managers, while UK 2020 adopts an 'apply and explain' approach, also on a mandatory basis for FCA-authorised asset managers.[129]

For the country-specific codes, we also divide them into civil and common law countries, given that legal families can be a possible source of policy diffusion.[130] We use the mainstream classification of the comparative private law scholarship;[131] thus, for example, Japan has been classified as a civil law country, despite having also been influenced by US law in some fields. This criterion largely matches the previous one given that all codes that have also been published in a language other than English are the codes of civil law countries. Yet, it excludes the non-country-specific codes (i.e. the ICGN and EFAMA codes). Finally, for the country-specific codes, we classify countries as having one or more cities that feature in the top 20 global financial centres, given that the pressure by institutional investors may have shaped the language and substantive orientation of these codes.

Next, we aim to determine if there is a significant difference between the means of any two groups by calculating t-test statistics for the six explanatory categories (Table 5).[132] The observations are for the codes enacted after the UK 2012 Code; if the same issuer has enacted more than one code, we use the most recent code (relevant for Italy, Japan and ICGN), given that codes by the same issuer would not be independent of each other;[133] thus, the overall number of observations is 21. Given this low number of observations (as well as possible endogenous nature of some of the variables), we cannot claim that the subsequent findings are of a causal nature; yet, they do show some interesting patterns.

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[129] However, while in theory the FCA could disqualify the FCA-authorised asset managers that do not comply with the UK stewardship code, no action has been taken so far and it is unlikely that public enforcement will gain any importance in the context of stewardship. See, further, Katelouzou and Sergakis (n 128).

[130] Cf. Holger Spamann, 'Contemporary Legal Transplants – Legal Families and the Diffusion of (Corporate) Law' (2009) *Brigham Young University Law Review* 1813.

[131] For an overview see Siems (n 33) 88-92; for criticism see ibid 94-109.

[132] For the categorical enforcement variable, we test for each of the categories whether it is different from the other two categories.

[133] Therefore, we also exclude the UK 2020 code. As India (PRDFA) 2018 and India (SEBI) 2019 are very similar (see Part III.B above), we only consider India (SEBI) 2019, together with India (IRDAI) 2017.

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Table 5: Tests of group differences between post-2012 codes

Keywords	**Group category**	**Difference and means**	**p-value and significance level**[134]
Disclos	Nature of issuer	Public > private (0.0151 vs. 0.0110)	0.0853*
Conflict	Nature of issuer	Public > private (0.0085 vs. 0.0058)	0.0844*
Monitor	Enforcement	Mandatory > others (0.0110 vs. 0.0070)	0.0840*
Escal	Other language	No > Yes (0.0028 vs. 0.0010)	0.0660*
Collect	[none]		
Vote	[none]		
Report	Nature of issuer	Public > private (0.0080 vs. 0.0039)	0.0490**

Table 5 shows that none of the six explanatory categories can explain the differences across the codes in the use of the words *collect* and *vote*. The nature of issuer has an impact on the frequency of the words *disclos*, *conflict* and *report*: we find that codes issued by public bodies focus more on stewardship-related disclosure, conflicts of interests, and reporting requirements. For the disclosure and reporting requirements this may be due to the fact that public issuers which have the role to improve the business improvement and encourage good stewardship activities pay an increasing attention to disclosure and transparency and may consider such codes within their enforcement activities even if they do not have the means to effectively enforce any disregard of the disclosure and reporting obligations.[135] For *conflict* it is less clear why this variable is significant; possibly, it may be due to the fact that public authorities have a particularly strong interest in preventing conflict of interests. More generally, it can be noted that the nature of the issuer is the variable with the most impact, probably because public issuers are more likely to copy the already established UK 2012 Code (also having been developed by a public issuer).

The word *monitor* is more often used in codes that have a mandatory element. This may be due to the emphasis of such codes on engagement activities, but it is also likely that this is due to the diffusion of the monitoring norm from the UK coercive code to other similarly coercive codes, prominently in India and Australia. Finally, escalation is found more often in codes only available in English, possibly since '*escalate*' is an English term

[134] * = 10%, ** = 5% significance level.

[135] Consider, e.g., Stewardship Asia, the issuer of the Singapore 2016 Code, which even though has been categorised as public issuer for the purposes of this study, does not have any enforcement powers. See further Puchniak and Tang (n 17).

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less commonly used than the other words, and thus, non-native speakers (or translators) may tend to avoid it.

It is also noteworthy that the categories about the nature of the code, legal families and the global financial centre are insignificant for any of the marker words: thus, to phrase it in a positive way, it cannot be said that the diffusion of stewardship principles is obstructed by the diverse nature of a code, the civil/common law divide and the diversity of financial centrality.

C. IS THE UK A STEWARDSHIP EXPORTER?

The previous subsection observed that the UK principles relating to escalation activities and collection action seem to have travelled less successfully compared to the other principles of the UK 2012 Code. It is the aim of this subsection to explore in more detail whether, based on the seven marker words, the UK can be considered as a stewardship exporter.

Table 6: Coverage of principles at level equivalent to UK Code 2012

disclos	*conflict*	*monitor*	*escal*	*collect*	*vote*	*report*
Brazil 2016	Australia (ACSI) 2018	Netherlands 2018	Brazil 2016	Australia (FSC) 2017	Australia (FSC) 2017	Australia (FSC) 2017
Canada 2017	Netherlands 2018	Switzerland 2013	Italy 2016	Canada 2017	India (IRDAI) 2017	EFAMA 2018
Italy 2016	Korea2016	Denmark 2016	Japan 2017	Denmark 2016	India (PFRDA) 2018	Italy 2016
Kenya 2017	Australia (FSC) 2017	Hong Kong 2016	Korea2016	Hong Kong 2016	US 2017	Kenya 2017
Netherlands 2018	Brazil 2016	US 2017	Malaysia 2014	ICGN 2016	Australia (ACSI) 2018	Netherlands 2018
Singapore 2016	Canada 2017	Australia (ACSI) 2018	Switzerland 2013	India (IRDAI) 2017	Brazil 2016	Singapore 2016
Australia (FSC) 2017	Denmark 2016	Australia (FSC) 2017	Taiwan 2016	India (PFRDA) 2018	Canada 2017	Switzerland 2013
Denmark 2016	EFAMA 2018	Brazil 2016	Australia (FSC) 2017	India (SEBI) 2019	Denmark 2016	Thailand 2017
EFAMA 2018	Hong Kong 2016	Canada 2017	Canada 2017	Japan 2017	EFAMA 2018	Australia (ACSI) 2018
Hong Kong 2016	ICGN 2016	EFAMA 2018	Hong Kong 2016	Kenya 2017	Hong Kong 2016	Brazil 2016
ICGN 2016	India (IRDAI) 2017	ICGN 2016	India (IRDAI) 2017	Korea2016	India (SEBI) 2019	Canada 2017
Japan 2017	India (PFRDA) 2018	India (IRDAI) 2017	Kenya 2017	Malaysia 2014	ICGN 2016	ICGN 2016
Korea 2016	India (SEBI) 2019	India (PFRDA) 2018	Netherlands 2018	Netherlands 2018	Italy 2016	India (PFRDA) 2018
Switzerland 2013	Italy 2016	India (SEBI) 2019	Thailand 2017	Switzerland 2013	Japan 2017	India (SEBI) 2019
Taiwan 2016	Japan 2017	Italy 2016	Australia (ACSI) 2018	Taiwan 2016	Kenya 2017	Japan 2017
Thailand 2017	Kenya 2017	Japan 2017	Denmark 2016	Thailand 2017	Korea2016	Korea2016
US 2017	Malaysia 2014	Kenya 2017	EFAMA 2018	US 2017	Malaysia 2014	Malaysia 2014
Australia (ACSI) 2018	Singapore 2016	Korea2016	ICGN 2016	Australia (ACSI) 2018	Netherlands 2018	Taiwan 2016
India (IRDAI) 2017	Switzerland 2013	Malaysia 2014	India (PFRDA) 2018	Singapore 2016	Singapore 2016	Denmark 2016
India (PFRDA) 2018	Taiwan 2016	Singapore 2016	India (SEBI) 2019	Brazil 2016	Switzerland 2013	Hong Kong 2016
India (SEBI) 2019	Thailand 2017	Taiwan 2016	Singapore 2016	EFAMA 2018	Taiwan 2016	India (IRDAI) 2017
Malaysia 2014	US 2017	Thailand 2017	US 2017	Italy 2016	Thailand 2017	US 2017

Shadings refer to:	>90%	50-90%	<50%

Table 6 sheds light on this question by presenting the differences in coverage of the seven marker words between the UK 2012 Code and its 22 subsequent counterpart

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codes.[136] It divides the frequencies (see Figure 4, above) into three categories that provide a comparison to the UK 2012 Code. The highest category (>90%) refers to instances where there is strong evidence of UK influence; the intermediate category (50-90%) refers to instances where some influence may be assumed, while the final category (<50%) shows cases of little influence.

It can be seen that *conflict*, *monitor* and *vote* are the categories where the UK influence has been pronounced for all but few codes. For *disclos*, *escal* and *report,* the evidence of UK influence is mixed,[137] while least influence is noticeable for *collect*. This suggests that while facilitating collective engagement by institutional investors has been championed by UK policymakers, expanding the opportunities for collective action has not been promoted by other stewardship codes, especially those developed in countries where public companies are dominated by family or state ownership, such as Hong Kong and Malaysia, or 'silent' shareholders with distaste for confrontation and criticism, such as potentially in Japan.[138]

Table 7: Ranked similarity to UK Code 2012 (with 'overcompliance' disregarded)

Rank	Average similarity for keywords		*Comparison: similarity to UK Code based on similarity of strings*[139]
1	India (SEBI) 2019	81.17%	*7.38% (rank 6)*
2	EFAMA 2018	81.11%	*9.20% (rank 4)*
3	Denmark 2016	80.39%	*5.93% (rank 10)*
4	Australia (ACSI) 2018	79.74%	*5.10% (rank 11)*
5	India (IRDAI) 2017	79.51%	*19.46% (rank 1)*
6	ICGN 2016	78.09%	*3.65% (rank 14)*
7	India (PFRDA) 2018	76.15%	*7.01% (rank 7)*
8	Hong Kong 2016	74.16%	*14.43% (rank 3)*
9	Singapore 2016	72.02%	*8.34% (rank 5)*
10	Kenya 2017	70.70%	*3.77% (rank 13)*

[136] As in Part IV.B above, we only take into account one code per issuer, which is the most recent one, with the exception of the UK. As we are interested in the impact of UK 2012 on other countries, we exclude UK 2020.

[137] Note that in Part IV.A above, the influence of *escal* appeared even less pronounced since this section also included the pre-2012 codes as well as multiple codes per issuer.

[138] On the antagonism of the Japanese code to collective action, see Ken Kokugo and Alicia Ogawa, 'The Unfinished Business of Japan's Stewardship Code' (Columbia Business School, Center on Japanese Economy and Business, Working Paper Series July 2017). Yet, the position of such cultural difference of Japan is contentions; see overview of the debate in Siems (n 33) 161-163.

[139] Based on the average as used for the clusters, see Part III.C above.

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11	Brazil 2016	70.03%	*2.99% (rank 17)*
12	Canada 2017	69.91%	*6.32% (rank 9)*
12	Taiwan 2016	68.22%	*1.74% (rank 21)*
14	Japan 2017	66.08%	*6.93% (rank 8)*
15	Malaysia 2014	64.22%	*16.77% (rank 2)*
16	Thailand 2017	63.77%	*5.30% (rank 11)*
17	Korea 2016	60.15%	*3.32% (rank 15)*
18	Italy 2016	59.96%	*2.20% (rank 20)*
19	Australia (FSC) 2017	52.48%	*1.15% (rank 22)*
20	US 2017	48.91%	*2.78% (rank 18)*
21	Netherlands 2018	46.54%	*3.05% (rank 15)*
22	Switzerland 2013	41.80%	*2.67% (rank 18)*

Next, we calculate the overall similarity of the 21 (subsequent) codes to the UK 2012 Code. The ranking of Table 7 is based on the difference between the UK 2012 Code and the other codes in each of the categories. For the purposes of the ranking, a code that is more than 100% similar to the UK one (because it refers to a particular principle more often) is capped at this number (i.e. it is not rewarded or penalised). For purposes of comparison, Table 7 also includes the ranking of the similarity to the UK 2012 Code based on the similarity of strings. Both rankings are moderately correlated.[140]

Both EFAMA 2018 and ICGN 2016 rank highly, perhaps because transnational codes tend to provide an overarching model for best corporate governance practices. From the country-specific codes, the India (SEBI) 2019 Code appears to be the most similar to the UK 2012 Code, followed by EFAMA 2018 and the Danish code. The two other Indian codes, the Singapore and the Hong Kong codes also rank highly, confirming the earlier findings about the similarities in the content between these codes and the UK Code.[141] From the top ranked codes the similarity between the Danish and the UK 2012 codes may surprise the reader especially since the language used by the Danish code (based on the similarity of strings) is not so similar to that of the UK 2012 Code.[142] But this textual disparity may be attributed to the translation process, and the similarity of the Danish principles to those in the UK code aligns with the fact that the Danish code explicitly cites the UK Code.[143]A further key disparity concerns the Malaysian code, which even though it is drafted in a way similar to the UK 2012 Code, only ranks 15th when it comes to the

[140] The Spearman rank correlation is 0.6279.
[141] See Part III.C above.
[142] See Part III.C above.
[143] See Part III.A. above.

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specific principles mainly because the principles of escalating activity and shareholder collective action have not been adopted. The US, Dutch and Swiss codes are the codes that were influenced the least by the UK stewardship principles. The Dutch Code, for instance, has 11 principles, among which are principles on communicating with relevant stakeholders and not borrowing shares, both of which are absent from the UK 2012 Code.

Finally, we calculate the t-test statistics for all the six explanatory categories of Table 5 with the aim of determining if the ranking of Table 7 exhibits significant group differences.[144] We find that only the nature of issuer and the availability in a language other than English are significant at the 10% level ($p = 0.0690$ and 0.0820). Public issuers have a higher mean similarity (72.02%) than private issuers (62.61%). This may be due to the fact that public issuers around the world are more likely to draft codes on the basis of pre-existing public codes, while private codes may be more irregular as they are shaped by diverse types of issuers. Codes not available in another language (in other words: the codes of the Anglophone countries and the ICGN and EFAMA codes) have a higher mean of similarity (71.00%) compared to the other codes (61.88%), plausibly because some of the translated codes may use linguistically different terms.

All the other categories cannot explain the diffusion patterns. This is in line with our previous findings and confirms that, for example, the divide between legal families and between financial centres and periphery cannot be said to have promoted or obstructed the diffusion of stewardship principles.

V. CONCLUSION

We confirm in this paper a conclusion made many times in the emerging stewardship literature: within a mere decade since the first UK Stewardship Code, shareholder stewardship has rapidly become a popular concept among policymakers, private standard-setters, companies and investors around the globe. Employing the method of content analysis and using information from 41 stewardship codes,[145] this paper has shown that there is in reality both uniformity and diversity between these codes.[146]

Three of our main findings are as follows: first, while some overall formal (textual) diffusion can be observed especially among former British colonies in Asia, stewardship has travelled in non-linear ways and has often been vernacularised or adapted to local

[144] As in Part III.B. above, this is based 21 observations, see also n 133, above.

[145] It is noteworthy, however, that compared to the widespread adoption of corporate governance codes, only a minority of countries have adopted what we defined at the beginning of this paper as stewardship codes, either preliminary stewardship initiatives or codes in the narrow sense. See Part III.A above.

[146] Further on diversity, see Katelouzou & Puchniak (n 29).

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contexts.[147] For instance, Japan has adopted a 'milder and more nuanced' version of the UK 2012 Code. While the English version of the Japanese Code uses the same word 'monitor', the original Japanese version requests investors to 'properly grasp the circumstances of investee companies'.[148]

Second, even though diffusion processes are too varied and complex to be reduced to a direct one-way transfer,[149] among the seven key stewardship principles of the UK Code, most of them have diffused widely, while the principles on escalating engagement activities and collective action are the least travelled. Our findings also support the claims about the way UK-originated norms have been renegotiated at the local context, with the possibility of 'faux convergence'.[150] In other words, even when codes are drafted in a similar way to the 'good' UK stewardship standards, as is the case of the Malaysian and Singapore codes, they do so on a superficial level often omitting key UK stewardship principles.

Third, there is no strong legal family effect on the diffusion patterns. While we find support for the diffusion of the UK stewardship model to common law countries in Asia, we also find (i) evidence of diffusion from the UK to a number of civil law countries (notably Japan and Denmark), (ii) impact of the transnational EFAMA and ICGN codes on a number of codes (notably Italy, Malaysia and Kenya), (iii) a regional cluster in Asia across the legal family divide (namely with Thailand, Japan and Korea showing some similarity to the common law countries), as well as (iv) some idiosyncratic results (e.g. the US and one of the Australian codes being very different from the UK model). Thus, as in other fields of business law,[151] conventional paradigms such as the legal family divide seem to be weakening.

Following on from these findings, future research can further enhance our understanding of diffusion in the area of stewardship norms. From a technical perspective, the text of the codes could be analysed with further tools,[152] and it may also be possible to consider the non-English language version of the codes.[153] From a broader perspective, future research can follow the insight that stewardship may mean something different for

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147 See generally Amitav Acharya, 'How Ideas Spread: Whose Norms Matter? Norm Localization and Institutional Change in Asian Regionalism' (2004) 58 *International Organization* 239-75.

148 Goto (n 49) 385

149 Twinning (n 36).

150 See Goto Koh & Puchniak (n 40).

151 See Dionysia Katelouzou and Mathias Siems, 'Disappearing Paradigms in Shareholder Protection: Leximetric Evidence for 30 Countries, 1990–2013' (2015) 15 *Journal of Corporate Law Studies* 127.

152 E.g., measures of cosine similarity between texts and applying forms of topic modelling, as used in some studies of content analysis, e.g., Jansa et al (n 63).

153 See Table A.2 of the Annex.

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different types of companies and investors. For example, the practice of stewardship at the firm level may be analysed to see how differences in shareholder ownership structure impact the application of the stewardship codes.[154] As Singapore has enacted a separate stewardship code for family businesses,[155] and as there is also soft law for sovereign wealth funds,[156] it may also be suggested that a 'one-size-fits-all model' of stewardship may not be the right way forward.

Finally, the dominant current models may also be subject to change and thus a topic of future research. The transposition of the EU's Shareholder Rights Directive (SRD) II is likely to have an impact on the operability of national stewardship codes in Europe.[157] Furthermore, as the UK Code of 2020 comes into force, it is conceivable that future research may want to track a possible second round of exportation of the revised UK model into the transnational arena.[158] Hence, we expect that, while the future of stewardship norms and practices is not perfectly predictable and diffusion involves various actors, local contexts and complex pathways, stewardship norms and practices will continue to travel globally.

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[154] For such research questions see also Ruth V Aguilera et al, 'Firms' Reaction to Changes in the Governance Preferences of Active Institutional Owners', ECGI Finance Working Paper No. 625/2019, <https://ssrn.com/abstract=3411566> accessed 15 March 2020; Florencio Lopez de Silanes et al, 'ESG Performance and Disclosure: A Cross-Country Analysis', ECGI Law Working Paper No. 481/2019, https://ssrn.com/abstract=3506084 accessed 15 March 2020.

[155] See (n 17) above.

[156] Notably the 'Santiago Principles' of the International Working Group of Sovereign Wealth Funds'.

[157] See e.g. Dionysia Katelouzou and Konstantinos Sergakis 'Shareholder Stewardship in Europe: When Harmonisation is not Enough' (Working Paper) (advancing a symbiotic relationship between the SRD II transposed rules and the national stewardship codes).

[158] For instance, the Japanese code is currently under revision and it likely to follow the UK 2020 code in its emphasis on ESG. See <https://www.fsa.go.jp/en/news/2019/20191220.html> accessed 14 March 2020.

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VI. ANNEX

Table A.1: Length of Stewardship Codes

Abbreviated name of Code[159]	**Full text (in words)**[160]	**Principles and specific guidance only (in words)**[161]	**As previous column but excluding stopwords**[162]
Australia (ACSI) 2018	2964	1721	1074
Australia (FSC) 2017	2640	836	488
Brazil 2016	2184	924	506
Canada 2005	1136	762	436
Canada 2010	1176	778	466
Canada 2017	1984	1348	795
Denmark 2016	3044	1776	1001
EFAMA 2011	1809	1104	629
EFAMA 2018	2254	1110	637
Hong Kong 2016	2232	1810	968
ICGN 2003	1942	1424	769
ICGN 2007	4665	2348	1244
ICGN 2013	7228	3969	2167
ICGN 2016	5062	2452	1441
India (IRDAI) 2017	964	906	473
India (PFRDA) 2018	1413	1129	655
India (SEBI) 2019	1696	1371	760
Italy 2013	984	121	80
Italy 2015	2596	1583	924
Italy 2016	2615	1615	937
Japan 2014	3362	1590	888
Japan 2017	4637	2285	1298
Kenya 2017	3735	2926	1780
Korea 2016	3231	1921	1133
Malaysia 2014	2967	1498	850

[159] See Table 1 in Part II.A, above.
[160] Following the formatting and editing as explained in Part III.B, above.
[161] As explained in Part IV.A, above.
[162] As explained in Part IV.A, above.

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Netherlands 2011	2583	1079	611
Netherlands 2018	3709	2220	1297
Singapore 2016	1828	952	544
South Africa 2011	2406	982	512
Switzerland 2013	1943	733	413
Taiwan 2016	2146	1220	702
Thailand 2017	3819	2666	1585
UK 1991	1474	261	148
UK 2002	1462	1001	558
UK 2005	1465	985	552
UK 2007	1392	989	554
UK 2009	1504	962	518
UK 2010	1908	1041	560
UK 2012	2954	1264	691
UK 2020	4331	3016	1755
US 2017	714	704	416

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Table A.2: Coding of Explanatory Categories for Diffusion[163]

Abbreviated name of Code[164]	**Type of the issuer**	**Nature of code**	**Enforce-ment mode**	**Other languages**	**Legal family**	**Global financial centre**
Australia (ACSI) 2018	1	0	0	0	1	1
Australia (FSC) 2017	1	0	2	0	1	1
Brazil 2016	1	1	0	1	0	0
Canada 2005	1	0	0	0	1	1
Canada 2010	1	0	0	0	1	1
Canada 2017	1	1	0	0	1	1
Denmark 2016	0	1	1	1	0	0
EFAMA 2011	1	0	0	0	n.a.	n.a.
EFAMA 2018	1	0	1	0	n.a.	n.a.
Hong Kong 2016	0	1	1	0	1	1
ICGN 2003	1	0	0	0	n.a.	n.a.
ICGN 2007	1	0	0	0	n.a.	n.a.
ICGN 2013	1	1	0	0	n.a.	n.a.
ICGN 2016	1	1	0	0	n.a.	n.a.
India (IRDAI) 2017	0	0	1	0	1	0
India (PFRDA) 2018	0	0	2	0	1	0
India (SEBI) 2019	0	0	2	0	1	0
Italy 2013	1	0	0	1	0	0
Italy 2015	1	0	1	1	0	0
Italy 2016	1	0	1	1	0	0
Japan 2014	0	1	1	1	0	1
Japan 2017	0	1	1	1	0	1
Kenya 2017	0	1	1	0	1	1
Korea 2016	1	1	1	1	0	0
Malaysia 2014	0	1	0	0	1	0
Netherlands 2011	1	0	1	1	0	0
Netherlands 2018	1	1	1	1	0	0
Singapore 2016	0	1	0	0	1	1

[163] For the definition of the categories see Part IV.B, above.
[164] See Table 1 in Part II.A, above.

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South Africa 2011	1	1	1	0	1	0
Switzerland 2013	1	0	1	1	0	1
Taiwan 2016	0	1	1	1	0	0
Thailand 2017	0	1	2	1	0	0
UK 1991	1	0	0	0	1	1
UK 2002	1	0	0	0	1	1
UK 2005	1	0	0	0	1	1
UK 2007	1	0	0	0	1	1
UK 2009	1	1	1	0	1	1
UK 2010	0	1	1	0	1	1
UK 2012	0	1	2	0	1	1
UK 2020	0	1	2	0	1	1
US 2017	1	0	0	0	1	1

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