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## 19. Cross-national diffusion in Europe

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### 19.1 INTRODUCTION

The diffusion of the use of various forms of impact assessments (IAs) in different political settings and legal traditions illustrates its great malleability and the operation of various factors. The adoption and effective implementation of IAs in Europe is nevertheless characterized by a great degree of variability among jurisdictions, despite the considerable influence exercised by the Organisation for Economic Co-operation and Development (OECD) and the European Union (EU), across the European continent (for example, De Francesco 2012; Radaelli 2005; Turnpenny et al. 2008).

This diversity is not only reflected in the adoption of different models of IA across the various jurisdictions examined, but also in the way this practice is effectively implemented. IA usage varies of course within each jurisdiction through time and often depends on the specific policy area in which it is intervening (for example, environment, health, social policy, competition) (Dunlop et al. 2012). There might also be some dissonance between the intended use of IA, as this is proclaimed in the foundational texts, guidelines, legislation, constitutional (or other) provisions that have been put in place in each jurisdiction, and its day-to-day use in the policy-making process. Previous research has established that there are different IA ‘types’ in Europe.<sup>1</sup>

Factors explaining the various types of IA implemented in various European jurisdictions include the patterns of diffusion from one country to another, the interaction of politics with expert knowledge and the prevailing ‘evidence eco-system’ in each jurisdiction (Lianos and Fazekas 2014).<sup>2</sup> We illustrate this phenomenon by exploring diffusion patterns not only in terms of the adoption of IA, but also in terms of the adoption of IA *types*. We do so by introducing a taxonomy developed with the purpose of describing the interaction of politics and expertise in each jurisdiction (Lianos and Fazekas 2014). We then connect the diffusion process with the type of IA prevalent in a jurisdiction.

Empirically, we draw on a unique database of over 2000 IAs produced across Europe in 2006 Q1–2012 Q2 developed by the Gutenberg project at the École Nationale d'Administration, France and at the Centre for Law, Economics and Society at University College London.

## 19.2 IA DIFFUSION

### 19.2.1 Adoption and Implementation

Diffusion consists of (1) adoption and (2) implementation (Adelle and Weiland 2012; see also Chapter 18). Adoption refers to the formal introduction of the IA into the legal system. Implementation may be conceptualized as referring to the stages after the decisional point of adoption or more generally to the 'depth of adoption' (De Francesco 2010), in essence through direct practical experience with IA indicated, among others, by the frequency of its use, the scope of impacts covered, the quality of assessment, its role in the policy-making process and eventually its institutionalization, the latter concept referring to its 'permanence within an organization, enduring through elections and changes in government' (De Francesco 2010, p. 169). The process of implementation of the IA system into a specific organizational and institutional context is prolonged and has several phases (De Francesco et al. 2012). It should not be excluded that the transplantation of IA in political and legal systems that do not present functional equivalents to the system where the transplant originated may produce completely different outcomes, leading to situations of 'diffusion without convergence' (Radaelli 2005).

### 19.2.2 Patterns of Diffusion: A Typology

Diffusion may be vertical, horizontal or both. Vertical diffusion operates through higher levels of governance, for example, through the influence of international organizations or the federal level, when exploring intra-state processes of diffusion. The most important of the former are probably the OECD and the EU. Horizontal diffusion involves interconnectedness of governments when elites communicate and interact, exchanging ideas, solutions and experiences (De Francesco 2012).

There are also different patterns of diffusion:

- Learning resulting from internal (for example, the characteristics of public administration, legal and constitutional frameworks, administrative culture) or external sources (for example,

transnational institutional linkages, government decisional interdependence, epistemic communities) (De Francesco 2010).

- Externalities providing incentives altering the cost-benefit ratios of domestic actors, such as competition among governments for ‘regulatory quality’ (leading them to adopt and implement policy innovations), coercion (when the diffusion of the specific policy innovation results from the use of material or economic power, including asymmetric bargaining imposing conditionality for these reforms, or binding legal norms adopted by supranational institutions), and contractualization (when diffusion results from some form of symmetric bargaining between states, or ‘soft’ international organization influence) (Morin and Gold 2013).
- Socialization among networks of experts and/or administrative elites (De Francesco 2010) leading to ‘the internalization of shared beliefs due to the interaction of actors’ (Heinze 2011, p. 12).
- Emulation indicating the ‘desire (or need) of domestic actors to conform to internationally widespread norms’ in order to ‘increase the legitimacy of policy choices’ (Heinze 2011, p. 12).

Some recent studies have focused on the micro-foundations of trans-border policy diffusion, advancing the importance of the electorate in pushing for the adoption of ‘successful’ policy innovations developed elsewhere (the ‘voter information model’) (Linos 2013). These patterns of diffusion alter the material incentives domestic actors face, for example, through the mechanisms of conditionality and competition, and through the mechanisms of learning and emulation, in some cases various diffusion mechanisms working in parallel.

### **19.2.3 Patterns of Diffusion in the European Continent**

Research on diffusion of policy innovations in the EU (and also OECD) Member States has shown that the decision to adopt IA depends on a number of factors, including the presence of transnational networks, government expenditure and legal origin (De Francesco 2012). The overall results show the important contribution of transnational networks in the diffusion of administrative innovations. The ‘mediative’ role of the OECD (De Francesco 2012, pp. 1296–7), perceived as a forum to facilitate discussion among experts for the best policy solutions, was found to have played a prevalent role in the adoption of IA procedures in various OECD Member States, thus illustrating the vertical dimension of diffusion, in particular through processes of socialization and emulation.

The EU has also operated as an agent of diffusion, the process being channelled by the high-level Mandelkern Group Report on Better Regulation (2001), which recommended the introduction of IA as an integral part of the policy-making process not only at the EU but also at the Member States level.<sup>3</sup> Member States were advised to ‘carry out impact assessments where they use the right of initiative for new legislation’ to ‘submit an impact analysis of draft national rules that they notify to the Commission’ and ‘to define standards for consultation and impact assessment for the transposition of those Directives that leave them broader margins for implementation’, one of the principal aims of the Commission being to improve the quality of national transposing measures (European Commission 2002).

The Commission recognized that to be fully efficient, EU IA practices need to be complemented, ‘where necessary, by equivalent practices in the Member States’ (European Commission 2004a). Developing its better regulation agenda, the Commission recommended Member States to establish national ‘better regulation’ strategies, in particular, IA systems, and encouraged them to aim for a scope of coverage similar to that of the Commission’s integrated impact assessment system (European Commission 2005a).

As a result of this process of diffusion, the declared objectives and motivations for introduction of IAs are usually similar across EU Member States. They primarily focus on improving the quality of regulations (EU, Denmark, France, Poland, UK – for more on the UK, see Chapter 16), reducing administrative burden on business (Netherlands, Denmark), making policies more transparent (Italy) and combinations thereof (see more in European Parliament 2011, pp.44, 45). However, looking to the micro-foundations of diffusion, the incentives domestic actors face in introducing IA may differ in each circumstance. For instance, Croatia had to introduce IA of proposed new policies and legislation in order to receive the Programmatic Adjustment Loan by the World Bank (World Bank 2005). A recommendation of the OECD about improvements in regulation played an important role in the adoption of the IA tool in the Czech Republic (Vitek 2010). In Estonia, the better regulation agenda and the adoption of an IA system resulted from OECD and EU initiatives (Kasemets 2012) that led the Ministry of Justice to create a special IA working group with the task to draft IA guidelines making use of the European Social Fund (Justiitsministeerium 2007, 2008a, 2008b, 2009a, 2009b).

Of particular interest is the vertical process of diffusion by the OECD and the EU in non-EU Member States. The tools for the vertical diffusion of IA at the OECD include technical assistance, reports and training. The EU disposes additional tools and, arguably, more leverage, primarily

through its practice of conditionality with regard to third countries (non-EU Member States). EU conditionality is exercised via the tools of annual progress reports, recommendations, conclusions, opinions, enlargement strategies, association agendas, action plans and so on. Furthermore, the process of integration of third countries into the EU trade system provides the latter a unique leverage over their domestic developments, leading to what some have called 'the Brussels effect' (Bradford 2012), thus providing an illustration of the coercive pattern of diffusion.

The principle of conditionality has played a central role in the promotion of policy and administrative reforms in Central and Eastern Europe (De Ridder and Kochenov 2011) in the last two decades and now in the Western Balkans and beyond. The EU conditionality consists basically in the development of institutional links and the provision of financial and technical aid, as well as, crucially, access to the EU internal market and/or accession to the EU, conditional upon compliance with its various legal, policy and institutional requirements (be these democratic principles, *acquis* and so on) (Maresceau 2001, p. 18). Two types of conditionality may be distinguished: (1) pre-accession conditionality and (2) market access conditionality. The first is applicable to countries that are in the process of accession to the EU (and which have a candidate or potential candidate status); the second, for countries that are not (yet) likely to accede to the EU. Such conditionality, if rightly applied, may have a spill-over effect by leading to the adoption and implementation of IA systems covering all domestic legislation and regulation. One may, however, question the permanence of the implementation of IA in these instances of vertical diffusion, in particular as following eventual accession to the EU, the conditionality incentive loses its clout. This is a topic for further research.

These practices illustrate that the EU's intervention has expanded on issues that do not fall within the narrow scope of the 'acquis' and may even be considered to lay outside its core competences when dealings with the current Member States (De Ridder and Kochenov 2011). The task of preparing the accession of new Member States to the EU was interpreted very broadly, leading to a wider reach of the conditionality principle: not a single aspect of the functioning of the candidate countries was to be regarded as immune from the EU's scrutiny (Kochenov 2005). As long as IA became part of the EU reform agenda, it was added to the EU's outreach to third countries. This has not been the case (at least to the same degree) prior to the accession of the Central and Eastern European countries to the EU. This is understandable as there was no well-developed IA system in the EU at the time.

Candidate countries<sup>4</sup> and potential candidate jurisdictions<sup>5</sup> approximate their legislation to that of the EU (Lazowski 2002). The European

Commission constantly monitors the reform and approximation progress of these jurisdictions using the tools of annual progress reports, recommendations, conclusions, opinions, enlargement strategies, association agendas, action plans and so on. Part of this monitoring covers the adoption and implementation of IA systems, ensuring their quality and applying them to particular policy fields and areas of legislation. The assessment of existing IA systems forms part of *all* reports of *all* monitored countries (however, progress reports for Iceland and Bosnia and Herzegovina refer to environmental impact assessments only). Thus, the 2012 progress report on Turkey notes the lack of progress in developing an IA system with a view of increasing the quality of legislation. The Commission was particularly concerned about the absence of an IA conducted prior to the adoption of some key legislation, for example, the reform of the education system, and stated its concern about its significant costs and impact on quality (European Commission 2012a, pp. 12, 42). A clear condition for introducing environmental impact assessments in order to receive financial assistance was imposed back in 2004 (European Commission 2004b, p. 24). In Croatia, the adoption, implementation and enforcement of IAs were closely monitored during the last pre-accession years (European Commission 2012b, p. 31).

The countries that aspire to become EU Member States, but do not dispose of a candidate or potential candidate status, or even officially pronounced by the EU with the prospect of becoming an EU member, such as Moldova and Ukraine, also approximate their legislation with the EU, and are forerunners of this process in Eastern Europe. IA formed an inherent part of the first EU-Ukraine Action Plan in 2005 requiring Ukraine to '[a]dopt and implement a system of impact assessment of regulatory measures, consultation of stakeholders, and prior notification of regulatory changes to economic operators to ensure transparency (predictability of regulatory environment)' (European Commission 2005b). The action plan also involved the adoption of a system for environmental impact assessments. Later, however, a general system of IA was excluded from the focus of action plans (later called association agendas), only environmental impact assessment being left as a requirement.

### 19.3 THE DATA

Turning to data, the main empirical findings discussed in this section derive from an IA-level database recording key characteristics of each individual text (for a full discussion of data collection, see Lianos and Fazekas 2014). The underlying data collection exercise estimates the total

number of IAs produced between 2006 Q1 and 2012 Q2 in 21 European countries<sup>6</sup> at 26308 IAs, or 179 IAs per year per country. This high average figure is due to a few highly active countries such as Estonia (4681) and the UK (2410). In some countries, no relevant IA activities could be identified during the examined period (such as Belgium, federal level); while in others, data collection and coding could not be carried out (Austria, Portugal and Latvia).

We applied a stratified random sampling with each year-country combination as a stratum that served our goal of analysing both variation across countries and within countries over time. In practice, a random sample was drawn from the identified full list of IAs per country per year. We coded at least 15 IAs per country per year<sup>7</sup> (if there were fewer IAs produced by a given country in the given year our sample was smaller, of course) (Table 19.1).

The coding of each IA followed a predefined coding template of 125 variables organized around the following variable groups (full template in Lianos and Fazekas 2014):

- background variables
- costs
- benefits
- comparison of costs and benefits
- evaluation of alternatives
- methodology – general
- methodology – discount rate and inflation
- presentation, structure
- consultation
- special topics – compliance/implementation
- special topics – health impacts
- special topics – administrative burdens
- special topics – competition assessment
- special topics – environmental impact assessment
- special topics – social impact assessment
- further specific topics
- referencing.

The coding was done manually by trained coders. All coded IAs were quality checked by a dedicated quality assurance team (for details, see Lianos and Fazakas 2014). Further empirical material was collected on the institutions pertaining to IA production and use. These institutional characteristics were identified by investigating official government documents and organizational structure.

Table 19.1 Distribution of IAs according to year of publication and country, 2006Q1–2012Q2 (non-weighted)

Country/year	2006	2007	2008	2009	2010	2011	2012 <sup>a</sup>	Total
Bulgaria <sup>b</sup>	0	0	0	14	0	0	1	15
Czech Republic <sup>b</sup>	0	3	22	18	23	17	20	103
Denmark	10	12	24	15	22	20	21	124
Estonia <sup>b</sup>	0	0	9	6	7	4	9	35
EU Commission	76	88	114	77	51	119	32	557
France <sup>b</sup>	0	0	0	3	14	9	2	28
Germany	16	15	18	15	16	15	18	113
Greece <sup>b</sup>	0	0	0	0	10	14	46	70
Hungary <sup>b</sup>	0	0	0	0	2	32	68	102
Ireland	5	4	7	5	9	7	12	49
Italy	13	44	16	23	20	9	1	126
Netherlands	1	2	5	1	2	5	3	19
Norway	11	9	12	7	10	10	10	69
Poland	18	20	20	20	24	21	26	149
Romania <sup>b</sup>	0	22	0	0	0	0	0	22
Serbia <sup>b</sup>	0	6	12	11	9	10	11	59
Slovakia	8	13	11	13	11	13	2	71
Slovenia	7	10	7	8	8	8	8	56
Spain <sup>b</sup>	0	0	14	12	10	10	10	56
Sweden	10	10	11	10	9	10	10	70
UK	17	41	17	20	20	11	27	153
Total	192	299	319	278	277	344	337	2046

Notes:

a. IAs only from 2012Q1–Q2.

b. Laggard country (adopting in 2007 or later).

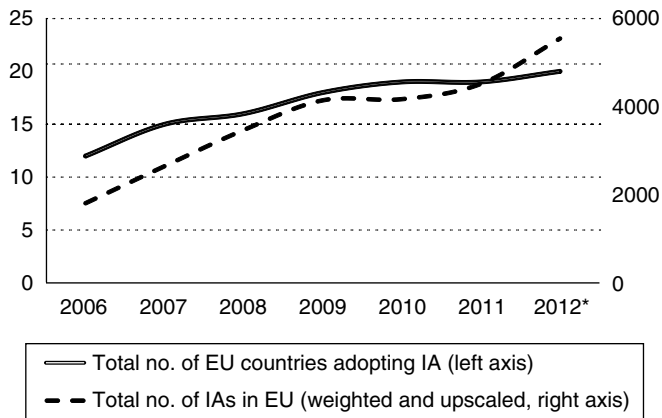
Source: Gutenberg project database.

## 19.4 DIFFUSION ON THE GROUND: A CLOSER LOOK AT WHAT DIFFUSION REALLY MEANS IN PRACTICE

### 19.4.1 Diffusion of IA Institutions

IA institutions have spread across Europe, this trend translating into a quantitatively large IA activity (Figure 19.1). Interestingly, the average number of IAs produced in a year per country increased from 151 in 2006 to 277 in 2012, which suggests that adopting IA institutions did result in





*Note:* \* Data only refer to the first half of 2012, so the figures are multiplied by two to arrive at a comparable estimate.

*Source:* Gutenberg project database.

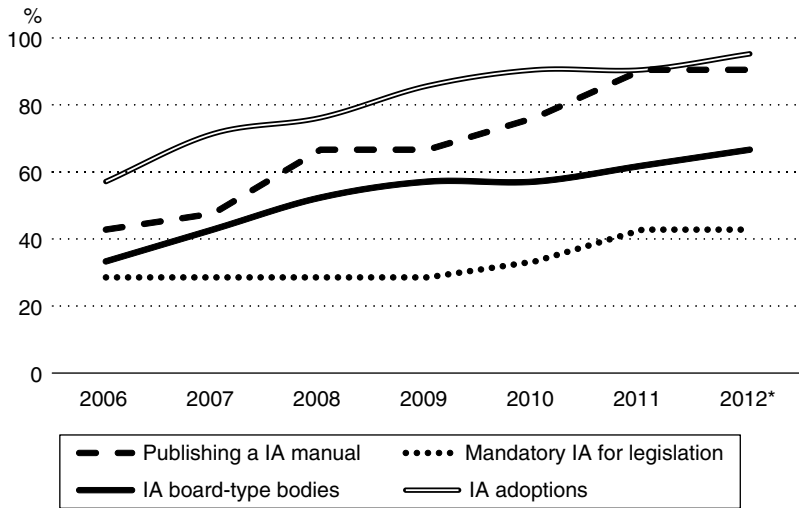
*Figure 19.1 Total number of countries adopting IA and total number of IAs produced across Europe, 2006Q1–2012Q2*

using them. However, what is unclear from a macro-perspective is what kinds of IAs have European countries produced.

A first and probably most elementary aspect of the diffusion of IA institutions is the adoption of key institutional characteristics that could underpin IA production. Three such institutional characteristics deserve particular attention as they capture the aid to and control of IA quality and the prescribed IA quantity:

1. Publication of an IA handbook: whether an official methodological aid is published and valid in the given year in a country.
2. IA board-type body: whether a (semi-)independent central body is functional that is devoted to checking IA quality in the given year in a country.
3. Mandatory IA for parliamentary bills: whether IA is mandatory for every bill introduced to the parliament by the government in the given year in a country.

The diffusion of these key institutions supports a mixed view: on the one hand, more and more European countries adopt key IA institutions that are essential for running an effective IA system. On the other hand, there



Notes: \* Data only refer to the first half of 2012.  
 N total = 21.

Source: Gutenberg project database.

Figure 19.2 Proportion of European countries adopting various basic IA institutions, 2006Q1–2012Q2

is a persistently wide gap between overall IA adoptions and the underlying quality of the IA institutional framework (Figure 19.2).

### 19.4.2 Diffusion of Different IA Types

Following Lianos and Fazekas (2014) five different IA types have been identified along seven dimensions:

- Scope of analysis: the number of impact areas that are touched upon.
- Sophistication of analysis: the complexity and extensiveness of applied analytical methods.
- Consultation: extensiveness of consultation as reported in the IA text.
- Accountability: the degree the IA establishes accountability relationships between the lawmaker/regulator and the regulated.
- Evaluating at least one alternative policy option.
- Including a quantitative estimation of regulatory costs.
- Including a quantitative estimation of regulatory benefits.

The identification of distinct IA types along these dimensions was carried out using advanced clustering techniques tightly integrated with theoretical considerations (Table 19.2). These categories are predominantly descriptive while their significance lies in that they indicate different boundary arrangements between politics and expertise prevalent in each jurisdiction (Hoppe 2005, 2009).

This multi-dimensional typology shows that well-developed IA systems may cater for diverse demands, most notably channelling societal demands through consultation into policy-making and combining sophisticated scientific analysis with societal interests. However, shallow or symbiotic IA systems have in common that they fail to reach any of these two distinct goals of IA as they both lack sufficient analytical complexity and extensive discussion of consultation in the text. By implication, rudimentary, shallow cost-benefit analysis (CBA) and cost-effectiveness type IAs indicate the implementation of shallow IA practices while participatory and symbiotic IAs indicate the implementation of well-developed IA practices.

Decomposing IA production across Europe into these five distinct types reveals that most of the growth in IA activities is due to the increased number of shallow CBA, rudimentary and symbiotic types (Figure 19.3). Cost-effectiveness and participatory type IA numbers have been largely stable at least since 2008. These basic facts point towards a dynamically changing IA landscape where both shallow and well-developed IA practices increasingly spread across Europe.

Laggard or late adopter countries display a distinctively different distribution of IA types compared to non-laggard countries (Figure 19.4). They have a much higher proportion of rudimentary and shallow CBA type IAs and a much lower proportion of the participatory type. This suggests that laggards are more readily implementing shallow practices.

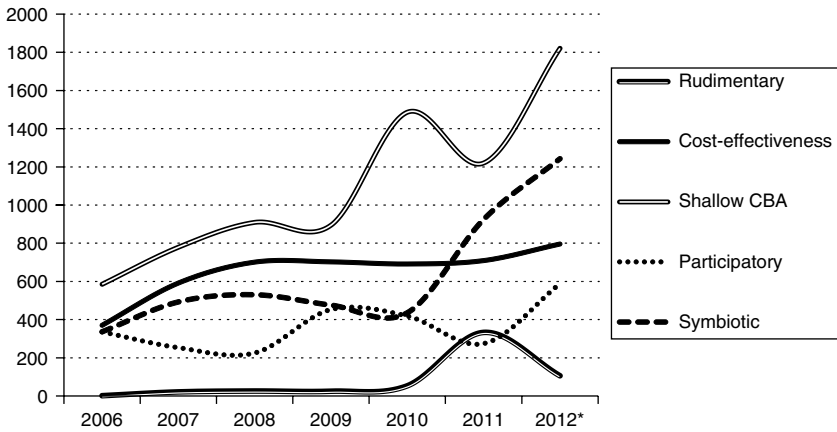
However, the close to identical proportion of symbiotic and cost-effectiveness type IAs suggest that not every laggard is following a different path compared to non-laggards. Moreover, two late adopters have made it into the top five European countries publishing symbiotic IAs: France and the Czech Republic (Figure 19.5).

The unexpected position of France and the Czech Republic could follow from specific patterns of diffusion. Thus, a considerable innovation was introduced by France, where as of end of 2009 it has become the only European country to provide for a constitutional basis for IA and an enforcement mechanism.<sup>8</sup> Following the new system, if an IA is not attached to a bill the government sends to the parliament, or if it is of poor quality, the conference of presidents of the parliamentary chamber may refuse to put the bill on the agenda. The principal reason that led to

Table 19.2 *Theoretically based and empirically identified IA types and their defining characteristics, Europe, 2006Q1–2012Q2*

	Scope	Sophistication	Consultation	Accountability	Alternative policy options	Cost figures	Benefit figures
Rudimentary IA	low	low	low	low	no	none	none
Shallow CBA IA	medium	low	medium/low	low	no	some	some
Cost-effectiveness IA	low	low	medium/low	medium/low	no	many	none
Participatory IA	medium/high	low	high	high	yes	some	some
Symbiotic IA	high	high	high	high	yes	many	many

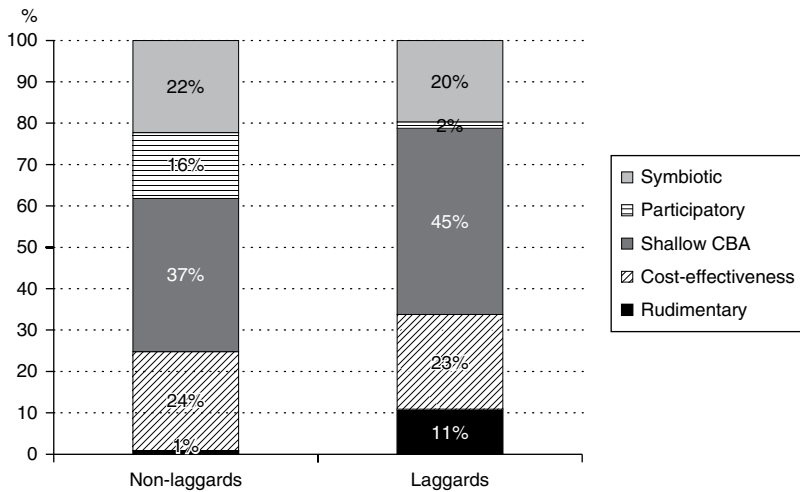
Source: Gutenberg project database.



Note: \* Data only refer to the first half of 2012, so the figures are multiplied by two to arrive at a comparable estimate.

Source: Gutenberg project database.

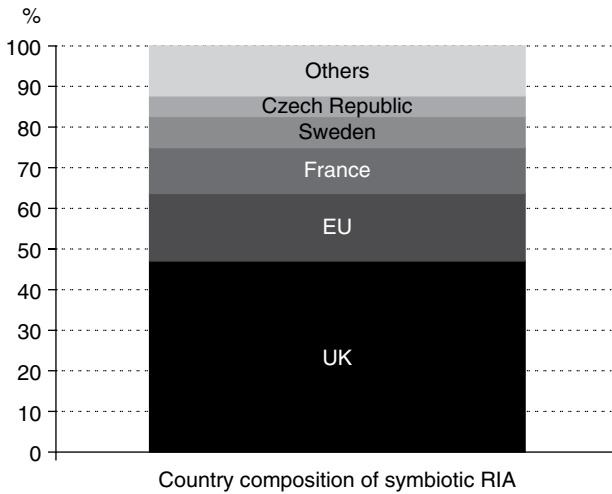
Figure 19.3 Total number of distinct IA types across Europe, 2006Q1–2012Q2



Notes:  $N_{non-laggard} = 13\,859$ ,  $N_{laggard} = 3684$ .

Source: Gutenberg project database.

Figure 19.4 Distribution of IAs published in laggard and non-laggard countries according to IA types, Europe, 2006Q1–2012Q2



Note: N = 3817.

Source: Gutenberg project database.

Figure 19.5 Top five countries that publish symbiotic IA, Europe, 2006Q1–2012Q2

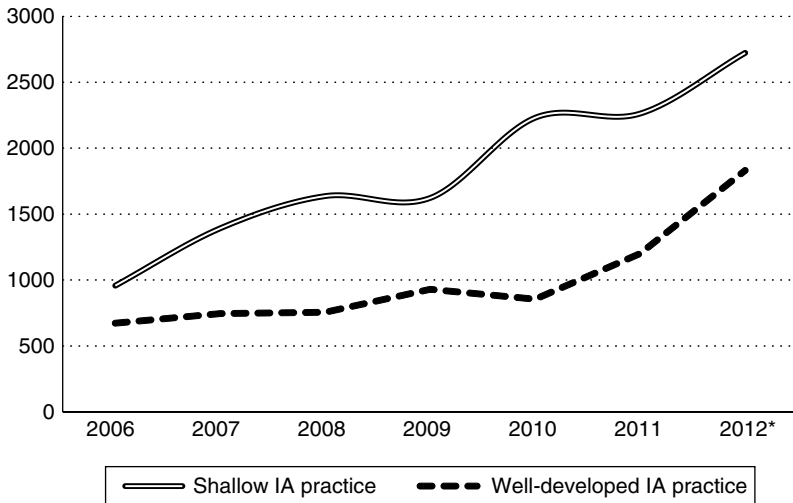
this constitutional amendment is the mobilization of domestic administrative and political elites in favour of evaluation as a tool for improving the quality of legislation (Assemblée Nationale 2009; Lasserre 2004; Sénat 2009) and a broad consensus, across the political spectrum, in favour of this objective, with a constitutional anchorage of the practice, hinting at a possible joint operation of emulation through the voter information model, and the externalities pattern through competition for regulatory quality.

The Czech success followed the reform that started in 2010 that by 2012 resulted in a two-tier system, linking IA to the legislative planning stage. At the first stage, an obligatory preliminary IA is produced for all proposals when the annual Plan of Legislative Works of the Government is composed each year, thus checking for the necessity to proceed to the second stage and conduct a full IA. The IA Committee, which is an independent expert oversight body, has to be involved in the approval of this Plan of Legislative Tasks of the Government. All the draft bills that are introduced outside the Plan have to have full IA by default. The strengthened institutional framework saw the shifting of the IA unit from a line ministry to the Government Office under the direct supervision of the Deputy

Prime Minister on Legislative process. In addition, since the beginning of 2012, the Czech IA Committee has been actively cooperating with German, Dutch, Swedish and British IA watchdogs, thus illustrating a parallel process of horizontal diffusion through a pattern of socialization.

## 19.5 CONCLUSION

Several patterns of diffusion may operate in parallel, thus rendering any effort to define a straightforward link between a specific pattern of diffusion and the emergence of a prevalent type of IA particularly difficult, if not impossible. However, there is a link between the process of diffusion and diffusion outcomes. Most latecomer European jurisdictions adopt and implement shallow and narrow IA practices with some notable exceptions such as France and the Czech Republic. Overall, the relative proportions of shallow and well-developed IA practices have remained the same, around 60–70 per cent of published IAs belonging to the shallow type, with both practices growing at a similar rate (Figure 19.6).



*Note:* \* Data only refer to the first half of 2012, so the figures are multiplied by two to arrive at a comparable estimate.

*Source:* Gutenberg project database.

*Figure 19.6 Combined number of IAs grouped by shallow and well-developed IA practice, Europe, 2006 Q1–2012 Q2*

## NOTES

1. On the question of the typology of IAs, see Lianos and Fazekas (2014).
2. By 'evidence eco-system' we mean the practices, institutional set-up and processes of production and use of scientific evidence in rulemaking.
3. The need for action at the Member States level was stressed during the preparatory work for the Commission's 2001 White Paper on European Governance stating that 'action at Community level alone – and *a fortiori* by the Commission alone – is certain not to succeed' (Renda 2006).
4. Currently Iceland, Montenegro, Serbia and Turkey.
5. Currently Albania, Bosnia and Herzegovina.
6. Compared to earlier publications data on one country, Lithuania, is not reported as it appears to have published 10423 IAs. This high figure requires further clarification.
7. Actual sample sizes may be smaller than this because some IAs were removed due to quality reasons; work is in progress.
8. Article 8 of the la loi organique 2009403 du 15 avril 2009 relative à l'application des articles 341, 39 et 44 de la Constitution.

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