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**Country report: (2) National debates**

## **The Debate on Corporate Governance in Denmark**

**Herman Knudsen**

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## Chronology

The Danish debate on corporate governance was sparked off by developments in both the national and the international contexts. In the early 1990s, bankruptcies in a few major Danish companies were accompanied by discussions of the tasks and responsibilities of the company board, and in the latter part of the 1990s, liberalisation of capital markets and increased competition for capital prompted the government to establish an interministerial committee whose task it was to begin to analyse corporate governance in the Danish context. The committee concluded, among other things, that the provisions determining board composition (mainly owner representatives) and management functioned relatively well. However, some necessary changes were also identified.

The process continued when in March 2001 the government asked four top company directors to consider whether there was a need for guidelines or recommendations for good corporate governance in Denmark. The committee came to be known as the "Nørby-udvalg", after its chairman, Lars Nørby Johansen (Falck-Securicor). The other members were Jørgen Lindegaard (SAS), Waldemar Schmidt (ISS) and Mads Øvlisen (Novo Nordisk).

The committee's report (*Nørby-udvalgets rapport on corporate governance i Danmark*, available at [www.corporategovernance.dk](http://www.corporategovernance.dk)) was published in December 2001. This report is still the main document of the Danish discussion, although it has been followed up by two other reports from another committee, also chaired by Lars Nørby Johansen. This committee was established by the Copenhagen Stock Exchange in November 2002, and its reports were published in January 2004 and May 2005 respectively.

As we shall see, the Danish reports and the public debate on corporate governance have only marginally touched upon the issue of worker participation at board level (although according to Danish company legislation employees are entitled to fill one third of the seats on company boards).

## Corporate governance in the Danish context

The 2001 report characterises the Danish system of corporate governance as something of a hybrid between the one-tier and the two-tier systems. On the one hand, it is not strictly a one-tier system because there is a distinction between the board (*bestyrelsen*) and the top management (*direktionen*). On the other hand, the two bodies are not clearly separated, as in the German system. In Denmark, the board not only oversees the management, but also takes part in strategic management. Furthermore, Danish company law does not prevent top managers from being board members. Put differently, the board may consist of executive as well as non-executive directors (but is usually dominated by the latter). The committee's view on these basic features of the Danish system was expressed quite clearly:

The committee does not find reasons to presume that other governance models are superior to the Danish model. With its recommendations the committee would like to facilitate the even better functioning of the Danish model. (p. 25)

Regarding the paradigmatic distinction between shareholder and stakeholder models the report takes a middle-of-the-road position. However, the stakeholder perspective is supported only in a rather vague and non-committal way:

The company's management must ... work for a long-term creation of wealth in the interests of the company and the shareholders. However, ... the optimal representation of shareholder interests presupposes that other stakeholders are taken into consideration to a relevant extent. A company that exclusively attempts to represent the interests of the shareholders in the short term may destroy the possibility of creating shareholder value in the longer term by not taking into due consideration the company's other stakeholders whose acceptance of the activities of the company may be a decisive prerequisite for continuing development. However, the many diverse stakeholders make it impossible to state precisely what kind of consideration individual companies should take in relation to stakeholders. (pp. 37–38)

None of the three reports found reasons for proposing changes to Danish legislation. Instead, the reports formulated a set of recommendations. Above these, a meta-recommendation is that companies in their reporting should either demonstrate that they are following these recommendations, or explain why they are not doing so.

## Recommendations to Danish companies

An important component of both the 2001 and the 2005 reports was a list of recommendations to companies. The recommendations refer to eight areas:

1. The role of shareholders and their interaction with the board.
2. The role of stakeholders and their significance for the company.
3. Openness and transparency.
4. Tasks and responsibilities of the board.
5. The composition of the board.
6. Remuneration of board and management.
7. Risk management.
8. Auditing (not covered by the 2001 report).

Most recommendations are identical from 2001 to 2005. They concern issues such as good information and communication practices, relations between the board and the management, relations with shareholders and stakeholders, procedures for regular evaluations of practice, and so on. Generally, the recommendations in the 2005 report are less detailed and specific, and therefore one might say also less ambitious. One example of this can be found in the first of two recommendations regarding relations with stakeholders. In the 2001 report the formulation runs:

It is recommended that the board formulates a policy for the company's relations to its stakeholders, including for example the company's basic idea, values and goals. One element in such a policy may be guidelines for the company's dissemination of information on, for example, environmental and social issues. (p. 15)

In the 2005 report only the first part of the first sentence is kept. Another example is that while the 2001 report recommends that the board be composed of no more than six persons elected by the general assembly (plus possible employee

representatives, but these are not mentioned), the 2005 report states only that the board should “not be so big as to prevent a constructive debate and an efficient decision-making process to take place”.

In two respects, however, the 2005 report contains recommendations which were not included in 2001. First, it has a number of recommendations concerning auditing. Secondly, it explicitly mentions employee representation on the board. This is not done in the section on stakeholders, however, but in the section on board composition. Here,

it is recommended that the individual company considers the need to explain the system of employee-elected board members in the annual report or on the company website.

What lies behind this is the fear that in particular investors from outside continental Europe may view employee board representatives as something negative, and that therefore Danish companies – if they are wise – should explain how this institution functions. This apologetic approach has been criticised by Danish trade union leaders (see the daily newspaper *Politiken*, 1 April 2004) and by researchers (Caspar Rose in *Tidsskrift for Arbejdsliv*, vol. 7, no. 3, 2005) as a very defensive way of presenting the fact that employee representation is a well-established and well-functioning element of corporate governance in Denmark. Instead, they argue, companies should present it as an asset that may help companies to make better decisions.

## Conclusion

Inspired by the international discussion on corporate governance, as witnessed by reports from the USA, the UK, the OECD and the World Bank in the 1990s, the Danish reports and discussions have attempted to formulate recommendations for “best practice” in the Danish context. It is remarkable that employee representation on the board – which has been a feature of the Danish system since 1973 – has hardly played any role in the discussion.

Perhaps the absence of this theme can be understood as the result of a kind of cross-pressure on those (relatively progressive and broad-minded business leaders) who have stood for the Danish contributions. On the one hand, they have had to recognise the neo-liberal context in which the corporate governance debate is taking place. On the other hand, there is no indication that employee representation at board level has affected companies negatively: rather the opposite. However, for them to speak positively of employee representation would be to openly contradict the neo-liberal paradigm. So why not just remain silent about employee representation!

This is, of course, irritating, as it means that an opportunity for reflecting on and improving the role of employee participation has been missed. Conversely, at least it can be said that the discussion on corporate governance in Denmark has not degenerated into an attack on the principle of employee representation on company boards.

(NB All quotations translated by the author.)