



Country report: Denmark

Recent changes in Danish corporate governance recommendations

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In May 2005 the third Danish report on good corporate governance was published (for earlier reports see report on this site dated October 2005).

The report was issued by the Copenhagen Stock Exchange Committee on Corporate Governance (the Nørby Committee). It included a slightly revised set of recommendations to companies. The revisions partly expressed a wish to comply with the two EU Recommendations from autumn 2004, on remuneration and the independence of board members respectively.

In October 2005 the recommendations of the Danish report – more than 60 altogether – were implemented in the Copenhagen Stock Exchange's disclosure requirements for listed companies, obliging companies, in accordance with the 'comply-or-explain' principle, to state in their future annual reports how they are addressing the recommendations. (An English version of the recommendations can be downloaded at www.corporategovernance.dk, under 'English').

Regarding the independence of board members the central recommendation is still that "a majority of the board members elected at the general meeting should be independent". It is stated explicitly that employee representatives on the board are not independent due to their employment in the company. Another recommendation is also unchanged, namely that members of the company's executive board (*direktion*) should not be seated on the supervisory board (*bestyrelse*). However, inspired by the EU recommendation the list of 'roles' not regarded as compatible with being an independent board member has been extended. A board member is not considered independent if the person in question:

- is or has been employed by the company within the last five years;
- is or has been a member of the executive board of the company;

- is a professional advisor for the company or is employed in or has a financial interest in a company which is a professional advisor for the company;
- has a substantial strategic interest in the company other than being a shareholder;
- has business or other links to the company's main shareholder;
- has family ties to persons who cannot be regarded as independent.

The last two of these points are new. Furthermore, it is new that “the board should at least once a year provide information about which of the board members are not regarded as independent. The board should also provide information about whether new candidates are regarded as being independent and state the reasons for this”.

Regarding remuneration the new recommendations are considerably more detailed than the previous ones. An important new recommendation is that the board should adopt a policy on remuneration and publish its contents in the annual report. It is also an innovation that it is now recommended that the annual report should state “the size of each board member's and each executive board member's total specified remuneration and other substantial benefits”. This will – if complied with by companies – lead to a new practice and an end to speculation in the press about the actual pay of board members and top managers.

With the implementation of the comply-or-explain recommendations in the rules of the Copenhagen Stock Exchange a new step has been taken in a process that started five years ago with the first “Nørby report” on good corporate governance in Denmark. The process has not only resulted in the above-mentioned code of conduct, but also in a clarification of the specific features of the Danish system, not least its character as a two-tier system. As mentioned above it is recommended that executive board members are not members of the supervisory board. More generally the 2005 report states in a section on “Danish company structure in an international perspective”:

“The Danish system is sometimes denoted as ‘one-and-a-half-tier’ – a hybrid between the two-tier German system and the one-tier Anglo-American system....

In the Danish system there are – as in the German one – two tiers, a supervisory board and an executive board, where the supervisory board supervises the day-to-day management of the executive board, but in practice the separation between the supervisory board and the executive board is less sharp. The supervisory board has, like the British board, the overall responsibility for the management of the company, but members of the executive board can sit on the supervisory board as long as they do not make up a majority (of shareholder elected members, HK).

The usual practice in listed companies is that members of the executive committee do not sit on the supervisory board, but participate in the meetings of the supervisory board without voting rights. However, in Denmark it has for many years been the

case that a member of the executive board cannot be the president of the supervisory board”.

(quoted and translated from “*Rapport om god selskabsledelse I Danmark 2005*”, p. 20).