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Women's Path to the Boardroom: The Case of Denmark

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Introduction

Since the 1960s, Denmark has experienced a steady increase in female participation in the labor market (Smith et al. 2013). The general employment rate of women aged 15–64 is today 70 percent, which is about 12 percentage points higher than the EU average (Global Gender Gap Report 2016). Women constitute slightly less than half of all Danish employees and 50 percent of all non-agricultural waged employment (European Commission 2013). The share of highly educated women has also increased over the last few years. In 2012, for example, 32.9

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percent of Danish women aged 15–64 had achieved the highest level of education (European Commission 2013). This is 7 percentage points higher than the EU-27 average. Denmark also sits among the too few in the world list in terms of gender equality in education, as the gender gap in terms of access to secondary and tertiary education and literacy has been fully closed. Denmark ranks highest in terms of women's rights, such as parental authority in marriage and after divorce, the existence of legislation for domestic violence and legislation on gender-based discrimination, inheritance rights for daughters, access to financial services and secure access to land use, control and ownership (Global Gender Gap Report 2016).

The picture is less optimistic when we look at women's career opportunities. For example, in 2012 Danish women earned 16 percent less than men on average, and this percentage is no lower than the EU-27 average. The wage gap has increased by 2.7 percentage points during the first decade of the twenty-first century (European Commission 2013). Denmark scores lower than the other Nordic countries in terms of women's political and economic opportunities. In 2016, the country was number 14 on that index, while three Nordic countries (Iceland, Norway and Finland) were assigned the top three positions in the world in terms of gender equality, having closed more than 80 percent of the gender gap in terms of economic participation and opportunity, political participation, health and education. According to the report, Denmark lags behind its Nordic neighbors especially in terms of women's economic participation and opportunity¹ as well as political empowerment.² Denmark was awarded a score of 5.7 out of 7 in terms of women's ability to rise to the top positions of leadership, but despite the relatively high score, their representation in the top positions remains low (Global Gender Gap Report 2016). Notwithstanding the low numbers and the legislative pressures for gender diversity in the neighboring countries and at the EU level, the Danish government has thus far resisted the implementation of board gender quotas or other mandatory policies.

This chapter reviews the rules, main debates and trends regarding gender board diversity in Denmark. In section “[General Background](#)”, we outline a few country facts and the specifics of the Danish corporate governance system. Next, in section “[Gender Diversity in Danish Boards](#)”, we provide an overview of the gender composition of Danish

boards and selected characteristics of Danish male and female directors. We also introduce the current legislative efforts with regard to gender diversity on Danish boards. We provide a critical reflection on the situation in section “[Critical Reflections on the Situation \(with the Reflections of a Local Actor\)](#)” and conclude in section “[Conclusion](#)”.

General Background

Facts on Denmark and the Danish Labor Market³

Denmark has about 5.6 million inhabitants, spread over a territory of 42,916 sq. km in the geographic region of Scandinavia (northern Europe). Its population is relatively homogeneous, as immigrants and their descendants constitute only about 10 percent of the Danish population. Denmark is one of the world's oldest monarchies. Its political system is based on the Danish Constitution of 1849, and has been characterized generally by consensus politics, i.e. the winning party holding a minority in the parliament and governing in concert with other parties. Since the end of November 2016, the Danish government has consisted of the Liberal Party (Venstre), the Liberal Alliance and the Conservative Party.

Denmark is among the most developed European countries, with a GDP per capita (as of 2014) equal to 322,000 Danish kroner (about 43,000 euros). Like the other Scandinavian countries, Denmark is well known for its economic equality and equal access to social security, including free healthcare and education (i.e. the Scandinavian welfare model). More than 50 percent of Danes enter higher education. Danish institutions for higher education are world renowned for their academic excellence, innovative research, teaching and strong links to business. The Danish labor market is defined by the so-called flexicurity model. The model builds on three main pillars: (i) flexible rules for hiring and firing, (ii) unemployment security in the form of a guarantee of relatively high unemployment benefits (largely based on membership and associated individual contributions to insurance funds during periods of employment), and (iii) an active labor market system that offers guidance to the unemployed in their job search.

In Denmark, maintaining a healthy work-life balance is high on the political agenda, and high quality of life is a core value in the Danish society. Accordingly, the Danish system offers high flexibility in terms of working hours and provides good social support in terms of maternity leave and childcare facilities. In 2013, for example, Denmark dedicated 4 percent of its GDP to social protection benefits for children and families, which is among the highest percentages in Europe. Denmark also offers one of the most generous parental leaves in Europe. Mothers are entitled to 4 weeks of maternity leave before the expected date of birth and 14 weeks of maternity leave after the birth. Fathers are entitled to 2 weeks of paternity leave within the first 14 weeks after the birth. Furthermore, each parent is entitled to 32 weeks of parental leave. Although they can opt for longer parental leaves, parents (who meet the employment criteria) can receive a maximum of 52 weeks of maternity leave benefits from the state. The Danish family policies promote the dual-earner family model, meaning that men and women are expected to share their family obligations equally (EC 2013). In fact, Danish men rank among the highest in the world in terms of minutes per day spent on unpaid (domestic) work. Yet, women still seem to carry the main burden of family work as they are substantially more likely to hold part-time jobs, both in comparison to men (35 percent of Danish women in comparison to 15 percent of men in 2012) and in comparison to the EU-27 female average (32 percent; European Commission 2013).

Corporate Governance System

The Danish corporate governance system is almost identical to the systems found in the four other Nordic countries of Finland, Iceland, Norway and Sweden. This is no coincidence, as the five Nordic countries have a pronounced tradition of cooperation within company law legislation, dating back to the end of the nineteenth century. What is today the common corporate governance system of the five Nordic countries was in fact first introduced in the 1930 Danish Companies Act and then in the other Nordic countries in the following decades, and although the countries' systems display minor differences, the basic features are almost

identical. This closeness of the Nordic systems was explored in the recent Lekvall Report (Lekvall 2014), which concluded that the system constituted an independent corporate governance system different from other European systems.

At first glance, the Danish corporate governance system resembles the German two-tier system, because management is divided between two separate company organs. However, upon closer analysis, the system's main features can actually be seen to be closer to the one-tier system that is mostly associated with the United Kingdom. In the Danish system, management is divided between a board of directors (*bestyrelse*) comprising three or more directors and a board of managers (*direktion*) comprised of one or more executives.⁴ This may look like the division found in German public companies between a supervisory board (*Aufsichtsrat*) and a management board (*Vorstand*), but it is in fact very different. To understand the main characteristics of the Danish system, and thereby of the other Nordic systems, it is useful to know about its conception. The system emerged from a one-tier system, in which a company limited by shares would have a board of directors as its only administrative company organ. However, in the deliberations that led to the 1930 Companies Act it was successfully argued that, in major companies, such as listed and other large public companies, management was in fact divided between the board of directors and a set of high-ranking executives, and it was contended that this executive level ought to be regulated by the Companies Act as was already the case for the board of directors. Consequently, the 1930 Companies Act made it obligatory for large companies to have not just a board of directors but also a board of management comprising executives in charge of daily management.⁵

It is important to note that the inclusion in the act of this extra company organ comprising executives did not intrude on the role of the board of directors, which continued to be the main governance body of the company. The two company organs are in a hierarchical position vis-à-vis each other, with the board of directors as the central governance body and having seniority over the board of managers. This seniority is emphasized in various ways in the statutory provisions of what is now the 2008 Companies Act,⁶ but which are essentially unchanged from the 1930 Act. The powers of the board of managers are limited to the daily

management of the company, whereas the board of directors is in charge of long-term strategy. The board of managers must follow the instructions of the board of directors and if issues arise that are extraordinary or fall outside the remit of daily affairs, the board of managers must bring them before the board of directors.⁷ In practice, the most important feature ensuring the board of directors' position as the upper level of governance concerns appointment. Whereas directors are appointed by the shareholders in annual general meetings (AGMs), usually for a year, managers are hired and may be fired at will by the board of directors.⁸ This more than anything ensures the executives' subservience to the directors.

Contrary to the German system, in which all executive powers are vested with the management board and the supervisory board has supervisory powers only, in the Danish system the actual governance of the company is divided between the board of directors and the board of management, and both directors and executives have executive powers, for example, to sign contracts.⁹ For this reason, the system is often referred to as *the dual-executive system*, emphasizing that both the upper-level board of directors and the lower-level board of management enjoy executive powers and participate actively in governing the company. Another difference is that double mandates, whereby a person may serve as both an executive and a director, are possible in the Danish but not the German system. As the board of directors serves two functions, to be the upper governance body in charge of long-term strategy and to monitor the daily business of the board of management, there is a statutory limitation that less than half of the directors may also serve as executives and that the chair of the board of directors cannot also serve as an executive, which ensures that the board of directors is capable of monitoring the management.¹⁰ As executives have a statutory right to participate in the meetings of the board of directors, unless the board decides otherwise *ad hoc*, it has become unusual for executives to also serve as directors. In Sweden, on the other hand, double mandates are still widely employed.

The Danish dual-executive system dating back to the 1930s resembles the corporate governance system found in the UK that has been shaped by the 1992 Cadbury Report (Cadbury Report 1992). The UK 2006 Companies Act does not itself mandate a particular governance system, but listed companies are obliged to observe the UK Corporate Governance

Code on a comply-or-explain basis. The UK system's division of the board of directors, into non-executive and executive directors, is very similar to the Danish division into directors and executives. The fact that in Danish terminology they each occupy a separate company organ simply denotes a distribution of powers and different functions. That is, in the Danish system the distribution of powers is based on statutory regulation and not soft-law recommendations as in the UK, which gives the directors a stronger position vis-à-vis the executives than that found between non-executives and executives in the UK system.¹¹

In the international corporate governance discourse, the concepts of the Anglo-American one-tier system and the German two-tier system have dominated to such an extent that they are often applied to systems of other jurisdictions as well. However, the dichotomy is not apt, and causes considerable confusion, in the debate over whether the Danish (and thereby Nordic) system should be labeled two tier because it consists of two company organs or one tier because there is effectively only one administrative organ, even though it is functionally divided into an upper and a lower level.¹² Diplomatic attempts to label the system "one-and-a-half" tier are not helpful either. It is better to see the system as a Nordic corporate governance system *sui generis*.

The Role of Shareholders

Another characteristic of the Danish corporate governance system that is highly important—although it is not governed by statute as is the constitution of the board of directors and board of managers—is the role played by the shareholders. In German law, the role of shareholders in public companies is limited compared to that of the management board, which is vested with almost all the power to govern the company. In UK law, the role of shareholders is equally removed from governance, not by statutory regulation as in Germany, but due to the fact that shareholding is dispersed, granting the management a position "independent" of the shareholders. This is also underlined by the provisions in the UK Corporate Governance Code requiring the board of directors to be composed of a predominance of directors who are independent of the major

shareholders, and by the mandatory bid rule found in the Takeover Code, which effectively prevents shareholders from assuming control over the board unless they are ready to launch a bid for all outstanding shares. The Danish, and Nordic, systems are very different.

The first thing to notice is the ubiquity of major shareholders, even in listed companies. The Lekvall Report (Lekvall 2014) found that almost two in three Nordic listed companies had a shareholder with a 20 percent stake or more, effectively controlling the company, and that one in five had a shareholder with a 50 percent stake. The respective numbers for Danish listed companies were 57 percent and 28 percent. What is equally important to understanding the Danish corporate governance system is that shareholders, in general meetings, are guaranteed the right to appoint the majority of the board of directors,¹³ if not the full board,¹⁴ and have the right to remove a director at any time without cause,¹⁵ thereby ensuring their effective and continuous control over the governance of the company.

This prevalence of dominating shareholders is probably the reason why the perception of shareholder engagement in Denmark is notably different from many other jurisdictions, especially the UK. In Danish corporate governance, emphasis is not on directors' independence from the shareholders, but on their accountability to the shareholders. Although Danish directors would no doubt describe themselves as independent of the shareholders, they would by this most likely be referring to "integrity", that is, having the capacity to stand up to any shareholder and preserve an independence of mind. However, it is unlikely that they would contest that the major shareholders ultimately had the right to decide the business direction of the company and that the outcome of a stand-off between a dominating shareholder and a director would normally result in the resignation of the latter.

Generally, it is customary for the dominant shareholders to engage with the board continuously and to receive important information confidentially, including inside information.¹⁶ Such engagement by shareholders is called "*aktivt ejerskab*" (active ownership) and is considered beneficial for the governance of the company. The reason why Danish law takes this benign view of control by dominant shareholders is probably due to the extensive protection of minority shareholders granted in the 2008

Companies Act and the prevailing view that only dominant shareholders have the resources to monitor, and if necessary discipline, management effectively.

The Functioning of the Board of Directors

As mentioned above, the board of directors in the Danish corporate governance system is vested with powers to govern the company, including executive powers to sign contracts and represent the company.¹⁷ The board is the central administrative body, which means that it enjoys all residual powers that have not been vested elsewhere with either the shareholders or the board of management. The members of the board of directors, although they are non-executives, are vested with the power to make overall and strategic decisions. The board of directors in the Danish system is thus a body primarily engaged with governance and making business decisions, whereas the supervisory function of directors, vis-à-vis the executives serving on the board of managers, is minor and comparable to that found in the relationship between non-executives and executives in the UK system. Consequently, all directors are charged with running the company and must be able to decide on important business issues such as overall strategy. Furthermore, as business decisions are often made through a mutual process involving both directors and executives in joint meetings, it is also deemed important that directors have the necessary business experience and knowledge to engage with the executives and the ability to provide them with the necessary interaction. This requirement to have business acumen also applies to directors appointed by the employees, and Danish unions spend considerable resources on business training for employee representatives, who are often unionized. In recent years, private commercial initiatives offering professional training for directors have proliferated, which probably also reflects the perceived need to ensure a high degree of professionalism and business experience among directors on Danish boards.

Compared to large German boards, for example, Danish boards are traditionally very small, probably reflecting their greater engagement in active management.¹⁸ The need to ensure that directors have the

necessary experience means that directors are most often drafted from the ranks of executives and, especially on the boards of publicly listed companies, directors typically have considerable business experience gained from serving as high-ranking executives, often on the boards of management of other companies.

Gender Diversity in Danish Boards

Facts and Trends

We start the discussion of the gender diversity in Danish boards by presenting some information on their composition and that of the top executive teams over the years. The information is gathered from the Danish Business Authority's register of board members and executives. The identification of board members and executives is based on the unique social security number (anonymized),¹⁹ based on which the information from the Danish Business Authority's register can be combined with data from the national bureau of statistics (Statistics Denmark), thereby adding information on directors' gender, age, highest level and duration of education and detailed family information. We consequently have access to longitudinal director data for all public and private limited companies with a board of directors in the time period from 2000 to 2012, both inclusive. For analysis purposes, we select larger companies, namely firms employing at least 100 individuals in a specific year.

Table 7.1, section (b), displays the descriptive statistics for female representation among all board members, shareholder-elected and employee-elected board members and top executives. Ours is not a balanced sample of firms, in that the changes in the percentages and numbers reported in Table 7.1, for example, capture both changes in the composition of company boards and also some (relatively minor) changes in the composition of the sample, namely certain companies entering and other companies exiting the sample in various years. Our sample includes around 1300 companies, although the number of firms varies across years. While (unfortunately) we cannot clearly differentiate between private and publicly listed firms, the majority of these firms are

Table 7.1 Female representation on Danish boards (companies with 100-plus employees)

(a) Number of seats held by Danish residents				
	2001	2004	2008	2012
(1) All board positions	4403	3908	4288	4654
(2) All executive positions	1775	1583	1765	1945
(b) Percentage of board seats held by female Danish residents				
	2001	2004	2008	2012
(3) Executives	3.10	3.73	4.87	6.38
(4) Shareholder-elected members	8.68	9.39	10.03	10.61
(5) Employee-elected members	19.72	19.46	20.41	24.36
(6) Shareholder-elected newly appointed	4.82	6.53	9.89	9.00
(7) Employee-elected newly appointed	25.6	19.48	22.13	31.00

Source: Own calculations based on information from the Danish Business Authority and Statistics Denmark

private limited companies. We have information about roughly 1780 executive positions in these firms and 4300 non-executive (board of directors) positions. We should note that we only count the positions held by Danish residents, as the Business Authority does not register the gender or other information for foreigners sitting on Danish boards, who constitute about 7 percent of board seats on average (Gregorič et al. 2014).

We first inspect the female representation at the top executive level (row (3) in Table 7.1). The numbers in the table display a positive trend, as the share of women among the executives doubled during 2001–2012. In the year 2001, only about 3 percent of all executive positions were held by women, while women held nearly 7 percent of all executive positions in 2012. Despite the positive trend, the representation of women among the executives remains low. We next look at the incidence of women among the non-executive directors (i.e. members of the board of directors). In reporting the statistics for the percentage of female directors, we distinguish between shareholder-elected and employee-elected directors. As noted above, the employees of Danish companies have the possibility to elect a minority of the members of the board of directors. The workers have exercised this right in about 25 percent of all the companies that are

subject to codetermination law, and in about half of the non-financial companies listed on the stock exchange (Gregorič and Poulsen 2016; Gregorič et al. 2016). Employee representatives are elected from among the firm's employees. Since the average share of women in the Danish workforce is high, making the gender diversity of the pool from which employee representatives are elected higher, we could expect the percentage of women among employee directors to be higher than among shareholder-elected directors. This is indeed what we observe. Women hold about 20 percent of all seats assigned to employee-elected members. This percentage remained relatively stable until 2008, and then increased to 24.4 percent for the period 2008–2012. An increase in female representation among the employee-elected members can also be observed among the newly appointed members (see row (7), Table 7.1). In 2012, nearly every third board seat assigned to a newly elected employee representative was filled by a woman.

The share of women among the shareholder-elected members is substantially lower, and has increased only slightly during the first decade of the twenty-first century. Women held 8.68 percent of shareholder-elected board seats held by Danish residents in the companies employing at least 100 employees in 2001. As of 2012, this percentage had increased only slightly, i.e. by approximately 2 percentage points. A more pronounced change is observed when looking only at the newly appointed directors (see row (6) in Table 7.1). In 2001, less than 5 percent of newly elected shareholder positions were assigned to women. By 2009, this percentage had doubled, although it remained low. A relatively modest increase in female representation is also detectable in terms of the number of companies with at least one shareholder-elected female director on their board (not reported in the table). For example, in 2001, 75 percent of companies with 100-plus employees had no shareholder-elected female director on their board. By 2012, this percentage had only fallen to 67 percent. The share of companies with more than one female director on their board was only about 4 percentage points higher in 2012 than in 2001.

The increase in female representation is presumably more pronounced in larger firms, and in the most recent years. According to a report by DJØF, the Danish association for graduates and students in law, business economics and political science (DJØF), the overall percentage of

positions held by women on the boards of Danish firms employing at least 200 people rose from 9.6 percent in 2009 to 17 percent in 2015. The increase has been larger in publicly listed corporations. For example, in 2015, women held about 23 percent of the board seats in publicly listed firms in Denmark.

While the change in female representation reported in Table 7.1 might be considered small, more significant changes are observable in terms of the characteristics of the women elected to boards. Selected indicators of these characteristics are presented in Table 7.2. As shown in Table 7.2, section (a), in 2001 about 44 percent of the shareholder-elected female directors had a close family relationship to another board member (i.e. they were the spouse, daughter or mother of another director). This percentage is greater than that for male directors (only about 6.22 percent of all male shareholder-elected members in 2001 were related by a family tie to another director). However, by the year 2012, that percentage for women had fallen to a much smaller figure, below 30 percent. Therefore, it looks like the odds that a woman is a member of a board because of her relationship to other board members (and probably the owner(s) of the firm) have been decreasing over the last few years, perhaps indicating a trend of greater professionalization of the female boardroom.

We next look at the number of board positions that women and men held in a specific year, on average [Table 7.2, section (b)]. This characteristic is important since the small increase in female representation reported in Table 7.1 might be considered even less encouraging if it were mainly capturing an increase in the number of positions held by the same (small pool) of women. As shown in Table 7.2 below, the average female director in 2012 held four board positions, one position more than in 2001, on average. However, this increase in the average number of positions held was likely driven by an increase in the number of positions held by a few highly sought-after female directors. The median number of positions held by female directors has, in fact, remained the same during 2001–2012. The number of board seats held by male directors has also increased over the same period, by two board seats on average.

Table 7.2 Director characteristics (companies with 100-plus employees)

(a) Percentage of females or males with a family relationship to another board member				
	2001	2004	2008	2012
(1) Family related among shareholder-elected female directors	43.72	41.69	37.91	28.34
(2) Family related among shareholder-elected male directors	6.22	7.51	7.67	5.55
(b) Average (median) number of board positions held				
	2001	2004	2008	2012
(3) Shareholder-elected female directors	2.92 (2)	3.14 (2)	3.47 (3)	4.07 (2)
(4) Shareholder-elected male directors	6.97 (4)	7.40 (4)	8.37 (5)	9.36 (6)
(c) Average education (in months)				
	2001	2004	2008	2012
(5) Shareholder-elected female directors	160	165	170	189
(6) Shareholder-elected male directors	174	175	177	192
(7) Newly appointed shareholder-elected female directors	186	180	180	205
(8) Newly appointed shareholder-elected male directors	177	167	180	193
(d) Average age				
	2001	2004	2008	2012
(9) Shareholder-elected female directors	48.80	47.62	49.02	50.02
(10) Shareholder-elected male directors	51.36	52.17	52.00	53.62
(11) Newly appointed shareholder-elected female directors	41.5	43.36	46.06	47.25
(12) Newly appointed shareholder-elected male directors	47.7	49.23	48.38	49.88

Source: Own calculations based on information from the Danish Business Authority and Statistics Denmark

The average education levels for male and female directors (measured in months, and separately for those who are newly elected) are shown in rows (5)–(8) of Table 7.2. We first see that, on average, shareholder-elected females on boards in 2012 had a significantly higher duration of studies than those holding board seats in 2001. The length of their education had increased from 160 months to 189 months, on average. We also observe an increase in the average education of male directors, from 174 to 192 on average, although the change for women was significantly larger.

Consequently, women and men on Danish boards were equally well educated as of 2012 (i.e. the differences between the means reported in rows (5) and (6) are not statistically significant). A similar trend is found when looking at the newly elected directors. Both male and female newly elected directors had, on average, a longer period of education than those already present on the board, and this holds for nearly all years during 2001–2012. During the entire period, newly appointed women were at least as highly educated as newly appointed male shareholder representatives. In 2012, the newly appointed female directors (shareholder-elected) had 205 months of education, which is about one year more than newly appointed male directors, on average.

Danish directors became slightly older, on average, during 2001–2012 [Table 7.2, section (d)]. The age difference between the shareholder-elected female and shareholder-elected male directors increased slightly during the period, from two to three years on average. However, the age difference between newly hired male and female directors fell. In 2001, a newly appointed female director was six years younger than a newly appointed male director, on average, while in 2012 that difference had fallen to just two years [see rows (11) and (12) of Table 7.2 above].

Rules and Public Debate

Gender board diversity has been the subject of considerable debate in Denmark, as the low female participation in the top corporate layers is seen as being at odds with a society enjoying equality between men and women, especially in the workforce and business life. However, the initiatives to introduce quotas for gender representation, as in Norway, have so far not received popular support in business or politics. The Danish Corporate Governance Committee responded to this debate in 2008 by making a recommendation for diversity to be enhanced, rejecting the call for it to make a more specific recommendation on gender.²⁰ Recommendation No. 2.1.6 consequently calls for a company to “discuss the company’s activities to ensure relevant diversity at management levels, including setting specific goals and accounting for its objectives and progress made in achieving the objectives . . .”. In the commentary to

the recommendation, diversity is defined as “e.g. age, international experience and gender”. The view appears to be that it is beneficial for a company to have a diversified board in order to ensure that the directors cover the many different aspects of its business and engagement with society, but gender is not singled out as a necessary element within this diversity.

In 2013, for the first time, legislation was introduced to address the question of gender representation on Danish boards. The initiative covers listed and other large companies²¹ as well as companies in which the state is a majority owner (cf. Section 139a of the 2008 Companies Act), and it can be seen as two pronged. One part concerns the disclosure of the level of gender representation, while the other concerns the company’s policy on recruitment and career planning. Both measures are voluntary in nature but are also subject to public reporting in the annual accounts of the company,²² which ensures public scrutiny and is expected to motivate companies to strive for a more equal gender representation.

According to Section 139a(1)(1), if a gender is presently “underrepresented” on a board, where underrepresentation is set at below 40 percent, then the company must present its intended target ratio (*måltal*) for the underrepresented gender. For example, if none or maybe one-third of a company’s directors are women, then the company has to set a target ratio for female directors, for example, 40 percent, and estimate the time it will take to achieve this result. The company is not obliged to set the target ratio at any specific level. It may restate its *status quo* or set a target ratio below the 40 percent level. However, it is obliged to disclose its results and explain any failure to achieve its target ratio. Note that the 40 percent limit for underrepresentation refers only to directors appointed by the shareholders and not to any of those appointed by the employees, which is an unusual diversion from the general rule that all directors are considered equal irrespective of who appointed them.

Furthermore, according to Section 139a(1)(2), a company with an underrepresented gender on its board must present its policy for increasing the representation of that gender within other management levels.²³ This obligation reflects the common practice in Denmark, where most of the directors are recruited from the ranks of the high-level executives. The low presence of women among the lower executive levels is one

explanation, among others, for the scarcity of female directors, and is sometimes euphemistically referred to as the “pipe-line problem”. This provision therefore aims to solve the problem by obliging companies to focus on internal recruitment and career-planning policies to ensure a higher representation of women in the senior executive levels, who would then be eligible for recruitment as directors. As is the case with the target ratio, a company is free to establish its own policies in this respect but is obliged to report its efforts in its annual accounts and explain how the policies have worked.

Critical Reflections on the Situation (with the Reflections of a Local Actor)

As outlined in the previous sections, the incidence of women among corporate directors in Denmark remains low. However, despite the increasing pressure for gender diversity on boards in the neighboring countries and at the EU level, the Danish government has thus far resisted implementing quotas. Instead, with the purpose of ensuring greater flexibility, and trusting that companies will discover the benefits of gender diversity on their own, the 2013 amendment to the law left the 1100 largest companies the freedom to set their own targets with regard to gender diversity, albeit with an obligation to report their progress toward achieving those targets. It is still to be seen whether this will lead to the desired results. According to a recent article in a Danish newspaper *Politiken* (Skærbæk and Heinskou, 2016), the percentage of female directorships in a subsample of the firms subject to the 2013 legislation has thus far increased only slightly, from 12.8 percent in August 2013 to 14.2 percent in January 2015.

Peter Horn

Peter Horn, who in 2015 started a private initiative promoting board gender diversity, Executive Women's Net (*Kvinder i Bestyrelser*), agrees that the Danish laws regarding gender diversity are probably too soft to have a significant impact. Yet, some of the large Danish companies have

started to set their own targets, providing some hope for improvements in the future. For example, the Carlsberg group has decided to follow the example of Norway and has set a target to include at least 40 percent of the underrepresented gender on its board of directors elected at the AGM by no later than 2017. Moreover, private initiatives such as the Executive Women's Net are oriented toward facilitating women's progress to the top organizational layers in Denmark and thereby supporting an organic increase in the representation of women in place of legally enforced quotas. Peter Horn describes the Executive Women's Net as an initiative that promotes board gender diversity primarily by helping women reach board positions in small and medium-sized companies. The hands-on experience gained in these (smaller) companies are, according to Peter Horn, an important step on the career ladder since it improves the women's leadership skills, which are a requirement of non-executive directors, particularly in larger firms. The Executive Women's Net also promotes all-female boards, i.e. boards that are composed exclusively of women. The aim here is, according to Peter Horn, both to show that women are, indeed, capable of governing a company and to provide a "mirror" to the all-men type of board.

As Peter Horn remarks, ensuring that women develop the required skills seems to be the main hurdle facing the board gender diversity efforts in Denmark. He thinks that, overall, most of the male directors would gladly welcome qualified women at the non-executive director level. Those women are just very hard to find. Peter Horn referred to a survey published by the Danish newspaper Monday Morning (*Mandag Morgen*), according to which there are currently only 1200 qualified C-level (i.e. chief officers in the firm) female leaders compared 100,000 male ones in the non-executive directors' pool. Although women now comprise around 40 percent of the highly educated people in Denmark, a very small percentage of these women reach middle management positions, and far less when it comes to top two levels of the firms. The major problem in this regard is, according to Peter Horn, women's progress to CEO or country manager positions in the largest companies. Peter Horn remarks that only a few of those positions are currently filled by women (e.g. KMD, DR, TV2, TDC, Zealand Pharma, Lundbeck Foundation); women only constitute about 7 percent of the CEOs in the 1500 largest

Danish companies (across all kinds of ownership). Peter Horn further notes that women's progress to these positions might also be limited by the perceived inconsistency between leadership and gender roles, i.e. differences between the expected behavior of leaders and the way women behave. Women, according to Peter Horn, are also lagging behind in terms of business politics, personal branding, career planning and career mapping.

Moreover, we reason, one problem might relate to the tax regime in Denmark. The progressive tax rate (including the "top tax") probably does not encourage women to work longer hours and assume extra responsibilities, since a large part of the financial gain from the extra effort is lost to taxation. Finally, some obstacles persist on the demand side. The scholarly research on Danish data shows that women's education or career preferences, family obligations or other unobserved time-invariant characteristics that influence the supply of women to the top positions are not the only things to blame for the observed gender gap in executive positions (Smith et al. 2013). Despite decades of family-friendly policies and women's educational progress, a glass ceiling still exists in the Danish labor market (Smith et al. 2013), and the incumbents' preference for maintaining a "traditional type of board" still somewhat hinders female appointments in Denmark (Gregorič et al. 2017).

Conclusion

Despite the low representation of women among the corporate directorships in Denmark, the quotas for gender representation have thus far received little support in business and politics. Yet, board gender diversity has been the subject of considerable debate in Denmark, as the low female participation in the top corporate layers is seen as being at odds with a society enjoying equality between men and women. Building on these debates, the specifics of the Danish corporate governance system and the related scholarly research, we conclude that the low incidence of women among the corporate directors in Denmark is to some extent due to the limited supply of female candidates, i.e. shortage of women with leadership skills and previous experience as executive directors. The high

demand for such skills in part relates to the specifics of Danish corporate governance system, i.e. a greater non-executive directors' engagement in active management. Women seem to be also lagging behind in terms of business politics, personal branding, career planning and mapping. Moreover, some hurdles remain on the demand side, presumably due to persisting incumbents' preferences for the traditional type of directors, e.g. male candidates with rich executive experience. Therefore, we argue, further efforts in Denmark need to be directed toward increasing the female pipeline, i.e. motivating women to opt for an executive career and, consequently, gain the experience that is still largely demanded in the boardroom. In addition, some efforts should be directed toward changing the existing preferences for the traditional type of director. This can be achieved both through mechanisms that promote competent women and facilitate the matching of the supply of qualified female candidates to the firms' demand for talent, and by increasing firms' recognition of the benefits of more gender-diversified boards.

Notes

1. Economic participation and opportunity contains the participation gap, the remuneration gap and the advancement gap. The participation gap measures the difference between women's and men's labor force participation rates. The remuneration gap is based on the ratio of estimated female-to-male earned income, and a qualitative indicator on wage equality for similar work drawn from the World Economic Forum's Executive Opinion Survey. The gap between the advancement of women and men is measured through the ratio of women to men among legislators, senior officials and managers, and the ratio of women to men among technical and professional workers (Global Gender Gap Report 2016).
2. Political empowerment measures the gap between men and women at the highest level of political decision-making through the ratio of women to men in ministerial-level positions, in parliamentary positions, and in terms of years in executive office (prime minister or president) for the last 50 years (Global Gender Gap Report 2016).

3. This subsection is largely based on the official websites of Denmark (<http://denmark.dk/en>) and the EU (http://europa.eu/epic/countries/denmark/index_en.htm).
4. When Sweden, as the first Nordic country to do so, was inspired by the governance system of the Danish 1930 Companies Act in its own 1944 Companies Act, the new system differed from the Danish one in that the board of management comprised just one person, the chief executive officer (CEO). Other than that, the distribution of powers between the board of directors and the board of managers was the same. The Swedish version was later applied in the Finnish and Norwegian Companies Acts, while the Danish version was applied in the Icelandic Companies Act.
5. Cf. Act No. 123 of 15 April 1930 § 48, which required limited liability companies with a subscribed capital of more than 100,000 Danish kroner to have a *direktion* (daily management organ) besides the board of directors. The same provision made it optional for all other companies covered by the Act.
6. Danish Act on Public and Private Limited Companies (the 2008 Companies Act).
7. The powers of the board of directors are listed in Section 115 and those of the board of managers in Sections 117–118 of the 2008 Companies Act.
8. Cf. Section 111(1)(1) of the 2008 Companies Act; This reflects that the introduction of the board of managers in the 1930 Companies Act was not intended in any way to change the position of executives as hired personnel.
9. Cf. Section 135 of the 2008 Companies Act.
10. Cf. Section 111(1)(1) of the 2008 Companies Act.
11. The different use of “executive” to mean either powers (executive powers) or a position (an executive) should not cause confusion. In English terminology “executive” is employed to signify a person who is in charge of daily management, which in Danish terminology translates into the function carried out by members of the management board. Consequently, by statutory definition, all Danish directors serving on the board of directors are “non-executives” in the English sense of the term.
12. One could actually question whether the UK corporate governance system is really a one-tier system, considering the distinction made between non-executives and executives.
13. Cf. Section 120(1) of the 2008 Companies Act.

14. Danish companies with at least 35 employees on average in the last three years are subject to codetermination. In these companies, the employees have a right (but no obligation) to elect one-third of the total number of directors, in the form of employee representatives. Such representatives must be appointed from among the company's workforce. These employee-appointed directors are considered directors in every respect, including their personal liability. If a company does not have employee representation and no one is entitled by the articles of the company to appoint directors, which is highly unusual, then the AGM will appoint all directors to the board.
15. Cf. Section 121(1) of the 2008 Companies Act.
16. That it may be legal for a member of the board to disclose inside information to certain outside parties, e.g. a dominant shareholder, depending on the character of the national corporate governance system, was upheld by the European Court of Justice in its decision of 22 November 2005 in case C-384/02, *Grøndgaard & Bang*, leading to acquittal in this case before the Danish Supreme Court as reported in the Danish legal periodical *Ugeskrift for Retsvæsen* (UfR) 2009.2142. The Supreme Court had already confirmed this right in respect of disclosure made by the whole board in the Vase case, reported in UfR 2006.3359. Naturally, if a dominant shareholder receives inside information, they cannot trade on it, as doing so would violate the ban on insider dealing. See Art 8 of the Market Abuse Regulation (596/2014).
17. Cf. Section 135 of the 2008 Companies Act.
18. The average number of directors appointed by the general meeting of shareholders to the boards of directors of Danish listed companies is only around 5.3 members (Lekvall 2014).
19. In addition to a number of other privacy protection measures, the actual social security numbers are made anonymous by Business Authority/ Statistics Denmark before data are made available for research purposes.
20. The Danish Corporate Governance Recommendations are inspired by the UK Corporate Governance Code and are a similarly soft-law instrument based on the comply-or-explain principle. Publicly listed companies are required to observe the code as part of the listing agreement.
21. A large company is defined as a company that, for two consecutive years, sits above two of the following three thresholds: (i) a balance of 156 million Danish kroner; (ii) a net turnover of 313 million Danish kroner;

- (iii) an average of 250 full-time employees (Lov om ændring af selskabsloven, årsregnskabsloven og forskellige andre love, 2012–2013).
22. Reporting is mandated by Section 99b of the Danish Accounting Act.
23. This does not apply to companies that have had fewer than 50 employees in the last year, cf. Section 139a(7).

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