# The Nordic Way of Corporate Governance

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## Abstract

This article draws on a pan-Nordic study of the corporate governance frameworks of the four major Nordic countries, carried out under the auspices of SNS and hereinafter referred to as the SNS study.[1] The study shows that those resemblance between the frameworks makes it warranted to talk about a joint Nordic corporate governance model. A key feature of the model is that it allows strong owners to effectively control and take a long-term responsibility for the company. The inherent risk of such a system, that it allows the control owner to extract undue private benefits from the company, is effectively curbed through a well-developed system of minority protection. The outcome is a model that encourages strong owners to engage in the governance of the company in order to tend to their investment while at the same time creating long-term value for all shareholders. This article reviews the findings of the study and extends them to reflections on conceivable sustainability implications of the Nordic model.

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[1] See Lekvall (2014), including stand-alone contributions by Airaksinen, Berglund and von Weymann (2014), Gillson (2914), Hansen and Lønfeldt (2014), Knudsen and Norvik (2104), and Skog and Sjöman (2014). SNS, Studieförbundet Näringsliv och Samhälle, is Sweden's leading arena for science-based policy debate.

## 1. Introduction

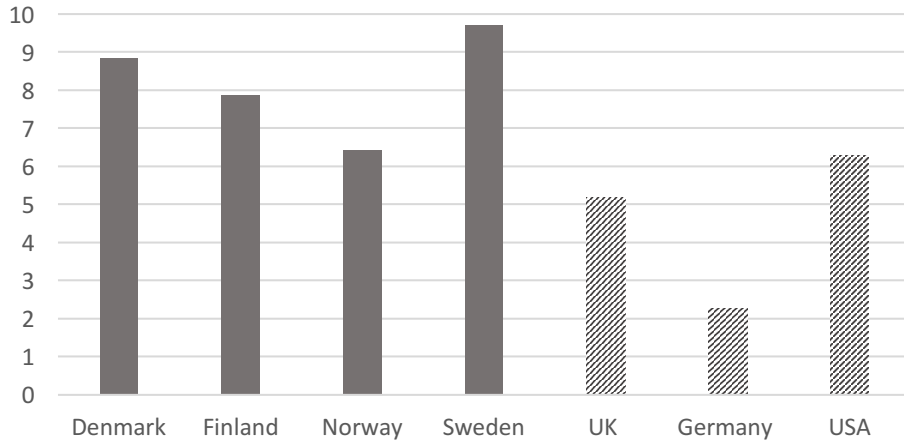
This article draws on the SNS study of Nordic corporate governance. This study shows that the resemblance between the corporate governance frameworks of the Nordic countries makes it warranted to talk about a joint Nordic corporate governance model. The purpose of this article is to summarize the key findings and elements of the SNS report and to extend them to reflections on conceivable sustainability implications of the Nordic model.

The four major Nordic countries of Denmark, Finland, Norway, and Sweden have fostered a remarkable number of world-leading companies, as illustrated in Figure 1. The figure shows the ratio of the share of companies on Forbes' list of the world's 2000 largest listed companies to the share of the world population of the four major Nordic countries, benchmarked against three world-leading industrial economies. The Nordic average ratio significantly exceeds those of all the benchmarking countries, and is about four times higher than that of Germany.

Many factors may certainly underlie this outcome, the further analysis of which is beyond the scope of this article. Nonetheless, it is widely held within the Nordic business communities that the way Nordic companies are governed plays a significant role in their often remarkable performance in the international markets. This notion is underpinned by numerous international rankings in recent years; for example, in the 2013 global ranking of the efficacy of corporate boards by the World Economic Forum, Sweden, Finland and Norway all ranked within the six top positions and Denmark ranked no. 20, just ahead of the UK and Germany.[2] However, over the last few decades, the Nordic countries have increasingly been pressured to adapt to what is sometimes referred to as international governance standards, in practice essentially the corporate governance practised in jurisdictions with an Anglo-Saxon common law tradition, primarily the US and the UK. This influence has two main sources:

One is the international capital market, which has drastically increased its presence in the Nordic markets during this period. Currently, on average non-domestic owners account for about 40% of the market capital-

**Figure 1:** Ratio of each country's share of the world's 2000 largest listed companies to its share of world population. Source: Forbes Global 2000 Leading Companies List 2013 and World Bank 2013 report.




[2] World Economic Forum Global Competitiveness Report 2013.

ization of listed companies in the Nordic region. A major portion of this ownership emanates from non-Nordic shareholders, mainly in the form of institutional investors with US or UK origins. As a consequence of this, the Nordic markets have seen a great influx of capital market players such as shareholders and their advisors, investment analysts, and board directors with an Anglo-Saxon corporate governance background. Occasionally this situation has caused frictions when such players are confronted with Nordic governance practices, manifested *inter alia* as a lack of understanding of Nordic general meeting practices, of major shareholders' role in the governance process, and of prevailing work practices in Nordic boards.

A second source of pressure has been the active corporate governance harmonization agenda pursued by the European Commission since the turn of the century. Remarkably, this agenda has been predominantly based upon the UK governance approach, largely disregarding the great diversity of corporate governance models existing across Europe. This approach has led to regulatory initiatives that have often been poorly adapted to the governance systems of other parts of Europe, including those in the Nordic region, thus causing considerable challenges for regulators, shareholders and companies.[3] Against this background, the overarching aim of the 2014 SNS study was to investigate the extent to which it might be possible to identify a common basic corporate governance model that is valid across all four countries and, if so, to provide an overall description of the key characteristics of this model compared with other corporate governance frameworks. Such a description would be useful for increasing the recognition and understanding of Nordic corporate governance in the international capital market and in the EU administration, thus possibly mitigating the abovementioned problems. Notably, the SNS study had no objective to promote the Nordic model for use on a broader international scale; rather, it was strictly confined to the pedagogical purposes mentioned above. Whether or not the model – as a whole or specific aspects of it – might also be useful outside of the Nordic jurisdictions is another matter.

## 2. Is there a specific Nordic governance model?

The prime purpose of the SNS study was to determine whether formal regulation and real-world practices of corporate governance in the Nordic countries were sufficiently similar to warrant the identification and description of a common Nordic governance model. A key outcome of the report was a clearly affirmative answer to this question. This conclusion is founded on the following three fundamental aspects of the Nordic institutional framework for the governance of listed companies:

### 2.1 Closely resembling rules and norms for good governance

The norm systems, largely determining how corporate governance is practised in a jurisdiction, closely resemble one another between the Nordic countries but differ significantly from those of most other parts of the world. Generally, such systems comprise three main components:

(i) ***Statutory regulation***, primarily in the form of national Companies Acts and other kinds of mandatory regulation, for which there is a long history of co-ordination between the Nordic countries. Hence, in the decades following World War II, the lawmakers of these countries (including Iceland) had far-reaching

[3] For an in-depth treatment of these and related issues, see Ilmonen (2016).

ambitions to develop a common Nordic Companies Act. No such act materialized, but the new national acts inaugurated in all countries concerned during the 1970s closely resembled one another.

Through later amendments and complements, those acts have gradually strayed from each other, and when new national acts were again introduced in the early 2000s, they differed significantly in crucial respects. This judgement does not, however, apply to the governance sections of the acts, which still closely resemble one another, sometimes down to the formulation of legal text. Together these acts therefore form a joint judicial framework for corporate governance across the Nordic region.

(ii) ***Self-regulation***, which traditionally plays an important role in Nordic societies within this field, today mainly in the form of corporate governance codes. The Nordic countries were relatively late to adopt this new form of regulation, but in the period from 2001 (Denmark) to 2005 (Sweden), a national code of corporate governance was introduced in each of the four countries. Although those codes differ significantly in terms of form, structure and scope, with regard to governance substance matter, as well as their institutional setup as part of the business sector self-regulation, they resemble each other closely and are generally in line with current international standards.

Listing rules and other regulation of privately operated stock exchanges may also be seen as part of the self-regulation of the business sector, albeit typically contractually mandatory for the companies concerned. Also in this respect there is a close co-ordination between the Nordic countries, largely due to the fact that the main exchanges of three of the countries (Denmark, Finland and Sweden) are owned and operated by the same privately owned company, Nasdaq Nordic Ltd, a subsidiary of the US-based Nasdaq Group Inc. Although the Norwegian main exchange, owned and operated by Oslo Børs, remains independent of this setup, its operating procedures closely resemble those of the other exchanges. Thus, a far-reaching harmonization of listing rules and other stock exchange regulation exists across the Nordic equity markets.

(iii) Finally, ***non-codified traditions, norms and practices*** also play a significant – but often underestimated – role in determining how corporate governance is pursued within a given jurisdiction. Even in this respect, the Nordic countries display close similarities based *inter alia* on long-standing common historical roots, largely shared ethnical backgrounds and, in more recent times, similar societal, political and economic structures. Altogether this leads to general norms, values and codes of conduct that are largely shared among the Nordic societies; to a considerable extent, they also disseminate into business communities and influence how companies are governed and managed.

## 2.2 Similar ownership structures of listed companies

The Nordic countries also share a common overall structure of the capital markets and ownership patterns in listed companies. The latter aspect is particularly important in this context because it largely determines the role that shareholders can play in the governance of companies. Listed companies may roughly be classified into two main categories in this respect: companies with a dispersed owner-

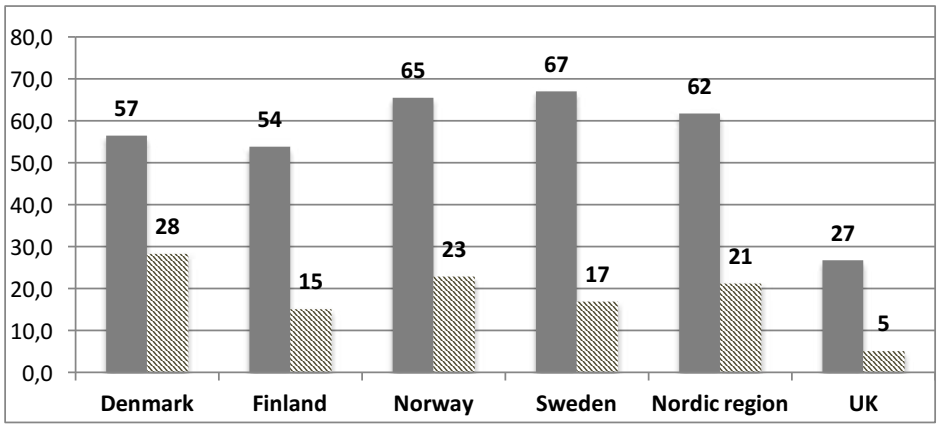
ship pattern, often with no single shareholder controlling more than a fraction of the total capital and/or voting power, and companies with a more concentrated ownership structure where one or a small group of shareholders can have a more or less controlling holding of the company. The first of these patterns is typical of markets with an Anglo-Saxon judicial tradition, primarily the US and the UK, whereas the second pattern dominates in continental Europe as in many other parts of the industrialized world.

This distinction is crucial because it largely determines the extent to which shareholders can and may wish to participate in the governance of their investee companies. In widely held companies, an individual shareholder that holds only a fraction of the total equity may consider it unwarranted to invest time and money in active governance of the company, given that this shareholder will reap only a corresponding fraction of the fruits of these efforts (the so-called free-rider problem). Furthermore, such shareholders are predominantly of the institutional investor type, usually with insufficient financial, organizational or human resources required to exert strong and active ownership powers. Instead, these shareholders tend to "vote with the feet", which in turn leads to the lack of shareholder engagement that is a frequent theme in the current international debate of the field.

In contrast, in closely held companies one or a few major shareholders may be in practical control of the company, often with their investment portfolios concentrated in one or a few companies where they engage actively in the governance in order to tend to their investment, typically with its long-term performance in view. Since these shareholders often own a substantial part of the company, they are less affected by the free-rider problem and are hence more motivated to invest considerable amounts of time and effort in governing the company.

A crucial, common feature of the Nordic equity markets is that their listed companies are predominantly of the latter category, a characteristic in which they differ distinctively from e.g., the UK market, as illustrated in Figure 2. As shown in the diagram (the filled bars), more than six out of ten listed companies in the Nordic region have at least

**Figure 2:** Percentage of listed companies with at least one shareholder in control of more than 20% (filled bars) and 50% (striped bars), respectively, of the votes of the company.
Data for the Nordic market comprise all domestically domiciled companies on the primary stock exchange of the respective countries. The UK data are based on a sample of 116 out of the corresponding population of about 800 companies on the London Stock Exchange Main Market. The figure is adapted from Lekvall (2014).



one shareholder in control of more than 20% of the votes of the company, usually sufficient to exert a considerable degree of control over listed companies. Comparing the countries, Norway and Sweden display the highest concentration levels, whereas Denmark and Finland show slightly lower levels. The striped bars instead indicate that one out of five Nordic companies has at least one shareholder in absolute control of the company with more than 50% of the votes. For both control levels, the corresponding numbers for the UK market are significantly lower.

It is also interesting to consider the situation in a broader international context, as indicated in Table 1 below. For the EU member states, these data are based on a study commissioned by the European Commission from 2007, whereas the US and Norway data stem from the study by La Porta et al. (1999). Although these data are not entirely up to date, it can reasonably be assumed that fundamental institutional features of this kind do not change rapidly and that the numbers displayed are therefore fairly comparable to those in the previous diagram. Notably, the data in this table are based only on the 20 (approximately; it differs slightly between countries) largest companies in the respective countries, whereas the data in the previous diagram are based on a total survey of all companies listed on the main exchanges of the four Nordic markets.

**Table 1:**Presence of at least one shareholder controlling more than 20% of votes among the approximately 20 largest listed companies in each country
Sources: EU Member States: European Commission (2007); The US and Norway: La Porta et al. (1999).

| Nordic countries | | European continental countries | | UK and USA | |
|---|---|---|---|---|---|
| Denmark | 74% | France | 40% | UK | 15% |
| Finland | 60% | Germany | 25% | USA | 20% |
| Norway | 75% | Italy | 65% | | |
| Sweden | 65% | Nether-lands | 48% | | |
| | | Spain | 46% | | |

As shown in the table, the Nordic countries as a group show the highest degree of ownership concentration at levels largely in line with those reported in Figure 2. However, several of the continental European countries also display concentration levels that can be assumed to often involve a significant degree of control ownership. This finding stands in sharp contrast to particularly the UK market with its considerably more dispersed ownership structure.[4]

### 2.3 A common governance structure

The third and arguably most important factor underlying the similarities of corporate governance frameworks in the Nordic countries is their strictly hierarchical "governance chain of command", closely shared between these countries but distinctively different from most other jurisdictions in Europe and elsewhere. This concordance has its roots in the previously mentioned history of legal co-ordination between the countries concerned, which resulted in the emergence of a specific Nordic governance structure broadly

[4] A similar conclusion about the US market on the basis of the La Porta et al. (1999) results (as those of several other researchers) is cast in doubt by Holderness (2007). Based on a comprehensive analysis of ownership data of exchange-listed companies in the US vs. a number of Western European and East Asian countries, Holderness (2007) concludes that the median ownership concentration in US public corporations is no less than that of a corresponding sample of non-US companies (ibid., p. 1389). It should be noted, however, that the bulk of Holderness's analysis is based on a 5% cutoff level for "blockholding". This may be appropriate as a general measure of ownership concentration but is not very pertinent as an indication of control ownership, at least not in a Nordic or European Continental context. Nonetheless, Holderness (2007) also briefly reports similar – although weaker – results for 10% as well as 20% cutoff levels. Furthermore, not least after a number of high-profile technology company IPOs since the turn of the millennium, the US market displays a considerable number of tightly controlled listed companies where the controlling owners use dual-class shares to further leverage their control (Gilson, 2014, pp. 105-106). Hence, pending further research on this issue, it seems appropriate to reserve judgement about the prevalence of control ownership among US listed companies.

along the following lines.[5]

Since the early 20th century, the corporate governance frameworks of the Nordic countries have been largely based on the Anglo-Saxon system, with a unitary board accountable to the general meeting. However, already at an early stage, there was a growing recognition of the fundamental difference between the strategic steering and oversight functions of "outside" directors (often the financiers of the business) and the executive functions performed by the directors engaged in the day-to-day management of the company. It was increasingly contended that this separation of roles should be reflected in the legally defined duties and responsibilities of the respective categories of directors. In response to such considerations, in the 1930 revision of their Companies Act, Danish lawmakers decided to distinguish the executive functions from the board and create a new legally defined corporate body separate from but subordinate to the board, and to make this arrangement mandatory for companies exceeding certain size criteria. In Danish practice the executive functions were usually performed by a collective body of senior officers; thus, the new body was defined as an *executive board* (Danish *direktion*), headed by what would currently be termed a *CEO* (Danish *administrerende direktør*).

In the decades that followed, this practice was adopted in all the other Nordic countries; however, with the difference that in Finland, Norway and Sweden, the new executive body was defined as a one-person function, today known as the CEO. In all four countries, the members of this *executive management* function, in the form of either a single-person CEO or a Danish *direktion*, may formally sit on the board but may constitute only a minority of its members. In practice this option is seldom exercised, but most Nordic boards are entirely non-executive. The main exception is Sweden, where the CEO currently is also a board member in slightly less than 40% of all listed companies.

This situation has led to a governance structure that may be schematically illustrated, and compared with the one- and two-tier models largely dominating European corporate governance, as shown in Figure 3. The left-hand side of the figure depicts the two-tier system typically used in jurisdictions with a German civil law tradition but with some variations also prevalent in other parts of Continental Europe. Particularly in its original German version, this system draws a strict line of demarcation between a supervisory board, with primarily oversight and controlling functions, and a management board vested with virtually all executive powers. The decision-making competence of both the general meeting and the supervisory board are basically defined by law, essentially limiting their powers to matters of oversight and control rather than to active participation in the management of the company. The dashed lines in the figure symbolise these limited powers of the superior governance bodies. Instead the model vests strong powers to the management board to run the company largely independently of shareholder influence, which in turn makes the model susceptible to agency problems between the shareholders and both the supervisory and the management boards.[6]

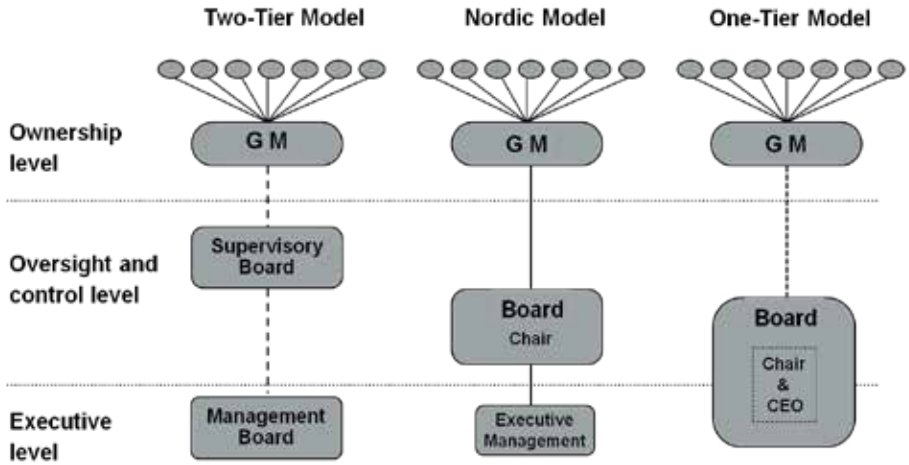
The right-hand side of the figure depicts the one-tier structure predominantly used in jurisdictions based on an Anglo-Saxon common law tradition, primarily the US and the UK. Here, the supervisory/control and executive functions are combined in a unitary board comprising both executive and

[5] For a more comprehensive review of this development, see Hansen (2007).

[6] For a further comparative analysis of the German vs. Nordic governance models, see Ringe (2016). Although from a conceptual point of view basically affirming the picture outlined here, Ringe contends that in terms of practical application and, to some extent, more recent legal amendments, the two models are in a process of gradual conversion.

**Figure 3:** A schematic illustration of the governance structure of the Nordic model compared with the one- and two-tier models, respectively.

Adapted from Lekvall (2014).




non-executive directors. This setup entails certain conflict of interest problems between the board and the executive management – problems that underlie some of the key principles of modern corporate governance.

Formally, the general meeting of this model has considerable power to control the board. In practice, however, this power is largely illusory because of the highly dispersed ownership structures typical of markets where this model is predominantly used. As noted above, with no owner holding more than a fraction of the company stock, no single shareholder can be expected to have the incentive and resources necessary to invest the time and money required to exert strong ownership powers. In practice, the result is typically far-reaching delegation of governance powers to the board with only faint shareholder powers remaining to discipline the board to act strictly in the interests of shareholders.

This limited power of shareholders to exert ownership control is symbolised in the figure by a dotted line from the general meeting to the board. Hence, this model also entails significant agency problems. In addition, as a consequence of its composition of a mixture of executive and non-executive directors, the board has an inherent conflict of interest situation vis-à-vis the executive management. This conflict is further exacerbated when, as is often the case in some jurisdictions applying this model, the same person holds the roles of both chair of the board and CEO. Several of the key principles of the US and UK governance approaches are aimed at imitigating these problems (e.g., requirements of independent directors, board committees and lead directors).

The Nordic solution is neither a mixture of nor a compromise between these models. It rather differs distinctly from both in at least three fundamental respects:

- It allocates far-reaching powers to the general meeting to control the governance of the company by placing this body at the top of a hierarchical "chain of command" in which each governance body is strictly subordinate to its next superior body.

- It vests the board with far-reaching powers to manage the company during its term of office. Nonetheless, each individual director, as well as the entire board, may be dismissed by the general meeting at any time and without stated cause, thus ensuring strong subordination and strict accountability of each director and the board as a whole to the shareholders.
- It makes a clear-cut distinction of duties and responsibilities between the mostly altogether non-executive board and the purely executive CEO function[7], the latter being appointed and dismissed by the board at will at any time and without the need for any stated cause, thus entailing a strict hierarchy that ensures strong accountability.

Hence the solid line throughout the governance chain in the Nordic model, symbolising the strong powers of the general meeting to control the subordinate bodies and enforce its will throughout the governance chain. Another way of expressing this is that the model is less susceptible to agency problems between shareholders and their agents in the form of the board and the executive management than are the two other models discussed. Instead, the Nordic model has other agency problems, primarily those that may occur between the (few) controlling owners and the vast remaining shareholder constituency. We will return to this topic below.

## 3. An owner-oriented governance model…

The most distinctive feature of the Nordic governance model is thus that it allows a shareholder majority, in the form of either a single controlling owner or a coalition of smaller shareholders, to effectively control and assume long-term responsibility for the company. The alleged risk of such a system – the potential of strong owners to abuse their powers to extract undue benefits from the company at the expense of other shareholders – is effectively curbed by a well-developed system of minority protection. The result is a governance model that encourages strong owners to invest time and money in long-term engagement in the governance of the company for the purpose of promoting their own interest while simultaneously creating value for the company and all its shareholders.

The underlying philosophy is that shareholders should be in command of their company. The board and executive management are seen as the shareholders' tools for running the company during the mandate period under strict fiduciary accountability to the shareholders for the outcome of their work. This is manifested through a clear and strictly hierarchical governance structure based on four main pillars:

(i) *Supremacy of the general meeting* to decide on any matters that do not expressly fall within the exclusive competence of any other governance body (which applies to very few issues, one being that the general meeting cannot decide on a higher distribution of profits than what is proposed by the board).

The general meeting may in the Nordic system issue written instructions to the board about how the company should be run, and the board would be legally obliged to follow those instructions. In practice, such "ownership instructions" are never used in listed companies, where the underlying assumption is that they are always to be managed with a view to long-term value creation. However, ownership instructions are occasionally used in state- or local gov-

[7] Or, in Denmark, the executive board.

ernment-owned companies, as well as some non-listed, privately held companies, all typically characterized by more complex goal structures than those of listed companies.

(ii) A *board of directors* appointed by and fully subordinate to the shareholders in the general meeting. As already mentioned, Nordic boards are mostly entirely *non-executive*, i.e., no member of executive management sits on the board, the main exception being Sweden, where the CEO is a formal board member in a significant (slightly less than 40%) – but slowly decreasing - share of the listed companies. In either case the CEO is legally entitled to participate in board meetings unless the board decides differently on a case-by-case basis (for example when it needs to discuss the performance of the CEO). Furthermore, the positions of chair of the board and CEO may never be held by the same person in Nordic listed companies; in Sweden, this is even prohibited by law.

As also mentioned before, the entire board, as well as any individual director, may be dismissed by the shareholders at any time and without stated cause. If occurring during an on-going mandate period, such dismissal requires the summoning of an extra-ordinary general meeting, which normally can occur within a matter of weeks. Hence, in cases of a change of control of a company (e.g., as a consequence of a hostile takeover or a merger), the entire board can immediately be replaced by the new owners.

In accordance with current international standards, through code provisions, the majority of board members are to be independent of the company and company management; this requirement is usually fulfilled in good measure in Nordic boards as a consequence of their predominantly non-executive nature. However, the codes of all four countries except Denmark make a distinction between independence in relation to the company and its management and independence in relation to major owners, with only two board members required to be independent in the latter sense. This distinction reflects the generally held view that major owners should be allowed to largely control their companies, including the right to fill the board majority with their trustees.[8]

(iii) An *executive management* function appointed by and fully subordinate to the board and subject to dismissal at will by the board at any time and without stated cause.

As discussed in a previous section, in all countries except Denmark, this function is performed by a single-person CEO, whereas in Denmark it is usually (but not always) composed of a group of people under the chairmanship of a CEO. In a strict corporate governance sense, this difference is of limited consequence since the Danish *direktion* performs the same function, and is appointed by and subordinate to the board in the same way, as the single-person CEO of the other countries. Hence, the Danish setup must not be mistaken for a two-tier structure of the German type but fits well into the overall Nordic structure outlined in Figure 4.

(iv) A *statutory auditor* appointed by and primarily accountable to the shareholders

[8] For a more elaborate discussion of the concept of independent directors in the Nordic corporate governance framework, see Hansen (2013).

in the general meeting. This appointment is made upon proposal by the board (or its audit committee), except in Sweden, where the shareholder-controlled nomination committee (cf. below) formally proposes the auditor; however, even in this case, the appointment is usually based on preparatory work completed by the board or its audit committee. In either case, the general meeting is never bound by the proposal presented but is perfectly sovereign to make a different decision if it so sees fit, although in practise this virtually never happens.

In the Nordic jurisdictions, the auditor is principally seen as the shareholders' tool for reviewing certain aspects of the work of the board and executive management, primarily the accounts and financial reporting of the company. However, in three of the countries, Norway, Finland and Sweden, the auditor also has the duty to review the administration of the company by the board and executive management. The exact meaning of this duty is subject to some debate, but the general interpretation is that it should not include any assessment of how the company is run from a business point of view but be confined to ensuring that the company complies with its articles of association, applicable law, and other applicable regulation.

In addition to these "main pillars", the Nordic governance model includes some further specific features worth highlighting in this context:

- In all four countries, the strong ownership powers just described may be further enhanced by the use of dual-class shares with different voting rights, but with a maximum difference of 1 to 10. This option is used mainly in Sweden (approximately 50% of listed companies), to a lesser extent in Denmark, even less in Finland and rarely in Norway. Rough estimates indicate that approximately ¼ of Nordic listed companies apply this form of control-enhancing mechanism.
- In Norway and Sweden, the nomination committee is a subcommittee not of the board but of the general meeting. The (code-based) provisions regulating this body differ somewhat between these countries, but common features are that the committee is appointed by the shareholders at the general meeting and that it predominantly comprises representatives of the (usually major) shareholders. The model is gaining increasing ground also in Finland but so far not in Denmark, where the international standard model with nomination committees in the form of a subcommittee of the board dominates.
- In all Nordic countries except Finland, employees have the right – but not an obligation – to be represented on the board. This right is currently used in more or less all Norwegian listed companies, whereas it is exercised in fewer than 40% of Swedish listed companies and even less in Denmark. The reason for the employees of the remaining companies to opt out of this opportunity is typically that they prefer other forms of co-determination.

Employee-appointed directors of Nordic boards have the same formal duties and responsibilities as any other board member. However, they can never constitute a board majority; typically they account for up to about 1/3 of the board. Another important feature is that, unlike some other jurisdictions allowing for employee board representation, the Nordic system requires those representatives to be elected by - and exclusively among - the company's employees, thus shunning the risk of central union political considerations intruding into the board's work.

## 4. …balanced by strict minority protection

The obvious risk of vesting control-owners with such strong powers is that those will be used to take advantage of the smaller shareholders by extracting undue private benefits from the company. Hence, the risk of *agency costs* in the Nordic model is more associated with the relationship between the controlling owner(s) and the rest of the shareholder constituency than with that between the shareholders and the board and management. To keep such agency costs within acceptable bounds, the other side of the strong ownership orientation of the Nordic model is an elaborate system for the protection of minority shareholder interests. This system operates through a combination of statutory, self-regulatory and general practice provisions, the most important of which are the following:

(i) *The principle of equal treatment of shareholders,* which prohibits the general meeting, the board and executive management to take any action rendering undue favours to certain shareholders at the expense of the company or other shareholders. This provision, which appears in the Companies Acts of all Nordic countries with almost identical wordings, is generally referred to as the *General Clause.*

Although similar stipulations can be found in most well-developed corporate governance jurisdictions, the Nordic rule seems to be held in higher esteem among the relevant actors and is more strictly enforced – not least through close scrutiny by fellow shareholders and the media – than what generally seems to be seen elsewhere. In fact, the considerable reputational risk, especially in the relatively small business communities, of being caught off-guard in breach of this principle, may reasonably be considered to make up key factor underlying the functioning of the Nordic governance model.

(ii) A tradition of strong *individual shareholder rights*, largely pre-empting the provisions of the 2007 EU Shareholders' Rights Directive long before it was introduced.

For example, a single share suffices to have an item included in the general meeting agenda; to participate, speak and vote for this share at the meeting; to file counter-proposals at the meeting to any item on the agenda; and to pose pertinent questions to the board and management and have them duly answered, provided that they can be answered without detriment to the company. A single shareholder can also challenge a general meeting resolution in court on grounds that it is illegal or inconsistent with the company's Articles of Association; in this instance, the court could declare the resolution null and void.

(iii) *Qualified majority vote requirements* for a number of resolutions by the general meeting of particular potential detriment to minority shareholder interests.

The required levels are 67%, 90% and 100% of the votes cast at the meeting or, for certain resolutions, of the total number of votes of the company. For example, in Sweden, an incentive programme involving the issue of shares or share options to beneficiaries, foregoing the pre-emptive right of shareholders to participate, requires a general meeting resolution with 90% majority of the votes cast at the meeting.[9]

[9] This provision is currently under scrutiny, and there is a pending proposal to lower the required majority to $^{2}/_{3}$ of the votes.

(iv) *Minority powers* to force certain resolutions at the general meeting, especially on matters regarding shareholders' economic rights. Thus, minorities of typically 5-10% (depending on the country and type of resolution) may require the summoning of an extra-ordinary general meeting, force a minimum dividend to be distributed and have a "minority auditor" or, under certain circumstances, a "special investigator" (requires 25% in Denmark) appointed by the district court or a public authority.

(v) Long-established, generally endorsed rules and practices for *related-party transactions* based on transparency towards all interested parties and strict market terms, largely pre-empting the provisions of the amended EU Shareholders' Rights Directive[10], currently in the process of implementation in the Member States.

(vi) A generally a high degree of *transparency* towards shareholders, the capital market and the surrounding society, reflecting a long tradition of transparency in the Nordic societies.

Individually, none of these points may seem very unique in an international perspective, but taken together they make up a comprehensive system, developed and refined through many years of accumulated experience, that appears to largely fulfil its purpose as convincingly proven through both scientific research and more anecdotal, real-world observations.

Perhaps the most manifest research-based evidence is provided by Nenova (2003). In this comprehensive study, encompassing 661 companies from 18 countries with dual-class shares, listed on the world's 30 largest national capital markets, Nenova (2003) determined the median percentage "excess value" of control-block shares to total company market capitalization for all companies involved. Averaging these numbers for each country and grouping the countries according to the La Porta (1998) classification of corporate governance legal systems, her key findings may be summarized as follows:

| TYPE OF LEGAL SYSTEM | AVERAGE MEDIAN EXCESS VALUE OF CONTROL-BLOCK SHARES |
|---|---|
| **French civil law** Whereof France 27%, Italy 30%, Mexico 37% | 23% |
| **German civil law** Whereof Germany 5%, Switzerland 1.5% | 16% |
| **Anglo-Saxon common law** Whereof UK 7%, US 0.7%, Canada 0.5% | 1.6% |
| **Scandinavian civil law** Whereof Denmark 0.3%, Finland 0.5%, Norway 4%, Sweden 0.4% | 0.5% |

As shown in this panel, whereas the value of control-block shares substantially exceeds that of the company as a whole in French civil law jurisdictions as well as - albeit to a lesser extent – in German civil law jurisdictions, reflecting considerable room for control-owners to extract pecuniary benefits from the companies beyond what is available to shareholders in general, the corresponding numbers for the Anglo-Saxon common law jurisdictions are substantially lower, and for the Nordic civil law jurisdictions close to nil. Nenova (2003) attributes these results primarily to the divergent capacities of different legal frameworks to protect minority shareholder value, *inter alia* through effective law enforcement, strong investor protection and strict takeover regulation.

Another example is the study by Gilson (2005) who, comparing the prevalence of pe-

[10] Directive (EC) 2017/282.

cuniary private benefits of corporate control in Sweden and the US with that of a number of other countries, including Italy, Mexico and some Southeast Asian countries, found significantly less of such behaviour in Sweden and the US than in the benchmark jurisdictions. Gilson concludes that the relevant dichotomy is not, as has often been asserted, between widely and tightly held shareholder structures but between "good law" and "bad law" jurisdictions, attributing Sweden and the US to the first category. This conclusion may be reasonably generalized to the entire Nordic region.

More practice-based and anecdotal evidence is provided by the observation that it is a wide-spread, and often quite successful, investment strategy among retail shareholders in the Nordic countries to "ride on the back" of major control-owners. The assumption is that those owners will have the incentive, competence and resources to tend meticulously to the prosperity of their companies, thus creating value for all shareholders. One may also point to the strong interest of foreign institutional investors, often critical to control ownership in their home markets, in investing in Nordic control-owned companies.

## 5. Sustainability aspects of the Nordic model

The concept of sustainability has been subject to intense debate in management theory and practice for several decades. However, the concept still arouses considerable controversy within academia as well as among business practitioners with regard to its purport and implications for corporate governance.

One reason for this debate may be found in the ambiguity of the term itself, given that its connotations seem to vary substantially between different contexts. Even within the limited scope of the corporate sector, sustainability in the sense of certain aspects of a company's activities being endurable over time (e.g., a long-lasting product line, business strategy or ownership structure) fundamentally differs from sustainability in the sense of the impact of a company's activities on its social and physical environment to ensure in the eyes of these constituencies (Aras and Crowther, 2008). In the latter meaning, the concept is often referred to as "corporate sustainability", which is also the term used here to distinguish it from other connotations.

Based on this distinction, in this section we first discuss the sustainability of Nordic corporate governance in the sense of the prospects of the model *per se* to prevail over time, and then explore its possible implications for the corporate sustainability performance of Nordic companies.

### 5.1 Will the model prevail?

As noted earlier in this article, for quite some time the Nordic model has been subject to considerable challenges from mainly two sources: one caused by vastly increased foreign ownership in the Nordic stock markets, mainly in the form of US- and UK-based institutional investors with a predominantly Anglo-Saxon corporate governance background, the other by an active corporate governance harmonization agenda pursued by the European Commission, often resulting in regulatory measures poorly in line with governance rules and practices in the Nordic jurisdictions.

Not least in Sweden, this has led to a vivid debate at least since the turn of the century about a more or less inevitable convergence of the Swedish control ownership model towards the Anglo-Saxon model – an offshoot of the broader international so-called convergence theory, see e.g., Söderström, ed. (2003) and Henrekson and Jakobsson (2003). A strong argument for this convergence, maintained particularly by the latter authors, has been a successively eroding capital base of Swedish control owners in relation to the total stock market capitalization, leading to an increasing deficit of financial capacity to defend their ownership positions in an in-

creasingly globalized market for corporate control. However, in another study about a decade later, the same authors found that no such change had occurred to any decisive extent: although the "old" blockholding owners had decreased their share of control of the Swedish equity market, the dramatic surge of the Swedish stock market in the period 1980-2000 had created a number of new fortunes of significant size, thus broadening the capital base for the Swedish ownership model (Henrekson and Jakobsson, 2012).

In this latter study the authors point at two additional forces that have increasingly challenged the Swedish model, i.e. the increased prevalence of subsidiaries of major foreign companies and the rapidly growing role of private equity ownership in the Swedish market. They further contend that the on-going EU regulation agenda continues to erode the Swedish model by inflicting upon it Anglo-Saxon-based governance principles that tend to undermine the basis for control ownership. Overall, the threats to the survival of the Swedish model are far from over, a conclusion that may be assumed to apply, to a greater or lesser extent, to the entire Nordic region.

Notwithstanding this, thus far the Nordic model seems to have basically endured and remained in reasonably good shape (Thomsen and Conyon, 2012). To what extent this situation will endure henceforth, however, remains to be seen. Gilson (2014), commenting on the Nordic model in an independent chapter of the report underlying this article, provides some interesting observations about this issue. Gilson finds no general evidence supporting the convergence theory, as he points to a number of recent IPOs of major listed companies on the US stock market, especially in the IT sector, where the original entrepreneurs maintain tight control of their companies through dual-class shares and other control-enhancing measures, and to the dramatic increase in institutional ownership in both the US and Nordic markets for a long time. Hence, Gilson speculates, the relevant issue may be whether we will see a convergence of shareholder distribution *within* markets rather than of ownership distribution *between* markets, possibly leading to a situation where both ownership models will thrive side by side in the same markets.

### 5.2 CSR/corporate sustainability implications of the model

Although the concepts of corporate social responsibility (CSR) and corporate sustainability have been subject to extensive academic research for many years, these activities do not appear to have produced an abundance of studies focusing specifically on the relationship between these concepts and corporate governance.[11] However, some notable exceptions are the contributions of Salzmann et al. (2006), Aras and Crowther (2008), and Jamali et al. (2008), as well as, more recently, those of Rahim (2013), Roe and Tilt (2015) and Gelter (2016). Furthermore, Thomson and Croydon (2012), and Strand et al. (2015), add some specifically Nordic aspects to this discussion. Altogether these studies may be said to provide at least an embryo of a theory of the interrelationship between corporate governance and CSR/corporate sustainability. Some key elements of such a theory, with specific relevance in the Nordic context, are the following:

- The concepts of corporate governance and CSR/corporate sustainability are closely interrelated in a two-way manner. There are different ideas about the

[11] There is a certain ambiguity in the literature of the field as to the relationship between the concepts of "Corporate Social Responsibility (CSR)" and "Corporate Sustainability". To avoid risks of misinterpretation, in the ensuing discussion the terminology generally used in each study referred to is also adopted in the discussion of its findings, thus leaving to the reader to assess the degree of alignment or misalignment between the two concepts in this context. Where no clear distinction is made between the two concepts the term "CSR/corporate sustainability" is used.

exact nature of this relationship; however, having analysed various propositions in this respect, Jamali et al. (2008) conclude that corporate governance "is a necessary pillar for a genuine and sustainable CSR orientation" (ibid., p. 257).

- CSR is intrinsically associated with *a long-term vision* of the company, aimed at ensuring that its business prevails over time (Jamali et al., 2008; Aras and Crowther, 2008). Hence the concept is closely related to the notion of License to Operate, according to which a company is seen as an integral part of the society in which it operates and thus must conform to the norms and values prevailing in this society so as to ensure its legitimacy in the eyes of its various stakeholders (Salzmann et al., 2006; Rao and Tilt, 2016).
- *Transparency*, along with accountability and honesty, is a crucial source of the vigour of a company's CSR performance (Jamali et al., 2008). Hence, reporting on its activities in this respect (also referred to as corporate social disclosure, CSD) to its pertinent stakeholders is a key element of a company's sustainability performance. It may in fact be seen as an expression of the company's accountability to its stakeholders (Rao and Tilt, 2016).
- Analysing the possible impact of *employee board participation* on the company's CSR performance, Gelter (2016) distinguishes between internal and external CSR, where the first concept relates to the company's conduct towards stakeholders with which it has a long-term relationship, notably its employees, and the second to various types of externalities produced by its operations. Gelter's overall conclusion is that employee board participation is generally associated with a higher level of internal CSR, whereas its impact on external CSR is unclear and may go in both directions.
- Several researchers also point at the predominantly voluntary nature of CSR behaviour (Jamali et al., 2008; Rahim, 2013; Rao and Tilt, 2016). However, Gelter (2016) notes that this applies primarily to the external aspects of CSR, whereas internal CSR is usually more rule-based (e.g. through legal requirements of employee board representation). Nonetheless, at least with regard to external CSR, *self-regulation* rather than law or other statutory rule-making is the predominant regime for setting norms and standards within the field (Rahim, 2013).[12]

As should be evident from this article, the above-mentioned elements are all salient features of Nordic corporate governance. It therefore seems warranted to assert that this governance framework provides – paraphrasing Jamali et al. (2008) – a solid pillar for a genuine CSR/corporate sustainability orientation among companies: The Nordic ownership model typically entails a long-term vision by major owners of their companies, founded not only on strong incentives to tend meticulously to their investments but also on a general drive to endure as long-term corporate owners, views closely reminiscent of the License to Operate notion.[13] Furthermore, transparency is a long-lasting hallmark of Nordic corporate governance, employee representation on corporate boards is a

[12] A notable exception is the EU Directive on Non-Financial Reporting (2014/95/EU), recently implemented in the Member States.

[13] It is therefore no coincidence that the two primary corporate governance self-regulatory norm systems in Sweden, the Swedish Corporate Governance Code for listed companies, administered by the Swedish Corporate Governance Board, and the Guidelines for Good Board Practice, administered by the Swedish Academy of Board Directors and mainly directed towards non-listed SMEs (only available in Swedish), both refer implicitly or explicitly to this notion in their recommendations regarding CSR/corporate sustainability.

well-established feature of the Nordic governance framework (except in Finland), and self-regulation plays a prominent role in the corporate governance regulatory regimes of the Nordic countries.

To what extent those ostensibly favourable preconditions have in fact brought forth stronger CSR/sustainability performance among Nordic companies than in their counterparts operating under other governance regimes largely remains to be proven. Yet there are a few studies indicating that this may indeed be the case to some extent. For example, Strand et al. (2015), referring to a variety of international measurements and rankings of CSR and sustainability performance at both company and country levels, as well as to other studies of CSR and sustainability behaviour of Scandinavian companies, conclude that "pretty much any way one measures it, Scandinavian countries and Scandinavian companies lead the world in strong CSR and sustainability performance". Also, Liang and Renneboog (2017), based on data comprising CSR ratings of more than 23,000 companies from 114 countries spanning 123 industries, and applying essentially the same classification of legal systems as the one used in the aforementioned Nenova (2003) study, found that companies from civil law countries generally scored higher on CSR performance than companies from common law countries, with Scandinavian civil law-based companies showing the highest level of CSR.

Notwithstanding this, since the findings of the two studies quoted above appear largely based on ranking lists of arguably debatable methodological stringency, it must be considered still unclear to what extent Nordic companies in general may outperform their counterparts from other parts of the world in terms of CSR/corporate sustainability performance. Hence further research will be needed to answer this question with any reasonable degree of certainty.

## 6. Conclusions

This article and the underlying 2014 SNS study report demonstrate that the corporate governance frameworks of the four major Nordic countries resemble one another to an extent that makes it warranted to talk about a joint Nordic corporate governance model. This model is based on three largely shared determinants of how corporate governance is practiced in a jurisdiction:

- Closely resembling social, cultural and regulatory frameworks.
- Similar prevailing ownership structures of listed companies.
- A common governance structure, distinctly different from those of other jurisdictions.

The essence of the model may be summarized as follows:

> *It is a model designed to allow strong owners to largely control their companies while maintaining an effective system for the protection of minority shareholders rights, the underlying rationale being that such owners, who often have all or major parts of their fortune invested in one or a few companies, generally have strong incentives, high competence, and sufficient resources to engage actively in the governance of their companies, typically with long-term value creation as the prime driving-force, to the benefit of themselves as well as all shareholders – provided possibilities to use their strong powers to extract undue private benefits from the company are effectively curbed.*

Although the model has been subject to substantial pressure to converge towards primarily the Anglo-Saxon governance model, it appears thus far to have endured basically intact, continuing to render competitive advantage to Nordic companies in global markets while ostensibly also providing some favourable preconditions for socially responsible corporate behaviour.

## References


Airaksinen, M., & Berglund, T. (2014). Corporate governance in Finland. In: Lekvall, P., ed. (2014). *The Nordic Corporate Governance Model*. SNS Förlag.

Aras, G. & Crowther, D. (2008). Governance and sustainability: An investigation into the relationship between corporate governance and corporate sustainability. *Management Decision* 46:3, 443-448.

European Commission (2007). Proportionality Between Ownership and Control in EU Listed Companies. European Commission.

Gelter, M. (2016). Employee participation in corporate governance and corporate social responsibility. Law Working Paper 322/2016 in ECGI Working Paper Series in Law, European Corporate Governance Institute.

Gilson, R.J. (2005). Controlling shareholders and corporate governance: Complicating the comparative taxonomy. *Harvard Law Review* 119:6, 1641-1679.

Gilson. R.J. (2014). The Nordic model in an international perspective: The role of ownership. In: Lekvall, P., ed. (2014). *The Nordic Corporate Governance Model*. SNS Förlag.

Hansen, J.L. (2006). Catching up with the crowd, but going where? *International Journal of Disclosure and Governance* 3:3, 213-232.

Hansen, J.L. (2007). A Scandinavian approach to corporate governance. *Scandinavian Studies in Law* 50, 126-142.

Hansen, J.L. (2013). Active owners and accountable directors. In: Birkmose, H., Neville, H. & Sørensen, E., eds. (2014). *Boards of Directors in European Companies – Reshaping and Harmonising Their Organisation and Duties*. Wolters Kluwer, Law and Business.

Hansen, J.L. & Lønfeldt, C. (2014). Corporate governance in Denmark. In: Lekvall, P., ed. (2014). *The Nordic Corporate Governance Model*. SNS Förlag.

Henrekson, M. & Jakobsson, U. (2003). The transformation of ownership, policy and structure in Sweden: Convergence towards the Anglo-Saxon model? *New Political Economy* 8:1, 73-102.

Henrekson, M. & Jakobsson, U. (2012). The Swedish corporate control model: Convergence, persistence or decline? *Corporate Governance: An International Review* 20:2, 212-227.

Ilmonen, K. (2016). *Dynamics of EU Corporate Governance Regulation – Nordic Perspectives*. University of Helsinki.

Jamali, D., Safieddine, A.M., & Rabbath, M. (2008), Corporate governance and corporate social responsibility synergies and interrelationships. *Corporate Governance: An International Review* 16:5, 443-459.

Jonsson, E.I. (2016). Iceland and the Nordic Corporate Governance Model. *Góðir stjórnarhættir* 1/2016, 22-26.

Knudsen, G. & Norvik, H. (2014). Corporate governance in Norway. In: Lekvall, P., ed. (2014). *The Nordic Corporate Governance Model*. SNS Förlag.

La Porta, R., Lopez-de-Silanes, F., Shleifer, A., & Vishny, F. (1998). Law and finance. *Journal of Political Economy* 106, 1113-1155.

La Porta, R., Lopez-de-Silanes, F., & Shleifer (1999). Corporate ownership around the world. *Journal of Finance* 54:2, 471-517.

Lekvall, P., ed. (2014). *The Nordic Corporate Governance Model*. SNS Förlag.

Liang, H. & Renneboog, L. (2017). On the foundations of corporate social responsibility. *Journal of Finance* 72:2, 853-910.

Nenova, T. (2003). The value of corporate voting rights and control: A cross-country analysis. *Journal of Financial Economics* 68, 325-351.

Rahim, M.M. (2013). Corporate social responsibility, corporate governance and corporate regulation.

In: Rahim, M.M., ed. (2013). *Legal Regulation of Corporate Social Responsibility: A Meta-Regulation Approach of Law for Raising CSR in Weak Economies*. Springer-Verlag.

Rao, K. & Tilt, C.A. (2016). Board composition and corporate social responsibility: The role of diversity, gender, strategy and decisions-making. *Journal of Business Ethics* 138:2, 327-347.

Ringe, W-G. (2016). German versus Nordic board models: Form, function and convergence. *Nordic Journal of Business* 65:1, 29-40.

Salzmann, O., Ionescu-Somers, A., & Steger, U. (2006). Corporate license to operate (LTO) – Review of the literature and research options. IMD Working Paper 2006-23, Forum for Corporate Social Management, IMD – International Institute for Management Development.

Sjöstrand, S-E., Berglund, T., Grönberg, L., Kallifatides, M., Poulfeldt, F., Pöyry, S., & Sigurjonsson, O. (2016). *Nordic Corporate Governance: An extensive in-depth study of corporate governance and board practices in 36 large companies*. Stockholm School of Economics Institute for Research.

Skog, R. & Sjöman, E. (2014). Corporate governance in Sweden. In: Lekvall, P., ed. (2014). *The Nordic Corporate Governance Model*. SNS Förlag.

Thomsen, S. & Conyon, M. (2012). Stakeholder governance in Scandinavia. In: Thomsen, S. & Conyon, M., (2012). *Corporate Governance: Mechanisms and Systems*. McGraw Hill.

Thomsen, S. (2016a). The Nordic corporate governance model. *Management and Organization Review* 12:1, 189-204.

Thomsen, S. (2016b). Nordic corporate governance revisited. *Nordic Journal of Business* 65:1, 4-12.

Strand, R., Freeman, R.E., & Hockerts, K.J. (2015). Corporate social responsibility and sustainability in Scandinavia: An overview. *Journal of Business Ethics* 127:1, 1-15.

Söderström, H.T. (2003). Ett Systemskifte för Europa och Sverige? In: Söderström, T., Berglöf, E., Holmström, B., Högfeldt, P., & Meyersson Milgrom, E. (2003). *Ägarmakt och Omvandling - Den Svenska Modellen Utmanad*. SNS Förlag (only available in Swedish).