**“Determinants and Impact of Corporate Directors’ Tenure: Evidence from Spain”[[1]](#footnote-1)**

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**Abstract**

In this paper we present useful empirical evidence to guide decisions about limits on the desirable length of corporate directors' terms. Specifically, we study, firstly, the factors that determine directors’ seniority and, secondly, the effects of greater seniority on directors’ commitment to their supervisory tasks. We use panel data from Spanish listed companies and their directors for the period 2013-2020.

Results show a high turnover rate for independent directors during their early years. Additionally, independent directors are most likely to be replaced at any given time, compared to designee and executive directors. Moreover, the likelihood of replacement does not increase with tenure but it is greater for directors who were appointed by previous CEOs. Additionally, there seems to be a trial period for directors before they become members of board committees and, in the case of independents, before they become chairs of the committees where they participate. Our results also indicate that older independents are less committed to the oversight of executives. Specifically, senior independent directors show lower attendance to board meetings and reduce the likelihood of CEO turnover (especially in the case of independents who sit on the appointments committee), while the presence of directors who were appointed before the CEO increases it.

Taken together, the results suggest a significant influence of the CEO on the initial and subsequent appointments, which leads to capture and reduces independents’ commitment to active supervision.

All this leads us to conclude that, although the main regulatory concern regarding directors’ tenure has been that, absent term limits, independents may remain too long in office, the regulator should also be concerned with the problem of unfriendly independents being ousted by the CEO and not spending enough time in office.

*JEL classification*: G34; M41; M43.

*Keywords*: Tenure; Experienced directors; Independent directors; Board meeting attendance; CEO pay; CEO turnover.

1. **Introduction**

Is there an optimal term for corporate directors? How does their ability and incentives to discharge their duties change over time? Experience could make them more competent but they may also accommodate with time and resist necessary change. Nevertheless, from a regulatory point of view, the main concern is that overtime corporate directors, and especially independent directors, may be captured by insiders, developing deference towards the insiders that (re)appoint them and losing incentives to monitor.

This is the reason why many corporate governance codes of good practice recommend term limits for independent directors. Term limits are also mandated in some countries. In Spain, the Ley de Sociedades de Capital limits the maximum term of independent directors to 12 years, although it allows these directors to continue on the board in a different category (art. 529 duodecies 4 LSC). The idea behind these limits, initially proposed by Jensen and Meckling (1976), is that independence wears off over time and there is a threat of capture of independent directors as their length of service increases. Therefore, the regulation that limits the duration of the mandate tries to prevent the emergence overtime of collusion between the independents and the executives and significant blockholders, whom they should supervise.

However, the number of empirical studies on this issue is small. Although there are numerous empirical studies on the relative efficiency of different characteristics of boards (such as size, independence, number of committees, etc.), there are few studies on the determinants and effects of directors' seniority in office that can guide the legislator on the advisability of imposing or recommending term limits for directors.

In this study we investigate the determinants and effects of directors' seniority in Spain. To do this, we use an incomplete data panel that combines data from Spanish listed companies and their directors for the period 2013-2020, with a total of 1,061 company-year observations for 171 different companies and a total of 11,297 director-company-year observations.

The main results show a situation where capture does not seem to develop over time but rather as a consequence of the early replacement of directors that are not perceived by the CEO as friendly enough.

First, we find that, among the characteristics that determine the probability that a director leaves office at a given time, having been appointed before the current CEO is of great importance. This indicates that the CEO has a significant influence on the appointment and renewal of directors, something that can lead to collusion. In addition, independent directors are more likely to leave the position at any given time compared to designee, executive and other external directors.

Secondly, we find that the probability of belonging to important committees (those that fulfill supervisory functions in matters of auditing, remuneration and appointments) increases with seniority up to 16 years and is lower for directors who were appointed before the CEO. In the case of independents, these results are not significant due to the need that companies have had during the period studied to incorporate a significant number of independents to comply with the new regulations. However, the probability of an independent chairing an important committee also increases with seniority up to 13 years.

Third, we observe that the oldest independent directors seem to have less commitment to the supervisory tasks assigned to them. Specifically, the presence of older independent directors is negatively related to the level of attendance at board meetings. In addition, although the seniority of the independents does not have an effect on remuneration, it does reduce the probability that the CEO will be replaced, especially in the case of independents who are part of the appointments committee. Conversely, the presence of independent directors who were appointed before the CEO increases the likelihood that the CEO will be replaced. Finding these results in our sample is surprising because the average length of service of independent directors is only four and a half years.

Taken together, the results suggest significant CEO influence in the appointment of independents to the position and their seniority in the position, which seems to reduce their commitment to active supervision. The directors who have a better relationship with the CEO are more likely to remain in office and occupy positions on committees and favor the interests of the CEO. In contrast, directors who were appointed before the CEO appear to be more committed to supervising the CEO.

Our findings are interesting from a regulatory point of view because they indicate that, rather than waiting for independents to develop loyalty towards them over time, CEOs and significant shareholders are likely to replace recently appointed independents if they are not perceived as friendly enough. Therefore, the problem may be that committed independents spend too little time in office, rather than too long. Specifically, our results suggests the convenience of introducing a minimum service time during which CEOs and significant shareholders may not replace independents.

The rest of the article is organized as follows. Section 2 reviews the relevant literature for the construction of testable hypotheses. Section 3 explains the sample construction procedure and the variables employed in the estimation. Next, section 4 presents the empirical results and section 5 discuses some additional robustness tests. Finally, section 6 contains some brief conclusions.

1. **Literature review and hypothesis development**
	1. *Literature review*

In the literature we find conflicting views on the effects of seniority on the quality of boards’ supervision.

In fact, this literature can be classified into two broad categories. In the first category, we find studies that focus on how seniority changes the *ability* of directors to fulfill their role. In the second category, the focus is on explaining how seniority changes directors' *incentives* to actively supervise managers.

Most of the authors who have studied the impact of seniority on the ability of the director to discharge their duties have a positive view. The prevailing idea is that more experienced directors are more competent because they have accumulated significant knowledge about the company and its environment. Following this reasoning, Vance (1983) and Kor and Mahoney (2000) state that forcing directors to retire leads to a waste of talent and experience. The increase in competence over time may also be related to the time needed to build social capital and learn to interpret information from executives or other advisors (Fischer and Pollock, 2004; Sundaramurthy and Lewis, 2003; Westphal, 1999). Additionally, Dou, Sahgal, and Zhang (2015) argue that most experienced directors are more likely to have worked with multiple CEOs, which should help them better assess the capacity of the current CEO.

Notwithstanding this prevailing positive view of the effect of seniority on director's ability, there are some dissenting authors. Their reasoning is that, as the time in office increases, the director will be less open to external information, more committed to a certain vision of the company and resistant to important changes in its strategic direction (Boeker, 1997; Hambrick and Fukutomi, 1991; Miller, 1991).

In the second category of studies, most authors take a negative view of the impact of seniority on directors' incentives to actively supervise managers. The basic argument is that seniority aggravates the agency problem, as directors develop loyalty towards the executives they are supposed to supervise (Jensen and Meckling, 1976; Vafeas, 2003; Nili, 2017).

However, some authors defend the view that directors' incentives to be active supervisors increase with seniority. In particular, Dou, Sahgal and Zhang (2015) maintain that greater seniority can strengthen the position of directors when negotiating with the CEO, equalizing their bargaining power. CEOs are considered to have greater influence the longer they have been in office (Hermalin and Weisbach, 1998) and these authors extend this idea to directors. Notice that this type of argument implies that the seniority of the directors must be studied together with that of the CEO. Finally, Yermack (2004) states that, when directors receive their compensation in the form of shares that they must keep in their portfolio for a certain time (even if the payment is not related to results), the directors with more seniority will have accumulated more shares and this should better align their incentives with those of the shareholders they represent.

It is important to note that almost all of these studies on the impact of seniority on ability and incentives are theoretical. There is only a small number of empirical studies investigating directors’ seniority. Most of these works find negative correlations between directors’ seniority and firm results, reinforcing the idea that it is desirable to impose term limits for directors. Hermalin and Weisbach (1988) document how the average tenure of directors in office is negatively associated with the market value of US companies. Mishra and Nielsen (1999), using a sample of North American banks, find that director seniority is negatively correlated with growth opportunities. Vafeas (2003) uses a small sample with one year of observations and divides the companies into two groups according to the average seniority of the directors who sit on the remuneration committee. Their results indicate that more senior committees pay higher salaries to their CEOs, especially when the CEO has been in the position for a longer period. Nili (2017) shows that, in the United States, the increase in board independence has occurred simultaneously with an increase in seniority that may have compromised the independence of directors.

Among the few positive results in the empirical literature we find Dou, Sahgal and Zhang (2015). They use a very long panel with data for US listed companies and find that a high proportion of non-executive directors who have been on the board longer than the current CEO and have served for a long term (more than 15 years) has important effects. Specifically, they find that their presence implies lower total CEO remuneration, greater sensitivity to results in cases of CEO replacement, and higher accounting quality.

Finally, there are very few studies that have analyzed simultaneously directors’ and CEO’s seniority (Coles, Daniel and Naveen, 2014; Core, Holthausen and Larcker, 1999; Landier, Sauvagnat, Sraer and Thesmar, 2013; Dou, Sahgal and Zhang, 2015). Their results indicate that directors who were appointed after the current CEO are worse supervisors. This is consistent with the idea that the CEO influences board appointments and appoints friendly directors. Therefore, when analyzing directors’ seniority, it is important not to confound the direct effect of seniority with the effects of the director being hired before the current CEO took office.

* 1. *Hypothesis development*

A good starting point to identify the determinants and impact of directors’ seniority is to consider an ideal framework where, without agency problems or undue CEO influence, shareholders select directors and retain them until a better replacement appears. In this framework, one can posit two null hypotheses. First, seniority will be totally determined by the characteristics of each director-company pair. Second, once we consider the characteristics that determine seniority, we expect no impact of seniority on board activity or company results.

However, it is obvious that there are numerous restrictions that limit the validity of this ideal framework for understanding reality. In other words, we expect that there will be many restrictions that prevent us from being in an equilibrium in which we reach optimal seniority. In fact, when a director leaves office, for whatever reason, it is necessary to replace him with a new one. This new director starts with zero seniority and this automatically alters the average seniority of the board. And obviously, as explained in the literature we have reviewed, there can be agency problems and the CEO may influence directors’ appointment and reelection to suit his/her interests. In this -more realistic- framework none of the previous null hypotheses will hold. Therefore, we restate our starting hypotheses as follows.

Our first testable hypothesis is that, although the characteristics of the company and the director influence seniority, these characteristics have limited power to explain observed seniority. This implies that observed seniority will be different from optimal seniority.

Our second hypothesis, which follows from the first, is that since seniority will typically be above or below its optimal level, it will affect the board's activity and results.

To investigate these hypotheses, we separate our study in four different parts.

First, we will investigate the influence that the characteristics of the director, the board and the company have on the probability that a director maintains his/her position for a longer time period. Here we will pay special attention to the analysis of the impact that the CEO can have on directors’ turnover.

Second, we will study whether seniority affects the functions that the director performs. In particular, we will measure the impact of seniority on the probability of belonging to committees and chairing them.

Third, we will analyze whether seniority impacts directors’ commitment to their duties, which we will measure indirectly as the level of attendance at board meetings.

Finally, we will study whether the seniority of the directors affects their monitoring, measuring the impact of seniority on CEO's remuneration and on the probability of CEO replacement.

Before carrying out all these analyses, in the next section we present the sample and discuss its particular characteristics -especially those due to regulatory changes that occurred during the sample period-, which must be considered for a correct interpretation of the results.

1. **Descriptive statistics**
	1. *Sample construction*

The sample used is an incomplete panel that combines data for Spanish listed companies and their directors for the period 2013-2020. To construct this sample, we use data from the Annual Corporate Governance Report and the Annual Remuneration Report that Spanish listed companies must submit annually to the CNMV and we complement these data with financial information from the annual accounts using Osiris.

The starting point are 1,079 company-year observations for the 2013-2020 period from the Annual Corporate Governance Reports. These data are then merged with the financial data from the companies' annual accounts using Osiris. In the process, 5 firm-year observations are lost.

All these company-year data are then combined with the individual data of the directors coming from the Annual Remuneration Reports and lose 13 additional company-year observations.

The result of this process is an incomplete data panel with 1,061 company-year observations for 171 different companies and a total of 11,297 director-company-year observations.

* 1. *Seniority and other director characteristics*

The main variable of interest for our study is the seniority of the directors, with special attention devoted to the case of independent directors. To understand the evolution of this variable ​​in our sample, it is important to first discuss the regulatory changes that occurred during the study period.

Graph 1 shows how since 2013, the number of directors has remained stable but there has been a significant substitution of designee directors for independent ones. The 2014 Capital Companies Law made compulsory the presence of at least four independent directors on the board, as well as the presence of at least two independent directors on the board committees in charge of auditing, remuneration and appointments. Moreover, the law mandated that the majority of members in these committees and their president should be independent. This started a rapid entry of independents and exit of designee directors into Spanish boards that has continued until the most recent years. Also noteworthy is the drop in the number of directors observed in 2020, which may be related to an increase in resignations and difficulties for replacing directors during the COVID pandemic.

In Graph 2 we can see that the substitution of designee for independent directors has produced changes in seniority, since when new directors join, the average seniority automatically falls. As more independent directors join, the percentage of directors with low seniority (less than 4 years) increases and the percentage of directors with intermediate seniority (between 4 and 8 years) also drops, while there are few changes in the percentage of directors with high seniority. The change that occurs in the last year of the sample is also noteworthy. During 2020, the percentage of directors with low seniority drops, and there is a simultaneous increase of the percentage of directors with seniority in between 4 and 8 years, who are precisely the independent directors who joined after the regulatory change in 2014 and have remained in office.

This is confirmed in Graph 3: the average seniority of independents is low until 2020, while there are many more designee directors and, even more markedly, executives and other directors with high tenures in all sample years.

It is also interesting to consider transitions from one type of director to another. In particular, the category “Other” is a residual category. In principle, this category includes a variety of profiles, such as members of the public administration and presidents or employees of subsidiaries or of charitable foundations financed by the firm. But, for the most part, it includes directors who were previously in other categories. Out of the 262 cases of directors classified as “Other” that we have in the sample, 174 come from other director types. Interestingly, we observe that this category serves to relocate independent directors. Table 3.1, shows the transitions and identifies 122 directors who, after having been on the board for a number of years as independent directors, move on to this residual category. The average seniority at which the change occurs is 9.8 years.

Table 3.2 shows the descriptive statistics of the different variables of seniority that we will use in the analysis a continuous *Seniority* variable and two dummy variables: *Appointed before the CEO* and *High seniority* (indicating whether the seniority of the director in the position is equal to or greater than 16 years). The results indicate an average seniority of almost 7 years, but with marked differences across types of directors, confirming that independent directors have the lowest average seniority and that less than 25% have been appointed before the CEO.

It is also interesting to observe the differences across directors who are members of some important board committee (audit committee, appointments committee and remuneration committee)[[4]](#footnote-4). Since 2014, the legal regime requires that these committees must have at least three members, with a minimum of two independent members and a majority of non-executive members. This is consistent with the data for these commissions being similar to that of independent directors.

Seniority may be related to other director characteristics, such as whether they are women, foreigners and the number of boards to which they belong. The average seniority of women and, especially, of foreigners, is low compared to the average, while that of “busy” directors (who serve in more than one board), whether they are "interlocking"[[5]](#footnote-5) or not, is slightly below average.

* 1. *Board characteristics*

Average board seniority depends on the seniority of each board member. And we are also interested in aggregating board seniority relative to the CEO and high board seniority.

Both individual and average board seniority will be influenced by the structure of the board. In particular, as we have already discussed, we expect board composition to have a significant impact on seniority, since independents, women and foreigners have increased in recent years as a result of new regulations and internationalization. In addition, there may be selection effects. Particularly, directors who belong to several boards and especially those on boards with interlocked positions could be more valuable to companies due to their greater networking capacity. Companies may retain them longer, which will translate into higher seniority. Or, alternatively, seniority may be a necessary characteristic to sit simultaneously on several boards. Therefore, it is necessary to control for all these variables in our estimates.

Our main hypothesis is that directors’ seniority influences their ability and their attitude in the discharge of their duties. A fairly crude but direct way to measure this attitude is by looking at board meetings attendance. We will measure how average board seniority affects the % of meetings attended by all directors (or alternatively the percentage attended by at least 80% of directors). Of course, attendance can be influenced by other variables that we must control for. These include (i) the remuneration paid to the directors for their work (measured as the average remuneration of non-executive directors), (ii) the number of meetings, (iii) whether the company pays attendance fees and its amount, and finally (iv) the average importance of the board for its members. This last variable considers the number of boards on which each director sits and the relative size of each company. If the director only sits in one board, the importance of that board for that board member will be equal to 1. If he/she sits in more than one board, following the methodology of Masulis and Mobbs (2013), we calculate the importance of each board as the weighted average of the value of the asset of each company, assuming that the director will put more value on participation in boards of larger companies, which offer more visibility. The more companies in the director's portfolio of boards and/or the smaller a company is with respect to the rest of the companies in the portfolio, the closer to zero is the importance of that board to the director. The average importance of the board aggregates the directors’ variables at the board level.

Descriptive statistics for all these board characteristics are shown in Table 3.3.

* 1. *Firm characteristics*

Different firm characteristics may be correlated with the seniority of its directors. The relationship may be purely mechanical: for example, young firms will necessarily have low seniority directors. In other cases, the relationship may appear as the result of the matching process between directors and companies. Specifically, directors may want to stay longer on the boards of companies that are larger (measured by *log total assets*), more profitable (high *5-year average ROA*), less risky (low *std. dev. 5-year ROA*). On the other hand, companies that are growing (companies with high *Tobin Q*) or investing in intangible assets (companies with a high *% of R&D expenses* over results) may need to incorporate new knowledge into their board and this could reduce the seniority of its members. The ownership structure (measured as *% concentrated capital*, i.e. in the hands of significant shareholders) may also be relevant in this context, since it could affect the seniority of different types of directors in a different way. For example, it could reduce the seniority of executives, as they are subject to greater control, or of the independent ones, since their impact on the final decisions of the board and their reputation will be less relevant.

Finally, as we have already explained, it is very important to understand the influence that the CEO has in maintaining the directors in office. It is to be expected that CEOs will want to shape the board according to their preferences. Therefore, we expect the seniority of the directors will tend to be lower than that of the CEO (the variable *CEO seniority* controls for this). This may be more relevant (i) when the CEO is also chairman of the board (*CEO is Chairman*) and (ii) for executive and independent directors, since the CEO will have more influence on their appointments than on those of designee directors. On the other hand, our hypothesis is that the seniority of the directors may influence their incentives to exert an active supervision. To study this hypothesis, we will measure the impact of directors’ seniority on CEO compensation (*Total CEO remuneration* and *% of variable CEO remuneration*) and on the probability of CEO replacement (measured with the dummy *CEO change* during the year).

Table 3.4. shows the descriptive statistics for these variables. In our sample the average company in the sample is large and mature, with few growth opportunities and low returns over the sample period.

1. **Results**

This section presents the results of the analysis of the determinants and the impact of directors’ seniority.

We will begin by studying which director, board and firm characteristics influence directors’ seniority. This analysis is conducted both at the individual level and, considering average tenure, also at the board and committee level.

Second, we will investigate the impact of seniority on the probability of the director being appointed as a member or chairman of the different board committees.

And finally, we want to know if seniority determines the results of board oversight. To do this, we will investigate the impact of seniority on meeting attendance and CEO compensation and replacement decisions.

* 1. *Determinants of directors and boards seniority*

4.1.a. Determinants of directors’ seniority

We start our estimations by focusing on the characteristics that increase the probability that a director reaches higher seniority in office.

Following Fahlenbrach, Low, and Stulz (2013), we use a Cox proportional hazard model that measures the probability of survival of the director in the position until he is replaced (event of interest) or until the company whose board he/she belongs to leaves the sample (censor event) based on personal characteristics of the director and those of the board and the company. The advantage of using the Cox model -as opposed to a standard regression or a logit model- is that we can also use the observations for which the event of interest (director replacement) does not occur during the sample time period, although we know that it will occur at some future time.

The results are shown in table 4.1.a. Since the event of interest is defined as the moment in which the director leaves the position, the variables with positive coefficients are negatively correlated with seniority. In column 1 we include only personal attributes of the director. In column 2 we add board characteristics and in column 3 we also introduce firm characteristics. In column 4 we add the seniority variable, to verify that the explanatory variables influence continuity once a certain seniority has been reached. The last four columns show the separate results for independent, designee, other external and executive directors. All the independent and dependent variables, both in this estimation and in all the others throughout the work, are truncated (“winsorized”) at the 1% and 99% percentiles, that is, we replace the most extreme values ​​by the value of the variable in these percentiles to prevent some extreme results from biasing the estimation results.

The first significant result is that the directors who are most likely to leave their position at a given time are those who were appointed before the current CEO, which indicates that the CEO has influence over board appointments. This is an important finding and confirms that we must separate the effect of seniority by itself from the effect of being co-opted by the current CEO, i.e. having been nominated after him/her.

Other director characteristics also affect the probability of survival in the expected direction. For example, non-executive directors (especially independent directors, but also designee directors and others) are more likely to leave than executives. Executives have greater commitment with the company, not only as directors but also as employees. We also see that the probability of survival is higher for women, which is consistent with the desire of companies over this period to increase the percentage of female directors. The probability of staying longer also increases for directors who belong to more committees, especially if they belong to important committees. In a model of "matching" or mutual selection of directors and companies, this can simultaneously reflect the greater value that these directors have for the company or the greater value that the position on the board has for them. In line with this last effect, an additional factor that increases the probability of reaching greater seniority is the importance of the board for the director, which is higher when the director only serves on a board or when the size of the company is greater than that of other companies on whose boards he serves simultaneously.

Board characteristics are less important, with the probability of separation increasing with board size and decreasing with the percentage of other external directors. Among company characteristics, the only significant variable is profitability, which tends to reduce the probability of separation. This can be interpreted as a reflection of the mutual satisfaction of the director and the company with the relationship.

Finally, as might be expected, the probability of separation increases with seniority. However, once high seniority has been reached (more than 16 years), the probability of separation decreases, showing a different pattern in the separations of very senior directors.

The results for the different types of directors are similar. The most interesting differences refer to the effect of presiding important committees, which increases the probability of separation in the case of designee directors. This seems logical in our sample period because of the regulatory changes which led to the replacement of designee directors by independents both at the board and committee level. It is also very interesting to note the different impact of the variables that refer to average salary, company size and ownership structure. The effects of salary and size could be due to the different incentives of independents and designee directors. The reputational effect (correlated with size) should be more important for independents, and motivate them to maintain in their position in larger companies. However, designee directors are expected to be more motivated by the salary received. Additionally, higher ownership concentration is positively correlated with the permanence of designee directors and not of independents. The results for other outside directors and executives are more difficult to interpret due to the small number of observations.

4.1.b. Determinants of directors’ seniority

Since board decisions are made by majority voting, it is important to consider average board seniority. To do this, we used a fixed-effect model to estimate the of average board seniority (column 1), the percentage of high seniority directors (directors with 16 or more years of service in column 2) and the average seniority of the different categories of directors in columns 3, 4, 5 and 6. Explanatory variables include other board and firm characteristics.

The results, shown in Table 4.1.b, indicate that the most senior boards tend to be also smaller, have fewer meetings, fewer women and fewer foreigners, but more directors in the “Other” category and more busy directors. In addition, larger companies with more stable results also tend to have more senior boards. The results also confirm that the CEO influences board seniority which is positively correlated with CEO seniority. Additionally, this influence is greater when the CEO is also president of the board.

However, the impact on independent directors is not significant, possibly due to the effect of the regulatory changes we have already discussed. The results for “other” directors show a very different behavior. These different results may be due to this residual category being comprised of the most senior directors (since they usually migrate from other categories), but the number of observations is very small.

* 1. *Impact of seniority on committee membership and chairmanship*

The board delegates important supervisory functions on committees such as the nomination, remuneration and audit committees. Committee membership implies, on the part of the director, a higher level of commitment to his/her duties and, on the part of the board, greater confidence in the judgment of the director. Therefore, it is important to study the impact of seniority on committee membership.

Table 4.2.a shows the results of a probit model estimating the probability of belonging to a committee. In columns 1 to 4 the dependent variable is the total number of committees where the director sits estimated with an ordered probit. In column 5 the dependent variable is a dummy indicating membership of at least one important committee (audit, remuneration or nominations committees) and the estimation is done with an ordinary probit model. In the last columns of the table we repeat the estimation for the total number of committees, for alternative samples using different director types.

In all cases, the director’s seniority has a very important impact on committee membership. In addition, the impact is non-linear. The probability of belonging to a committee increases as seniority increases to 13-16 years and then decreases. This result is maintained when we only consider important committees. This could indicate that it takes a number of years of experience in the company to have sufficient knowledge and competence, but it may also suggest that directors have to prove "loyalty" during a trial period before being considered fit for greater responsibilities.

However, when we separate the sample into different types of directors, we see that the effect of seniority disappears for independent directors. We believe this result may be due to the changes in regulation in the period we are studying. As we have already observed in the descriptive statistics, during the sample years, Spanish companies had to increase rapidly the number of independents to comply with the new legal requirements, especially with regard to the structure of the audit, nomination and remuneration committees, which should have a majority of independents. Because of this, there are still few senior independent directors and this interferes with our estimation. This is consistent with the proportion of independents on the board having a negative effect on the probability of each individual director belonging to a committee.

Trying to investigate this problem further, in Table 4.2.b we repeat the analysis, but focusing on the chairmanship of the committees. The idea is that being chairman of a committee indicates greater responsibility and involvement. Looking at the chairs allows us to determine whether, given the restriction imposed by the need to have a sufficient number of independents in committees, the most senior independents are more likely to chair them. The dependent variable is a dummy indicating whether the director is chair of an important committee in which he/she takes part. In the last two columns the sample is restricted to independent and designee directors respectively. We do not consider other directors’ types because it is very unusual for them to be chairs of these committees. Interestingly, we find that for independents, the probability of being chairman of a committee increases with seniority.

These results are robust to the inclusion of controls for director and firm characteristics. Consistent with the regulatory changes explained above, we find that independents are more likely to take part in committees than any other type of director (executives, the reference type not included in the estimation, are the least likely). An unexpected result is that foreigners and women are less likely to belong to committees and, being members of one, to chair it. There may be several explanations for these results. For example, less commitment may be expected from foreigners living in another country. In the case of women, there are two possible interpretations, one regarding work load and on regarding trust. Regarding work load, if it is difficult to find female directors, companies will try to make the position more attractive by demanding less involvement. But it is also possible that there is a lack of trust. This is known as a "token" effect (Kanter, 1977), which appears when firms include women on boards because of external pressures, but without much conviction (Farrel and Hersch, 2005).

The results we have found so far, both in terms of (i) the importance of the characteristics of director, board and company in determining the probability of remaining in office and (ii) the importance of seniority in being member of board committees, suggest that senior directors have a different influence on board decisions. Therefore, we now turn to investigate the impact of directors’ seniority on the discharge of oversight tasks that the board performs.

* 1. *Impact of average seniority on board meetings attendance*

Attending board meetings is essential for the director to gather the relevant information, vote and influence board decisions. Directors who attend more meetings show a greater degree of commitment to their duties. Does this commitment change with seniority? Unfortunately, available data about board meeting attendance are not at the individual level. The aggregate data indicate the percentage of meetings that are attended by all directors or at least 80% of the directors. Therefore, we take these variables as independent variables and conduct a fixed effects estimation where we control for the characteristics of the board and the company.

The results are shown in Table 4.3.a. We do not find any effect of average seniority on board meeting attendance. Nor do we find any effect when we focus on the percentage of very old directors or when we introduce the percentage of directors appointed before the CEO. However, when we separate the effect of seniority for independent and designee directors (in Table 4.3.b), we do observe that the seniority of independents has a negative impact on attendance. Therefore, we can say that older independent directors seem less committed to discharging their duties.

The results for some of the control variables are also interesting. As one might expect, it is more difficult for all directors to attend when boards are larger. We also observe that higher ownership concentration has a positive impact on attendance, possibly because designee directors more motivated to attend in this case[[6]](#footnote-6). An unexpected result is that the relative importance of the board for its directors has a negative impact on attendance. This variable is calculated for each director as the weighted average of the value of the assets of each company to whose board it belongs. Therefore, at the aggregate level (average importance of the board for its directors), this variable is highly correlated with the size of the company, indicating that the boards of larger companies have more attendance problems.

Perhaps the most striking result regarding the control variables is that the payment of an attendance fee is negatively related to attendance. This could be interpreted in two different ways. First, companies that pay attendance fees may be those in which directors have more difficulty attending meetings, for example, because the headquarters are in more distant locations or because there is a higher percentage of foreign directors. However, when studying the data there is no significant correlation between the percentage of foreigners and the existence of an attendance fee or its amount[[7]](#footnote-7). In addition, if the fees are paid for having to travel to a more distant location, it seems obvious that the average fee of 1,280 euros is insufficient to overcome this disadvantage, especially if we compare it with the average total annual remuneration of non-executive directors of 76,000 euros[[8]](#footnote-8). Secondly, it is possible that the payment of an attendance fee, by setting a price for attendance and generating a monetary incentive, reduces the intrinsic motivation of the directors (Gneezy and Rustichini, 2000). In addition, the negative impact of a price could be reinforced by the reduced amount of the fee. This intrinsic motivation effect is also consistent with women having better attendance results. Women may be motivated to attend to avoid being considered mere "tokens."

* 1. *Impact of average seniority on CEO compensation*

It is difficult to determine the optimal level of CEO compensation. The high remuneration we currently observe could respond to optimal contractual solutions in complex and risky environments (Gabaix and Landier, 2008; Tervio, 2008) but it may also be the suboptimal result of unresolved agency problems and excessive CEO power (Bebchuk and Fried, 2003). However, one clear result in the literature is that, in order to align incentives, CEO compensation should include a high percentage of variable remuneration (Jensen and Murphy, 2010; Aggarwal and Samwick, 1999).

The results of the estimation of the impact on CEO compensation of board and remuneration committee seniority are shown in Table 4.4.a. Table 4.4.b. shows the separate results for independent and designee directors. The results for variable remuneration are presented in tables 4.4.c and 4.4.d. When we consider all directors together (Tables 4.4.a and 4.4.c) we find no impact of seniority on remuneration, neither total nor variable. We only find that directors appointed before the CEO on the remuneration committee offer less variable remuneration. When we separate independent and designee directors we observe that the average seniority of independents is negatively correlated with both total remuneration and the percentage of variable remuneration.

In general, regressions have little explanatory power and the only significant variables in the case of total remuneration are size (larger companies pay more) and the concentration of ownership (the higher the concentration, the lower the total remuneration). Regarding variable remuneration, the most interesting result is that variable remuneration represents a higher proportion of compensation in the most profitable companies with less volatile results. This could indicate that CEOs accept a higher proportion of variable remuneration in firms where this is expected to benefit the CEO without making him/her bear high risk (Palia, 2001).

These results raise questions about the way in which variable remuneration is being used by Spanish companies, which does not seem to align the interests of CEOs and shareholders. In addition, this is consistent with results indicating that variable remuneration is higher in firms with more dispersed ownership, and in firms with smaller, more active boards. Moreover, our results are in line with the findings of Gómez (2019) and Gutiérrez y Sáez (2020), indicating that variable remuneration is low in Spain and is based mainly on accounting results and not on market values. Taking this into account, we can interpret positively the fact that the directors in the remuneration committee who were appointed before the CEO are less likely to offer variable compensation.

* 1. *Impact of average seniority on CEO turnover*

Boards of directors are responsible for selecting and also for replacing the CEO when the results are poor (Adams, Hermalin, and Weisbach, 2010). Many studies have found different board characteristics are important in determining the outcome of these processes. In particular, the likelihood of CEO turnover increases when the board is smaller (Yermack, 1996), more independent (Weisbach, 1988), the CEO is not chairman (Goyal and Park, 2002) and when the board has a higher proportion of women (Adams and Ferreira, 2009).

To study the effect of directors’ seniority on the probability of CEO turnover we estimate a probit model where the dependent variable is an indicator that takes the value 1 for the years in which the CEO changes and 0 otherwise[[9]](#footnote-9). Obviously, there may be cases in which the board does not fire the CEO, but rather the CEO leaves voluntarily. There are also cases where a forced departure is presented as voluntary. Given the difficulty of clearly distinguishing the different cases, we included all CEO changes – following Jenter and Lewellen (2019) and Adams and Ferreira (2009) – and, therefore, voluntary departures will create noise and lower accuracy in our estimate.

The key variable that should determine CEO turnover is poor performance, therefore in our analysis we introduce average ROA in the last 5 years and the interaction term between this variable and board seniority. Other control variables are the same as in the previous estimates.

The results appear in Table 4.5.a and show that average board seniority has a significant influence on the possibility of the CEO turnover. In addition, the results are similar when we look at board seniority and at the appointments committee seniority. Seniority reduces the probability of CEO turnover, while the presence of directors appointed before the CEO increases it. Additionally, we do not find a significant effect for the interactions with average ROA, indicating that the impact of seniority is the same for any value of ROA.

It is also important to note that the effects are practically of the same order of magnitude as the impact of having more independents on the board. For example, taking as our base model the model on the last column in Table 4.5.a and assigning the average values to the variables in that model, we find a turnover probability of 16.6%. Increasing the percentage of independents by 10% (from the average of 40% to 50%) increases the probability of CEO turnover to 30%, while increasing the percentage of directors appointed before the CEO to the appointments committee by 10% (from the average of 22% to 32%) increases the probability of CEO turnover up to 24%. In contrast, increasing the average appointments committee seniority by one year from their average of 6 reduces the probability of replacement to 11%. Therefore, the effects identified are statistically and economically important.

In Table 4.5.b we repeat the analysis, but separating independent and designee directors. The results are stronger for the independent directors and less clear for designee directors. Independent directors are less likely to replace the CEO as their seniority increases, unless they were appointed before the current CEO, in which case they are more likely to replace him.

1. **Robustness tests**

The results indicate that the presence on the board of senior directors appointed by the current CEO can hinder effective supervision. We have included in our estimations fixed effects to eliminate as far as possible confounding effects due to non-observable factors. However, the results may be due to selection problems. Seniority is the result of the joint decisions of the director, deciding to remain in office, and the company, deciding to maintain the appointment, and both decisions are strongly endogenous. In this section we address these issues with different robustness tests.

*5.1 Results with propensity score matching*

The first selection effect to consider refers to directors preferring to remain on the boards of certain companies. Our findings may be the result of directors’ preferences for lower monitoring effort, which could induce them to keep the positions in firms where there are no confrontations with management, and to quit other boards. In fact, when we estimated the determinants of seniority, we found that there are several firm characteristics which affect seniority. To minimize this problem we perform a propensity score matching procedure that repeats the analysis on firms that are similar in all observable variables except average tenure. To do this, we first predict average board tenure using the ordinary least squares model that appears in column 1 of table 4.1.b. Then, for each firm with effective average tenure greater or equal to 9 years (treatment sample) we select the firm with the closest prediction but an effective average tenure of less than 5 years (control sample). Next, we discard all the companies for which we can’t find a control. Therefore, our final sample of treated and control firms comprises firms that are similar in the determinants of seniority but differ markedly in their effective average tenure. Finally, we repeat the analysis of board outcomes, including meeting attendance, remuneration and CEO turnover.

With this procedure we reduced the sample to 524 firm-year observations, but the results are similar to those of the main analysis both regarding the influence of the seniority of the independent directors on meeting attendance, total and variable remuneration and CEO replacement. Therefore, we can say that, at least part of the identified effect is really due to seniority and not to the self-selection that leads directors to stay longer in companies with some specific characteristics.

*5.2 Results for an alternative sample of “busy directors”.*

The second selection problem that could be an alternative explanation for our results is the possibility that firms are able to retain only directors with some particular characteristics. If it is more difficult to retain the best directors (because they receive offers from other boards or alternative job opportunities), seniority would be capturing the lower quality of the retained directors, rather than the direct impact of more years in office. To address this problem we identify directors who, in a given year, sit on more than one board and whose seniority is, at least in one of these boards, greater than 9 years and, at least in another, lower than 5 years. For this alternative sample we know the reason for directors staying longer in the firm is not that they did not have the chance to move to a different board. We repeat the analysis with this sample. If our initial results were simply due to the lower quality of senior directors, seniority should cease to be significant. However, we find that the results regarding board outcomes for this alternative sample (available upon request) confirm that having more senior independents reduces board attendance, doesn’t seem to have an impact on remuneration and reduces CEO turnover. All these results reinforce our interpretation of the results regarding the seniority of independent directors as a problem of capture, rather than a selection issue.

*5.3 Results for general versus firm specific directors’ experience.*

Finally, our interpretation of the results is that seniority does not adversely affect the ability of directors to discharge their monitoring duties. The problem is that seniority is the result of capture and capture changes directors’ incentives to monitor. This interpretation is reinforced by the fact that the negative results related to seniority are limited to independent directors and not to designee directors, whose average tenure is much higher (7.3 years compared to 4.5 for independents). Nevertheless, to rule out the possibility that our results are due to the lower ability of senior directors, we constructed an alternative seniority variable that measures years of total experience as a director in any firm in the sample, rather than seniority in the position of director in a particular firm. When we repeat the analysis using this variable we find that the presence of more experienced independent directors does not reduce board meetings attendance and, instead, it reduces both total and variable remuneration. Therefore, the preferences of experienced independent directors seem similar to the preferences of directors appointed before the current CEO. This supports our interpretation of seniority generating problems because of capture rather than because of lower ability. However, we continue to see that experienced independent directors who sit on the appointments committee are more reluctant to fire the CEO than those appointed before the CEO. Nevertheless, the average seniority in the appointments committee is low (average of 6.25 years and median of 4). Thus, in this particular case, it is difficult to separate the general seniority from seniority in the firm.

1. **Conclusions**

In this paper we have empirically investigated the determinants and effects of directors' seniority in Spanish companies. The exercise offers interesting insights on the corporate governance of Spanish listed companies.

Our results indicate that older independents have a lower commitment to executive supervision. Specifically, older independent directors show lower attendance at board meetings and reduce the probability that the CEO will be replaced, while directors who were appointed before the CEO increase it. These results are similar to those found on the previous literature and support legal restrictions on the duration of the mandates of the independents. However, our interpretation of these results is not based on the impact of seniority per se, but rather on the influence that CEOs have on the selection and retention of independent directors. This is consistent with the high turnover of independent directors during their first years. It is also consistent with finding that the directors who are most likely to be replaced are not the oldest independent directors, but rather those who were appointed before the CEO. This suggests that the CEO replaces “unfriendly” directors. In addition, there seems to be a trial period for directors to reach positions of responsibility, since the probability that they will participate in important committees increases with seniority, at least up to 16 years. In the case of independent directors, this last effect is difficult to observe in the sample, since many of them have recently joined as a result of changes in the legislation, but the effect is reflected in the lower probability of presiding committees for independents of lower seniority.

Overall, the results draw attention to the influence of the CEO in the processes of selection and maintenance of independent directors. The CEO can not only extend the permanence of deferent directors, but also shorten, without any minimum term, the permanence of those who are not.

Therefore, we recommend the regulator to introduce mechanisms that reduce this influence and allow independents not aligned with the CEO to be appointed and maintained in office. Two potential options are, first, the introduction of minimum term limits during which independents cannot be separated without cause and, second, the reinforcement of the independence of the appointments committee. Both suggestions could be introduced in the corporate governance codes of good practice under the "comply or explain" principle, which has proven effective in improving the level of corporate governance of companies in recent decades.

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**APPENDIX**

**Graph 1. Changes in the number and percentage of directors by type**

**Graph 2. Differences in directors’ seniority across time**

**Graph 3. Differences in directors’ seniority across time and by type**

|  |  |
| --- | --- |
|  |  |
|  |  |

**Table 3.1. Number of directors who change category and average seniority at the time of the change (in parentheses)**

|  |  |
| --- | --- |
|   | t+n |
| t | Executive | Designee | Independent | Other |
| Executive |   | 0 | 12 (6.75) | 26 (9.3) |
| Designee | 51 (10.4) |   | 33 (4.1) | 26 (6.09) |
| Independent | 0 | 0 |   | **122 (9.8)** |
| Other | 0 | 0 | 0 |   |
|   |   |   |

**Table 3.2. Seniority and other directors’ characteristics**



**Table 3.3. Descriptive statistics of the boards in the sample**



**Table 3.4. Descriptive statistics of the firms and CEOs in the sample**



**Table 4.1.a: Probability of separation of the director**

**Table 4.1.b: Determinants of average board seniority**



**Table 4.2.a: Impact of directors' seniority on the probability of participating in board committees**



**Table 4.2.b: Impact of seniority on the probability of chairing and important committee**



**Table 4.3.a: Impact of seniority on board meeting attendance**



**Table 4.3.b: Impact of seniority of independent and designee directors on board meetings attendance**



**Table 4.4.a: Impact of board and remuneration committee seniority on total CEO compensation**



**Table 4.4.b: Impact of independent and designee directors' seniority on total CEO remuneration**



**Table 4.4.c: Impact of board and remuneration committee seniority on the % of CEOs variable remuneration**



**Table 4.4.d: Impact of independent and designee directors’ seniority on the % of CEOs variable remuneration**



**Table 4.5.a: Impact of board and nomination committee seniority on the probability of CEO turnover**



**Table 4.5.b: Impact of independent and designee directors' seniority on CEO turnover**



1. This paper builds upon research conducted for the Spanish stock market regulator, the CNMV (Comisión Nacional del Mercado de Valores). However, the views expressed here only reflect the authors’ views and not the regulators’. All mistakes and errors are solely our own. [↑](#footnote-ref-1)
2. Corresponding autor: maria.gutierrez@uc3m.es [↑](#footnote-ref-2)
3. maribel.saez@uam.es [↑](#footnote-ref-3)
4. When there is only one committee that is jointly responsible for appointments and remuneration, we treat its members as belonging simultaneously to both the appointments committee and the remuneration committee. [↑](#footnote-ref-4)
5. An “interlocking” position is defined as one in which the director belongs to two different boards in which at least one other director also belongs simultaneously to both boards. [↑](#footnote-ref-5)
6. To determine if this is the case, in additional regressions we introduce the interaction term between ownership concentration and the percentage of designee directors and verify that it has a positive impact on attendance. [↑](#footnote-ref-6)
7. In additional regressions we also introduce the interaction between the payment of fees and the percentage of foreigners but find no significant results. [↑](#footnote-ref-7)
8. We computed the average attendance fee per meeting as the average annual fees received by each director (13,810 euros) over the average number of annual board meetings of 10.79. [↑](#footnote-ref-8)
9. The reduced number of observations does not allow us to introduce fixed firm effects in the probit estimation, so we only include year and industry fixed effects. In additional analysis we estimate a linear fixed-effect model that confirms the probit results. [↑](#footnote-ref-9)