

THE LEGAL IMPLICATIONS OF AI IN CORPORATE GOVERNANCE FROM DIRECTORS' RESPONSIBILITIES TO REGULATORY EVOLUTION

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Integrating artificial intelligence (AI) into corporate governance presents a dual challenge. On one hand, it offers significant opportunities for enhanced efficiency and strategic decision-making. On the other hand, it introduces complex legal, ethical, and financial challenges, particularly concerning directors' fiduciary duties. As AI transforms business processes, corporate leaders must ensure compliance, transparency, and accountability, particularly about shareholders, investors, and business partners. A significant element of AI governance is the regulatory leadership demonstrated by the European Union, with the AI Act providing the first comprehensive legal framework for AI adoption. In an era of political uncertainty, stakeholders strive to balance fostering AI-driven innovation and maintaining accountability. Directors must align corporate governance structures with these regulations to ensure AI's legal and ethical use. Financial reporting has a pivotal role in disclosing AI-related risks to investors and regulatory bodies, thereby strengthening corporate transparency and accountability. Corporate leadership is thus responsible for establishing effective oversight mechanisms that mitigate risks while promoting responsible AI-driven innovation. By enhancing governance structures and ensuring comprehensive AI supervision, directors will uphold corporate integrity, sustain investor confidence, and successfully navigate the evolving regulatory landscape.

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1 Introduction

Integrating artificial intelligence (AI) into various aspects of life is a growing phenomenon with significant implications for economic and regulatory frameworks (Hacker, 2021). Developing an appropriate legal framework is crucial to ensuring the safe utilization of all forms of AI. Such a framework should also support advancing new technologies to enhance effectiveness and efficiency across various sectors (Primec, 2020).

The European Union (EU) was the first to regulate, with several innovations in this area being proposed in recent years. The most significant changes have been triggered by the AI Act (Regulation 2024/1689), the world's first comprehensive legal framework for the regulation of AI, with a focus on the risks associated with AI and the EU's leading role in this field. A new Directive on Product Liability (Directive 2024/2853) for defective products was adopted. It entered into force on December 8, 2024, and replaced the almost forty years old previous directive. However, at the beginning of 2025, the European Commission withdrew its intention to propose an AI liability directive (Proposal for a Directive 2022/496). This proposal had been under consideration for a considerable time.

Given its direct impact on fundamental corporate processes and accountability, analyzing AI from a corporate governance and law standpoint is imperative.

Integrating AI presents significant challenges for corporate decision-makers who are often tasked with determining where and how AI systems should be implemented. These decisions can substantially impact the company's costs, risks, and growth opportunities. This highlights two essential questions that must be addressed: **Is it the board of directors' responsibility to implement new technologies?** Conversely, **could prematurely introducing new technology without sufficient information be considered irresponsible behavior?** In this context, finding the right balance is crucial: **insufficient reliance on AI may result in inefficiency while excessive reliance may expose the company to significant risks** (Ahern, 2024).

The potential advantages of AI are considerable, particularly in the context of risk management and improving business processes within corporate governance. These advantages are primarily attributed to the ability of computer algorithms to improve over time, as evidenced by the large volumes of data they process, which play a crucial role in enhancing their learning capabilities. While data processing is essential for improving AI systems, however, it raises concerns regarding data protection and privacy (Primec, Pastirk & Perko, 2024; Boillet, 2018). Consequently, AI systems can potentially become more effective in managing corporate risks. Such systems can develop sophisticated tools that enhance an organization's capacity to monitor key areas, such as regulatory compliance and corporate governance (Boillet, 2018).

2 Methodology

The present paper offers a legal analysis of the liability of directors in companies concerning the use of AI. It should be noted that both corporate governance and AI are complex and interdisciplinary fields. By contrast, the purpose and focus of the present paper are significantly narrower in scope because it primarily concentrates on the specific issue of directors' liability in connection with the use of AI.

The first part of the paper predominantly employs the descriptive method which provides readers with a broader understanding of the research subject. This section is structured thematically, addressing key concepts essential for understanding the topic. The nomotechnical analysis and analytical method are also applied to present the relevant legislative framework.

In the continuance of the research, directors' liability for using AI is primarily analyzed through the nomotechnical analysis, the legal-logical method, and the descriptive method. The combination of these methods is intended to provide a comprehensive presentation of the legal framework and to emphasize the key challenges that directors encounter when implementing AI in business processes.

3 Theoretical background

Companies must develop a comprehensive corporate governance framework to harness the potential of AI while managing the risks described above. To understand this role, it is necessary to identify the fundamental principles of corporate governance.

Corporate governance can be defined as a constitutive element that guides and shapes the activities of economic entities. A multitude of definitions of corporate governance can be found in the literature. Berle and Means emphasized the separation of ownership and control, whereby owners often entrust management to managers (Bratina & Pašić, 2010). Similarly, Štiblar (2010) highlighted the conflict of interest between managers and owners as a key feature of corporate governance. In contrast, Trstenjak (2003) sees corporate governance as a broader framework encompassing forms of governance and control, especially in public limited companies. Minow & Monks (2001) and Gregorič (2003) define corporate governance as a network of relationships between a company's bodies and stakeholders, influencing corporate performance and the capital market. According to Tičar (2016), corporate governance is the establishment of control mechanisms to ensure investor returns while safeguarding the company's long-term stability. However, Bohinc & Bratina (2005) have highlighted that the term 'corporate governance' is most often used about companies, despite the Slovenian legal order not recognizing a specific legal form of a corporation. Instead, it speaks of commercial companies.

While the definitions of corporate governance vary in their respective emphases, they are unified by the necessity of establishing mechanisms that facilitate effective decision-making, risk management, and the protection of stakeholders' interests.

Thus, corporate governance contributes to enhancing economic efficiency and fostering societal growth.

A comprehensive corporate governance framework is crucial in ensuring the transparent, accountable, and secure use of AI in companies. Such a framework should incorporate strategies that promote the responsible deployment of AI while establishing risk management measures within internal company systems (Daidai &

Tamine, 2023). The effective integration of AI in a business environment has the potential to optimize decision-making processes and thus create added value. Corporate boards must possess a comprehensive understanding of AI systems because they play a pivotal role in establishing and overseeing mechanisms that ensure compliance with legal regulations, ethical principles, and security standards. In doing so, they contribute to risk mitigation while promoting the responsible use of AI within the company (Gregory, 2023).

All of this is particularly important since the management bodies of a company (especially the management board or executive management) are responsible for managing the company's affairs in its internal relations and representing it in external relations. In addition to these duties, management bodies are also tasked with performing entrepreneurial leadership functions which include managing the company, defining business policies, and making fundamental organizational and strategic decisions related to risk management. The duties of directors are precisely defined by legislation. In the Slovenian legal system, the Companies Act regulates directors' positions and responsibilities (Zakon o gospodarskih družbah (ZGD-1), 2006).

As members of the management or supervisory body, directors and supervisory board members have a fundamental duty under corporate law to manage and oversee the company on behalf of the company with the diligence of a conscientious and honest businessperson. This duty also entails fulfilling contractual obligations towards the company's creditors and considering the legitimate interests of other entitled stakeholders (Bratina, 2024). The ZGD-1 defines the duty of conduct and the standard of care required of members of the management or supervisory body, stipulating that in the event of a breach of this duty, they may be held liable for damages to the company (Cepec & Kovač, 2019).

Two fiduciary duties are particularly relevant in this regard: **the duty of loyalty** and **the duty of care** (Podgorelec, 2015). Both duties are essential in ensuring that management bodies approach the adoption of AI with diligence, foresight, and accountability, thereby minimizing potential risks while maximizing the technology's potential benefits (Ahern, 2024). Kocbek emphasizes that when analyzing the liability of management or supervisory body members, a significant question arises: how to distinguish between a poor business decision and a breach

of the duty of care. It is essential to recognize that business decisions not only present opportunities for success (profit) but also inherently involve a certain degree of risk. The management is not only expected to seek business opportunities for the company but also to have the courage to make decisions — even if they involve a degree of risk (Kocbek et al., 2014, p. 81).

The business judgment rule has been firmly established and widely recognized in Anglo-American law. Although the Slovenian ZGD-1 does not explicitly codify the business judgment rule, it has nevertheless been adopted through case law (Bratina, 2024). Bratina stresses that a business decision that ultimately proves incorrect does not automatically constitute a breach of the duty of care. When assessing liability, it is imperative to consider the business judgment rule regarding damages and criminal matters.

4 Discussion

Understanding new technology systems, including AI, is a complex area studied by different scientific disciplines. Presently, the AI Act is this domain's most comprehensive legislative treatment. However, European and Slovenian legislation lacks explicit articulation of the obligations of directors and supervisors to ensure the responsible use of AI systems.

Boillet stresses that corporate leadership should comprehensively understand how AI technologies are applied within the organization and its external environment. They must establish appropriate structures to address ethical concerns and remain cognizant of the challenges posed by algorithmic bias (European Union Agency for Fundamental Rights, 2022; Baer, 2019). Furthermore, they must stay informed about emerging frameworks, policies, and legislation to ensure their company balances algorithmic transparency and accountability appropriately.

As previously stated, there is an absence of specific legal regulations that govern the obligations and responsibilities of governing bodies regarding the utilization of AI technology. Consequently, it becomes imperative to consider the legal interpretation and analogy of existing legal provisions when addressing these issues. In general terms, the liability of directors can be attributed to their fiduciary duty, which encompasses the imperative of ensuring the lawful conduct of business. The

obligations of directors and their liability about the use of AI technology are not explicitly regulated by legislation. As a result, addressing these issues relies on legal interpretation and applying existing statutory provisions by analogy. The obligations of management bodies regarding AI are primarily determined by each company's circumstances in specific cases. Various factors are considered when assessing the implementation of AI systems in a corporate context. These include the nature of the company itself (such as its size, sector of activity, and technological infrastructure), the level of technological development, the risks associated with using AI systems, and the potential of alternative technologies that could replace applied AI. Given these circumstances, the rules of due diligence and general principles of corporate law will apply (Schalast, n.d.).

Directors' duties are not worded to narrowly prescribe the actions that must be taken to comply with them. As Ahern (2024) emphasizes, the flexibility inherent in directors' duties is designed to accommodate dynamic business developments, including technological advancements, such as AI. Consequently, while AI's role may influence the context in which directors' duties are applied, it should not shift their overarching content. Nevertheless, the board must address the following questions. Boards must address a range of complex decisions when considering AI's integration in areas, such as strategy, operations, oversight, compliance, and reporting. Corporate law places significant responsibility on individual and collective directors, which means that boards cannot simply delegate AI-related matters to a director or committee presumed to possess expertise in this field (Ahern, 2024).

When a company employs AI systems that impact its operations and the associated risks significantly, members of the management bodies are expected to act following the standard of care exercised by a diligent and prudent manager. The management enjoys considerable discretion in decision-making (Schulte, 2024). However, decisions must be made based on appropriate information and in the company's best interest. This implies that management bodies must consider the company's interests from the perspective of the consequences their actions may have. It is important to emphasize that a company has distinct interests, which may differ from the interests of its shareholders. Acting in the best interest of the company means that the conduct of management bodies should be aimed at enhancing the company's position and its relationships with third parties, ultimately maximizing the value of

the company's assets and achieving the highest possible return on those assets (Kocbek et al., 2014).

A prudent approach would ensure adequate oversight of AI systems while adopting predetermined procedures and familiarizing AI systems with rules resembling the instructions typically given to employees (Schulte, 2024).

The board is responsible for establishing the organization's AI risk appetite and providing high-level scrutiny over its AI strategy. In addition, the board should ensure that AI is used and deployed responsibly and that all users of AI tools receive appropriate training. It is also recommended that an approval chain be established for each AI use case, thus allowing for proper evaluation of the risks and opportunities and the appropriate application of guardrails (Sharma, 2025).

5 Conclusion

The article has outlined many open questions related to AI that have emerged in the context of the rapid development of this new technology in recent years. Comprehending these issues is complex, requiring a simultaneous understanding of legal frameworks and AI systems. Mainly through adopting the AI Act, the EU has been the first to introduce comprehensive regulation in this area. Nonetheless, the new regulation has raised several questions regarding its adequacy and effectiveness.

Considering the potential risks associated with AI technology, corporate management is expected to implement procedures to prevent or minimize risks that could impede the adoption of harmful AI systems (e.g., algorithmic bias). Establishing adequate internal control and compliance systems within companies would prove the directors fulfill their duty of care.

In conclusion, as was previously emphasized, directors and supervisory board members must manage the company with the duty of care of a prudent and diligent manager while acting in the company's best interests. Given the growing role of AI, AI oversight must be integrated into the broader risk management framework. To do so, company leaders must understand the impact of AI on the company's strategic direction, regulatory compliance, and ethical considerations. Furthermore, it is

incumbent upon them to establish appropriate precautionary mechanisms to manage the associated risks effectively.

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