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ARTIFICIAL INTELLIGENCE IN COMPANY LAW: MORE THAN SOFTWARE?

ABSTRACT

We are witnessing the growing application of Artificial Intelligence (AI) across all areas of human activity. The field of Company Law is no exception, as commercial companies, in the course of their operations, require sufficient amounts of accurate information in order to make sound decisions. In this context, the issue of business decision making arises at multiple levels ranging from routine operational decisions to fundamental entrepreneurial choices that may have long-term and significant effects on the company's survival and development. In the European Union, the long-anticipated AI Act has entered into force. It addresses certain legal questions associated with the use of AI technologies. This paper explores the technological background of AI and considers the legal implications of situations where a company's management delegates decision-making authority to an algorithm. Any automation of decision-making processes not subject to human oversight and control must be approached with great caution. In the use of AI, the management must always act with due care. This obligation remains in force regardless of the growing trend toward so-called Algorithmic Management. This paper provides an overview of the current regulatory framework and analyzes the EU AI Act, including the issue of legal classification of AI systems. The Act regulates which areas of human activity may be subject to restrictions or prohibitions on the use of AI, a question directly relevant to the field of Company Law. Finally, the paper offers concrete recommendations for legally acceptable use of AI in corporate practice.

Keywords: Artificial intelligence (AI), Liability of directors, EU AI Act, Entrepreneurial decision, Legal liability

1. INTRODUCTION

The rapid growth of artificial intelligence has led to fundamental changes in the

business environment and raised questions about how legislation needs to adapt to these changes. Thanks to technological advances, algorithms and AI systems are now able to process huge data sets, learn from experience, and suggest or even make decisions that were traditionally the domain of humans. Today, computers not only outperform humans at chess and data analysis, but are also used in business management—from automated investment decision-making to human resources management. This raises the question of whether algorithms can become “members” of management or at least important advisors who significantly influence business decisions. In the corporate sector, the business judgment rule and the responsibility of board members are taken into account when they rely on algorithmic analyses in business decisions. The judiciary is examining the use of AI tools in case law and criminal law and how transparency, impartiality, and human control over such decisions can be ensured. In public administration, the focus is on constitutional and administrative frameworks for automated decision-making, with an emphasis on protecting citizens' fundamental rights, non-discrimination, and the right to an effective remedy. In healthcare, clinical decision support provided by AI systems is being analyzed and research is being conducted into how the potential for improving treatment outcomes can be reconciled with patient safety requirements, a clear division of tasks, and ethical standards. As early as the middle of the last decade, the media reported on the case of a company that appointed an algorithm called Vital to its board of directors, which allegedly gave it voting rights on investment decisions. Although this “AI director” remained legally only an advisor without formal status as a board member, this example shows the potential of AI to participate at the highest levels of corporate decision-making. These trends signal that AI in business is no longer limited to auxiliary tools, but can play an active role in the management of a company. A similar step was recently taken (in 2023) in the United Arab Emirates, where the International Holding Company (IHC) of Abu Dhabi announced that it would appoint an AI system as an observer to its board of directors. This AI observer is not a formal voting member, but participates in meetings, analyzes data, and makes recommendations to the board. IHC is thus the second practical experience of AI integration at a high level of corporate management after Vital. IHC stated that it wants to use AI to identify trends and opportunities in the market more quickly and expects the AI system to “learn” by monitoring board meetings and provide better support for decision-making over time. In addition, according to a survey by the World Economic Forum, almost half of the top managers surveyed in a projection for the period 2025–2030 expect that they could be replaced by Artificial Intelligence.¹ These trends signal that AI in business is no longer limited to being an auxiliary tool, but can play an active role in the management of a

¹ World Economic Forum, The Future of Jobs Report 2025, str. 29, available at: <https://www.weforum.org/publications/the-future-of-jobs-report-2025/>, March 1, 2025.

company.

The development described above raises a number of legal questions, such as whether algorithms can legally and practically take over the functions of management bodies in companies and thus have the status of a creation that is more than software or an object in the legal sense. It is also legitimate to ask to what extent human managers may or must delegate business decisions to AI systems, and what obligations they have in doing so, and who bears responsibility if the AI makes a mistake - the company (as the system user), the board members, or the system manufacturer.² Furthermore, it is a fact that many jobs that were previously performed by humans are already being automated by AI, which inevitably affects the position of workers and the business organization system of a company. Finally, it is necessary to examine whether the existing normative framework is sufficient to legally regulate the new technological reality, or whether additional new rules are needed, which we are considering in particular through the AI Act - the general EU regulation on artificial intelligence.³

These issues are complex and interrelated. In the second chapter of the article, we analyze the use of AI in business decisions - from supporting analytical tools to autonomous systems - and consider the legal limits and obligations of management when introducing such systems. The third chapter discusses the inevitable process of automating business functions and the impact of AI on the position of employees and the day-to-day operations of the company. The fourth chapter provides a summary of the legal requirements set out in the EU AI Act, including the definition of high-risk AI and new regulatory requirements for commercial enterprises. Unpredictable and therefore uncontrolled failures in artificial intelligence systems can cause harm to a wide range of stakeholders. The EU AI law introduces the criterion of the risk-benefit ratio. This means that the risks of harm are socially and legally acceptable as long as the use of these systems brings more benefits than harm. This is determined on the basis of a cost-benefit analysis. The fundamental question, however, is whether it is constitutionally justified from the perspective of the state's duty to protect its citizens to accept the unknown and unpredictable risks of how artificial intelligence works. This supports the view that AI law is an important element in the system for protecting the rights of legal and

² Especially critical of the work and plan of the European Commission in the field of artificial intelligence and digitization is Graf von Westphalen, F., *Disruptive Technology Creates Disrupted Law*, ZIP, 2020, p. 737.

³ Regulation (EU) 2024/1689 of the European Parliament and of the Council of 13 June 2024 laying down harmonised rules on artificial intelligence and amending Regulations (EC) No 300/2008, (EU) No 167/2013, (EU) No 168/2013, (EU) 2018/858, (EU) 2018/1139 and (EU) 2019/2144 and Directives 2014/90/EU, (EU) 2016/797 and (EU) 2020/1828 (Artificial Intelligence Act), <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX:32024R1689>, accessed March 1, 2025.

natural persons in the EU. In its famous 1978 decision in the Kalkar case,⁴ The Constitutional Court of the Federal Republic of Germany has given priority to the protection of citizens' fundamental rights over "practical reasons", which is a significant indicator of the change in social consciousness regarding the understanding of the aforementioned rights.

2. ARTIFICIAL INTELLIGENCE IN BUSINESS DECISION-MAKING IN COMPANIES

Business decision-making is at the very core of the management function - the management board makes decisions on business management, investments, strategic guidelines, finances and other issues crucial to the success of the company. Company law expects members of the management board to act with the due care of a diligent and conscientious businessman, which the Croatian Company Act formulates as an obligation to conduct business with the aforementioned care.⁵ This standard of conduct means that management must invest reasonable effort and attention in obtaining relevant information, analyzing options, and selecting the option that it reasonably believes is in the best interests of the company. The unique nature of business decisions is that they often involve business risks and there is no clearly correct answer in advance. In contrast to some management tasks that are strictly defined by law or corporate documents (where management has no discretion—e.g., fulfillment of prescribed obligations, implementation of meeting resolutions, etc.), management has a certain degree of discretion in genuine business decisions.⁶ Such decisions include, for example, the decision to invest in a new project, launch a new business venture, acquire another company, or select a development strategy. What they have in common is that there are often several permissible courses of action or at least a dilemma between taking a particular course of action and refraining from doing so. Only

⁴ The Kalkar judgment of the German Constitutional Court (BVerfG, Decion from 08.08.1978 - 2 BvL 8/77). A key part of the reasoning behind this judgment reads that, it is crucial to require of the Legislator, in view of its duty to protect, to adopt a regulation that excludes with absolute certainty all threats to fundamental rights that may arise from the approval of technical installations and their operation would be to misjudge the limits of human cognitive abilities and would largely prohibit any state approval of the use of technology. In shaping the social order, assessments based on practical reason must therefore suffice. Uncertainties beyond this threshold of practical reason are inevitable and as such must be borne by all citizens as socially appropriate burdens. The text of the judgment is available at <https://openjur.de/u/166332.html>, March 1, 2025.

⁵ See Art. 252. Croatian Companies Act ("Official Gazette" No. 111/93, 34/99, 121/99, 52/00, 118/03, 107/07, 146/08, 137/09, 152/11 - official consolidated text, 111/12, 125/11, 68/13, 110/15, 40/19, 34/22, 114/22, 18/23, 130/23, 136/24).

⁶ Brnabić, R., *Uprava d.o.o.-a – granice poslovne prosudbe*, Pravo u gospodarstvu, godina 59, 5/220, p. 335–337.

time will tell which decision was the best one, as the results depend on numerous unpredictable factors. Therefore, before making a decision, the members of a company's board of directors must gather an appropriate amount of information, analyze relevant data, consider alternative options and potential risks, and decide in good faith, putting the interests of the company above personal motives. If they do so, they cannot be reasonably blamed, even if the outcome is not favorable.⁷ If, on the other hand, the board makes a hasty decision without sufficient information or for the wrong reasons (e.g., for personal gain at the expense of the company), even a positive outcome does not necessarily release the board members from liability. For this reason, boards of directors, supervisory boards, and CEOs of companies use artificial intelligence to support strategic and operational decisions. AI can be used as an advanced analysis tool that processes information faster and more thoroughly than humans and suggests optimal decisions. For example, machine learning systems can analyze financial markets and recommend investments or better assess the credit risk of customers than traditional models, thus providing management with a better basis for decision-making.⁸ In its simplest form, AI acts as a supporting tool—a more complex version of data analysis software—and the final decision rests with human managers. However, technological developments also open up the possibility of algorithms making independent decisions within a given framework.

2.1. Delegation of decisions and limits of Artificial Intelligence autonomy

A key legal issue in this context is the delegation of decisions to AI systems. According to traditional principles of corporate law, management and directors may delegate certain tasks and decisions to subordinate managers or external advisors, but must retain ultimate responsibility and oversight (known as ultimate management responsibility). Delegating tasks is essential—without it, the complex administration of large companies would not be possible. However, there are limits here as well: the most important and essential management tasks that the law expressly assigns to management may not be delegated, while routine or preparatory activities may be transferred to others, provided that management ultimately makes an independent and responsible decision based on the information gathered. This principle remains the basis for the introduction of AI into decision-making—human management bodies must remain in control of the process and retain the final say in decisions. In other words, even the most advanced AI should be a management tool and not replace management itself. In

⁷ Barbić, J., *Pravo društava - društva kapitala, Knjiga druga, Sv. I.*, 8. Izdanje, Organizator, Zagreb, 2025, p. 1016.

⁸ Tischbirek, A., *Ermessensdirigierende KI*, Zeitschrift für Digitalisierung und Recht (ZfDR), Vol. 3, 4/2021, p. 312.

practice, this means that fully binding decision-making by the AI system (for example, management accepting all AI decisions in advance without review) would contradict the principle of corporate decision-making bodies. This approach is also followed by the GDPR, which in Art. 22 sets a limit on fully automated individual decisions and reflects the general view that important decisions should not be left solely to machines without human involvement.⁹ Today's AI remains largely specialized for specific types of tasks. For example, AI may be successful in deciding whether to approve a loan or select an investment portfolio, but it cannot "lead" the entire business strategy of a company in the way that human management does.

2.2. Delegation of decisions and limits of AI autonomy

A key legal topic in this context is the delegation of decision-making to AI systems. According to traditional principles of corporate law, management and directors can delegate certain tasks and decisions to subordinate employees or external advisors, but must retain ultimate responsibility and oversight (the so-called ultimate management responsibility). Delegation of tasks is necessary - without it, the complex management of large companies would not be feasible. However, there are limits, so the most important and original management tasks that the Law explicitly entrusts to management may not be delegated, while routine or preparatory activities may be transferred to others, provided that the Management ultimately makes a decision independently and responsibly based on the information collected. This principle remains the basis for the introduction of AI in decision-making - human management bodies must remain masters of the process and retain the last word in decisions. In other words, even the most advanced UI should be a management tool, and not a substitute for the Management itself. In practice, this means that completely binding decisions to the UI system (e.g. for the management to accept in advance all decisions made by the UI without review) would be contrary to the principle of independent decision-making by the company's organs.¹⁰ This starting point is also followed by the GDPR Regulation, which in Article 22 sets a limit on fully automated individual decisions, reflecting the general position that key decisions should not

⁹ Möslin points out that with sufficient technological progress, it is not ruled out that algorithms will take over some segments of business management. Möslin F., *Digitalisierung im Gesellschaftsrecht. Unternehmensleitung durch Algorithmen und künstliche Intelligenz*, Zeitschrift für Wirtschaftsrecht (ZIP), Vol. 39, 5/2018, p. 207.

¹⁰ Lücke states that the management's decision to follow UI decisions would be legally unsustainable and incompatible with the management's duties and thus without legal effect. Lücke, O., *Der Einsatz von KI in der und durch die Unternehmensleitung*, Betriebs-Berater (BB), Vol. 15, Heft 35/ 2019, p. 1989.

be left exclusively to machines without any human involvement.¹¹

The literature elaborates on various models of AI participation in management decisions.¹² At least two groups of such models are usually distinguished. In a company's business decision-making processes, the AI system can be a competent decision maker - which is the case when the company's management has effectively entrusted the AI with making decisions, and it actually delegates those decisions to the company's employees. On the other hand, the AI may have the status of a controlled decision maker. In this case, the AI still makes decisions, but within the framework set by management, so that the impact of those decisions on the business is in line with management's plans.¹³ In the first case, KI functions as an "independent manager"; in the second case, it is primarily an information tool or an automated assistant whose decisions can be checked and corrected by humans. In the practice of current KI implementation in companies, this second model predominates: algorithms propose or implement decisions in a certain segment (e.g. automatic credit approval up to a certain amount), but management retains the authority to set criteria, monitor results and intervene if necessary. However, this does not diminish the importance of the fact that a decision proposed or made by a KI can have the same effect as if it had been made by a human being - for example, an algorithmic recommendation that is always automatically confirmed by management becomes a de facto management decision. In this sense, the adaptation of institutions such as the Business Judgment Rule and other standards for cases of dependency on KI is discussed. Under the business judgment rule, the board of directors is not liable for a business decision if it was made on the basis of appropriate information, to the best of its knowledge and belief, and in the best interests of the company. The question is whether this rule also applies when the management has relied on the analysis or recommendation of the UI system. Modern approaches suggest that the use of KI in business decision-making, with appropriate additional precautions and controls, can be understood as the behavior of a prudent and conscientious businessman or manager, provided that management has ensured the reliability of the system and verified its results as objectively as possible. If the algorithm is carefully selected and tested, and the management regularly monitors its functioning, any misjudgment by the KI system in the decision-making process can be treated as a

¹¹ See Art. 22. General Data Protection Regulation (GDPR), <https://eur-lex.europa.eu/eli/reg/2016/679/oj/eng>, March 1, 2025.

¹² See for instance Langenbucher, K., *KI und Aktienrecht*, *Europäische Zeitschrift für Wirtschaftsrecht (EuZW)*, Vol. 6, 18/ 2024, p. 857. and further. Cf. Sharff, C., *Wie künstliche Intelligenz Entscheidungen prägt. Eine Multiple-Case-Study über Entscheidungen künstlicher Intelligenz im Kontext von Unternehmen*, Springer, Wiesbaden, 2024, p. 53.

¹³ Sharff, C., *op. cit.*, note 12, p. 53. and further.

business risk that does not automatically entail the liability of the management (there are analogous situations in which a human expert can give wrong advice despite due care). If, on the other hand, the management introduces a KI system into the company negligently and without thorough examination, or if it ignores obvious defects in the functioning of this system, it can be held liable for negligence (e.g. lack of supervision or organizational failure).¹⁴

2.3. Due Diligence of Management in the Use of Artificial Intelligence

Board members and directors who use AI in decision-making are subject to traditional fiduciary duties of due diligence, but these duties now need to be specified in a new way. Some authors argue that a board considering the introduction of AI must act with the care of a good and conscientious businessman, which means that it has a duty to consider the possibilities of using AI wherever it is appropriate for the fulfilment of a particular task. In other words, if there is an available AI application that can significantly improve decision-making in a particular area (e.g. market analysis, customer enquiry processing) and if its effectiveness has been proven, management should at least consider using it. This goes beyond the general duty of management to stay informed and use all reasonably available means for the benefit of the company.¹⁵

If, in a specific situation, the failure to implement a proven AI technology constitutes a clear disregard for the available information or tools (i.e., if the decision made would be unreasonably worse without the help of AI), it could be assumed that management has violated its duty of care. In practice, such a conclusion would only be reached in exceptional cases – for example, if there is a generally accepted and reliable industry standard for a specific type of analysis to

¹⁴ Langheld, G., Haagen C., *Einsatz Künstlicher Intelligenz bei unternehmerischen Entscheidungen*, NZG, Vol. 25, 33/2023, p. 1537.

¹⁵ Of course, there is no absolute obligation to use AI in every case. Telle concludes that the law does not currently impose an explicit obligation on the administration to use AI. Rather, it is a dynamic obligation that depends on the circumstances: if, in a given situation, the failure to implement proven AI technology constitutes a clear disregard of available information or resources (i.e., a decision without AI would be unreasonably worse), then it could be assumed that the administration has breached its duty of care. In practice, such a conclusion would only be reached in exceptional cases - for example, where there is a generally accepted and reliable industry standard that requires a certain type of analysis to be performed using an AI tool, but management persistently and without justification refuses to do so, thereby making decisions based on significantly inferior information. As a result, the standard of care is gradually evolving: the use of some forms of narrow AI systems may already be considered part of reasonable business practice ("state of the art"), and management that ignores this must have valid reasons why such technology is inappropriate for them. Telle, M., *Einsatz Künstlicher Intelligenz Zur Vorbereitenden Unterstützung von Leitungsentscheidungen Des Vorstands Einer AG*, Duncker & Humblot, Berlin, 2023, p. 60.-61.

be performed with an AI tool, but a particular management team persistently rejects it without justification and thus makes decisions based on significantly poorer information. The standard of due diligence is therefore gradually evolving. If management decides to use AI in the decision-making process, a number of specific duties arise to ensure that its use is responsible and lawful.

The literature suggests providing guidelines (checklists) for administrations. These guidelines include a number of practical measures: It is necessary to carefully select the appropriate AI system for a specific task (evaluate available solutions and decide whether to develop your own system or purchase a ready-made one, ensuring that the AI is suitable and reliable for the purpose); the algorithm must be set up to optimize the desired goals within reasonable limits; ensuring high-quality data for learning (the "garbage in, garbage out" principle warns that even the most advanced AI will produce poor results if the input data is poor. Therefore, management must ensure that the data sets are relevant, representative, free of bias, and that their use is legally permissible). Conduct thorough testing and validation of the UI system prior to full implementation (sufficient pilot phase with representative examples to confirm the functionality and reliability of the system). Ensure continuous monitoring of the operation of the UI system even after implementation. In addition, technical support for the UI system must be provided by qualified personnel, such as a designated Chief Digital Officer (CDO) or other IT experts, as members of management often lack the expertise to gain detailed insight into the algorithm. It is important to have a team within the company that is familiar with AI and can intervene in its work. There must also be the possibility of human intervention or shutdown of the AI system if it delivers incorrect or inappropriate results: Responsible persons should have the authority and technical ability to adjust parameters, stop the AI, or take it out of service if circumstances require it.¹⁶

2.4. Liability for decisions made with the help of AI

When management uses AI in decision making, the question arises: Who is responsible if such a decision causes harm to society or third parties? Since AI has neither legal personality nor formal responsibility, the ultimate responsibility lies with human actors: the company, board members, and possibly technology producers. For example, if the AI system makes a bad investment decision that causes a loss to the company, that decision was formally made by management (who implemented it based on the AI's recommendation). Board members could be held liable to the company if they are found to have acted negligently in

¹⁶ So Lücke, O., *op.cit.*, note 10, p. 1992.

connection with the use of AI. As explained above, the standard of care is adjusted here: if all obligations are met (proper system selection, monitoring, etc.), even an unexpected AI error can be treated as a business risk rather than a management error. In principle, unforeseeable individual errors made by self-learning algorithms should not automatically be held against management, provided they are not organizational or supervisory errors - such errors are similar to unforeseeable human errors, against which reasonable measures do not provide complete protection. On the other hand, if the damage was caused by the company's management's failure to take appropriate organizational measures and controls (e.g., because it used AI in hiring decisions without any review, so that the system was biased and unlawfully discriminated against applicants), the members of the company's management could be held liable for breach of duty - for failing to establish a system of control and legality in the use of the tool.

It is important to note that the liability of the directors does not preclude the potential liability of the manufacturer or supplier of the UI system to the company (e.g., under contracts or general product and service liability rules) if the system is defective. For example, if a software company supplies a bank with an AI system for making credit decisions, and the system causes financial damage due to a programming error, the bank may seek damages from the company. However, under the general rules, the company's management cannot shift all responsibility to external consultants or tools - it must still prove that it exercised due care in selecting, hiring and monitoring them. In the European context, there is already a broader debate about the need for specific liability rules for AI.¹⁷

3. AUTOMATION OF SPECIFIC TYPES OF WORKING TASKS

The use of artificial intelligence is not limited to strategic management decisions, but extends to a wide range of business tasks within companies. Many repetitive, analytical, or operational tasks that were traditionally performed by humans can now be partially or completely automated by AI systems. This transformation is often referred to as digital automation or algorithmic management when AI takes over the role of monitoring employees.

Examples of automated business functions include financial transactions related to algorithmic trading on stock exchanges (known as high-frequency trading),

¹⁷ Langenbucher, K., *Künstliche Intelligenz in der Leitungsentscheidung des Vorstands*, ZHR, Vol. 8, 6/2023, p. 733.

where systems autonomously buy and sell securities according to predefined models; automatic transaction verification for fraud detection; and AI based accounting software that categorizes expenses or forecasts cash flows. In marketing and sales departments, AI analyzes customer data and personalizes offers, manages prices (dynamic pricing), and chatbots communicate independently with customers in customer service; recommendation systems (as used by large online platforms) enable tailored, individual sales strategies. Autonomous systems and AI also have a place in human resources departments, where they are used, for example, in personnel selection. Systems that filter resumes and evaluate applicants; algorithms that assess candidates' characteristics by processing video interview recordings; then AI to monitor employee performance (analyzing sales results, monitoring typing or the use of computer applications) and even to make recommendations for promotions or dismissals. AI systems can significantly improve the work of predictive maintenance departments in manufacturing plants by anticipating machine failures and scheduling maintenance work. Supply chain optimization (demand forecasting and automatic material ordering); logistics and delivery routes are determined by algorithms; inventory management in warehouses with AI-controlled robots. AI is becoming an important tool in automated document processing. It is often used as a digital assistant (personal secretary) that schedules meetings, answers standard queries, or creates reports. Some companies have virtual legal or tax advisors that use knowledge databases and artificial intelligence to provide preliminary opinions before a case is reviewed by a human expert.

The automation of work processes brings numerous advantages, as it increases efficiency, reduces labor costs, speeds up information processing, and theoretically reduces human error or bias. AI can work around the clock, process thousands of requests per minute (e.g., in automated decision-making for routine loans or insurance), and thus significantly improve the scalability of companies. In addition, AI improves objectivity in some areas. For example, a well-designed recruitment algorithm can eliminate employer bias toward a particular gender or race and focus solely on meritocratic metrics. In human resources, there are already systems that analyze performance based on measurable indicators and warn of possible unconscious biases on the part of managers when evaluating employees.

However, the advantages are accompanied by disadvantages. First of all, mass automation raises the question of replacing human labor. What does it mean for employees when "the robot becomes the boss"? In fact the robots already act as supervisors in some areas of the workplace – one example is a system for monitoring delivery drivers or warehouse workers, where an algorithm assigns tasks and monitors performance. This type of "algorithmic boss" can create a feeling of dehumanization within the management system. Employees can find

themselves in a situation where an invisible algorithm assigns them work tasks without human intervention and then evaluates the employee's efficiency in performing these tasks. Labor law and employee protection are facing new questions: Do employees have a right to know whether the decision about their promotion or dismissal is made by AI? How can it be ensured that such a decision is neither discriminatory nor arbitrary? According to Art. 22 GDPR, a person (e.g., an applicant or employee) has the right not to be subject to a decision based solely on automated processing that produces legal effects or similarly significant effects. This means that in many cases, an employee can request a human review of a decision made by an algorithm. This obliges employers to require human involvement in important decision-making processes, at least as a final check. It is certainly not acceptable for an algorithm to terminate an employee's employment contract without human review, for example.

Another problem is excessive reliance on AI. When systems work well over a long period of time, there is a risk that users the humans will begin to blindly trust their decisions and no longer question them. Algorithms can also be used as an alibi for controversial decisions ("that's what the algorithm said"), thereby blurring responsibility. Management must take care to maintain a critical attitude: if, for example, it turns out that the UI's sales forecast is wrong in the same direction from quarter to quarter, it should recognize this and adjust the model rather than continuing to blindly believe its inaccurate forecasts just because the "intelligent system" calculated them. The paradox of automation is that highly automated systems can dull the attention of human operators. People intervene less, so they may not notice the problem until late in the game when the system makes a mistake.

In addition, transparency and explainability of automated decisions are becoming increasingly important. Many AI systems, especially those based on deep learning and neural networks, function as "black boxes" – their decisions are often opaque (not easily explainable in human terms).¹⁸ This poses a challenge when the company has to justify its decision to a supervisory authority, a court, or the public. For example, if a bank denies a customer a loan based on the UI assessment, it must be able to explain the reasons for the denial in accordance with consumer rights and non-discrimination regulations. However, if the reason is hidden in the complex statistical patterns identified by the AI, it can be difficult to articulate clearly. Management is therefore advised to introduce the principle of "explainable AI" wherever possible – i.e., to use models that deliver understandable results or

¹⁸ Papadoulis, V., *Artificial Intelligence's Black Box: Posing New Ethical and Legal Challenges on Modern Societies*, in: Kornilakis A. et al. (Eds.), *Artificial Intelligence and Normative Challenges-International and Comparative Legal Perspectives*, Springer, Cham, 2023, p. 42.

at least additional modules that explain the algorithm's decisions. Management must be able to objectively justify why it took (or did not take) the UI system's recommendation into account when making a decision. Management does not have to explain how the impact assessment arrived at a particular recommendation (which it often cannot even know), but it should document the reasons why it considered that recommendation to be reliable or useful. An example of a good approach: If an AI passes extensive testing and demonstrates a high degree of accuracy in its predictions, management can cite this empirical data as the basis for its confidence in the AI. This provides evidence that the decision was made in an informed and thoughtful manner and not blindly following the dictates of a machine.¹⁹

A special segment of automation that many companies are confronted with is personnel decisions using AI—e.g., automated human resources management systems (HR). The AI Act classifies such systems (for hiring, employee evaluation, or contract termination) as high-risk AI systems precisely because they have the potential to significantly impact people's lives. This means that employers who use such tools must meet strict requirements (more on this in the next chapter). Even now, however, employers must take anti-discrimination regulations into account—if, for example, the AI system unconsciously learns to favor a certain candidate profile that correlates with the male gender, the employer is responsible for correcting this bias so that gender discrimination does not occur in employment.²⁰ Finally, automation is also changing the internal organization of companies. Some traditional hierarchies can be flattened—when software gives workers instructions, the number of middle managers can be reduced. New roles are emerging, such as data analysts and CI specialists, who work alongside traditional managers. Companies must invest in training their employees so that they can work effectively with AI systems (e.g., so that team leaders know how to interpret reports generated by AI). Organizational resilience also takes on a new dimension: a failure or error in an AI system can cause a systemic problem (for example, if an

¹⁹ Langheld, G., Haagen C., *op.cit.*, note 14, p. 1538.

²⁰ When assessing discrimination by algorithms, a number of reactions can be found which point at the difficulties in establishing the relationship between antidiscrimination law and algorithm-based decisions. See Morondo Taramundi, D., *Discrimination by Machine-Based Decisions: Inputs and Limits of Anti-discrimination Law*, in: Custers, B.; Fosch-Villaronga, E. (Eds.), *Law and Artificial Intelligence- Regulating AI and Applying AI in Legal Practice*, Asser Press, The Hague, 2022, p. 75. *Conf.* Langheld, G., Haagen C., *op. cit.* in fn. nr. 14, *ibid.* Algorithmic bias is often a reflection of bias in the data used to train the system. This underscores the need for high quality (accurate) input data and for testing the model for fairness. In Germany, the literature already refers to organizational obligations of employers when dealing with algorithmic systems, analogous to occupational safety obligations - e.g., the obligation to check whether the decision-making system functions fairly and without discrimination.

inventory management system incorrectly predicts demand, this can lead to overstocking or shortages). Crisis mechanisms must therefore be planned for such cases (e.g., falling back on human decision-making or redundant systems).

In short, automation through AI promises efficiency, but requires well-thought-out integration into work processes and good change management. Companies that succeed in benefiting from AI while maintaining a human face in management and respecting employee rights will have an advantage. With the new regulation, European legislators want to create an appropriate regulatory framework for the responsible use of AI, which will be discussed in more detail in the next chapter.

4. EUROPEAN UNION AI ACT

The AI Act is the first comprehensive attempt to regulate artificial intelligence in the EU and introduces comprehensive and risk-based regulation of the development, use, and marketing of artificial intelligence systems. In other words: With this law, the European Union aims to create a common legal framework for AI that balances the need to protect the public interest and fundamental rights with the promotion of innovation. The law has extraterritorial effect and also applies to companies outside the EU if they use AI systems in their business activities within the EU or use them in a way that affects citizens of EU member states. Such an approach, similar to that of the GDPR system, reflects the EU's efforts to enforce high standards worldwide ("Brussels effect") and encourage other countries outside the EU to regulate AI technologies in a similar manner. The AI Act is intended to be a legally binding EU regulation, meaning that it will apply directly and uniformly in all member states.²¹

The normative structure of the AI Act reflects the dual nature of this regulation—it combines elements of traditional product safety law and modern digital regulation. It draws heavily on proven concepts from the EU's new legal framework for the marketing of products (e.g., conformity assessment requirements, responsibilities of manufacturers, importers, and distributors). However, the AI Act goes beyond mere product safety by introducing rules designed to ensure the protection of fundamental rights and ethical values in relation to AI technology. This is unusual for the regulations of the New Legislative Framework, but justified in the case of the AI Act, as it regulates an area of law that cannot be harmonized and interpreted exclusively through product-related regulations. This applies in particular to the legal regulation of the

²¹ Voigt, P., Hullen, N., *Handbuch KI-Verordnung*, Springer, Berlin, 2024, p. v. (Foreword).

status of generic AI models, which should be constantly taken into account, especially in the context of protecting the rights of workers and consumers, but also of other legal and natural persons. The AI Act is divided into chapters covering the following topics: definitions and general scope (including exceptions, e.g., exclusion of AI systems used exclusively for military and security purposes), a list of prohibited AI practices, detailed rules for high-risk AI systems, specific transparency requirements for certain AI systems with limited risk, obligations relating to generic AI models for general purposes, the creation of an institutional framework for oversight (national supervisory authorities and a European AI Board), and provisions on enforcement and sanctions for infringements of this Regulation.²²

4.1. EU AI Act – Key provisions and implications for business

The AI Act introduces a risk-based approach to regulation. At the heart of the Act is the classification of AI systems according to the level of risk their use poses to human health, safety, and fundamental rights. The regulation recognizes four levels of such risks. Systems with unacceptable risk include, for example, cases where the use of AI systems violates fundamental human rights. From the perspective of EU regulations, it is therefore unacceptable for the government to introduce a kind of "social scoring" system for citizens (as is the case in China) or to use subconscious manipulation techniques that can harm people. The implementation of such systems is not permitted. The next category is high-risk AI systems. Such systems represent a key category subject to strict requirements under the AI Act. Annex III of the regulations provides an exhaustive list of areas considered high risk. Particularly relevant for companies are AI systems in the areas of recruitment, employee management, and access to self-employment, AI for the management of basic private and public services (e.g., credit scoring systems), creditworthiness assessment systems, product safety components, and the like..²³

AI systems with limited risk are those that do not pose a high risk but still require certain transparency measures. The AI Act lists chatbots that communicate with humans as an example. Companies or institutions that use these algorithms in their work are required to inform their customers that they are communicating with AI and not with another human being. For this group, the regulation sets out virtually

²² *Ibid.*

²³ For example, Chapter III states that AI systems used to select or filter individuals in hiring processes or to make decisions about termination of employment are considered high-risk - meaning that a company that uses an algorithm for hiring or automated decisions about termination of employment must comply with the requirements of the AI Act. *Ibid.*, p. 47.

no specific requirements other than general ones, such as general product safety requirements. The focus of companies will, of course, remain on high-risk systems. The AI Act imposes a whole range of horizontal requirements that such systems must meet in order to be used or placed on the market. These requirements include establishing and maintaining an AI risk management system (identifying potential risks and measures to mitigate them throughout the system's life cycle), ensuring high-quality data for training, testing, and validating AI (the aim is to ensure the relevance and representativeness of the data and minimize bias in the data set), the creation of technical documentation and the keeping of records (logs) on the operation of the AI system to enable monitoring and accountability, and ensuring a certain level of transparency for example, when an AI system communicates decisions or recommendations to users, it must be clear that the decision was made or suggested by the AI (with an indication of the most important parameters on which it was based). The responsibility for fulfilling these obligations lies primarily with the provider of the UI system, i.e., the party that places the system on the market or puts it into service under its own name. This is typically a software manufacturer or technology company that develops a UI system for distribution. However, users of high-risk AI systems (e.g., a company that purchases such a system and uses it internally) also have certain obligations: They must use the system in accordance with the instructions, monitor its implementation themselves, report serious incidents or malfunctions to the competent authorities, and refrain from making unauthorized changes to the system that could increase the risk. So if a bank uses another party's UI system to assess the creditworthiness of its customers, it is obliged to monitor its work and warn the manufacturer and supervisory authorities of any unexpected results that could pose a risk to customers.

The AI Act implies that a company's management and supervisory bodies will also have to take responsibility for checking the legal compliance of AI systems in future. The board of directors cannot claim that it did not know how the employee evaluation system worked if it potentially violated the law—it is the duty of company management to ensure that systems with the necessary certifications are used and that procedures for monitoring these systems are implemented within the company. In some critical sectors (such as finance, transportation, or healthcare), the AI Act's mechanisms (e.g., mandatory conformity assessment) will give regulatory authorities insight into and control over AI in companies. Overall, the AI Act introduces proactive regulation before AI reaches users, it must meet certain standards. This is a different approach from the previous one, which often involved reacting only after problems arose (e.g., court cases involving discrimination).

The question of data management also remains open, which the AI Act only touches on marginally with regard to data quality. The AI Act does not address these issues of data ownership and value for the time being, but it does lay the groundwork by defining the obligations associated with the use of data.²⁴

5. CONCLUSION

The considerations in this article show that artificial intelligence in Corporate Law is much more than just software. This conclusion also applies to most other areas of human life and work. Due to its ability to process large amounts of data in a short time, machine learning, autonomous decision-making, and adaptation, AI is becoming an increasingly better assistant in decision-making and management. Executive boards and managing directors are faced with the challenge of integrating AI into management processes while upholding the fundamental legal principles of responsibility, transparency, and protection of the interests of society and third parties. AI is already contributing to better information and greater efficiency in the work of numerous companies' executive boards. Algorithms can extract patterns from huge amounts of data that are imperceptible to humans and make recommendations that lead to faster and often better business decisions. Using the AI can be a competitive advantage – managers who ignore these tools could fall behind. On the other hand, completely delegating strategic decisions to a machine would contradict the legal and ethical framework of human society. The human factor remains indispensable when setting goals, assessing risks, and making decisions that require value judgments (e.g., weighing the interests of shareholders, employees, etc.). In complex situations that require moral reasoning, intuition, and creativity, AI cannot yet fully replicate human judgment (and may never be able to do so). The existing legal framework governing the duties of corporate bodies does not prevent the meaningful use of AI, provided that management acts with due care and responsibility. On the contrary, one could almost say that reasonable and conscientious corporate management, depending on the nature and scope of the company's business activities, would be obliged to examine the possibility of using all means that could help it make a decision based

²⁴ Graf von Westphalen points out that the traditional concept of ownership (as a right to a tangible object in civil law) does not fit well with the phenomenon of data generated by machines and AI. The question of "who owns the data" produced, for example, by AI systems in autonomous driving or by business AI in market analysis, has not been clearly resolved. The EU is creating a legal framework for the exchange of industrial data. However, companies find themselves in a situation where they have to resolve the rules for data management internally on the basis of their own autonomous rules. Westphalen points out that the concept of the "data economy" also requires an adjustment of accounting rules – perhaps valuable data sets and trained models will be recognized as intangible assets on the balance sheet in the future. Graf von Westphalen, F., *op. cit.*, note 2, p. 744-745.

on adequate information, in accordance with the standards of a prudent businessman. However, precisely because of the aforementioned requirement for attention, management must remain in control of the process and critically monitor AI. Legal obligations such as organizing oversight, ensuring data quality, and auditing systems are all derivatives of the general duty of care that have been adapted to the new context. If these obligations are met, management can use AI without exposing the company or themselves to unacceptable risks.

Furthermore, the automation of functions through AI is changing the way business is done, but it also requires a new social contract within the company. Employees must be guaranteed that they will not be treated unfairly by an algorithm and that there is a mechanism for appealing and human review of decisions. Employers, in turn, can use AI to eliminate subjective biases and increase productivity. However, they should be careful not to create an "opaque machine bureaucracy" that undermines employee trust. Trade unions and works councils will also play an important role here, as they are already involved in examining the introduction of employee monitoring systems in some countries. Human oversight of AI is important not only for technical reasons, but also to preserve human dignity in the work process.

The EU AI Act is a pioneer in the global regulation of AI and introduces relatively strict but necessary rules, especially for high-risk areas of human activity. Its implementation will ensure minimum standards of quality and safety, which will also benefit companies (as it will strengthen user confidence in AI products and services). The challenge, of course, is to find the right balance so that innovation is not stifled by excessive regulation. The AI Act attempts to strike a balance by providing relief for smaller players and focusing on areas with the highest risks. For the business sector, compliance with the AI Act will become part of the compliance routine, similar to the GDPR or environmental regulations. This may require new expertise in corporate legal departments, but in the long run it will create predictability and a "level playing field" for all. In any case, the question of legal liability mechanisms for damages caused by the use of AI systems remains open. The injured party must not be left in a legal vacuum between the responsibilities of the manufacturer and the purchaser (user) of the AI system. The trend is to close these gaps by adapting existing regulations (e.g., by extending strict liability). The question of the confidentiality of algorithms as a company's trade secret in relation to the community's demand for transparency regarding the work of these companies is also controversial. Companies invest heavily in AI and protect their algorithms as trade secrets, but on the other hand, the public interest may demand insight when these algorithms decide, for example, on loans or insurance for citizens. The issue of market competition must not be ignored either. The dominance of a few large technology companies in the AI development

market would certainly not be desirable, which is something that responsible legislators should keep in mind.

All of these issues are relatively new to Croatian company law. As a member of the EU, Croatia is obliged to incorporate AI law into its legal system. This also means training lawyers, judges, and corporate lawyers in all aspects of AI. Company law may need to change in some respects in the future (e.g., requiring mandatory IT expertise for certain bodies or defining rules for autonomous decisions within companies), but fundamentals such as the responsibility of bodies, the protection of minority shareholders, and corporate transparency will remain equally important, albeit taking on new forms through the prism of AI. Artificial intelligence has the potential to improve and streamline corporate governance—through more informed decisions, automated routines, and predictive analytics—but it is not a risk-free panacea. It is a powerful tool, and every powerful tool requires a robust framework for accountability. Therefore, legislators must proceed with great caution when making any changes to regulations that give economic reasons priority over fundamental human rights. Company law and related regulations in the EU are moving in precisely this direction: integrating AI into the legal system in such a way that innovation is promoted but abuse and harm are prevented. The challenge for legal scholarship is to continue to critically accompany these changes. Just as legal theorists once discussed legal machines and warned of the dangers of mechanical application of the law, we must now ensure that algorithmic governance serves people and society, and not the other way around.

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