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LIFTING THE AI VEIL IN COMPANY LAW

In September 2024, the United Nations published a report titled "Governing AI for Humanity," which addressed the international governance of artificial intelligence. In March 2024, the European Union adopted the Artificial Intelligence Act, which establishes uniform legal rules governing the use of artificial intelligence systems. Governments and companies throughout the world are continuously adopting strategies, laws, and guidelines, resulting in a disparate array of global approaches to AI. Amid this global regulatory diversity, the role of AI in company law raises pressing questions about its governance within corporate structures. This article will give an overview of international and EU standards regarding liability issues that arise through the use of artificial intelligence in company law with the aim of identifying potential opportunities and challenges that could be anticipated in Bosnia and Herzegovina. Are robot-directors and AI board members the future of modern companies? If so, how should their liability be treated? This paper analyses several possibilities for AI liability adding to the discussion of a two-fold problem that will emerge in company law: who is liable if AI is used as a tool to help management and board members in decision making, and second, can AI participate in decision-making without human intervention. This paper argues that AI liability should be approached through an extension of traditional addressees of liability' under the existing doctrines such as duty of care for directors' liability, and the piercing of the veil doctrine for shareholder liability. It establishes suggestions regarding which situations the veil of the corporate entity should be lifted and when shareholders' liability should be extended. It suggests that the focus on AI should be on whether the human actors in the company acted reasonably and with the duty of care in using the technology.

Keywords: EU AI Act, robo-directors, legal personality of AI, AI Liability Directive, Product Liability Directive.

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“Without people, in this world nothing can work, not even computers.”
E. Blum

1. INTRODUCTION

The digitalisation of company law was enhanced during the COVID-19 pandemic, when lockdowns, travel restrictions across borders, and other restrictive measures made it difficult for businesses to convene general meetings with physical attendance (European Commission, 2022). Even though virtual-only annual shareholder meetings were already reported in 2001 in the United States of America, (Koevski, Gavrilovik & Spasevski, 2020) they are an important segment of more serious discussions on the role of digital tools and processes in company law. For example, some EU countries (Spain, Germany)¹ have permanent legislation regulating the possibility for hybrid or purely virtual General Meetings for shareholders of listed companies under certain conditions, as is foreseen by Directive 2007/36/EC. Although some authors argue that this practice reveals certain shortcomings—such as unequal opportunities among shareholders (Koevski Gavrilovik & Spasevski, 2020) - it remains a significant step toward the digitalisation and increased efficiency of company law. According to a Study requested by the ITRE committee², there are several industries currently digitalising processes through the use of, for example, artificial intelligence (further in text: AI): 1) High tech; 2) Automotive and Assembly; 3) Financial Services; 4) Telecom; 5) Retail; 6) Consumer packaged goods; 7) Travel, transport, logistics; 8) Electric power and natural gas; 9) Infrastructure; 10) Pharmaceuticals and medical products; 11) Healthcare systems and services and 12) parts of the engineering sector characterised by advanced manufacturing technologies and Key Enabling Technologies (KETs) (Eager, 2019, p. 19). Besides the business sector trying to accommodate to rapid change and technological innovation, governments have also jumped on the digitalisation wagon by providing possibilities for online formation of companies. Directive (EU) 2017/1132 on Certain Aspects of Company Law and Directive (EU) 2019/1151 on the use of digital tools and procedures in company law have created a legal and administrative framework that allows citizens of the European Union to establish a limited liability company entirely online (Hasanović, 2024). Through the involvement of international organisations such as the International Financial Corporation, Bosnia and Herzegovina has tried to reform its laws in 2024, by adopting regulations to enhance procedures for online formation of limited liability companies. Digitalisation is seen as a necessary and effective means of eliminating existing corporate governance problems associated with human involvement by enabling faster processing of extensive content related to company registration (Page, 2009; Hickman & Petrin, 2021). Corporate governance, as used in this article, is defined as “the system by which companies are

¹ Spain (Law 5/2021, of 12 April); Germany (Gesetz zur Einführung virtueller Hauptversammlungen von Aktiengesellschaften und Änderung genossenschafts- sowie insolvenz- und restrukturierungsrechtlicher Vorschriften v. 20.7.2022, BGBl. I, 1166).

² The document was provided by the Policy Department for Economic, Scientific and Quality of Life Policies at the request of the committee on Industry, Research and Energy (ITRE committee).

directed and controlled.” (Code, 1992, p. 15). This paper explores recent developments in company law concerning artificial intelligence and seeks to address emerging concepts of AI liability within corporate legal frameworks. The first section of this paper looks at international and EU standards on AI, emphasising the challenges that arise in regulating AI; the second section discusses AI liability issues, with the third section giving special emphasis on liability issues that may arise in company law. The fourth section presents Bosnia and Herzegovina as a case study to explore AI liability issues in company law, with particular emphasis on situations where AI is employed by company managers and shareholders. The gap that is seen in scholarship refers to situations in which shareholders or owner could potentially be held liable for AI assistance that when the harmful act done by this particular group, resulted in fraud or damage to the companies creditors. In conclusion, the authors emphasise the need for companies to develop internal strategies and compliance mechanisms governing the use of AI in business operations, in order to guide managers and shareholders on the ethical, legal, and professional standards that must be upheld throughout its application.

2. INTEGRATING AI INTO CORPORATE GOVERNANCE AND REGULATION

AI-driven governance tools, such as Vital and Tieto’s Alicia T, were introduced before international AI regulations and frameworks. The similarity between these tools is that they are all entrusted with decision-making powers that are not controlled by a human, but rather by a program within a company setting. Vital, a machine making investment recommendations (Leonard-Barton & Swap, 2005), Tieto, a member of the leadership team (Petrin, 2019), Einstein, an AI system taking part in staff meetings (Reid, 2018), and Charlie, an AI conversational agent (Georganta & Ulfert, 2024). With Europe asserting itself as a serious player in deploying AI manufacturing, the EC found itself proposing and developing general principles on robotics and AI (European Commission, Directorate-General for Justice and Consumers, 2021; Hickman & Petrin, 2021). The focus is being directed towards the business necessities that AI has the potential to address, including: data analysis, automation of business processes, customer and employee engagement, and translation (Davenport & Ronanki, 2018; Nilsson, 2009). However, all of them can be put into two major groups (in terms of company law), reflective of the fact whether the work AI does is administrative work or decision-making work. Administrative work that is performed by AI is related to tasks that are repetitive, and therefore time-consuming, for example, in compliance or reporting. In these areas, AI has been shown to be performing better than humans, decreasing mistakes and costs.³ According to a survey performed by Kolbjørnsrud, Amico & Thomas (2016, p. 3), managers “spend more than half of their time on administrative coordination and control tasks”. AI could allow directors to spend more time on genuine business matters. Similarly, the function of company boards is mainly supervising executives (OECD, 2015). AI could inspire a digitalised, innovative company board that is more oriented towards

³ Companies using robotic process automation (RPA) tools are seeing productivity soar, with some reporting cost reductions of 25-50% and processes completed up to five times faster.

the strategic placement of the company. (Fenwick McCahery & Vermeulen, 2019). When it comes to decision-making powers, they are not a stand-alone task and are very connected to organisational history, ethics, empathy, and traits unknown to AI. However, one prime example of AI with decision-making powers is the Germany-based e-commerce merchant Otto, an AI system that cut stock by 20% and reduced product returns through deep learning, which helped it analyse billions of transactions to predict what products consumers will buy.⁴ Norwegian IT business Tieto included an AI-based application called AliciaT in a leadership team, with the job to “perform data-driven decision-making and innovate new data-driven ideas.” (Fenwick & Vermeulen, 2019; Mosco, 2020, p. 89) As Joshua Davis states: “The best computers are superior. Human beings cannot beat them. We can only learn from them.” (Davis, 2018, p. 174). However, AI superiority is questioned when it comes to decisions that can influence the life (or death) of humans: what decision will the AI make when one life must be lost over another?⁵ As Hickman & Petrin (2021, p. 595) state, ‘AI and company law’ is an emerging area that is set to rapidly gain in importance. Further challenges that can affect businesses that want to embrace technology are related to the high costs of AI scaling. Most businesses do not scale beyond pilot projects because of the technical challenges that are involved in implementing AI in everyday business. Competition also dictates that many companies have to innovate their business models from product-based to service-based business. (Foss & Saebi, 2015). Ethical and legal considerations have also been discussed by scholars (Smith & Miller, 2022; Davis, 2018; Kim, 2016), especially related to facial recognition technology⁶ that has proven to be racially biased, but also to illegal employment discrimination.⁷ The reason these considerations are important is to emphasise the susceptibility to abuse of AI technology by people in charge. Besides the financial and ethical constraints, a survey of workers revealed that 37% are concerned about losing their jobs to AI within the next five years (Lussana, 2024). But can AI replace humans in corporate leadership? According to Policy Recommendations on AI, of the High-Level Expert Group on Artificial Intelligence (the AI Policy Recommendations), the capability for human intervention in every decision cycle of the system is not desirable, and meaningful human intervention and oversight over AI decisions should be addressed in specific sectors⁸ (High-Level Expert Group on Artificial Intelligence, 2019). Regulation of AI has been widely discussed in the last decade around the world. Given the borderless character of this technology, states

⁴ The revenue in of the Otto Group in the 2023/24 financial year was around EUR 15 billion. Otto Group. 2025. Key Figures. Available at: <https://www.ottogroup.com/en/ueber-uns/kennzahlen.php> (9. 2. 2025).

⁵ For example, in a car crash, whom will the autopilot protect, a pedestrian or its “driver”?

⁶ AIs for facial recognition or social scoring are deemed unacceptably risky and prohibited (Article 5 of 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 OJ L, 2024/1689 (AI Act)).

⁷ Pauline Kim suggests that a corporation may engage in illegal employment discrimination without anyone ever knowing-or perhaps ever being able to know-that it is doing so because of reliance on AI that is ever-evolving and leaves no record of the basis for its recommendations.

⁸ e.g. a human doctor to check a medical treatment decision.

find it very hard to prohibit its use. Citizens with access to the Internet typically have access to artificial intelligence, and so do employees working in companies worldwide. Companies, on the other hand, are increasingly automating their services by employing AI instead of human employees (Haim, 2023). States also recognised that the development of AI bears immense potential for the development of their national economies as well as their geopolitical positions. Recent years have been marked by the adoption and implementation of national strategies of the states that plan to use AI as a significant source of economic development. While AI offers economic and societal benefits, its risks — including privacy violations, discrimination, and security threats- necessitate regulatory frameworks that ensure AI is legal, ethical, and robust. Consequently, governments face a dual challenge: promoting AI innovation while implementing rules that protect individuals and society.

Regulating AI is not a simple task. There are several challenges. First, there is no universally accepted definition of AI, making it challenging to craft targeted laws. The EU has adopted the legal definition in the AI Act after the OECD definition, but the agreement in the scientific community has not been reached. Second, AI is not a singular technology, but a collection of diverse systems with different risks and applications. Not all types of AI systems bear the same level of risk or similar characteristics. Third, AI does not operate in isolation—its impact depends on the broader legal and social environment. It allows interaction between humans and AI systems, between AI systems, as well as between AI systems and other digital environments. In response to AI’s challenges, governments are increasingly engaging in regulatory competition and fostering fragmentation (Wachter, Mittelstadt & Floridi, 2020). Some jurisdictions aim to set global standards, much like the European Union did with the General Data Protection Regulation (GDPR)⁹ in global data protection laws (Bradford, 2020). Other countries, led by the United States and China, are developing their own regulatory approaches. The competition to regulate AI raises concerns about whether it will lead to a “race to the bottom” — where countries adopt minimal AI regulations to attract investment—or a “race to the top”, where high regulatory standards set global norms. While some nations may weaken regulations to foster AI growth, the growing importance of trust in AI suggests that strong regulations could provide a competitive advantage (Smuha, 2019).

Given AI’s global impact, disparate national regulatory frameworks may create regulatory fragmentation, impeding innovation and potentially leading to conflicting legal obligations for multinational actors. There is a growing need for international cooperation to develop harmonised AI governance frameworks that balance innovation with fundamental rights and ethical considerations (Floridi, 2019). The United Nations Educational, Scientific and Cultural Organisation (UNESCO) has proposed a Recommendation on the Ethics of Artificial Intelligence.¹⁰ Similarly, the Organisation for Economic Co-operation and Development (OECD) has developed AI principles focusing on fairness,

⁹ Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016 on the protection of natural persons with regard to the processing of personal data and on the free movement of such data (General Data Protection Regulation). *Official Journal of the European Union*, L 119, 1–88.

¹⁰ UNESCO. 2021. Recommendation on the Ethics of Artificial Intelligence.

accountability, and transparency.¹¹ The Group of Twenty (G20) has also endorsed these principles, recognising the need for international cooperation in AI governance.¹² Yet, a global binding regulation of AI has not been adopted.

When it comes to the regional legal frameworks, Europe is at the global forefront. Both main regional organisations, the European Union and the Council of Europe, have adopted binding legal instruments. The EU has taken a leading role in AI regulation through initiatives such as the Artificial Intelligence Act,¹³ which seeks to classify AI applications based on their risk levels. Furthermore, it adopted legal instruments aimed at the regulation of online intermediaries and digital markets – the Digital Services Act¹⁴ and Digital Markets Act.¹⁵ It also amended the Product Liability Directive 85/374/EEC and is in the process of adopting a new instrument, Proposal for a Directive of the European Parliament and of the Council on adapting non-contractual civil liability rules to artificial intelligence (AI Liability Directive). Moreover, it adopted the Cyber Resilience Act¹⁶ aimed at regulating products with digital elements, and the Data Act¹⁷ and Data Governance Act¹⁸ to regulate data flows. As stated above, the EU approach aims at setting a global benchmark in AI regulation. Almada argues that the AI Act, as a central piece of the EU AI regulation, may not achieve the same level of global diffusion due to institutional and political factors specific to the EU, which render it complex and, to a certain degree, impractical (Almada, 2025). They include the complexity of the AI Act itself (144 pages, 113 articles, and 13 annexes), its design based on the EU values (for example, the legislative assessment of risks does not follow any particular methodologies but reflects political judgments about potential harms from AI), and the legal and technological enforcement capacities that might be too expensive to replicate elsewhere.

¹¹ OECD. 2019. OECD Principles on Artificial Intelligence. Paris: OECD.

¹² G20. 2019. G20 AI Principles - Osaka Leaders' Declaration.

¹³ 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 OJ L, 2024/1689.

¹⁴ Regulation (EU) 2022/2065 of the European Parliament and of the Council of 19 October 2022 on a Single Market for Digital Services and amending Directive 2000/31/EC (Digital Services Act). *Official Journal of the European Union*, L 277, 1–102.

¹⁵ Regulation (EU) 2022/1925 of the European Parliament and of the Council of 14 September 2022 on contestable and fair markets in the digital sector and amending Directives (EU) 2019/1937 and (EU) 2020/1828 (Digital Markets Act). *Official Journal of the European Union*, L 265, 1–66.

¹⁶ Regulation (EU) 2024/2847 of the European Parliament and of the Council of 23 October 2024 on horizontal cybersecurity requirements for products with digital elements and amending Regulations (EU) No 168/2013 and (EU) 2019/1020 and Directive (EU) 2020/1828 L, 2024/2847.

¹⁷ Regulation (EU) 2023/2854 of the European Parliament and of the Council of 13 December 2023 on harmonised rules on fair access to and use of data (Data Act). *Official Journal of the European Union*, L 2023/2854.

¹⁸ Regulation (EU) 2022/868 of the European Parliament and of the Council of 30 May 2022 on European data governance and amending Regulation (EU) 2018/1724 (Data Governance Act). *Official Journal of the European Union*, L 151, 1–44.

The Council of Europe in 2024 adopted the Framework Convention on artificial intelligence and human rights, democracy, and the rule of law. It is the first-ever international, legally binding instrument devoted to AI regulation.¹⁹ Although it was subject to criticism, the treaty is a step in the right direction as it recognises a need to regulate AI beyond national law, a point which is impossible to neglect in the long term, provided AI is to remain safe for humans (Villalobos & Maas, 2024).

3. AI LIABILITY

To treat liability for accidents has proved not to be a simple task. In the EU, we could attest to several approaches in the previous years. In 2017, the European Parliament passed the Resolution on Civil Law Rules on Robotics (European Parliament, 2017). Although a non-binding document with various ideas, it contains a peculiar proposal concerning treating AI as a person. However, in 2020, the European Parliament abandoned this idea and passed a Resolution with recommendations to the Commission on a civil liability regime for artificial intelligence (2020/2014(INL)). Instead of holding AI liable, it suggested that backend and frontend operators should be jointly and severally liable for AI-caused harm. The EC then introduced a third approach, focusing on revising the outdated 1985 Product Liability Directive and introducing a new AI Liability Directive, which was abandoned in 2025. These significant shifts in the EU's approach to AI liability regulation highlight the complexity of the issue.

Such developments, although seemingly unclear, seem to reject the idea of treating AI as a person. Justifiably so. Several strong arguments can be made against it. The debate on recognising electronic entities as persons was initially sparked by philosophical and ethical considerations regarding the status and nature of humans in modern societies. Introducing electronic persons challenges existing anthropocentric concepts of personhood, which are not designed to accommodate entities like AI (Eidenmüller, 2019). Beyond these philosophical and ethical concerns, even if viewed purely as a liability issue without broader implications, the idea has significant drawbacks.

For an electronic person to be held liable, it must possess a pool of assets to compensate for any damages it causes. The question arises of how these assets would be composed and maintained. Manufacturers, users, or third parties would have to provide the initial funds, along with a mechanism for maintaining them, whether through initial capital or mandatory insurance. If the financial burden of establishing and maintaining these assets falls on manufacturers or users, then the necessity of creating a separate legal entity becomes questionable. After all, insurance coverage can be obtained without granting electronic entities legal personhood. Additionally, the issue remains of whether manufacturers or

¹⁹ So far, the official website of the Convention lists the following signatories: Andorra, Georgia, Iceland, Liechtenstein, Montenegro, Norway, Republic of Moldova, San Marino, Switzerland, United Kingdom, Canada, European Union, Israel, Japan, and the United States of America. According to its provisions, the convention will become effective on the first day of the month following a three-month period after at least five signatories, including three Council of Europe member states, have ratified it. Ratification of some of the signatories is currently pending.

users should bear these costs, as they may find ways to redistribute financial obligations through contractual arrangements, depending on how lawmakers regulate the matter. Most notably, granting AI a personality could serve as a shield for manufacturers, absolving them of responsibility and removing their incentive to minimise risks. The existence of separate assets for an electronic person could function as a liability cap for those required to provide them. For manufacturers, this legal framework could create an opportunity for negligent practices, as they would have limited or no liability, reducing their motivation to ensure product safety. Moreover, holding an AI system liable may not lead to improvements in its performance, since its ability to learn and enhance itself depends on pre-set software (Wagner, 2019). As a result, the deterrent effect of the liability system, intended to prevent harm, would not be achieved (Muftić, 2021).

To this day, general rules on criminal and civil liability apply to incidents involving AI systems, in which case the liability is placed with the operator or owner of the device (Eager *et al.*, 2020). However, AI is not just a product that is manufactured and that will keep its properties. It is designed to evolve. A long time ago, the AI was actually considered a legal entity, like a company. Jurists in the 18th and 19th centuries gave the following definition of legal persons: "it has been found necessary, when it is the advantage of the public to have any particular rights kept on foot and continued, to constitute artificial persons, who may maintain a perpetual succession, and enjoy a kind of legal immortality" (Blackstone, 1809, p. 467). Blackstone calls such artificial persons "bodies politic, bodies corporate, (*corpora corporata*) or corporations." (Blackstone, 1809, p. 467). The so-called fictionalists, led by Friedrich Carl von Savigny and Roman scholars, claimed that legal persons are artificial constructs, created by law and dependent on the individuals composing them. It sounds familiar when we now think of AI in those terms. Contrary to those arguments, Maitland and Gierke stated companies are "...as real and natural as is the personality of man" (Maitland, 1900, pp. 335–336; Gierke, 1873). The theory they advocated is called entity theory and dominated legal discussions from roughly 1900 to 1930. According to entity theorists, companies have a will, and their will is a group will (Gierke, 1873). This view was significantly diluted by second-generation entity theorists such as Dewey, who emphasised that Gierke's "person" signifies a right-and-duty-bearing unit. In order for this unit to be given the rights and obligations of a legal person, it must produce consequences (Dewey, 1925). According to this definition, we could make the case that AI is a right-and-duty-bearing unit that produces consequences.

Authors such as Horwitz (1992) and Millon (1990) emphasised that entity theory legitimated the rise of big business in the early 20th century. This holds much truth if we look back on what the entity theory promotes. If the entity is a person in itself with its own rights and obligations, then it is also liable for its actions. Meaning that its shareholders limit their liability to the amount of their stake. Using analogy, if AI were to be given legal personality, the liability of its owners and operators could be limited to their regular duty of care (through regular insurance for products).

Only in exceptional circumstances (of misuse or abuse) could this liability be expanded through the piercing the veil doctrine, and the owner or operator could bear unlimited personal liability for damages that occurred. Therefore, granting AI legal personality is

theoretically feasible, as non-human entities have previously been granted such status, most notably in the case of corporations and the Whanganui River in New Zealand. Should foreign legislation evolve to grant AI legal personhood, it would be worthwhile to analyse the potential impact such developments could have on corporate law in terms of the formation of companies, shareholder rights, and liabilities. With current legislation in place, AI liability in terms of company law should be approached through an extension of liability of persons with special duties towards the company (in terms of managers), or through the piercing of the corporate veil doctrine (in terms of shareholders and owners). Liability of the management for harm of AI could be placed under the duty of care doctrine. The manager would need to prove that he did everything reasonable to prevent harm to the AI. Various scholars (Lepetić, 2024; Voeneky *et al.*, 2022) have identified which mitigating circumstances a director could bring forward in a trial to prove that he acted with duty of care when performing his duties assisted by AI.

4. NOTEWORTHY DISCUSSIONS ON AI LIABILITY IN COMPANY LAW

As of today, there is no fully autonomous AI system known to perform as a director of a company (Petrin, 2024; Bainbridge, 2017). This is even the least realistic scenario for the use of AI, and there are other challenges that need to be addressed, according to Lepetić (2024). However, the EC published a study on the use of AI by companies, to advance knowledge of how businesses, shareholders, creditors, government agencies, and other individuals use AI in company law and corporate governance, in which it predicts that it may be possible in the future to introduce AI as a member to the board (European Commission, Directorate-General for Justice and Consumers, 2021). The probability of AI becoming a director is far-fetched because AI is neither a legal nor a natural person, to which the Directive (EU) 2017/1132 on Certain Aspects of Company Law systematically refers.²⁰ AI has no legal personality (under European and/or national laws). In a report issued by the European Parliament (EP), the Commission on Civil Law Rules on Robotics discusses the potential for granting robots a particular legal status in the future by applying electronic personality to situations in which they decide on their own or engage in other independent interactions with third parties. Although no Member State's law explicitly prohibits it, the use of AI to replace natural or legal persons in corporate appointments is not possible. Whenever a law refers to a legal subject with the authority to decide or enter into agreements, it only refers to a natural person or a legal entity in line with the fundamental principles of national laws. Using AI as a support tool in management activities is implicitly permitted (European Commission, Directorate-General for Justice and Consumers, 2021; Hickman & Petrin, 2021). This conclusion appears to be supported by the reviewed literature, which states that directors are not inherently barred from using AI in assigning decision-making authority. Using the general principles that underpin board delegation to executives and committees as an example, Möslin (2018) concludes that such delegation is permitted under current company law frameworks, but comes

²⁰ Directive (EU) 2017/1132 of the European Parliament and of the Council of 14 June 2017 Relating to Certain Aspects of Company Law.

with two main requirements: (i) that the decisions and responsibilities that form the core of the management function (such as defining and overseeing corporate strategy) remain with human directors, and (ii) that directors supervise the selection and use of AI tools, which causes that they possess at least a basic understanding of how the particular AI tools work. Lepetić also makes a point that engaging AI consultants or executive directors specialised in AI systems could bridge the AI knowledge gap of directors. But who is liable when the director implements a decision based on an AI recommendation, or declines a decision despite it? Existing director responsibilities and liabilities in the Member States do not appear to be affected by the use of AI as an assisting tool in decision-making. Directors are held accountable for failing to uphold their fiduciary duties (duty of care) (Gerner-Beuerle, Paech & Schuster, 2013). In order to avoid additional risks, companies must address the relevant provisions of the EU AI Act.²¹ Through implementing strong risk management procedures and transparent reporting, companies may successfully negotiate the new regulatory landscape as laid down in Chapters I and II of the AI Act. AI does not have human consciousness. It cannot function without human beings, but what if it becomes so advanced that it can? If and when machine learning develops so much so that AI can demonstrate decision-making processes, who will be liable for decisions made by the machine within a company? Authors such as Cheong (2021) and Bryson *et al.* (2017) have discussed ideas that the board of the future could consist of an AI Director, but also ideas on the incorporation of AI within company law, and ideas on limited liability. In this context, Cheong suggested the AI could be incorporated like a company is incorporated, with given information such as the registration number and who the owners (and or shareholders) of the AI are. In this scenario, like with companies, the owners or shareholders of the AI would request limited liability, because they would not want to be held responsible for the acts of a fully autonomous artificial intelligence being. Similarly with companies, arguments against limited liability related to moral hazard, could apply to this scenario. There are cases in which companies were misused by their owners for illicit purposes. Similarly, this can happen with AI technology. For example, AI Directors could be abused by natural persons, who could use the newly established company as a facade to avoid non-compete clauses.²² If AI would be granted legal personhood in the future, the tests performed by courts in order to identify whether the piercing of the corporate veil doctrine can be applied or not could serve as a starting point for the development of an AI liability doctrine.

²¹ AI Act.

²² A similar situation arose in *Gilford Motor Co v Horne*, where a former employee attempted to circumvent a restrictive covenant by incorporating a new company to conduct the same business as his previous employer. The court held that the newly formed company was a sham, created with the intent to pursue an unlawful objective.

5. DISCUSSIONS ON AI IN B&H COMPANY LAW

Unfortunately, Bosnia and Herzegovina, unlike its neighbors²³, has not adopted a national strategy on the use of AI. In terms of digitalisation, as a EU candidate country²⁴ it is required to integrate existing EU legislation into the relevant national law. The company law *acquis* comprises regulations pertaining to the establishment, registration, merger, and division of companies. Consequently, it is of paramount importance to comprehend the challenges confronting Member States related to digitalisation and the usage of AI in company law.

The Company Laws²⁵ in Bosnia and Herzegovina (further in text B&H) state that a company is a legal entity that independently engages in the production and sale of goods and the provision of services in the market for the purpose of generating profit. It may be established by both domestic and foreign natural and legal persons unless otherwise provided by law (Law on Companies of FB&H, Art. 2, 302). In that respect, and since AI is not a natural or legal person, it is to be concluded that the laws of B&H do not foresee the possibility of AI systems to independently establish a company. However, the law opens a door in that respect since a foreign legal person can establish a company in B&H. In terms of digitalisation processes relating to the establishment of limited liability companies, B&H has harmonised its legislation with Directive (EU) 2017/1132 on Certain Aspects of Company Law and Directive (EU) 2019/1151 on the use of digital tools and procedures in company law. The legal framework encompasses the provision of services at a unified virtual location within the registration process prior to the competent registry court, employing technical methodologies that utilise qualified electronic certificates for the identification of the applicant and the legally valid signing of documents in electronic document form.²⁶ This system could be enhanced in the future with AI by providing users with options for company names, or checking documentation for clerical errors before submission, checking directors, shareholders and persons with significant control, etc. Although Bosnia and Herzegovina has harmonised its company law with Directive (EU)

²³ I.e. Serbia and Croatia: Artificial Intelligence Development Strategy in the Republic of Serbia for the Period 2020–2025.; Croatia's Digital Strategy for the period up to 2023.

²⁴ Directorate-General for Neighbourhood and Enlargement Negotiations, Bosnia and Herzegovina Report. 2024. Available at: https://enlargement.ec.europa.eu/bosnia-and-herzegovina-report-2024_en#-details (3. 3. 2025).

²⁵ The laws are: Law on Companies of the Federation of Bosnia and Herzegovina, *Official Gazette of the Federation of Bosnia and Herzegovina*, no. 81/2015 and 75/2021; Law on Companies of the Republic of Srpska, *Official Gazette of the Republic of Srpska*, no. 127/2008, 58/2009, 100/2011, 67/2013, 100/2017, 82/2019, and 17/2023; Law on Enterprises of the Brčko District of Bosnia and Herzegovina – Consolidated Text, *Official Gazette of the Brčko District of Bosnia and Herzegovina*, no. 49/11 and 01-02-815/20. For the purpose of this article, authors will provide a focused analysis on the Law on Companies of the Federation of Bosnia and Herzegovina, no. 81/2015 and 75/2021.

²⁶ Rulebook on the Content, Form, and Method of Completing the Registration Application, as well as the Conditions and Procedure for Electronic Business Registration in the Federation of Bosnia and Herzegovina, *Official Gazette of the Federation of Bosnia and Herzegovina*, no. 34/24; Regulation on Maintaining the Business Register in the Federation of Bosnia and Herzegovina, *Official Gazette of the Federation of Bosnia and Herzegovina*, no. 93/2023 and 33/2024.

2019/1151, the online formation of limited liability companies is still in its pilot phase (Hasanović, 2024). The owner is still required to sign the documents, and the signature must be authenticated at the municipality or by a notary. Regarding the appointment of directors, members of supervisory bodies, in joint stock companies and limited liability companies, the law explicitly states that they must be natural persons with full legal capacity (Grbo, 2017). The company is represented by the members of the management board, who are primarily bound by the restrictions imposed by the Articles of Association and the applicable mandatory law. The representative of a company may delegate its powers (considering applicable limitations) by giving proxy to another person. A shareholder of a joint stock company may exercise the right to take part in the work and decision-making of the general assembly of a joint-stock company, either personally or through a proxy. In addition to any legally competent natural person, a proxy may be a legal entity registered for brokerage in the trading of securities or an association with the status of a legal entity established and registered for the purpose of associating and representing shareholders, in which cases the powers under the proxy are exercised by the legal or authorised representative of such a legal entity.²⁷ Similarly to the process of company formation, this provision might pave the way for AI-driven shareholder engagement — for instance, if AI were to be granted legal entity status, or if the creation of AI-managed legal entities became a legal possibility. The Company Laws also provide for the possibility of engagement of a legal entity for audit services of joint stock companies, which, in the future, if that would be an AI led company, could provide for the possibility of full AI audit services. Members of the management board, the president and members of the supervisory board, legal representatives, and authorised signatories are persons with special duties towards the company (Company Law FBiH, art 32) and they must perform their tasks with due care and diligence of a prudent businessperson (Grbo, 2016). Because of this provision, even though the use of AI as an assisting tool in decision-making is not forbidden, it does not exempt persons with special duties toward the company, of liability.

To conclude, in Bosnia and Herzegovina AI cannot replace a director, or the board of a company for that matter, but there are no regulatory restrictions in using AI as a support tool in management activities. Company Laws provide for additional security through an article that defines persons who have special duties toward the company as they must perform their duties diligently, with the care of a prudent businessperson, and in the reasonable belief that they are acting in the best interest of the company. The principle of appropriate management of the company is a standard that enhances the accountability of those in charge of running it.

If AI is granted legal personhood and limited liability, the owners and shareholders of the AI could be held responsible under the piercing the corporate veil doctrine. However, in the situation in which management and the board use AI as an “assistant” the doctrines of duty of care, and piercing the corporate veil, can inspire partial AI liability doctrines. Although company laws in Bosnia and Herzegovina do not have a definition of “piercing

²⁷ Article 238 Law on Companies of the Federation of Bosnia and Herzegovina, *Official Gazette of the Federation of Bosnia and Herzegovina*, no. 81/2015 and 75/2021.

the corporate veil”, article 5 of the Company law of the Federation of B&H states that the veil of limited liability of a company will be lifted if the owner or shareholders:

1. abuse the company to achieve a personal goal that is not in accordance with the goals of other members and the company as a whole;
2. manage the company's assets as their own;
3. use the company to defraud or damage its creditors;
4. influence the reduction of the company's assets for their own benefit or the benefit of third parties, or influence the company to assume obligations even though they knew or should have known that the company was not or would not be able to fulfil its obligations (Company Law of FB&H, art. 5).

The law has established that the shareholder will be held accountable if using the corporate form of a company for illicit purposes. Similarly, we could establish the same for using AI in the company (or in general) for illicit or discriminatory purposes. The central question regarding using AI in companies should be, did the human actors (managers, shareholders and owners) in the company:

1. act reasonably and with the duty of care in using the technology?
2. abuse the AI to achieve a personal goal or gain?
3. use the AI to defraud or damage its creditors?

The first question is related to the management of the company. In order to prove the duty of care, the management of the company should have in place a policy for the usage of AI in its corporate structure. This policy should have guidelines on the use of AI, permissible and impermissible conduct, and quality control procedures with the firm. The management's duty of care in using AI includes the responsibility to ensure that the company has established a clear policy and guidelines on the ethical use of AI in its corporate activities. Has the manager who is using AI as an assisting tool, educated himself about the technology, has the technology performed well in similar circumstances or not, has the manager acted in the companies best interest (with the care of a prudent businessperson), etc.

The second question relates to the shareholders and owners of the company. Have they abused AI to achieve personal goals or gains that are contrary to the goals of other members and the company as a whole, for example, if the management has misused AI for discriminatory practices in the hiring process or evaluation of employees? Or have they used AI for illicit purposes, to defraud creditors, for example, if AI is used in the banking industry to cover up fraud instead of detecting it?

Addressing these questions is critical when assessing the liability of managers, shareholders, and company owners and determining their level of care and/or misconduct in a given case. State company laws must evolve to address scenarios where AI has been misused by managers or shareholders. This evolution is necessary to either shield them from expanded liability or to establish safeguards against the misuse of AI.

6. CONCLUSION

Bosnia and Herzegovina continuously tries to keep up with EU standards and trends regarding company law and digitalisation of its processes. Whether it is an online formation of companies or corporate governance, Bosnia and Herzegovina attempts to offer a favourable business environment. AI has entered the business spheres worldwide, offering new insight and opportunities for a more efficient doing business. This article has provided an overview of potential liability implication of AI to company law, focusing specially on the company law of Bosnia and Herzegovina. AI is inevitably going to change the legal landscape across sectors and companies will not remain untouched. Businesses are under continuing pressure to innovate and technological advances provide a mechanism for maximising efficiency, accuracy, and profitability. AI can aid the company's management and shareholders and it has already been recognised worldwide. Companies employ AI to perform various tasks. Likewise, harm related to activities in which AI was involved is inevitable and it requires attention. To determine how to approach it, we should understand fundamental tenets on of the company law and the rules of liability. Companies should also develop internal strategies and compliance mechanisms on the use of AI within their business, in order to inform their managers and shareholders on ethical, legal and professional standards that have to be accommodated throughout the use of AI. Legislators should provide clear liability guidelines so that managers, shareholders and owners can be protected and encouraged to use the technology freely. However, certain protection mechanisms and quality control should become a requirement for companies that are using AI in business operations in order to protect them from its potential negative affects.

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