

REGIERUNGSKOMMISSION

Deutscher Corporate Governance Kodex

Practical Impulse

The use of artificial intelligence
within the supervisory board

Preface

The current Practical Impulse is an update of the first edition, which came out last year. It deals with feedback derived from practical experience as well as new technological and regulatory developments, bringing them together to provide an updated overview of the situation.

Through the occasional publications of the "Practical Impulse" series, the Regierungskommission Deutscher Corporate Governance Kodex ("the Commission") seeks to share its thoughts on the practical implementation of individual Code recommendations and suggestions with stakeholders.

The individual publications in the Practical Impulse series should be understood as additional support documents, in keeping with our credo that "the Commission is more than the Code". The Practical Impulse series is designed to provide pragmatic suggestions which can be implemented under the current legislative framework. These are aimed at companies who seek to question and further develop their own governance practices. The Impulses are by no means binding. They do not aim to cover any topic exhaustively, let alone provide the last word on any of the matters discussed. The present Practical Impulse edition thus seeks primarily to generate an appreciation for the fact that engaging with the theme of artificial intelligence (AI) is not solely a task for the management board; it is also a matter which concerns the supervisory board in both of its major roles – namely that of providing oversight for the management board and that of serving as a strategic sparring partner for the same. These are core topics for the Code. The sooner supervisory boards deal with the issue of AI, the greater the opportunity will be for improving the quality and the professional standard of their work. Put simply: now is the time to get started!

AI within the supervisory board – a topic with a future

AI is currently one of the most intensely discussed topics there is. The question of what role AI might play, and should play, within the supervisory board had also been raised with the Commission.

This question arises partly due to the attention it receives from the public, but even more so because of the extraordinarily dynamic development of the technology. At present, the performance, availability and breadth of application of AI systems is not developing over multi-year cycles of innovation. Rather, progress in some areas is taking place at timescales of a few months. For the supervisory board, all of this means that rather than being faced with the need to get a fundamental understanding of AI, what is really needed is for the developments in this technology to be continually monitored, assessed and integrated into business processes. Given this situation, AI is no longer something which looms in the future. It is now an issue requiring proper and forward-looking oversight.

This means that AI has entered the core area of the supervisory board's responsibilities. Technological changes are increasingly affecting the business models, competitiveness, risk profiles and the decision-making processes of companies. The supervisory board is thus not just indirectly affected, but is also directly addressed in its oversight and advisory roles.

The answer with regard to the role of AI in the supervisory board is correspondingly multi-

layered: Firstly, the supervisory board must work alongside the management board when it comes to the strategic coordination and use of AI. Secondly, appropriate AI governance needs to be ensured from the supervisory board's point of view, particularly with respect to compliance with relevant regulatory frameworks, such as the EU AI Act. Thirdly – and this constitutes the subject matter of the current Practical Impulse issue – there is the question of how the supervisory board can make use of AI in its own work: for better preparation, for example, or for the structured acquisition of information, or for the discussion of matters in greater depth.

Strategic relevance: why the supervisory board needs to understand and use AI

Nowadays, the supervisory board is more than simply a monitoring entity. It is the strategic sparring partner of the management board. It contributes to core decisions which set the direction of the business, it verifies assumptions, and it evaluates risks and opportunities. It is precisely in these areas that AI can provide real added value: it can process information faster, recognise hidden patterns, generate scenarios based on the data and provide intelligent summaries of complex issues.

Looking ahead, however, there is also the matter of legal liability. According to the stipulations of the Business Judgement Rule (section 93 Stock Corporation Act), the more capable AI systems become, the more the appropriate use by supervisory boards of AI as a source of information for their decision-making may become a relevant consideration. It is not yet a requirement that AI systems be used during decision-making processes, but as their capabilities grow, it will become increasingly difficult to convincingly justify not making use of them.

A responsible approach to AI is no mere technical add-on. On the contrary, it is an integral component of present-day supervisory work. It broadens one's analytical horizons – as well as strengthening decision-making capabilities. At the same time, the thoughtful use of AI also sends an important signal into the company as a whole. The signal sent is particularly relevant as the actual usage of AI in the company often develops faster than the formal control and governance structures do. Surveys of employees often show rates of usage which are higher than those reported to the management board. This discrepancy indicates that AI tools are being used in an informal or unregulated manner. Consequently, there is a need for the management board to guide the deployment of AI, provide secure tools and establish consistent AI governance. The role of the supervisory board is to monitor this process.

This, in turn, can function as a beacon in two important ways: culturally, by demonstrating openness and a willingness to learn, and structurally, through the development of systems, processes and principles which can be applied beyond the realms of the supervisory board.

At the same time, it is necessary to be clear on where the limitations of AI currently lie. AI can recognise patterns and its analyses can lay the groundwork for decisions. AI does not, however, replace the functions and characteristics which define the work of a good supervisory board: the responsible weighing up of options, the critical questioning of assumptions, and the ability of the people involved to make ethically grounded decisions.

Requirements: what the supervisory board needs for the implementation of AI

In order for AI to be used wisely, responsibly and in ways which make sense, some key requirements must be met. These concern not just the technology itself, but also legal clarity, ethical responsibility and a realistic understanding of how AI can be harnessed and of where its limits lie. Furthermore, effective governance must also be developed.

1. Legal context

The use of AI within the supervisory board is subject to the same legal requirements as every other means of information acquisition: It must be consistent with the principle of legality, that is to say, it must take place in a manner which is orderly and compliant with the law. During this process, specific rules and standards such as the General Data Protection Regulation (GDPR), confidentiality, transparency specifications and discrimination prohibitions are to be respected, as are special regulations such as those resulting from the EU AI Act. In addition to the aforementioned regulations, supervisory boards also need to give particular attention to company-internal guidelines and confidentiality standards.

2. Ethical and business-specific guardrails

AI operates in a regulatory environment and is more than simply a technical innovation. It also influences how decisions are made within businesses. It is therefore important that the use of AI within businesses meets fundamental ethical standards. These include, for example, fairness and societal acceptance. Specifically, this means that the management board must develop clear rules with regard to how AI is to be used across the entire business, doing so in consultation with representatives of company employees where appropriate. The supervisory board monitors this process, provides suggestions, and can also specify guidelines for its own work as it relates to AI. In this way, the two boards can jointly ensure that AI is used responsibly and appropriately.

3. Technical requirements and comprehensibility

Supervisory boards often have only very limited access to data. AI systems used should therefore be calibrated against available information in a targeted way whilst simultaneously functioning in a manner which respects the GDPR, maintains safety, ensures confidentiality, and provides clear accounts of how they have arrived at their conclusions. Ideally, they draw on the tools present within the company. Even if it is not always clear how an AI model ended up coming to a decision, what matters here is that the system provides a comprehensible derivation, that the results are documented in a way which makes sense, and that they are embedded within the decision-making process as a whole.

4. Economic benefits, limitations and risks

With very little effort, the use of suitable AI systems is already capable of producing appreciable added value. In comparison to the potential insights which can be gained, the initial costs are

modest. What is important is to understand that AI should not become an end in itself but should rather serve to increase the quality of the work carried out by the board.

Whatever the power of an AI, it is always necessary to be aware of current limitations and weaknesses, as AI systems continue to make mistakes and are dependent on the data and parameters they are trained with (their biases, in other words). AI is thus a useful aid, but it does not replace human responsibility, the ability to enter critical discussions and the embedding of decisions within ethical and strategic contexts. When using AI, the supervisory board as a whole, as well as every individual member, must critically question and evaluate results and retain the awareness that they are still ultimately responsible.

5. Governance structure for the use of AI by the board

Just as the supervisory board critically accompanies and monitors the development of company-wide AI governance, it must also establish governance for its own use of AI. In doing so, it is particularly important to specify information depth. To carry out their duties, supervisory boards do not need the same detailed level of information that the management board does. AI systems used by the supervisory board should be targeted at the role of a board whose purpose is oversight and consultation. This involves clear rules, defined areas of application, comprehensible documentation, the naming of responsible parties and the transparent incorporation of the AI contribution within the overall assessment. Only in this way can the use of AI within the board be accountable, controllable, and strategically useful. What is essential here is that governance for the use of AI by the supervisory board is harmonised with the AI governance in operation across the company as a whole. This requires close cooperation between the management board and the supervisory board. The specific configuration and anchoring of this harmonisation – for example in the internal regulations of the supervisory board – is the responsibility of the board itself.

The deployment of AI in the supervisory board also raises questions relating to governance, regarding such matters as responsibility for the selection and operation of systems, the embedding of AI in existing monitoring and compliance structures and the ongoing review of results. These questions must be regularly addressed together with the management board and integrated into the existing governance architecture of the company.

Usage options: how the supervisory board can make use of AI

Embarking on the use of AI should not be an abrupt or disruptive process, as this can result in people being overwhelmed and responding reactively. A more appropriate approach as a step by step, organic approach – one which gives people the space they need to learn, enjoy the process of experimentation, make adjustments and apply the technology in a targeted way.

In practice, the actual use of AI by the board can take place in different ways: some supervisory boards intentionally avoid standardised summary functions in order to avoid overloading meetings with large numbers of AI-induced questions. Other boards regularly make use of AI-supported deep dives on selected topics.

The stages described below should thus not be seen as a strict sequence. In practice, different intensities of use are applied in parallel. The decisive factor is not so much the stage, but rather situation-specific usage adequate to the role required.

Three possible stages for introducing and expanding the use of AI appear to be practical.

Stage 1: Digital assistance for routine tasks

AI can ease the burden for supervisory boards by taking on repetitive tasks – such as automatically producing summaries, text recognition, drafting minutes for meetings and organising documents. Such functions increase efficiency and free the board up to discuss matters of substance.

Stage 2: Analysis and providing context

AI can function as an "intelligent magnifying glass", providing pointers for research, cross-references and structured evaluations. This also includes such tasks as searching through extensive documentation, identifying patterns and anomalies, risk evaluation and generating and comparing key figures. The board's own work history is the primary source of data for these tasks.

For benchmarking (market, competition), additional external sources are helpful, such as press clippings, financial statements or analyst reports, as these can be integrated via secure interfaces or data import. In this way, it becomes a straightforward matter to systematically broaden the horizons of the supervisory board so that external points of view are included.

Stage 3: Strategic sparring and scenarios

In more advanced applications, AI can function as a catalyst for strategic discussions within the board – such as by means of simulated scenarios, vulnerability analyses or logic checks. Use cases extend from risk analyses and investment evaluations to location decisions, M&A valuations and supply chain analyses.

In future, "Agentic AI" systems will gain in significance – that is to say AI agents which autonomously carry out tasks, make recommendations and operate tools. They do not simply react but rather have their own initiative and therefore require particularly clear aims, control points and decision logic.

Implementation: what the supervisory board can actually do

AI needs to be embedded in the work of the board, both in the preparatory tasks carried out by individual members and when conducting meetings. It is worth considering targeted search and analysis possibilities, as well as engaging with automated interactive computer programs, that is to say: bots. In future, decision templates could also be supported by AI-enabled graphical user interfaces (so-called dashboards), or interactive analyses. What is most important is that such implementations must be safe, intuitive and easy to integrate.

Suitable systems need to be available: the chatbots available on the market can only be used for general and non-confidential questions. Businesses should therefore prepare secure, explainable tools which are compliant with the regulations. These must have access to relevant

data, a clear security architecture and they must produce results whose derivation can be understood.

Given this context, practical use has resulted in the development of various technical solution models for the use of AI by supervisory boards: (1) AI functions supplied by established providers of boardroom software, or the interface they provide for connecting with AI; (2) specialised start-ups with innovative approaches, the use of which should be particularly carefully considered by larger companies and those subject to greater regulation; (3) solutions developed internally by specific companies, with a high level of control, but with associated costs and governance requirements; (4) hybrid models, which combine existing board systems with additional AI components. What to choose depends partly on security requirements, ease of integration, and the governance structure and risk profile of the company.

Skills development is vital. The supervisory board does not need to be staffed by AI experts. However, all members do need to have a shared basic understanding of the mode of operation, possibilities and limitations of AI. This basic knowledge can be acquired progressively, by means of targeted training sessions, the use of internal or external expertise, or through tools which help to explain and provide context.

In this respect, the approach taken with AI does not differ from that taken with other complex topics.

Conclusion: rethinking oversight – with curiosity and a clear position

AI is changing how we process information, reach decisions and recognise connections. For supervisory boards, as for other institutions, this is creating new possibilities and new forms of cooperation between human and machine.

The decisive factor is not detailed technical knowledge, but rather a readiness to try out new ways of thinking and working. Those who make thoughtful use of AI can increase the quality of the work done by their boards by providing more depth, more context and a broader variety of perspectives.

Now is the right time to begin, step by step, with pragmatism, awareness of risks, and curiosity.

Feedback regarding this Practical Impulse shows that the use of AI requires continuous observation and assessment. Given that this is the case, this Practical Impulse is regularly checked and, where required, rewritten in order to adequately reflect new technological developments and practical experiences. The dynamism of these developments means that these adjustments are made with care but without any specific indication of the changes made.