



**HL INFLUENCERS:
DIGITAL TRANSFORMATION
TRANSCRIPT
AI, ESG AND ETHICS (PT 2)**

<p>Leo von Gerlach</p>	<p>Hello, everybody, and welcome to another edition of The Influencers, our podcast conversation on digital transformation and law. I'm Leo von Gerlach, and with me today are, once more, my Hogan Lovells partners, Adrian Walker and Rita Hunter, as you know, both from the London office.</p> <p>Adrian leads our global ESG practice and Rita co-leads our sustainable finance and investment practice. And we would like to continue today our conversation on the intersection between ESG and artificial intelligence. So, we heard a lot about the impact of ESG on AI and vice versa, and we want to dive a little bit deeper into individual topics today. And with that, Adrian, Rita, welcome back to the show.</p>
<p>Rita Hunter</p>	<p>Thank you, Leo. It's nice to be back.</p>
<p>Leo von Gerlach</p>	<p>Great. Adrian, let's start with you and AI, ESG, and governmental works. So just give us an idea of how these three different aspects, ESG, AI, and the work of governments come together at one point and how they interact with one another.</p>
<p>Adrian Walker</p>	<p>Thanks, Leo. I think what was interesting was in the last session, Rita laid out some of the details about where we actually are at the moment, where governments have landed in terms of the regulation and how things have played out to date. But as you've alluded to, Leo, the big question is, is sort of where are we headed and how is the politics going to play into that?</p> <p>If we sort of framing at a really high level, the principles of ESG, it was really a governance code for humanity agreed at a U.N. level. And I think humanity has been evolving its governance codes through, probably through tribes, through nations, through religion for many years. But what changed with the ESG code was people recognized the importance of not just thinking about human rights and governance for us, the people here, but to balance that about those who are going to come after us, our children, if you like, and to account for them. And hand-in-hand with that was thinking about the rights, if you like, of the planet and other species and biodiversity, largely because if we messed with those badly, that was going to prejudice those who followed us.</p>

	<p>So, it was a kind of futurist code that was sort of frozen in time and some of that thinking found its way into some of the stuff that Rita outlined. But if we roll forward, there's increasing degrees of disagreement on some of those fundamental topics. We disagree on climate, we disagree on lots of stuff, the right and the left and on a national basis. And somehow, inevitably, those codes are going to evolve over time to reflect those different thought patterns. The interesting thing at the most macro level for this conversation is what role will AI play in that? Because it's coming more and more into the fore of the way people think, the way governments think about this stuff and how it evolves.</p> <p>The two big points I want to register here in terms of possibilities is one thought that is out there, that if AI plays a bigger thought, if we hand over our decision making to AI, there is a risk that moral evolution will halt. And this is the sort of MacAskill idea that at the time that AI starts to dominate thought, the current moral thinking will be hardwired into that framework and development after that will cease. And this is sort of linked to an idea that AI can't really do metacognition. It can't think about thinking and therefore morally evolve.</p> <p>And I don't think anyone knows whether that's right or wrong. I asked AI, it said it couldn't do that. We'll see. I'm not so sure. So, you have this idea on the one hand: in terms of governance, will AI bring a sort of locking in at the now? And then the other possibility is if it can do metacognition, if it can evolve, what purpose will it choose and where will humanity sit within that? And I think there it could evolve a code that saves us or that doesn't serve us, or it could be somewhere in between, but it would be thinking differently.</p> <p>And I think this is a kind of meta paradox we have. Are we going to have a lock-in frozen situation or are we going to have AI evolving the thinking with humanity thinking within that, but not necessarily controlling it? That sort of looms over the AI thinking around that governance and moral debate and how things will evolve. And governments will be thinking about that and how they can best deploy that.</p>
Leo von Gerlach	<p>That's interesting and let's follow up on that. So, governments have to look at the interests of individuals; governments have to look at the interests of the organizations that individuals form. And let's perhaps start with the individuals. There are all these intrusive factors deriving from AI and its intrusive qualities. Just your thoughts on how governments should deal with this, (A), in the direction of the individual, and (B), what repercussions that may have and governments think about their nation being in competition to others.</p>
Adrian Walker	<p>Yeah, I think it's a sort of multi-tiered thing, Leo. And if we start with, you picked on the individuals to start with, if we start with the individual rights, some of the big questions that have traditionally been kind of rule of law, human rights related, are very much pinned to individuals. And we can see that playing out in the news at the moment, and the classic example in the</p>

	<p>AI context is the balance between individual rights and freedom of speech and digital identity. Will people using AI as an intermediary have the right to play around with people's identity images? All that sort of thing on the basis that freedom of speech should predominate. And you'll see different views on that. It may be decided at national law, we make it, but we probably need sort of meta laws because AI and corporates don't work just on a national basis.</p> <p>So, you've got all of that complexity playing out and then alongside that, I think you've got something really interesting going on at a governance level in how I think AI and social media is changing maybe the way we think about political issues. It's a cause of complexity, so who knows what the consequences will be. But it is also a cause for optimism because I think what it's enabling is more cross-national approaches to that, to issues. So, you see, for example, more ability to think and accelerate thinking on a cross-national basis about ethics and governance. It's a kind of modern version of workers of the world unite, if you like, not looking at a national level, but cross-national in the chat rooms and AI accelerators. And then you have a similar thing working in the consumerism context.</p> <p>So, you've got democracy working at a national level. Consumerism has the ability to shape morals and values through people's purchasing decisions, through social media and AI accelerators. So again, we're seeing groups evolve the way they think about things and what the code should be through these means. So, I think it is undoubtedly the case that whichever example you pick, tech and AI as an accelerator is enabling a more transnational approach, which I think is going to create a different moral evolution and government. So, quite a lot going on there again, but I think it offers some hope for actually allowing a less divided world on moral issues because you can pool views in a different way and hopefully average things.</p>
Leo von Gerlach	<p>So, I understand from what you're saying, Adrian, there are some strong interdependencies from how governments want to deal with the treatment of the individual in that evolving sphere and how that interrelate with how governments relate to one another in their positioning.</p> <p>Moving on from that starting point, Rita, there's also this organizational aspect toward that what we typically refer to as corporate governance and a similar question to you: where do you see government politics just approaching topics of corporate governance in the time of AI and the impact it has?</p>
Rita Hunter	<p>I think, as I mentioned, we have major jurisdictions seeking to regulate AI systems. And so there is going to be, I suspect, a wave of, say, regulatory enforcement or perhaps issues that arise that are less than desirable because of the use of AI. Obviously, AI brings [with it] many, many advantages and opportunities, but we also have risks and disadvantages. And so I think for global corporates, their use of AI has to be inseparable with corporate governance. And I think that is just a way of risk-mitigating</p>

	<p>any sort of exposure that might come with getting it wrong. And what do I mean about getting it wrong? Well, if you're a company and you're adopting AI across your operations, if you're adopting it to satisfy mandatory reporting, whether that be financial or non-financial reporting, and if you're looking at it as to form part of your, say, your decision-making, then boards and executives will need to realize that actually AI isn't just a technology issue, but it very much becomes a governance issue at its core. And I think a strong governance framework is what determines whether AI becomes a strategic advantage or a source of risk.</p> <p>So, if you're thinking about the regulations again, you will have regulatory expectations on boards to understand AI risks, to ensure they have proper controls, to oversee compliance with AI-related laws, and also to integrate the AI into their enterprise risk management. So, I think what we're essentially saying here is that this shifts AI from being an IT project to a board level responsibility, which isn't dissimilar to how boards have to treat things like their financial reporting or even cybersecurity. And so ultimately, if you have strong governance, then in order to perceive that governance as being sufficient or adequate, you'd want that governance to define who owns your AI risk, who signs off on AI-driven decisions, how models are validated and monitored, and at what point do you need human intervention? And I think that's probably going to be one of the real key issues going forward. And ultimately, if you've got this strong governance, then you should hopefully be mitigating the risk that you have at responsibility gaps. So you know who is accountable for the outcomes that AI brings with it. So ultimately, I think it's going to become a very, very strong piece of how companies use AI, and it will come back to their corporate governance around it.</p>
Leo von Gerlach	<p>So that seems to be a super important point for everybody to take away that governance, corporate governance for any AI-related risk is a top priority for corporations and just getting governance right obviously starts with understanding the problem and understanding the risks that derive from it. Wonderful.</p> <p>So now flipping the perspective once more and getting to the beginning where the whole conversation started, namely the kind of impact, the positive impact that AI can do on ESG. Just speaking about the impact that AI can have on corporate governance and in particular on corporate compliance policies, so, how can we use the technology to make our work in governance and compliance work better?</p>
Rita Hunter	<p>So, I'm going to take this back to, as I mentioned, we have lots of sustainability, climate, ESG-related laws and regulations. We have the EU that has a very comprehensive set of rules and regs and laws, and we have a lot of other jurisdictions globally. When I say a lot, I mean the majority of them that have climate reporting requirements.</p>

	<p>And so, the use of AI is definitely an advantage and can be a positive for many companies that need to satisfy their compliance obligations. The ways in which I think companies can benefit from the use of AI is if you think about what we're talking about from an ESG perspective, we're talking about data and companies need a lot of data. It needs to be what informs all of their compliance and their disclosure obligations in this space. And it doesn't stop at just what the company does. It has to go through to their supply chains. You're looking at human rights, due diligence requirements. There's a whole host of aspects that a company needs to ensure it doesn't lose its position on.</p> <p>And AI can be used to essentially scrape internal organizations' data systems. So, you'll have data that needs to fit into this compliance with sustainability laws hosted by HR, finance, technology, operations, the business, you name it, they're all going to have data that's probably relevant to how they need to comply with these obligations. So, if you have an AI tool that can scrape an internal organization's data and go even further towards its supply chain, then you're essentially saving yourself time and ensuring that you have the ability to comply with your obligations in a timely manner.</p> <p>The caution that I have with that, of course, with every opportunity, there's a risk, is ensuring you have appropriate oversight and you have the human intervention and ensuring what data your AI is scraping is not out of date, it's accurate. And is it essentially producing information that you can use in your compliance reporting, which isn't going to get you in trouble from, say, a greenwashing perspective or a social washing perspective? So, a lot of AI tools that are helping companies comply with their obligations, not only do they take the data, but they then can also help prepare the disclosures themselves.</p> <p>So, the risk there comes with, is the disclosure accurate or are we sort of venturing into greenwashing territory? So, there's again, that need for human intervention, checking, analysis, all of that stuff that we've been talking about. Again, the governance model comes into it. Where's the oversight? Who owns the risk? What are we doing with all this information?</p> <p>I think some other points around compliance. There is a very, very technical European legislation called the Taxonomy Regulation that is very technical. It needs a lot of KPIs, a lot of technical data. Again, your AI can help. Companies are struggling to comply with this. It's a perfect way that AI can help. But again, with caution, making sure it's accurate, it's up to date, and you're not going to get yourself in any regulatory trouble.</p>
Leo von Gerlach	<p>Rita, well, again, thank you so much. I think that's so insightful on that, so hyper relevant impact on positive as negative and ambivalent of AI on any corporate governance work and how to do it ever better. And we have heard also a lot about the risks and how to mitigate them and that was just a terrific show. So thank you once again, Rita, thank you, Adrian, and thank you actually all of you for tuning in and I hope you'll join us again for the the next</p>

	edition of The Influencers, which will be coming up soon. Until then, take care, goodbye.
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