

Digital corporate governance in Slovakia

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Digital corporate governance in Slovakia. The paper focuses on the current trend of digitalisation of decision-making processes. Legal risks associated with the use of digital technologies in facilitating decision-making by corporate bodies and the means to mitigate such risks are brought into attention. The author supports the view that the current Slovak legislation is insufficient for full-fledged virtual shareholders' meetings but is sufficient for the use of digital means as support or substitute for the decision-making of corporate board members. The general framework of the draft recodification of the Slovak Civil Code allowing associates (members of corporations including civil associations) to participate virtually in meetings of associates of all corporate legal forms is considered an up-to-date solution.

Key words: digitalisation, corporate governance, virtual shareholders' meeting, corporate e-governance, electronic voting

Introduction

Effective corporate governance requires flexible procedural rules governing the way corporate decisions are made. Slovak corporate law is rigid in terms of decision-making processes. The regulation dates back to pre-Internet times and rules are conceptually built on the physical presence of the persons involved in decision-making. However, this world is coming to an end and nowadays a large part of personal interaction takes place online. Digital technologies are increasingly used as means of searching for information, simplifying its processing, or otherwise supporting decision-making. So far, digital technologies have been replacing human decision-making processes only in exceptional cases. In this article, we will address the possibility of virtual meetings and digitalisation of the voting processes of corporate bodies (1), the digital exercise of other shareholder rights (2) and the use of digital technologies in decision-making by the executive and supervisory bodies (3). We will focus on the limits of the current laws and legal regulations, present possibilities of deploying digital technologies and on the proposal of a new legal regulation in the recodification of private law.

1. Online decision-making by corporate bodies

1.1. Digital technologies facilitating board members' decision-making and virtual board meetings

The technical course of negotiations and decision-making by the collective body of a commercial company is not regulated in detail in Slovak corporate law. The default

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rule requires personal participation in the meeting. The memorandum or articles of association may permit the members of the executive board or the supervisory board to vote in writing or by electronic means (Sect. 66 Subs. 8 of the Slovak Commercial Code). It is therefore assumed that the decision on the method of communication cannot be taken by the executive or supervisory body of the company itself within their Rules of Procedure but must be taken by the shareholders by amending the fundamental corporate documents. The law does not provide for any additional rules governing electronic communication by members of elected bodies. Deficiencies in data transmission or identification of persons are apparently not considered to be significant here and the obligation to ensure their proper functioning is left to the responsibility of the members of the bodies in question.

1.2. Digital technologies facilitating shareholders' decision-making and virtual shareholders' meetings

Shareholders of a corporations make their decisions mainly in the shareholders' meeting. The shareholders' meeting is the supreme body of the corporation and decides on the most important issues of the corporation. In addition, shareholders may, under certain conditions, take decisions outside the shareholders' meeting or agree, by virtue of a contract, to amend the articles of association of a private limited liability company. Partnerships do not have a shareholders' meeting, but major decisions are taken in the form of an amendment to the partnership agreement.

a) (Virtual) shareholders' meeting

The shareholders' meeting is the supreme body of corporations deciding on the most important issues of the existence and functioning of the corporation. The shareholders' meeting presupposes the simultaneous physical participation of the shareholders in the deliberations of the body at a given time and place.

The procedure of the shareholders' meeting itself is regulated quite strictly, based on the requirement of the shareholders' physical presence. The Commercial Code does not provide for either digital shareholders' meetings or the possibility to participate in a physical shareholders' meeting by means of remote communication. An exception is the regulation of public joint-stock corporations (*listed corporations*) with the possibility of shareholder participation by means of remote communication (Art. 190d of the Slovak Commercial Code). However, a strict mechanism for verifying the identity of the voting shareholder and the subsequent confirmation of the votes cast must be complied with. Interestingly, it is a practice in Slovakia that public joint-stock corporations do not make use of the possibility to hold virtual shareholders' meetings. According to the results of empirical research conducted by Sokol, based on data from publicly available articles of incorporation, it appears that the majority of public joint-stock corporations have explicitly excluded the possibility of holding shareholders' meetings electronically. On

the contrary, the meeting and voting of the board of directors and the supervisory board using electronic means was almost regularly enshrined in these corporations.¹

Is it possible to amend these rules? There is a lively debate going on in Slovak legal scholarship on the extent to which the rules of corporate law are mandatory or non-mandatory and thus whether they can be amended by the articles of association or by-laws.² However, it is apparently presumed that rules on participation in the shareholders' meeting and the method of voting are mandatory. It is stated that the means of remote communication may provide for the participation of a shareholder in the shareholders' meeting without his personal presence only under the conditions laid down in the law.³ Looking abroad, this is not the only possible conclusion.⁴ We assume that the reason for the doctrinal strict approach is the regulation in Section 66 Subs. 8 Slovak Commercial Code allowing the modification of voting mechanisms for executive and supervisory boards but is silent regarding the voting procedures of the shareholders' meeting.

Even the current legal situation allows virtual shareholders' meetings. Slovak corporate law is specific in its intensive enforcement of *ex post* protection against resolutions of shareholders' meetings and in the strong judicial position that resolutions of shareholders' meetings can only be reviewed by a special judicial procedure initiated by a given plaintiff. Otherwise, the defects of the resolutions are in principle considered as healed.⁵ Protection against resolutions of the shareholders' meeting requires, in principle, that the rights of the shareholder have been infringed by the resolution of the shareholders' meeting. A resolution of a shareholders' meeting of a company held virtually might possibly not be challenged at all, or the future case-law may lead to the conclusion that if a shareholder has had the opportunity to attend the shareholders' meeting physically and has also voluntarily accepted his virtual attendance, his rights

¹ SOKOL, M. Elektronické hlasovanie kolektívnych orgánov v obchodných spoločnostiach [Electronic voting of collective bodies in companies]. In *GRANT Journal*. Vol. 11, y. 2022, No. 1, p. 57.

² GÁBRIŠ, T.: Kogentné a dispozitívne normy v korporátnom práve: Filozofický, historický a kognitívny pohľad [Mandatory and Default Provisions in Corporate Law: a philosophical, historical and cognitive perspective]. In *Laudatio Alexandrovi Škrinárovi*. Trnava: Typi Universitatis Tyrnaviensis, 2020, pp. 26 – 39; OVEČKOVÁ, O. – CSACH, K. – ŽITŇANSKÁ, L. *Obchodné právo 2. Obchodné spoločnosti a družstvo* [Commercial Law 2. Corporations and Cooperatives]. Bratislava: Wolters Kluwer SR, 2020, pp. 53 – 55; PATAKYOVÁ, M. – GRAMBLIČKOVÁ, B. in PATAKYOVÁ, M. – ĎURICA, M. – HUSÁR, J. et al.: *Aplikované právo obchodných spoločností a družstva – ťažiskové inštitúty* [Applied Company and Cooperative Law - Key institutes]. Bratislava: Wolters Kluwer SR, 2021, pp. 41 – 46; ŠULEKOVÁ, Ž. Zmluvná sloboda v korporátnom práve – kde nachádzať jej limity? [Contractual Freedom in Corporate Law - Where to find its limits?] In *Acta Facultatis Iuridicae Universitatis Comenianae*, No. 2, 2013, pp. 274 et seq.; ŠULEKOVÁ, Ž.: *Zmluvná sloboda a právo obchodných spoločností. Dizertačná práca* [Contractual Freedom in Corporate Law. PhD thesis]. Košice : UPJŠ, 2015, p. 200.

³ OVEČKOVÁ, O. – CSACH, K. – ŽITŇANSKÁ, L. *Obchodné právo 2. Obchodné spoločnosti a družstvo* [Commercial Law 2. Corporations and Cooperatives]. Bratislava: Wolters Kluwer SR s. r. o., 2020, p. 311.

⁴ The Rules on Physical Attendance are Considered as Default (non-mandatory) in German law. SCHINDLER, H. in SCHINDLER, H. – SCHAFFNER, P. *Virtuelle Beschlussfassung in Kapitalgesellschaften und Vereinen*. München: C. H. Beck, 2021, p. 125.

⁵ For more details against the leading case-law see HLUŠÁK, M. Právna povaha uznesenia valného zhromaždenia obchodných spoločností [Legal Nature of Resolutions By Shareholders' Meetings]. In *Súkromné právo*, No. 5, 2022, pp. 154 – 161.

were not infringed. Thus, the resolution of the virtual shareholders' meeting would remain effective despite the failure to comply with the legal procedure on physical attendance and even without the corporate charter providing for digital voting.

Recently, however, there have been some legislative shifts regarding the admissibility of virtual shareholders' meetings. Legislators around the globe adopted pandemic regulation allowing for virtual shareholders' meetings and distant voting.⁶ Slovak legislation has also allowed digital voting at shareholders' meetings as well as participation in collective bodies' meetings by means of electronic communication, without further restrictions. The regulation was effective during the restrictions imposed by the Covid-19 pandemic.⁷

It is the pandemic rules for the governance of companies and other legal entities that have shown that virtual shareholders' meetings are feasible and there is no indication that the number of disputes regarding the validity of resolutions of the shareholders' meeting has increased during the extraordinary measures. Therefore, maintaining the liberal provisions in force even after the pandemic is being discussed.

Some authors identify the risk that the hasty choices made during COVID times will lead to suboptimal regulation of virtual shareholders' meetings in the long-term. To avoid that risk, lawmakers should redraft shareholders' meeting rules to fully reflect three fundamental changes in corporate governance, namely in how meetings are held (virtually instead of in person), in their temporal dimension (the 'meeting' being a multi-day process instead of a one-day event), and in the nature of participants (with the institutionalisation of corporate ownership, which allows institutional investors to deploy resources and technology that are unavailable to most individuals).⁸

However, the nature of these three announced changes is not, in our view, characteristic of all shareholders' meetings. Especially in the environment of concentrated shareholder structure and closed corporations, so typical of the continental legal environment, there is no special need to reflect the changes in the position of institutional investors in the exercise of their rights at the virtual shareholders' meeting. Nor is the shift towards multi-day shareholders' meetings so significant in the case of closed corporations, where the shareholders' meeting is often an administrative or implementation act of the shareholders, or, conversely, a forum where conflicts between shareholders escalate and do not last that long.

⁶ ZETZSCHE, D. A. – ANKER-SØRENSEN, L. – CONSIGLIO, R. – YEBOAH-SMITH, M. Enhancing Virtual Governance: Comparative lessons from COVID-19 company laws. In *Journal of Corporate Law Studies*, 22:1 (2022), pp. 115-150, doi: 10.1080/14735970.2021.1977453, p. 118.

⁷ See section 5 of Act No. 62/2020 Coll. on Certain Emergency Measures in Relation to the Spread of the Dangerous Contagious Human Disease COVID-19 and in the judiciary. For the implications thereof see CSACH, K. – HAVEL, B. – PALA, R. – POSPÍŠIL, B. Správa a riadenie obchodných spoločností počas pandémie COVID-19 [Corporate Governance During Covid-19 pandemics]. In *Súkromné právo*, No. 2, 2020, p. 20.

⁸ ZETZSCHE, D. A. – ANKER-SØRENSEN, L. – CONSIGLIO, R. – YEBOAH-SMITH, M. Enhancing Virtual Governance: Comparative lessons from COVID-19 company laws. In *Journal of Corporate Law Studies*, 22:1 (2022), pp. 115-150, doi: 10.1080/14735970.2021.1977453, p. 118.

b) (Digital) *Per rollam* voting

Shareholders decide on the issues within the competence of the shareholders' meeting in principle at the shareholders' meeting. However, the legislation also allows for decisions within the competence of the shareholders' meeting to be taken by the shareholders outside the shareholders' meeting (so-called *per rollam* voting). *Per rollam* voting is permitted in a limited liability company (Sect. 130 Slovak Commercial Code) and, if its articles of association so allow, also in a simple joint-stock corporation (Sect. 220zb Slovak Commercial Code), but not in an ordinary joint-stock corporation. While the shareholders' meeting presupposes the participation of the shareholders at the same time at a certain place, the adoption of decisions outside the shareholders' meeting presupposes successive written communication by means of a circular, a letter. The decision-making process is performed by the statutory body sending a draft resolution inviting the shareholders to express their views within a certain time limit.

In the case of *per rollam* call voting, it is generally accepted that both the call for vote and the vote cast *per rollam* itself are conducted electronically, even within a relatively short period of three days.⁹ Nor do potential problems with the identification of the email sender appear to be a reason for case law to tighten the requirements for digital *per rollam* voting as opposed to physical voting by a paper letter. Here, the risks associated with questionable voter identification seem to be left to the next stage, the judicial review of the result initiated by a shareholder.

1.3. Pros and cons of virtual shareholders' meetings

The pandemic experience shows that the change in the way shareholders' meetings were conducted has not been followed by leaked reports of a sharp increase in disputes over the validity of resolutions or the shortcomings of such online decision-making processes. On the contrary, the functioning of the entire society has shifted to the virtual world. The virtual general assembly is the 'new normal' and the legislator should not put obstacles in its way. On the contrary, every conceptual rethink and recodification of shareholder meetings must be built upon the idea of a virtual gathering. But what are the risks involved?

Some risks are likely to be more pronounced with digital than with physical voting (stability of the online connection, mistakes in marking the ballot), while others will be less pronounced (preservation of the audio-visual record, identification of the cast votes, lower risk of miscalculations of results).

The problem of verifying the voter's identity also arises in the case of physical attendance at the shareholders' meeting – if the shareholder is represented by a proxy, the corporation is left to rely on the authenticity of the signature and the identity check is in fact shifted into the *ex post* judicial review phase. It is precisely the emphasis on *ex post* protection and *ex post* control of the resolutions of the shareholders' meeting that is also a fundamental starting point when considering virtual shareholders' meetings and eliminating the inherent risks.

⁹ Decision of the Slovak Supreme Court file Nr. 1 Obdo/22/2018 dated 18/7/2018 on *per rollam* voting by email.

The course of the virtual shareholders' meeting is much more in control by the corporate bodies, which will have control over the digital interface allowing the communication between the shareholders. It might be easier to mute a shareholder in the virtual than in the real world. However, the subsequent protection of the shareholder is sufficient here as well.

More importantly, virtual voting using various digital forms and voting platforms blurs the distinction between voting at a shareholders' meeting and *per rollam* voting. It makes no difference whether the vote on a particular proposal is sent to the shareholder by paper mail to a mailbox, or by e-mail, or simply by a click-through in the electronic system to which the shareholder has access. It is also technically irrelevant whether the shareholder is given time to send a reply or whether the voting time at the virtual shareholders' meeting is extended. If the risks of identity verification or wrong data transmission are not considered fundamental in *per rollam* voting and email *per rollam* voting is allowed, neither shall they be considered as fundamental in a virtual shareholders' meeting.

Here, virtual shareholders' meetings take advantage of the benefits of *per rollam* voting and compensate for the fundamental shortcoming of *per rollam* voting, which is the absence of discussion and interaction between shareholders or between shareholders and board members. Since *per rollam* voting can be used to take any decision that could be taken by the shareholders' meeting, the very liberal attitude of case law towards digital *per rollam* voting is a strong argument for abandoning the view of the indispensable need for the physical presence of the shareholder at the shareholders' meeting.

1.4. Recodification draft on legal persons (2021)

A proposal for the recodification of legal persons has been recently published by the Slovak Ministry of Justice.¹⁰ The proposed general regulation of legal entities should also constitute an extensive general regulation for commercial companies. Several of the provisions of the legislative draft envisage virtual participation in the shareholders' meeting (assembly of members). It also allows the executive and supervisory bodies to decide themselves how to proceed and whether to choose physical appearance or online communication abolishing the need to regulate the process in the fundamental corporate documents.

2. Digital technologies facilitating the exercising of shareholder's information and control rights

Digitisation and remote access to documents also enables more efficient exercise of the shareholder's ancillary rights, in particular the right of information.¹¹ Although the

¹⁰ Ministry of Justice, [online] <https://www.justice.gov.sk/aktualne-temy/rekodifikacia-sukromneho-prava/> [16/11/2022].

¹¹ The Informal Company Law Expert Group (ICLEG). *Report on Digitalisation in Company Law* (March 24, 2016), p. 34. [online] <https://ssrn.com/abstract=2893701> or <http://dx.doi.org/10.2139/ssrn.2893701> [16/11/2022].

quality and scope of the right of information depends on the legal type of the company, we can generalise that the right of information has two components – the shareholder has the right to inspect the company’s documents along with the right to have the members of the executive body provide him with explanations (continuously or at the general assembly). The Slovak Commercial Code does not lay any obstacles to presenting the information electronically.¹² Although the law provides that a shareholder has the right to inspect documents at the registered office of the company, the purpose of such rule is not violated if an inspection of documents in the digital form is accessible anywhere. This can also be done by creating access to shared documents. Digital access to documents may obviously pose the risk of the documents circulating into wrong hands, but the risk essentially equals the risk associated with the documents being accessed physically.

3. Digital tools supporting the decision-making process of corporate bodies

The digitalisation of company law brings not only simplifications for the exercise of shareholder rights, but also for the management and its contribution to corporate governance. The use of digital tools or artificial intelligence is manifold, AI could be used in much more complex scenarios ranging from the assistance to decision-making processes, the monitoring and red flagging¹³ even to autonomous decision-making. Such tools might be used by the management and the supervisory boards.

The deployment of digital tools can bear significant risks. The recent history has evidenced that AI can go wrong with dramatic consequences. Furthermore, if directors start to rely on AI to produce answers, they may have little understanding of the causes of potential failures and expend less cognitive energy trying to foresee areas of potential failure.¹⁴

The use of digital technologies within corporate governance has become a focal point of the regulators as well. In 2018, the European Commission released a ‘Coordinated Plan on Artificial Intelligence’,¹⁵ followed by a white paper¹⁶ and a report on the safety

¹² BUHALA, O. *Právo spoločníkov na informácie* [Shareholders’ Information Rights]. Bratislava: C. H. Beck, 2022, p. 101.

¹³ Digital technology may be used as a tool to identify possible compliance risks not only from a technical but also from a legal point of view. See LAGIOIA, F. – JABŁONOWSKA, A. – LIEPINA, R. – DRAZEWSKI, K.: AI in Search of Unfairness in Consumer Contracts: The Terms of Service Landscape. In *Journal of Consumer Policy* (2022) 45:481–536. <https://doi.org/10.1007/s10603-022-09520-9>. Web pages of this digital tool: <http://claudette.eui.eu/demo/> [16/11/2022].

¹⁴ HICKMAN, E. – PETRIN, M. Trustworthy AI and Corporate Governance: The EU’s Ethics Guidelines for Trustworthy Artificial Intelligence from a Company Law Perspective. *Eur Bus Org Law Rev* 22, 593–625 (2021), p. 616. [online] <https://doi.org/10.1007/s40804-021-00224-0> [16/11/2022].

¹⁵ European Commission. Communication from the Commission to the European Parliament, the European Council, the Council, the European Economic and Social Committee and the Committee of the Regions – Coordinated plan on artificial intelligence. COM (2018) 795 final (7 December 2018).

¹⁶ European Commission. *White paper on artificial intelligence – a European approach to excellence and trust*. COM (2020) 65 final (19 February 2020).

and liability implications of AI and other technologies.¹⁷ Furthermore, AI ethics guidelines¹⁸ underline the duties of the corporate management to monitor the implementation of AI systems and their operation. The Guidelines do not cover the topic of AI-based corporate governance in more detail, nor do they seem to reflect other roles of AI within the corporate governance framework. However, a European tender concerning the relevance and impact of artificial intelligence for company law and corporate governance was launched in 2019, and the resulting project is ongoing.¹⁹

But the legal discourse goes even further. Some authors are already considering the need to redraw the architecture of corporate law, influenced by technological and economic changes that can be summarised under the term *platform economy*. Today, the proportion of transactions concluded through digital platforms is growing enormously and platforms are becoming the gateway to the market, whether from the supplier's or the consumer's perspective. In contrast, models of corporate governance were a product of centralised, hierarchical organisations. The functioning of companies relies on hierarchical organizational structures and the position of various gatekeepers and facilitators. The rise of platforms with their exploitations of minimal information costs is disrupting these hierarchical corporate structures. It is discussed whether the same way that the 'firm' came to replace 'contracts' for many business activities in the context of the industrial revolution, 'platforms' are now replacing 'old-world firms' in the context of the digital transformation.²⁰

The author is not a proponent of catastrophic scenarios. The basic principles of corporate governance and the division of tasks between individual bodies of a company and its shareholders, the nature of the roles of these persons as well as the functional relationships between them provide sufficient answers to the use of digital means in decision-making. Let us illustrate this with the example of the recent legal regulation, the use of early warning systems for the purposes of preventive restructuring.

Electronic (online) early warning systems are one of the important elements of the Restructuring and Insolvency Directive²¹ bankruptcy prevention system.²² They should

¹⁷ European Commission. Report on the safety and liability implications of artificial intelligence, the internet of things and robotics. COM (2020) 64 final (19 February 2020).

¹⁸ High-Level Expert Group on Artificial Intelligence (2019) Ethics guidelines for trustworthy AI. [online] <https://digital-strategy.ec.europa.eu/en/library/ethics-guidelines-trustworthy-ai>. [16/11/2022].

¹⁹ For more details, see HICKMAN, E. – PETRIN, M. Trustworthy AI and Corporate Governance: The EU's Ethics Guidelines for Trustworthy Artificial Intelligence from a Company Law Perspective. *Eur Bus Org Law Rev* 22, 593–625 (2021), footnote 22. [online] <https://doi.org/10.1007/s40804-021-00224-0> [16/11/2022].

²⁰ FENWICK, M. – MCCAHERY, J.A. – VERMEULEN, E.P.M. The End of 'Corporate' Governance: Hello 'Platform' Governance. *Eur Bus Org Law Rev* 20, 171–199 (2019). [online] <https://doi.org/10.1007/s40804-019-00137-z> [16/11/2022].

²¹ Directive (EU) 2019/1023 of the European Parliament and of the Council of 20 June 2019 on preventive restructuring frameworks, on discharge of debt and disqualifications, and on measures to increase the efficiency of procedures concerning restructuring, insolvency and discharge of debt, and amending Directive (EU) 2017/1132 (Directive on restructuring and insolvency). OJ L 172, 26.6.2019, pp. 18 – 55.

²² The importance of early warning systems is already indicated by the fact that, at least in Italy and France, prior to the adoption of the Directive, there was already legislative activity in preparation for such early warning systems. BALP, G.: Early Warning Tools at the Crossroads of Insolvency Law and Company Law. *Bocco-*

be able to signal the need for action to avert financial problems (Article 3 of the Directive). Early warning systems should either be developed by the Member States or left to the private sector. The details of early warning systems are not known from the Directive²³ or from current Slovak national legislation. Current European practice shows that we can distinguish between a system that would be limited to informing members of the corporate bodies about the crisis scenario and the means to resolve it, or a system that would represent a broader level of intervention by imposing additional obligations on a wider range of affected persons (auditors, minority shareholders but also the public sector, which will become aware of the financial difficulties of the business relatively early on).²⁴ We can expect to see the linking of these early warning systems with the accounting or cash flow of the entrepreneur, algorithmic processing of big data and its assessment.

Members of corporate bodies can be expected to rely on these recommended systems and to adapt their behaviour accordingly. It is questionable whether the reliance on an electronic early warning system will be considered sufficient to meet the fiduciary (due care) obligations of board members.

The requirement of informed decision-making by a member of the corporate body²⁵ implies that if a member of the body has to decide on an issue lacking the necessary knowledge or experience (e.g. filing a tax statement, deciding whether to take legal action against a contractor, or whether the conditions for dismissing an employee are met), he or she should seek advice from a sufficiently qualified and independent person (adviser).²⁶ In selecting an adviser, the person in charge must make a sufficiently good selection of the expert (*culpa in eligendo* – responsibility for the choice, not for the result), provide all the necessary and truthful information requested by the expert, cooperate with the professional and devote time to examine the result of his work (reasonableness check).²⁷ The member of the board may not be familiar with the law or the economic issues at hand and therefore cannot be expected to be able to formulate precise questions for the expert opinion sought, but he must check that answers to the questions asked have been given by the expert and

ni Legal Studies Research Paper No. 3010300. 28/7/2018 [online] <https://ssrn.com/abstract=3010300> [16/11/2022].

²³ The Directive offers little indication of what criteria should be evaluated – warnings could be triggered by a debtor's failure to make certain types of payments, for example, by withholding payments of taxes or social security contributions. It also allows Member States to lay down specific rules on early warning instruments for large companies and groups. See directive recital nr. 22.

²⁴ For more detail see GARRIDO, J. M. – DELONG, Ch, M. – RASEKH, A. – ROSHA, A. Restructuring and Insolvency in Europe: Policy Options in the Implementation of the EU Directive. In *IMF Working Paper*, 2021, Nr. 152, p. 6. [online] <https://doi.org/10.5089/9781513573595.001> [16/12/2022].

²⁵ Slovak corporate law implies that a member of a corporate body must act in an informed manner, i. e. that they are obliged to obtain and take into account all available information relating to the subject-matter of the decision when making a decision. See Sections 135a Subs. 1 and 194a Subs. 5 of the Slovak Commercial Code.

²⁶ LUKÁČKA, P. – MAŠUROVÁ, A. In: MAMOJKA, M. et al: *Obchodné právo I – všeobecná časť, súťažné právo, právo obchodných spoločností a družstva* [Commercial Law I – general part, competition law, corporate law]. Bratislava: C. H. Beck, 2021, p. 496 (Lukáčka), p. 608 (Mašurová).

²⁷ Judgment of the Slovak Supreme Court file Nr. 3 Obo 106/2006 dated 1/2/2007.

that answers do not contain any apparent deficiencies.²⁸ If these requirements have been met, the member of the corporate body is not liable for the damage caused by wrong advice or statement that was relied on.²⁹

The same applies if a member of the board relies on the data provided by an early warning system. The board member is required to enter correct data and sufficiently evaluate its conclusions.

Conclusions

The digitalisation of corporate governance is an unstoppable trend. Legislative interventions are likely to be needed in the introduction of virtual shareholders' meetings, but they may not be as stringent as those for public joint-stock corporations. The idea of unifying the theoretical concepts of shareholders' meeting and *per rollam* voting is the key to liberalising the rules for virtual shareholders' meetings. The risks discussed (identity of the voting shareholder, technical stability of the connection) are sufficiently mitigated by the possibility of subsequent judicial review. On the contrary, current legislation on the duties and liability of board members is also fully applicable in the event that digital technologies are involved in their deliberative processes. The current rules on the selection of counsel and reliance on professional advice allow for a rational assessment even in cases where members rely on the results of an automated digital system and even cases where the decision of the automated system replaces the member's decision. These rules do not relieve the board members of the duty to monitor a proper implementation of the digital system, to oversee its operation and to review its results.

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²⁸ OVEČKOVÁ, O. – CSACH, K. – ŽITŇANSKÁ, L. *Obchodné právo 2. Obchodné spoločnosti a družstvo* [Commercial Law 2. Corporations and Cooperatives]. Bratislava: Wolters Kluwer SR, 2020, pp. 267 – 268.

²⁹ This could be considered also as an absence of intent – from the perspective of criminal law. ŠAMKO, P. Spoliehanie sa daňového subjektu na správnosť odbornej rady daňového poradcu z trestnoprávneho hľadiska [Reliance of a Taxable Entity on the Tax Advisor's Statement From a Criminal Law Perspective]. In *Bulletin slovenskej advokácie*, 2021, No. 11, p. 26.

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