



FACULTY OF LAW
Lund University

Saida Abbasli

Enhancing Due Diligence While Upholding Compliance: An Analysis of AI Integration in the Context of Mergers and Acquisitions and its Compatibility with the EU AI Act

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Supervisor: Eduardo Gill-Pedro

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Summary

With rapidly advancing developments in Artificial Intelligence (AI) technology, the integration of AI into Mergers and Acquisitions (M&A) due diligence processes has the potential to transform how firms evaluate potential transactions. This thesis explores this transformative potential while considering the framework of the European Union's (EU) regulatory landscape, specifically in the context of the EU AI Act. The primary goal of this research is to analyse how AI tools can be used in M&A due diligence processes in a way that complies with the EU Regulatory Framework, more specifically with the EU AI Act.

To comprehensively address this aim a preliminary understanding of M&A processes, including its stages with a specific focus on due diligence, is established. Thereafter, the thesis delves deep into the current shortcomings and deficiencies in traditional M&A due diligence processes, while mainly relying on practical and legal perspectives.

Next, the thesis explains the intricacies of AI, to understand what mechanism lies behind the tools that are used in M&A due diligence processes. After grasping the notion of AI, the research continues to explore potential drawbacks and advantages of AI in M&A due diligence processes. In the end, it tries to locate the relevance of AI tools that are used in due diligence processes within the provisions of the AI Act, thus exploring potential areas of conflict between the use of AI tools in M&A due diligence and the requirements outlined in the EU AI Act.

As a result, to address these challenges and ensure compliance with the EU AI Act, the thesis proposes several recommendations and practices for companies. The research specifically emphasises the importance of human oversight and collaboration in AI-driven decision-making, along with the need for clear accountability frameworks to define roles and responsibilities within the companies.

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Saida Abbasli

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Abbreviations

AI	Artificial Intelligence
AI Act	Artificial Intelligence Act
CE	European Conformity
CSDD	Corporate Sustainability Due Diligence Directive
EC or Commission	European Commission
ESG	Environmental, Social and Governance
EU	European Union
GDPR	General Data Protection Regulation
GPAI	General Purpose Artificial Intelligence
M&As	Merger and Acquisitions
ML	Machine Learning
OECD	Organisation for Economic Co-operation and Development
XAI	Explainable AI

1. Introduction

In recent years, the integration of Artificial Intelligence (AI) into various industries has rapidly transformed the landscape of business operations, marking a paradigm shift in how tasks are performed and decisions are made. From healthcare to finance, from manufacturing to marketing, AI technologies have spread to every sector, offering innovative solutions to complex problems and revolutionising traditional workflows. Furthermore, corporate governance and the legal industry are two areas where AI is having a particularly noticeable impact, as businesses are using AI tools more and more to improve compliance, efficiency, and accuracy.¹

One of the crucial activities for businesses to expand their scope and reach is through mergers. As companies try to take advantage of growth prospects, adapt to changing industry dynamics, and navigate regulatory complexities, the strategic use of Mergers and Acquisitions (M&A) has become more common. Therefore, it is crucial to start by developing a fundamental understanding of M&A procedures and the function of due diligence in this context. M&A transactions are business combinations that merge companies through joint ventures, acquisitions, and mergers in order to create efficiencies, increase market share, and maximise shareholder value. However, these transactions are subject to financial, legal, and regulatory requirements that vary depending on the jurisdiction.²

An important stage in the deal-making process is the due diligence phase of M&A deals, which is defined by the thorough examination of huge amounts of documents, financial records, and legal contracts. Therefore, in the middle of this technological change, businesses are slowly planning or even starting to use AI-powered solutions to speed and optimise the due diligence process, thus the M&A processes, considering the extremely time consuming and inefficient nature of them.³ Additionally, the need to quickly and efficiently complete these deals has never been greater as companies attempt to manage the complexity of mergers and acquisitions in a market that is becoming more and more competitive.

As mentioned above, there are some challenges with traditional due diligence procedures, such as time constraints, resource-intensive operations, and the inherent drawbacks of manual review techniques. Due diligence can involve a massive volume of documents and data, which can be overwhelming for individuals and result in delays, errors, and overlooking crucial details. Furthermore, traditional due diligence procedures fall short of providing real-time

¹ Daniel Wangerin, 'M&A Due Diligence, Post-Acquisition Performance, and Financial Reporting for Business Combinations', (2019), 36 Contemporary Accounting Research, p. 2344, <<https://onlinelibrary.wiley.com/doi/abs/10.1111/1911-3846.12520>>, accessed 15 April 2024.

² Sara Fernández, Ángela Triguero and Esteban Alfaro-Cortés, 'M&A Effects on Innovation and Profitability in Large European Firms', (2018), 57 Management Decision, p. 105, <<https://doi.org/10.1108/MD-08-2017-0730>>, accessed 18 May 2024

³ Linda A. Thompson, 'EU's New AI Act Will Create Wave of Work for Law Firms', Law.com International, <<https://www.law.com/international-edition/2023/12/12/eus-new-ai-act-will-create-wave-of-work-for-law-firms/>>, accessed 15 April 2024

insights and predictive analytics due to the dynamic and ever-evolving nature of business environments.⁴

In light of this, AI becomes a game-changing instrument for improving the effectiveness and speed of due diligence procedures in mergers and acquisitions. AI technologies have the capacity to automate document review, extract relevant data, detect patterns and forecast outcomes with unusual speed and accuracy by utilising machine learning algorithms, natural language processing, and data analytics. AI-powered solutions promise more quick decision-making, risk mitigation, and value generation in M&A transactions, ranging from contract analysis to financial modelling.⁵

However, there are several limitations and circumstances to bear in mind when integrating AI into M&A due diligence, especially when it comes to regulatory compliance. Companies deploying AI tools must make sure that their AI systems comply with the provisions of the recently approved European Union (EU) AI Act, which lays out criteria for the development and deployment of AI technology, as they cross the EU regulatory landscape.⁶ Thus, the key provisions of the AI Act, its implications for AI integration in M&A due diligence, and recommendations for ensuring regulatory compliance will all be covered in detail in the sections that follow in this thesis.

Therefore, this thesis aims to provide an in-depth analysis of the changing landscape of corporate transactions by exploring the intricate details of M&A due diligence procedures, analysing the shortcomings of traditional methods, and assessing the possible advantages and challenges of implementing AI.

This thesis also aims to explore how the EU AI Act, a significantly important legislation that regulates the development, distribution, and deployment of AI systems within the EU, relates to the integration of AI in M&A due diligence. The focus will be on understanding the specific requirements set forth by the Act, classifying the AI tools according to the risk categorisation, assessing the impact on AI practices in due diligence, and proposing strategies to ensure compliance. By examining the intersection of advanced AI applications and stringent regulatory frameworks, this study aims to provide valuable insights for companies navigating the evolving regulatory landscape of AI in M&A activities.

In examining the primary challenges associated with the integration of AI in M&A due diligence processes, the thesis delves into both the beneficial and adverse effects from a practical and regulatory perspective.. This includes analysing the characteristics of M&A due diligence processes and AI tools and the ultimate impact of such an implementation within the sector and compliance with the EU AI Act.

⁴ Wangerin (n 1)

⁵ Krieg DeVault, Travis D. Lovett, and Charles O. Richert, 'Using AI in M&A Transactions: Key Advantages, Challenges, and Considerations', Lexology (2024), <<https://www.lexology.com/library/detail.aspx?g=b010f0ee-6055-46a2-be05-cc632f16acd2>>, accessed 17 April 2024

⁶ 'Decoding the EU AI Act', KPMG, (2024), <<https://assets.kpmg.com/content/dam/kpmg/xx/pdf/2024/02/decoding-the-eu-artificial-intelligence-act.pdf>>, accessed 17 April 2024

1.1. Purpose and research question

The purpose of this thesis is to explore the deployment of AI tools in M&A due diligence processes, considering both their benefits and drawbacks, and to examine their alignment with the upcoming European Regulatory Framework, particularly the newly approved EU AI Act.

Therefore, the research aims to provide guidance for enhancing M&A due diligence processes with the help of specific AI tools while ensuring compliance with the EU laws. Specifically, it seeks to discuss the existing due diligence processes, highlighting their deficiencies and areas for improvement, to evaluate AI tools, examining their advantages and disadvantages in the context of M&A due diligence, to analyse whether the deployment of such tools in due diligence processes may potentially violate forthcoming EU regulation, more specifically the AI Act, and to identify future challenges that AI tools may pose in M&A due diligence processes and propose potential solutions to address these challenges effectively.

Based on the outlined purpose, the central research question guiding this thesis is: "How can AI tools be used in M&A due diligence processes in a way that complies with the EU Regulatory Framework, more specifically with the EU AI Act?"

To address this overarching research question, the following sub questions will be explored throughout this thesis:

1. What are the current shortcomings and deficiencies in traditional M&A due diligence processes?
2. What are the advantages and disadvantages of utilising AI tools in M&A due diligence processes?
3. What are the key provisions of the EU AI Act and how do they impact the deployment of AI tools in M&A due diligence?
4. What strategies and practices can companies adopt to address these challenges and ensure compliance with regulatory requirements while leveraging AI in M&A due diligence?

1.2. Methodology and material

This thesis adopts a qualitative research methodology to delve into the intricate aspects of due diligence processes conducted during mergers and acquisitions and the integration of AI tools within this framework. Qualitative research, characterised by the collection and analysis of non-numerical data, offers a comprehensive understanding of complex subjects and facilitates the exploration of new research avenues.⁷ The qualitative approach employed in this study encompasses document analysis, with a particular focus on examining the role of AI tools in M&A due diligence.

To achieve the objectives of describing key concepts and defining terms relevant to M&A, due diligence, and AI tools, the descriptive legal research method is utilised in the second and third

⁷ Robert E. Stake, 'Qualitative Research: Studying How Things Work', Guilford Publications (2010), p.11, <<http://ebookcentral.proquest.com/lib/lund/detail.action?docID=479606>>, accessed 20 April 2024

chapters.⁸ Descriptive legal research elucidates the fundamental characteristics of these concepts, providing a foundational understanding essential for subsequent analysis.⁹

Moreover, doctrinal legal research is employed to critically evaluate traditional due diligence processes and assess the advantages and disadvantages of AI tools in this regard. This method involves a comprehensive examination of various sources to determine the implications of integrating AI into M&A due diligence and to identify potential pitfalls.¹⁰

Chapter four of this thesis primarily relies on applied legal research, a methodology followed toward solving practical challenges.¹¹ Through applied legal research, the practical application of AI tools in M&A due diligence is scrutinised, with a specific focus on their alignment with the EU AI Act and strategies for mitigating associated risks. Furthermore, this approach enables the exploration of potential enhancements to the implementation of AI tools within the business context.¹²

The primary sources of law in this thesis consist of EU legislation, notably the EU AI Act and the General Data Protection Regulation (GDPR). Given the peculiar nature of the topic, no case law is available, therefore precluding an analysis of relevant EU judicial decisions related to the EU AI Act. Additionally, general principles of EU law play a vital role in interpreting related legal concepts and analysing relevant EU legislation.

In combination with primary sources, secondary sources such as books, academic articles, doctrinal works, and legal blogs contribute to the comprehensive examination of the subject matter. While primary sources offer legal frameworks and regulations, secondary sources provide insights, analyses, and scholarly perspectives that enrich the discussion surrounding AI in M&A due diligence.

AI note: For language enhancement and to ensure cohesion throughout this thesis, AI tools have been used in certain sections. These tools were utilized solely to refine the articulation of ideas and to enhance the readability of the text. All ideas, analyses, and conclusions presented in this thesis are the original work of the author or have been derived from the works of other human authors, which are duly referenced. The core intellectual contributions and the conceptual framework underpinning this thesis are entirely attributed to human authorship. The incorporation of AI was merely a supplementary measure to ensure that the thesis meets high standards of clarity and coherence in its presentation.

⁸ Frans L. Leeuw and Hans Schmeets, 'Empirical Legal Research', Edward Elgar Publishing (2016), p. 54, <<https://www-elgaronline-com.ludwig.lub.lu.se/monochap/9781782549390.00009.xml>>, accessed 20 April 2024

⁹ Mark van Hoecke, 'Methodologies of Legal Research: What Kind of Method for What Kind of Discipline?', Hart Publishing (2011), p. 113, <<http://www.bloomsburycollections.com.ludwig.lub.lu.se/collections/monograph-detail>>, accessed 20 April 2024

¹⁰ Suzanne E. Rowe, 'Legal Research, Legal Writing, and Legal Analysis: Putting Law School into Practice Maximizing the Law School Experience II', 29 Stetson Law Review (1999), p. 1198, <<https://heinonline.org/HOL/P?h=hein.journals/stet29&i=1207>>, accessed 20 April 2024

¹¹ Willem H. van Boom, Pieter Desmet, and Peter Mascini, 'Empirical Legal Research in Action', Edward Elgar Publishing (2018), p. 9, <<https://www-elgaronline-com.ludwig.lub.lu.se/edcollchap/edcoll/9781785362743/9781785362743.00005.xml>>, accessed 20 April 2024

¹² Ibid p. 11

1.3. Delimitations

As this thesis specifically focuses on the due diligence phase of M&As, other stages of the process, including the screening of potential targets, will not be examined in detail, although they may occasionally be mentioned for context and to provide a holistic view. Additionally, the terms Mergers and Acquisitions will generally be analysed together and referred to as one entity (M&A, Mergers and Acquisitions, or Mergers), except where it is necessary to distinguish between them due to specific characteristics, such as in Chapter 2.1, where they are defined separately. Also in terms of M&As, considering its broad scope and heavy focus on regulatory perspective, an in-detail analysis of European Union Merger Regulation (EUMR) would be impossible with the limited scope of this thesis, thus it is only slightly touched upon in the M&A chapter.

Furthermore, privacy concerns addressed in this thesis will primarily focus on companies and their employees, excluding an in-depth analysis of privacy issues related to third parties, such as business partners and other related stakeholders.

Additionally, in terms of the subjects of the AI Act, this thesis mostly focuses on the deployers of the AI systems, thus analysis from the perspective of developers and distributors is, if any, covered quite limited.

Moreover, while data privacy and General Data Protection Regulation (GDPR) concerns will be considered, a comprehensive analysis of GDPR would be beyond the scope of this thesis, thus it will not be scrutinised in detail. Instead, the study will concentrate on the compliance of AI tools with the EU AI Act within the context of M&A due diligence.

2. M&A Due Diligence Process - Identifying Red Flags

“How do you make money? Spinoffs, split-ups, liquidations, mergers and acquisitions.”¹³

M&As have been one of the most essential ways for businesses looking for growth, market expansion, and a competitive edge in the ever-rapidly changing business environment. However, the success of these deals mostly depends on careful due diligence, which is a procedure meant to uncover important details and evaluate the risks connected to the target company. The buyer makes sure they fully comprehend all the details of the acquisition before closing any deal. These details include the duties that will be performed, the extent of the seller's contingent liabilities, problematic contracts, possible legal conflicts, issues with intellectual property, and much more. Due diligence is particularly important when buying private companies, as the seller might not have had their offering reviewed by the public market.

Current M&A trends and related legal actions highlight how crucial it is for acquirers to carefully evaluate any risks. This entails an extensive examination of the business's financial standing in addition to a close examination of matters involving cybersecurity, intellectual property, data security breaches, and employment-related legal and sexual harassment responsibilities.¹⁴

To gain a deeper understanding of this concept, the following chapter will conduct a thorough analysis of the due diligence process. However, before directly proceeding with this kind of outline, it is necessary to provide a brief overview that clarifies what mergers and acquisitions are and positions the importance of due diligence in this framework. Additionally, M&As from an EU regulatory perspective will also be analysed in the following section, however, the focus will mostly be on the perspective of the companies. Following that, the main focus will be on identifying the shortcomings of traditional due diligence procedures. This analysis will therefore pave the way for the main target of this thesis, how or can these pitfalls be filled with the help of technological advancements in AI, however, this part will pop up in the following chapters.

2.1. Brief Introduction to Mergers and Acquisitions

In the corporate world, M&As are often used practices which serve as the main channels for firm expansion and restructuring. Broadly defined, a merger is the process through which two corporations come together, with one ceasing to exist (usually called the target company) and

¹³ Mario Gabelli, Chairman of Gamco Investors, <<https://www.cnbc.com/2012/11/21/here-are-small-cap-values-gabelli.html>>, accessed 25 April 2024

¹⁴ Richard D. Harroch, David A. Lipkin, Richard V. Smith, and John Cook, ‘A Comprehensive Guide To Due Diligence Issues In Mergers And Acquisitions’, All Business (2019), Forbes, <<https://www.forbes.com/sites/allbusiness/2019/03/27/comprehensive-guide-due-diligence-issues-mergers-and-acquisitions/>>, accessed 29 April 2024

the other remaining (acquirer).¹⁵ Over their histories, a number of well-known corporations have participated in a large number of M&A transactions. These deals come in a variety of forms, such as conglomerate mergers that combine businesses from different industries, vertical mergers involving businesses with distinct value-added processes, and horizontal mergers between businesses providing comparable goods or services.¹⁶

The target company, also known as the seller, and the acquirer or bidder, often known as the buyer, are the usual parties engaged in M&A transactions. A variety of factors, such as the expectation of synergy, which might show up as increased sales and revenues, fewer costs, and easier access to financing at cheaper rates, are what push mergers. Similar to the concept that $2 + 2 = 5$, synergy is founded on the idea that the whole is more valuable than the sum of its parts, underlining the possibility of increased value generation through effective matches.¹⁷

The process of two companies becoming one entails the purchasing company assuming the combined business's debts and assets. For these kinds of transactions, the phrase "statutory merger" is frequently used, signifying that the firms' incorporation requirements are met by the transactions.¹⁸ A subsidiary merger, however, in which the target company becomes a subsidiary of the acquiring corporation, is not the same as the former. The acquisition of Electronic Data Systems by General Motors, wherein the latter became a part of GM's subsidiary, is an illustration of a subsidiary merger.¹⁹ The subsidiary of the acquiring business combines with the target in a forward triangular merger, with the subsidiary surviving. In contrast, the target survives a reverse triangular merger in which the subsidiary of the purchasing business merges with the target.²⁰

In contrast to a merger, a consolidation is the formation of a completely new company by two or more entities, with the dissolution of the original companies. This happened in 1986 when Burroughs and Sperry joined to form Unisys, therefore shareholders of the original companies became shareholders of the new company via a consolidation.²¹ To put it simply, a merger ($A + B$) produces A, whereas a consolidation ($A + B$) produces a new company, C. In fact, though, the phrases "merger" and "consolidation" are occasionally used synonymously, particularly in terms of deals involving companies of varying or comparable sizes.²²

Although it can apply to both friendly and hostile mergers as well as hostile acquisitions specifically, the term "takeover" is also frequently used to refer to a variety of transactions.

¹⁵ Patrick A. Gaughan, 'Mergers, Acquisitions, and Corporate Restructurings', 5 Wiley (2020), p. 12, accessed 24 April 2024

¹⁶ Harvey Poniachek, 'Mergers and Acquisitions: A Practitioner's Guide to Successful Deals', World Scientific (2019), pp. 1-15, <https://doi.org/10.1142/9789813277427_0001>, accessed 24 April 2024

¹⁷ Ibid

¹⁸ Gaughan (n 15)

¹⁹ Allan Sloan, 'A Smart, Class E Move by GM: It Outdoes Perot in the EDS Deal', The Washington Post (1995), <<https://www.washingtonpost.com/archive/business/1995/08/22/a-smart-class-e-move-by-gm-it-outdoes-perot-in-the-eds-deal/de6a3aba-f249-4734-9d78-a3463c4fd604/>>, accessed 2 May 2024

²⁰ Gaughan (n 15) 13

²¹ 'Against the Current: The Sperry-Burroughs Merger and the Unisys Struggle to Survive 1980-2001', 29 IEEE Journals & Magazine (2007), p. 3, <<https://ieeexplore-ieee-org.ludwig.lub.lu.se/document/4287213>>, accessed 2 May 2024

²² Gaughan (n 15) 13

Overall, depending on the situation and type of transaction, these terms, which have different meanings, are frequently used ambiguously in the M&A industry.²³

M&As can also be motivated by strategic goals like talent acquisition, competitive positioning within the industry, geographic expansion, product or service diversification, access to new technologies, or intellectual property. These goals are in addition to the already specified ones. Additionally, M&A operations can be very important in helping businesses respond to shifts in the market, in regulations, and in industry disruptions. This helps businesses adapt and prosper in dynamic business settings.²⁴

In the European context, EU merger control is a crucial component of EU competition policy, which aims to prevent mergers and acquisitions from substantially affecting the ability of the internal market to function as an effective marketplace. The European Commission (EC) is mainly in charge of overseeing this regulatory framework, by evaluating mergers to stop the emergence or consolidation of market dominance that can endanger consumers and impede innovation.²⁵

The EC Merger Regulation²⁶, which lays out the guidelines for merger notification and evaluation, is the cornerstone of EU merger control. The regulation requires that before they may be put into effect, mergers and acquisitions that reach specific turnover limits be disclosed to the European Commission. The purpose of the thresholds is to ensure that the regulation covers key market players by capturing transactions by companies that engage in substantial activities within the EU.²⁷

The regulation establishes a two-phase investigation process. Phase I is a preliminary review that can take up to twenty five working days, during which the Commission determines if there are substantial concerns about the merger's compatibility with the internal market. If no such concerns are identified, the merger will be approved either conditionally or unconditionally. If there are concerns, Phase II of the investigation, a more thorough examination that might take up to ninety more working days, begins.²⁸

The substantive test for EU merger control is whether a concentration would significantly impede effective competition, particularly through the creation or strengthening of a dominant position. During this test, the European Commission evaluates several parameters, such as

²³ Ibid

²⁴ Ibid

²⁵ Sean Stevens, 'Killer-Acquisitions by the Big Tech Giants and the EU's Merger Control in a Fast-Evolving Digital Era', <<http://lup.lub.lu.se/student-papers/record/9128111>>, accessed 5 May 2024

²⁶ Council Regulation (EC) No 139/2004 of 20 January 2004 on the control of concentrations between undertakings (the EC Merger Regulation) (Text with EEA relevance) 2004 (OJ L)

²⁷ Nicholas Levy, Andris Rimsa, and Bianca Buzatu, 'Research Handbook on Global Merger Control', Edward Elgar Publishing (2023), p. 219, <<https://www-elgaronline-com.ludwig.lub.lu.se/edcollchap/book/9781800378193/book-part-9781800378193-20.xml>>, accessed 5 May 2024

²⁸ Ilene Knable Gotts, 'The Merger Control Review', 8 The Law Reviews (2017), p. 1-6, <<https://www.clearygottlieb.com/~media/organize-archive/cgsh/files/2017/publications/eu-merger-control-chapter-20-the-merger-control-review-eighth-edition.pdf>>, accessed 5 May 2024

market definition, market shares and concentration level, competitive effects, barriers to entry, and efficiencies.²⁹

Identifying the market definition is usually the first stage, where the potential impact of the merger is determined in the light of the relevant product market and geographical markets. The next step usually entails examining the merged parties' combined market shares and the consequent levels of concentration, to measure the impact in the market. In relation to that, assessing the possibility of both coordinated (where the combined company might increase prices or reduce output) and unilateral effects (where the merger might make it easier for existing firms to collude) is another important parameter to be looked through. Another crucial point is determining if the market remains accessible to new competitors in order to minimise any anti-competitive impacts of the merger. Lastly, taking into account if the merger will result in efficiencies that benefit customers and prevent any potential harm to competition is the next element to be considered.³⁰

Thus, EU merger control is essential for maintaining internal market competition because it blocks mergers that might harm consumers and impede market innovation. The regulatory framework provides an effective framework for evaluating and controlling mergers and acquisitions, which is outlined by the EC Merger Regulation and supported by guidelines and case law. In the end, EU merger control supports a dynamic and competitive European economy by striking a balance between authorising beneficial economic consolidation and prohibiting anti-competitive concentrations.³¹

Moreover, as can be observed from the above-mentioned, mergers and acquisitions involve complex factors including stakeholder communication, legal and regulatory compliance, customer retention, leadership alignment, cultural integration, and brand management in addition to financial transactions. Maximising the value created by M&A initiatives and attaining the intended results depends on effectively managing these complexities.³²

2.2. Stages of an M&A process

The initiation of the M&A process generally occurs from the Target company's standpoint. For a number of reasons, including financial limitations, reaching peak valuation, shareholder liquidity requirements, or being approached by a potential Buyer, typically a supplier or customer, who wants to talk about shared interests, Target may decide to start the sale process. Target often makes sure that its corporate and legal affairs are in order before formally beginning the sale process. Target's legal team may also be involved to varying degrees. Potential flaws with Target's records or processes are likely to come to light during the sale process and affect the sale price. Such issues might include inadequate or unsigned employee contracts (such as confidentiality agreements, non-compete clauses), inaccurate employee

²⁹ Levy and others (n 27) 221

³⁰ Levy and others (n 27) 132-139

³¹ Dr. Tilman Kuhn, 'EC focus on internal documents: Time to rethink the architecture of the EU merger control process?', White & Case LLP (2019), <<https://www.whitecase.com/insight-our-thinking/ec-focus-internal-documents-time-rethink-architecture-eu-merger-control>>, accessed 5 May 2024

³² Gaughan (n 15) 13

bonus plans, inadequately recorded customer agreements, and incomplete stock records. It is essential to take care of these problems early on in order to reduce the problems and increase the sale price.³³

To put the aforementioned procedure in a more clear set up, it is essential to look at the stages of the merger in a structured way. However, different scholarly and legal sources present differing models identifying the stages of mergers. Nevertheless, this thesis aims to adopt a structured framework that includes five stages of a merger process for comprehensive analysis. By doing so, it also aims to provide a structured road map and important insights into the complexities of the process and its implications for the organisations and stakeholders involved.

In the initial stage, known as the 'Assessment and Preliminary Review' phase, the process typically begins with the creation of an information memorandum by the Target. The purpose of this paper aims to attract potential buyers and assess interest in acquiring the company or its assets. Without revealing confidential business data, the memorandum includes relevant information to assist potential buyers in assessing their level of interest. At this stage, Non-Disclosure Agreements (NDAs) are usually signed by interested parties in order to protect confidential data.³⁴

The next step, negotiation, involves taking into account a number of factors, including employment laws, licence challenges, competition law concerns, and financial considerations. In this stage, parties may also include suggested terms and conditions in a letter of intent that is not legally binding and send it to the other party.³⁵

Subsequently, the target company or business is thoroughly examined as part of the next stage - due diligence. The purpose of this procedure, known as "buyer due diligence," which is often carried out by advisers hired by the potential buyer, is to determine a reasonable price, detect risks, and strengthen market position. It addresses corporate issues, contractual duties, employment practices, data protection, intellectual property, and regulatory compliance, in addition to legal and financial topics.³⁶ As another subsection will be fully devoted to due diligence, the procedure will not be explained thoroughly in this part.

The negotiations and closing process starts after the completion of due diligence. After reviewing the results, the potential buyer negotiates the terms of the deal, including the purchase price, any limitations, warranties, and indemnities. Depending on the type of transaction, these provisions are usually codified in an Assets Purchase Agreement (APA) or a Share Purchase Agreement (SPA).³⁷

³³ Edwin L. Miller Jr, 'Mergers and Acquisitions: A Step-by-Step Legal and Practical Guide', Wiley (2008), p. 24, accessed 24 April 2024

³⁴ 'Mergers & Acquisitions - The 5 Stages of an M&A Transaction', (2022), <<https://www.pwc.com/mt/en/publications/tax-legal/mergers-and-acquisitions-5-stages-of-MA-transaction.html>>, accessed 7 May 2024

³⁵ Ibid

³⁶ Ibid

³⁷ Ibid

Finally, in the post-closure integration/implementation stage, the SPA and APA may include clauses for post-closing obligations, such as asset transfers, obtaining consents, and price adjustments. In this phase, parties may also undertake integration exercises.³⁸

2.2.1. An ex-ante investigation - due diligence

M&A transactions are intricate operations that need to be carefully planned and analysed in order to be successful. As previously indicated, a key component of this process is due diligence, which is defined in Black's Dictionary as "*measure of assiduity or prudence, something that is circumstantially expected and is ordinarily exercised by a person who is prudent/reasonable*".³⁹ As this definition seems not to be very clear in practice, this section would be a guide to better understand the practical significance of due diligence. In broad terms, due diligence is a thorough examination of the target company's assets, liabilities, financial performance, operations, legal compliance, and other relevant factors carried out by both buyers and sellers. In this context, the OECD⁴⁰ gives a relatively clarifying definition, while taking into account the definition provided by the Commission, by referring to due diligence as "*the processes through which enterprises can identify, prevent, mitigate and account for how they address their actual and potential adverse impacts*"^{41, 42}.

Additionally, in the business context, due diligence plays a crucial role in facilitating informed decision-making and minimising risks associated with M&A transactions.⁴³ From the buyer's perspective, due diligence usually provides reassurance that their expectations regarding the transaction are accurate, as it lessens the possibility of unexpected problems following the acquisition by assisting buyers in identifying potential risks and liabilities connected with the target company. On the other hand, sellers gain from due diligence as well since it helps them establish credibility with prospective purchasers and might reveal undiscovered value in their business, which could result in an increased sale price.⁴⁴

Generally, due diligence is carried out for several reasons. First of all, it guarantees accuracy and transparency by enabling parties to validate and authenticate information provided during

³⁸ Duncan N. Angwin, Sotirios Paroutis and Richard Connell, 'Why Good Things Don't Happen: The Micro-Foundations of Routines in the M&A Process', 68 Journal of Business Research (2015), p. 1367, <<https://www.sciencedirect.com/science/article/pii/S0148296314004226>>, accessed 4 May 2024

³⁹ Black H. Campbell, 'Black's Law Dictionary', 9th edn, St Paul, Minn West 2009

⁴⁰ Organisation for Economic Co-operation and Development

⁴¹ 'OECD Guidelines for Multinational Enterprises on Responsible Business Conduct', OECD (2023), Ch. II, Para. 10, <https://www.oecd-ilibrary.org/finance-and-investment/oecd-guidelines-for-multinational-enterprises-on-responsible-business-conduct_81f92357-en>, accessed 4 May 2024

⁴² 'Due Diligence Explained', European Commission, <https://single-market-economy.ec.europa.eu/sectors/raw-materials/due-diligence-ready/due-diligence-explained_en>, accessed 10 May 2024

⁴³ Daniel R. Denison and Ia Ko, 'Advances in Mergers and Acquisitions', Emerald Group Publishing Limited, 2016, Vol. 15, Ch. 3, p. 53, <<https://doi-org.ludwig.lub.lu.se/10.1108/S1479-361X20160000015004>>, accessed 2 May 2024

⁴⁴ Duncan Angwin, 'Mergers and Acquisitions across European Borders: National Perspectives on Preacquisition Due Diligence and the Use of Professional Advisers', 36 Journal of World Business (2001), p. 32, <https://www.sciencedirect.com/science/article/abs/pii/S1090951600000535?fr=RR-2&ref=pdf_download&rr=88326b581bcd992a>, accessed 13 May 2024

the transaction process.⁴⁵ Second, it assists in locating possible flaws or problems that can compromise the transaction's success, enabling parties to steer clear of bad transactions. It, additionally, provides important information that helps value the purchase and make sure it meets investment standards.⁴⁶ Furthermore, the expenses linked to conducting due diligence differ based on the size and complexity of the target business. However, it is also a fact that the risks related to skipping due diligence usually outweigh the costs, even if it could need an extensive time and resource commitment.⁴⁷

Additionally, due diligence activities in an M&A transaction cover a wide range of topics that are essential for assessing the viability and potential risks of the target company.⁴⁸ Examining the target company's overview, financial performance, technology and patents, strategic fit, target customer base, management and workforce, legal concerns, information technology infrastructure, corporate matters, environmental considerations, production capabilities, and marketing strategies are just a few of the activities involved in this process.⁴⁹

Examining the target company's capital structure, future predictions, and historical financial records is part of the financial due diligence process, which assesses the company's performance and overall financial health.⁵⁰ To fully understand the target company's competitive advantage and innovative potential, it is also essential to evaluate the calibre of its technology and intellectual property, such as patents and trademarks.⁵¹ Due diligence also includes finding possible synergies for value generation and assessing the target company's strategic fit with the buyer's goals.⁵² In order to evaluate market position and growth potential, it also involves looking at the target company's client base, sales pipeline, and related risks.⁵³ In addition, the purpose of legal due diligence is to locate ongoing legal disputes and regulatory actions as well as to make sure that rules and regulations are being followed.⁵⁴

To gain a deeper understanding of the intricacies of a due diligence process, this part of the Section will review the due diligence checklist provided by Thomson Reuters, a high-profile provider of business data and intelligence solutions, for private M&A deals.⁵⁵ This checklist serves as a valuable roadmap for understanding and navigating due diligence processes

⁴⁵ Nan J. Morrison, Guy Kinley, and Kristin L. Ficery, 'Merger Deal Breakers: When Operational Due Diligence Exposes Risk', 29 *Journal of Business Strategy* (2008), p. 23, <<https://doi.org/10.1108/02756660810873182>>, accessed 2 May 2024

⁴⁶ 'Due Diligence: Investigation or Audit of a Potential Deal or Investment Opportunity', Corporate Finance Institute (CFI), <<https://corporatefinanceinstitute.com/resources/valuation/due-diligence-overview/>>, accessed 13 May 2024

⁴⁷ Angwin 2001 (n 44) 36

⁴⁸ Morrison and others (n 45) 25

⁴⁹ Alen Sacek, 'Due Diligence in Mergers and Acquisitions in Emerging Markets: Evaluated Risk Factors From the Academic and Practical View', 11 *Journal of Modern Accounting and Auditing* (2015), p. 363, <<http://www.davidpublisher.org/index.php/Home/Article/index?id=16010.html>>, accessed 13 May 2024

⁵⁰ Ibid (n 38) 1370

⁵¹ Chris O'Leary and Raees Nakhuda, 'M&A Due Diligence Checklist for Public and Private Deals', Thomson Reuters (TR) Law Blog (2023), <<https://legal.thomsonreuters.com/blog/m-and-a-due-diligence-checklist-for-public-and-private-deals/>>, accessed 14 May 2024

⁵² CFI (n 46)

⁵³ O'Leary and Nakhuda (n 51)

⁵⁴ Angwin 2001 (n 44) 37

⁵⁵ Thomson Reuters 'About Us', <<https://www.thomsonreuters.com/en/about-us.html>>, accessed 14 May 2024

effectively. It is also worth noting that, considering the similarities and to avoid repetition, only the checklist for private M&A deals will be analysed below, as the concept is quite similar in both types of deals.

Define the due diligence task

Before starting with the due diligence review, it is essential to define the client's fundamental needs. This includes establishing the due diligence budget, determining the scope and deadlines of the diligence review, identifying specific focus areas such as the impact of external factors like COVID-19, and assessing the need for external consultants. Additionally, the method of communication with deal parties, often facilitated through third parties like investment bankers, should be clarified.⁵⁶

Assemble the Due Diligence Team

The composition of the due diligence team varies depending on the transaction's specifics but typically includes legal, business, accounting, and tax specialists. The team size can range from three individuals to over 20, with a designated point person responsible for coordinating the process, usually a junior lawyer.⁵⁷

Submit the Due Diligence Request

In many cases, buyers need to request information from the seller, typically in the form of a due diligence request listing questions and document requests organised by topic. These requests should be tailored to the specific target business and industry to ensure relevance and effectiveness in gathering proper information.⁵⁸

Get Access to Sources of Information

Accessing information sources is crucial for conducting due diligence effectively, especially in private deals where publicly available resources may not be accessible. This often involves obtaining access to the target company's privately held financials, which may be housed in virtual data rooms⁵⁹ or on-premises.⁶⁰

Distribute and Organise Materials

In private M&A deals, sellers may impose restrictions on the circulation of materials to protect sensitive information. Therefore, diligence teams must comply with confidentiality agreements and procedures for accessing and sharing materials while searching for critical information relevant to the transaction.⁶¹

⁵⁶ O'Leary and Nakhuda (n 51)

⁵⁷ O'Leary and Nakhuda (n 51)

⁵⁸ Ibid

⁵⁹ "A virtual data room (VDR), also known as a deal room, is a secure online repository for document storage and distribution." - 'Virtual Data Room (VDR): Definition, Uses, and Alternatives', Investopedia, <<https://www.investopedia.com/terms/v/virtual-data-room-vdr.asp>>, accessed 14 May 2024.

⁶⁰ O'Leary and Nakhuda (n 51)

⁶¹ Ibid

Additionally, during the review of materials for private M&A deals, key areas of focus include ownership documents, capitalization, and equity ownership, restrictions on equity transfer, and specialist reviews by legal and outside consultants to assess complex provisions.⁶²

Overall, in M&A deals, due diligence is crucial for both buyers and sellers since it offers important information about the terms of the agreement, potential risks, and chances to create value. Therefore, by carrying out extensive due diligence, parties can optimise the success of the transaction and make well-informed investment decisions. However, as can be observed from the checklist above, traditional due diligence processes include many steps that can more efficiently be conducted by other tools, namely AI tools, which will be discussed in more detail in the following sections.

2.3. Challenges associated with traditional due diligence processes

The failure rate of traditional merger processes, as evidenced by failed takeovers, is a significant concern in corporate transactions. Particularly in the context of the UK market, O'Sullivan and Wong estimate that a substantial proportion, approximately 18.7%, of takeover bids made between 1989 and 1995 were ultimately abandoned.⁶³ Similarly, a study by Holl and Kyriazis focusing on takeover activity in the 1980s also reveals a significant failure rate of 25.2%.⁶⁴ It should also be emphasised that these figures have been in constant increase over the years, specifically considering the takeover of big businesses, which occurs more often now than ever.

These findings underscore the inherent risks and challenges associated with traditional merger processes. The higher proportion of abandoned takeovers is caused by various factors, including cultural differences, financial complications, regulatory obstacles, and strategy misalignment between merging firms, which usually stem from inaccurate due diligence processes.⁶⁵ Therefore, such failures not only result in financial losses for the involved parties but also disrupt market dynamics and destroy investor trust.⁶⁶

Despite being an essential component of mergers, in light of the changing nature of modern business environments, the effectiveness of conventional due diligence procedures has been disputed for a while, with the above-mentioned failure rates considered. It is now a fact that

⁶² Ibid

⁶³ Pauline Wong and Noel O'Sullivan, 'The Determinants and Consequences of Abandoned Takeovers', 15 *Journal of Economic Surveys* (2001), p. 146, <<https://onlinelibrary.wiley.com/doi/10.1111/1467-6419.00135>>, accessed 14 May 2024.

⁶⁴ Peter Holl and Dimitris Kyriazis, 'The Determinants of Outcome in UK Take-over Bids', 3 *International Journal of the Economics of Business* (1996), p. 181, <<https://ludwig.lub.lu.se/login?url=https://search.ebscohost.com/login.aspx?direct=true&AuthType=ip,uid&db=bth&AN=9610042969&site=eds-live&scope=site>>, accessed 14 May 2024

⁶⁵ Denison and Ko (n 43) 55

⁶⁶ CFI (n 46)

these procedures have significant drawbacks even though they have historically been essential for supporting risk mitigation and well-informed decision-making.⁶⁷

Furthermore, this section (with its subsections) explores the difficulties that conventional due diligence procedures face in the M&A industry. Therefore, it will discuss the various obstacles that stakeholders experience when going through the due diligence phase, ranging from the limitations caused by time and money constraints to the complications resulting from changing landscapes. It will also be emphasised how crucial it is to address these issues in light of the possible effects they may have on transaction outcomes and organisational success. Thus, overall the section will pave the way for the following chapters, where implementation of AI can be seen as a potential solution for the concerns raised throughout this section regarding traditional mergers.

2.3.1. Time is money

M&A due diligence procedures are usually seen as time-consuming for several reasons. First and foremost, carrying out a thorough due diligence procedure is necessary to get a thorough and accurate understanding of the target business, which in turn makes post-purchase integration easier and lowers the learning hurdle that needs to be climbed after the acquisition.⁶⁸ This in-depth knowledge of the target business is essential to reducing the post-acquisition integration period. Due diligence procedures also need a lot of resources and run the risk of being superficial if the management is unaware of the immediate economic benefits, which adds to the time-consuming nature of the process.⁶⁹

The fact that due diligence is a continuous activity with the goal of detecting and mitigating risks to rights-holders rather than a one-time occurrence further extends the time needed for it.⁷⁰ Multiple levels of analysis are used in the due diligence process to uncover opportunities and hazards, including those related to foreign markets, industry characteristics, and the strength of the target's competitive position.⁷¹

The time-consuming aspect of due diligence is further complicated by the complexity of M&A deals and the requirement to confirm the target's financial statements, assess strategic

⁶⁷ Stefan Rao Kostas, 'The Past, Present, & Future of M&A - Assessing How the Lean Process and Artificial Intelligence Can Remedy the Pitfalls of Traditional M&A', 24, *Transactions: The Tennessee Journal of Business Law* (2022), p. 115, <<https://heinonline.org/HOL/P?h=hein.journals/transac24&i=101>>, accessed 3 May 2024

⁶⁸ Emanuel Gomes and others, 'Critical Success Factors through the Mergers and Acquisitions Process: Revealing Pre- and Post-M&A Connections for Improved Performance', 55 *Thunderbird International Business Review* (2013), p. 14, <<https://onlinelibrary.wiley.com/doi/10.1002/tie.21521>>, accessed 5 May 2024

⁶⁹ Karin Buhmann, Jonas Jonsson, and Mette Fisker, 'Do no harm and do more good too: connecting the SDGs with business and human rights and political CSR theory', 19 *Corporate Governance* (2019), No. 3, pp. 389-403, <<https://doi.org/10.1108/CG-01-2018-0030>>, accessed 29 April 2024

⁷⁰ Gabriela Quijano and Carlos Lopez, 'Rise of Mandatory Human Rights Due Diligence: A Beacon of Hope or a Double-Edged Sword?', 6 *Business and Human Rights Journal* (2021), p. 241, <https://www.cambridge.org/core/product/identifier/S2057019821000079/type/journal_article>, accessed 2 May 2024

⁷¹ Rosa Caiazza and Tiziana Volpe, 'M&A Process: A Literature Review and Research Agenda', 21 *Business Process Management Journal* (2015), p. 205, <<https://doi.org/10.1108/BPMJ-11-2013-0145>>, accessed 2 May 2024

reasoning, and look into other sub-factors crucial to realising purchase value.⁷² Due diligence tasks are becoming more and more crucial as M&A operations get more complicated with the growing number of businesses, which highlights how time-consuming the process is.⁷³

To emphasise the importance of the time = money element, the idea stated by Light can be referred to, which entails that sometimes late decisions in M&As can cost a bomb.⁷⁴

In conclusion, the need for a thorough understanding of the target company, the necessity of high-quality accounting information, the substantial resources involved, the continuous nature of the process, the necessity of multiple levels of analysis, and the complexity of merger transactions all contribute to the time-consuming nature of due diligence processes for M&A transactions.⁷⁵

2.3.2. Money again

As finance is one of the most important assets when it comes to the business world, it requires a separate subsection in terms of the costly nature of due diligence processes, apart from the 'time is money' aspect. Given that the due diligence procedure itself entails an extensive examination and assessment of potential business opportunities, it is often perceived as expensive. But beyond this fact, due diligence involves a careful examination to identify threats, assess cash flows, and balance the expected expenses, benefits, and risks related to the purchase.⁷⁶

Additionally, conventional due diligence procedures focus mostly on material assets and documentation, leading to what may be called a "mechanical verification" of tax, accounting, and legal concerns.⁷⁷ This narrow emphasis could result in inefficiencies, especially when evaluating intangible factors like past managerial behaviour or unethical actions that are common in industries like hedge funds.^{78,79} It becomes essential to ensure efficient due diligence procedures in order to reduce risks and raise the likelihood of a successful merger closure. Nonetheless, there is an ongoing discussion on the effectiveness of traditional due diligence, particularly in cases where valuing a target firm's resources is difficult and intricate.⁸⁰

⁷² Sacek (n 49) 365

⁷³ Bruce C. Doeg, 'Rethinking What Is Possible in Mergers and Acquisitions', Baker Donelson (2020), <<https://www.bakerdonelson.com/rethinking-what-is-possible-in-mergers-and-acquisitions>>, accessed 9 May 2024

⁷⁴ David A. Light, 'Who Goes, Who Stays?', Harvard Business Review (2001), <<https://hbr.org/2001/01/who-goes-who-stays>>, accessed 5 May 2024

⁷⁵ Jeffery S. Perry and Thomas J. Herd, 'Reducing M&A Risk through Improved Due Diligence', 32, Strategy & Leadership (2004), p. 12, <<https://doi.org/10.1108/10878570410525089>>, accessed 2 May 2024

⁷⁶ Caiazza and Volpe (n 71) 207

⁷⁷ Sacek (n 49) 365

⁷⁸ "A hedge fund is a limited partnership of private investors whose money is pooled and managed by professional fund managers", <<https://www.investopedia.com/terms/h/hedgefund.asp#:~:text=A%20hedge%20fund%20is%20a,earn%20above%20average%20investment%20returns>>, accessed 29 April 2024

⁷⁹ Stephen J. Brown, Thomas L. Fraser, and Bing Liang, 'Hedge Fund Due Diligence: A Source of Alpha in a Hedge Fund Portfolio Strategy' (2008), p. 8, <<https://papers.ssrn.com/abstract=1016904>>, accessed 2 May 2024

⁸⁰ Morrison and others (n 45) 26

It is also a fact that due diligence provides one last chance to find any "red flags" that might indicate unanticipated challenges after the transaction.⁸¹ For example, a year after Hewlett-Packard (HP) paid \$11 billion to acquire Autonomy in 2012, HP spotted an asset write-down of \$8.8 billion.⁸² The identification of accounting problems at Autonomy, which overstated its past earnings in the years prior to the acquisition, served as the basis for these write-downs. It is thought that HP would have valued Autonomy at considerably less than \$11 billion or would have ended negotiations completely before signing the acquisition agreement if the issues had been discovered during the due diligence process. Alternatively, had the issues been discovered prior to the purchase being finalised, HP may have used its contractual right to terminate the acquisition agreement.⁸³

To sum up, the reason traditional M&A due diligence procedures are so expensive is that they require extensive research, concentrate too much on material assets, and make it difficult to evaluate and convey the value of target firm resources.⁸⁴ All of these elements work together to drive up the costs associated with performing due diligence for mergers and acquisitions.

2.3.3. Potential human error - accuracy

As mentioned several times already, the evaluation of the target company's operational, legal, financial, and strategic factors is a difficult part of due diligence in M&A transactions. Exactly because of its complexity, there is a higher chance that errors will occur at various stages along the process. Error risk is further increased by the use of human judgement and decision-making in risk assessment, financial reporting, and post-acquisition performance evaluation.⁸⁵

Due diligence mistakes caused by human error can also result from communication gaps, which is especially common in dynamic operational environments. This, in return, stems again from the fact that due diligence is a complex process requiring a huge workload, in the context of traditional due diligence processes, a huge number of people are involved in such an analysis. Moreover, it is difficult to effectively limit human errors because of the qualitative nature of operational risk assessment in due diligence, particularly in intangible areas like past manager behaviour and ethical issues.⁸⁶

Furthermore, due diligence processes involving a variety of parties, including investors, crowdfunding platforms, and entrepreneurs, present information asymmetries that might result in decision-making prone to error.⁸⁷ Additionally, incorporating cultural due diligence into

⁸¹ Wangerin (n 1) 2350

⁸² Juliette Garside, 'Hewlett-Packard Faces \$1bn Lawsuit from Shareholders over Autonomy Deal', *The Guardian* (2013), <<https://www.theguardian.com/business/2013/may/07/shareholders-sue-hp-autonomy-deal>>, accessed 14 May 2024

⁸³ Wangerin (n 1) 2350

⁸⁴ *Ibid*

⁸⁵ Denison and Ko (n 43) 54

⁸⁶ *Ibid*

⁸⁷ Douglas J. Cumming, Sofia A. Johan, and Yelin Zhang, 'The role of due diligence in crowdfunding platforms', 108 *Journal of Banking & Finance* (2019), Article No 105661, <<https://doi.org/10.1016/j.jbankfin.2019.105661>>, accessed 2 May 2024

M&A deals introduces even another level of complexity, since unsatisfactory post-merger performance can result from a lack of awareness of organisational cultures and strategy fit.

2.3.4. To be, or not to be (efficient), that is the question

Traditional merger due diligence is also often criticised for its inefficiency. Due diligence procedures are frequently tried to be shortened as a result of competitive pressures brought on by market dynamics, the need for quick financial rewards, and the already long merger approval process from the Commission.⁸⁸ This rush, which also stems from the investigation overloading, could end up in inadequate analysis of important parts of the target firm's resources, making it tough to accurately detect their genuine value and quality. Moreover, agency difficulties inside businesses can worsen this issue, as managers may prioritise their own financial interests above doing full due diligence.⁸⁹

In fact, financial stability is important, yet blind spots may as well arise from overlooking environmental factors. However, it needs to be considered that the circumstances might become even worse by the lack of research on environmental sustainability and Environmental, Social, and Governance (ESG) performance, especially in the context of the ecologically sensitive corporate environment of today. Investors and customers generally are favouring companies with good ESG performance nowadays. However, even a reputable corporation may be hiding serious environmental concerns, such as improper waste disposal practices or unreported pollution. Following the acquisition, these liabilities may come to light, resulting in significant remedying expenses alongside the reputational damage.⁹⁰

Even if companies consider the ESG aspects, the assessment is usually very shallow, due to hefty amounts of due diligence work, as companies are not very up for allocating extensive time for focusing specifically on environmental concerns. Therefore, in a conventional due diligence, where loads of people analyse endless data belonging to the target company, the target company's dedication to sustainable practices in favour of focusing on the bare minimum of environmental legislation compliance might easily but unintentionally be overlooked.⁹¹

However, these concerns have now become more intricate with the recent adoption of stringent rules by Members of the European Parliament (MEP) concerning human rights and environmental standards.⁹² These new regulations require firms to incorporate thorough

⁸⁸ Doeg (n 73)

⁸⁹ Wangerin (n 1) 2353

⁹⁰ Manocha Pavan and Jagjit Singh Srail, 'Exploring environmental supply chain innovation in M&A', *Sustainability*, 2020, 12(23), Article nr. 10105, <<https://doi.org/10.3390/su122310105>>, accessed 2 May 2024

⁹¹ Ibid

⁹² 'European Parliament legislative resolution of 24 April 2024 on the proposal for a directive of the European Parliament and of the Council on Corporate Sustainability Due Diligence and amending Directive (EU) 2019/1937 (COM(2022)0071 – C9-0050/2022 – 2022/0051(COD)) (Corporate Sustainability Due Diligence Directive), (2024), <https://www.europarl.europa.eu/doceo/document/TA-9-2024-0329_EN.html>, accessed 17 May 2024

assessments of their human rights and environmental impacts into their due diligence processes.⁹³

To be more specific, in March 2021, the European Parliament passed a resolution calling for mandatory corporate due diligence and accountability legislation, which was further developed into the proposed Corporate Sustainability Due Diligence Directive (CSDD).⁹⁴ This directive requires that companies operating within the EU must identify, prevent, mitigate, and account for human rights and environmental impacts throughout their operations and supply chains. With the introduction of these new rules, the scope has broadened significantly to include the assessment of human rights and environmental standards of target companies.⁹⁵

Within the human rights aspect, companies must assess several patterns such as the potential existence of child or forced labour or the potential absence of a fair wage policy, evaluate the operations of the company which might impact the Union laws, and review the supply chain while ensuring suppliers or subcontractors of target company comply with human rights standards.⁹⁶

As for the environmental considerations, the environmental footprint of the target company is to be analysed thoroughly from a range of perspectives. This would include compliance with environmental laws and regulations, commitment to sustainability, and impact of the company's operations on the society and environment.⁹⁷

As can be seen, these new strict requirements make due diligence processes even more complex and important, as non-compliance would result in both reputational damage ("naming and shaming") and huge fines (up to 5% of companies' net worldwide turnover).⁹⁸

Apart from environmental concerns, the lack of attention to the consideration of cultural matters is also one of the drawbacks of conventional due diligence, as one of the primary obstacles in mergers and acquisitions is the cultural assimilation of businesses from various parts of the world.⁹⁹ High risks arise from organisational and national differences between the merging organisations, particularly for Western dealmakers dealing in Latin America, the Middle East, and Asia. Similar to this, businesses from developing countries aiming to enter Western markets encounter enormous difficulties in comprehending their business partners'

⁹³ European Parliament, 'Corporate due diligence rules agreed to safeguard human rights and environment', (2023), <<https://www.europarl.europa.eu/news/en/press-room/20231205IPR15689/corporate-due-diligence-rules-agreed-to-safeguard-human-rights-and-environment>>, accessed 17 May 2024

⁹⁴ Ibid

⁹⁵ 'Due Diligence: MEPs Adopt Rules for Firms on Human Rights and Environment', News, European Parliament, (2024), <<https://www.europarl.europa.eu/news/en/press-room/20240419IPR20585/due-diligence-meps-adopt-rules-for-firms-on-human-rights-and-environment>>, accessed 17 May 2024

⁹⁶ Seher Budak and Nyman Matilda, 'Corporate Sustainability Due Diligence: The European Council and the European Parliament Have Finally Reached a Provisional Agreement with the Aim to Protect the Environment and Human Rights', Global Supply Chain Compliance - Baker McKenzie (2023), <<https://supplychaincompliance.bakermckenzie.com/2023/12/27/corporate-sustainability-due-diligence-the-european-council-and-the-european-parliament-have-finally-reached-a-provisional-agreement-with-the-aim-to-protect-the-environment-and-human-rights/>>, accessed 17 May 2024

⁹⁷ Ibid

⁹⁸ EP News (n 95)

⁹⁹ Caiazza and Volpe (n 71) 209

actions. The achievement of efficiencies and shareholder value may be impacted by these difficulties, which also raise the possibility of incompatible principles of management that result in acculturative stress, problems with implementation, and poor performance.¹⁰⁰

Ultimately, these obstacles must be overcome in order to reduce risks and guarantee a smooth merger integration. Consequently, these inefficiencies highlight the need for a more comprehensive strategy in due diligence, which will be discussed in more detail in the chapters that follow.

¹⁰⁰ Ibid

3. A Transformative Phenomenon - Artificial Intelligence

*“AI is one of the most important things humanity is working on. It has tremendous potential to improve lives.”*¹⁰¹

In the preceding chapter, the challenges and deficiencies inherent to conducting due diligence in M&A processes, including the associated costs, potential for human error, and the limitations of relying on a combination of human expertise and manual or outdated software systems were explored. However, integrating artificial intelligence might present a promising solution to these challenges, offering the potential to expedite processes, enhance accuracy, and optimise efficiency. Therefore, to have a holistic perspective on the matter, this chapter will delve into a foundational examination of AI, its types and fundamental principles, and its application within the context of M&A due diligence, before directly delving deep into the application of AI in due diligence processes.

To start from the very scratch, technology is advancing at a rapid pace, and AI alongside that, has already begun to impact many different industries, including the legal sector. Many legal scholars are now investigating efficient ways to incorporate AI tools in legal matters to achieve better, faster, less costly, and more reliable results. Taking into consideration its intricacies, M&A is one of those fields that need certain improvements to achieve a better success rate, which consequently requires a more efficient and smooth investigation phase.¹⁰²

Therefore, this chapter serves as a gateway, providing a thorough examination of AI, including its concept and definition, historical evolution, types, and analysis of potential integration of AI tools into the M&A due diligence process. However, it is also worth mentioning that no uniform definition of AI exists, therefore the most optimal theories and definitions serving the purpose of this thesis will be analysed in the following sections.¹⁰³

3.1. What is AI?

When you enter the search prompt "What is AI?" into Google, you'll receive approximately 3,150,000,000 results in just 0.91 seconds. Similarly, searching for "what is Artificial Intelligence" gives out about 651,000,000 results in 1.03 seconds, and "definition of AI" generates around 3,240,000,000 results.¹⁰⁴ Considering the impossibility of revolving around

¹⁰¹ Cat Clifford, 'Google CEO: A.I. Is More Important than Fire or Electricity', CNBC, 2018, <<https://www.cnbc.com/2018/02/01/google-ceo-sundar-pichai-ai-is-more-important-than-fire-electricity.html>>, accessed 12 April 2024

¹⁰² Wangerin (n 1) 2352

¹⁰³ Stuart Russell and Peter Norvig, 'Artificial Intelligence: A modern approach', Pearson, 4th ed., Upper Saddle River, NJ, Prentice Hall (2020)

¹⁰⁴ Jair Ribeiro, 'These Are the Best Definitions of Artificial Intelligence You Can Read Today', The Startup, 2021, <<https://medium.com/swlh/these-are-the-best-definitions-of-artificial-intelligence-you-can-read-today-7c53c0e38584>>, accessed 18 April 2024

all those definitions, this chapter will only go through the most foundational and accurate ones that are provided over time. At its simplest, Artificial Intelligence can be explained as machines created artificially - by humans to achieve a human level of intelligence. Based upon the following explanation and the ongoing hype, the idea of AI may at first glance seem like a concept belonging to the near past, although it is not totally a new phenomenon, its roots date back to the mid-1900s. The question of “Can machines think?” was already analysed in detail by the father of modern computer science - Alan Turing in 1950.¹⁰⁵ Not surprisingly, the outcome of this analysis suggested that there is no barrier for machines to have intelligence, thus think like humans, if necessary infrastructure (e.g. adequate storage capacity, processing power, etc.) is provided. Considering the learning ability of machines, he went further and defended that, in a similar way, machines can also think, however, it all may need to get started as an imitation game.¹⁰⁶ He has also introduced the well-known benchmark - the Turing test, a test which measures a machine's capacity to display intelligent behaviour that is either identical to or indistinguishable from human behaviour. Despite its later identified shortcomings, the Turing test has been an important foundational step for characterising artificial intelligence. Turing has also predicted for after half a century's time the difficulty of differentiating machines from humans, which we have already started to experience today to a certain extent.¹⁰⁷ To sum up, according to Turing's opinion, artificial intelligence can be defined as an imitation of intelligence by computers which usually belongs to humans.

Not a long time after the Turing test, already in 1955, an early artificial intelligence program - the *Logic Theorist* was introduced by Allen Newell, Cliff Shaw, and Herbert Simon.¹⁰⁸ While affirming Turing's expectations, this project has shown how a machine - AI can imitate human problem-solving abilities.¹⁰⁹

Now if we get detached a bit from its historical origin and come closer to the present day to understand how AI is defined, some common definitions can be considered. Nils John Nilsson, an American computer scientist, defines artificial intelligence as an instrument that “*functions appropriately in its environment*”.¹¹⁰ However, Technopedia gives a bit broader definition while referring to AI as “*a branch of computer science that uses computational models to perform tasks that previously required human intelligence*”.¹¹¹ Additionally, PricewaterhouseCoopers (PwC), one of the leading consulting firms, labels AI as “*a cutting-edge combination of technologies that can understand, learn, and then act based on that*

¹⁰⁵ Alan M. Turing, ‘Computing Machinery and Intelligence’, *Mind Association*, 59 Oxford University Press, No. 236, 1950, pp. 433-460, <<https://www.jstor.org/stable/2251299>>, accessed 18 April 2024

¹⁰⁶ Ibid p. 450

¹⁰⁷ Ibid

¹⁰⁸ Rockwell Anyoha, ‘The History of Artificial Intelligence’ - Special Edition on Artificial Intelligence, SITN, Harvard Kenneth C. Griffin Graduate School of Arts and Sciences (2017), <<https://sitn.hms.harvard.edu/flash/2017/history-artificial-intelligence/>>, accessed 18 April 2024

¹⁰⁹ Ibid.

¹¹⁰ Nils John Nilsson, ‘The Quest for Artificial Intelligence’, Cambridge University Press, 2009, accessed 18 April 2024

¹¹¹ Techopedia, ‘Artificial Intelligence (AI)’ (2024), <<https://www.techopedia.com/definition/190/artificial-intelligence-ai>>, accessed 3 May 2024

learned information".¹¹² AI is also metaphorically interpreted as being "as white as snow, as red as blood, as black as ebony" according to Kaplan and Haenlein.¹¹³

Even though the above-stated definitions are not exhaustive, they help to understand some of the varied opinions regarding the nature of artificial intelligence. Additionally, as the area is still developing, it is necessary to have a flexible definition of AI for the future, which includes the range of functions displayed by intelligent devices.¹¹⁴

Besides all forecited definitions, to serve the purpose of this thesis, it is crucial to pay attention to how the EU defines artificial intelligence. Not surprisingly, there is no uniform EU-wide accepted definition either, however recently adopted Artificial Intelligence Act¹¹⁵ lays a common ground to set a definition for artificial intelligence across Europe. Although not explicitly defining the notion of artificial intelligence and by following a broadly defining method, the Act identifies 'AI system', which, in principle, might coincide with a definition for artificial intelligence. The AI Act definition is as follows:

*"a machine-based system designed to operate with varying levels of autonomy and that may exhibit adaptiveness after deployment and that, for explicit or implicit objectives, infers, from the input it receives, how to generate outputs such as predictions, content, recommendations, or decisions that can influence physical or virtual environments".*¹¹⁶

To understand the concept of AI thoroughly, this part of the chapter will break the following definition into its components and analyse all of them in detail. The definition begins by emphasising that AI is machine-based, meaning that it functions via computer processes and preprogrammed algorithms. The definition continues by referring to the use of particular techniques and approaches that are included in the AI Act, which suggests that AI is a broad category that includes a variety of approaches and technology.¹¹⁷ It also adds that AI is built to accomplish particular goals established by people, highlighting the importance of human involvement and oversight in determining AI's function and purpose, while emphasising autonomy. Lastly, a reference to outputs from AI systems also exists, which includes content, predictions, suggestions, and decisions.¹¹⁸

¹¹² PwC CISAI 'Bot.Me: A revolutionary partnership. How AI is pushing man and machine closer together', Consumer Intelligence Series, <<https://www.pwc.in/assets/pdfs/consulting/digital-enablement-advisory1/pwc-botme-booklet.pdf>>, accessed 18 April 2024

¹¹³ Andreas Kaplan and Michael Haenlein, 'Siri, Siri, in My Hand: Who's the Fairest in the Land? On the Interpretations, Illustrations, and Implications of Artificial Intelligence', 62(1) Business Horizons (2019), p. 16, <<https://www.sciencedirect.com/science/article/pii/S0007681318301393>>, accessed 3 May 2024

¹¹⁴ Christopher Manning, 'Artificial Intelligence Definitions', Human-Centered Artificial Intelligence, Stanford University, 2020, <<https://hai.stanford.edu/sites/default/files/2020-09/AI-Definitions-HAI.pdf>>, (April 18, 2024).

¹¹⁵ Artificial Intelligence Act (hereinafter "AI Act"), P9_TA(2024)0138, <https://www.europarl.europa.eu/doceo/document/TA-9-2024-0138-FNL-COR01_EN.pdf>, Note: Text has not yet undergone legal-linguistic finalisation.

¹¹⁶ Ibid., Art. 3(1).

¹¹⁷ 'The EU Artificial Intelligence Act: Our 16 Key Takeaways, Stibbe (2024), <<https://www.stibbe.com/publications-and-insights/the-eu-artificial-intelligence-act-our-16-key-takeaways>>, accessed 8 May 2024.

¹¹⁸ Ibid

Ultimately, despite the absence of a global definition, based upon diverse explanations mentioned in this section, artificial intelligence can be understood as a scientific attempt to provide machines with cognitive capacity to learn, reason, adapt, and solve complex problems on their own in a variety of domains. By utilising sophisticated algorithms, data analytics, and computational models, this attempt aims to simulate and enhance human-like intelligence, thereby transforming technological innovation, automation, and decision-making.

3.2. Intelligence levels of AI

AI has been in our daily lives since a while now with constant developments in computer capacity, cognitive skills, and algorithmic sophistication. To grasp the notion of AI, it is important to understand the functioning behind the system, therefore this section will peer over the main levels (types) of AI.

Apart from the definitions provided earlier, AI can also be broadly defined as a range of potential intelligence levels and capabilities, which is typically classified into three categories: Artificial Narrow Intelligence (ANI), Artificial General Intelligence (AGI), and Artificial Superintelligence (ASI).¹¹⁹ Each level represents a progressive stage in the evolution of AI, characterised by expanding cognitive capabilities and potential implications for society.

To start with, the most commonly used type of artificial intelligence today is ANI, which is also referred to as Weak AI. It is designed to carry out a single task or a restricted set of tasks, like recommendation systems, image recognition, audio recognition, facial recognition, and natural language processing.¹²⁰ ANI is the simplest type of AI, which uses human-initiated machine learning algorithms that are trained on vast volumes of data to detect patterns and determine outcomes. Its abilities are restricted to carrying out duties within its designated domain with excellence. Nevertheless, narrow AI is limited to the tasks for which it was designed and cannot generalise.¹²¹

To take one example, ChatGPT is one of the most popular ANI products, which excels at generating human-like text responses based on the input it receives but is limited to the tasks it is programmed for and lacks the general cognitive abilities of higher-level AI systems like AGI or ASI.¹²²

Apart from the classification of the levels of AI, ANI, in itself, also has two main types.¹²³ The first type of ANI is known as Symbolic AI (SAI), and it was the most popular method in the early phases of contemporary AI research. The underlying structure and operational behaviour of SAI software are determined by these rules, which form its basis. When input data is easily

¹¹⁹ Kaplan and Haenlein (n 113) 15

¹²⁰ José María Guerrero, 'Mind Mapping and Artificial Intelligence', Academic Press (2023), p. 159, <<https://www.sciencedirect.com/science/article/pii/B9780128201190000108>>, accessed 3 May 2024

¹²¹ Ben Dickson, 'What Is Artificial Narrow Intelligence (Narrow AI)? - TechTalks' (2020), <<https://bdttechtalks.com/2020/04/09/what-is-narrow-artificial-intelligence-ani/>>, accessed 3 May 2024

¹²² Aslihan Unal and Izzet Kilinch, 'The Feasibility of Artificial Intelligence Performing as CEO: The Vizier-Shah Theory' Vol. 23 (6) Foresight (2021), p. 715, <<https://doi.org/10.1108/FS-02-2021-0048>>, accessed 3 May 2024

¹²³ Dickson (n 121)

converted into symbolic representations and the governing principles are clearly established, SAI becomes very beneficial.¹²⁴ However, SAI's scaling problems are a major disadvantage, as they are ineffective at solving generalised problems because the number of rules needed to solve a problem grows exponentially with its complexity.¹²⁵

Machine learning (ML) is the second and more advanced category of ANI, which is relevant as the AI tools used in M&A due diligence that are considered in this thesis use machine learning, and it is a different programming paradigm from SAI. As it is important to understand the programming behind the AI tools used in due diligence processes, this section will explain the working mechanism of machine learning to some extent without delving deep into its more technical characteristics.

Machine learning mainly operates within the framework of ANI, leveraging techniques such as supervised learning, unsupervised learning, and reinforcement learning to analyse data, extract patterns, and make predictions. In supervised learning, input-output pairs are given to a model during its training on labeled data in order to facilitate the learning process. On the other hand, reinforcement learning concentrates on figuring out the best course of action via trial and error, while unsupervised learning aims to identify significant patterns from unlabelled data.¹²⁶

Furthermore, when creating a machine learning system, programmers build a model and then train it with a large number of examples. The rule-based programming feature of SAI is not at all like this training approach. These examples are analysed by ML algorithms, which produce a model that can carry out particular prediction and classification tasks on its own, which is considered an important element required in due diligence processes.¹²⁷

As this section has explained the specific characteristics of types of AI, the upcoming section will focus on how these types, with their peculiarities, can be useful in M&A due diligence processes.

Since their development still seems to be far-reaching considering their potentially extremely developed capacity and the irrelevance to the main topic, AGI and ASI will not be discussed thoroughly in this thesis.¹²⁸

3.3. AI integrated M&A due diligence - A solution to traditional complexities?

The skyrocketing growth in technology, thus in AI, paves the way for a more developed society by achieving further while facing less complexities and manual labour by human beings. It

¹²⁴ Guerrero (n 120) 160

¹²⁵ Ibid

¹²⁶ Ibid

¹²⁷ Ibid

¹²⁸ Gary Marcus, 'Artificial General Intelligence: Why Aren't We There Yet?', Allen Institute for AI (2017), <<https://www.youtube.com/watch?v=7dnN3P2bCJo>>, accessed 3 May 2024

should come as no surprise that, already today, AI is extensively integrated in a vast range of fields, starting from finance, marketing, logistics to healthcare, and etc.

But can AI be used in the legal field as well? The answer to this question is, absolutely, yes, the AI tools have not bypassed the legal field. One example of such tools can be 'Blue J Legal', which uses artificial intelligence for the automation of legal documents. Using machine learning, this software examines contracts and other legal texts to identify necessary patterns, therefore enables an automated drafting of standard legal documents and creates specific templates.¹²⁹ Using such AI tools enhance legal affairs by increasing speed and accuracy, while decreasing costs and time spent, as they automate monotonous and time-consuming duties like legal research and document analysis. As a result, legal practitioners can concentrate on the more strategic elements of the due diligence process.¹³⁰ Therefore why not to use such tools in M&As, one of the most complex legal matters, to optimise merger processes?

Among the types of AI Machine learning and symbolic artificial intelligence are especially relevant in the context of M&A due diligence. Symbolic AI, as explained in the previous section, is characterised by rule-based reasoning and expert systems. It provides interpretability and transparency, which makes it appropriate for situations where decisions are made analytically.¹³¹ Additionally, SAI can help with contract adherence, identification of regulatory compliance issues, and legal document analysis during the due diligence process. Through the integration of domain-specific knowledge and regulations into expert systems, SAI can provide thorough assessments of the operational, financial, and legal aspects of target companies.¹³²

However, machine learning is particularly good at using explicit programming to discover patterns and insights from big datasets. ML techniques, such as deep learning models, have proven to be remarkably effective in predictive modelling, error detection, and data analysis. ML algorithms can also sort through enormous volumes of data, including contracts and documents, in M&A due diligence, spot important patterns, and forecast possible risks or benefits to speed up the due diligence process.¹³³ This also reduces the possibility of human error and saves a significant amount of time, guaranteeing a more thorough and accurate examination.¹³⁴ Thus, decision-makers are given the capacity by ML to make well-informed decisions and optimise merge outcomes by utilising historical data and learning from previous transactions. Additionally, AI tools guarantee continuous access to legal research and

¹²⁹ Benjamin Alarie, Anthony Niblett & Albert H. Yoon, 'How Artificial Intelligence Will Affect the Practice of Law' 68 U Toronto LJ (2018) p. 106, <<https://heinonline.org/HOL/P?h=hein.journals/utlj68&i=291>>, accessed 10 April 2024

¹³⁰ DeVault, and others (n 5)

¹³¹ Kosta Mitrofanskiy, 'AI in Legal Industry: Key Benefits and Trends', Intellisoft (2024), <<https://intellisoft.io/artificial-intelligence-ai-in-the-law-industry-key-trends-examples-usages/>>, accessed 9 May 2024

¹³² 'Boosting the Use of Artificial Intelligence in Europe's Micro, Small and Medium-Sized Enterprises', European Economic and Social Committee (EESC), (2021), p. 31, <<https://www.eesc.europa.eu/en/our-work/publications-other-work/publications/boosting-use-artificial-intelligence-europes-micro-small-and-medium-sized-enterprises>>, accessed 13 May 2024

¹³³ Mitrofanskiy (n 131)

¹³⁴ DeVault and others (n 5)

document analysis capabilities, which can be especially helpful in M&A transactions with tight deadlines.¹³⁵

To sum up, it is possible for practitioners to fully utilise AI technologies in M&A due diligence procedures by having a thorough understanding of the specifics of ANI, including its subtypes like SAI and ML. Through a combination of AI systems' features with the particular demands of due diligence assignments, companies can optimise productivity, reduce risks, improve accuracy, and generate value over the course of a merger deal. This, therefore, enables legal professionals, companies, and their clients to make better decisions, while reducing costs and time.¹³⁶ It can also be seen from the current developments that future M&A due diligence will be shaped by the grasp of AI's potential and restrictions as the regulatory environment changes and businesses adopt AI-driven strategies.¹³⁷

3.4. Potential practical drawbacks of AI usage

Even though AI holds great potential for transforming M&A due diligence activities by enhancing efficiency, improving research capacities, and decreasing expenses, these benefits come with some serious disadvantages that should be carefully considered.¹³⁸ Thus, those possible drawbacks that may emerge while implementing AI tools in mergers, particularly in the due diligence stage, will be explored in this section.

Potential cost and implementation challenges

The first thing that usually comes to mind when considering AI tools is how much money they will cost to deploy. Implementing AI technology, training staff, and modifying current processes can all come at a high cost. Moreover, the intricacy of AI systems may provide integration difficulties, necessitating modifications to current procedures and possible interruptions to day-to-day activities. However, it should also be considered that such costs may possibly emerge only at the beginning of deployment.¹³⁹

On the other hand, it should also be taken into account that, compared to the ever-continuing cost ineffectiveness of traditional due diligence processes, the costs for installing and later maintaining such AI tools may well be beneficial and less costly in the long run.¹⁴⁰

¹³⁵ Ibid

¹³⁶ Nima Noghrehkar, 'AI and the Future of Mergers and Acquisitions', Institute for Mergers, Acquisitions, and Alliances (IMAA) (2023), <<https://imaa-institute.org/blog/the-future-role-of-artificial-intelligence-in-mergers-and-acquisitions/>>, accessed 13 May 2024

¹³⁷ 'AI and the Legal Profession in 2024', Bloomberg Law (2023), p. 3, <<https://pro.bloomberglaw.com/insights/business-of-law/ai-and-the-legal-profession-in-2024/>>, accessed 13 May 2024

¹³⁸ Marc Vogelsang, 'How AI Will Impact Due Diligence in M&A Transactions', <https://www.ey.com/en_ch/strategy-transactions/how-ai-will-impact-due-diligence-in-m-and-a-transactions>, accessed 9 May 2024

¹³⁹ Giacomo Pescatore and Patrick Hannon, "No Synthesizers" – AI and M&A, Possible Effects on the Due Diligence Stage, Cartwright Pescatore (2024), <<https://www.becp.eu/2024/02/21/no-synthesizers-ai-and-ma-possible-effects-on-the-due-diligence-stage-2/>>, accessed 9 May 2024

¹⁴⁰ EESC (n 132) 32

Accuracy

The quality of AI systems indeed depends on the data they are trained on. Therefore, it can be argued that, during due diligence, inadequate or inaccurate data sets might result in incorrect analysis and misleading results.¹⁴¹ Large volumes of data from many sources are frequently involved in M&A transactions, thus it can be also argued that inconsistencies or inaccuracies in this data can be built up as “hallucinations” by AI algorithms, resulting in inaccurate evaluations of the target company's financial state, legal status, or competitive position.¹⁴² However, it is important to bear in mind that traditional due diligence is also subject to inaccuracies.

First of all, human reviewers are prone to errors in data analysis, missing important details, and misinterpreting complex financial records. The huge amount of data involved in merger transactions can be excessive for human reviewers to handle, which might raise the likelihood of errors in assessment, missed alerts, and ultimately incorrect due diligence conclusions. The result of these errors stands out in the high rates of failures in mergers.¹⁴³

Second, AI systems are ever-changing and algorithms for machine learning can be continuously taught on new data sets, which gradually increases their accuracy and capacity for pattern recognition. It is also worth emphasising that, AI is able to mitigate the impact of past errors or data inconsistencies that may have existed in the initial training set of data thanks to this continuous learning process.¹⁴⁴

Finally, the outcomes of an AI analysis don't have to be completely a black box¹⁴⁵. Explainable AI (XAI)¹⁴⁶ solutions can help M&A teams comprehend the logic behind AI-generated insights. This enables human specialists to verify the correctness of AI-driven analysis, detect any inaccuracies, and evaluate the quality of the data used before reaching final conclusions.¹⁴⁷

¹⁴¹ Jana Soukupová, ‘AI-Based Legal Technology: A Critical Assessment of the Current Use of Artificial Intelligence in Legal Practice’, 15 Masaryk University Journal of Law and Technology (2021), p. 285, <<https://journals.muni.cz/mujlt/article/view/14504>>, accessed 9 May 2024

¹⁴² Vogelsang (n 138)

¹⁴³ Gomes (n 68)

¹⁴⁴ Ibid

¹⁴⁵ “Black boxes in the context of artificial intelligence refer to complex AI systems or models that operate in an opaque or incomprehensible manner, making it challenging for users to understand how the system arrives at its decisions or predictions” - Charlotte A. Tschider, ‘Beyond the “Black Box”’, 98 Denver Law Review (2020), p. 683, <<https://heinonline.org/HOL/P?h=hein.journals/denlr98&i=688>>, accessed 7 May 2024

¹⁴⁶ “Explainable AI (XAI) is a field within AI research that focuses on developing algorithms, models, and techniques that enhance the transparency and interpretability of AI systems. XAI techniques aim to reveal the inner workings of AI models, making the decision-making process more transparent and interpretable for users. They also help users understand why a particular decision was reached by an AI system, enabling them to validate the outcomes, identify potential biases, and ensure that the AI system operates in an ethical and reliable manner.” - Feiyu Xu and others, ‘Natural Language Processing and Chinese Computing’, Springer International Publishing (2019), p. 563, <https://link.springer.com/chapter/10.1007/978-3-030-32236-6_51>, accessed 7 May 2024

¹⁴⁷ Karen McGregor Richmond and others, ‘Explainable AI and Law: An Evidential Survey’, 3 Digital Society (2023), p. 6, <<https://doi.org/10.1007/s44206-023-00081-z>>, accessed 15 May 2024

Resistance to Change

As a matter of fact and understandably, not every legal practitioner is quick to adopt new technology. Resistance to using AI tools can be attributed to a lack of familiarity with the technology, concerns about job security, and a preference for conventional techniques.¹⁴⁸

However, to overcome this resistance and promote an innovative culture within law firms, it is necessary, and not very costly, to implement training programs, effective strategies, and emphasise the potential advantages of artificial intelligence.¹⁴⁹ Such a familiarity will, certainly, incentivize the usage of AI, thus contributing to more efficient due diligence processes.¹⁵⁰

Potential Job Losses

The expected possibility of job loss is one of the most concerning issues with AI, as was briefly touched upon in the previous paragraph. Paralegals, legal assistants, and even associates with specialised knowledge in these fields may be greatly impacted by the automation of processes such as legal document review, financial analysis, and compatibility test.¹⁵¹

On the contrary, even though the use of AI in M&A processes may seem at first glance as resulting in changes to the nature of work and the workforce as mentioned in the previous paragraph, in reality, it actually offers legal professionals the chance to upskill, adapt, and concentrate on higher-value jobs.¹⁵² This means that while being used only as tools, AI technologies can enhance the abilities of human experts and help them drive more successful M&A transactions, rather than replacing them, as will be delved deeper in the following chapters.

Safeguarding sensitive data

Typically, M&As deal with extremely sensitive data, such as confidential data of clients or financial details of the target company, and etc. Sensitive data, in this context, might include names, addresses, and other personal details regarding the employees of the target company. It might also entail performance and disciplinary records about employee performance when assessing the workforce details of the target company.¹⁵³ Considering this, data security might be seen as an issue when using AI systems for operations involving such data.¹⁵⁴ Besides, there may be serious risks associated with hacking incidents, unauthorised access, and the abuse of sensitive information.¹⁵⁵

¹⁴⁸ Mitrofanskiy (n 131)

¹⁴⁹ Ibid

¹⁵⁰ CFI (n 46)

¹⁵¹ Mitrofanskiy (n 131)

¹⁵² Soukupová (n 141) 286

¹⁵³ 'How to handle employee data risks in M&A transactions', Bird&Bird (2024), <<https://www.twobirds.com/-/media/new-website-content/pdfs/capabilities/privacy-and-data-protection/bird-,-a-,-bird-employee-data-risks-in-m,-a,-a-transactions---infographic-2024.pdf>>, accessed 17 May 2024

¹⁵⁴ Soukupová (n 141) 286

¹⁵⁵ Anas Baig, 'The Impact of the GDPR on Artificial Intelligence', Securiti (2023), <<https://securiti.ai/impact-of-the-gdpr-on-artificial-intelligence/>>, accessed 11 May 2024

Furthermore, as the main ruler of personal data protection matters, GDPR¹⁵⁶ compliance is critical in the context of M&A due diligence, as large volumes of sensitive data are frequently processed and analysed.¹⁵⁷ Therefore, strict guidelines for the processing of personal data are established by GDPR, which includes clauses concerning lawfulness, fairness, transparency, purpose limitation, data minimization, accuracy, credibility, and confidentiality. In addition, the GDPR gives people specific rights regarding their personal data, including the ability to access, modify, remove, limit, and relocate their data, as well as the opportunity to object to processing and automated decision-making.¹⁵⁸

Therefore, a few important factors need to be taken into account in order for AI technologies used in M&A due diligence to be GDPR compliant. First and foremost, the processing of data must have a legitimate basis as specified by GDPR, such as the need to handle data in order to fulfil legal requirements or carry out a contract. Secondly, AI solutions must also guarantee transparency in relation to data processing operations, giving people clear information about how their data is handled and processed.¹⁵⁹ Additionally, Data Protection Impact Assessments (DPIAs) are required by Article 35 of the GDPR for AI applications that present a substantial risk to individuals' rights and freedoms. While at first glance this assessment might be seen as limiting evaluation capabilities of AI providers, such an assessment system can actually be seen as an aid to organisations in recognizing and addressing potential data protection hazards before implementing AI systems.¹⁶⁰

Furthermore, even though there are reasons to be concerned about data security when using AI in M&A due diligence, this might actually be seen as a chance to improve security measures rather than a justification for avoiding AI completely.¹⁶¹ In other words, it is a fact that today due diligence already goes beyond paper records. Emails, spreadsheets, and other digital files have been used widely since a long time in this technology era, proving that safeguarding sensitive data is not an exclusive concern that belongs to AI tools.¹⁶² The use of AI just broadens the scope of data analysis, which already includes numerous digital sources. Additionally, traditional safeguards for existing document reviewing tools may well be strengthened by the application of AI, while adding a layer of automation and analysis to digital data, which can sometimes be even more prone to human error.¹⁶³

¹⁵⁶ 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, and Repealing Directive 95/46/EC (General Data Protection Regulation) (thereinafter GDPR), (Text with EEA relevance) (2016)

¹⁵⁷ 'Key Issue 6: Interplay with GDPR - EU AI Act', <<https://www.euaiact.com/key-issue/6>>, accessed 10 May 2024

¹⁵⁸ Baig (n 155)

¹⁵⁹ Ibid

¹⁶⁰ Ibid

¹⁶¹ Pia Jarantilla, 'M&A Due Diligence in the Digital Age: Cybersecurity and Data Privacy Considerations', Institute for Mergers, Acquisitions, and Alliances (IMAA) (2023), <<https://imaa-institute.org/blog/cybersecurity-due-diligence/>>, accessed 9 May 2024

¹⁶² Christopher M. Caparelli and others, 'Privacy and Data Security Due Diligence: The Importance of Implementing Post-Closing Improvements', *Torys Quarterly* (2022), <<https://www.torys.com/en/our-latest-thinking/publications/2022/04/privacy-and-data-security-due-diligence>>, accessed 9 May 2024

¹⁶³ Ibid

Ethical Challenges and Legal Uncertainties

The use of AI in mergers might also raise some ethical questions. For example, who has responsibility for the analyses algorithms conduct?¹⁶⁴ Or how might algorithmic decision-making be made more transparent? Which ethical standards direct the creation and utilisation of authorised AI? What happens if discrimination occurs by the usage of AI tools?¹⁶⁵ As the legal frameworks regulating the use of AI are still developing, unfortunately, these problems are mostly unsolved.

However, the recently approved AI Act, which will be analysed thoroughly in upcoming paragraphs, and future up-to-date legal acts can be handy tools to regulate AI-related matters, including ethical challenges and legal uncertainties, thus helping to find answers to the above questions.

¹⁶⁴ Unal and Kilinch (n 122) 716

¹⁶⁵ Soukupová (n 141) 287

4. Compliance with EU Regulatory Framework - Aspects to be Considered

“Success in creating AI would be the biggest event in human history. Unfortunately, it might also be the last, unless we learn how to avoid the risks.”¹⁶⁶

As outlined in the preceding chapter, the utilisation of AI becomes increasingly popular in M&As as well and the integration of such tools presents promise as a prospective solution to the challenges encountered, as outlined in Chapter 2, within due diligence processes, as delineated in Chapter 3. Nonetheless, the deployment of AI in such contexts is not without its risks which has been underscored by the EU as well. To uphold fundamental rights and safeguard public interest, the EU has established a regulatory framework establishing the parameters regulating the utilisation of AI within these processes. Thus, building on the understanding of AI and due diligence process that is grasped throughout this thesis, this chapter goes on an examination of these regulatory measures, with a particular focus on the recently approved EU AI Act, clarifying its provisions and implications within the domain of M&A due diligence. This legal framework, in particular with regard to high-risk applications, provides a thorough approach to managing the possible risks connected with the usage of AI.¹⁶⁷

Since the beginning of the discussions about the approval of the AI Act, it has started to be seen as a regulatory burden, specifically in the business sector. However, instead of seeing the AI Act as an armed guardian, it is better to regard it as a piece of hope for the safe and effective adoption of AI technologies throughout Europe, considering that it is aimed to provide a framework to guarantee that AI systems be developed and used responsibly and ethically, rather than limiting innovation.¹⁶⁸ Moreover, the Act seeks to protect fundamental rights and values while boosting trust and confidence in AI technologies by outlining explicit guidelines and standards for AI developers, operators, and users.

While supporting the above, Alex Combessie, the CEO and co-founder of the French open-source AI startup Giskard, described the EU Parliament's final approval of the AI Act as a relief and a major turning point. While accepting that the Act sets extra rules and requirements for developers of fundamental models and high-risk AI systems, which are classified as potential "systemic risks," he also noted that these safeguards can effectively be put into practice to have successfully implemented AI tools in place.¹⁶⁹

¹⁶⁶ “‘The Best or Worst Thing to Happen to Humanity’ - Stephen Hawking Launches Centre for the Future of Intelligence”, University of Cambridge, 19 October 2016, <<https://www.cam.ac.uk/research/news/the-best-or-worst-thing-to-happen-to-humanity-stephen-hawking-launches-centre-for-the-future-of->>, accessed 2 May 2024

¹⁶⁷ ‘AI Act - Shaping Europe’s Digital Future’ (2024), <<https://digital-strategy.ec.europa.eu/en/policies/regulatory-framework-ai>>, accessed 9 May 2024

¹⁶⁸ Ibid

¹⁶⁹ Pascale Davies, ‘The EU Passed the First AI Law. Tech Experts Say It’s “Bittersweet”’, Euronews (2024), <<https://www.euronews.com/next/2024/03/16/eu-ai-act-reaction-tech-experts-say-the-worlds-first-ai-law-is-historic-but-bittersweet>>, accessed 13 May 2024

To sum up, this chapter will explore the compliance of AI implementation during M&A due diligence, particularly in light of the newly approved AI Act. With a thorough awareness of the legal landscape, the effects of AI on conventional due diligence procedures can be objectively evaluated while taking into account the positives and negatives, that have already been covered in forecited chapters, for both conventional and AI-integrated due diligence situations.

4.1. Brief introduction regarding the AI Act

Before delving into the intricacies of the AI Act, it would be worth giving a brief introduction about its context and the approval process. While formally known as the Proposal for a Regulation of the European Parliament and of the Council laying down harmonised rules on artificial intelligence, it is a comprehensive regulatory framework that the European Commission has proposed to control the development, implementation, and use of artificial intelligence systems within the EU.¹⁷⁰ The Act, which was introduced in April 2021 and approved in March 2024, is an innovative attempt that supports legitimate and responsible use of AI while encouraging innovation and competitiveness in the EU digital market.¹⁷¹ It is also worth mentioning that the Act also specifies that the legislation does not apply to areas outside the scope of EU regulations and cannot in any way interfere with member state jurisdiction over matters of national security or any entity designated to deal with matters in this regard.¹⁷²

When it comes to extensively clarifying the aim of the AI Act, it seeks to improve internal market efficiency by creating a uniform legal framework that corresponds to the development, launch, deployment, and use of AI systems within the Union in accordance with Union principles.¹⁷³ The goal is to mitigate the negative effects of AI systems within the Union while also promoting innovation. It also aims to protect human-centred and trustworthy AI while maintaining a high standard of protection for health, safety, and fundamental rights as outlined in the European Union's Charter of Fundamental Rights (the "Charter"), which includes democratic principles, the rule of law, and environmental preservation.¹⁷⁴ Additionally, the Act attempts to lessen the possible negative effects on people and society by placing further limitations and requirements on developers of high-risk AI systems and underlying models, while following a risk-based approach.¹⁷⁵

¹⁷⁰ 'EU Artificial Intelligence Act | Up-to-Date Developments and Analyses of the EU AI Act', Future of Life Institute (2024), <<https://artificialintelligenceact.eu/>>, accessed 7 May 2024

¹⁷¹ Ibid

¹⁷² 'Artificial Intelligence Act: Council and Parliament Strike a Deal on the First Rules for AI in the World', Press Release (2023), Council of the EU, <<https://www.consilium.europa.eu/en/press/press-releases/2023/12/09/artificial-intelligence-act-council-and-parliament-strike-a-deal-on-the-first-worldwide-rules-for-ai/>>, accessed 9 May 2024

¹⁷³ Ibid

¹⁷⁴ Shaping Europe's Digital Future (n 167)

¹⁷⁵ AI Act, Recital 1

4.2. Defining AI Systems

As mentioned in the earlier chapters, the Commission has a very broad definition of AI in its newly approved AI Act, while referring to artificial intelligence as “AI Systems”. But what does this definition comprise?

In simpler terms, the AI Act defines “AI systems” as a machine or software that can act on its own, with varying levels of autonomy, adapt over time while already being in use, and figure out how to produce various outputs like forecasts, created content, suggestions, or choices, which can affect both the real world and digital spaces.¹⁷⁶ The scope of this newly formed description and its consequences for AI system developers, operators, and users, however, are still subject to discussion.¹⁷⁷

Specifically, the part emphasising the adaptiveness after deployment of AI tools, in essence, captures the main characteristic of machine learning, which therefore approves the approach followed in previous sections arguing that AI tools used in M&A due diligence would probably entail machine learning. Additionally, by specifying the examples of outputs AI systems can produce, the definition provides concrete examples of AI tools, whilst helping to understand the practical applications of AI, thus making the definition more relatable and clear.¹⁷⁸

4.3. Controlled actors

After analysing the definition of AI Systems, it is essential to look at who is to be controlled by the provisions of the Act and analyse its implications for companies engaged in M&A transactions, particularly in the context of due diligence activities. Thus, the subject scope of the AI Act covers the following seven distinct categories, establishing the regulatory boundaries of the proposed legislation:

1. Providers of AI Systems and General-Purpose AI Models: The AI Act applies to providers that introduce AI systems or general-purpose AI models into the Union market, regardless of where they are located.¹⁷⁹ This clause emphasises the significance of complying with the regulatory framework for businesses using AI tools for due diligence, irrespective of the source of the AI technology.

2. AI System Deployers in the Union: The Act's provisions apply to the entities that have their place of establishment or are located within the Union that use AI systems in their services or operations.¹⁸⁰ Therefore, it contends that AI-tool deploying companies conducting due diligence procedures have to abide by the legal standards controlling the implementation and

¹⁷⁶ AI Act, Art. 3(1)

¹⁷⁷ Martin Ebers and others, ‘The European Commission’s Proposal for an Artificial Intelligence Act—A Critical Assessment by Members of the Robotics and AI Law Society (RAILS)’, (2021), 4 J 589, <<https://www.mdpi.com/2571-8800/4/4/43>>, accessed 6 May 2024

¹⁷⁸ AI Act, Art. 3(1)

¹⁷⁹ AI Act, Art. 2(a)

¹⁸⁰ AI Act, Art. 2(b)

use of AI systems, regardless of whether they are a part of an M&A transaction or other corporate operations.

3. Providers and Deployers in Third-Country Companies with Impact on Union Operations: The AI Act expands its scope to include both provider and deployers, which have their place of establishment or location in a third country and whose AI systems (output) have an influence on Union operations.¹⁸¹ This clause emphasises the regulatory framework's extraterritorial reach and the requirement for compliance from businesses using AI technologies in due diligence procedures, even if the suppliers or deployers are located outside of the Union.

4. Importers and Distributors of AI Systems: The AI Act's regulations apply to importers and distributors of AI systems, wherever they may be located.¹⁸² When obtaining AI technologies from foreign suppliers to employ in due diligence processes, businesses need to make sure that consumer protection laws and regulatory requirements are met.

5. Product Manufacturers Integrating AI Systems: The AI Act's regulations must be followed by manufacturers who incorporate AI systems into their goods and sell them under their trademark or brand.¹⁸³ This clause emphasises the need for openness, security, and moral principles for businesses using exclusive tools or software to integrate AI technology into due diligence procedures.

6. Authorised Representatives of Non-EU Providers: The AI Act covers authorised representatives of providers who are not based in the Union.¹⁸⁴ To ensure compliance with EU regulations and guidelines, companies that get AI technologies from non-EU providers for use in due diligence procedures must designate representatives to fulfil their legal obligations.

7. Affected Persons within the Union: The AI Act covers both individuals and organisations inside the Union that could be impacted by the implementation or use of AI technologies.¹⁸⁵ This covers target companies going through due diligence as well as investors and employees who are participating in M&A transactions. In the context of AI deployment, the Act seeks to safeguard their interests, safety, and rights.

It is important to note that, spoiler alert, AI tools used in M&A due diligence are unlikely to fall under the high-risk category defined by the AI Act (see Chapter 4.6). However, as the AI Act and its categorization evolve rapidly with the ever-continuing advances in AI, it's crucial to consider the responsibilities of providers, distributors, and deployers, in case those tools might fall under the extended high-risk categorization in the future.

Therefore, Article 2 of the AI Act establishes a broad scope that encompasses providers, distributors, and deployers (also regarded as users) of AI systems, including those intended for M&A due diligence. This means that companies involved in the development, distribution, or usage of AI tools for due diligence purposes are subject to the regulations laid out in the AI

¹⁸¹ AI Act, Art. 2(c)

¹⁸² AI Act, Art. 2(d)

¹⁸³ AI Act, Art. 2(e)

¹⁸⁴ AI Act, Art. 2(f)

¹⁸⁵ AI Act, Art. 2(g)

Act, irrespective of their role in the AI ecosystem and irrespective of their location, as effects in the Union are considered more crucial.

However, it is worth emphasising that the scope of obligations of providers and distributors would be broader in any case than the mere users of such tools, specifically in data protection and liability matters. The responsibilities of providers and importers mainly entail compliance with the high-risk AI systems they import or distribute. In essence, the importer has to verify CE (European Conformity) compliance, whilst the provider has to make sure, by examining necessary documents, that the system is compliant.¹⁸⁶ Within this context, it becomes evident that the AI Act mandates the providers or importers of an AI system to conduct a risk assessment, while according to the GDPR, the user, as defined under the AI Act, assumes the role of the "data controller" responsible for risk assessment.¹⁸⁷ This shift in roles results in the exclusion of users from any obligations regarding risk assessment under the Act.¹⁸⁸ However, being exempted from risk assessment does not exclude other responsibilities of deployers. One important point is that the deployer should follow the provider's instructions for using the high-risk AI system, which has significant implications for any potential liability discussions with the provider. As a result, when a high-risk AI system is used and causes harm to a company or its customers, the AI system provider's main defence will likely be that the deployer did not follow the guidelines properly. Therefore, the deployer is required to provide human oversight wherever possible and to supervise the system's operation as well as the data input.¹⁸⁹

Nevertheless, the important aspect lies in analysing whether the specific AI tools intended for M&A due diligence fall under the provisions of prohibited systems or high-risk systems, outlined in the Act, considering their importance and strict control. Identifying whether these tools meet the criteria for high-risk classification or if they engage in any of the prohibited practices is essential for ensuring compliance with the regulatory framework. The following sections will delve deeper into the evaluation of AI tools used in M&A due diligence to determine their alignment with the provisions of the AI Act.

4.4. General Scope

The provisions of the AI Act provide a comprehensive framework that overlaps with the use of AI technologies in due diligence procedures. In order to maintain compliance while mitigating any possible legal and ethical concerns, companies that engage in due diligence must navigate the following regulations:

*High-Risk AI Systems*¹⁹⁰

Articles 102-109 and Article 112 contain special rules that apply to AI systems that are deemed high-risk according to Article 6(1). Hence, businesses using AI tools for due diligence need to

¹⁸⁶ 'Decoding the EU AI Act', KPMG (2024), <<https://assets.kpmg.com/content/dam/kpmg/xx/pdf/2024/02/decoding-the-eu-artificial-intelligence-act.pdf>>

¹⁸⁷ AI Act, Art. 23 and 24

¹⁸⁸ Ebers (n 177) 591

¹⁸⁹ Stibbe (n 117)

¹⁹⁰ AI Act, Art. 6

determine whether their systems fit within this category and follow the guidelines set forth by the relevant regulations. Compliance with these regulations guarantees the security, transparency, and responsibility of AI systems employed during the due diligence procedure. Therefore, whether AI tools used in due diligence may fall under high-risk AI systems will be discussed in the following sections.

*Scope and Exclusions*¹⁹¹

The Act defines the boundaries of its use, leaving some fields and activities outside of its scope. In particular, the Act does not regulate AI systems created solely for scientific study and development, nor does it apply to AI systems employed exclusively for military, defence, or national security objectives.¹⁹² Since AI tools deployed for due diligence do not fall under any of those general exempted categories, they may fall under the scope of the AI Act. However, the analysis regarding the potential of falling under prohibited practices will also be discussed in the next section.

*Protection of Personal Data*¹⁹³

AI systems used for due diligence must comply with Union law on the protection of personal data, including GDPR. When processing personal data as part of due diligence procedures utilising AI tools, businesses are required to fulfil privacy rights and data protection rules.¹⁹⁴

To summarise, the AI Act's broadness offers a complex regulatory framework that interacts with the use of AI tools in due diligence procedures. Companies must follow the Act's guidelines to guarantee compliance and reduce potential risks to their operations, ethical principles, and the law that comes along with deploying AI in due diligence. Companies may use AI tools efficiently while encouraging transparency, accountability, and responsible AI governance by following legal obligations and upholding ethical standards.¹⁹⁵

4.5. Prohibited AI Practices

As already mentioned before, the AI Act proposes a risk-based classification while classifying AI systems into four different categories: Unacceptable risks (Prohibited AI Practices), high risks, limited risks, and minimal risks.¹⁹⁶ This section will analyse the Prohibited AI Practices, outlined in Article 5, which aims to safeguard individuals from the threat and harm caused by the implementation of AI.¹⁹⁷ AI systems that fall under this particular category are considered to pose an unacceptable risk, therefore are banned from being developed, deployed, or placed on the EU market.¹⁹⁸ Additionally, the Act requires AI tools that fall under this category - prohibited practices cease to exist within six months from the date of entry into force of the

¹⁹¹ AI Act, Articles 3, 4, 6, 8, 9, 10, 11, and 12

¹⁹² AI Act, Art. 2(3)

¹⁹³ AI Act, Art. 7

¹⁹⁴ Thompson (n 3)

¹⁹⁵ Ibid

¹⁹⁶ Shaping Europe's Digital Future (n 167)

¹⁹⁷ CoEU Press Release (n 172)

¹⁹⁸ 'Key Issue 3: Risk-Based Approach', <<https://www.euaiact.com/key-issue/3>>, accessed 11 May 2024

Act.¹⁹⁹ Companies must particularly be concerned regarding the clause on prohibited AI practices, as the fines can be substantial. In other words, violating a forbidden AI practice could result in a penalty ranging up to EUR 35 million or 7% of the company's total global annual turnover, depending on the severity of the violation.²⁰⁰

Thus, the AI practices falling under the prohibited category will be mentioned below while considering whether AI tools that might be deployed in M&A due diligence processes would fall under any of those practices.

*Subliminal or Deceptive Techniques*²⁰¹

AI tools utilised in M&A due diligence are designed to enhance decision-making processes by providing insights derived from vast datasets and complex analyses. While these tools aim to facilitate informed and strategic decisions, it is essential to examine whether they could deliberately employ subliminal or deceptive techniques, as prohibited by the AI Act.

From the perspective of proponents of AI tools, the primary objective is to leverage advanced algorithms and machine learning models to extract meaningful patterns and trends from data, aiding in the identification of potential risks and opportunities in merger scenarios. These tools operate transparently, presenting findings based on objective data inputs and analytical methodologies, without intentionally manipulating or distorting decision-makers' perceptions.

However, it is crucial to acknowledge potential counterarguments. Despite their intent, AI tools may deliberately introduce biases or inaccuracies - hallucinations in the analysis, leading to inaccurate interpretations of information or recommendations.²⁰² Additionally, the complexity of AI algorithms could obscure the underlying logic or assumptions, making it challenging for users to fully comprehend the basis of the generated insights. In such cases, there's a risk that decision-makers may unknowingly rely on flawed or misleading conclusions, mirroring the effects of subliminal or deceptive techniques. Therefore, while AI tools themselves may not deliberately employ such practices, there is a need for robust oversight and transparency measures to ensure the integrity and reliability of their outputs in M&A due diligence processes. Thus, by ensuring that AI tools utilised in M&A due diligence are programmed with appropriate controls and oversight mechanisms, the likelihood of being classified under subliminal or deceptive techniques, therefore prohibited AI practices under the AI Act can be mitigated.

¹⁹⁹ The AI Act, recital 179

²⁰⁰ Stibbe (n 117)

²⁰¹ AI Act, Art. 2(1)(a)

²⁰² Pescatore and Hannon (n 139)

Exploiting Vulnerabilities²⁰³ and Social Scoring²⁰⁴

Considering some of their common characteristics, these two categories would be discussed together and analysed in the face of attributability of these categories to AI tools used in due diligence. Supporters of AI tools argue that the purpose of using these technologies in M&A due diligence is to find relevant patterns and trends in data sets while giving decision-makers important information. Artificial Intelligence algorithms are built to evaluate data in an unbiased and objective manner, reducing the possibility of exploiting weaknesses stemming from individual characteristics like age, disability, or socioeconomic standing. Furthermore, financial, operational, and market data are the primary focuses of AI techniques used in M&A due diligence, as opposed to individual characteristics or social behaviour. As a result, supporters contend that using AI technologies for due diligence reduces the likelihood of exploiting security holes or implementing social scoring techniques.

However, it is important to acknowledge potential counterarguments. AI systems, although well-intended, have the potential to unintentionally reproduce existing prejudices in the data utilised for analysis, producing results that vary depending on age, gender, or socioeconomic position. Moreover, these tools' algorithms can unintentionally favour some measures or indicators over others, which could disadvantage particular individuals or groups.²⁰⁵ There's a chance that AI techniques in the context of social scoring could unintentionally aid in the profiling or classification of individuals based on their financial background, business relationships, or other elements important to M&A deals. These actions might result in discrimination or unjust treatment, which would be against the AI Act's fundamental ideals of justice and equity.

Therefore, even though proponents of AI tools contend that they can increase M&A due diligence efficiency and accuracy, it is critical to carefully consider any potential consequences, including those related to social scoring and vulnerability exploitation. As mentioned for the previous category, protective measures including strict data validation procedures, transparency policies, and continuous oversight can be put in place to assist reduce these risks and guarantee adherence to the legal requirements outlined in the AI Act.

Other prohibited categories (less relevant)

As stated multiple times already, AI tools used in M&A due diligence processes are designed to specifically analyse market, financial, and operational data to support well-informed decision-making in commercial transactions. It can easily be claimed that these tools are unlikely to come under the other remaining prohibited AI techniques, which will be analysed below, mentioned in the AI Act due to their specific application within the mergers.

²⁰³ AI Act, Art. 2(1)(b)

²⁰⁴ AI Act, Art. 2(1)(c)

²⁰⁵ Soukupová (n 141) 290

First of all, *predictive criminal risk assessment*²⁰⁶ will not potentially be carried out by AI tools employed in M&A due diligence. Rather than creating criminal behaviour profiles of individuals, their main role is to evaluate the financial viability, strategic fit, and potential risks connected with merger transactions.

Second, *untargeted facial recognition*²⁰⁷ is not also potentially used by the due diligence AI tools. Since the focus of AI tools used in due diligence is on data analysis and risk assessment in the context of business transactions, rather than on personal identification, they do not take or analyse facial images for identifying purposes.

Thirdly, AI methods employed in M&A due diligence seem to have nothing to do with *emotion detection in the workplace*²⁰⁸, considering these tools don't evaluate people's emotional states, instead, they concentrate on statistical analysis. Their goal usually is to offer unbiased perceptions of the operational and financial standing of companies engaged in mergers and acquisitions.

Likewise, AI techniques used in M&A due diligence are possibly subject to *neither biometric categorization*²⁰⁹ nor *real-time remote biometric identification*²¹⁰. These technologies don't classify people according to biometric information that could be used to infer private information like political opinions or race. They also do not use remote biometric identification of individuals in real-time. Rather, they concentrate on doing business-related data analysis to help with merger transaction decision-making.

Even though, currently, the AI tools at hand do not seem to fall under any of the above-mentioned categories, new capabilities brought about by AI technological developments in future may overlap with the mentioned prohibited behaviours listed in the AI Act. As a result, legal frameworks must be continuously evaluated and adjusted to address these potential challenges.

²⁰⁶ AI Act, Art. 2(1)(d)

²⁰⁷ AI Act, Art. 2(1)(e)

²⁰⁸ AI Act, Art. 2(1)(f)

²⁰⁹ AI Act, Art. 2(1)(g)

²¹⁰ AI Act, Art. 2(1)(h)

4.6. High-risk AI systems

Since prohibited AI systems are analysed in the previous section, it is time to proceed to the next step - high-risk systems, which is probably one of the most important questions for companies deploying such tools. Article 6(1) of the AI Act outlines the cumulative criteria for identifying high-risk AI systems, irrespective of whether it is an independent product or a component of another product covered under specific EU legislation.²¹¹ These AI systems are considered to pose significant risks and are subject to strict requirements and conformity assessments before being allowed on the EU market.²¹² Therefore, the two cumulative conditions that must be met are:

- 1. The AI system is intended to be used as a safety component of a product, or the AI system itself is a product covered by the Union harmonisation legislation listed in Annex I,²¹³*
- 2. The product whose safety component is the AI system, or the AI system itself as a product, is required to undergo a third-party conformity assessment before being placed on the market or put into service, as per the Union harmonisation legislation listed in Annex I.²¹⁴*

In essence, Article 6(1) classifies AI systems as "high-risk" if they are used as critical safety components in regulated products or are standalone products subject to third-party conformity assessments under EU product safety laws listed in Annex I. This is to ensure high-risk AI systems used in such products meet stringent safety requirements before being marketed or used.²¹⁵

Meanwhile, Annex I, while being divided into two sections, lists various EU legislative acts related to product safety, such as the Machinery Directive, Toy Safety Directive, Radio Equipment Directive, and so on.²¹⁶ If Annex I is extensively analysed, it will be obvious from the listing that AI tools used in due diligence do not fall under any of those listed products. Moreover, considering those criteria are cumulative, the fact that the first criterion is not met already automatically eliminates the relevance of the second requirement.

Additionally, Annex III further specifies the below-mentioned areas which are automatically considered high-risk:

1. Biometrics: AI systems used for remote biometric identification, biometric categorization based on sensitive attributes, or emotion recognition.
2. Critical infrastructure: AI systems serving as safety components in managing critical digital infrastructure, road traffic, or in the supply of utilities like water, gas, heating, or electricity.

²¹¹ AI Act, Art. 6

²¹² Ebers.(n 177) 589

²¹³ AI Act, Art. 6(1)(a)

²¹⁴ AI Act, Art. 6(1)(b)

²¹⁵ Ebers.(n 177) 591

²¹⁶ AI Act, Annex I

3. Education and vocational training: AI systems used for admission, evaluation of learning outcomes, assessing education levels, and monitoring prohibited behaviour during educational activities.
4. Employment, workers management, and access to self-employment: AI systems involved in recruitment, selection, decision-making regarding work-related relationships, and performance evaluation.
5. Access to essential services: AI systems used by public authorities for evaluating eligibility for essential public assistance, creditworthiness assessment, risk assessment in insurance, and emergency call classification and dispatching.
6. Law enforcement: AI systems utilised for assessing the risk of individuals becoming victims of crimes, reliability of evidence in investigations, risk assessment for offending or re-offending, and profiling in criminal investigations.
7. Migration, asylum, and border control management: AI systems for assessing risks related to migration, examination of applications for asylum or permits, and detection or identification of natural persons.
8. Administration of justice and democratic processes: AI systems assisting judicial authorities in research, interpretation, and application of law, as well as those influencing election outcomes or voting behaviour.²¹⁷

As it is apparent, the AI tools used in M&A due diligence would unlikely fall under any of the above-mentioned categories either. Therefore, the AI tools at hand should not be covered by Annex III of the Act.

However, even if the classification gets extended in the future to potentially cover such tools, there is an exception clause to the qualification of high-risk AI systems listed in Annex III that could exclude them from being classified as high-risk. This exception entails that “if an AI system from this category does not pose a significant risk of harm to the health, safety, or fundamental rights of individuals, it will not be considered a high-risk AI system”.²¹⁸ This exception applies if the system is intended to perform a narrow procedural task, improve the result of a previously completed human activity, detect decision-making patterns or deviations without replacing or influencing the prior human assessment without proper review, or perform a preparatory task for an assessment.²¹⁹ It should also be emphasised that those are not cumulative criterias, therefore if any of them is recognised under the exception, the tool might be exempted.

²¹⁷ AI Act, Annex III

²¹⁸ AI Act, Art. 6(3)

²¹⁹ Ibid

Hypothetically, AI tools used in M&A due diligence processes are likely to fall under this exception clause, if they get caught under an extended high-risk classification in the future. These tools are typically designed to assist in specific tasks like contract review, data analysis, and risk assessment, rather than making autonomous decisions that directly impact individuals' health, safety, or fundamental rights. Thus, they are intended to support and enhance human decision-making processes, not replace them entirely. Furthermore, these AI tools do not perform profiling of natural persons, which is explicitly stated as a condition for being considered a high-risk AI system, even if the exception applies.²²⁰

To summarise, high-risk AI systems are those intended for use in critical areas such as safety, infrastructure management, education, employment, public services, law enforcement, migration control, and democratic processes. After analysing Article 6(1), which sets up requirements for high-risk qualification, and Article 6(2) (particularly, Annex III), which specifies high-risk AI systems, of the AI Act, it is obvious that AI tools used in M&A due diligence does not fall under any categorisation listed in aforementioned provisions, therefore should not be considered high-risk AI systems.²²¹ However, even if the list gets extended in the future, Article 6(3) can potentially protect such tools with the provided exceptions.

4.7. GPAIs

Another important classification is regarding the regulation of General Purpose AI (GPAI) models, which play a critical role in various applications ranging from image recognition to natural language processing.

The EU AI Act categorises GPAI models into two distinct groups: Conventional GPAIs (also known as minimal-risk) and systemic-risk (also regarded as limited-risk) GPAIs.²²² This classification is based on the potential impact and capabilities of the AI models. Conventional GPAIs encompass a broad spectrum of AI systems designed for generally applicable functions such as image and speech recognition, pattern detection, and audio/video generation. Well-known examples include generative AI applications like ChatGPT²²³ and DALL-E²²⁴. These models are subject to minimal documentation requirements under the Act.²²⁵ However, this type of GPAIs will not be analysed in detail, as AI tools used in M&A processes would not potentially fall under this category, considering the limited capabilities of conventional GPAIs.

On the other hand, systemic-risk GPAIs are deemed to have high-impact capabilities that may pose significant risks if not properly regulated. According to Article 51 of the AI Act, a GPAI model is classified as having systemic risk if it meets certain conditions. Firstly, if it possesses high-impact capabilities, evaluated based on appropriate technical tools and methodologies, it falls under the category of GPAI with systemic risk.²²⁶ Additionally, a GPAI model can be

²²⁰ Stibbe (n 117)

²²¹ Ebers.(n 177) 591

²²² AI Act, Art. 50

²²³ 'ChatGPT', <<https://chatgpt.com>>, accessed 16 May 2024

²²⁴ 'DALL·E 2', <<https://labs.openai.com>>, accessed 16 May 2024

²²⁵ KPMG (n 186)

²²⁶ AI Act, Art. 51(1)(a)

classified as such based on a decision of the Commission or following a qualified alert from the scientific panel, if it has capabilities or an impact equivalent to those with high impact capabilities.²²⁷ The Act also gives a technical threshold to qualify as GPAI, which serves as a benchmark to identify GPAI models with significant computational requirements and potentially high-impact capabilities.²²⁸

Furthermore, these models, like GPT-4, are subjected to more stringent oversight. They must comply with strict obligations, including model evaluations, risk assessments and mitigation, incident reporting, and cybersecurity measures. This distinction ensures that while innovation is encouraged, accountability and safety remain essential in the deployment of high-impact AI systems.²²⁹

Considering AI tools used in M&A due diligence, such tools might fall under the category of GPAI with systemic risk if they meet the criteria outlined in Article 51. If these AI tools possess high-impact capabilities and require substantial computational resources for training, they could be classified as GPAI with systemic risk.²³⁰ Additionally, the potential impact of AI tools in influencing M&A decisions and their implications for businesses and stakeholders could warrant classification under this category. Therefore, companies deploying AI tools in M&A due diligence should be aware of the regulatory implications and obligations associated with GPAI with systemic risk classification, as outlined in the AI Act.²³¹

Furthermore, providers of GPAI models, irrespective of their classification, are obligated to comply with transparency requirements outlined in the AI Act. This includes maintaining technical documentation, adhering to EU copyright laws, and providing comprehensive information on AI training data. However, providers of systemic-risk GPAIs bear additional responsibilities, given the potential risks associated with their capabilities.²³²

While the Act's provisions may pose additional regulatory requirements for providers of systemic-risk GPAIs, they are essential for mitigating potential risks and safeguarding societal interests. Moreover, the Act acknowledges the dynamic nature of AI technologies and the need for periodic updates to reflect advancements in computing power and emerging paradigms like Quantum AI.²³³

The Act also sets up several obligations for providers or deployers of GPAI systems, some of which are relevant responsibilities for considering deployment in due diligence.²³⁴ One of the main responsibilities is that deployers should ensure that users interacting with AI tools are informed about the nature of the system. If the AI tool directly interacts with natural persons,

²²⁷ AI Act, Art. 51(1)(b)

²²⁸ AI Act, Art. 51(2)

²²⁹ KPMG (n 186)

²³⁰ Ibid

²³¹ Ibid

²³² Stibbe (n 117)

²³³ Thierry Kellerhals and Michael Wellner, 'Is AI Regulation Threatening Innovation and ChatGPT?', KPMG, (2024), <<https://kpmg.com/ch/en/blogs/home/posts/2024/04/is-ai-regulation-threatening-innovation-and-chatgpt.html>>, accessed 14 May 2024

²³⁴ AI Act, Art. 50

it should be clearly indicated that they are interacting with an AI system, unless this is already obvious to a reasonably well-informed person.²³⁵ Therefore, deployers should provide clear and accessible information about the AI's role in the due diligence process to maintain transparency and manage user expectations. Deployers must also mark the outputs as artificially generated or manipulated, where applicable, if the AI tool generates or manipulates content such as reports, analyses, or presentations. This ensures that users are aware of the AI's involvement in producing the content and can assess its reliability accordingly.²³⁶ Deployers should also implement effective and reliable marking mechanisms to clearly distinguish AI-generated content from human-generated content. Additionally, the Act requires deployers to provide clear and distinguishable information to users regarding the AI tool's operation, capabilities, and limitations.²³⁷ Considering this, such information should be accessible and provided at the outset of the due diligence process to ensure that users understand how the AI tool contributes to the analysis and decision-making process, thus helping users make informed judgments and interpretations based on AI-generated insights.²³⁸

Lastly, the Act does not disregard other applicable laws, by requiring deployers to ensure compliance not only with the obligations specified in the AI Act but also with any other relevant regulations or standards applicable to AI deployment in due diligence processes.²³⁹ This includes ensuring alignment with data protection regulations, industry-specific guidelines, and best practices in AI governance. By maintaining compliance, deployers mitigate legal risks and uphold ethical standards in their AI usage.

To sum up, the EU AI Act provides a robust regulatory framework for governing GPAI models, balancing innovation with accountability and safety. Despite a need for detailed analysis, AI tools used in due diligence might potentially fall under this category and, therefore be subject to the requirements set out for GPAI. However, by following the obligations set out in the Act, deployers of due diligence AI tools can uphold transparency, accountability, and ethical principles in mergers, thereby fostering trust among users and stakeholders while mitigating potential risks associated with AI technology.

²³⁵ AI Act, Art. 50(1)

²³⁶ AI Act, Art. 50(2)

²³⁷ AI Act, Art. 50(5)

²³⁸ KPMG (n 186)

²³⁹ AI Act, Art. 50(6)

5. Conclusion

“Artificial intelligence is not a substitute for human intelligence; it is a tool to amplify human creativity and ingenuity.”²⁴⁰

Since their emergence, AI tools have been transforming the landscape of various sectors, including M&A due diligence, while enabling companies to process vast amounts of data with speed and accuracy, thereby enhancing decision-making and operational efficiency. Having examined the integration of AI within M&A due diligence from multiple perspectives, it is evident that AI brings both significant benefits and potential challenges. The automation of due diligence tasks by AI tools reshapes the efficiency and thoroughness of the process, providing deeper insights and identifying risks that might otherwise go unnoticed. This thesis, through a detailed examination of the EU AI Act and its implications, offers a comprehensive analysis of how AI can be leveraged in M&A due diligence while upholding efficiency and ensuring regulatory compliance. This multifaceted approach addresses the economic, legal, and ethical dimensions of AI integration, fulfilling the research objectives and answering the key questions posed at the outset.

As it is already evident from the relevant literature and this thesis, traditional M&A due diligence processes are characterised by their labour-intensive, time-consuming nature, often involving significant manual effort in data collection, analysis, and verification. These processes can be plagued by inefficiencies such as human error, cognitive biases, and the overwhelming volume of information that must be sifted through. Therefore, this inefficiency not only puts the deal closures under the risk of not being authorised by the Commission or delays deal closures but also increases transaction costs and the risk of missing critical information. The manual handling of large datasets can lead to inconsistencies and a lack of standardisation, further complicating the due diligence process. Therefore, there is a clear need for a more efficient, accurate, and consistent approach, which AI tools have the potential to provide.

This thesis supports the idea that AI tools can revolutionise M&A due diligence by automating repetitive tasks, reducing human error, and enabling the analysis of large datasets quickly and accurately. It is a fact that AI can process vast amounts of data at speeds far beyond human capabilities, significantly reducing the time required for due diligence, and at the same time machine learning algorithms can identify patterns and correlations that might be missed by human analysts, leading to more informed decision-making. Furthermore, advanced AI tools can provide deeper insights through predictive analytics and natural language processing, uncovering hidden risks and opportunities, also creating a standardised approach to due diligence, which is considered in detail under the inefficiency subsection.

²⁴⁰ Fei-Fei Li, Co-Director of the Stanford Institute for Human-Centered Artificial Intelligence and IT Professor at the Graduate School of Business

Despite the benefits, several disadvantages of AI deployment are also considered which mainly include cost, accuracy, and data privacy concerns, among others. Firstly, implementing AI tools in M&A due diligence processes entails a significant initial investment, encompassing both the acquisition of advanced technology and the necessary training for employees. This upfront cost can be substantial, often requiring careful budgeting and strategic planning to ensure a successful integration. Furthermore, the complexity and transparency of AI systems pose additional challenges. Many AI models operate as "black boxes," where the decision-making processes are not easily understood by human operators. This opacity can hinder transparency and accountability, making it difficult for stakeholders to trust and verify the AI's outputs. Additionally, the handling of sensitive data by AI systems raises significant privacy and security issues. Robust data governance frameworks are essential to protect personal information and ensure compliance with data protection laws, such as the GDPR.

With regard to compliance, the EU AI Act establishes a comprehensive regulatory framework designed to ensure the ethical and safe deployment of AI technologies. One of the key provisions is the risk-based classification of AI systems, in which AI tools are categorised into different risk levels each with corresponding regulatory requirements. This thesis claims the AI tools used in due diligence processes to fall under the specific category of risk classification, GPAI, and follows the analysis accordingly.

Transparency requirements are another crucial aspect of the EU AI Act. The Act requires that AI systems must be designed to provide clear and understandable information about their operations and decision-making processes. This transparency is vital for building trust and enabling stakeholders to scrutinise AI-driven decisions. While the EU AI Act mandates transparency, many AI tools function as opaque systems, therefore necessitating the development of XAI techniques. These techniques aim to make AI decision-making processes more understandable to human users, thereby aligning with regulatory requirements. The Act also mandates accountability and oversight, requiring organisations to establish mechanisms for human oversight and accountability for AI-driven decisions. This ensures that human judgement and ethical considerations are integrated into AI operations.

Data privacy and protection are also paramount under the EU AI Act, as AI systems must comply with data protection laws, including the GDPR, to ensure the privacy and security of personal data.

Overall, the integration of AI tools in M&A due diligence processes holds great promise for enhancing efficiency, accuracy, and decision-making. However, it also presents significant challenges, particularly in terms of regulatory compliance with the EU AI Act. The provisions of the AI Act collectively impact the deployment of AI tools in M&A due diligence by necessitating transparent, accountable, and secure AI systems. Therefore, by adopting strategies that ensure transparency, accountability, robust data governance, and human-AI collaboration, companies can effectively leverage AI while maintaining compliance, thus mitigating risks and building trust in AI-driven processes. For this purpose, this conclusion further continues to give ideas on the effective implementation of AI tools in M&A due diligence processes.

5.1. Recommendations

To address the aforementioned challenges and ensure compliance with the EU AI Act, organisations can adopt several strategies, one of which is to implement XAI. Developing and deploying AI systems that provide clear and understandable explanations for their decisions enhances transparency and trust. XAI techniques also help shed light on AI operations, making it easier for stakeholders to understand and validate AI-driven outcomes.

Establishing robust data governance is also crucial. Implementing comprehensive data governance frameworks ensures data quality, privacy, and security. This includes compliance with GDPR and regular audits to verify that data handling practices meet regulatory standards.

Human oversight and collaboration are especially vital for ensuring that AI tools contribute to the activities rather than replace human expertise. Ensuring human oversight for critical AI-driven decisions fosters a collaborative environment where AI enhances human judgement. However, considering the aim of implementing AI tools in M&A due diligence processes is not to replace human labour, but assist individuals in their analysis, the role of AI can be seen as a mere tool in such processes. Finally, establishing clear accountability frameworks is necessary. Defining clear roles and responsibilities within the organisation for AI-driven decisions and implementing accountability mechanisms help address potential issues and ensure regulatory compliance.

Overall, with constant human oversight and necessary advancements in AI technology and data privacy concerns, AI tools can effectively be implemented in M&A due diligence processes, thus contributing to more successful and efficient merger closures.

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