

Proposal for a regulation of the European Parliament and of the Council laying down harmonized rules on artificial intelligence (Artificial Intelligence Act) and amending certain union legislative acts - Presidency compromise text (Brussels, 15 February 2022 (OR. en) 6239/22) - art. 40-55a

Art. 53 ust. 1b lit. c

("The establishment of AI regulatory sandboxes as defined in paragraph 1 shall aim to contribute to the following objectives: (...) d) enhance authorities' understanding of the opportunities and risks of AI systems as well as of the suitability and effectiveness of the measures for preventing and mitigating those risks;")

Undoubtedly, continuous oversight of the solutions tested within the sandbox is of value to the authorities involved, but this should be a possible outcome and not an objective of the sandbox. Identifying this item as an objective may cause authorities to be guided by their own needs when assessing applications for the sandbox, whereas the role of the sandbox should be to assist entrepreneurs implementing new AI solutions.

art. 53 ust. 2a akapit 3

("Participation in the AI regulatory sandbox shall be based on a specific plan agreed between the participant(s) and the national competent authority(ies) or the European Data Protection Supervisor, as applicable.")

Określenie planu działania danego sandboxu jest dobrym rozwiązaniem. Istnieje jednak obawa, że proces uzgadniania planu pomiędzy organem/organami a uczestnikami będzie długi i mozolny. Z tego względu należałoby w samym AI Act określić ramy czasowe uzgadniania takiego planu, z jednej strony by zmobilizować stronę publiczną do sprawnego konkludowania dyskusji z uczestnikami, z drugiej zaś by wyznaczyć uczestnikom horyzont czasowy, który będą musieli wkalkulować, planując przeprowadzenie planowanego projektu.

Defining a plan of action for a given sandbox is a good solution. However, there is a concern that the process of agreeing the plan between the authority/authorities and the participants will be long and laborious. Therefore, it would be advisable to define in the AI Act itself a timeframe for agreeing such a plan, on the one hand, in order to mobilise the public party to conclude the discussion with the participants efficiently, and on the other hand, to set a time horizon for the participants to calculate when planning to carry out the planned project.

Art. 3 pkt 51

("'informed consent' means a subject's free and voluntary expression of his or her willingness to participate in a particular testing in real world conditions, after having been informed of all aspects of the testing that are relevant to the subject's decision to participate; in the case of minors and of incapacitated subjects, the informed consent shall be given by their legally designated representative;")

Definicja oraz art. 54b ust. 1 częściowo się pokrywają ("free and voluntary expression" / "freely given"; "having been informed of all aspects" / "having been duly informed with concise, clear, relevant, and understandable information"). Z tego względu należy rozważyć rezygnację z definicji i uzupełnienie art. 54b ust. 1 o elementy, których w nim brakuje (zgoda zastępcza opiekuna).

There is some overlap between the definition and Article 54b(1) ("free and voluntary expression" / "freely given"; "having been informed of all aspects" / "having been duly informed with concise, clear,

relevant, and understandable information"). Therefore, consideration should be given to abandoning the definition and supplementing Article 54b(1) with the elements it lacks (surrogate guardian's consent).

(general comment) Chapter V

Some provisions refer to AI systems (e.g. Article 53(1), Article 54(1)), while others refer to high-risk AI systems (e.g. Article 53(1b)(e), title of Article 54a). It is therefore not entirely clear whether all sandbox provisions refer only to high-risk systems or only to some of them.

