LEGAL ASPECTS OF THE EUROPEAN UNION ARTIFICIAL INTELLIGENCE ACT

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Abstract

On the 9th December 2023, the European Council and the European Parliament have reached a provisional agreement on the Artificial Intelligence Act. Almost 5 years have passed since the first thought about this type of regulation. The Artificial Intelligence Act covers the main topics of ensuring fundamental human rights. This regulation will cover the main rules and regulations of high-risk artificial intelligence systems which could cause vital human rights violations. Due to the new regulation a new body of the European Union will take care of obeying the rules - The European Artificial Intelligence Board. During years artificial intelligence systems have been developing very rapidly which has caused some fear, but the new regulation should bring peace to mind.

Keywords: European Union, Artificial Intelligence Act, regulation

Introduction

Relevance of the topic. Artificial Intelligence is considered to be the fourth industrial revolution of the 21st century. This rapidly growing industry improves our lives and overall economic and societal well-being. Artificial Intelligence contributes to medical advancements, safety improvements, data analysis and efficiency, fraud detection and cybersecurity as well as to innovations in education, exploration and research. No matter how positive the benefits of artificial intelligence are, it should not be forgotten that this industry is relatively new and not yet regulated. Therefore, there is a high risk of various legal and ethnic issues. Artificial intelligence can unpredictably harm people's life, health and property. Unregulated use of these systems may affect and violate fundamental human rights, such as the right to human dignity and self-determination, privacy and protection of personal data, freedom of expression and assembly, non-discrimination, or the right to effective judicial defence and fair trial, as well as consumer protection[33]. This is why the European Council and the European Parliament have reached a provisional agreement on the Artificial Intelligence Act on the 9th December 2023. This Act ensures that artificial intelligence developed and used in Europe fully complies with EU rights and values including human care, safety, privacy, transparency, non-discrimination and social and environmental well-being[34].

The main issue. As artificial intelligence is being used more and more in various areas of life, then what rules of use will be determined by the new European Union Artificial Intelligence Act and how much human rights and security will be ensured?

[33] M. Ebers, V. R. S. Hoch, F. Rosenkranz, H. Ruschemeier, B. Steinrötter, *The European Commission's Proposal for an Artificial Intelligence Act – A Critical Assessment by Members of the Robotics and AI Law Society (RAILS)*. J 2021, 4(4), s. 589-603. Online access: https://www.mdpi.com/2571-8800/4/4/43

[34] News European Parliament. *MEPs ready to negotiate first-ever rules for safe and transparent AI,* 2023. Online access: https://www.europarl.europa.eu/news/en/press-room/20230609IPR96212/meps-ready-to-negotiate-first-ever-rules-for-safe-and-transparent-ai

The purpose of the research is to analyze legal aspects of the European Union Artificial Intelligence Act.

Research objectives: 1) review the development of artificial intelligence; 2) analyze assumptions of the Artificial Intelligence Act development; 3) analyze regulation of the Artificial Intelligence Act.

Methodology of investigation. The applied research methods are based on the critical analysis of literature on the subject, logical – analytical method and summarization method.

The development of the artificial intelligence

For the first time the concept of artificial intelligence was presented at a conference held in 1956 at the Dartmouth Summer Research Project on Artificial Intelligence, hosted by John McCarthy and Marvin Minsky and funded by the Rockefeller Institute[35]. This conference is considered the founder of this discipline[36]. In this conference John McCarthy for the first time defined artificial intelligence, stating: "The science and engineering of making intelligent machines, especially intelligent computer programs[37]". Since that time artificial intelligence had ups and downs till 2010. Around 2010, this discipline started its rapid progress. There are two factors that determined progress. First of all, direct access to massive amounts of data. For example, using image classification algorithms previously required uploading images. Nowadays, a simple Google search can easily find a large number of images. The second reason of fast development was the high efficiency of computer graphics card processors. This card was discovered in order to speed up the calculation of learning algorithms. The computing power of these cards has allowed great progress to be made at a limited financial cost. The paradigm has taken a different turn – it is no longer just coding rules as for expert systems, but of letting computers to discover them alone on the basis of large amounts of data, using correlation and classification methods[38]. In 2021, a study was conducted on how the ability of artificial intelligence to recognize language and image has improved over the time. In Figure 1 the chart compares the data of human and artificial intelligence abilities in five different domains – handwriting recognition, speech recognition, image recognition, reading comprehension and language understanding. The initial performance of the artificial intelligence system is 100, and the human performance is used as zero in the tests. When the artificial intelligence performance crosses the zero line, it means that it scored higher on the corresponding test than humans who took the same test. In the chart it is seen that artificial intelligence systems have become increasingly capable and now outperform humans in all of these areas. The artificial intelligence is used widely on everyday basis and can be even found on a phone, such

[35] R. Anyoha, Harvard University, *The History of Artificial Intelligence,* 2017. Online access: https://sitn.hms.harvard.edu/flash/2017/history-artificial-intelligence/

[36] C. Zhang, Y. Lu, *Study on artificial intelligence: The state of the art and future prospects*, 2021. Online access: https://www.sciencedirect.com/science/article/abs/pii/S2452414X21000248

[37] M. C. Buiten, *Towards Intelligent Regulation of artificial intelligence*, 2019. Online access: https://www.cambridge.org/core/journals/european-journal-of-risk-regulation/article/towards-intelligent-regulation-of-artificial-intelligence/AF1AD1940B70DB88D2B24202EE933F1B

[38] Council of Europe. *History of Artificial Intelligence,* 2023. Online access: https://www.coe.int/en/web/artificial-intelligence/history-of-ai

as image recognition that categorizes photos or speech recognition that transcribes what you dictate[39].

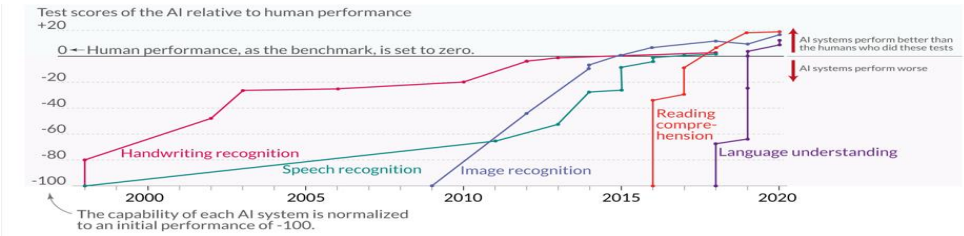

Fig.1. Language and image recognition capabilities of AI systems[40]
1 pav. *Dirbtinio intelekto sistemų kalbos ir vaizdų atpažinimo galimybės*[40]

As can be seen from the above information, artificial intelligence systems have an increasing impact on our lives. Considering the fact that artificial intelligence is constantly improving, it can be expected that this technology will become more and more powerful and influential in the coming years. How such powerful artificial intelligence systems are developed and used will be crucial to the future of our world and our own lives[41].

Assumptions of the Artificial Intelligence Act development

Presenting the 2019-2024 European Commission's political guidelines "A Union that strives for more", U. von der Leyen signalled a political commitment to present legislation for a harmonized European approach to the human and ethical impact of artificial intelligence. This political commitment was the basis for the drafting of the Artificial Intelligence Act. In 2020, the European Commission presented the White Paper on Artificial Intelligence - a European approach to excellence and trust. The White Paper mentions that the Commission is committed to creating the conditions for scientific breakthroughs, preserving the EU's technological leadership and ensuring that new technologies bring benefits to all Europeans - their lives will improve and their rights will not be violated. The White Paper envisaged that the European Union would strive to create an ecosystem of artificial intelligence that would benefit the entire European society and economy - new benefits for citizens, development opportunities for businesses and better services in the public interest. In order to create an ecosystem of expertise that could support the development of AI and its implementation in the EU economy and public administration, more active actions are needed at various levels. In order to do this, EU was engaged to cooperate with member states, to mobilize the science and innovation community, skills development, special attention to small and medium-sized enterprises, partnership with the private sector, promotion of implementing artificial intelligence in the public sector, ensuring access to data and

[39] M. Roser, *The brief history of artificial intelligence: The world has changed fast – what might be next?*, 2022. Online access: https://ourworldindata.org/brief-history-of-ai#article-licence

[40] Data source: Kiela et al. (2021) – Dynabench: Rethinking Benchmarking in NLP. Licensed under CC-BY by the author Max Roser. Online access: https://ourworldindata.org/brief-history-of-ai#article-licence

[41] C. Giattino, E. Mathieu, V. Samborska, M. Roser, *Artificial Intelligence*, 2023. Online access: https://ourworldindata.org/artificial-intelligence

computing infrastructure, international aspects were foreseen[42]. Following the presentation of this book and the information in it, a wide-ranging consultation was launched with Member States' civil society, industry and academia on concrete proposals for a European approach to artificial intelligence. This type of consultation led to a comprehensive dialogue with all stakeholders, which led to further action. The most important thing is that there is a need to clearly, rigorously and effectively define the ethical framework for the creation, design, use and modification of artificial intelligence[43]. In the "Artificial Intelligence for Europe" the European Commission representing artificial intelligence importance was stating: "The European Union should have a coordinated approach to make the most of the opportunities offered by artificial intelligence and to address the new challenges that it brings. The European Union can lead the way in developing and using artificial intelligence for good and for all, building on its values and its strengths"[44]. Eventually, on 21 April 2021, European Commission presented the proposal - "Artificial Intelligence Act". After this draft member countries had an opportunity to discuss their opinions how to make this regulation better for all.

Regulation of the Artificial Intelligence Act

On the 9th December 2023, the Council presidency and the European Parliament's negotiators reached a historical provincial agreement on the Artificial Intelligence Act. That is the world's first comprehensive artificial intelligence law. This Act aims to ensure that artificial intelligence systems are safe and compatible with the current legal acts regulating fundamental rights and Union values; ensure legal certainty for investments and innovation in the field of artificial intelligence; improve governance and effective enforcement of current legislation governing fundamental rights and security requirements for artificial intelligence systems; facilitate the development of a common market for legitimate, safe and reliable artificial intelligence applications and prevent market fragmentation[45]. According to European Commission the Artificial Intelligence Act will apply to stating: "Public and private sectors inside and outside the European Union as long as the artificial intelligence system is placed on the European Union market or its use affects people located in the European Union[46]". In the Act of Artificial Intelligence a risk-based approach with four levels of risk for artificial intelligence systems is categorized:

[42] Europos Komisija, Baltoji knyga, *Dirbtinis intelektas. Europos požiūris į kompetenciją ir pasitikėjimą*, 2020. Online access: https://eur-lex.europa.eu/legal-content/LT/TXT/PDF/?uri=CELEX:52020DC0065&from=EN

[43] I. Bikeev, P. Kabanov, I. Begishev, Z. Khisamova, Criminological risks and legal aspects of artificial intelligence implementation, 2019. Online access: https://dl.acm.org/doi/abs/10.1145/3371425.3371476

[44] Eur-Lex, *Communication from the commission. Artificial Intelligence for Europe*, 2018. Online access: https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX:52018DC0237

[45] Eur-Lex, *Europos parlamento ir tarybos reglamentas, kuriuo nustatomos suderintos dirbtinio intelekto taisyklės (dirbtinio intelekto aktas) ir iš dalies keičiami tam tikri Sąjungos teisėkūros procedūra priimti aktai,* 2021. Online access: https://eur-lex.europa.eu/legal-content/LT/TXT/?uri=CELEX:52021PC0206

[46] European Commission. *Artificial Intelligence – questions and answers*, 2023. Online access: https://ec.europa.eu/commission/presscorner/detail/en/QANDA_21_1683

• Minimal risk - artificial intelligence systems that are the lowest risk systems. Those can be developed and used in accordance with current legislation without additional legal obligations. This type of systems are currently the majority of all in use or likely to be used.

• High risk – this type of artificial intelligence systems are allowed in the European Union, but they need to achieve requirements and obligations. Legislators have clarified and adjusted these requirements to make them more technically feasible and easier for stakeholders to comply with. Providers of this systems must have to implement quality and risk management systems to ensure their compliance with the new requirements and minimize risks for users and affected persons[47]. The preliminary agreement provides for a fundamental rights impact assessment before developers place a high-risk AI system on the market.

• Unacceptable risk – in some cases of using artificial intelligence, the risks are considered unacceptable, so these systems will be banned in the European Union. The European Commission stating: "A very limited set of particularly harmful uses of AI that contravene EU values because they violate fundamental rights and will therefore be banned: social scoring for public and private purposes; exploitation of vulnerabilities of persons, use of subliminal techniques; real-time remote biometric identification in publicly accessible spaces by law enforcement, subject to narrow exceptions; biometric categorisation of natural persons based on biometric data to deduce or inter their race, political opinions, trade union membership, religious or philosophical beliefs or sexual orientation. Filtering of datasets based on biometric data in the area of law enforcement will still be possible; individual predictive policing; emotion recognition in the workplace and education institutions, unless for medical or safety reasons; untargeted scraping of internet or CCTV for facial images to build up or expand databases[48]".

• Specific transparency risk – for some of artificial intelligence systems that are imposed specific transparency requirements, such as clear risk of manipulation.

In the Artificial Intelligence Act systemic risks are considered, which could arise from general-purpose artificial intelligence models. They are used for numerous tasks and can be the basis for many artificial intelligence systems in the European Union[49]. Fines for violations of the AI Act were set as a percentage of the offending company's global annual turnover for the previous financial year or a predetermined amount, whichever is greater. This would amount to 35 mill. € or 7% for violations of prohibited AI applications, 15 mill. € or 3% for violations of the obligations of the AI Act and 7.5 mill. € or 1.5% for providing incorrect information. However, for SMEs and start-ups for violations of the provisions of the AI Act, the preliminary agreement provides for more proportional upper limits of administrative fines. The compromise agreement also clearly states that a natural or legal person can file a complaint about non-compliance with the AI Act to the relevant market surveillance authority and can expect that such a complaint will be dealt with in accordance

[47] European Commission. *Artificial Intelligence – questions and answers*, 2023. Online access: https://ec.europa.eu/commission/presscorner/detail/en/QANDA_21_1683

[48] European Commission. *Artificial Intelligence – questions and answers*, 2023. Online access: https://ec.europa.eu/commission/presscorner/detail/en/QANDA_21_1683

[49] Eur-Lex, *Europos parlamento ir tarybos reglamentas, kuriuo nustatomos suderintos dirbtinio intelekto taisyklės (dirbtinio intelekto aktas) ir iš dalies keičiami tam tikri Sąjungos teisėkūros procedūra priimti aktai,* 2021. Online access: https://eur-lex.europa.eu/legal-content/LT/TXT/?uri=CELEX:52021PC0206

with the special procedures of that authority[50]. In the Artificial Intelligence Act mentioned innovation support. The provisions on innovation support measures have been fundamentally changed. In particular, it is specified that in the restricted test regulatory environments of the field of AI, which should provide a controlled environment for the development, testing and validation of innovative AI systems, it should also be possible to test innovative AI systems in real conditions. In addition, new provisions are included to allow real-world testing of AI systems under certain conditions and safeguards. Finally, in order to ease the administrative burden on smaller companies, the draft agreement sets out a list of actions to be taken to support such operators and provides for a number of limited and well-defined derogations[51].

Exceptions in the Artificial Intelligence Act

Taking into account the peculiarities of law enforcement institutions and the need to preserve the ability to use AI in their vital activities, several changes to the Commission's proposal regarding the use of AI systems for law enforcement purposes have been agreed. Provided that appropriate safeguards are in place, these changes are intended to take into account the need to ensure the confidentiality of sensitive operational data related to their activities. For example, an emergency procedure was established, according to which law enforcement authorities are allowed to use a high-risk AI tool for which the compliance assessment procedure has not been carried out in an emergency. However, a specific mechanism is also in place to ensure that fundamental rights are adequately protected against any potential misuse of AI systems. In addition, as regards the use of real-time remote biometric identification systems in public spaces, the preliminary agreement clarifies the purposes for which such use may be considered strictly necessary for law enforcement purposes and for which law enforcement authorities should be exceptionally permitted to use such systems. The compromise agreement provides additional safeguards, and these exceptions are limited to cases of victims of certain crimes, the prevention of real, present or anticipated threats such as terrorist attacks, murder, trafficking in human beings, sexual exploitation of children and child sexual abuse material, the search for suspects of the most serious crimes[52].

The European Artificial Intelligence Board

[50] European Council. *Artificial inteligence act: Council and Parliament strike a deal on the first rules for AI in the world*, 2023. Online access: 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/

[51] European Council. *Artificial inteligence act: Council and Parliament strike a deal on the first rules for AI in the world*, 2023. Online access: 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/

[52] European Council. *Artificial inteligence act: Council and Parliament strike a deal on the first rules for AI in the world*, 2023. Online access: 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/

The Commission established the European Artificial Intelligence Board the tasks of which are overseeing high risk artificial intelligence models, contributing to the promotion of standards and testing practices, and ensuring the implementation of common rules across all Member States. A scientific group of independent experts will advise the European Artificial Intelligence Board on high risk models, contribute to the development of a methodology for assessing the feasibility of foundation models, advise on the designation and development of high-impact foundation models, and monitor potential material safety hazards to foundation models. The European Artificial Intelligence Board, made up of representatives of Member States, will remain as a coordination platform and advisory body to the Commission, and will give Member States an important role in the implementation of the Regulation, including the development of Codes of Conduct for the Funds, models. Finally, a consultative forum will be established for stakeholders such as industry, SMEs, start-ups, civil society and academia to provide technical expertise to the European Artificial Intelligence Board[53]. The European Artificial Intelligence Board and the Member states should encourage and assist in the development of codes of conduct. The Commission and the Board shall encourage and support the development of codes of conduct to promote the voluntary application of requirements to AI systems based on clear objectives, such as environmental sustainability, accessibility for disabled people, stakeholder participation in the design and development of AI systems and diversity of development teams and key performance indicators intended to measure the achievement of those goals[54]. As well European Commission will establish a system for registering high-risk AI applications in a public EU-wide database. This registration will also enable authorities, users and other interested parties to check whether a high-risk AI system meets the requirements set out in the proposal and to carry out enhanced supervision of these AI systems that pose a high risk to fundamental rights. In order to contribute data to this database, AI suppliers will be required to provide significant information about their systems and perform a compliance assessment of these systems. In addition, AI suppliers will be obliged to inform national competent authorities of major incidents or malfunctions that lead to violations of fundamental rights obligations as soon as they become known, as well as any recalls and market withdrawals of AI systems[55].

Next steps

The provisional agreement stipulates that the Artificial Intelligence Act should apply two years after its entry into force, with certain exceptions to specific provisions. In the

[53] European Council. *Artificial inteligence act: Council and Parliament strike a deal on the first rules for AI in the world*, 2023. Online access: 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/

[54] Eur-Lex, *Europos parlamento ir tarybos reglamentas, kuriuo nustatomos suderintos dirbtinio intelekto taisyklės (dirbtinio intelekto aktas) ir iš dalies keičiami tam tikri Sąjungos teisėkūros procedūra priimti aktai,* 2021. Online access: https://eur-lex.europa.eu/legal-content/LT/TXT/?uri=CELEX:52021PC0206

[55] Eur-Lex, *Europos parlamento ir tarybos reglamentas, kuriuo nustatomos suderintos dirbtinio intelekto taisyklės (dirbtinio intelekto aktas) ir iš dalies keičiami tam tikri Sąjungos teisėkūros procedūra priimti aktai,* 2021. Online access: https://eur-lex.europa.eu/legal-content/LT/TXT/?uri=CELEX:52021PC0206

coming weeks, work at the technical level will continue in order to prepare a detailed version of the new regulation. Once this work is complete, the Presidency will submit a compromise text to the Member State Representatives for approval. The entire text will have to be approved by both legislative bodies, and will still need to be reviewed by legal linguists before they can officially adopt it.

Conclusions

1. The artificial intelligence now is different than it was in 1956 for the first time presented by John McCarthy. Through the years artificial intelligence had ups and downs but now with its rapid development is used widely in everyday life. This fast growth is the reason why it is so vital to have regulation of artificial intelligence. Unregulated field of artificial intelligence can violate fundamental human rights.

2. U. von der Leyen political commitment to present legislation for a harmonized European approach to the human and ethical impact of artificial intelligence provided basis for today's Artificial Intelligence Act. This proposal of Artificial Intelligence Act was changed with the impact from other members of the European Union and it should guarantee that human rights are ensure and progress of artificial intelligence is not stopped.

3. The Artificial Intelligence Act divides the systems of artificial intelligence into four main types according to risks: minimal risk, high risk, unacceptable risk and specific transparency risk. The most dangerous type is high risk due to its ability to cause the biggest damage. This type of artificial intelligence must be added to the EU register data. Fines for violations of the AI Act were set as a percentage of the offending company's global annual turnover for the previous financial year or a predetermined amount, whichever is greater. Law enforcement institutions need to preserve the ability to use AI in their vital activities. The Commission established the European Artificial Intelligence Board, the tasks of which are overseeing high risk artificial intelligence models and other things.

4. Overall, the Artificial Intelligence Act takes care of a lot of fields where human rights could be violated. The provisional agreement stipulates that the Artificial Intelligence Act should apply two years after its entry into force, with certain exceptions to specific provisions.

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Europos Sąjungos dirbtinio intelekto įstatymo teisiniai aspektai

Santrauka

2023 m. gruodžio 9 d. Europos Vadovų Taryba ir Europos Parlamentas pasiekė preliminarų susitarimą dėl Dirbtinio intelekto įstatymo. Praėjo beveik 5 metai nuo tada, kai pirmą kartą susimąstėte apie tokio tipo reguliavimą. Dirbtinio intelekto įstatymas apima pagrindines pagrindinių žmogaus teisių užtikrinimo temas. Šiuo reglamentu bus taikomos pagrindinės taisyklės ir rajoninis didelio pavojaus dirbtinio intelekto sistemų reguliavimas,

galintis sukelti esminį žmogaus teisių pažeidimą. Dėl naujo reguliavimo bus įsteigta nauja Europos Sąjungos organizacija, kuri rūpinsis taisyklių laikymusi – Europos dirbtinio intelekto valdyba. Bėgant metams dirbtinio intelekto sistemos sparčiai vystėsi, o tai kelia baimę, tačiau naujas reguliavimas turėtų atnešti ramybę.

Raktiniai žodžiai: Europos Sąjunga, Dirbtinio intelekto įstatymas, reglamentas