„Krytyka Prawa", tom 16, nr 3/2024, s. 8-10, ISSN 2080-1084, e-ISSN 2450-7938, © 2024 Author.
This is an open access article distributed under the Creative Commons BY 4.0 license:
http://creativecommons.org/licenses/by/4.0

WALDEMAR HOFF

Let's go and play in a sandbox. A regulatory sandbox, that is[1]

One of the characteristics of the science of law is that from time to time we are struck by new concepts inspired by emerging social phenomena, crises, new business models, and, above all, technological advances. The latter has raised a special interest among lawmakers in creating a specific legal framework for the development of innovative forms of high-tech entrepreneurship. This experimental framework is generally called a *regulatory sandbox*, although it appears under different names, such as *'safe space'*. The term *'smart regulation'* is also used, which may suggest some autonomy or independence of such a regulation from the regulator.

The primary function of a regulatory sandbox is to provide high-tech entrepreneurs with favorable conditions for development. What is important is that the innovative nature of the technology developed is a source of uncertainty about the right regulatory policy. To a degree, a regulatory sandbox is a mutation of a regulatory impact assessment (RIA) performed *ex-ante*, done under real rather than model or hypothetical conditions.

Sandboxes also act as a 'shock absorber' assuaging the hostility towards new organizational forms. The devastating impact of the lack of such protective measures could be seen during Uber's early success in the passenger transportation market. The company became subject to media attacks and even acts of physical violence, a progressive tightening of administrative requirements, until it eventually regressed its business model. It ceased to operate as an online platform working with independent carriers, adopting an archaic and outdated passenger transport model of a cab company. Perhaps its innovative business model could have been saved had it been launched in an experimental regulatory environment.

Regulatory sandboxes are being established as experimental legislative solutions in economic sectors, especially in modern finance *(Fintech*) – electronic payments, energy, or AI services. New procedural pathways, are also proposed at the level of

[1] Translation of that article into English was financed under Agreement Nr RCN/SN/0331/2021/11 with funds from the Ministry of Education and Science, allocated to the "Rozwój czasopism naukowych" programme.

EU law in the pharmaceutical sector – with the approval of new drugs for distribution and sale in mind. This requires simplifying the scientific phase of drug development, speeding up the administrative procedures, and even making systemic changes by merging the many institutions responsible for drug approval.

Although sandboxes have been mostly used in economy-related sectors, their potential application in other areas is enormous. The idea of social experimentation – or social engineering – has been around for several decades and is relatively well-covered in sociological and political science publications. It is not unfamiliar to legal sciences either. The recently fashionable state and local regulations, dealing with e.g. legal control of language or identity, could be tested in regulatory sandboxes, too. It would enable them to explore legislative requirements in a less controversial way than today. Absent experimental regulation, authorities are experimenting on the living organisms of the general public. It negatively affects the political climate.

The fact that regulatory sandboxes can be used in a wide variety of areas opens the way for research in all fields of law. Of course, the involvement of narrowly specialized lawyers (e.g. in energy, pharmaceutical, financial, and even space law) will be the most noticeable. At the same time, each sandbox designed for a specific sector raises questions typical of the more historically established, more broadly defined branches of law. For example, in the case of administrative law, these questions will concern the rules of access to the sandbox, the rules of use, and the conditions of exit, intersecting with questions related to civil law when addressing the matter of the contractual freedom of sandbox users. Constitutionalists and legal theorists will face grave dilemmas for regulatory sandbox is an exception to the general principle of equality before the law. Why only certain entities should be given access to less restrictive operating conditions is a question that should equally concern competition law specialists. Situations in which the law allows inequality – as an exception from the general principle, occur in several areas, such as food production governed by religious standards, or special economic zones. Such cases tend to be justified by factors such as the protection of ethnic identity, religion, the demands of technological progress, economic development, etc. all of which bear the hallmarks of science and necessity, yet are based on the arbitrary choice of decision-makers. Regulatory sandboxes are not a universally accepted solution. For instance, the uncertainty of the impact on the overall law as a system made German lawmakers initially reluctant to resort to sandboxing. Instead, a traditional one--size-fits-all legal framework was opted for. However, presently in Germany, sandboxes are considered an effective instrument for supporting modern undertakings, such as the exploitation of drones. Still, skeptical attitudes among scholars are not uncommon, even in countries where sandboxes are already in use. Overcoming

 DOI: 10.7206/kp.2080-1084.697

the uncertainty about the many aspects of regulatory sandboxes depends greatly on the science of law.

The exploding interest among scholars seems to raise more questions than answers. To prevent this horn of plenty from becoming a Pandora's box, it is necessary to develop some axiological guidelines for making sandboxes in harmony with the axiology of the legal system in all its multi-layered complexity. The Artificial Intelligence Act is particularly relevant to the matter at hand. It will undoubtedly inspire scholars not only because of the solutions it provides but also because of the doubts it raises.

To address these needs and expectations, the editorial team of "The Critique of Law" would like to initiate the debate on the nature, role, and legal status of regulatory sandboxes. The article to open the discussion is featured already in this issue of our journal.

Waldemar Hoff
Deputy Editor-in-Chief of "The Critique of Law"