

Dealing with the Brussels Effect: How should Japanese companies prepare for the EU-AI Act?

Event Report & Q&A

Date/Time	Wednesday, December 11, 2024, 12:00-13:00
Venue	Zoom Webinar
Organized by	Tokyo College, The University of Tokyo Institute for Future Initiatives, The University of Tokyo
Co-organized by	Next Generation Artificial Intelligence Research Center, The University of Tokyo
Supported by	Japan AI Safety Institute AI and Law Society Osaka University Research Center on Ethical, Legal and Social Issues Japan Deep Learning Association
Speakers (In order of appearance)	Akiko Murakami (Executive Director, Japan AI Safety Institute) Kyoko Yoshinaga (Project Associate Professor of the Graduate School of Media and Governance, Keio University) Naohiro Furukawa (Attorney at Law, ABEJA, Inc.; Representative, AI and Law Society) Fumiko Kudo (Specially Appointed Associate Professor, Osaka University Research Center on Ethical, Legal and Social Issues) Toshiya Jitsuzumi (Professor, Chuo University)
Moderator	Arisa Ema (Associate Professor, Tokyo College, The University of Tokyo)

The EU Artificial Intelligence Act (AI Act), approved by the EU Council on May 21, 2024, and entered into force on August 1, 2024, is the world's first comprehensive regulatory framework for artificial intelligence (AI).¹ Its provisions will be implemented in stages by December 31, 2030, with potential implications for companies and organizations outside the EU, including those in Japan. In this event, experts explained and discussed the AI Act as well as the Code of Practice (CoP) for general-purpose AI, which is currently in the drafting process and will detail the AI Act rules on general-purpose AI.

The webinar attracted a total of 583 attendees, with a particular focus on implications for Japanese companies and organizations. A follow-up event is scheduled for January 15, 2025, to coincide with the progress of the CoP drafting process.

This Event Report & Q&A provides a summary of the event proceedings, along with a selection of questions from attendees—including those that could not be addressed on the day due to time constraints—and the speakers' responses to them.

1. Event Proceedings

Opening Remarks

The event began with opening remarks by Ms. Akiko Murakami (Japan AI Safety Institute). She discussed the growing global interest in AI safety following the advent of generative AI, noting that countries and regions such as Japan, the EU, the United States, and China are each advancing their own AI governance efforts. She then emphasized the EU's willingness to incorporate opinions from around the world in drafting the Code of Practice (CoP) for general-purpose AI models and stated:

“For companies, the emergence of separate regulations in different countries would require compliance with each jurisdiction's rules, leading to significant costs. In such a situation, finding commonalities across regulations and guidelines worldwide would enable more efficient responses. Therefore, engaging proactively in forums like the CoP, where opinions can be expressed, is crucial from an international perspective.”

¹ The AI Act is a regulation under EU law, which means it is directly applicable in all EU member states.

Ms. Murakami concluded by stressing the importance of understanding the AI Act and contributing insights from a Japanese perspective, urging attendees to actively engage in discussions.

Overview of the EU AI Act and Key Points for Japanese Companies

Following the opening remarks, Prof. Kyoko Yoshinaga (Keio University) and Mr. Naohiro Furukawa (ABEJA, Inc.) provided a detailed overview of the EU AI Act.²

Prof. Yoshinaga began by outlining the AI Act, noting that it is the world's first comprehensive regulatory law on AI, a regulation under EU law, and part of the New Legislative Framework (NLF). She explained that the Act aims to realize EU values, including democracy, the rule of law, and environmental protection, while also seeking to ensure market competitiveness by unifying the markets of 27 member states. Additionally, the Act intends to promote innovation by providing legal certainty through comprehensive regulation. She further elaborated that the AI Act's regulatory scope, based on a risk-based approach, covers (1) prohibited AI practices, (2) high-risk AI systems, (3) certain AI systems, and (4) general-purpose AI models, the latter added in response to the proliferation of generative AI services. She also explained the Act's scope of application, penalties, and implementation timeline. Regarding the scope of application, Prof. Yoshinaga highlighted Article 2(1)(a), which applies to providers placing AI systems or general-purpose AI models on the market or putting them into service in the EU, regardless of their location. She also noted Article 2(1)(c), which applies to providers and deployers of AI systems located in third countries if the output is used within the EU. She cautioned that Japanese companies could fall under these categories. Prof. Yoshinaga then briefly explained the regulatory targets, focusing on (1) prohibited AI practices and (2) high-risk AI systems.

Mr. Furukawa continued the explanation, first addressing (3) certain AI systems. He noted that if a system qualifies as both a high-risk AI system and a certain AI system, it would be subject to both sets of regulations. He then elaborated on (4) general-purpose AI models. He explained that general-purpose AI models are categorized into regular models and those with systemic risk, based on factors such as the cumulative computational power used for training. He also outlined the obligations imposed on providers of each category. Furthermore, Mr. Furukawa introduced the provisions regarding the Code of Practice (CoP) for general-purpose AI models, explaining that compliance with the CoP is presumed to fulfill the obligations under the AI Act. In conclusion, he cautioned Japanese companies that even if

² For further details, refer to the series “EU AI 法概説” (Overview of the EU AI Act) authored by five experts, including Furukawa and Yoshinaga, published in nine consecutive issues of 商事法務 NBL from No. 1269 (July 1, 2024) to No. 1278 (November 15, 2024).

they are not directly within the scope of the AI Act, they may be indirectly affected through business relationships, such as outsourced development. He emphasized the importance of actively participating in the development of standards similar to the CoP in the future.

Introduction to Panel Discussion

Following the overview of the AI Act, Prof. Fumiko Kudo (Osaka University Research Center on Ethical, Legal and Social Issues) and Prof. Toshiya Jitsuzumi (Chuo University) provided an explanation of the CoP and its drafting process.

Prof. Kudo briefly outlined the CoP and explained that its final version would be drafted through an ongoing multi-stakeholder interactive process by April 2025, coming into effect in May 2025. As a participant in this process, Prof. Kudo noted that stakeholders involved in drafting the CoP were recruited globally (both within and outside the EU). She mentioned that around 1,000 participants, including general-purpose AI model providers, downstream providers, industry, civil society, academia, and independent experts, were involved, but felt that Japanese participation was limited. Referencing the first draft published on November 14, 2024, Prof. Kudo confirmed that the CoP includes “objectives” aligned with the AI Act, “measures” (actions that providers of general-purpose AI models must take to achieve the objectives), and “KPIs” to evaluate goal achievement. She shared her impressions of the first draft, noting that it was still a rough proposal lacking in overall detail and that some phrasing could potentially lead to additional or expanded regulations beyond the EU AI Act’s scope. Prof. Kudo suggested that while there was still room for feedback from a Japanese perspective, understanding the needs of Japanese companies was necessary and welcomed suggestions.

Prof. Jitsuzumi, also involved in the drafting process, shared his impressions of the first draft. He highlighted that the “measures” for transparency included encouragement to consider public disclosure of information beyond the AI Act’s requirements. He noted this could potentially have global impact as additional regulation and was monitoring it closely. Regarding AI governance “measures,” Prof. Jitsuzumi suggested there was room for consideration on whether they would be an excessive burden for businesses, including SMEs, whether third-party verification could ensure effectiveness, and whether the disclosed information would be useful for consumers. He encouraged Japanese companies to seize the “opportunity to change the CoP itself” by contributing their opinions.

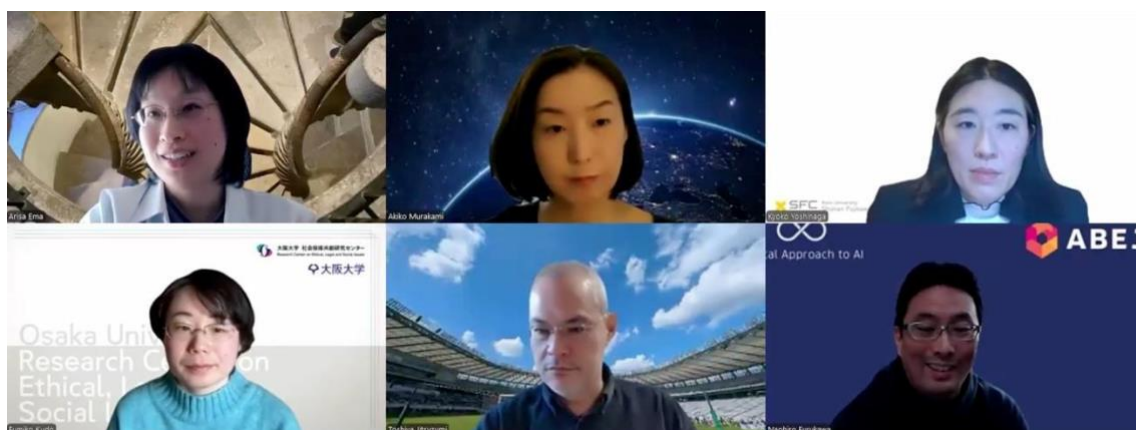
Panel Discussion

The panel discussion, moderated by Prof. Arisa Ema (Tokyo College, The University of Tokyo) involved all speakers discussing several topics.

First, opinions were exchanged on the magnitude of the Brussels Effect related to the AI Act. Prof. Yoshinaga suggested that the Brussels Effect would be less significant compared to the

General Data Protection Regulation (GDPR), stating that “AI startups will ultimately move to where development is easiest for them.” Mr. Furukawa agreed, while cautioning that this does not mean there would be no impact on Japanese companies. Prof. Jitsuzumi opined that the AI Act could extend its influence by being referenced in various countries for establishing minimum regulations or government procurement standards. Prof. Kudo, as a member of the Cabinet Office’s “AI System Research Group,” expressed interest in EU developments when considering international interoperability in the context of developing institutional frameworks in Japan.

The panelists and moderator then addressed several questions, reflecting on the discussion. They reiterated their call for Japanese companies to actively voice their opinions, concerns, and anxieties, and participate in the ongoing discussions.



Top row (from left to right): Prof. Ema, Ms. Murakami, Prof. Yoshinaga

Bottom row (from left to right): Prof. Kudo, Prof. Jitsuzumi, Mr. Furukawa

2. Q&A

This section presents a selection of questions from attendees—including those that could not be addressed on the day due to time constraints—and the speakers’ responses to them.

Q: Regarding the “global annual turnover” for penalties, is it correct to understand this as the total corporate turnover (including non-AI-related parts)?

Yoshinaga: Yes, based on the text of the regulation, it does not specify AI-related turnover, so I believe it refers to the total corporate turnover. This is likely because it is difficult to separate out AI product revenue specifically.

Q: How does the AI Act relate to issues like election interference through deepfakes?

Furukawa: Deepfakes are subject to the transparency obligations for certain AI systems under Article 50. Some cases might also be punishable under defamation laws. Prohibiting only AI-

generated false information cannot be justified; if we prohibit the creation of false information, we must also prohibit human-created false information for consistency. However, we need to consider the implications for freedom of expression.

Q: Could you explain again about the “systemic risk” of general-purpose AI models?

Kudo: I will refer to the answers provided in the FAQs for the AI Act and the CoP. Systemic risks are risks of large-scale harm arising from state-of-the-art models or other models with equivalent impact at a given time (see Article 3(65)). Examples include lowering barriers to developing chemical or biological weapons, loss of control over autonomous general-purpose AI models, and large-scale harmful discrimination or misinformation (Recital 110). The EU AI Office notes that while general-purpose AI models with systemic risk are currently developed by a small number of companies, this may change over time.

<https://digital-strategy.ec.europa.eu/en/faqs/general-purpose-ai-models-ai-act-questions-answers>

Q: Do “providers of general-purpose AI models” include businesses that provide applications (such as chatbots or contract drafting apps) using GPT-xx offered by OpenAI?

Kudo: There is a possibility they could be included. The FAQs for the AI Act and the CoP explicitly state that entities modifying or fine-tuning existing general-purpose AI models may be considered providers of new models. However, the extent of modification or fine-tuning required for this classification remains unclear and is a topic for future consideration. Therefore, in our feedback on the CoP draft, we are asking questions and making proposals to clarify the scope or ensure proportional and gradual obligations based on risk.

<https://digital-strategy.ec.europa.eu/en/faqs/general-purpose-ai-models-ai-act-questions-answers>

Q: In the CoP drafting process, which countries had the most stakeholders from outside the EU? How about Asian countries other than Japan?

Jitsuzumi: Prior to the CoP discussion, a global opinion survey was conducted. Outside of Europe (mainly Western and Northern Europe), the United States had the most participation. From East Asia, I submitted the only opinion from Japan. Looking at the entire Asian region, there was just one more opinion from India, so interest from Asian countries was extremely low as of late August. There were no opinions from South America or Africa. The current situation might be slightly better, but compared to Europe and the US, it is still at a level where we can say there is almost no participation.

Q: Is there a chance to revise the points in the CoP that could lead to additional or expanded regulations?

Jitsuzumi: In the context of CoP development, there are two more opportunities to provide input before the final decision in May.

Furukawa: Essentially, the effect of the CoP is that compliance with it is presumed to indicate compliance with the relevant articles for general-purpose AI models. So, if you do not like the CoP, it is possible to implement your own measures to comply with the articles independently.

Q: Some legal experts in Japan are proposing to create AI regulations similar to the EU's. What are your thoughts on this?

Jitsuzumi: Personally, I am against it. Comprehensive regulation for a rapidly evolving new industry like AI is inherently challenging for hard law. Moreover, AI introduced into production processes is often just a new technology for achieving higher efficiency, so it does not create fundamentally new risks that require new legislation. The issue is the “quantity” of risk. Therefore, the current priority should be considering how to apply existing laws to this new technology, and comprehensive cross-sectoral regulation like the EU's is unnecessary until AI creates entirely new types of risks or until we are on the verge of “strong AI” with self-awareness.

Yoshinaga: At this point, I believe a comprehensive AI regulation law like the EU's is not suitable for Japan. Currently, a combination of soft law (guidelines) for comprehensive matters and hard law (legislation) for sector-specific and context-specific areas where risks have materialized is more appropriate. In international conferences, I often explain why Japan adopted soft law as comprehensive regulation and why it works in Japan, citing several reasons, including that risks vary depending on the context of use. In Japan's case, comprehensive AI regulation would likely discourage companies from taking development risks. Also, it is not widely known, but sector-specific legal amendments related to AI are steadily being made (e.g., Financial Instruments and Exchange Act, Digital Platform Transparency Act). So, it is a misconception that Japan has no AI regulation laws. I also agree with Prof. Jitsuzumi's opinion that regulation will be necessary when we reach the stage of strong AI (AGI).

Furukawa: Fundamentally, existing individual laws can address the issues, so there is no need for comprehensive regulation. Also, regulating only AI-based actions cannot be justified, so there is little point in establishing special AI regulations.

Kudo: I also believe that individual laws can cover a significant portion in Japan, and they should (as the nature of risks differs by use case, comprehensive regulation may not be appropriate). However, I feel that the framework for sharing information about serious incidents related to general-purpose AI models or advanced models between the public and private sectors (authorities and businesses) is currently insufficient. If this were to be implemented, I believe it should be regulated by law (based on the “rule of law”).

Q: How should we deal with countries that don not follow the international trend of AI regulation?

Yoshinaga: We can only rely on efforts to build consensus at the level of international organizations (G7, G20, OECD-GPAI, UN, etc.).

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