



European Council gives final approval to Landmark AI Act

On May 21, 2024, Council of the European Union issued a press release announcing Council gives final approval to the Artificial Intelligence Act (short: AI Act). The full release can be found [here](#). This legislation, was originally proposed by the European Commission on 21 April 2021, has been politically agreed upon by all three EU institutions (8 December 2023), and adopted by European Parliament on 13 March 2024. During the legislative process it had faced significant challenges in reaching a consensus among member states, addresses the rapid proliferation of AI technologies, exemplified by systems like ChatGPT, and the complexities in regulating them to balance various national interests.

The rules will come into force in 20 days after its publication in the official Journal. They will then apply from two years after they come into force. If companies do not comply with the regulations, the member states must decide on sanctions, such as monetary fines.

The AI Act applies outside of the European Union national borders and will therefore also be relevant for Japanese companies without presence in the EU. The Act applies to all high-risk AI systems that are developed and used outside of the EU, if the output of those systems is intended for use in the EU.

Consequently, the AI Act is poised to become a de facto global standard¹, much like the GDPR, potentially exerting substantial influence on businesses worldwide that utilize AI technologies. Key highlights from the release include:

- 1. Banned AI Applications:** The new rules prohibit certain AI applications that threaten citizens' rights. This includes:
 - Biometric categorisation systems based on sensitive characteristics.
 - Social scoring and predictive policing based solely on profiling or assessing personal characteristics.
 - AI that manipulates human behaviour (cognitive behavioral manipulation).
- 2. High-Risk AI Systems:** There are clear obligations for other high-risk AI systems.

Such systems must:

- Assess risks.
- Ensure transparency.
- Need to be registered in the EU database.

- 3. General-Purpose AI (GPAI) Systems:** GPAI systems and the models they are based on must meet specific transparency requirements.

The regulation of digital markets and services is a high priority for the EU, with many laws and regulations intersecting and impacting the development and use of GPAI. Key areas of focus in the EU regarding GPAI include data protection, copyright, and cybersecurity.

¹ See also the opinion expressed in the National Law Review: <https://natlawreview.com/article/eu-artificial-intelligence-act-what-s-impact>

- a. Data Protection:** The General Data Protection Regulation (GDPR) provides the legal basis for the training and subsequent use of GPAI models. Important principles under the GDPR include transparency, data minimization, and purpose limitation. These principles have been extensively discussed in guidelines from various regulatory authorities, such as those in the United Kingdom, France, Bavaria, Baden-Württemberg, and Hamburg.
- b. Copyright:** Training and output of GPAI can potentially infringe copyright laws. At the EU level, there is an exception for "text and data mining," which allows the use of copyrighted content for training GPAI models unless rights holders opt-out. Many rights holders do this by declaring their reservations in a machine-readable format. This exception, however, does not apply in all relevant jurisdictions, such as the United Kingdom (see ICO guidelines) or the United States (see information from the Copyright Office). Notable lawsuits outside the EU include *New York Times Co. v. Microsoft Corp.* et al. and *Getty Images (US), Inc. v. Stability AI, Inc.*, which focus on the training of machine learning-based models.
- c. Cybersecurity:** Cybersecurity risks associated with GPAI include adversarial attacks, where attempts are made to deceive the model into producing incorrect results, and misinformation such as "hallucinations" (seemingly plausible results that contradict the input data). These risks highlight the need for robust security measures and continuous monitoring.

In Conclusion, companies must navigate a complex regulatory landscape when developing and deploying GPAI systems, ensuring compliance with GDPR, addressing copyright concerns, and mitigating cybersecurity risks. Keeping abreast of legal developments within and outside the EU is crucial for staying compliant and avoiding potential legal challenges.

Therefore, before the AI Act comes into effect in two years, companies must thoroughly prepare to ensure that their AI systems comply with the new regulations. We will continue to provide updates as more details about the AI Act and other related regulation of digital markets and services become available.

THIS NEWSLETTER IS PROVIDED FOR INFORMATION PURPOSES ONLY; IT DOES NOT CONSTITUTE AND SHOULD NOT BE RELIED UPON AS LEGAL ADVICE.

Authors/Contacts

[Fumiaki Matsuoka](#)

Partner

E: fumiaki.matsuoka@aplaw.jp

[Burak Kara](#)*

Associate

Atsumi & Sakai Europa GmbH -
Rechtsanwälte und Steuerberater**

E: burak.kara@aplaw.de

[Frank Becker](#)*

Partner

Atsumi & Sakai Europa GmbH -
Rechtsanwälte und Steuerberater**

E: frank.becker@aplaw.de

* Not Registered as a Foreign Lawyer in Japan

**A corporation registered in Germany providing legal and tax advisory services

If you would like to sign up for A&S Newsletters, please fill out the [sign-up form](#).
Back issues of our newsletters are available [here](#).

Atsumi & Sakai is a multi-award-winning, independent Tokyo law firm with a dynamic and innovative approach to legal practice; it has been responsible for a number of ground-breaking financial deal structures and was the first Japanese law firm to create a foreign law joint venture and to admit foreign lawyers as full partners. Expanding from its highly regarded finance practice, the Firm now acts for a wide range of international and domestic companies, banks, financial institutions and other businesses, offering a comprehensive range of legal expertise.

Atsumi & Sakai has an outward-looking approach to its international practice, and has several foreign lawyers with extensive experience from leading international law firms, providing its clients with the benefit of both Japanese law expertise and real international experience.

We are the only independent Japanese law firm with affiliated offices located in New York, London, Brussels and Frankfurt which, together with our Tokyo office and Fukuoka affiliated office, enables us to provide real-time advice on Japanese law to our clients globally.

Atsumi & Sakai

www.aplawjapan.com/en/

Tokyo Office: Fukoku Seimei Bldg., 2-2-2 Uchisaiwaicho, Chiyoda-ku, Tokyo 100-0011, Japan

Fukuoka Affiliate Office: Tenjin Bldg. 10F, 2-12-1 Tenjin, Chuo-ku, Fukuoka-shi, Fukuoka 810-0001 Japan

New York Affiliate Office: 1120 Avenue of the Americas, 4th Floor, New York, New York 10036

London Office: 85 Gresham Street, London EC2V 7NQ, United Kingdom

Brussels Office: CBR Building, Chaussée de la Hulpe 185, 1170, Brussels, Belgium

Frankfurt Affiliate Office: OpernTurm (13F) Bockenheimer Landstraße 2-4, 60306 Frankfurt am Main, Germany

NOTICES

1. ABOUT ATSUMI & SAKAI

Atsumi & Sakai is a partnership consisting of Atsumi & Sakai Legal Professional Corporation, a Japanese professional corporation, a foreign law joint venture under the Act on Special Measures Concerning the Handling of Legal Services by Foreign Lawyers with certain Registered Foreign Lawyers of our firm, a Japanese Civil Code partnership among Japanese lawyers, represented by Yutaka Sakai, a lawyer admitted in Japan, and a foreign law joint venture with Janssen Foreign Law Office, represented by Markus Janssen, a foreign lawyer registered in Japan to advise on the laws of the Federal Republic of Germany. In addition to lawyers admitted in Japan, our firm includes foreign lawyers registered in Japan to advise on the laws of the US States of New York and California, the Republic of Korea, India, England and Wales, and the State of Queensland, Australia. Foreign lawyers registered in Japan to advise on state laws also are qualified to provide advice in Japan on the federal laws of their respective jurisdictions.*

*Atsumi & Sakai has established an office in London operating as Atsumi & Sakai Europe Limited (a company incorporated in England and Wales (No: 09389892); sole director Naoki Kanehisa, a lawyer admitted in Japan), an office in Brussels operating as Atsumi & Sakai Brussels EU (a company incorporated in Belgium; managing partner: Etsuko Kameoka, a lawyer admitted in New York and a Registered Foreign Lawyer in Brussels**), and an affiliate office in New York operating as Atsumi & Sakai New York LLP (a limited liability partnership established in New York; managing partner Bonnie L. Dixon, a lawyer admitted in New York and a Registered Foreign Lawyer in Japan). We also have a partnership with A&S Fukuoka LPC in Japan (partner: Yasuhiro Usui, a lawyer admitted in Japan) and an affiliate office in Frankfurt operating as Atsumi & Sakai Europa GmbH - Rechtsanwälte und Steuerberater, a corporation registered in Germany providing legal and tax advisory services (local managing director: Frank Becker, a lawyer admitted in the Federal Republic of Germany).*

* Atsumi & Sakai is not regulated by the Solicitors Regulation Authority for England and Wales.

**Not Registered as a Foreign Lawyer in Japan

2. LEGAL ADVICE

Japanese legal advice provided by Atsumi & Sakai and our global offices is provided by lawyers admitted in Japan. Advice provided in Tokyo in respect of any foreign law on which one of our foreign lawyers is registered in Japan to advise, may be provided by such a Registered Foreign Lawyer. None of Atsumi & Sakai Legal Professional Corporation, Atsumi & Sakai Europe Limited or Mr. Naoki Kanehisa is regulated by the Solicitors Regulation Authority for England and Wales, and none will undertake any reserved legal activity as defined in the United Kingdom Legal Services Act 2007. Advice provided in Germany on the laws of Germany will be provided by a lawyer admitted in Germany, and advice provided in New York on the laws of New York will be provided by a lawyer admitted in New York.