

## **BILL No. , OF 2023**

Provides for the use of Artificial Intelligence.

THE NATIONAL CONGRESS decrees:

### **CHAPTER I PRELIMINARY PROVISIONS**

Art. 1 This Law establishes general rules of a national character for the development, implementation, and responsible use of artificial intelligence (AI) systems in Brazil, with the objective of protecting fundamental rights and guaranteeing the implementation of safe and reliable systems, for the benefit of the human person, the democratic regime, and scientific and technological development.

Art. 2 The development, implementation, and use of artificial intelligence systems in Brazil are founded on:

- I – the centrality of the human person;
- II – respect for human rights and democratic values;
- III – the free development of personality;
- IV – protection of the environment and sustainable development;
- V – equality, non-discrimination, plurality, and respect for labor rights;
- VI – technological development and innovation;
- VII – free enterprise, free competition, and consumer protection;

VIII – privacy, data protection, and informational self-determination;

IX – the promotion of research and development for the purpose of stimulating innovation in the productive sectors and in the public authorities; and

X – access to information and education, and awareness of artificial intelligence systems and their applications.

Art. 3 The development, implementation, and use of artificial intelligence systems shall observe good faith and the following principles:

I – inclusive growth, sustainable development, and well-being;

II – self-determination and freedom of decision and choice;

III – human participation in the artificial intelligence cycle and effective human oversight;

IV – non-discrimination;

V – justice, fairness, and inclusion;

VI – transparency, explainability, intelligibility, and auditability;

VII – reliability and robustness of artificial intelligence systems and information security;

VIII – due process of law, contestability, and adversarial proceedings;

IX – traceability of decisions throughout the life cycle of artificial intelligence systems as a means of accountability and of attributing responsibility to a natural person or legal entity;

X – accountability, liability, and full reparation of damages;

XI – prevention, precaution, and mitigation of systemic risks arising from intentional or unintentional uses and from unforeseen effects of artificial intelligence systems; and

XII – non-maleficence and proportionality between the methods employed and the determined and legitimate purposes of artificial intelligence systems.

Art. 4 For the purposes of this Law, the following definitions are adopted:

I – artificial intelligence system: a computational system, with varying degrees of autonomy, designed to infer how to achieve a given set of objectives, using approaches based on machine learning and/or logic and knowledge representation, by means of input data from machines or humans, with the objective of producing predictions, recommendations, or decisions that may influence the virtual or real environment;

II – supplier of an artificial intelligence system: a natural person or legal entity, of a public or private nature, that develops an artificial intelligence system, directly or on commission, with a view to placing it on the market or putting it into service as a service it provides, under its own name or brand, whether for payment or free of charge;

III – operator of an artificial intelligence system: a natural person or legal entity, of a public or private nature, that employs or uses an artificial intelligence system in its own name or for its own benefit, unless said system is used in the course of a personal activity of a non-professional nature;

IV – AI agents: suppliers and operators of artificial intelligence systems;

V – competent authority: the body or entity of the Federal Public Administration responsible for overseeing, implementing, and monitoring compliance with this Law throughout the national territory;

VI – discrimination: any distinction, exclusion, restriction, or preference, in any area of public or private life, whose purpose or effect is to nullify or restrict the recognition, enjoyment, or exercise, on an equal footing, of one or more rights or freedoms provided for in the legal order, on the basis of personal characteristics such as geographic origin, race, color or ethnicity, gender, sexual orientation, socioeconomic class, age, disability, religion, or political opinions;

VII – indirect discrimination: discrimination that occurs when an apparently neutral rule, practice, or criterion has the capacity to

cause a disadvantage to persons belonging to a specific group, or to place them at a disadvantage, unless that rule, practice, or criterion has some reasonable and legitimate objective or justification in light of the right to equality and the other fundamental rights;

VIII – text and data mining: the process of extracting and analyzing large quantities of data or partial or full excerpts of textual content, from which patterns and correlations are extracted that will generate information relevant to the development or use of artificial intelligence systems.

## CHAPTER II RIGHTS

### Section I General Provisions

Art. 5 Persons affected by artificial intelligence systems have the following rights, to be exercised in the manner and under the conditions described in this Chapter:

I – the right to prior information regarding their interactions with artificial intelligence systems;

II – the right to an explanation of the decision, recommendation, or prediction made by artificial intelligence systems;

III – the right to contest decisions or predictions of artificial intelligence systems that produce legal effects or that significantly impact the interests of the affected person;

IV – the right to human determination and participation in decisions of artificial intelligence systems, taking into account the context and the state of the art of technological development;

V – the right to non-discrimination and to the correction of direct, indirect, unlawful, or abusive discriminatory biases; and

VI – the right to privacy and to the protection of personal data, under the terms of the pertinent legislation.

Sole paragraph. AI agents shall inform, in a clear and easily accessible manner, the procedures necessary for the exercise of the rights described in the caput.

Art. 6 The defense of the interests and rights provided for in this Law may be exercised before the competent administrative bodies, as well as in court, individually or collectively, in accordance with the pertinent legislation on the instruments of individual, collective, and diffuse protection.

### Section

## II Of the rights associated with information and understanding of decisions made by artificial intelligence systems

Art. 7 Persons affected by artificial intelligence systems have the right to receive, prior to contracting or using the system, clear and adequate information regarding the following aspects:

I – the automated nature of the interaction and of the decision in processes or products that affect the person;

II – a general description of the system, the types of decisions, recommendations, or predictions it is intended to make, and the consequences of its use for the person;

III – identification of the operators of the artificial intelligence system and the governance measures adopted by the organization in the development and deployment of the system;

IV – the role of the artificial intelligence system and of the humans involved in the decision-making, prediction, or recommendation process;

V – categories of personal data used in the context of the operation of the artificial intelligence system;

VI – security, non-discrimination, and reliability measures adopted, including accuracy, precision, and coverage; and

VII – other information defined in regulation.

§ 1 Without prejudice to the provision of complete information in a physical or digital medium open to the public, the information referred to in subparagraph I of the caput of this article shall also be provided, where applicable, through the use of easily recognizable icons or symbols.

§ 2 Persons exposed to emotion recognition systems or biometric categorization systems shall be informed about the use and operation of the system in the environment in which the exposure occurs.

§ 3 Artificial intelligence systems intended for vulnerable groups, such as children, adolescents, the elderly, and persons with disabilities, shall be developed in such a way that these persons are able to understand how they work and their rights vis-à-vis AI agents.

Art. 8 A person affected by an artificial intelligence system may request an explanation of the decision, prediction, or recommendation, with information regarding the criteria and procedures used, as well as the main factors that affect that specific prediction or decision, including information on:

I – the rationale and logic of the system, and the meaning and anticipated consequences of such decision for the affected person;

II – the degree and level of contribution of the artificial intelligence system to decision-making;

III – the data processed and its source, the criteria for decision-making and, where appropriate, their weighting, as applied to the situation of the affected person;

IV – the mechanisms by which the person can contest the decision; and

V – the possibility of requesting human intervention, under the terms of this Law.

Sole paragraph. The information mentioned in the caput shall be provided through a free and simplified procedure, in language that allows the person to understand the outcome of the decision or prediction in question, within a period of up to fifteen days from the request, with a single extension for an equal period permitted, depending on the complexity of the case.

### Section

#### III Of the right to contest decisions and to request human intervention

Art. 9 A person affected by an artificial intelligence system shall have the right to contest and to request review of decisions, recommendations, or predictions generated by such system that produce relevant legal effects or that significantly impact their interests.

§ 1 The right to correction of incomplete, inaccurate, or outdated data used by artificial intelligence systems is guaranteed,

as well as the right to request the anonymization, blocking, or deletion of unnecessary or excessive data, or data processed in noncompliance with the legislation, under the terms of art. 18 of Law No. 13,709 of August 14, 2018, and the pertinent legislation.

§ 2 The right to contest provided for in the caput of this article also covers decisions, recommendations, or predictions based on inferences that are discriminatory, unreasonable, or contrary to objective good faith, understood as inferences that:

I – are founded on data that is inadequate or abusive for the purposes of the processing;

II – are based on imprecise or statistically unreliable methods; or

III – do not adequately consider the individuality and personal characteristics of individuals.

Art. 10. When the decision, prediction, or recommendation of an artificial intelligence system produces relevant legal effects or significantly impacts the interests of the person, including through the generation of profiles and the drawing of inferences, the person may request human intervention or review.

Sole paragraph. Human intervention or review shall not be required if its implementation is demonstrably impossible, in which case the party responsible for operating the artificial intelligence system shall implement effective alternative measures, in order to ensure the re-examination of the contested decision, taking into account the arguments raised by the affected person, as well as the reparation of any damages caused.

Art. 11. In scenarios in which the decisions, predictions, or recommendations generated by artificial intelligence systems have an irreversible or hard-to-reverse impact or involve decisions that may generate risks to the life or physical integrity of individuals, there shall be meaningful human involvement in the decision-making process and a final human determination.

Section IV Of the right to non-discrimination and to the correction of direct, indirect, unlawful, or abusive discriminatory biases

Art. 12. Persons affected by decisions, predictions, or recommendations of artificial intelligence systems have the right to fair and

equal treatment, and the implementation and use of artificial intelligence systems that may result in direct, indirect, unlawful, or abusive discrimination are prohibited, including:

I – as a result of the use of sensitive personal data or of disproportionate impacts on the basis of personal characteristics such as geographic origin, race, color or ethnicity, gender, sexual orientation, socioeconomic class, age, disability, religion, or political opinions; or

II – by establishing disadvantages or aggravating the situation of vulnerability of persons belonging to a specific group, even if apparently neutral criteria are used.

Sole paragraph. The prohibition provided for in the caput does not preclude the adoption of criteria for differentiating between individuals or groups when such differentiation is based on demonstrated, reasonable, and legitimate objectives or justifications in light of the right to equality and the other fundamental rights.

## CHAPTER III CATEGORIZATION OF RISKS

### Section I Preliminary assessment

Art. 13. Prior to its placement on the market or putting into service, every artificial intelligence system shall undergo a preliminary assessment carried out by the supplier to classify its degree of risk, the record of which shall take into account the criteria provided for in this chapter.

§ 1 Suppliers of general-purpose artificial intelligence systems shall include in their preliminary assessment the intended purposes or applications, under the terms of art. 17 of this law.

§ 2 The preliminary assessment carried out by the supplier shall be recorded and documented for purposes of liability and accountability in the event that the artificial intelligence system is not classified as high risk.

§ 3 The competent authority may order the reclassification of the artificial intelligence system, upon prior notice, as well as order an algorithmic impact assessment to support an ongoing investigation.

§ 4 If the result of the reclassification identifies the artificial intelligence system as high risk, carrying out an algorithmic impact assessment and adopting the other governance measures provided for in Chapter IV shall be mandatory, without prejudice to any penalties in the event of a fraudulent, incomplete, or untruthful preliminary assessment.

## Section II Excessive Risk

Art. 14. The implementation and use of artificial intelligence systems are prohibited:

I – that employ subliminal techniques whose objective or effect is to induce a natural person to behave in a manner that is harmful or dangerous to their health or safety or contrary to the foundations of this Law;

II – that exploit any vulnerabilities of specific groups of natural persons, such as those associated with their age or physical or mental disability, so as to induce them to behave in a manner that is harmful to their health or safety or contrary to the foundations of this Law;

III – by the public authorities, to evaluate, classify, or rank natural persons, based on their social behavior or personality attributes, by means of a universal score, for access to goods, services, and public policies, in an illegitimate or disproportionate manner.

Art. 15. In the context of public security activities, the use of remote biometric identification systems, on a continuous basis in publicly accessible spaces, is permitted only when provided for in a specific federal law and authorized by a court in connection with individualized criminal prosecution activity, in the following cases:

I – prosecution of crimes punishable by a maximum penalty of imprisonment exceeding two years;

II – search for victims of crimes or missing persons; or

III – crime in flagrante delicto.

Sole paragraph. The law referred to in the caput shall provide for measures that are proportionate and strictly necessary to serve the public interest, with due process of law and judicial oversight observed, as well as the principles and rights provided for in this Law, especially the guarantee against discrimination and the need for review of the algorithmic inference by the responsible

public agent before any action is taken against the identified person.

Art. 16. The competent authority shall be responsible for regulating excessive-risk artificial intelligence systems.

### Section III High Risk

Art. 17. High-risk artificial intelligence systems are those used for the following purposes:

I – application as safety devices in the management and operation of critical infrastructure, such as traffic control and water and electricity supply networks;

II – education and vocational training, including systems for determining access to educational or vocational training institutions or for assessing and monitoring students;

III – recruitment, screening, filtering, evaluation of candidates, decision-making on promotions or terminations of contractual employment relationships, allocation of tasks, and control and evaluation of the performance and behavior of persons affected by such artificial intelligence applications in the areas of employment, worker management, and access to self-employment;

IV – evaluation of criteria for access to, eligibility for, granting, review, reduction, or revocation of private and public services that are considered essential, including systems used to assess the eligibility of natural persons for public assistance and social security services;

V – assessment of the debt capacity of natural persons or establishment of their credit rating;

VI – dispatching or establishing priorities for emergency response services, including firefighters and medical assistance;

VII – administration of justice, including systems that assist judicial authorities in investigating the facts and applying the law;

VIII – autonomous vehicles, when their use may generate risks to the physical integrity of persons;

IX – applications in the health field, including those intended to assist medical diagnoses and procedures;

X – biometric identification systems;

XI – criminal investigation and public security, in particular for individual risk assessments by the competent authorities, in order to determine the risk of a person committing offenses or reoffending, or the risk for potential victims of criminal offenses, or to assess the personality traits and characteristics or past criminal behavior of natural persons or groups;

XII – analytical study of crimes relating to natural persons, allowing law enforcement authorities to search large, complex data sets, related or unrelated, available in different data sources or in different data formats, in order to identify unknown patterns or discover hidden relationships in the data;

XIII – investigation by administrative authorities to assess the credibility of evidence in the course of the investigation or prosecution of offenses, to predict the occurrence or recurrence of an actual or potential offense on the basis of the profiling of natural persons; or

XIV – migration management and border control.

Art. 18. The competent authority shall be responsible for updating the list of excessive-risk or high-risk artificial intelligence systems, identifying new cases, based on at least one of the following criteria:

I – the implementation being on a large scale, taking into account the number of persons affected and the geographic extent, as well as its duration and frequency;

II – the system being able to negatively impact the exercise of rights and freedoms or the use of a service;

III – the system has a high potential for material or moral harm, as well as for discrimination;

IV – the system affects persons of a specific vulnerable group;

V – the possible harmful results of the artificial intelligence system are irreversible or difficult to reverse;

VI – a similar artificial intelligence system has previously caused material or moral harm;

VII – low degree of transparency, explainability, and auditability of the artificial intelligence system, which hinders its control or oversight;

VIII – high level of identifiability of data subjects, including the processing of genetic and biometric data for the purpose of uniquely identifying a natural person, especially when the processing includes combining, matching, or comparing data from multiple sources;

IX – where the affected person has reasonable expectations regarding the use of their personal data in the artificial intelligence system, in particular the expectation of confidentiality, as in the processing of confidential or sensitive data.

Sole paragraph. The update of the list mentioned in the caput by the competent authority shall be preceded by consultation with the competent sectoral regulatory body, if any, as well as by public consultation and hearing and by regulatory impact analysis.

## CHAPTER IV GOVERNANCE OF ARTIFICIAL INTELLIGENCE SYSTEMS

### Section I General Provisions

Art. 19. AI agents shall establish governance structures and internal processes capable of ensuring the security of the systems and the fulfillment of the rights of affected persons, under the terms of Chapter II of this Law and of the pertinent legislation, which shall include, at a minimum:

I – transparency measures regarding the use of artificial intelligence systems in interaction with natural persons, which includes the use of adequate and sufficiently clear and informative human-machine interfaces;

II – transparency regarding the governance measures adopted by the organization in the development and use of the artificial intelligence system;

III – adequate data management measures for the mitigation and prevention of potential discriminatory biases;

IV – legitimization of data processing in accordance with data protection legislation, including through the adoption of privacy by design and by default measures and the adoption of techniques that minimize the use of personal data;

V – adoption of adequate parameters for the separation and organization of data for the training, testing, and validation of the system's results; and

VI – adoption of adequate information security measures from design through operation of the system.

§ 1 The governance measures for artificial intelligence systems apply throughout their entire life cycle, from initial design to the end of their activities and discontinuation.

§ 2 The technical documentation of high-risk artificial intelligence systems shall be prepared before they are placed on the market or used to provide a service, and shall be kept up to date during their use.

## Section II Governance Measures for High-Risk Artificial Intelligence Systems

Art. 20. In addition to the measures indicated in Art. 19, AI agents that supply or operate high-risk systems shall adopt the following governance measures and internal processes:

I – documentation, in a format suited to the development process and the technology used, regarding the operation of the system and the decisions involved in its construction, implementation, and use, considering all relevant stages in the system's life cycle, such as the design, development, evaluation, operation, and discontinuation stages of the system;

II – use of tools for automatic logging of the system's operation, so as to allow the assessment of its accuracy and robustness and the identification of potential discriminatory effects, and implementation of the risk mitigation measures adopted, with special attention to adverse effects;

III – performance of tests to assess appropriate levels of reliability, according to the sector and the type of application of the artificial intelligence system, including tests of robustness, accuracy, precision, and coverage;

IV – data management measures to mitigate and prevent discriminatory biases, including:

a) assessment of the data with appropriate measures to control human cognitive biases that may affect the collection and organization of the data and to avoid the generation of biases due to problems in classification, flaws or lack of information regarding affected groups, lack of coverage or distortions in representativeness, according to the intended application, as well as corrective measures to avoid the incorporation of structural social biases that may be perpetuated and amplified by the technology; and

b) composition of an inclusive team responsible for the design and development of the system, guided by the pursuit of diversity.

V – adoption of technical measures to enable the explainability of the results of artificial intelligence systems and of measures to make available to operators and potentially impacted persons general information about the functioning of the artificial intelligence model employed, making explicit the logic and criteria relevant to the production of results, as well as, upon request of the interested party, to make available adequate information that allows the interpretation of the results concretely produced, with respect for industrial and commercial secrecy.

Sole paragraph. Human oversight of high-risk artificial intelligence systems shall seek to prevent or minimize the risks to people's rights and freedoms that may arise from their normal use or from their use under reasonably foreseeable conditions of misuse, enabling the persons responsible for human oversight to:

I – understand the capacities and limitations of the artificial intelligence system and properly control its operation, so that signs of anomalies, dysfunctions, and unexpected performance can be identified and resolved as quickly as possible;

II – be aware of the possible tendency to automatically rely or over-rely on the result produced by the artificial intelligence system;

III – correctly interpret the result of the artificial intelligence system, taking into account the characteristics of the system and the interpretation tools and methods available;

IV – decide, in any specific situation, not to use the high-risk artificial intelligence system or to disregard, override, or reverse its result; and

V – intervene in the operation of the high-risk artificial intelligence system or interrupt its operation.

Art. 21. In addition to the governance measures established in this chapter, bodies and entities of the public authorities of the Union, the States, the Federal District, and the Municipalities, when contracting, developing, or using artificial intelligence systems considered high risk, shall adopt the following measures:

I – holding prior public consultation and hearing on the planned use of the artificial intelligence systems, with information on the data to be used, the general logic of operation, and the results of tests performed;

II – definition of protocols for access to and use of the system that allow recording who used it, for what specific situation, and for what purpose;

III – use of data from secure sources that are accurate, relevant, up to date, and representative of the affected populations and tested against discriminatory biases, in accordance with Law No. 13,709 of August 14, 2018, and its regulatory acts;

IV – facilitated and effective guarantee to citizens, vis-à-vis the public authorities, of the right to human explanation and review of decisions made by artificial intelligence systems that produce relevant legal effects or that significantly impact the interests of the affected person, to be carried out by the competent public official;

V – use of an application programming interface that allows its use by other systems for interoperability purposes, as provided by regulation; and

VI – publication, in easily accessible outlets, preferably on their websites, of the preliminary assessments of the artificial intelligence systems developed, implemented, or used by the public authorities of the Union, the States, the Federal District, and the Municipalities, regardless of the degree of risk, without prejudice to the provisions of Art. 43.

§ 1 The use of biometric systems by the public authorities of the Union, the States, the Federal District, and the Municipalities shall be preceded by the issuance of a normative act establishing guarantees for the exercise of the rights of the affected person and protection against direct, indirect, unlawful, or abusive discrimination,

with the processing of data on race, color, or ethnicity being prohibited, except as expressly provided by law.

§ 2 Where it is impossible to eliminate or substantively mitigate the risks associated with the artificial intelligence system identified in the algorithmic impact assessment provided for in Art. 22 of this Law, its use shall be discontinued.

### Section III Algorithmic Impact Assessment

Art. 22. The algorithmic impact assessment of artificial intelligence systems is an obligation of AI agents whenever the system is considered high risk by the preliminary assessment.

Sole paragraph. The competent authority shall be notified of the high-risk system through the sharing of the preliminary assessment and the algorithmic impact assessment.

Art. 23. The algorithmic impact assessment shall be carried out by a professional or team of professionals with the technical, scientific, and legal knowledge necessary to produce the report and with functional independence.

Sole paragraph. It shall be incumbent upon the competent authority to regulate the cases in which the performance or audit of the impact assessment must necessarily be conducted by a professional or team of professionals external to the supplier;

Art. 24. The impact assessment methodology shall contain, at a minimum, the following stages:

- I – preparation;
- II – risk cognition;
- III – mitigation of the risks identified;
- IV – monitoring.

§ 1 The impact assessment shall consider and record, at a minimum:

a) known and foreseeable risks associated with the artificial intelligence system at the time it was developed, as well as the risks that may reasonably be expected from it;

- b) benefits associated with the artificial intelligence system;
- c) probability of adverse consequences, including the number of persons potentially impacted;
- d) severity of adverse consequences, including the effort required to mitigate them;
- e) logic of operation of the artificial intelligence system;
- f) process and result of tests and evaluations and mitigation measures carried out to verify possible impacts on rights, with special emphasis on potential discriminatory impacts;
- g) training and risk awareness actions associated with the artificial intelligence system;
- h) mitigation measures and indication and justification of the residual risk of the artificial intelligence system, accompanied by frequent quality control tests; and
- i) transparency measures to the public, especially to potential users of the system, regarding residual risks, mainly when involving a high degree of harmfulness or dangerousness to the health or safety of users, under the terms of Arts. 9 and 10 of Law No. 8,078 of September 11, 1990 (Código de Defesa do Consumidor).

§ 2 In keeping with the precautionary principle, when using artificial intelligence systems that may generate irreversible impacts or impacts that are difficult to reverse, the algorithmic impact assessment shall also take into account incipient, incomplete, or speculative evidence.

§ 3 The competent authority may establish other criteria and elements for the preparation of the impact assessment, including the participation of the different affected social segments, according to the risk and economic size of the organization.

§ 4 It shall be incumbent upon the competent authority to regulate the frequency of updates to impact assessments, considering the life cycle of high-risk artificial intelligence systems and the fields of application, and it may incorporate best sectoral practices.

§ 5 AI agents that, after placing a system on the market or putting it into service, become aware of

an unexpected risk that it presents to the rights of natural persons shall immediately notify the competent authorities and the persons affected by the artificial intelligence system.

Art. 25. The algorithmic impact assessment shall consist of a continuous iterative process, carried out throughout the entire life cycle of high-risk artificial intelligence systems, with periodic updates required.

§ 1 It shall be incumbent upon the competent authority to regulate the frequency of updates to impact assessments.

§ 2 The update of the algorithmic impact assessment shall also include public participation, through a procedure of consultation with interested parties, even if in a simplified manner.

Art. 26. Subject to industrial and commercial secrecy, the conclusions of the impact assessment shall be public, containing at least the following information:

I – description of the intended purpose for which the system will be used, as well as its context of use and territorial and temporal scope;

II – risk mitigation measures, as well as their residual level once such measures have been implemented; and

III – description of the participation of different affected segments, if it has occurred, under the terms of § 3 of Art. 24 of this Law.

## CHAPTER V CIVIL LIABILITY

Art. 27. The supplier or operator of an artificial intelligence system that causes property, moral, individual, or collective damage is obliged to repair it in full, regardless of the degree of autonomy of the system.

§ 1 When it concerns a high-risk or excessive-risk artificial intelligence system, the supplier or operator shall be strictly liable for the damages caused, to the extent of their participation in the harm.

§ 2 When it does not concern a high-risk artificial intelligence system, the fault of the agent causing the damage shall be presumed, with the burden of proof reversed in favor of the victim.

Art. 28. AI agents shall not be held liable when:

I – they prove that they did not put the artificial intelligence system into circulation, employ it, or profit from it; or

II – they prove that the damage results from the exclusive act of the victim or of a third party, as well as from an external fortuitous event.

Art. 29. The hypotheses of civil liability arising from damages caused by artificial intelligence systems in the context of consumer relations remain subject to the rules provided in Law No. 8,078 of September 11, 1990 (Código de Defesa do Consumidor), without prejudice to the application of the other provisions of this Law.

## CHAPTER VI CODES OF GOOD PRACTICES AND GOVERNANCE

Art. 30. AI agents may, individually or through associations, formulate codes of good practices and governance that establish the conditions of organization, the operating regime, the procedures, including those concerning complaints from affected persons, the security standards, the technical standards, the specific obligations for each implementation context, the educational actions, the internal oversight and risk mitigation mechanisms, and the appropriate technical and organizational security measures for managing the risks arising from the application of the systems.

§ 1 In establishing good practice rules, the purpose, the probability and severity of the resulting risks and benefits shall be considered, as in the methodology set out in Art. 24 of this Law.

§ 2 The developers and operators of artificial intelligence systems may:

I – implement a governance program that, at a minimum:

a) demonstrates its commitment to adopting internal processes and policies that ensure comprehensive compliance with norms and good practices relating to non-maleficence and to proportionality between the methods employed and the specific and legitimate purposes of the artificial intelligence systems;

b) is adapted to the structure, scale, and volume of its operations, as well as to its potential for harm;

c) aims to establish a relationship of trust with affected persons, through transparent conduct that ensures mechanisms of participation under the terms of Art. 24, § 3, of this Law;

d) is integrated into its general governance structure and establishes and applies internal and external oversight mechanisms;

e) has response plans for reversing the possible harmful results of the artificial intelligence system; and

f) is constantly updated based on information obtained from continuous monitoring and periodic evaluations.

§ 3 Voluntary adherence to a code of good practices and governance may be considered an indication of good faith on the part of the agent and shall be taken into account by the competent authority for purposes of applying administrative sanctions.

§ 4 The competent authority may establish a procedure for analyzing the compatibility of the code of conduct with the legislation in force, with a view to its approval, publication, and periodic updating.

## CHAPTER VII REPORTING OF SERIOUS INCIDENTS

Art. 31. AI agents shall report to the competent authority the occurrence of serious security incidents, including when there is a risk to the life and physical integrity of persons, the interruption of the operation of critical infrastructure, serious damage to property or the environment, as well as serious violations of fundamental rights, under the terms of the regulation.

§ 1 The report shall be made within a reasonable period, as defined by the competent authority.

§ 2 The competent authority shall verify the seriousness of the incident and may, if necessary, order the agent to adopt measures and take steps to reverse or mitigate the effects of the incident.

## CHAPTER VIII OVERSIGHT AND ENFORCEMENT

### Section I The Competent Authority

Art. 32. The Executive Branch shall designate a competent authority to ensure the implementation and enforcement of this Law.

*Sole paragraph. It is incumbent upon the competent authority to:*

I – ensure the protection of fundamental rights and of other rights affected by the use of artificial intelligence systems;

II – promote the preparation, updating, and implementation of the Brazilian Artificial Intelligence Strategy together with the bodies of related competence;

III – promote and prepare studies on good practices in the development and use of artificial intelligence systems;

IV – encourage the adoption of good practices, including codes of conduct, in the development and use of artificial intelligence systems;

V – promote cooperation actions with authorities for the protection and promotion of the development and use of artificial intelligence systems of other countries, of an international or transnational nature;

VI – issue rules for the regulation of this Law, including on:

a) procedures associated with the exercise of the rights provided for in this Law;

b) procedures and requirements for the preparation of the algorithmic impact assessment;

c) form and requirements of the information to be made public on the use of artificial intelligence systems; and

d) procedures for the certification of the development and use of high-risk systems.

VII – coordinate with public regulatory authorities in exercising their competences in specific sectors of economic and governmental activities subject to regulation;

VIII – oversee, independently or jointly with other competent public bodies, the disclosure of the information provided for in Arts. 7 and 43;

IX – oversee and apply sanctions in cases of development or use of artificial intelligence systems carried out in breach of the legislation, through an administrative proceeding that ensures adversarial proceedings, full defense, and the right to appeal;

X – to request, at any time, from public authority entities that develop or use artificial intelligence systems, a specific report on the scope, the nature of the data, and other details of the processing carried out, with the possibility of issuing a complementary technical opinion to ensure compliance with this Law;

XI – to enter, at any time, into a commitment with artificial intelligence agents to eliminate irregularity, legal uncertainty, or contentious situations within administrative proceedings, in accordance with the provisions of Decree-Law No. 4,657 of September 4, 1942;

XII – to consider petitions against the operator of an artificial intelligence system, after a complaint has been duly shown to have been filed and not resolved within the period established in regulations; and

XIII – to prepare annual reports on its activities.

Sole paragraph. In exercising the powers set out in the caput, the competent body may establish differentiated conditions, requirements, and communication and disclosure channels for suppliers and operators of artificial intelligence systems classified as micro or small enterprises, under the terms of Complementary Law No. 123 of December 14, 2006, and startups, under the terms of Complementary Law No. 182 of June 1, 2021.

Art. 33. The competent authority shall be the central body for the application of this Law and for the establishment of norms and guidelines for its implementation.

Art. 34. The competent authority and the public bodies and entities responsible for the regulation of specific sectors of economic and

governmental activity shall coordinate their activities, within their respective spheres of action, with a view to ensuring compliance with this Law.

§ 1 The competent authority shall maintain a permanent forum for communication, including through technical cooperation, with the public administration bodies and entities responsible for the regulation of specific sectors of economic and governmental activity, in order to facilitate their regulatory, oversight, and sanctioning powers.

§ 2 In experimental regulatory environments (regulatory sandbox) involving artificial intelligence systems, conducted by public bodies and entities responsible for the regulation of specific sectors of economic activity, the competent authority shall be notified and may express its views on compliance with the purposes and principles of this Law.

Art. 35. The regulations and norms issued by the competent authority shall be preceded by public consultation and hearings, as well as regulatory impact analyses, under the terms of Arts. 6 to 12 of Law No. 13,848 of June 25, 2019, where applicable.

## Section II Administrative Sanctions

Art. 36. Artificial intelligence agents, by reason of infractions committed against the norms provided for in this Law, shall be subject to the following administrative sanctions, applicable by the competent authority:

I – warning;

II – simple fine, limited in total to R\$ 50,000,000.00 (fifty million reais) per infraction, or, in the case of a legal entity governed by private law, up to 2% (two percent) of its revenue, or that of its group or conglomerate in Brazil, in its last fiscal year, excluding taxes;

III – public disclosure of the infraction after its occurrence has been duly investigated and confirmed;

IV – prohibition or restriction on participating in the regulatory sandbox regime provided for in this Law, for up to five years;

V – partial or total, temporary or permanent suspension of the development, provision, or operation of the artificial intelligence system; and

VI – prohibition on the processing of certain databases.

§ 1 The sanctions shall be applied following an administrative proceeding that allows the opportunity for full defense, gradually, individually, or cumulatively, according to the particularities of the specific case and considering the following parameters and criteria:

I – the severity and nature of the infractions and any violation of rights;

II – the good faith of the infringer;

III – the advantage gained or sought by the infringer;

IV – the economic condition of the infringer;

V – recidivism;

VI – the degree of harm;

VII – the cooperation of the infringer;

VIII – the repeated and demonstrated adoption of internal mechanisms and procedures capable of minimizing risks, including algorithmic impact assessment and effective implementation of a code of ethics;

IX – the adoption of a policy of good practices and governance;

X – the prompt adoption of corrective measures;

XI – the proportionality between the seriousness of the violation and the intensity of the sanction; and

XII – the accumulation with other administrative sanctions that may already have been definitively applied for the same unlawful act.

§ 2 Before or during the administrative proceeding referred to in § 1, the competent authority may adopt preventive measures, including a coercive fine, subject to the total limit referred to in subparagraph II of the caput, when there is evidence or well-founded concern that the artificial intelligence agent:

I – causes or may cause irreparable harm or harm that is difficult to repair; or

II – renders the final outcome of the proceeding ineffective.

§ 3 The provisions of this article do not replace the application of administrative, civil, or criminal sanctions defined in Law No. 8,078 of September 11, 1990, in Law No. 13,709 of August 14, 2018, and in specific legislation.

§ 4 In the case of the development, provision, or use of excessive-risk artificial intelligence systems, there shall be, at a minimum, the imposition of a fine and, in the case of a legal entity, the partial or total, provisional or permanent suspension of its activities.

§ 5 The application of the sanctions provided for in this article does not, under any circumstances, exclude the obligation to provide full reparation for the harm caused, under the terms of Art. 27.

Art. 37. The competent authority shall define, by means of its own regulation, the procedure for investigating and the criteria for applying administrative sanctions for infractions of this Law, which shall be subject to public consultation, without prejudice to the provisions of Decree-Law No. 4,657 of September 4, 1942, Law No. 9,784 of January 29, 1999, and other pertinent legal provisions.

Sole paragraph. The methodologies referred to in the caput of this article shall be published in advance and shall objectively present the forms and calibration of the sanctions, which shall contain detailed grounds for all of their elements, demonstrating compliance with the criteria provided for in this Law.

## Section

### III Measures to Foster Innovation

Art. 38. The competent authority may authorize the operation of an experimental regulatory environment for innovation in artificial intelligence (regulatory sandbox) for entities that request it and meet the requirements specified by this Law and in regulations.

Art. 39. Requests for authorization for regulatory sandboxes shall be submitted to the competent body by means of a project whose characteristics include, among others:

I – innovation in the use of technology or in the alternative use of existing technologies;

II – improvements in terms of efficiency gains, cost reduction, increased security, reduced risks, and benefits to society and consumers, among others;

III – a discontinuation plan, providing for measures to be taken to ensure the operational viability of the project once the regulatory sandbox authorization period has ended.

Art. 40. The competent authority shall issue regulations establishing the procedures for requesting and authorizing the operation of regulatory sandboxes, and may limit or interrupt their operation, as well as issue recommendations, taking into consideration, among other aspects, the preservation of fundamental rights, the rights of potentially affected consumers, and the security and protection of the personal data that are subject to processing.

Art. 41. Participants in the testing environment for artificial intelligence regulation remain liable, under the terms of the applicable liability legislation, for any harm inflicted on third parties as a result of the experimentation that takes place in the testing environment.

Art. 42. The automated use of works, such as extraction, reproduction, storage, and transformation, in data and text mining processes in artificial intelligence systems, in activities carried out by research organizations and institutions, by journalism organizations, and by museums, archives, and libraries, does not constitute copyright infringement, provided that:

I – its objective is not the simple reproduction, display, or dissemination of the original work itself;

II – the use occurs to the extent necessary for the objective to be achieved;

III – it does not unjustifiably prejudice the economic interests of the rights holders; and

IV – it does not compete with the normal exploitation of the works.

§ 1 Any reproductions of works for data mining activity shall be kept under strict security conditions, and only for the time necessary to carry out the activity or for the specific purpose of verifying the results of scientific research.

§ 2 The provisions of the caput apply to text and data mining activity for other analytical activities in artificial intelligence systems, provided that the conditions of the subparagraphs of the caput and of § 1 are met, and provided that the

activities do not communicate the work to the public and that access to the works has been obtained legitimately.

§ 3 Text and data mining activity that involves personal data shall be subject to the provisions of Law No. 13,709 of August 14, 2018 (General Personal Data Protection Law).

#### Section IV Public Artificial Intelligence Database

Art. 43. It is incumbent upon the competent authority to create and maintain a publicly accessible database of high-risk artificial intelligence containing the public documents of the impact assessments, with respect for commercial and industrial secrets, under the terms of the regulation.

### CHAPTER IX FINAL PROVISIONS

Art. 44. The rights and principles expressed in this Law do not exclude others provided for in the national legal order or in the international treaties to which the Federative Republic of Brazil is a party.

Art. 45. This Law enters into force one year after its publication.

### JUSTIFICATION

The development and popularization of artificial intelligence technologies have revolutionized various areas of human activity. Moreover, forecasts indicate that artificial intelligence (AI) will bring about even deeper economic and social changes in the near future.

Recognizing the relevance of this issue, a number of legislative proposals have recently been introduced in both the Federal Senate and the Chamber of Deputies, with the aim of establishing guideposts for the development and application of artificial intelligence systems in Brazil. Of particular note are Bill (PL) No. 5,051 of 2019, authored by Senator Styvenson Valentim, which establishes the principles for the use of Artificial Intelligence in Brazil; PL No. 21 of 2020, by Federal Deputy Eduardo Bismarck, which establishes foundations, principles, and guidelines for the development and application of artificial intelligence in Brazil, and provides other measures, and which was approved by the Chamber of Deputies; and PL No. 872 of 2021, by Senator Veneziano Vital do Rêgo, which provides for the use of Artificial Intelligence.

On February 3, 2022, these three bills began to be processed jointly in the Federal Senate and, subsequently, on February 17 of the same year, by means of Act of the President of the Federal Senate No. 4 of 2022, authored by me, at the suggestion of Senator Eduardo Gomes, with a view to drafting a legal text of the most advanced technical quality, the Commission of Jurists was established to support the drafting of a draft substitute for them.

Composed of renowned jurists, the commission had as members leading specialists in the fields of civil law and digital law, to whom I am grateful for their time, their dedication, and for sharing the final text that I now present. The members of the collegiate body were: Justice of the Superior Court of Justice, Ricardo Villas Bôas Cueva (President); Laura Schertel Ferreira Mendes (Rapporteur); Ana de Oliveira Frazão; Bruno Ricardo Bioni; Danilo Cesar Maganhoto Doneda (in memoriam); Fabrício de Mota Alves; Miriam Wimmer; Wederson Advincula Siqueira; Claudia Lima Marques; Juliano Souza de Albuquerque Maranhão; Thiago Luís Santos Sombra; Georges Abboud; Frederico Quadros D'Almeida; Victor Marcel Pinheiro; Estela Aranha; Clara Iglesias Keller; Mariana Giorgetti Valente, and Filipe José Medon Affonso. I must also thank the technical staff of the Federal Senate, in particular the Legislative Consultancy and the civil servants who provided support to the collegiate body: Reinilson Prado dos Santos; Renata Felix Perez, and Donaldo Portela Rodrigues.

The aforementioned Commission held a series of public hearings, as well as an international seminar, hearing from more than seventy experts on the subject, representing various segments: organized civil society, government, academia, and the private sector. It also opened the opportunity for any interested parties to participate through written contributions, receiving 102 submissions, individually analyzed and organized according to their proposals. Finally, the Commission requested that the Legislative Consultancy of the Federal Senate prepare a study on the regulation of artificial intelligence in more than thirty member countries of the Organisation for Economic Co-operation and Development (OECD), which made it possible to analyze the worldwide regulatory landscape on the subject.

Based on all of this extensive material, on December 6, 2022, the Commission of Jurists submitted its final report, together with a preliminary draft bill for the regulation of artificial intelligence.

In this context, the present initiative is based on the conclusions of the aforementioned Commission and seeks to reconcile, in legal regulation, the protection of fundamental rights and

freedoms, the valuing of labor and of human dignity, and the technological innovation represented by artificial intelligence.

The bill has a dual objective. On the one hand, it establishes rights to protect the most vulnerable link in question, the natural person who is already impacted daily by artificial intelligence systems, from content recommendation and the targeting of advertising on the Internet to the analysis of their eligibility for credit and for certain public policies. On the other hand, by providing governance tools and an institutional arrangement for oversight and supervision, it creates conditions of predictability regarding its interpretation and, ultimately, legal certainty for innovation and technological development.

The proposal therefore proceeds from the premise that there is no trade-off between the protection of fundamental rights and freedoms, the valuing of labor and of human dignity, on the one hand, and the economic order and the creation of new value chains, on the other. On the contrary, its foundations and its body of principles seek precisely such harmonization, under the terms of the Federal Constitution.

Structurally, the proposal establishes risk-based regulation and a rights-based regulatory model. It also presents governance instruments for adequate accountability of the economic agents that develop and use artificial intelligence, encouraging good-faith conduct and effective risk management.

The proposed text first defines general foundations and principles for the development and use of artificial intelligence systems, which frame all the other specific provisions.

It dedicates a specific chapter to the protection of the rights of persons affected by artificial intelligence systems, in which it: guarantees appropriate access to information and adequate understanding of the decisions made by these systems; establishes and regulates the right to contest automated decisions and to request human intervention; and governs the right to non-discrimination and to the correction of discriminatory biases.

In addition to setting basic and cross-cutting rights for any and every context in which there is interaction between machine and human being, such as information and transparency, this obligation is intensified when the AI system produces relevant legal effects or significantly impacts the individuals concerned (e.g., the right to contest and to human intervention). Thus, the weight of regulation is calibrated according to the potential risks of the context in which the technology is applied. Symmetrically to the rights, certain

general and specific governance measures were established, respectively, for artificial intelligence systems of any degree of risk and for those categorized as high risk.

In addressing the categorization of artificial intelligence risks, the proposal establishes the requirement of a preliminary assessment; defines the prohibited applications, due to excessive risk; and defines high-risk applications, which are subject to stricter control norms.

With regard to the governance of systems, the bill lists the measures to be adopted to ensure transparency and the mitigation of biases; sets additional measures for high-risk systems and for governmental artificial intelligence systems; and standardizes the procedure for algorithmic impact assessment.

The text also addresses the rules on civil liability involving artificial intelligence systems, including defining the circumstances in which those responsible for their development and use will not be held liable.

In keeping with the gradation of norms according to the risk posed by the system - which permeates the entire draft of the proposal - an important distinction is made in the chapter on civil liability: in the case of a high-risk or excessive-risk AI system, the supplier or operator is strictly liable for the harm caused, to the extent of each one's participation in the harm. And in the case of AI that is not high risk, the fault of the agent causing the harm will be presumed, with the burden of proof reversed in favor of the victim.

The bill also reinforces protection against discrimination, through various instruments, such as the right to information and understanding, the right to contest, and a specific right to the correction of direct, indirect, unlawful, or abusive discriminatory biases, in addition to preventive governance measures. In addition to adopting definitions of direct and indirect discrimination – thus incorporating definitions from the Inter-American Convention against Racism, promulgated in 2022 –, the text pays particular attention to (hyper)vulnerable groups, both in qualifying what constitutes a high-risk system and in reinforcing certain rights.

In providing for the oversight of artificial intelligence, the bill determines that the Executive Branch shall designate an authority to ensure compliance with the established norms, and it specifies that authority's powers and sets administrative sanctions.

Measures to foster artificial intelligence innovation are also provided for, notably the experimental regulatory environment (regulatory sandbox).

Thus, through a mixed approach of ex-ante and ex-post provisions, the proposal lays out criteria for assessing and triggering which types of actions should be taken to mitigate the risks at stake, also involving the sectors interested in the regulatory process, through co-regulation.

Furthermore, in line with international law, it lays out guideposts for reconciling copyright and intellectual property with the notion that data should be a common good and should therefore circulate for machine training and the development of artificial intelligence systems - without, however, implying prejudice to the holders of such rights. There are, accordingly, developments in how regulation can foster innovation. In light of the foregoing, and aware of the challenge that the subject represents, we count on the collaboration of our esteemed colleagues to improve this proposal.

Session Hall,

Senator Rodrigo Pacheco