

New legal framework for regulating artificial intelligence (Bill 2238/23), approved by the Senate. The text will now be considered by the Chamber of Deputies.

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On December 10, 2024, Brazil's Federal Senate approved a new legal framework for regulating artificial intelligence (Bill No. 2338/23). Following Senate approval, the text will now be debated in the Chamber of Deputies and, if approved, will be submitted for presidential assent.

The proposed legislation was drafted by the Internal Temporary Committee on Artificial Intelligence (CTIA), which consolidated a text focused on balancing the rights of people affected by AI systems with the regulatory obligations of artificial intelligence actors. These actors include developers, distributors, and implementers, each with specific responsibilities.

For clarity, AI implementers are entities or individuals that use artificial intelligence systems in their operations, integrating them into their processes or services. AI developers are responsible for creating, designing, and maintaining AI systems. Distributors are those who market these systems or act as intermediaries in their sale and supply.

The legal framework takes a risk-based approach, classifying AI systems into categories such as excessive risk, whose use is prohibited in certain cases, and high risk, which requires algorithmic impact assessments (Articles 13-28). The main obligations and responsibilities of AI implementers, distributors, and developers include the following:

(i) For implementers: Maintain documentation on accuracy and safety; mitigate discriminatory bias; ensure adequate human oversight; provide transparency about the system's operations and results; and conduct impact assessments at every stage of the AI life cycle.

(ii) For developers: Document governance measures; conduct tests to ensure safety levels; mitigate discriminatory bias; provide information to implementers; and promote social responsibility and sustainability.

(iii) For distributors: Ensure regulatory compliance of the systems they market; provide clear information on functionality and associated risks; facilitate communication between developers and implementers when needed; and ensure that distributed systems are duly registered and certified, where applicable.

General-purpose and generative AI systems have additional obligations intended to prevent specific risks.

The proposal establishes the National System for the Regulation and Governance of Artificial Intelligence (SIA), coordinated by the National Data Protection Authority (ANPD), with support from the Permanent Council for Regulatory Cooperation in Artificial Intelligence (CRIA) and the Committee of Experts and Scientists in Artificial Intelligence (CECIA). It also provides for penalties similar to those in the General Data Protection Law (LGPD), including fines of up to BRL 50,000,000 (fifty million reais) per violation.

The text therefore seeks to regulate contentious issues such as information integrity and copyright. On copyright, it establishes that rights holders may prohibit the use of their content or require payment when it is used to develop AI.

The legal framework thus represents a significant regulatory advance, placing Brazil at the forefront of artificial intelligence regulation. However, it also creates challenges for companies and developers as they adapt their practices to comply with the new requirements.