

Office of Senator Eduardo Gomes

OPINION N° , OF2024

From the PLENARY, replacing the INTERNAL TEMPORARY COMMITTEE ON ARTIFICIAL INTELLIGENCE IN BRAZIL, on the amendments presented in the Plenary to Bill 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; Bill No. 5,051 of 2019, by Senator Styvenson Valentim, which establishes the principles for the use of Artificial Intelligence in Brazil; Bill No. 5,691 of 2019, by Senator Styvenson Valentim, which establishes the National Artificial Intelligence Policy; Bill No. 872, of 2021, by Senator Veneziano Vital do Rêgo, which provides the ethical frameworks and guidelines that underpin the development and use of Artificial Intelligence in Brazil; Bill No. 2,338, of 2023, by Senator Rodrigo Pacheco, which provides for the use of Artificial Intelligence; Bill No. 3,592 of 2023, by Senator Rodrigo Cunha, which establishes guidelines for the use of images and audio of deceased people through artificial intelligence (AI), with the aim of preserving the dignity, privacy and rights of individuals even after their death; Bill No. 210, of 2024, by Senator Marcos do Val, which provides the principles for the use of artificial intelligence technology

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in Brazil; and Bill No. 266 of 2024,
which *provides for the use of artificial
intelligence systems to assist the work
of doctors, lawyers and judges.*

Rapporteur: Senator EDUARDO GOMES

I – REPORT

The Plenary amendments to the Bill are now being examined No. 2,338, of 2023, by Senator Rodrigo Pacheco, which *provides for the use of Artificial Intelligence*; and other projects attached to it.

Forwarded to the Plenary, the proposal received new amendments. There was also approval of Requests No. 13 and 14, of 2024-CTIA, which requested urgency in voting on the Project.

II – ANALYSIS

Bill No. 2,338 of 2023, and its appendices, provides for the artificial intelligence. The establishment of rules for the topic has already been exhaustively analyzed by CTIA through one of the most participatory and open legislative debates in recent years in this House.

That said, I begin the analysis of the plenary amendments.

Amendments No. 200, 219, 220, 221, 225 and 229, referring to the alteration or suppression of the rules defined for the protection of copyright and related rights, have already been subject to analysis within the scope of CTIA, through

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numerous amendments, including Amendment No. 191, accepted, and Amendments No. 151, 159, 162, 185, 187, 192 and 194, partially accepted, to balance and better serve the interests of the affected sectors, with a view to not establishing undue restrictions on copyright and related rights. Therefore, we are of the opinion that these amendments should be rejected.

THE Amendment No. 201 seeks to exclude mentions of integrity from the text informational, considering that the insertion of the theme goes beyond the discipline of AI. Rejected the amendment, since the respective debate has already taken place through Amendments No. 153, 154, 165 and 183. At the time, it was decided to maintain the provision of information integrity as a basis, in art. 2, item XV, of the CTIA substitute, as well as a concept, in art. 4, item XXII. There was also a complete suppression of item XIII of art. 14, item XI of art. 15 and of art. 31, *caput* and sole paragraph, and the maintenance of art. 41 as it deals with the guarantee of informational integrity in the communication of serious security incidents. In view of this, is also rejected the Amendment No. 218, for defending the reinsertion of section XI of art. 15 and art. 31.

To the Amendments No. 202 to 215 were removed by the author.

It is also believed that rejection from the Amendment No. 216, which has similar objective to Amendments 180 and 188 and includes, in the guidelines for the protection of labor and workers, a guarantee of human review in automated decisions that institute disciplinary punishments and dismissal of workers. It is considered that the proposed text presents minimum guarantees, only guiding public policies on the subject so that the Executive Branch, as an appropriate scope, can mature the debate.

About Amendment No. 217, which proposes reinsertion, in art. 14, from the prediction of internet application systems as high-risk AI, it is suggested that rejection. The topic was the subject of debates during the analysis of Amendments No. 101, 113, 121, 153 and 165, with the decision to delete them. After in-depth debate, the provision proved to be excessively generic, considering that technical imprecision may have undesirable repercussions for important sectors, including those linked to the protection of fundamental rights, including freedom of expression.

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It is also believed that rejection from the Amendment No. 222, suggesting that making substantial or structural changes to the system will imply changes in the role of the agent, excluding the mere change in the purpose of the system. The issue was examined in the context of Amendments No. 175, 181 and 196, all of which were rejected, since changes in the very purpose of the AI can, in themselves, change the level of risk offered by the system.

To the Amendments No. 223 and 226, refer to the impact assessment algorithmic. The first, identical to Amendment No. 176, already analyzed, excludes a provision regarding public participation in carrying out the aforementioned assessment. The second raises concerns regarding the broad nature of the procedure. The matter was the subject of in-depth consideration, resulting in changes as a result of Amendments No. 171, 176, 182 and 195. It was understood that the rules for preliminary and algorithmic impact assessment were significantly relaxed in the name of respect for and encouragement of economic freedom, with preliminary assessment even changing from a mandatory procedure to good practice. Therefore, it is our opinion that rejection of Amendments No. 223 and 226.

Reject-if, also, the Amendments No. 224 and 242, as well as part of Amendment No. 239, which suggest the inclusion of more criteria for regulating the classification of high-risk AI systems, as well as for identifying new high-risk hypotheses, in the name of greater legal certainty. It is considered that the partial acceptance of Amendment No. 172 generated a reinforcement of the duty to render accounts in such situations. This was done through the addition of item "d" to § 5 of art. 16 of the substitute bill.

In its second part, the Amendment No. 239 also proposes amendment of section V of art. 46 and suppression of art. 47, on the grounds that the provisions may generate undue concentration of power. We are of the opinion that rejection of the amendment also on this point, as the provisions in question fill a gap regarding the powers to be exercised in relation to economic activities in which there is no specific sectoral regulatory body.

The Amendment No. 227 suggests the removal of the expression "providing technical access" of § 3 of art. 18 to the argument that the measure may result in invasion, affecting competitiveness and industrial and commercial secrets. It is the opinion that rejection, because the device itself already provides that

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such access will occur within reasonably expected and necessary parameters, expressly protecting industrial and commercial confidentiality.

About the Amendment No. 228, that presents an object similar to that of Amendment No. 133, it is suggested that rejection. The prohibition of the use of AI systems that facilitate material representing the sexual exploitation of minors is provided for and prohibited in art. 13, paragraph I, item "d".

It is believed that rejection from the Amendment No. 230, for suggesting the exclusion of the entire Chapter II of the text, concerning the rights of individuals or groups affected by AI systems. As stated, the proposal is concerned with balancing the protection of rights with the need to ensure the promotion of innovation and technological development. Thus, the Chapter on the provision of prerogatives for individuals affected by AI was reduced and considered in light of these premises, with a reduction in general rights and limitation of greater provisions to high-risk AI systems.

Rejected still the Amendment No. 231, which expands the hypotheses of non-application of the Law, reaching systems used in internal or intermediary business, commercial or industrial processes; not related to and not interactive with natural persons; and that do not generate risk. The first hypothesis is partially covered by item "c" of § 1º of art. 1º, with regard to the activities of testing and developing systems before they enter into circulation on the market. Furthermore, any AI system will be, even indirectly, related to a human being. Finally, systems that do not generate risk already have a very reduced regulatory burden, since a large part of the obligations established by the text began to focus on high-risk AIs.

For the Amendment No. 232, about the non-cumulative nature of sentences arising from the same conduct, it is suggested that rejection. The subject has a similar objective to Amendments No. 23, 25, 111, 138 and 173, already analyzed and rejected. We consider that the legal system already responds to this situation, including based on constitutional principles. There are also infra-legal instruments to reduce situations of cumulation, although not in such a specific way, but sufficient to protect the rights of the administered.

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We opine forrejectionto theAmendments No. 233 and 237, since the provision of the precautionary and preventive principles in the text were debated through Amendments No. 65, 76, 97, with these assumptions being maintained. In the same sense, it should berejecttheAmendment No. 234, which has a similar purpose to Amendments 77 and 95, since, in the name of legal certainty and protection of rights, the assumptions of human supervision and determination, as well as due diligence and auditability, must apply to all AI systems and not just high-risk ones.

THEAmendment No. 235presents a substitute with the justification of establish a balance between protection and stimulation of development. The proposal, with 16 articles, provides for the use of AI, establishes concepts and principles, as well as defines rules on obligations and accountability of agents and content recommendations. It is recommended thatrejection, considering that, throughout the analysis of the 189 amendments presented in the CTIA, there were several changes to the text in order to seek exactly the balance between protection of rights and incentives for innovation and scientific and technological development.

We also suggestrejectionfrom theAmendment No. 236, which proposes changes in the concepts of affected person or group and algorithmic impact assessment provided for in art. 4. The proposal presents a similar theme to Amendments No. 73 and 98, which were also rejected on the grounds that the concepts should be maintained in the scope in which they were presented, in order to enforce the level of rights protection necessary for the context.

Rejectedalso theAmendment No. 238,which changes the text to make it clear that the rights listed therein would not be applicable to any AI systems and that, even for systems not covered by the standard, it would be possible to request the person responsible to exercise similar rights, since the structure of rights and duties has already been extensively debated and defined in a balanced manner.

It is also suggested torejectionof theAmendments No. 240 and 243, relating to AI systems that pose risks to minors or that contain explicit content without consent. It is considered that the issue is duly addressed by the paragraphs of art. 13, which establishes the prohibited AI systems, as well as

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by arts. 14, 15 and 16, which regulate the categorization of high-risk AI systems.

We also believe in rejection from the Amendment No. 241, that suggests more restrictive wording regarding the obligations defined for general-purpose and generative AI systems, limiting the duties provided for to systems categorized as high risk. The same issue was considered in Amendments No. 163, 164, 184 and 198, which were rejected, as the text clarifies their incidence on general-purpose and generative AI systems with systemic risk.

We took the opportunity to make a correction of a material error in the Opinion approved by CTIA, regarding Amendments No. 165, by Senator Mecias de Jesus, and No. 183, by Senator Izalci Lucas, presented to the Committee. The correction must be made so that they appear in the Committee's Vote as fully accepted, being removed from the list of amendments partially accepted.

III – VOTE

In view of the above, the vote is to reject Amendments No. 200-PLN, 201-PLN and 216-PLN to 244-PLN.

Session Room,

, President

, Rapporteur