

New Legal Framework to regulate Artificial Intelligence (Bill 2238/23), with the approval of the Senate, where the text will be analyzed by the Chamber of Deputies.

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On December 10, 2024, the Brazilian Federal Senate approved a new legal framework to regulate Artificial Intelligence (Bill No. 2338/23). With the Senate's approval, the text will now proceed to deliberation in the Chamber of Deputies and, if approved, will be sent for presidential sanction.

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

For clarity, AI implementers are entities or individuals that apply artificial intelligence systems in their operations, integrating them into their processes or services. AI developers are responsible for the creation, design and maintenance of AI systems. Finally, distributors are those that market or mediate the sale and supply of developed AI systems.

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

(i) For implementers: Maintain documentation on accuracy and safety; mitigate discriminatory bias; ensure appropriate human oversight; transparency in system operations and outcomes; and conduct impact assessments at all stages of the AI lifecycle.

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

(iii) For distributors: Ensure regulatory compliance of commercialized systems; provide clear information on functionality and associated risks; facilitate communication between developers and implementers when necessary; and ensure that distributed systems are properly registered and certified, where appropriate.

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 the support of the Permanent Council for Regulatory Cooperation in Artificial Intelligence (CRIA) and the Committee of Experts and Scientists in Artificial Intelligence (CECIA). Sanctions similar to those of the General Data Protection Law (LGPD) are also foreseen, including fines of up to BRL 50,000,000 (fifty million reais) per infringement.

The text thus seeks to regulate controversial issues such as information integrity and copyright. As for copyright, it establishes that copyright holders can prohibit the use of their content or demand remuneration when it is used for the development of AI.

The Legal Framework therefore represents a significant regulatory advance, placing Brazil at the forefront of artificial intelligence regulation. However, it also poses challenges for companies and developers to adjust their practices to meet the new requirements.