

Substitute Bill Brazil AI Law

New version of the AI Regulatory
Framework in Brazil: main changes
and governance impacts

New version of the AI Regulatory Framework in Brazil: main changes and governance impacts

Today (November 28th), the Temporary AI Commission (CTIA) of the Federal Senate presented a new version of the substitute text for PL 2338/23, a proposed regulatory framework for Artificial Intelligence in Brazil. With revisions incorporating contributions from various sectors, the text reflects progress toward balancing technological innovation, the protection of rights, and flexible regulation, though it still contains points of contention. The text remains open for new amendments until December 2nd (Monday), with its vote scheduled for December 3rd. Following this, it is expected to be voted on in the Senate Plenary between December 4th and 6th.

According to the report, the goals of the new text include:

- 1. Promoting innovation and economic development.** The proposal expands exceptions to the scope of the law and introduces flexible regulatory regimes for new entrants. Incentives are offered for strategic projects, startups, and public-private partnerships.
- 2. Implementing a dynamic and adaptable risk classification.** The regulatory logic now predominantly operates ex-post, with high-risk classifications to be adjusted via sub-regulatory frameworks. This model reduces initial bureaucracy, enhances legal certainty, and facilitates technological investments.
- 3. Strengthening the AI Governance System (SIA).** The proposal emphasizes Brazil's existing regulatory structures, with regulatory agencies and sectoral authorities playing a central role.
- 4. Aligning with global debates and the geopolitical context.** The text is designed to align with international discussions on sustainability and global governance. It seeks to leverage Brazil's geopolitical position as a developing nation with a clean energy matrix to attract strategic investments, such as in data centers.

The discussion now moves toward two key points: 1) Highlighting the main changes and features of this new text; and 2) Updating the timeline of legislative progress in Brazil.

1) Main Changes and Highlights of the New Version Released by CTIA on 11/28:

COMPETENT AUTHORITY

- The ANPD (National Data Protection Authority) is still mentioned as the competent authority and coordinator of the Artificial Intelligence System (SIA). However, the document specifies that its competence is residual, limited to areas that do not have a specific sectoral regulatory authority.
- There is an explicit and joint mention of both the "competent authority" and "sectoral authorities," reinforcing the precedence of sectoral authorities in regulated environments and eliminating the overlap of responsibilities that previously existed between the competent authority and sectoral authorities. On the other hand, Article 51 establishes joint authority for supervising high-risk systems that violate the rights and principles outlined in the legislative proposal (PL).
- It is expressly noted that the competent authority has normative, regulatory, supervisory, and sanctioning powers only in unregulated sectors.

PROMOTION OF INNOVATION

- Simplified regulatory frameworks have been created, now shifted to transitional provisions, to encourage scientific and technological research and public-interest projects.
- Public-private partnership projects and those conducted in innovation institutions will enjoy special benefits.

EXEMPTIONS FROM THE SCOPE OF THE LAW

- The law does not apply to AI systems used by individuals for non-economic purposes, including general-purpose and generative systems.
- Testing and development activities are also excluded, with the regulation focusing solely on the use and commercial application of AI.

RISK CLASSIFICATION

- The criteria for determining the high risk of a system have been revised: previously, it considered the purpose for which the system was developed; now, it considers only the purpose for which the system is employed, emphasizing actual use over original intent.
- AI used in education will be classified as high risk only when it determines student selection or evaluates academic performance. Administrative tools are excluded from this classification.
- The classification of high risk for the use of AI systems in labor relations for task allocation and performance control has been removed. Only systems that evaluate performance and behavior of affected individuals remain classified as high risk.
- Any AI system, even if not designed for the purpose, that enables the production or dissemination of material related to child sexual abuse or exploitation will be classified as excessively risky and, therefore, prohibited.
- AI systems used as intermediary technologies that do not influence or determine results or levels of decision-making, or that perform strictly procedural tasks, are not considered high-risk.
- For the SIA to identify new high-risk scenarios, large-scale criteria such as the estimated number of people affected, geographical reach, duration, and frequency of use will no longer be considered. Instead, the risk to freedom of expression will be added as a criterion.

CLARIFICATION AND SIMPLIFICATION OF OBLIGATIONS

- Preliminary risk assessments are no longer mandatory for AI operators. However, they remain a best practice to demonstrate compliance with safety, transparency, and ethical requirements.
- Preliminary assessments will only be mandatory for general-purpose and generative AI systems. Developers must take into account expected uses and the established high-risk criteria.

- The concept of the "AI Officer" has been excluded, granting greater autonomy to regulated entities.
- The implementation of rights must consider the state of the art in technological development, applying what is feasible effectively and proportionately.
- The right to human determination will apply only to high-risk AI systems, encompassing rights to explanation, review, and contestation.
- Algorithmic Impact Assessments, mandatory for high-risk systems or uses, must be conducted prior to the introduction or deployment of the AI system in the market, taking into account the specific context of its introduction or deployment.
- The requirement for public participation in algorithmic impact assessments has been removed from the legislative proposal (PL), transferring the responsibility for its regulation to the competent authority and sectoral authorities.
- A provision was included allowing the SIA to establish simplified regimes with regulatory flexibility to foster national technological development.

AI GOVERNANCE

- Governance obligations and measures will be assigned according to the role of each actor in the AI lifecycle (developer, implementer, etc.). These actors must cooperate by providing information, necessary technical access, and reasonable support to fulfill their obligations.
- Regulated sectors will have greater influence over the regulation of the algorithmic impact assessment tool and greater public participation in the processes.
- **Thus, specific governance measures required of various actors were clarified and allocated, as outlined in Item 2.**

AI SYSTEM IDENTIFICATION

- The labeling of synthetic content in artistic, cultural, or entertainment works—provided it does not pose a risk of spreading false information—can be done in ways that do not harm the quality or utility of the work, such as in credits or metadata. This ensures that audiences can enjoy and use the work normally.

ACCREDITATION MECHANISMS

- The competent authority may accredit organizations to assess the risks of AI systems and evaluate compliance with required governance measures. Consequently, the SIA assumes the role of regulating the certification process by these organizations.

RIGHTS OF THE PERSON OR GROUP AFFECTED BY THE AI SYSTEM

- The requirement for prior notification of interactions with an AI system has been removed, allowing such notifications to occur at various stages instead.

COPYRIGHT PROTECTION

- Copyright protection has been incorporated as one of the foundational principles of the law, alongside intellectual property and trade secrets.

The remuneration system for copyright, as outlined in the previous text, has been maintained, and a system of compensation for moral and material damages was added. This includes damages caused by the use of copyrighted material during training, even if the copyright holder prohibits such use after the training process.

FREEDOM OF EXPRESSION

- The text emphasizes freedom of expression across various areas, including its inclusion in the law’s foundational principles, criteria for identifying new high-risk AI systems, risks to be addressed by developers of generative AI systems, and risks to be considered when communicating security incidents.

CONNECTION WITH INTERNATIONAL STANDARDS

- The text reflects global discussions on AI regulation, highlighting the need to balance risks and benefits, especially for emerging countries like Brazil.
- It emphasizes sustainability and incentives for establishing data centers in Brazil.
- Regulated sectors will have greater influence over the regulation of the algorithmic impact assessment tool and greater public participation in the regulatory processes.

2) Governance Measures and Obligations of AI Actors

AI Agents	AI Governance Measures to be Adopted
High-Risk AI System Applicators	<p>a) documentation in an appropriate format, considering all relevant stages in the system life cycle;</p> <p>b) use of tools or processes for the results of using the system, to allow the assessment of its accuracy and robustness and to determine potential illicit or abusive discriminatory results, and implementation of the risk mitigation measures adopted;</p> <p>c) documentation of the performance of tests to assess appropriate levels of reliability and safety;</p> <p>d) documentation in an appropriate format of the degree of human supervision that has contributed to the results presented by the AI systems;</p>

AI Agents	AI Governance Measures to be Adopted
High-Risk AI System Applicators	<p>e) measures to mitigate and prevent discriminatory biases, where the risk of discrimination arises from the application of the AI system; and</p> <p>f) provision of adequate information that allows, respecting industrial and commercial confidentiality by their technical capabilities, the interpretation of the results, and operation of AI systems introduced or placed into circulation on the market.</p>
High-Risk AI System Developers	<p>a) maintaining a record of the governance measures adopted in the development of the artificial intelligence system, to provide the necessary information to the applicant so that the latter can fulfill its obligations determined above;</p> <p>b) use of tools or processes to record the system's operation, to allow the assessment of its accuracy and robustness;</p> <p>c) carrying out tests to assess appropriate levels of security;</p> <p>d) adoption of technical measures to enable the applicability of the results of AI systems and the provision of adequate information that allows the interpretation of their results and operation, respecting industrial and commercial confidentiality;</p> <p>e) measures to mitigate and prevent discriminatory biases, where the risk of discrimination arises from the application of the AI system; and</p> <p>f) transparency on management and governance policies to promote social and sustainable responsibility within the scope of its activities.</p>
High Risk AI Systems Distributors	<p>They must ensure that the above measures are implemented before placing the system on the market.</p>

Generative AI System Developers	<p>Implement measures to identify and mitigate risks associated with fundamental rights, the environment, information integrity, freedom of expression, and access to information before offering the product or service for sale. Additionally, upon request from the relevant authorities, the developer must provide evidence demonstrating the adoption of these measures.</p>
General Purpose and Generative AI System Developers	<p>In addition to the relevant documentation on the development of the systems, carry out a preliminary assessment of them in order to identify their respective expected risk levels, including potential systemic risk, considering the reasonably expected purposes of use and the criteria provided for in the Law.</p> <p>If the system is made available as a resource for the development of services by third parties (e.g. through integration models such as APIs), they must cooperate with other AI system agents throughout the period in which this service is provided and supported, in order to allow adequate mitigation of risks and compliance with the rights established in the Law.</p>
General Purpose and Generative AI with Systemic RisksSystem Developers	<p>The relevant documentation on the development of the above systems must carry out a preliminary assessment of the systems, taking into account the following points:</p> <ul style="list-style-type: none"> I - describe the general purpose AI model; II - document the tests and analyses performed to identify and manage reasonably foreseeable risks, as appropriate and technically feasible; III - document the remaining unmitigable risks after development; IV - only process and incorporate data sets collected and processed in compliance with legal requirements, subject to adequate data governance, in particular, when dealing with personal data, by Law No. 13,709, of August 14, 2018 (General Law on the Protection of Personal Data) and Chapter X of this Law; V - publish a summary of the data set used in training the system, under the regulations; VI - design and develop AI systems using applicable standards to reduce energy use, resource use, and waste, as well as to increase energy efficiency and overall system efficiency, considering the context of use;

3) Chronology in Brazil

For a better general understanding of the legislative path in our country, here is a quick summary covering the main milestones, updated until November 2024:

1. **PL 21/20** (principles-based) approved in the Chamber of Deputies on 09/29/21;
2. **PL 2.338/23** (prescriptive), after the work of the Committee of Jurists, was presented on 05/03/23 by the President of the Senate, Rodrigo Pacheco;
3. **CTIA** installed on 08/16/23 to evaluate Bills No. 2338/2023, 21/2020, 5051/2019, 5691/2019, 872/2021, 3592/2023, 145/2024, 146/2024, 210/2024 and 266/2024;
4. The **Preliminary Text** of the CTIA's substitute proposal was presented on 04/24/24, with a deadline for receiving contributions from society until 05/22/2024
5. Three substitute proposals were presented by CTIA between June and July 2024: **Report of 06/07, Report of 06/18 and Report of 07/04**;
6. To facilitate deeper discussions, CTIA held four **Public Hearings**, and its operating period was extended three times, from 06/18/2024 to 11/13/2024, with the final extension valid until 12/14/2024.
7. On 11/28/2024, the most recent CTIA Substitute Proposal **Report** was presented, accompanied by 25 additional amendments. Of these, 5 were accepted, 4 partially accepted, and 16 rejected.

4) Next steps

The proposed text may be further amended until 12/2/2024, with 12/3/2024 being the expected date for approval by CTIA.

Following CTIA approval, the proposal will be submitted to the Senate plenary for consideration, likely between 12/4/2024 and 12/6/2024.

Authors:



Rony Vainzof
rony@vlklaw.com.br



Caio Lima
caio@vlklaw.com.br



Nuria Baxauli
nuria.baxauli@vlklaw.com.br



Paulo Sarmento
paulo.sarmiento@vlklaw.com.br



Mateus Lamonica
mateus.lamonica@vlklaw.com.br