AI LEGAL FRAMEWORK
BILL no. 2338/23

KEY ASPECTS OF THE TEXT APPROVED BY THE SENATE

On December 10, 2024, the Senate approved **Bill No. 2338/2023 ("Bill")**, known as the **Artificial Intelligence Legal Framework**. The Bill aims to establish general guidelines for the responsible governance of Artificial Intelligence ("AI") systems in Brazil. Below, we highlight the key points of the text

SCOPE

The rules of the Bill apply to all activities involving the development, provision, or operation of AI Systems, defined as "*machine-based systems that, with varying degrees of autonomy and for explicit or implicit objectives, infer from a set of data or information received how to generate outcomes, particularly predictions, content, recommendations, or decisions that may influence the virtual, physical, or real environment*".

The Bill also distinguishes between various types of AI Systems, such as **general-purpose AI** and **generative AI**, establishing specific obligations for the development, provision, or operation of each category.

AI AGENTS

The AI value chain comprises various stakeholders. In general, the Bill organizes them into **three main groups**, assigning each specific governance responsibilities and obligations.

DISTRIBUTOR

A natural or legal person, whether public or private, that makes an AI system available and distributes it for use by a third party, either for a fee or free of charge.

DEVELOPER

A natural or legal person, whether public or private, that develops an AI System, either directly or by commission, with the purpose of placing it on the market or applying it in a service they provide.

USER

A natural or legal person, whether public or private, that employs or uses an AI System on their behalf or for their benefit.

RIGHTS

Individuals or groups affected by AI Systems have the following rights:

ALL AI SYSTEMS

Right to information regarding interactions with AI Systems

Right to privacy and the protection of personal data

Right to protection against unlawful or abusive discrimination and to the correction of illegal or abusive discriminatory biases

HIGH-RISK AI SYSTEMS

Right to an explanation regarding the decision, recommendation, or prediction made by the AI System

Right to contest and request a review of decisions, recommendations, or predictions made by the AI System

Right to human review of decisions

GENERATIVE AI SYSTEMS

Transparency regarding the copyright or related rights used in the development of AI Systems

Right to compensation for the use of copyright or related rights

Right to opt-out from the use of copyright or related rights in the development of AI Systems

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RISK CLASSIFICATION

The Bill adopts a risk-based approach, classifying AI Systems according to their potential impact level. **It sets specific requirements for "high-risk" systems and prohibits the use of systems deemed as "excessive risk".**

EXCESSIVE RISK

AI Systems implemented to **(i)** instigate, induce, or exploit vulnerabilities with the aim of prompting behaviors that cause harm to health, safety, or other fundamental rights; **(ii)** assess personality traits, characteristics, or past behaviors for crime risk evaluation, offenses, or recidivism; **(iii)** classify or rank individuals based on social behavior or personality attributes; **(iv)** enable the production, dissemination, or facilitate the creation of material that constitutes or represents the abuse or exploitation of children and adolescents.

HIGH RISK

AI Systems implemented for use as security devices in managing critical infrastructures, education, recruitment, candidate screening, filtering, and evaluation, making decisions about promotions or terminations of employment relationships, assessing access criteria, reducing or revoking essential services (including public welfare and social security services), autonomous vehicles in public spaces, and applications in the health sector.

GOVERNANCE

Following the risk-based approach, **governance measures** are determined to be observed by developers, users, and distributors of AI systems or general-purpose and generative AI systems, according to the state of the art in technological development.

DOCUMENTATION
(e.g., preliminary assessment, algorithmic impact assessment)

INTERNAL PROCESSES
(e.g., incident response plan)

EXTERNAL PROCESSES
(e.g., transparency mechanisms)

SPECIFIC MEASURES
(developers, users, and distributors)

ENFORCEMENT

The Bill established the **National System for the Regulation and Governance of Artificial Intelligence ("SIA")**, an integrated regulatory ecosystem that, according to the current text, will be coordinated by the **National Data Protection Authority ("ANPD")**.

The ANPD and the sectoral authorities within the SIA have oversight and enforcement powers. In the event of non-compliance with the AI Legal Framework, one or more sanctions may be imposed, as listed:
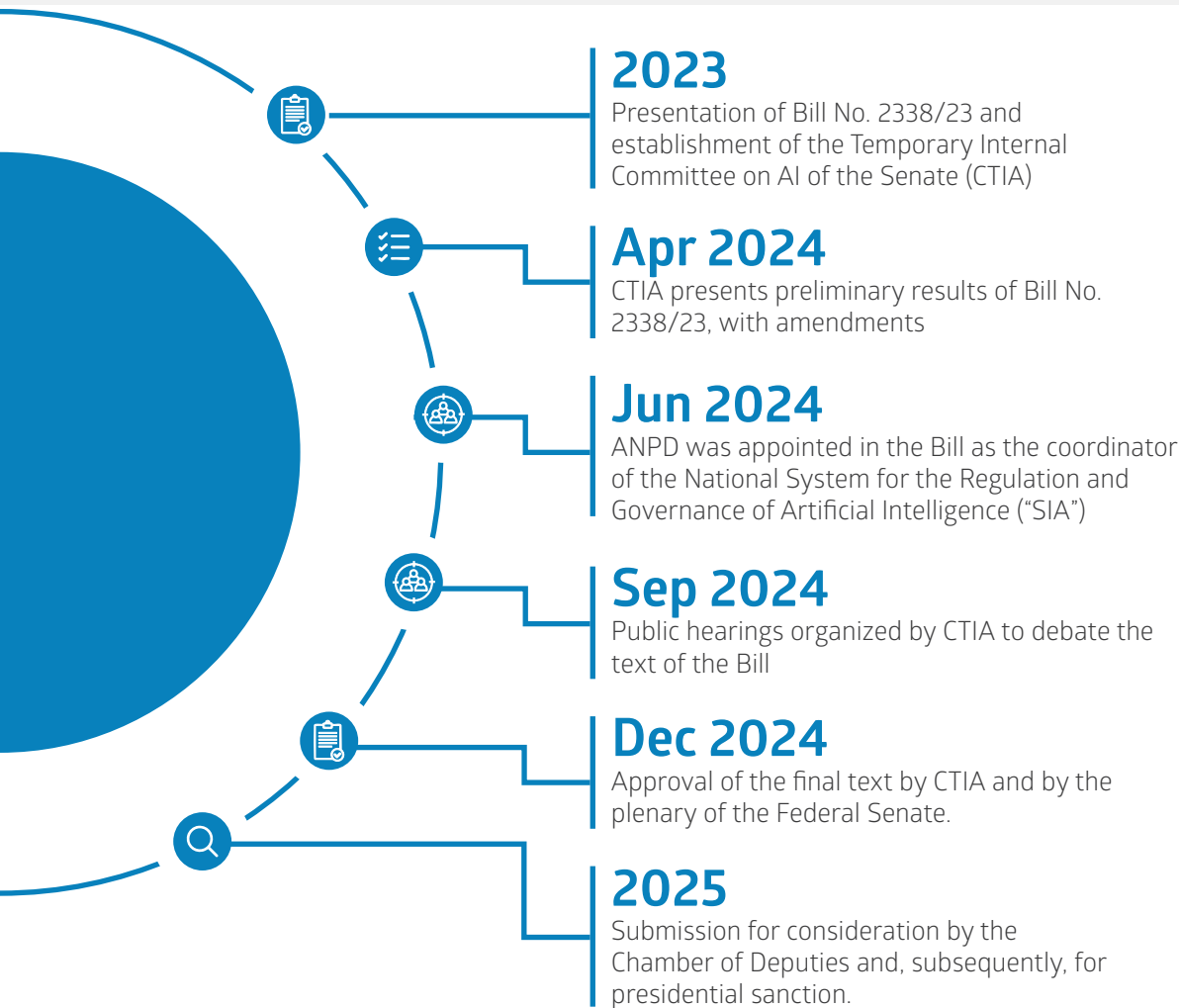
SANCTIONS
- Warning
- Simple fine (limited to 50 million BRL or 2% of gross revenue)
- Public disclosure of the infraction
- Prohibition or restriction from participating in the AI sandbox regime (for up to 5 years)
- Partial or total suspension of the development, provision, or operation of the AI system
- Prohibition on processing certain data sets

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LEGISLATIVE PROCESS AND NEXT STEPS

2023
Presentation of Bill No. 2338/23 and establishment of the Temporary Internal Committee on AI of the Senate (CTIA)

Apr 2024
CTIA presents preliminary results of Bill No. 2338/23, with amendments

Jun 2024
ANPD was appointed in the Bill as the coordinator of the National System for the Regulation and Governance of Artificial Intelligence ("SIA")

Sep 2024
Public hearings organized by CTIA to debate the text of the Bill

Dec 2024
Approval of the final text by CTIA and by the plenary of the Federal Senate.

2025
Submission for consideration by the Chamber of Deputies and, subsequently, for presidential sanction.

TIME

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