

# Brazil

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## Introduction

In the last few years, the growth in the use of artificial intelligence (AI) has been consolidated on several fronts, including important advances in:

- pattern recognition and information extraction from unstructured texts;
- generation of texts, images, videos and sounds through data mining;
- image processing with relevant applications in medicine;
- anti-money laundering resources; and
- automation of legal compliance.

However, to avoid violations against fundamental rights, the dissemination of AI technologies requires extensive regulation.

For instance, the use of AI to filter content on social networks has raised ethical questions on transparency, boosting a legislative initiative in Brazil with the approval in the Brazilian Chamber of Deputies of the PL 2.630/2020 – the so-called ‘Fake News Act’. Such imposition reflects a ‘regulatory turn’ regarding AI and shows that Brazil is trying to introduce new legislation capable of ending the ‘soft law’ era in AI regulation, along with its abstract ethical principles.

In September 2021, the Brazilian Chamber of Deputies approved PL 21/2020 as the ‘Legal Framework for Artificial Intelligence’. Contrary to the international hard law shift, this initiative still compiled abstract ethical principles without establishing binding obligations for public and private sectors, except for a couple of feeble recommendations around impact and risk analysis. PL 21/2020 was then sent to the Senate, where another important bill was drafted on the same subject in May 2023 (PL 2.338/2023).

Both PL 21/2020 and PL 2.338/2023 – along with eight other bills regarding the AI theme – are being analysed by the Internal Temporary Committee on Artificial Intelligence in Brazil (the ‘Committee’), which wishes to ensure the effective

development of reliable AI as a consequence of the insertion of a minimum set of binding governance standards for high-risk systems.<sup>180</sup>

Therefore, through the enactment of the Legal Framework for Artificial Intelligence, the Committee intends to set an era of 'hard law' regarding the use of AI systems in Brazil, establishing procedural obligations reflecting best practices in system development, such as impact and risk analysis, intellectual property protection, governance over data, transparency and tests on accuracy.

The improvement of legal parameters for AI applications becomes more pressing as the sector progresses in Brazil, affecting the lives of millions and raising questions about how the law should regulate new technologies.<sup>181</sup> This chapter provides an overview of the regulatory framework regarding the use of AI applications in Brazil, as well as their use by public institutions which govern the legal system, and by companies, associations and individuals that provide legal services in this jurisdiction.

## 1. What is the understanding or definition of AI in your jurisdiction?

The latest report of the Committee<sup>182</sup> presents the following definition in Article 4:

'For the purposes of this Law, the following definitions are adopted:

I – artificial intelligence system (AI): system based on a machine that, through different degrees of autonomy and for explicit and implicit purposes, infers from a database or information received how to generate results, especially, predictions, recommendations or decisions that may influence the real or virtual environment.'

## 2. In your jurisdiction, besides legal tech tools (ie, law firm or claim management, data platforms, etc), are there already current AI tools or use cases in practice for legal services?

In recent years, several of Brazil's companies, as well as international companies operating in the Brazilian market, have been marketing technological products aimed at the legal sector. Research points to a popularisation of the use of techniques based on machine learning, a factor that is motivated at least in part by

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180 See 'Diretrizes para o aperfeiçoamento do marco legal da IA no Brasil' ('Guidelines for improving the legal framework for AI in Brazil') (\*Publisher's translation) (Consultor Jurídico, 2 September 2021), [www.conjur.com.br/2021-set-02/opiniao-diretrizes-aperfeicoamento-marco-ia-brasil](http://www.conjur.com.br/2021-set-02/opiniao-diretrizes-aperfeicoamento-marco-ia-brasil) accessed 26 April 2024.

181 See 'Inteligência artificial aplicada ao direito e o direito da inteligência artificial' ('Artificial Intelligence applied to law and the law of artificial intelligence') (\*Publisher's translation) (Suprema, 30 June 23021) <https://suprema.stf.jus.br/index.php/suprema/article/view/20> accessed 26 April 2024.

182 See Internal Temporary Commission on Artificial Intelligence in Brasil, <https://legis.senado.leg.br/comissoes/arquivos?ap=8139&codcol=2629> accessed 26 April 2024.

the policy of open access to judicial data. The website of the Brazilian Association of Lawtechs and LegalTechs<sup>183</sup> reveals that, in March 2024, around 200 companies in the legal sector offered products or solutions aimed at the legal sector in a broad sense. Although not all these companies make use of AI, some of them are specifically dedicated to this type of application, as smart technology providers for the public sector or as data analysis and jurimetrics providers.<sup>184</sup>

In Brazil, several public institutions have been investing in the development of AI with the primary objective of speeding up their procedures. In recent years, more than 58 AI projects have been implemented in Brazilian courts.<sup>185</sup> Furthermore, in 2022, there were 64 new initiatives, with applications ranging from the transcription of hearings and drafting suggestions to the judgment of admissibility of appeals and the calculation of the probability of decision reversals. This digitisation trend is increasingly necessary for managing the efficiency of the courts, considering that Brazil is unique in terms of court litigation with a very expressive number of lawsuits: around 81.4 million, according to a survey carried out by the National Council of Justice (CNJ).<sup>186</sup>

The robots Victor and VitóriaIA, for example, streamlined the running of the Supreme Court of Brazil (Supremo Tribunal Federal or STF). The first machine helps in the resolution of cases through the analysis of requirements of general repercussions for the extraordinary appeals that arrive at the STF, while the second tool organises and gathers cases with the same subjects. Through these systems, the STF has achieved a huge improvement in efficiency in carrying out both admissibility and final judgments. AI also helps standardise the STF's case law, systematising understanding.

Parallel to the movement inside public institutions, many law firms have invested in AI resources to optimise their time, avoid repetitive tasks and reduce operating costs through tools which offer:

- automated assistance in litigation;
- automatic generation of drafts of legal motions and contracts;
- automatic translation of documents;
- research of case law;
- jurimetrics; and
- analysis and reorganisation of case portfolios.

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183 'Radar de Lawtechs e Legaltechs' ('Lawtechs and Legaltechs Radar\*') (\*Publisher's translation) (AB2L), <https://ab2l.org.br/radar-lawtechs/> accessed 26 April 2024.

184 See 'Inteligência artificial aplicada ao direito e o direito da inteligência artificial' (Suprema, 30 June 23021).

185 See 'Artificial Intelligence: Technology applied to conflict resolution in the Brazilian Judiciary' (FGV Conhecimento), <https://repositorio.fgv.br/items/89149bfb-04df-4260-8a6c-6d5729cd622a> accessed 26 April 2024.

186 Marcela Bocayuva and Rebecca de Souza Paiva 'Uso da IA no sistema de Justiça e um dos grandes desafios do século' (Consultor Jurídico, 5 April 2024)<https://www.conjur.com.br/2024-abr-05/uso-da-ia-no-sistema-de-justica-e-um-dos-grandes-desafios-do-seculo/> accessed 14 June 2024.

### 3. What is the current or planned regulatory approach on AI in general?

Such advances in the adoption of technological tools by law firms and other legal sectors have given rise to the need to discuss the ethical limits of this use. Outdated formulas in legal practices result in slowness, bureaucratisation and injustice, making the advantages of applying AI technologies to the law obvious. There are, nevertheless, important risks in implementing this new model – regarding, for example, copyright or personal data protection – which requires a public debate on this paradigm shift.

On 6 April 2021, the Brazilian Strategy for Artificial Intelligence (EBIA) was published through Ordinance No 4617 of the Ministry of Science, Technology and Innovation (MCTI). According to Stanford University's 2021 Artificial Intelligence Index, Brazil is the 31st country to outline such a national strategy.<sup>187</sup>

The EBIA was developed in three stages. The first step was hiring a specialised AI consultancy, with the objective of carrying out a study on the potential social and economic impacts of the large-scale use of AI tools and the presentation of proposals to mitigate any negative effects arising from this use. The second consisted of research into international best practices, covering topics such as general productivity gains, consequences for the labour market, education and professional requalification policies, and incentives for research, development and innovation, with the application of AI in areas such as health, urban mobility and public safety. The third stage was carried out through a public consultation which received over 1,000 contributions.<sup>188</sup> Based on these studies, research and recommendations, the EBIA was established with three transversal axes and six vertical axes.

The three transversal axes, which are to be considered in all AI applications, are:

1. *Legislation, regulation and ethical use*: legal, regulatory and ethical parameters for the development of AI.
2. *AI governance*: a governance structure that promotes methods and procedures to ensure compliance with AI principles when developing solutions with this technology.
3. *International aspects*: cooperation and integration platforms for exchanging information, experiences, regulations and good practices in conducting AI on the world stage.

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187 See 'A Estratégia Brasileira de Inteligência Artificial' ('The Brazilian Artificial Intelligence Strategy'\*) (\*Publisher's translation) (MIT Technology Review, 23 April 2021), <https://mittechreview.com.br/a-estrategia-brasileira-de-inteligencia-artificial/> accessed 26 April 2024.

188 *Ibid.*

The six vertical axes, which define the priority areas for applying AI, are:

1. *Education*: qualifying and preparing current and future generations for the changes in AI.
2. *Workforce and training*: preparing workers for the transformation of the labour market, with the replacement of jobs through automation and for the emergence of new positions, professional qualification and requalification.
3. *Research, development, innovation and entrepreneurship*: promoting public and private investments in research and development (R&D) to encourage AI innovation in a holistic way – including technical, social, legal and ethical aspects.
4. *Application in productive sectors*: promoting the use of AI in different sectors of the economy to improve the efficiency of Brazilian companies.
5. *Application in the public sector*: promoting the ethical use of AI by the public institutions to improve the quality of services provided to society, prioritising economy and efficiency.
6. *Public safety*: encouraging the non-discriminatory use of AI in the area of public safety, respecting the right to privacy and protection of the data subject's image, with supervisory monitoring mechanisms to ensure its ethical use.

In addition, the EBIA has six initial strategic objectives that should be divided into specific actions:

1. contribute to the elaboration of ethical principles for the development and use of responsible AI;
2. promote sustained investments in AI R&D;
3. remove barriers to innovation in AI;
4. train professionals for the AI ecosystem;
5. encourage innovation and development of Brazilian AI in an international environment; and
6. promote an environment of cooperation between public and private entities, industry and research centres for the development of AI.

The EBIA represents the beginning of a conversation on a topic of enormous importance. However, it lacks solidity and a more detailed action plan. There are no clear budget guidelines for implementing its recommendations, nor has there been a risk-based debate on the application of AI technologies. The strategy touches on ethical aspects

in a very superficial way, without offering objectives, standards, procedures or ground rules for regulating the use of such tools in Brazil.<sup>189</sup>

Nonetheless, the Committee – responsible for discussing the recent bills aiming to regulate AI in the country – brought more solidity to the ethical issues raised by EBIA in 2021. For instance, in its preliminary report presented on 24 April 2024, the Committee suggests the creation of a National Artificial Intelligence Regulation and Governance System, which shall evaluate the risks of implementing an AI project before its introduction in the Brazilian market.<sup>190</sup>

Furthermore, based on the EBIA's guidelines, the Committee established the following principles for AI regulation:

1. human being centralisation;
2. respect of human rights and democratic values;
3. free speech and development of personality;
4. environment protection;
5. equality, non-discrimination, plurality and diversity;
6. social rights;
7. economic, scientific and technological development;
8. free market and customer defence;
9. privacy and personal data protection;
10. information and data access;
11. cultural rights protection and artistic/historical goods promotion;
12. education on how to use AI;
13. information and data integrity and reliability;
14. hate speech and fake news combat;
15. intellectual property protection;
16. cybersecurity;

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<sup>189</sup> See 'Inteligencia Artificial no Brasil ainda precisa de uma estratégia' (FGV, 11 May 2021) <https://portal.fgv.br/artigos/inteligencia-artificial-brasil-ainda-precisa-estrategia> accessed 16 June 2024.

<sup>190</sup> See 'IA: relator apresenta proposta alinhada com regulamentos da Europa e dos EUA' ('IA: rapporteur presents proposal aligned with European and US regulations') (\*Publisher's translation) (Senadonoticias, 24 April 2024), [www12.senado.leg.br/noticias/materias/2024/04/24/ia-relator-apresenta-proposta-alinhada-com-regulamentos-da-europa-e-dos-eua](http://www12.senado.leg.br/noticias/materias/2024/04/24/ia-relator-apresenta-proposta-alinhada-com-regulamentos-da-europa-e-dos-eua) accessed 26 April 2024.

17. legal compliance;
18. transparency and auditability of the AI system;
19. accountability, responsibility and reparation of damages; and
20. prevention and mitigation of risks.

Finally, during the presentation of the report, the Committee argued that AI regulations need to protect fundamental rights without hindering the innovation and development of new technologies in Brazil.

#### **4. What are the current or planned regulations on the general use of AI or machine learning systems?**

Three months after the EBIA was published, the Brazilian Chamber of Deputies took its first step towards a bill that creates a Legal Framework for Artificial Intelligence. In September 2021, the House approved PL 21/2020, whose objective was to determine the principles, rights, duties and governance instruments for the development of AI technology in Brazil.

In May 2023, another important bill was drafted by the Senate (PL 2.338/2023) and, since it had the same purpose as PL 21/2020, they were both sent to the Committee responsible for analysing the bills and preparing a final text and report regarding AI regulation.<sup>191</sup>

The latest report of the Committee provides for some noteworthy rules – one of which is the attribution of responsibility for damages to ‘artificial intelligence agents’, who are either the developers (programmers) or those responsible for monitoring the software’s implementation. It is a controversial option, considering that it may inhibit the implementation of AI systems. The Committee’s report contains uncontroversial positions too, such as the compulsory documentation of steps and decisions in the software’s development cycle and related prior impact analysis, effective for prevention of liability for damages. In this sense, the regulatory agencies will create certification procedures to establish quality and certification marks for AI applications.

Apparently, in view of such a system of liability to be adopted in Brazil, victims of torts caused by AI will be able to pursue damages from the technology manufacturer. Here we see a delicate issue, considering the possibility that, when acting autonomously, the AI tools perform acts not originally considered by their manufacturer and/or developer. Even though the involved parties use maximum diligence, the results arising from the use of AI are not fully predictable in its current state. Therefore, there is a need to discuss regulatory alternatives for civil

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<sup>191</sup> *Ibid.*

liability regarding unpredictable results of the implementation of AI applications in the country.

With respect to the users of the AI systems, the Committee's report establishes that the public administration shall institute programmes aimed at teaching individuals how to properly use such technologies, explaining how AI systems work and the benefits and risks of the tools available in the Brazilian market.

## **5. Is free data access an issue in relation to AI?**

Article 20 of the General Data Protection Law (LGPD, Law No 13.709/2018)<sup>192</sup> attempts to address this issue, providing for the right of holders to request the review of automated decisions of personal data when these affect their interests. This includes the mapping of personal, professional, customer and credit profiles, as well as any aspects of personality.<sup>193</sup>

Moreover, in Article 20 section 1, the LGPD also determines that the controller of systems that make decisions based solely on the automated processing of personal data must provide information regarding the criteria and procedures used for the automated decision. However, as AI applications' choices are defined over detectable properties based on the data, machine learning systems do not consider normative justifications for decision making,<sup>194</sup> which brings about a technical struggle to comply with the principles of the law.

Furthermore, with respect to generative AI, the preliminary report of the Committee establishes that the AI system provider shall inform which copyrighted contents were included in the AI database or used in the AI training to generate text, images, audio, video or software codes. Nevertheless, the automatic generation of content through copyrighted databases shall not constitute a violation when used for research, journalistic, cultural or educational purposes, provided it has no commercial goals.

## **6. Are there already current court decisions on the provision of legal services using AI or decisions concerning other sectors that might be applicable to the use of AI in the provision of legal services?**

Case law understandings and common views on the subject are yet to be suitably established in Brazil.

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192 See General Data Protection Law (LGPD, Law No 13.709/2018), [www.planalto.gov.br/ccivil\\_03/\\_ato2015-2018/2018/lei/13709.htm](http://www.planalto.gov.br/ccivil_03/_ato2015-2018/2018/lei/13709.htm) accessed 26 April 2024.

193 See 'A Estratégia Brasileira de Inteligência Artificial' (MIT Technology Review, 23 April 2021).

194 See 'Inteligência artificial aplicada ao direito e o direito da inteligência artificial' (Suprema, 30 June 23021).

**7. What is the current status – planned, discussed or implemented – of the sectorial legislation in your jurisdiction on the use of AI in the legal profession or services that are traditionally being rendered by lawyers?**

The CNJ has issued Resolution 332/2020 establishing ethical, transparency and governance requirements that must be observed in the use of intelligent systems in judicial contexts. In view of the importance of access to data for the development of machine learning, the CNJ also established, through Resolution 334/2020, the Advisory Committee on Open Data and Data Protection within the scope of the Brazilian judiciary. The Committee's objective is to assist the CNJ in the construction of data access policies that balance the demands of transparency and technological development on the one hand, and, on the other, the need to protect the data of individuals mentioned in the context of court documents, establishing standards and technical and administrative measures for the proper processing of judicial data.<sup>195</sup>

Regarding the use of AI in the services rendered specifically by lawyers, there is no applicable legislation since AI regulation is still being discussed by the Brazilian National Congress.

**8. What is the role of national bar organisations or other official professional institutions?**

In 2018, the Brazilian National Bar Association (OAB) announced the creation of the Artificial Intelligence Coordination to regulate the use of AI in the legal profession. At the time, there was an institutional concern regarding the launch of AI tools for legal assistance in cases without the involvement of lawyers through 'virtual robots'. The main objective of the initiative was to ensure coordination between legal professionals and technological development, rejecting 'opportunists' who would subordinate the role of attorneys to 'a marginal role through the disorderly and unruly massification' of AI tools.<sup>196</sup> The entity pointed out that the Brazilian Statute of Law provides that the activities of legal consultation are private activities of lawyers duly registered at the National Bar Association.

To contribute to the modernisation of law in Brazil, the Federal Council of the OAB currently offers OABJuris, an AI application made available free of charge to registered professionals. The tool helps attorneys across the country to find the most appropriate case law, to have reliable information about the recent decisions of the courts, and to make better decisions about whether to appeal.<sup>197</sup>

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195 See 'Diretrizes para o aperfeiçoamento do marco legal da IA no Brasil' (Consultor Jurídico, 2 September 2021).

196 See 'OAB cria grupo para regulamentar inteligência artificial' ('OAB creates group to regulate artificial intelligence') (\*Publisher's translation) (Mgalhas, 3 July 2018), <https://www.mgalhas.com.br/quentes/282968/oab-cria-grupo-para-regular-inteligencia-artificial> accessed 26 April 2024.

197 See 'OAB cria grupo para regulamentar inteligência artificial' (Mgalhas, 3 July 2018).