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Regulation of AI in South American Jurisdictions

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In South America, as of May 2024, no country has yet approved legislation to regulate the development and use of Artificial Intelligence ("AI") systems. However, as discussions on this matter have intensified in recent years and propelled by the recently proposed European Artificial Intelligence Act[1], and the regulatory stances taken by the United States, an approval of such legislation is anticipated in the near future. In this brief article, we aim to outline the most recent updates regarding this issue focusing on Brazil, with comments on Chile, Argentina, Peru, Uruguay, and Colombia.

In Brazil, following the presentation of several legislative proposals since 2019, the Senate established a Temporary In-house Committee on Artificial Intelligence in Brazil (CTIA) in August 2023. This decision was made in recognition of the increasing social significance of the subject within society.

The CTIA's mandate is to collectively analyse all legislative proposals brought before the Brazilian National Congress, and to subsequently develop a consolidated draft for submission to the National Congress for consideration.

On April 24, 2024, Senator Eduardo Gomes, acting as the rapporteur for the CTIA, presented the preliminary text of Bill of Law No. 2338/2023[2], commonly referred to as the "AI Legal Framework", after a thorough study conducted by a committee of legal experts. This Bill of Law draws inspiration from both the European Artificial Intelligence Act and the regulatory approach

adopted by the United States, thereby creating a hybrid model tailored to address national specificities.

The proposed hybrid model in Brazil combines elements from both the decentralized approach seen in the United States and the centralized approach observed in Europe. Under this model, sectorial agencies are tasked with regulating AI matters within their respective domains on the one hand, and a central agency is also established on the other, akin to the European model.

The purpose of the central agency would be overseeing decisions related to AI matters made by the sectorial agencies, while also establishing general rules, promoting cooperation between different sectorial agencies, and collaborating with other regulatory agencies regarding cross-border issues such as antitrust matters, consumer and environmental protection.

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The proposed central agency would also be responsible for promoting cohesion and uniformity in the decisions of the sectorial agencies when they pertain to similar AI-related matters, thereby ensuring consistency and coherence in the regulation of AI across various sectors of the economy and society in Brazil.

The Bill of Law 2338/2023 also establishes rights of the persons or groups considered potentially affected by the AI applications, as follows: the right to (1) prior information regarding their interactions with artificial intelligence systems; (2) privacy and the protection of personal data; (3) determination and human participation in decisions made by AI systems; and (4) non-discrimination and the correction of direct, indirect, illegal, or abusive discriminatory biases.

For the AI systems' agents, the Bill institutes several obligations. They must create governance structures and internal procedures to guarantee the rights of the persons or groups considered potentially affected by the AI application, and the security of the system. The governance structures must encompass (1) transparency measures regarding the use of AI systems when interacting with natural persons; (2) transparency related to the governance measures adopted when developing the AI application; and (3) informational security measures. According to the AI system's risk assessment and the type of AI application, it must comply to other specific obligations, as similarly provided in Europe's AI Act.

In addition, the updated text provides a specific section to establish copyright protection within the scope of the development and utilization of AI systems, but in a broader way when compared to the Europe's AI Act. The supplier must disclose which copyright-protected works were used in order to train the AI application, it being made clear that the holders of copyrights and ancillary rights are entitled to prohibit the use of their works in the training of AI systems.

The central agency will also conduct a regulatory sandbox to define the remuneration of rightsholders regarding the utilization of their copyright-protected works in the development of AI systems, reaffirming the principles of the Brazilian Copyright Law (Law no. 9610/98), such as: author's protection, human-centred approach, non-transference of moral rights, public domain protection, limitation and exceptions on copyrights, and the restrictive interpretation regarding copyright transactions.

Another aspect of the proposed Bill of Law that mirrors the European AI Act is the classification of AI systems based on risk assessment. Prior to its introduction to the market, the AI application must pass through a preliminary appraisal, which will define the category of AI into which the system falls. This procedure aims to categorize AI systems according to their potential risks and impacts on individuals, society, and fundamental rights. Thereby, it provides a structured approach to understand and manages the potential risks of different types of AI systems, enabling appropriate regulatory measures to be implemented based on the level of risk posed by each system.

In Chile, the Artificial Intelligence National Policy was updated in 2024 after the European AI Act, incorporating some of its rationales[3], especially the classification of AI systems based on risk assessment. Chile's AI National Policy encompasses a series of measures, across different sectors of the economy and the society, to better address the different ways in which the use of AI applications can affect society. It also draws inspiration on UNESCO's Recommendation on the Ethics of Artificial Intelligence[4], promoting a series of ethical principles recognized internationally, focusing on

the development and use of AI systems in a responsible manner, while fostering transparency, equality, and respect for human rights. In addition, it is important to mention the Bulletin 15869-19[5], a bill that intends to regulate AI systems, which is inspired by Europe's AI Act, creating a risk assessment procedure for AI applications, a National Commission on Artificial Intelligence, and establishing a series of obligations for suppliers, developers, and users of AI applications[6].

In Argentina, the latest Bill of Law on the matter was proposed in March 2024[7], focused on establishing certifications for good practices, implementing a public registry of significant risks, promoting artificial intelligence in small and medium-sized enterprises, and encouraging accountability and algorithmic transparency of new technologies for collective benefits. It also establishes a Consultive Council on Artificial Intelligence *ad honorem* and outlines a set of principles to be adhered to, with a focus on safeguarding fundamental rights.

> " The main goal is to establish a regulatory framework aimed at promoting the ethical and responsible use of AI, fostering respect for human rights, and the safety of citizens. "

In Peru, the Presidency of the Council of Ministers submitted to public consultation the Bill of Law 31814 – Artificial Intelligence Law[8] – by which public and private institutions, as well as civil society organizations, are invited to share their opinion about the proposed legislation. The main goal is to establish a regulatory framework aimed at promoting the ethical and responsible use of AI, fostering respect for human rights, and the safety of citizens. As observed in the prior proposed legislation and regulatory stances in Europe, Brazil, Argentina, and Chile, it also provides a classification of AI applications based on a risk assessment.

In Uruguay, on November 2023 the Law 20,212 was enacted establishing, in its Articles 74 and 75[9], the guiding principles that must be observed by the AGESIC (*Agencia para el Desarrollo del Gobierno de Gestión Electrónica y la Sociedad de la Información y el Conocimiento*) when elaborating and regulating AI-related issues throughout society. When related to personal data, the AGESIC shall act alongside the URCDP (*Unidad Reguladora y de Control de Datos Personales*), the national agency responsible for overseeing personal data affairs. AGESIC has a deadline of 180 days to present before the legislative houses a report with recommendations for the elaboration of an AI regulation, which shall foster the protection of human rights, ensure the ethical use of AI, while also supporting innovation.

In Colombia, seven bills of law are currently under consideration by the National Congress. However, given the imminent conclusion of the current 2023-2024 legislature term in June 2024[10], the probability of any of these bills being ratified in such a short time is exceedingly low. There have been some regulatory measures referencing the utilization of AI which have predominantly addressed AI deployment tangentially, particularly within the context of services rendered by public entities.

However, all seven bills of laws draw inspiration from international precedents, such as the already mentioned UNESCO Recommendation on the Ethics of Artificial Intelligence, the OECD Council Recommendation on Artificial Intelligence[11] and the Europe's AI Act. It is imperative to underscore that until formal legislation is enacted to specifically regulate the domain of AI, the nation adheres to the principles outlined in the Public Policy for Digital Transformation and Artificial Intelligence (Conpes 3975[12], issued in 2019).

It is evident that the issue of AI regulation is gaining traction throughout South America, emerging as a prominent topic of discussion in legislative bodies across various countries, following a global trend. Moreover, there is a noticeable consistency among Bills of Laws and policies in certain aspects. Specifically in South America, the adherence to UNESCO's AI principles and the rationales of Europe's AI Act highlights a direction to be followed in the region. It includes the establishment of a classification system for AI applications based on the assessed risks they may pose to society, promoting the ethical and responsible development and use of AI systems, and prioritizing the protection of fundamental human rights.

[1]   *https://artificialintelligenceact.eu/high-level-summary/, acesso em 14/05/2024.*

[2]   *https://legis.senado.leg.br/comissoes/arquivos?ap=8139&codcol=2629, acesso em 11/05/2024.*

[3]   *https://redgol.cl/tendencias/por-que-gobierno-envia-proyecto-de-ley-para-regular-la-ia, acesso em 11/05/2024.*

[4]   *https://unesdoc.unesco.org/ark:/48223/pf0000381137, acesso em 11/05/2024.*

[5]   *https://www.derechosdigitales.org/22881/america-latina-ante-la-inteligencia-artificial-mapeo-de-iniciativas-regulatorias-en-la-region/, acesso em 14/05/2024.*

[6]   *https://www.camara.cl/legislacion/ProyectosDeLey/tramitacion. aspx?prmID=16416&prmBOLETIN=15869-19, acesso em 14/05/2024.*

[7]   *https://comercioyjusticia.info/justicia/nuevo-proyecto-en-diputados-para-regular-el-uso-de-la-ia/, acesso em 11/05/2024.*

[8]   *https://proactivo.com.pe/pcm-inicia-consulta-publica-sobre-reglamento-de-ley-de-inteligencia-artificial/, acesso em 11/05/2024.*

[9]   *https://www.impo.com.uy/bases/leyes/20212-2023, acesso em 14/05/2024.*

[10]   *https://www.linkedin.com/pulse/los-proyecto-de-ley-que-hay-inteligencia-sfh9f/, acesso em 14/05/2024.*

[11]   *https://www.oecd.org/digital/artificial-intelligence/, acesso em 14/05/2024.*

[12]   *https://colaboracion.dnp.gov.co/CDT/Conpes/Econ%C3%B3micos/3975.pdf, acesso em 14/05/2024.*