

Regulation on Dosimetry and Application of Administrative Sanctions

RESOLUTION CD/ANPD N° 4
OF FEBRUARY 24,
2023



RESOLUTION Nº 4, OF FEBRUARY 24, 2023

Approves the Regulation on Dosimetry and
Application of Administrative Sanctions.

THE BOARD OF DIRECTORS OF THE NATIONAL DATA PROTECTION AUTHORITY, in the use of the attributions granted by article 55-J, IV, and paragraph 2 of Law Nº 13,709, of August 14, 2018, Brazilian Data Protection Law (LGPD), by article 2, IV, and article 29 of Annex I of Decree Nº 10,474, of August 26, 2020, and provided for in the Internal Regulation of the National Data Protection Authority, approved by Ordinance Nº 1, of March 8, 2021,

Having regard to the records of process No. 00261.000358/2021-02; and

Having regard to the resolution taken in Deliberative Circuit No. 02/2023,

Resolves:

Article 1. To approve the Regulation on Dosimetry and Application of Administrative Sanctions, in the form of the Annex to this Resolution.

Article 2. The Regulation of the Enforcement Process and the Administrative Sanctioning Process within the scope of the National Data Protection Authority, approved by Resolution CD/ANPD Nº 1, of October 28, 2021, published in the Federal Official Gazette of October 29, 2021, is now in force with the following amendments:

"Article 32.....

Paragraph 1 – Other measures not provided for in this article may be adopted, if compatible with the provisions of articles 30 and 31.

Paragraph 2 - Failure to comply with a preventive measure:

I – gives rise to a progression of action by ANPD so that, at its discretion, it adopts other preventive measures or acts in a repressive manner, with the adoption of compatible measures; and

II – will be considered aggravating circumstance in the event of the initiation of administrative sanctioning process.

Paragraph 3 – The measures set out in this Chapter IV are not to be confused with the preventive measures referred to in article 26, item IV of Annex I to Decree No. 10,474, of 2020.

(New wording)

"Article 55.....

Paragraph 1 – The decision shall be motivated, indicating the facts and legal grounds, as well as applying the respective sanction, when applicable, following the parameters and criteria defined in Paragraph 1 of article 52 of the LGPD and in the regulations issued by the ANPD.

Paragraph 2 – In cases where the offender is required to adopt measures, in the form of an obligation to do or not to do, the decision shall also contain, when applicable:

I - the deadline for implementation and the conditions under which ANPD must assess, or the offender must demonstrate, compliance with the measures imposed; and

II - the amount of the simple fine or the daily fine with an indication of the deadline for payment." (New wording)

"Article 62.....

Paragraph 3 – If the decision is upheld or partially reconsidered, the General Coordination of Enforcement will forward the process to the Board of Directors for further action, accompanied by an analysis of the general assumptions of appeal admissibility, the granting of suspensive effect and the assessment of the request, as well as any other information it deems pertinent.

(New wording)"

Article 3 The following provisions of the Regulation of the Enforcement Process and the Administrative Sanctioning Process within the scope of the National Data Protection Authority, approved by Resolution CD/ANPD No. 1, of October 28, 2021, published in the Official Gazette of October 29, 2021, are hereby revoked:

I - Paragraph 4 of article 35; and

II - Paragraph 3 of article 36.

Article 4 This Resolution enters into force on the date of its publication.

WALDEMAR GONÇALVES ORTUNHO JUNIOR

Director-President

ANNEX

REGULATION OF DOSIMETRY AND APPLICATION OF ADMINISTRATIVE SANCTIONS

CHAPTER I

GENERAL PROVISIONS

Article 1. This Regulation aims to establish parameters and criteria for the application of administrative sanctions by the National Data Protection Authority (ANPD), as well as the forms and dosimetry for the calculation of the base amount of fine sanctions.

Article 2. For the purposes of this Regulation, the following definitions are adopted:

I - group or conglomerate of companies: a set of companies, de facto or de jure, with their own legal personalities, under the direction, control or management of a natural or legal entity/person, or even a group of people who hold, separately or jointly, control power over the others, provided it is demonstrated the integrated interest, effective communion of interests, and joint action of the companies that are part of it;

II - violation: non-compliance with an obligation established in Law nº 13,709, of August 14, 2018 (LGPD), and in the regulations issued by the ANPD;

III - permanent violation: infringing conduct that extends over time, through action or omission of the offender regarding the same normative provision;

IV - Offender: processing agent who commits a violation;

V - corrective measures: measures determined by the ANPD with the purpose of correcting the violation and bringing the offender back to full compliance with the LGPD and the regulations issued by the ANPD, which must be applied together with the warning sanction, under the terms of this Regulation;

VI - Good Practices and Governance Policy: internal rules and processes that ensure comprehensive compliance with personal data protection legislation, established and implemented by the processing agent through the adoption of:

a) rules of good practices and governance, pursuant to article 50, caput and § 1, of the LGPD; or

b) privacy governance program, pursuant to paragraph 2 of article 50 of the LGPD;

VII - business field: area of operation of a company, group or conglomerate of companies, as defined by the ANPD and verified in the specific case, which may be proven by means of corporate purpose, National Classification of Economic Activities (CNAE) code, directly related service code, or similar instruments;

VIII - specific recidivism: repetition of a violation by the same offender to the same legal or regulatory provision, within a period of five (5) years, counted from the final and unappealable judgment of the sanctioning administrative process, until the date of the commission of the new violation;

IX - generic recidivism: commission of a violation by the same offender, regardless of the legal or regulatory provision, within a period of five (5) years, counted from the final and unappealable judgment of the sanctioning administrative process until the date of the commission of the new violation, excluding the provisions of item VIII of the caput; and

X - res judicata: attribute of a final decision rendered in an administrative sanctioning process, within the scope of the ANPD, making it immutable and indisputable within the process in which it was rendered.

CHAPTER II

APPLICATION OF SANCTIONS

Section I

Administrative Sanctions

Article 3. Violations will subject the offender to the following administrative sanctions:

I - warning, under the terms of article 9 of this Regulation;

II - simple fine, under the terms of arts. 10 to 15 of the Regulation;

III - daily fine, under the terms of article 16 of this Regulation;

IV - publication of the violation, after its occurrence has been duly ascertained and confirmed, under the terms of arts. 20 and 21 of this Regulation;

V - blocking of the personal data to which the violation refers, until its regularization, under the terms of article 22 of this Regulation;

VI - deletion of the personal data to which the violation refers, under the terms of article 23 of this Regulation;

VII - partial suspension of the operation of the database to which the violation refers, under the terms of article 24 of this Regulation;

VIII - suspension of the exercise of the personal data processing activity to which the violation refers, under the terms of article 25 of this Regulation; and

IX - partial or total prohibition of the exercise of activities related to data processing, under the terms of article 26 of this Regulation.

Paragraph 1 - The sanctions provided for in items VII, VIII and IX of the head provision of this article shall only be applied after at least one of the sanctions referred to in items II, III, IV, V and VI of the head provision of this article has already been imposed for the same specific case.

Paragraph 2 - In the event of paragraph 1 of this article, the ANPD shall inform the main sectoral regulatory body or entity, with sanctioning powers, to which the controller is subject, during the investigation phase, so that it can express its opinion on the possible consequences of the imposition of sanctions for the exercise of regulated economic activities carried out by the controller, especially in the provision of public services, as well as provide other information deemed pertinent.

Paragraph 3 - The sectoral regulatory body or entity shall have a period of up to twenty (20) business days, extendable only once for an equal period, after which the process may continue and be decided even without its manifestation.

Paragraph 4 - The offender may express his opinion on the information presented by the sectoral regulatory body or entity in its final allegations.

Paragraph 5 - The provisions of items I and IV to IX of the head provision^o 8,112, of December 11, 1990, Law N^o 8,429, of June 2, 1992, and Law N^o 12,527, of November 18, 2011.

Article 4. The sanctions shall be applied after an administrative proceeding by means of a reasoned decision of the ANPD, ensuring the right to a full defense, to the adversarial process and to due process of law, pursuant to Law No. 9,784, of January 29, 1999, of the LGPD, of the ANPD's Internal Regulation, and of the Regulation of the Enforcement Process and the Administrative Sanctioning Process approved by Resolution CD/ANPD No. 1, of October 28, 2021.

Sole Paragraph. In case of plurality of offenders, the sanctions will be applied individually.

Article 5. The sanctions shall be applied gradually, separately or cumulatively, according to the peculiarities of the specific case and under the terms of this Regulation.

Paragraph 1 - The application of a sanction does not exclude the possibility of adoption of other administrative measures by the ANPD, provided for in the LGPD, and in the Regulation

of the Enforcement Process and the Administrative Sanctioning Process, approved by Resolution CD/ANPD Nº 1, of October 28, 2021, and in other legal and regulatory provisions in force, to ensure the compliance of the offender with the personal data protection legislation.

Paragraph 2 - Failure to comply with the sanction applied or failure to regularize the conduct, within the stipulated period, will give rise to the progression of the ANPD's action to the application of more serious sanctions, without prejudice to the adoption of other applicable legal measures.

Article 6. The summons of the sanction and the counting of the deadlines provided for in this Regulation shall be carried out in accordance with the provisions of the Regulation of the Enforcement Process and the Administrative Sanctioning Process, approved by Resolution CD/ANPD Nº 01/2021.

Article 7. In the definition of the sanction, the following parameters and criteria must be considered:

I - the seriousness and nature of the violations and the personal rights affected;

II - the good faith of the offender;

III - the advantage obtained or intended by the offender;

IV - the economic condition of the offender;

V - specific recidivism;

VI - generic recidivism;

VII - the degree of damage, under the terms of Appendix I of this Regulation;

VIII - the cooperation of the offender;

IX - the repeated and demonstrated adoption of internal mechanisms and procedures capable of minimizing the damage, aimed at the safe and adequate processing of data, in line with the LGPD;

X - the adoption of a policy of good practices and governance;

XI - the prompt adoption of corrective measures; and

XII - the proportionality between the seriousness of the misconduct and the intensity of the penalty.

Section II

Classification of Violations

Article 8. Violations are classified, according to the severity and nature of the violations and the personal rights affected, as:

I - mild;

II - moderate; or

III - severe.

Paragraph 1 - The violation shall be considered mild when none of the hypotheses listed in paragraphs 2 or 3 of this article are verified.

Paragraph 2 - The violation shall be considered moderate when it may significantly affect the interests and fundamental rights of the data subjects, characterized in situations in which the processing activity may significantly prevent or limit the exercise of rights or the use of a service, as well as cause material or moral damage to the data subjects, such as discrimination; violation of physical integrity; the right to image and reputation; financial fraud or misuse of identity, as long as it is not classified as severe.

Paragraph 3 - The violation shall be considered severe when:

I - the hypothesis established in paragraph 2 of this article is verified and cumulatively, at least, one of the following:

a) involve large-scale processing of personal data, characterized when it covers a significant number of data subjects, also considering the amount of data involved, as well as the duration, frequency and geographic extent of the processing carried out;

b) the offender obtains or intends to obtain an economic advantage as a result of the violation committed;

c) the violation implies a risk to the life of the data subjects;

d) the violation involves processing sensitive data or personal data of children, adolescents or the elderly;

e) the offender carries out the processing of personal data without support in one of the legal basis provided for in the LGPD;

f) the offender carries out processing with unlawful or abusive discriminatory effects;
or

g) verified the systematic adoption of irregular practices by the offender;

II - constitute obstruction to the enforcement activity.

Section III

Application of Warning

Article 9. The ANPD may apply the warning sanction when:

I - the violation is mild or moderate and does not characterize specific recidivism; or

II - there is a need to impose corrective measures.

Section IV

Application of Simple Fine

Article 10. The ANPD will apply the simple fine sanction when:

I - the offender has not complied with the preventive or corrective measures imposed on him/her, within the established deadlines, when applicable;

II - the violation is classified as severe; or

III – due to the nature of the violation, of the processing activity or the personal data, and to the circumstances of the case, it is not appropriate to impose another sanction.

Subsection I

Definition of the Base Amount

Article 11. To define the base amount of the simple fine, the methodology described in Appendix I of this Regulation will be used for each violation committed, considering the following elements:

I - the classification of the violation;

II - the offender's revenue in the last available fiscal year prior to the application of the sanction, excluding the taxes referred to in item III of paragraph 1 of article 12 of Decree-Law Nº 1,598, of December 26, 1977, relating to the field of business activity in which the violation occurred; and

III - the degree of the damage, under the terms of Appendix I of this Regulation.

Paragraph 1 - For the purposes of the provisions of item II of the caput, the following shall be considered as revenue:

I - the gross revenue referred to in article 12 of Decree-Law No. 1,598, of December 26, 1977, excluding returns and canceled sales, as well as discounts granted unconditionally;

II - the gross revenue referred to in paragraph 1 of article 3 of Complementary Law Nº 123, of December 14, 2006, excluding returns and canceled sales, as well as discounts granted unconditionally, to private legal entities opting for the Simples Nacional;

III - the total amount of funds earned, excluding sales taxes, for non-profit private legal entities, under the terms of the legislation in force; or

IV - the amount defined by the ANPD, under the terms of this Regulation, which may consider:

a) the revenue limit provided for in items I and II of article 3 or in paragraph 1 of article 18-A, as appropriate, of Complementary Law Nº 123, of December 14, 2006, in the case of those opting for the Simples Nacional;

b) the revenue limit provided for in item I, paragraph 1, of article 4, of Complementary Law Nº 182, of June 1st, 2021, in the case of startups;

c) the total revenue of the company, group or conglomerate of companies in Brazil, if information regarding the field of business activity in which the violation occurred is not available;

d) the sum of income received by individuals related to personal data processing activities, directly or indirectly; or

e) in other cases, the revenue limit corresponding to the maximum fine amount of R\$ 50,000,000.00 (fifty million reais).

Paragraph 2 - The sum of revenues obtained in all affected field of business activity shall be considered when:

I - the violation has occurred in more than one field of business activity; or

II - the personal data covered by the violation is used, related, or used as sources of information for processes in other fields of activity of the company, group or conglomerate.

Paragraph 3 - For the purposes of the provisions of item IV of paragraph 1 of this article, the ANPD shall define the amount of revenue, when:

I - the offender does not present unequivocal and suitable documentation, characterized, among other ways, by fraud, falsehood, error, inaccuracy, simulation or omission as to any element defined by law as being mandatory to be declared;

II - the offender does not submit documentation within the deadline established by the ANPD; or

III - the revenue amount is presented incompletely.

Paragraph 4 - If the offender is proven not to have had revenue in the last fiscal year prior to the application of the sanction, the following shall be considered for calculating the base amount for the simple fine:

I - the amount of the last revenue calculated by the offender, excluding taxes, updated until the last day of the fiscal year prior to the application of the sanction; or

II - in the absence of this, the ranges of absolute amounts, in reais, as provided for in Appendix I of this Regulation.

Subsection II

Aggravating Circumstances

Article 12. The amount of the simple fine will be increased in the percentages below, if the following aggravating circumstances occur:

I - 10% (ten percent) for each specific case of recidivism, up to a limit of 40% (forty percent);

II - 5% (five percent) for each case of generic recidivism, up to a limit of 20% (twenty percent);

III - 20% (twenty percent) for each guidance or preventive measure not complied with in the enforcement process or preparatory procedure that preceded the administrative sanctioning process, up to the limit of 80% (eighty percent); and

IV - 30% (thirty percent) for each corrective measure not complied with, up to the limit of 90% (ninety percent).

Paragraph 1 - In the event of the incidence of more than one of the items of this article, the percentages related to each factor shall be added.

Paragraph 2 - In the event that there are records that can be computed as specific recidivism beyond what is sufficient for the incidence of the maximum percentage of aggravation provided for in item I of this article, the surpluses shall enter the category of generic recidivism, for the increase provided for in item II.

Subsection III

Mitigating Circumstances

Article 13. The amount of the simple fine will be reduced, in the percentages below, if the following mitigating circumstances occur:

I - in cases where the violation ceases:

a) 75% (seventy-five percent), if prior to the initiation of a preparatory procedure by the ANPD;

b) 50% (fifty percent), if after the initiation of a preparatory procedure and until the initiation of an administrative sanctioning process; or

c) 30% (thirty percent), if after the initiation of an administrative sanctioning process and until the delivery of the decision of first instance within the scope of the administrative sanctioning process;

II - 20% (twenty percent), in cases of implementation of a policy of good practices and governance or repeated and demonstrated adoption of internal mechanisms and procedures capable of minimizing damages to data subjects, aimed at the safe and adequate processing of data, until the issuance of the decision of first instance within the scope of the administrative sanctioning process;

III - in cases where the offender has proven the implementation of measures capable of reversing or mitigating the effects of the violation on the affected data subjects:

a) 20% (twenty percent), prior to the initiation of a preparatory procedure or administrative sanctioning process by the ANPD; or

b) 10% (ten percent), if after the initiation of a preparatory procedure and until the initiation of an administrative sanctioning process; and

IV - 5% (five percent), in cases where there is cooperation or good faith on the part of the offender.

Paragraph 1 - For the purposes of items I and III of this article, the cessation of the violation and the adoption of measures capable of reversing or mitigating the effects of the violation resulting from the mere compliance with an administrative or judicial determination will not be considered mitigating factors.

Paragraph 2 - In the event of the incidence of more than one of the items of this article, the percentages related to each factor shall be added.

Paragraph 3 - The burden of proving to the ANPD that the requirements set out in this article have been met lies with the offender.

Subsection IV

Incidence of Aggravating and Mitigating Circumstances

Article 14. The aggravating circumstances set forth in article 12 and the mitigating circumstances established in article 13 of this Regulation shall apply to the base amount of the fine.

Article 15. The result of the application of the provisions of article 14 of this Regulation, in any case:

I - may not be lower than the minimum amounts provided for in Appendix II of this Regulation, except for cases in which the advantage obtained or intended by the offender is estimable, in which case twice the economic advantage resulting from the violation shall be applied; and

II - will be limited to 2% (two percent) of the revenue of the private legal entity, group or conglomerate of companies in Brazil in its last fiscal year, excluding taxes, or to R\$ 50,000,000.00 (fifty million reais).

Section V

Application of Daily Fine

Article 16. The ANPD will apply the daily fine sanction when necessary to ensure compliance, within a certain period, with a non-pecuniary sanction or a determination established by the ANPD, subject to:

I - the total limit provided for in article 52, item II, of the LGPD, per violation;

II - the classification of the violation; and

III - the degree of the damage, under the terms of Appendix I of this Regulation.

Paragraph 1 - The amount of the daily fine shall be applied cumulatively, considering the time between the incidence of the fine and the fulfillment of the obligation, up to the total limit of R\$ 50,000,000.00 (fifty million reais) per violation.

Paragraph 2 - The degree of damage referred to in item III of the caput comprises the extent of the damage and the loss caused, pursuant to article 54 of the LGPD.

Paragraph 3 - A daily fine sanction may be applied in the event of the caput of this article or when the offender:

I - after being notified of the commission of irregularities that have been committed, fail to remedy them within the indicated deadline;

II - obstruct the enforcement activity, provided that the application of the daily fine is necessary to clear it; or

III - commit a permanent violation that has not ceased until the decision.

Paragraph 4 - The daily fine sanction is levied from:

I - the first business day of delay in complying with the non-pecuniary sanction or the determination established by the ANPD, after official knowledge of the summons of the decision that stipulated it, regardless of a new summons; or

II - the business day following the official acknowledgment of the summons of the decision that stipulated it until the fulfillment of the obligation.

Section VI

Payment of the Fine Sanction

Article 17. The fine must be paid within twenty (20) business days, counted from the official acknowledgment of the decision that apply the sanction.

Paragraph 1 - The daily fine shall be paid within the period referred to in the caput, counted from the official acknowledgment of the decision that determines the amount due.

Paragraph 2 - Small processing agents, as defined by Resolution CD/ANPD Nº 2, of January 27, 2022, will be granted a double period for the payment of the fines provided for in the caput of this article.

Paragraph 3 - When the fine is not paid within the deadline of the caput, its amount must be increased by the following charges:

I - default interest, counted from the first day of the month following the due date, equivalent to the reference rate of the Special Settlement and Custody System (Selic), for federal securities, accumulated monthly, until the last day of the month prior to payment, and 1% (one percent) in the month of payment; and

II - Late payment fine of 0.33% (thirty-three hundredths of a percent) per day of delay, up to a limit of 20% (twenty percent), calculated from the first day following the expiration of the deadline for payment of the administrative sanction definitively imputed, until the day on which its payment occurs, under the terms of the applicable federal legislation.

Article 18. The offender who expressly waives the right to appeal the decision of first instance will be entitled to a reduction factor of 25% (twenty-five percent) in the amount of the fine imposed, if he makes the payment within the deadline for payment defined in the caput of article 17.

Article 19. The payment made after the summons of the decision to impose the sanction does not affect the right to file an administrative appeal.

Sole Paragraph. In case the administrative appeal is granted, the amount of the fine paid will be refunded with correction by the interest corresponding to the Selic rate or another index that may replace it, according to the legislation in force.

Section VII

Publication of the Violation

Article 20. The ANPD may apply the sanction of publication to the offender, considering the relevance and public interest of the matter.

Paragraph 1 - The sanction of publication consists of the disclosure of the violation by the offender himself, after its occurrence has been duly ascertained and confirmed.

Paragraph 2 - The sanction of publication shall indicate the content, means, duration and deadline for its fulfillment.

Paragraph 3 - The burdens related to the publication of the violation shall be borne exclusively by the offender.

Article 21. The sanction of publication of the violation is not to be confused with the publication of a decision to application of administrative sanction in the Federal Official Gazette or with other acts carried out by the ANPD, for the purpose of complying with the principle of administrative publicity.

Section VIII

Blocking of Personal Data

Article 22. The ANPD may apply the sanction of blocking personal data to the offender.

Paragraph 1 - The sanction of blocking personal data consists of the temporary suspension of any processing operation with the personal data to which the violation refers, by keeping them, until the conduct is regularized by the offender.

Paragraph 2 - The offender shall, as soon as summoned of the sanction referred to in the caput, immediately communicate the blocking of the data to the processing agents with whom he/she has made shared use of data, so that they repeat the same procedure, except in cases where this communication is proven impossible or implies disproportionate effort, hypotheses that will be evaluated by the ANPD.

Paragraph 3 - The offender must prove to the ANPD the regularization of his conduct, so that he is authorized to unblock the personal data.

Section IX

Deletion of Personal Data

Article 23. The ANPD may apply to the offender the sanction of deletion of the personal data to which the violation refers.

Paragraph 1 - The sanction of deletion of personal data consists of the exclusion of data or a set of data stored in a database, regardless of the procedure employed.

Paragraph 2 - The offender shall, as soon as summoned of the sanction referred to in the caput, immediately communicate the deletion of the data to the processing agents with whom it has made shared use of data, so that they repeat the same procedure, except in cases where this communication is proven impossible or implies disproportionate effort, hypotheses that will be evaluated by the ANPD.

Section X

Partial Suspension of the Operation of the Database

Article 24. The ANPD may apply to the offender the sanction of partial suspension of the operation of the database to which the violation refers.

Paragraph 1 - The sanction referred to in the caput has the purpose of suspending the operation of a database in disagreement with the legislation on the protection of personal data.

Paragraph 2 - The sanction of partial suspension of the operation of the database shall be applied for a maximum period of six (6) months, extendable for an equal period, until the regularization of the processing activity by the controller, considering the complexity of the regularization and the classification of the violation.

Paragraph 3 - To determine the deadline, the ANPD must consider the public interest, the impact on the rights of the data subjects, the classification of the violation and the complexity of the regularization of the processing activity by the offender.

Paragraph 4 - The regularization of the processing activity must be proven by the offender, in order to reestablish the operation of the partially suspended database.

Section XI

Suspension of the Exercise of Personal Data Processing Activity

Article 25. The ANPD may apply to the offender the sanction of suspension of the exercise of personal data processing activity.

Paragraph 1 - The sanction referred to in the caput has the purpose of suspending the exercise of the personal data processing activity to which the violation refers, in order to ensure compliance with the legal and regulatory rules and will be applied for a maximum period of six (6) months, extendable for an equal period.

Paragraph 2 - To determine the deadline, the ANPD shall consider the public interest, the impact on the rights of the data subjects and the classification of the violation.

Section XII

Partial or Total Prohibition of the Exercise of Activities Related to Data Processing

Article 26. The sanction of prohibition of the exercise of activities related to data processing consists of the partial or total impediment of personal data processing operations, and may be applied in cases where:

I - there is recidivism of a violation punished by partial suspension of the operation of the database or suspension of the exercise of the processing personal data activity;

II - there is processing of personal data for unlawful purposes, or without legal basis; or

III - the offender loses or does not meet the technical and operational conditions to maintain the proper processing of personal data.

Section XIII

Compliance with the Principle of Proportionality

Article 27. The ANPD may set aside the methodology of dosimetry for the sanction of fines or replace the application of the sanction with another contained in this Regulation, in cases where there is a loss to the proportionality between the seriousness of the violation and the intensity of the sanction, observing the provisions of item XI of paragraph 1 of article 52 of the LGPD, in this Regulation and in other applicable rules.

Sole Paragraph. The decision referred to in the caput cannot be based on abstract legal values and must be motivated and reasoned, demonstrating the necessity and adequacy of the measure imposed, the disproportionality found, the public interest to be protected and the parameters adopted in the application of the sanction, considering the practical consequences of the decision.

CHAPTER III

FINAL PROVISIONS

Article 28. The provisions contained in these Regulations also apply to administrative processes in progress when they enter into force.

APPENDIX I TO THE REGULATION ON DOSIMETRY AND APPLICATION OF ADMINISTRATIVE SANCTIONS

Methodology for applying a fine sanction

1. OBJECTIVE

This Appendix describes the methodology for calculating the amount of simple fine sanctions applicable for violations of Law Nº 13,709, of August 14, 2018, and the regulations issued by the National Data Protection Authority (ANPD).

2. REFERENCES

2.1. Law Nº 13,709, of August 14, 2018 – Brazilian Data Protection Law (LGPD);

2.2. Law Nº 9,784, of January 29, 1999, which regulates the administrative process within the scope of the Federal Public Administration;

2.3. Resolution CD/ANPD Nº 1, of October 28, 2021, which approves the Regulation of the Enforcement Process and the Administrative Sanctioning Process within the scope of the ANPD;

2.4. Ordinance Nº 1, of March 8, 2021, which approves the ANPD's Internal Regulation.

3. CALCULATION FORMULA

The amount of simple fines will be determined by the following formula:

$$A_{\text{fine}} = A_{\text{base}} \times (1 + \text{Aggravating} + \text{Mitigating})$$

Where:

A_{fine}: amount of the fine;

A_{base}: base amount of the fine;

Aggravating: sum of the percentages, in decimal form, of the aggravating circumstances;

Mitigating: sum of the percentages, in decimal form, of the mitigating circumstances.

4. APPLICATION OF THE CALCULATION FORMULA

To facilitate understanding, it is proposed to didactically divide the methodology for calculating the simple fine into 4 (four) steps:

- **Step 1:** determination of the base rate;
- **Step 2:** determination of the base amount of the fine;
- **Step 3:** determination of the amount of the fine;
- **Step 4:** compliance with the minimum and maximum limits of the fine.

Step 1

4.1. Determination of the base rate (A_{base}):

To define the base rate for the purposes of dosimetry of the fine sanction, the ANPD must first classify the violation as mild, moderate or severe, according to the criteria provided for in the Regulation of Dosimetry and Application of Administrative Sanctions.

According to the classification of the violation, the minimum and maximum rates are determined, according to the following table:

Table 1 – Minimum (R₁) and maximum (R₂) rates for defining the base amount of the fine

Classification	Percentage of revenue (R₁)	Percentage of revenue (R₂)
Mild	0.08% (eight hundredths percent)	0.15% (fifteen hundredths of a percent)
Moderate	0.13% (thirteen hundredths percent)	0.50% (fifty hundredths of a percent)
Severe	0.45% (forty-five hundredths percent)	1.50% (one integer and fifty hundredths percent)

After defining the range of rates, the degree of damage is determined by means of a scale from 0 to 3, as shown in Table 2 below.

Table 2 – Values for Degree of Damage

Value	Degree of Damage
3	<p>The violation causes injury or offense to diffuse, collective or individual rights or interests, which, given the extraordinary circumstances of the case, have an irreversible impact or difficult to reverse on the affected data subjects, of a material or moral nature, causing, among other situations, discrimination, violation of physical integrity, the right to image and reputation, financial fraud or misuse of identity; or</p> <p>Damages resulting from bad faith litigation, such as, among other hypotheses provided for in procedural legislation, alteration of the truth of the facts, use of the process to achieve an illegal objective, unjustified resistance to the progress of the process, reckless action in any act of the process or impediment of the ANPD's action.</p>
2	<p>The violation causes injury or offense to diffuse, collective or individual rights or interests, which, given the circumstances of the case, generate significant material or moral impact to data subjects and which do not fit the criteria of the degree of damage 0, 1 or 3.</p>

Value	Degree of Damage
	Damage resulting from the sending of untimely information or untimely compliance with direct harm to the enforcement process or administrative sanctioning process or to third parties and which does not result from bad faith litigation.
1	<p>The violation causes injury or offense to the rights or interests of a small number of data subjects, with limited material or moral impact, which can be reversed or compensated for relatively easily; or</p> <p>Non-compliance with a determination or sending or making available information outside the deadlines or conditions established by the ANPD, without direct prejudice to the enforcement process or administrative sanctioning process or to third parties and that does not result from bad faith litigation.</p>
0	The violation does not cause damage or only causes damage with insignificant impacts to data subjects, which arise from foreseeable or common situations and which do not justify the need for compensation.

After defining the parameter "degree of damage", the base rate of the fine sanction is determined, respecting the range of fine rates between the minimum and the maximum.

$$R_{\text{base}} = \frac{(R_2 - R_1)}{3} \times DD + R_1$$

Where:

R_2 = maximum rate depending on the classification of the violation;

R_1 = minimum rate depending on the classification of the violation;

DD = degree of damage caused by the violation; and

R_{base} = base rate.

Step 2

4.2 Determination of the base amount (A_{base}):

The base amount of the fine will be calculated by multiplying the base rate by the gross revenue, excluding taxes.

$$A_{\text{base}} = R_{\text{base}} \times (\text{Revenue} + \text{Taxes})$$

Where:

A_{base} = base amount of the fine;

R_{base} = base rate;

Revenue = offender's revenue; and

Taxes = levied taxes.

For cases in which the offender is an individual or a legal entity without revenue, the base amount of the fine will be calculated according to the following formula, considering ranges of absolute amounts, in reais, according to the classification of the violation, according to Table 3, and the parameter of the degree of damage, to be considered according to Table 2:

$$A_{base} = \frac{(A_2 - A_1)}{3} \times DD + A_1$$

Where:

A_{base} = base amount;

A₂ = maximum amount depending on the classification of the violation;

A₁ = minimum amount depending on the classification of the violation; and

DD = degree of damage caused by the violation.

Table 3 – Minimum and maximum amounts for defining the base amount of the fine for cases in which the offender is an individual or a legal entity with no revenue

Classification	Amount (in R\$) A₁	Amount (in R\$) A₂
Lightweight	1,500.00 (one thousand five hundred reais)	3,500.00 (three thousand five hundred reais)
Average	3,000.00 (three thousand reais)	7,000.00 (seven thousand reais)
Serious	6,750.00 (six thousand seven hundred and fifty reais)	15,750.00 (fifteen thousand seven hundred and fifty reais)

4.3 Determination of the amount of the fine (A_{fine}):

Aggravating and mitigating circumstances apply to the base amount of the fine, as provided for in the Regulation on Dosimetry and Application of Administrative Sanctions.

$$A_{fine} = A_{base} \times (1 + \text{Aggravating} + \text{Mitigating})$$

Where:

A_{fine} = amount of the fine;

A_{base} = base amount of the fine;

Aggravating = sum of the percentages, in decimal form, of the aggravating circumstances;
and

Mitigating = sum of the percentages, in decimal form, of the mitigating circumstances.

Step 4

4.4 Adequacy to the minimum and maximum limits of the fine (A_{final}):

For cases in which the advantage obtained is estimable, it is verified whether the amount of the resulting fine is at least twice the amount of the advantage obtained, under the terms of article 13, sole paragraph, I, of the Regulation on Dosimetry and Application of Administrative Sanctions. If the amount of the fine is lower, it is adjusted so that the final amount of the fine is twice the amount of the advantage obtained.

Finally, when necessary, the amount of the fine is adjusted to the minimum fine amounts to be applied as provided for in Appendix II and to the maximum limit of 2% (two percent) of the revenue of the legal entity under private law, group or conglomerate of companies in Brazil in its last fiscal year, excluding taxes, in total, to R\$50,000,000.00 (fifty million reais) per violation, so that:

$$A_{final} = \begin{cases} A_{fine}, & \text{if } A_{min} \leq A_{fine} \leq A_{max} \\ A_{min}, & \text{if } A_{fine} < A_{min} \\ A_{max}, & \text{if } A_{fine} > A_{max} \end{cases}$$

Where:

A_{min} = minimum amount of fine to be considered according to Appendix II or twice the amount of the advantage obtained, whichever is greater;

A_{\max} = maximum amount of fine to be considered, respecting the maximum limit of 2% (two percent) of the gross revenue of the legal entity or R\$ 50,000,000.00 (fifty million reais), whichever is lower; and

A_{final} = final amount of fine to be applied.

Thus, the final amount of the fine, per violation, will have as a minimum limit the highest amount between: a) twice the amount of the advantage obtained, when estimated; (b) the minimum provided for in Appendix II.

In turn, the maximum limit will be the lowest amount between: (a) R\$ 50,000,000.00 (fifty million reais); and (b) 2% (two percent) of the revenues of the private legal entity, group or conglomerate of companies in Brazil in its last fiscal year, excluding taxes.

APPENDIX II TO THE REGULATION ON DOSIMETRY AND APPLICATION OF ADMINISTRATIVE SANCTIONS

Minimum amounts to be observed for the adequacy of the simple fine sanction, as described in Appendix I

Table 1 – Minimum amounts of simple fine for cases in which the offender is an individual or a legal entity without revenue

Graduation	Amount (in R\$)
Mild	1,000.00 (one thousand reais)
Moderate	2,000.00 (two thousand reais)
Severe	4,000.00 (four thousand reais)

Table 2 – Minimum amounts of simple fines for offenders not included in Table 1

Graduation	Amount (in R\$)
Mild	3,000.00 (three thousand reais)
Moderate	6,000.00 (six thousand reais)
Severe	12,000.00 (twelve thousand reais)