

Regulation of the Enforcement Process and the Administrative Sanctioning

RESOLUTION CD/ANPD N° 1
OF OCTOBER 28,
2021



RESOLUTION CD/ANPD N. 1, OF OCTOBER 28, 2021

Approves the Regulation of the Enforcement
Process and the Administrative Sanctioning
Process within the scope of the National Data
Protection Authority.

THE BOARD OF DIRECTORS OF THE NATIONAL DATA PROTECTION AUTHORITY, exercising the normative, enforcement and sanctioning powers established by article 55-J, IV, and Paragraph 2 of Law No. 13.709, of August 14, 2018, by arts. 2, IV, and 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. 00261.000089/2021-76 and

Having regard to the deliberation taken in Deliberative Circuit No. 15/2021, resolves:

Article 1. Approve the Regulation of the Enforcement Process and the Administrative Sanctioning Process within the scope of the National Data Protection Authority, as set out in the Annex to this Resolution.

Article 2. This Resolution enters into force on the date of its publication.

WALDEMAR GONÇALVES ORTUNHO JUNIOR

Director President

ANNEX

REGULATION OF THE ENFORCEMENT PROCESS AND THE ADMINISTRATIVE SANCTIONING PROCESS WITHIN THE SCOPE OF ANPD

TITLE I

GENERAL PROVISIONS

CHAPTER I

PRELIMINARY PROVISIONS

Article 1. The purpose of this Regulation is to establish the procedures inherent to the enforcement process and the rules to be observed within the scope of the administrative sanctioning process by the National Data Protection Authority (ANPD).

Paragraph 1. The provisions of this regulation shall apply to data subjects, processing agents, natural or legal persons, whether governed by public or private law, and other persons interested in the processing of personal data, under the terms of Article 13.

Paragraph 2. The provisions of Law No. 9784, of January 29, 1999, apply subsidiarily to this Regulation.

Article 2 Enforcement includes monitoring, guidance and preventive action, in accordance with the procedures set out in this Regulation.

Paragraph 1. The imposition of sanctions shall take place in accordance with specific regulation, by means of an administrative sanctioning process, as defined in this Regulation.

Paragraph 2. The purpose of ANPD's enforcement activity will be to guide, prevent and repress violations of Law No. 13,709, of August 14, 2018 (General Personal Data Protection Law - LGPD).

Article 3. ANPD will act to protect the rights of data subjects, to promote the implementation of personal data protection legislation, and to ensure compliance with it.

CHAPTER II

DEFINITIONS

Article 4. The following definitions are adopted for the purpose of this Regulation:

I - regulated agents: processing agents and others involved or interested in the processing of personal data;

II - defendant: a regulated agent who, once sufficient indications of infringing conduct have been identified, has administrative sanctioning process instituted against it by means of a violation notice;

III - complaint: communication made to ANPD by any person, natural or legal, of an alleged violation committed against the country's personal data protection legislation, other than a data subject petition;

IV - obstruction of the enforcement activity: an act, whether commissive or omissive, direct or indirect, of the enforcement or of its representatives, which prevents, hinders or embarrasses the enforcement activity carried out by ANPD, by offering obstacles to the agent's situation, refusing to

provide answers, and failing to send or sending in a untimely manner any data and information pertinent to the regulated agent's obligation;

V - data subject petition: communication made to ANPD by the data subject about a request submitted to the controller and not resolved within the period established by regulation, under the terms of item V of article 55-J of the LGPD; and

VI - request: a set of types of communication, comprising a data subject petition and a complaint.

CHAPTER III

THE DUTIES OF REGULATED AGENTS

Article 5. Regulated agents are subject to enforcement by ANPD and have the following duties, among others:

I – to provide copies of documents, whether physical or digital, data and information relevant to the evaluation of personal data processing activities, within the period, location, format and other conditions established by ANPD;

II – to allow access to installations, equipment, applications, facilities, systems, tools and technological resources, documents, data and information of a technical, operational and other nature relevant to the evaluation of personal data processing activities, in its possession or in the possession of third parties;

III – to enable ANPD to be aware of the information systems used to process data and information, as well as their traceability, updating and replacement, making data and information from these instruments available;

IV – to submit to audits carried out or determined by ANPD;

V - to keep physical or digital documents, data and information for the periods established in the legislation and in specific regulations, as well as for the duration of administrative proceedings in which they are required; and

VI – to make available, whenever requested, a representative capable of supporting ANPD's work, with the knowledge and autonomy to provide data, information and other aspects relating to its object.

Paragraph 1. The documents, data and information requested, received, obtained and accessed by ANPD under the terms of this Regulation are those necessary for the effective exercise of its duties, as well as those subject to the rules of access and classification of secrecy provided for in specific regulations.

Paragraph 2. It is up to the regulated agent to request from ANPD the confidentiality of information relating to its business activity, such as technical, economic-financial, accounting and

operational data and information, the disclosure of which may represent a violation of commercial or industrial secrecy.

Paragraph 3. Documents submitted in digitalized form must comply with the requirements established by Decree No. 10,278 of March 18, 2020.

Paragraph 4. The regulated agent, through an appointed representative, may monitor ANPD's audit, except in cases where prior notification or face-to-face monitoring are incompatible with the nature of the investigation or where confidentiality is necessary to ensure its effectiveness.

Article 6. Failure to comply with the duties set out in article 5 may characterize obstruction of the enforcement activity, subjecting the offender to repressive measures, without prejudice to the adoption by ANPD of the necessary measures with the aim of concluding the obstructed enforcement action.

CHAPTER IV

PROCEDURAL PROVISIONS

Article 7. The procedural provisions of this Chapter apply to interactions between ANPD units and regulated agents in the cases covered by this Regulation.

Section I

Deadlines

Article 8. The deadlines defined in this regulation begin to run from the moment they are officially notified and are counted in working days, excluding the day on which they begin and including the day on which they expire.

Paragraph 1. The deadline for carrying out an act shall be extended to the next working day if ANPD's head office is not open for business on the day it is due, or if it closes earlier.

Paragraph 2. The deadline will also be extended, in accordance with paragraph 1, in the event of proven unavailability of the electronic petitioning system:

I - for a period of more than three hours, uninterrupted or not, if it occurs between 6 a.m. and 11 p.m.; or

II - if the unavailability occurs between 23:00 and 24:00.

Section II

Communication of Acts

Article 9. Administrative acts shall be issued based on a motivated decision by the competent authority.

Summons

Article 10. Administrative acts shall be communicated by means of a summons, under the terms of Article 12 of this Regulation, which shall contain:

I - the identification of the person summoned;

II - the purpose of the summons and information that the proceedings will continue regardless of their appearance;

III - the date, time and place, or the deadline for taking action, if any;

IV - information on whether the person summoned must appear in person, be represented, make a statement or present a defense or appeal in the proceedings or comply with a diligence; and

V - an indication of the relevant facts and legal grounds.

Means of performing acts

Article 11. Administrative acts will preferably be carried out by electronic means, as a rule adopted by ANPD, and may also take place by videoconference or other technological means of transmitting sounds and images in real time.

Sole paragraph. Exceptionally, ANPD may send communication by physical means, or by any other means that ensures the awareness of the interested party.

Effective date of communications

Article 12. Official knowledge occurs with the summons:

I - by electronic means, on the date on which the user consults the corresponding document or, if no consultation is made, in ten working days after the summons is sent;

II - by post, on the date of receipt of the Acknowledgement of Receipt (AR) or equivalent document;

III - in person, on the date of acknowledgement by the person summoned, their representative, agent or, in the event of a refusal to acknowledge, on the date declared by the public servant who issued the summons;

IV - when the party appears, in person or duly represented, to take cognizance of the proceedings or justify their omission, from that moment onwards;

V - by public notice, on the date of publication;

VI - by another means that ensures that the interested party is aware; and

VII - by international cooperation mechanisms, as established in Decree No. 9,734, of March 20, 2019, or any successor rule.

Paragraph 1. If the attempt by post is unsuccessful or if the address of the person summoned is unknown or uncertain, a circumstance that shall be certified in the procedure's file, the summons shall be served by public notice in the Federal Official Gazette.

Paragraph 2. The interested party must inform a valid e-mail address at which it will receive communications, at the first opportunity it has to manifest itself in the process.

Section III

Interested parties

Article 13. The following are interested parties in the administrative proceedings referred to in this regulation, with due regard for commercial and industrial secrecy:

I - natural or legal persons, who initiate it as holders of rights, with individual interests or in the exercise of the right of representation;

II - those who, without having initiated the proceedings, have rights or interests that may be affected by the decision to be adopted;

III - representative organizations and associations, with regard to collective rights and interests; and

IV - legally constituted individuals or associations with regard to diffuse rights or interests, including academic institutions.

Section IV

Priority Service

Article 14. Priority shall be given to the processing of procedures in the cases provided for by law, whenever requested by the interested party and provided that the applicable requirements are met.

Paragraph 1. The authority competent to consider the request referred to in article 14 shall determine the action to be taken in processing the procedure.

Paragraph 2. Once priority has been granted, the procedure files will receive their own identification showing the priority processing regime.

TITLE II

ENFORCEMENT PROCESS

CHAPTER I

GENERAL PROVISIONS

Object of responsive action

Article 15. ANPD will adopt monitoring, guidance and prevention activities in the enforcement process and may initiate repressive activity.

Paragraph 1. Monitoring is intended to gather relevant information and data to support decision-making by ANPD to ensure the regular functioning of the regulated environment.

Paragraph 2. The guidance activity is characterized by action based on cost-effectiveness and the use of methods and tools that aim to promote guidance, awareness and education of processing agents and data subjects.

Paragraph 3. Preventive activity, preferably, consists of an action based on the joint and dialogued construction of solutions and measures aimed at bringing the processing agent back into full compliance or at avoiding or remedying situations that may entail risk or damage to the data subjects and to other processing agents.

Paragraph 4. The repressive activity is characterized by ANPD's coercive action, aimed at interrupting situations of damage or risk, restoring full compliance and punishing those responsible by applying the sanctions provided for in article 52 of the LGPD, through administrative sanctioning process.

Means of enforcement

Article 16. In exercising its enforcement powers, ANPD may act:

I - ex officio;

II - as a result of periodic enforcement programs;

III - in coordination with public bodies and entities; or

IV - in cooperation with personal data protection authorities of other countries, of an international or transnational nature.

Sole paragraph. ANPD's enforcement will promote knowledge of the rules and public policies on the protection of personal data and security measures among data subjects and processing agents, to disseminate good practices under the terms of the LGPD.

Enforcement fundamentals

Article 17. ANPD's enforcement process will observe the following fundamentals:

I - alignment with strategic planning, with the instruments for monitoring data processing activities and with the National Policy for the Protection of Personal Data and Privacy;

II - prioritizing action based on evidence and regulatory risks, with a focus and orientation towards results;

III - integrated and coordinated action with public administration bodies and entities;

IV - acting in a responsive manner, adopting measures proportionate to the risk identified and the attitude of the regulated agents;

V - encouraging the promotion of a culture of personal data protection;

VI - provision for transparency, feedback and self-regulation mechanisms;

VII - encouraging responsibility and accountability on the part of processing agents;

VIII - encouraging direct conciliation between the parties and prioritizing the resolution of the problem and the reparation of damages by the controller, observing the principles and rights of the data subject provided for in the LGPD;

IX - the requirement for minimal intervention in imposing administrative conditions on the processing of personal data; and

X - carrying out enforcement activities that best suit ANPD's competencies.

CHAPTER II

THE MONITORING ACTIVITY

Article 18. The General-Coordination of Enforcement will monitor personal data processing activities, observing the limits set out in Articles 3 and 4 of the LGPD, to:

I - plan and provide relevant information for enforcement activities;

II - analyze the compliance of processing agents with regard to the protection of personal data;

III - consider the regulatory risk based on the behavior of processing agents, in order to allocate resources and adopt actions compatible with the risk;

IV - prevent irregular practices and to foster a culture of personal data protection; and

V - act to seek the correction of irregular practices and the reparation or minimization of occasional damage.

Article 19. The Monitoring Cycle Report and the Priority Themes Map are monitoring instruments.

Sole paragraph. The monitoring cycle will be annual and a longer period may be set by decision of the Board of Directors.

Section I

The Monitoring Cycle Report

Article 20. The Monitoring Cycle Report is an instrument for evaluation, accountability and planning of ANPD's enforcement activities.

Paragraph 1. The Monitoring Cycle Report will:

I - evaluate the enforcement activities carried out in the monitoring cycle, including priority themes, presenting indicators and results;

II - direct the strategy for guidance, prevention and repression activities and the measures to be adopted, including during the following cycle; and

III - consolidate the information obtained from requests and incident reports, as well as from other sources of input received by the General-Coordination of Enforcement.

Paragraph 2. The Monitoring Cycle Report will be submitted to the Board of Directors for deliberation at the end of the cycle and may indicate other needs for ANPD action, in addition to its enforcement and sanctioning powers.

Section II

Priority Themes Map

Article 21. The Priority Themes Map will be biannual and will establish the priority themes that will be considered by ANPD for the purposes of studying and planning the enforcement activity for the period.

Article 22. The Priority Themes Map will use the criteria of risk, seriousness, timeliness and relevance and will include:

I - the memory of the decision-making process that led to the selection and prioritization of the themes, including the prioritization methodologies used;

II - the objectives to be achieved and the parameters or indicators used to measure the achievement of these objectives, where appropriate;

III - implementation schedule; and

IV - an indication of the need for interaction with other public administration entities or bodies, as well as with data protection authorities in other countries.

Article 23. The General-Coordination of Enforcement will draw up the Priority Themes Map with the support of ANPD's other technical areas and submit it to the Board of Directors for approval.

Sole Paragraph. The General-Coordination of Enforcement or the Board of Directors may, in the event of new and urgent facts, propose changes to the Priority Themes Map for deliberation by the Board of Directors.

Section III

Receiving Requests

Article 24. ANPD shall establish and publicize the means of receiving requests.

Article 25. Subject to the provisions of articles 17 and 26, the admissibility of requests will be carried out by the General-Coordination of Enforcement, which will verify:

I - the competence of ANPD to assess the matter;

II - the identification of the applicant or whether anonymity is appropriate;

III - the legitimacy of the applicant;

IV - identification of the alleged processing agent, where appropriate; and

V - a description of the fact.

Paragraph 1. In addition to the admissibility requirements indicated in the main body of this article, the data subject petition must be accompanied by proof that it was previously submitted to the controller and not resolved within the period established in the regulation, with the data subject's self-declaration being admitted when it is not possible to provide other means of proof.

Paragraph 2. Requests will be included in the calculation of the indicators for the monitoring cycle in force on the date they are registered in ANPD's systems.

Paragraph 3. An anonymous complaint shall be received and processed when the allegations contained therein are found to be credible and the identification of the complainant is not necessary for the investigation of the facts.

Paragraph 4. In the event of a complaint, the identification of the applicant may be considered protected personal information with restricted access, in accordance with the legislation in force.

Article 26. Requests will be analyzed in aggregate, and any resulting measures will be adopted in a standardized manner.

Paragraph 1. The General-Coordination of Enforcement may, exceptionally, determine the individualized analysis of a request by means of a motivated decision, considering the relevant circumstances of the procedure and its potential repercussions on collective and diffuse interests.

Paragraph 2. The handling of individual requests by ANPD will be addressed in its own regulation.

CHAPTER III

THE GUIDANCE ACTIVITY

Article 27. ANPD shall promote measures aimed at guiding, raising awareness and educating processing agents, data subjects and others involved or interested in the processing of personal data.

Article 28. The measures applied in the course of the guidance activity do not constitute a sanction for the regulated agent.

Article 29. The following are considered guidance measures:

I - drawing up and making available guides to good practice and model documents for use by processing agents;

II - suggesting training and courses to regulated agents;

III - developing and making available tools for self-assessment of compliance and risk assessment to be used by processing agents;

IV - recognition and dissemination of the rules of good practice and governance; and

V - recommendation of:

a) the use of technical standards that make it easier for data subjects to control their personal data;

b) implementation of the Privacy Governance Program; and

c) compliance with codes of conduct and good practices established by certification bodies or other responsible entities.

Paragraph 1. Other measures not provided for in this article may be adopted provided they are compatible with the provisions of articles 27 and 28.

Paragraph 2. Regulated agents, or their representative associations, may suggest the adoption of the guidance measures listed above, subject to assessment by ANPD.

CHAPTER IV

PREVENTIVE ACTIVITY

Article 30. Preventive activity aims to bring the processing agent back into full compliance or to avoid or remedy situations that entail risk or harm to personal data subjects.

Article 31. The measures applied by the General-Coordination of Enforcement in the course of the preventive activity do not constitute a sanction for the regulated agent.

Article 32. The following are considered preventive measures:

I - disclosure of information;

II - warning;

III - request for regularization or statement; and

IV - compliance plan.

Paragraph 1. Other measures not provided for in this article may be adopted, if compatible with the provisions of articles 30 and 31. [\(Renumbered from the sole paragraph by Resolution CD/ANPD No. 04, of February 24, 2023\)](#)

Paragraph 2. Failure to comply with a preventive measure: [\(New wording given by Resolution CD/ANPD No. 04, of February 24, 2023\)](#)

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 [\(Wording given by Resolution CD/ANPD No. 04, of February 24, 2023\)](#)

II - will be considered an aggravating circumstance in the event of the initiation of administrative sanctioning process. [\(New wording given by Resolution CD/ANPD No. 04, of February 24, 2023\)](#)

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. [\(New wording given by Resolution CD/ANPD No. 04, of February 24, 2023\)](#)

Section I

Disclosure of Information

Article 33. ANPD may disclose information and aggregate sector and performance data on its website as a preventive measure, such as the rate of problem resolution and requests from data subjects answered.

Sole paragraph. ANPD may order the regulated agent to disclose the aggregate sector information and data referred to in this article in aggregate form or restricted to its activities.

Section II

Warning

Article 34. The warning shall contain a description of the situation and sufficient information for the processing agent to be able to identify the necessary measures.

Section III

Regularization Request and Statement

Article 35. The regularization request and the statement are intended for situations in which regularization must take place within a specified period of time and whose complexity does not justify the preparation of a compliance plan.

Paragraph 1. The statement will be used when a violation occurs as a result of the processing of personal data by public bodies.

Paragraph 2. The regularization request or statement shall contain a description of the situation and sufficient information for the processing agent to be able to identify the necessary measures, and shall provide proof of regularization within the specified period.

Paragraph 3. The processing agent may request an extension of the deadline once for an equal period, provided that the reasons for not regularizing the situation within the given deadline are presented.

~~Paragraph 4. Failure to comply with the request for regularization or the report gives rise to progression of ANPD's action to, at its discretion, adopt other preventive measures or to repressive action, with the adoption of compatible measures, and will be considered aggravating if administrative sanctioning process are initiated.~~ [\(Repealed by Resolution CD/ANPD No. 04, of February 24, 2023\)](#)

Section IV

The Compliance Plan

Article 36. The compliance plan must contain at least:

- I - object;
- II - deadlines;
- III - actions planned to reverse the situation identified;
- IV - monitoring criteria; and
- V - the path to achieving the expected results.

Paragraph 1. The compliance plan does not exempt the processing agent from complying with the obligations laid down in the regulations.

Paragraph 2. It will be up to the processing agent to prove that the expected result has been met, in addition to the measures adopted to reverse the situation within the established timeframe.

~~Paragraph 3. Failure to comply with the compliance plan will result in ANPD moving towards repressive action, with the adoption of compatible measures, and will be considered aggravating if sanctioning process is initiated.~~ [\(Repealed by Resolution CD/ANPD No. 04, of February 24, 2023\)](#)

TITLE III

REPRESSIVE ACTIVITY

CHAPTER I

THE ADMINISTRATIVE SANCTIONING PROCESS AND ITS PHASES

Article 37. The administrative sanctioning process is aimed at investigating violations of data protection legislation within ANPD's competence, under the terms of article 55-J, IV, of the LGPD, and may be initiated:

- I - *ex officio* by the General-Coordination of Enforcement;
- II - as a result of the monitoring process; or
- III - in the event of a request in which the General-Coordination of Enforcement, after analyzing admissibility, decides to immediately open a sanctioning process.

Article 38. There can be no administrative appeal against the order instituting an administrative sanction process.

Article 39. In conducting the administrative process referred to in this Regulation, ANPD shall comply, among others, with the principles of legality, purpose, motivation, reasonableness, proportionality, morality, full defense, adversarial proceedings, legal certainty, public interest and efficiency, and shall observe the following criteria:

I - serving purposes of general interest;

II - adequacy between means and ends, whereas prohibited the imposition of obligations, restrictions and sanctions to a greater extent than is strictly necessary to serve the public interest;

III - observance of the formalities essential to guarantee the rights of the interested parties;

IV - adoption of simple forms, sufficient to provide an adequate degree of certainty, security and respect for the rights of the interested parties;

V – pushing of the administrative process *ex officio*, without prejudice to the actions of interested parties; and

VI - interpretation of the administrative rule in the way that best guarantees the fulfillment of the public purpose to which it is directed, with retroactive application of a new interpretation being prohibited.

Section I

The Preparatory Procedure

Article 40. The General-Coordination of Enforcement may, *ex officio* or upon request, by means of a preparatory procedure, carry out preliminary investigations when the indications of a violation are not sufficient for the immediate initiation of an administrative sanctioning process.

Sole paragraph. The preparatory procedure may be conducted in secrecy, in the interests of the investigations, at the discretion of the General-Coordination of Enforcement.

Article 41. When necessary to clarify the demand, the General-Coordination of Enforcement may order the carrying out of diligence, as provided for in the LGPD, Decree No. 10,474, of 2020, and ANPD's Internal Regulation.

Article 42. Once the instruction phase of the preparatory procedure has been completed, the General-Coordination of Enforcement may close it or initiate administrative sanctioning process, without prejudice to the adoption of guidance and prevention measures, as appropriate.

Sole Paragraph. The General-Coordination of Enforcement may initiate administrative sanctioning process immediately, regardless of preparatory procedures or the adoption of guidance and prevention measures, due to the seriousness and nature of the violations, the personal rights affected, recidivism, the degree of damage or the applicable administrative limitation period.

Conduct adjustment agreement

Article 43. The interested party may submit a proposal to the General-Coordination of Enforcement to enter into a conduct adjustment agreement.

Paragraph 1. The proposal shall be submitted to the Board of Directors for deliberation, in compliance with the provisions of ANPD's Internal Regulation.

Paragraph 2. Suspension of proceedings will begin once the conduct adjustment agreement has been signed.

Paragraph 3. The administrative sanctioning process shall be closed once full compliance with the conduct adjustment agreement has been verified.

Article 44. The conduct adjustment agreement shall follow ANPD's own regulations and applicable legislation.

Section II

The Initiation and Investigation Phases

Drawing up the violation notice

Article 45. The administrative sanctioning process will be initiated by the General-Coordination of Enforcement, guaranteeing the accused the right to an adversarial proceeding and a full defense.

Article 46. The violation notice shall be drawn up and shall contain the following elements:

I - identification of the offending natural or legal entity;

II - a statement of the alleged unlawful conduct imputed to the defendant, indicating the facts to be investigated; and

III - legal or regulatory provision related to the alleged violation.

Article 47. In the event of a decision to issue a violation notice, the General-Coordination of Enforcement will summon the processing agent concerned to present a defense within a maximum of ten working days, in the form indicated in the summons.

Article 48. ANPD may carry out due diligence and add new evidence to the procedure's file, regardless of the deadline for the defendant's defense, with a view to speeding up the process and mitigating risks, while ensuring the right to an adversarial hearing.

Paragraph 1. The defendant may attach any evidence he deems necessary for his defense.

Paragraph 2. When the defendant needs to provide information or additional evidence, summonses will be issued for this purpose.

Paragraph 3. If the summons is not complied with, the General-Coordination of Enforcement may, if it deems the matter relevant, remedy the omission ex officio, but it shall not be exempt from issuing the decision.

Paragraph 4. ANPD may admit the use of evidence produced in other proceedings, whether administrative or judicial, including by data protection authorities in other countries, assigning it the value it deems appropriate, with due regard for the adversarial process and full defense.

Article 49. ANPD may request or admit the participation of a suitably representative interested party as a third party.

Paragraph 1. The pertinence of participation will be assessed considering the relevance of the matter, the specificity of the subject matter of the demand or the social repercussion of the controversy under analysis in the administrative sanctioning process.

Paragraph 2. The admissibility and, if granted, the powers of the interested third party and the deadlines for its manifestation shall be defined by an unappealable administrative decision.

Paragraph 3. The interested third party shall receive the file in its current state and shall only have access to public documents and public procedural documents.

The defendant's defense

Article 50. It is up to the defendant to prove the facts he alleges, without prejudice to the duty assigned to the body responsible for the investigation.

Sole paragraph. Regardless of the phase of the proceedings, the person in default may intervene, without the right to repeat any act already carried out.

Article 51. Requests for the production of evidence will be analyzed by the General-Coordination of Enforcement and may be rejected.

Article 52. If the production of expert evidence is granted, the experts shall give an undertaking to perform their duties well and faithfully, observing the following:

I - the General-Coordination of Enforcement will define the relevant requirements for the procedural instruction and the questions to be answered by the expert;

II - the defendant may formulate supplementary questions and request clarifications from the expert; and

III - the expertise may be carried out by an ANPD authority or official, specifically designated for this purpose by the Board of Directors, or by any public body, or by a professional who is the subject of a previously signed Cooperation Agreement, or by a professional specially hired for this purpose, and the interested party may appoint a technical assistant.

Right to closing arguments

Article 53. A period of ten working days is allowed for the defendant to make a statement before the instruction report is drawn up, if new evidence is produced between the defense and the investigation.

Instruction Report

Article 54. Once the defense deadline has elapsed, regardless of whether or not it has been presented, an instruction report will be drawn up to support the first instance decision and the procedure will be sent to the General-Coordination of Enforcement for a decision.

Sole Paragraph. The instruction report closes the investigation phase, unless the procedural analysis indicates that the process is not sufficiently instructed, in which case an order will be issued determining the steps to be taken.

Section III

The Decision Phase by the General-Coordination of Enforcement

Article 55. Once the procedural instruction has been completed, the General-Coordination of Enforcement will issue the first instance decision, a summary of which will be published in the Federal Official Gazette.

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 ANPD. [\(Renumbered from the sole paragraph by Resolution CD/ANPD No. 04, of February 24, 2023\)](#)

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 must also contain, where applicable: [\(New wording given by Resolution CD/ANPD No. 04, of February 24, 2023\)](#)

I - the deadline for implementation and the conditions under which ANPD must assess, or the offender must demonstrate, compliance with the measures imposed; and [\(New wording given by Resolution CD/ANPD No. 04, of February 24, 2023\)](#)

II - the amount of the simple fine or daily fine with an indication of the deadline for payment. [\(New wording given by Resolution CD/ANPD no. 04, of February 24, 2023\)](#)

Article 56. If the first instance decision decrees the imposition of an administrative sanction, the summons provided for in Article 58 shall also determine compliance with the sanction by the defendant and the respective deadline for enforcement.

Sole Paragraph. Once the decision has become final and the deadline for compliance with the administrative penalty has elapsed without proof thereof, the procedure shall be sent for collection and enforcement, subject to the provisions of article 67.

Article 57. It is possible to bring together for joint judgment procedures that could generate a risk of conflicting or contradictory decisions if decided separately, even if there is no connection between them, whether at the decision phase at first instance or on appeal.

Section IV

The Appeal Phase

Appeal to ANPD's Board of Directors

Article 58. The defendant will be summoned to comply with the first instance decision or file an administrative appeal with the Board of Directors, as the highest administrative body, within ten working days, counting from the summons of the decision.

Paragraph 1. The summons to the defendant ends the decision phase.

Paragraph 2. The administrative appeal must be addressed to the authority that issued the decision and must be filed in the manner indicated in the summons.

Article 59. If the decision is to close the administrative process, the General-Coordination of Enforcement will inform interested third parties who are qualified in the process, who may appeal to the Board of Directors within ten working days of the notification.

Suspensive effect

Article 60. Administrative appeals shall have a suspensive effect limited to the contested subject matter of the decision, except in the event of well-founded fear of damage that would be difficult or uncertain to repair as a result of the execution of the appealed decision.

Appeal dismissed

Article 61. The appeal will not be heard when it is filed:

I - after the deadline;

II - by anyone who does not have legal standing;

III - after the administrative sphere has been exhausted.

IV - for lack of appeal interest;

V - against acts of mere expediency or preparatory to decisions, as well as in the face of technical analysis and unappealable opinions or decisions.

Sole paragraph. ANPD shall not be prevented from reviewing the illegal act *ex officio* if the appeal is rejected.

Judgment of reconsideration

Article 62. Once the administrative appeal has been received, the General-Coordination of Enforcement may reconsider its decision, stating the reasons.

Paragraph 1. The exercise of the reconsideration judgment referred to in the *caput* shall result in the issuance of a new decision, which shall have substitutive effect in relation to the appealed decision, and the defendant shall be summoned of the new decision.

Paragraph 2. The exercise of the reconsideration judgment may not result in an aggravation of the sanction originally applied.

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. (NR) ([New wording given by Resolution CD/ANPD No. 04, of February 24, 2023](#))

Paragraph 4. In the event of partial reconsideration, the decision must explain the part that has been reconsidered, as well as ratifying the other terms of the appealed decision.

Paragraph 5. In the event that the reconsideration results in the total exoneration of the sanction originally applied, the new decision issued shall be subject to the necessary re-examination by the Board of Directors.

Reporting

Article 63. The procedure for distributing and processing appeals shall follow the rules of ANPD's Internal Regulation.

Article 64. The Rapporteur Director may refer the procedure to the Legal Department or other ANPD bodies for analysis and opinion, under the terms of the Internal Regulation.

Appeal judgment

Article 65. In order for the Board of Directors to decide, the Rapporteur Director shall express his opinion on the admissibility and total or partial acceptance or rejection of the appeal, stating the reasons for his vote, and the other Directors shall then vote in accordance with the legal and regulatory grounds.

Paragraph 1. If the consideration of the appeal could worsen the appellant's situation, the appellant must be summoned, before the decision is made, to formulate allegations within a maximum period of ten working days.

Paragraph 2 The decision of the Board of Directors shall be published in accordance with the law, and the interested parties shall be notified for the purposes of acknowledging and complying with the decision, as appropriate.

Section V

Compliance with the Decision and Entry in the Active Debt Register

Article 66. The process will be forwarded to the General-Coordination of Enforcement to monitor compliance with the decision.

Article 67. The General-Coordination of Enforcement will adopt the necessary measures to ensure that the decision is complied with.

Paragraph 1. Once the decision has been complied with and there are no further steps to be taken, the procedure's file shall be closed.

Paragraph 2. If a pecuniary penalty is not paid by the due date, the debtor will be summoned of the existence of the debt, and provided all information pertinent to the debt, and of its registration in the Federal Public Sector Credits Unpaid Informative Registry (Cadin), within seventy-five days of this summons, as well as that the debt will be sent for registration in the Federal Active Debt.

Paragraph 3. If there is still an overdue and unpaid debt, the procedure will be forwarded to the competent body of the Federal Attorney General's Office.

Section VI

Review

Article 68. Administrative proceedings resulting in sanctions may be reviewed at any time, on request or ex officio, when new facts or relevant circumstances arise that justify the inappropriateness of the sanction applied.

Article 69. The request for review shall be received as a new procedure and filed in its own records, and the interested party must submit a full copy of the main documents of the process whose review is sought.

Paragraph 1. The request for review shall be distributed to a Director who did not act as rapporteur in the case under review.

Paragraph 2. The submission of a request for review shall not suspend the effects of the sanction imposed by a final and unappealable administrative decision, especially the adoption of the measures necessary for the constitution, collection and enforcement of the non-tax credit resulting from the imposition of a fine.

Paragraph 3. The General-Coordination of Enforcement will judge the admissibility of the review process, indicating whether or not the legal requirements have been met, and will then send it to the Board of Directors for information and a decision, attaching it to the main process.

Paragraph 4. A review of the sanctioning process may not result in an aggravation of the sanction.

Paragraph 5. The review shall follow the same procedure as the administrative appeal.

TITLE IV

FINAL AND TRANSITIONAL PROVISIONS

Article 70. The first monitoring cycle will begin in January 2022.

Article 71. The Board of Directors may issue an Ordinance to establish supplementary instructions to the provisions of this Regulation.