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## ANPD monitoring regulation

**Agency:** National Data Protection Authority

**Status:** Active

**Published in the Official Gazette:** May 28, 2021

**Opening:** May 28, 2021

**Closing:** June 28, 2021

### SUMMARY

The National Data Protection Authority (ANPD) Regulatory Schedule, approved for the biennium 2021-2022 through Ordinance n. 11, of January 27, 2021, provides, among the actions to be given priority by the Authority for the period, the establishment of normatives for the application of article 52 and subsequent of Law n. 13709, of August 14, 2019, the General Personal Data Protection Law (LGPD).

The proposed normative seeks to create a monitoring activity strategy for the ANPD based on the following values:

- (i) regulation based on evidence;
- (ii) proportionality between risks and allocated resources;
- (iii) transparency and permeability, which allow society not only to monitor, but also to contribute to improving the performance of the ANPD;
- (iv) transparent and fair processes, with clear rules on rights and obligations; and
- (v) promoting compliance through several different instruments and approaches.

With the normative, ANPD seeks, on the one hand, to have a monitoring role that enhances a regulatory environment with greater compliance by those regulated in respect to privacy and data protection, without, on the other hand, failing to apply sanctions when necessary.

In this sense, the draft Resolution submitted to public consultation, which establishes the monitoring mechanism ANPD intends to adopt, with provision for monitoring, guidance, prevention and application of sanctions, follows the logic of the responsive regulation. This model suggests the adoption of positive and negative incentives among violations of the LGPD and their treatment according to their severity. With this, it is expected that the incentives motivate those regulated to maintain an adequate conduct.

In this manner, the ANPD, according to the provisions of article 55-J, paragraph 2, of the LGPD, and of article 6, paragraph 1, and article 51, item V and sole paragraph of its Internal Regulations, and also seeking a more effective social participation, believes the public consultation on this normative is essential to collect contributions from society with a view to improve the monitoring model of the Authority.

**PRESIDENCY OF THE REPUBLIC**

**NATIONAL DATA PROTECTION AUTHORITY**

RESOLUTION N. XXX, OF XXX XXX, 2021.

Provides on the monitoring and application of sanctions by the National Data Protection Authority.

THE BOARD OF DIRECTORS OF THE NATIONAL DATA PROTECTION AUTHORITY, in the exercise of its normative, monitoring and sanctioning powers, established by article 55-J, IV, and paragraph 2 of Law n. 13709, of August 14, 2018, by article 2, IV, 29 of Annex I to Decree n. 10474, of August 26, 2020, and contemplated in the Internal Regulations of the National Data Protection Authority (Ordinance n. 1, of March 8, 2021), and considering the contents in records of Proceedings n. 00261.000089/2021-76 and the decision reached at the 10<sup>th</sup> Deliberative Meeting held on MONTH DAY, YEAR,

DECIDES:

TITLE I  
GENERAL PROVISIONS

CHAPTER I  
PRELIMINARY PROVISIONS

Art. 1 - This resolution approves the Monitoring Regulation, which provides for the inspection and application of sanctions by the National Data Protection Authority (ANPD).

§ 1 - The monitoring includes inspection and guidance activities, and preventive actions, in accordance with the procedures contemplated in this regulation.

§ 2 - The application of a sanction will occur by means of an administrative sanctioning process, defined in this Regulation.

§ 3 - The purpose of this Regulation is to prevent and repress infractions against the General Personal Data Protection Law (LGPD).

§ 4 - The provisions of Law n. 9784, of January 29, 1999, apply subsidiarily to this Regulation.

Art. 2 - The provisions of this regulation apply to the processing agents, individuals or legal entities, governmental or private.

Art. 3 - The ANPD will act to protect the rights of the data subjects, to promote the implementation of the personal data protection laws and ensure their compliance.

## CHAPTER II DEFINITIONS

Art. 4 - The following definitions are adopted in this Regulation:

I - Governed Parties: are the data subjects, the processing agents and other participants or interested parties in the personal data processing;

II - Monitoring cycle schedule: is the instrument by which the ANPD organizes its monitoring activity;

III - Report: is the communication made to the ANPD by any entity, individual or corporate, of an infraction carried out against the personal data protection legislation of the Country, that is not a Complaint;

IV - Complaint: is the communication made to the ANPD by the personal data subject about an issue presented to the controller and not solved, in the terms of item V of article 55-J of the LGPD;

V - Representation: is the communication made to the ANPD by public authorities, to inform about an act which is a potential infraction against the personal data protection legislation or regulation of the Country;

VI - Application: is the name given to the set of communications, comprising the complaint, the report or the representation.

### CHAPTER III DUTIES OF THE GOVERNED PARTIES

Art. 5 - The Governed Parties are subject to the monitoring of the ANPD and have the following duties, among others:

I - to provide copies of documents, physical or digital, data and information that are relevant to the assessment of personal data processing activities, within the time, place, format and other conditions established by the ANPD;

II - to allow access to the facilities, equipment, applications, systems, technological tools and resources, documents, data and information of a technical and operational nature, and others relevant to the assessment of personal data processing activities, in their possession or in possession of third parties;

III - to allow ANPD to become aware of the information systems used to process data and information, as well as their traceability, updating and replacement, making available the data and information resulting from these instruments.

IV - to submit to audits performed or determined by the ANPD;

V - to keep the physical and digital documents, the data and information for the periods established in the specific legislation and regulation, as well as during the entire period of processing of administrative proceedings in which they are needed; and

VI - to make available, whenever requested, a representative capable of assisting in ANPD's actions, with knowledge and autonomy to provide data, information and other aspects related to its object.

§ 1 - The documents, data and information requested, received, obtained and accessed by the ANPD under the terms of this Regulation are those necessary for the effective exercise of its attributions, as well as those subject to access rules and secrecy classification contemplated in a specific regulation.

§ 2 - The Governed Party may request from ANPD the confidentiality of information related to its business activity, such as technical, economic-financial, accountancy, operational data and information, the disclosure of which could represent a competitive advantage for its competitors or violation of a commercial or industrial secret, and the request must be justified and limited to the information that gives cause to such request.

§ 3 - The ANPD will comply with the hypothesis of legal secrecy related to the data and the information to which it has access.

#### CHAPTER IV PROCEDURAL PROVISIONS

Art. 6 - The procedural provisions apply to any interaction between the units of the ANPD and the Governed Parties when this Regulation is applicable.

##### Section I Dates of Terms

Art. 7 - The terms defined in this Regulation are counted in business days, with exception to the business day of the summons or notification, and including the due date, unless expressly provided otherwise.

Sole paragraph. The deadline to perform the act will be postponed to the first next business day, if its due date is not a working day at the head offices of the ANPD or if it closes early, or if the electronic petition system is unavailable.

##### Section II Communication of Procedural Acts

Art. 8 - The issuance of procedural acts will occur by determination of the competent authority.

### **Summons**

Art. 9 - The procedural acts will be communicated by means of summons or notification, which must contain:

I - the identification of who is summoned;

II - the purpose of the summons and the information on the continuity of the proceedings, regardless of their appearance;

III - the date, time and place, or period, in which the measure must be taken;

IV - information whether the summoned party must appear in person, be represented, manifest or present a defense or appeal in the proceedings or yet, comply with a measure; and

V - indication of the relevant legal facts and bases.

### **Means for practice of acts**

Art. 10. The procedural acts shall be carried out by electronic means, including by videoconference or other technological means for transmission of live sounds and images.

Sole paragraph. Exceptionally, the ANPD may issue a communication through physical means, or through any other resource that ensure the interested party is made aware.

### **Date on which communications are effected**

Art. 11. The summons and notification are considered to have been delivered:

I - by electronic means, on the date the user opens the corresponding document or, if the document is not read, ten days after the summons are sent;

II - by post, on the date of its receipt, duly noted on the Receipt of Notice or an equivalent document;

III - personally, on the date the summoned party, its representative or agent is made aware or, in case the acknowledgment is refused, on the date stated by the public servant who carries out the summons;

IV – at the moment the party appears to acknowledge the proceedings or justify its omission;

V - by summons notice, on the date of its publication;

VI - by another means that ensures the awareness of the interested party, on the date of such awareness; and

VII - by international cooperation mechanisms, on the date of receipt of the communication.

§ 1- If the attempt to deliver by post is not successful or there is no compliance with the request for international cooperation, the summons will be effected by publishing a summons notice exclusively on the ANPD page on the internet.

§ 2 - In the event of an interested party living in countries that accept direct postal summons, the international summons may be carried out by post, with receipt of notice in the party's own name.

### Section III Legitimate Parties

Art. 12. The following are legitimate as interested parties in the administrative proceedings this resolution deals with:

I - natural persons or legal entities, who initiate these proceedings as holders of individual rights or interests, or in the exercise of representation rights;

II - those who, not having initiated the proceedings, hold rights or interests that may be affected by the decision to be made;

III - the representative organizations and associations, in relation to collective interests and rights; and

IV - people or associations legally vested in respect of diffuse interests or rights, including academic institutions.

#### Section IV Priority Attention

Art. 13. Priority will be given to the continuity of proceedings in the hypothesis contemplated by law, whenever requested by the interested party and having met with the applicable requirements.

§ 1 - The competent authority to hear the request mentioned in the heading will determine the measures to be taken in the course of the proceedings.

§ 2 - Once priority is granted, the case records will receive special identification to demonstrate the priority regime in course.

## TITLE II THE MONITORING ACTIVITY

### CHAPTER I GENERAL PROVISIONS

#### **Object of responsive actions**

Art. 14. The ANPD will adopt monitoring, guidance and preventive action procedures in its monitoring activity and may initiate the repressive procedure.

§ 1 - The monitoring activity aims to gather relevant information that allows the ANPD to be sensitive to the regulated environment and to the demands of data subjects, processing agents and other interested parties in the protection of personal data, subsidizing the exercise of its regulatory, inspection or sanctioning powers.



§ 2 - The guidance activity is characterized by actions based on the economy and use of methods and tools that aim to promote guidance, awareness and education of processing agents and personal data subjects.

§ 3 - The preventive activity consists of an action based, preferably, on the joint and discussed construction of solutions and measures that aim to bring the processing agent back to full compliance, as well as to avoid or remedy situations that may cause risk or damage to the personal data subjects and other processing agents.

§ 4 - The repressive activity is characterized by the coercive action of the ANPD, intended to interrupt situations of damage or risk, to repair damages, to return to full compliance and to punish those responsible by applying the sanctions provided for in article 52 of Law n. 13709, of 2018, by means of sanctioning administrative proceedings.

### **Monitoring means**

Art. 15. In its inspection activities, the ANPD may act:

I - *ex officio*, moved by complaints or denunciations;

II - as a result of the periodic monitoring programs of the ANPD;

III - in a coordinated manner with public bodies and entities responsible for regulating specific sectors of the economic and governmental activity; or

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

Sole paragraph. The ANPD monitoring will promote knowledge of the public rules and policies on the protection of personal data and of security measures among the data subjects and processing agents, in order to disseminate good practices, under the terms of the LGPD, without prejudice to the exercise of its sanctioning powers, when a violation of the Law is verified.

### **Premises of inspection**

Art. 16. The monitoring activity of the ANPD will observe the following premises:

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

II - priority given to actions based on evidence and risk management, with focus and orientation on results;

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

IV - acting in a responsive manner, with the adoption of measures that are proportional to the identified risk and the attitude of the governed parties;

V - motivating to promote a personal data protection culture;

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

VII - encouraging accountability by processing agents;

VIII - encouraging direct conciliation between the parties and giving priority to the controller solving the problem and repairing damages, observing the principles and rights of the holder provided for in the LGPD; and

IX - requiring minimal intervention in the imposition of administrative constraints on the processing of personal data.

## CHAPTER II THE MONITORING ACTIVITY

Art. 17. The General Monitoring Coordination of the ANPD will carry out the monitoring of data processing activities, observing the limits provided for in articles 3 and 4 of Law n. 13709, of 2018, with the purpose of:

I - planning and subsidizing the monitoring activity with relevant information;

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

III - differentiating the regulatory risk according to the behavior of the processing agents, in order to allocate resources and take measures that are compatible with the risk;

IV - preventing irregular practices and fostering a culture of protection of personal data; and

V - acting towards the correction of irregular practices and the repair or minimization of eventual damages.

Art. 18. The monitoring cycle analysis report and the map of priority themes are monitoring instruments.

§ 1 - The monitoring cycle analysis report will guide the preventive and repressive action strategy and the measures to be taken, including during the course of the next cycle.

§ 2 - The analysis report will consolidate the information obtained from complaints, reports, representations and notifications of incidents, as well as from other sources of input received by the General Monitoring Coordination.

§ 3 - The map of priority themes will consolidate the themes that will be considered by the ANPD for the purposes of studying and planning the monitoring activity in a certain period.

§ 4 The map of themes will consider risks, severity, present standing and relevance.

Art. 19. The monitoring cycle analysis report, the map of priority themes and other data obtained by the ANPD will contribute to the preparation of a diagnosis that will define the guidance monitoring, preventive monitoring or sanctioning monitoring actions and the improvement of the regulation related to the closed cycle.

## Section I Map of Priority Themes

Art. 20. The biannual map of priority themes composes the proactive monitoring planning and is intended to prioritize the performance of the ANPD, promoting alignment between strategic planning, prioritized themes and the resources available.

Art. 21. The General Monitoring Coordination will prepare the map of priority themes with the support of the other technical areas of the ANDP and submit it to the approval of the Board of Directors, observing the deadlines established in the Monitoring Cycle Schedule.

Art. 22. The biannual map of relevant themes will indicate the themes that will be object of the inspection activities of the ANPD during its term, and will include:

I - the memory of the decision-making process through which the themes were selected and given priority, including the prioritization methodologies used;

II - the purposes to be achieved and the parameters or indicators used to measure the achievement of these purposes, when applicable;

III - the schedule of execution; and

IV - the indication of the need for interaction with other entities or bodies of the public administration.

## Section II Monitoring Cycle Schedule

Art. 23. The ANPD will organize itself, preferably, through monitoring cycles, which will be defined in the monitoring cycle schedule.

Art. 24. The monitoring cycle schedule will contain the duration of the cycle and the monitoring instruments and will be published by the ANPD on its website.

Art. 25. The monitoring cycle will consider all complaints, reports, representations and notifications of incidents, as well as other sources of input received by the ANPD during its term related to violations of personal data or privacy.

### **Receiving complaints, reports and representations**

Art. 26. The requirements stated in complaints and reports will be received on a dedicated platform and the representations will be received through the Electronic Information System (SEI) throughout the monitoring cycle.

Art. 27. In respect of the admissibility of reports and representations, the General Monitoring Coordination will verify:

I - if the matter is within competence of the ANPD;

II - if the applicant has identified him or herself, or, if not, whether an anonymous complaint can be made;

III - if the applicant has legitimacy to represent;

IV - if the processing agent was identified, even if only as a suspicion;

V - if the fact was clearly described.

§ 1 - If the requirements of the previous items have been met, the applicant will be informed that his or her report has been accepted and how to follow-up.

§ 2 - The admissibility for registration of complaints will consider whether there has been a previous attempt to solve the problem with the controller, without prejudice to the assumptions of article 27 and will occur in a self-declared manner by the data subject.

§ 3 - The admitted requirements will become part of the calculation of the indicators of the monitoring cycle in force on the date of their registration in the ANPD systems.

§ 4 - The anonymous report will be received and processed when the truthfulness of its allegations is verified and when the identification of the reporting person is not necessary for the verification of facts.

§ 5 - In the event of a report of an unlawful act or irregularity practiced by processing agents, the identification of the applicant may be considered personal information protected with restricted access, in accordance with the legislation in force.

§ 6 - If the analysis concludes that the application is inadmissible, the applicant will be notified of the decision and clarified as to the legislation and the reasons for rejection, and the preliminary analysis procedure will be filed.

Art. 28. The requirements and complaints provided for in article 26 will be analyzed jointly and any measures resulting from them will be taken in a standardized way.

§ 1 - The General Monitoring Coordination may, exceptionally, determine the individual analysis of a complaint by means of a reasoned decision, considering the relevant circumstances of the case and its potential repercussion on collective and diffuse interests.

§ 2 - The processing of individual requirements by the ANPD will be addressed in its own regulation.

### Section III Closing of the Monitoring Cycle

Art. 29. Once the monitoring cycle is closed, the General Monitoring Coordination will:

I - calculate the indicators of the monitoring cycle;

II - classify all processing agents in ranges;

III - analyze the results; and

IV - prepare a Technical Note on the Monitoring Cycle.

§ 1 - The calculation of the indicators and the classification of the processing agents referred to in the requirements for the period will be automated, according to its own methodology.

§ 2 - The Technical Note will consist of a report, a diagnosis for the period and a conclusion, and will point out proactive measures to be taken by the ANPD during the next monitoring cycle.

§ 3 - The Technical Note will be submitted to the appreciation and approval of the Board of Directors.

§ 4 - The proposals set forth in the Technical Note may indicate the need of other actions of the ANPD, beyond its monitoring or sanctioning powers.

§ 5 - The Board of Directors may direct the foreseen measures according to the information obtained in the Monitoring Cycle.

Art. 30. The General Monitoring Coordination, for the purposes of the provision in item II of Article 29, will classify the processing agents in four ranges:

I - Range I: processing agents for whom no measures will be immediately taken;

II - Range II: processing agents to which the ANPD will send a report, notifying about the themes reported or complained about by the data subjects, so that they may take corrective actions;

III - Range III: processing agents for which the ANPD will adopt guiding or preventive measures; and

IV - Range IV: processing agents for which the ANPD will adopt preventive or repressive measures.

§ 1 - The criteria to place agents in ranges will be defined in an ordinance issued by the Board of Directors.

§ 2 - The repressive measures will be adopted for processing agents who remain in Range IV for two consecutive cycles.

§ 3 - The General Monitoring Coordination may adopt the repressive measures *ex officio*, regardless of the provisions in § 2, according to the convenience and opportunity of the case.

§ 4 The guiding, preventive or repressive measures applicable to each range may be adopted individually or jointly.

§ 5 - The ANPD will consider the classification range of the processing agent and the measures taken in the three previous cycles, for the adoption of the applicable measures.

### CHAPTER III GUIDANCE ACTIVITY

Art. 31. The ANPD will take measures aimed at guiding, raising awareness and educating processing agents, personal data subjects and other members or interested parties in the processing of personal data.

Art. 32. The measures applied throughout the guidance process do not constitute a sanction to the governed party.

Art. 33. The following consist in guidance measures:

I - to prepare and make available guides to good practices and document templates to be used by processing agents;



II - to suggest that the governed parties take part in training and courses;

III - to prepare and make available tools for compliance self-assessment and risk assessment to be used by the processing agents; and

IV - to recognize and disseminate rules of good practice and governance;

V - to recommend:

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

b) the implementation of the Privacy Governance Program; and

c) the observance of codes of conduct and good practices established by certification bodies or another responsible entity.

§ 1 - Other measures, not contemplated in this article, may be taken if compatible with the provisions of article 31.

§ 2 - The Governed Parties, or their representative associations, may suggest the adoption of the guidance measures listed above, subject to the assessment of the ANPD.

#### CHAPTER IV PREVENTIVE ACTIVITY

Art. 34. The preventive activity aims to redirect the processing agent back to full compliance, and to avoid or remedy situations that cause risk or damage to those governed.

Art. 35. The measures applied by the General Monitoring Coordination during the preventive activity do not constitute a sanction to the governed party.

Art. 36. The following are considered preventive measures:

I - disclosing information;

II - notice;

III - request for regularization; and

IV - compliance plan.

§ 1 - Other measures, not contemplated in this article, may be taken if compatible with the provisions of article 34.

§ 2 - At the discretion of the ANPD, within the scope of the preventive process, guidance measures may also be adopted.

Art. 37. The ANPD will publish an ordinance with information on the use of measures within the scope of preventive activity.

#### Section I Disclosure of Information

Art. 38. The ANPD may publish combined sectorial and performance data on its website as a preventive or remedying measure, such as the rate of resolution of problems and requests from subjects that have been answered.

Sole paragraph. The ANPD may determine that the governed party discloses the information described in this article.

#### Section II Notice

Art. 39. The notice to take measures will contain the description of the situation and enough information for the processing agent to be able to identify the necessary measures.

### Section III Request for Regularization

Art. 40. The request for regularization is intended for situations in which regularization must occur within a specified period and whose complexity does not justify the preparation of a compliance plan.

§ 1 - In addition to the period for regularization, which may be postponed once only for an equal period, the request for regularization will contain a description of the situation and enough information for the processing agent to be able to identify the necessary measures.

§ 2 - The processing agent must present proof of the regularization within the established period.

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§ 3 - Non-compliance with the request for regularization allows the ANPD to proceed to, at its discretion, adopt other preventive measures or repressive action, by taking compatible measures, and may be considered an aggravating circumstance if the sanctioning administrative proceedings are initiated.

### Section IV Compliance Plan

Art. 41. The compliance plan must contain, at least:

I - the object;

II - the terms;

III - actions intended to reverse the identified situation;

IV - follow-up criteria; and

V - path of achievement of the expected results.

§ 1 - The compliance plan does not exempt the agent from complying with the obligations provided for in the regulations.

§ 2 - Failure to observe the compliance plan allows the ANPD to proceed to take repressive action, by taking compatible measures, and may be considered an aggravating circumstance if the sanctioning administrative proceedings are initiated.

### TITLE III APPLICATION OF SANCTIONS

#### CHAPTER I SANCTIONING ADMINISTRATIVE PROCEEDINGS AND ITS PHASES

Art. 42. The sanctioning administrative proceedings are aimed at investigating violations of the data protection legislation of the ANPD, under the terms of article 55-J, IV of the LGPD, and may be initiated:

I - *ex officio* by the ANPD;

II - as a result of the monitoring process; or

III - by request in which the General Monitoring Coordination, having carried out the admissibility analysis, decides to immediately initiate the sanctioning proceedings.

Art. 43. No administrative appeal or request for reconsideration against the authority's decision to commence the administrative sanctioning proceedings may be filed.

Art. 44. The ANPD sanctioning administrative proceedings comprise the following phases:

I - initiation;

II - disclosure;

III - decision; and

IV - appeal.

Section I  
Initiation Phase

Art. 45. Once the sanctioning administrative proceedings are initiated, as contemplated in article 42, the ANPD will analyze the documents and information contained in the case records and the need for measures.

Art. 46. After analysis, the ANPD may dismiss the proceedings, determine measures to be taken or draw up the notice of infraction.

§ 1 - The dismissal of the proceedings will be determined by a reasoned order from the competent authority and will be the object of notification to the applicant, who may appeal within 10 (ten) days as of the notification to the Board of Directors.

§ 2 - When necessary to clarify the request, the ANPD may determine measures to be taken, in accordance with Law n. 13709, of 2018, Decree n. 10474, of 2020, and the Annex of Ordinance n. 1 of the ANPD, of 2021.

§ 3 - Once sufficient evidence of infringing conducts has been identified, the ANPD will draw up the notice of infraction.

Art. 47. Up to ten days after being informed of the decision to dismiss, the Board of Directors may call up the administrative proceedings.

Sole Paragraph. The member of the Board of Directors who called the records will report the calling incident and inform the grounds for the request.

Art. 48. The Board of Directors, when deciding on the calling incident, may:

I - confirm the decision to dismiss; or

II - determine that the case records return to the General Monitoring Coordination, to commence sanctioning administrative proceedings.

## **Retraction**

Art. 49. The notified party who provenly suspends the investigated conduct and, if applicable, repairs the damages resulting from it, may have the administrative proceedings dismissed by the General Monitoring Coordination, in a reasoned decision.

§ 1 - The notified party must prove the remedy through a written statement to the ANPD.

§ 2 - Retraction may be exercised until the summoning for the decision of the first instance court.

§ 3 - The voluntary correction of all the harmful effects produced by the infringer and effective for all those harmed by the conduct described in the infraction notice is a condition for the dismissal of the proceedings.

Art. 50. The ANPD will not initiate administrative proceedings if the notified party demonstrates that it suspended the conduct and remedied any damages before the proceedings were initiated.

## **Term of Adjustment of Conduct**

Art. 51. The notified party may present to the General Monitoring Coordination a proposal for entering into a term of adjustment of conduct in accordance with item VII, of article 26 of Decree n. 10474, of August 26, 2020.

§ 1 - The proposal will be submitted to the Board of Directors for deliberation, in accordance with the provisions of the Internal Regulations of the ANPD.

§ 2 - The suspension of the proceedings will begin after the ANPD expresses interest in negotiating the term of adjustment of conduct.

Art. 52. The term of adjustment of conduct within the scope of the sanctioning administrative proceedings will follow the ANPD's own regulation and the applicable legislation.

## Section II Discovery Phase

### **Issuance of infraction notice**

Art. 53. The discovery phase begins with summons being sent to the interested processing agent, to present a defense within a maximum period of ten days, in the form indicated in the summons.

Art. 54. The ANPD may take measures and add new evidence to the case, regardless of the drawing up of the infraction notice and the period allowed for the defense of the notified party, with a view to speed proceedings and mitigating risks, ensuring the adversary system.

§ 1 - The interested party may file the evidence it deems necessary for its defense.

§ 2 - When it is necessary to provide information or submit evidence by interested parties or third parties, summons will be issued for such purpose.

§ 3 - If the summons is ignored, the General Monitoring Coordination may, if it considers the matter relevant, remedy the omission itself, not refraining from issuing the decision.

§ 4 - The ANPD may admit the use of evidence produced in other proceedings, administrative or jurisdictional, assigning to it the value it considers appropriate, observing the adversary and full defense system.

Art. 55. The ANPD may request or admit the participation of an interested party with adequate representation as an interested third party.

§ 1 - The interested third party will have a period of 10 days to manifest its interest in joining the proceedings, as of the issuance of the notice of infraction.

§ 2 - The relevance of its participation will be assessed considering the purpose of the matters under analysis in the sanctioning administrative proceedings.

§ 3 - The General Monitoring Coordination will analyze the admissibility of the interested third party based on convenience and opportunity criteria.

§ 4 - The clarifications of the interested third party must be provided before the notified party is called to present its closing arguments.

§ 5 - The interested third party will have access to public documents and procedural documents.

### **Defense of the notified party**

Art. 56. If the notified party presents a defense, it must clarify:

I - if it is the processing agent responsible for the data object of the administrative sanctioning process; if not, indicate, whenever possible, the agent involved;

II - if measures have already been taken in relation to the facts described in the notice of infraction, with evidence of such measures; or indicate the actual or legal facts that prevent the immediate adoption of the measure;

III - if there is an indication of how to solve the problem, detailing in which manner;

IV - if, in the fact in question, operators or other controllers have participated, identifying them; and

V - which evidence it wishes to present.

Art. 57. Requests for the production of evidence will be analyzed by the General Monitoring Coordination and may be denied.



Art. 58. If the production of expert evidence is accepted, the experts will commit to perform their duties faithfully, observing the following:

I - the General Monitoring Coordination will define the relevant requirements for the discovering phase and the questions to be answered by the expert;

II - the interested party may pose additional questions and request clarification from the expert; and

III - the expert examination may be carried out by an ANPD authority or official, specifically appointed for this purpose by the Board of Directors, or by any public agency, or by a professional having previously signed a Cooperation Agreement, or even by a professional specially hired for such purpose, and the interested party will be allowed to appoint a technical assistant.

### **Right to closing arguments**

Art. 59. If between the defense and the discovery phase new facts are produced, a period of ten days will be allowed for manifestation of the defendant before the preparation of the Remediation Report.

### **Remediation Report**

Art. 60. Once the defense period elapses, whether or not it has been presented, a procedural remediation report will be prepared, to subsidize the decision of the first instance and the proceedings will be remitted to the General Monitoring Coordination to assess.

§ 1 - The procedural remediation report completes the discovery phase, unless it indicates that the proceedings are not sufficiently supported.

§ 2 - If additional facts are required, the General Monitoring Coordination will issue an order determining the steps to be taken.

§ 3 - If the report contains information that indicates that the proceedings are complete, the General Monitoring Coordination will conclude the discovery phase and the proceedings will move on to the decision phase.

### Section III Decision Phase

Art. 61. Once the discovery phase is concluded, the General Monitoring Coordination will issue the first instance decision, the summary of which will be published in the Federal Official Gazette, and the notified party will be entitled to file an administrative appeal within a maximum period of 10 (ten) days as of the summons.

Sole paragraph. The decision will be reasoned, with indication of the facts and legal grounds, and will apply the sanction, following the parameters and criteria defined in paragraph 1 and items of article 52 of Law n. 13709, of 2018.

Art. 62. If the first instance decision concludes for the application of the administrative sanctions provided for in article 52 of Law n. 13709, of 2018, the summons contemplated in the previous article will also determine compliance with the penalty by the notified party and the respective deadline to do so.

Sole paragraph. Once the period to comply with the financial administrative sanction has elapsed, in lack of its respective evidence, the proceedings will be sent for collection of execution.

Art. 63. Proceedings may be judged jointly, if their separate decisions pose a risk of rendering conflicting or contradictory decisions, even if there is no connection between them, whether in first instance decision or appeal stage.

### Section IV Appeal Phase

## **Appeal to the Board of Directors of the ANPD**

Art. 64. The interested party will be summoned to comply with the first instance decision or to file an administrative appeal to the Board of Directors, as the maximum administrative instance, within ten days, as of the summons of the decision.

§ 1 - The summoning of the notified party completes the decision phase.

§ 2 - The administrative appeal must be addressed to the authority that rendered the decision and must be filed in the manner indicated in the summons.

### **Suspensive effect**

Art. 65. The administrative appeal will have a suspensive effect limited to the challenged matter of the decision, except in those cases of fair fear of losses whose remediation is difficult or uncertain, arising from the execution of the appealed decision.

### **Appeal not granted**

Art. 66. The appeal will be denied when filed:

I - out of time;

II - by non-legitimized parties;

III - after the administrative sphere has been exhausted.

IV - due to lack of interest in the appeal;

V - against acts of simple procedure of preparation for decisions, as well as in view of technical analysis and opinions.

Sole paragraph. The denial of the appeal does not prevent the ANPD from reviewing *ex officio* the illegal act.

## **Rehearing Stage**

Art. 67. Once the administrative appeal has been received, the General Monitoring Coordination may reconsider it in a reasoned manner.

§ 1 - If the General Monitoring Coordination fully reconsiders the decision, it will send the proceedings to the Board of Directors to acknowledge, to be subsequently shelved.

§ 2 - The rehearing referred to in the heading will give rise to the issuance of a new decision, which has a substitute effect in relation to the challenged decision, and the interested party must be notified of the new decision.

§ 3 - If the decision is maintained or partially reconsidered, the General Monitoring Coordination will forward the proceedings to the Board of Directors for further action.

§ 4 - In the event of a partial reconsideration, the decision must clarify the reconsidered part, as well as the ratification of the other terms of the challenged decision.

## **Report**

Art. 68. The procedure for distributing and processing the appeal will follow the rules of the Internal Regulations of the ANPD.

Art. 69. The reporting Director may send the case to Legal Counsel for analysis and manifestation, under the terms of the Internal Regulations.

Sole paragraph. The reporting Director will give an opinion in favor of total or partial granting, or denial of the appeal, justifying his or her vote.

## **Appeal judgment**

Art. 70. At the meeting of the Board of Directors, the reporting Director will give an opinion in favor of the total or partial granting, or of the denial of the appeal, justifying his

or her vote, and the remaining Directors will vote according to the legal grounds and regulations.

§ 1 - If the hearing of the appeal may produce an encumbrance for the appellant, the appellant must be summoned to present its allegations within a maximum period of 10 (ten) days, before the decision.

§ 2 - The decision of the Board of Directors will be published in accordance with the law, summoning the interested parties for the purposes of acknowledging and complying with the decision, as the case may be.

#### Section V Compliance with the decision and Registration of Unpaid Liability

Art. 71. The proceedings will be forwarded to the General Monitoring Coordination to monitor compliance with the decision, and will subsequently be shelved.

Art. 72. Once the proceedings are concluded, the necessary measures to comply with the decision will be taken.

Sole paragraph. Failure to pay the financial penalty on the due date will subject the debtor to registration in the Informative Roll of Unpaid Credits of the Federal Public Sector (Cadin) and the case records will be forwarded to the competent body of the Federal Attorney General for registration as an overdue liability.

#### Section VI Review

Art. 73. Administrative proceedings that result in sanctions may be reviewed, at any time, by request or *ex officio*, when new facts or relevant circumstances arise that could justify the inadequacy of the sanction applied.

§ 1 - The request for review will be received as a new procedure and notified in separate records, and the interested party must instruct the case with a full copy of the documents, or the main documents, of the proceedings to be reviewed.

§ 2 - The submission of a request for review will not suspend the effects of the sanction applied by an unappealable administrative decision, especially those adopting the necessary measures to constitute, collect and execute the non-tax credit resulting from the application of a fine penalty.

§ 3 - The General Monitoring Coordination, examining the review, will judge admissibility, indicating whether the requirements for the review are present or not, and will forward it for the acknowledgment and decision of the Board of Directors, with the main proceedings.

§ 4 - The review of the sanctioning proceedings cannot increase the penalty.

Art. 74. The review will follow the same procedure as the administrative appeal.

#### TITLE IV FINAL AND TEMPORARY PROVISIONS

##### **Term**

Art. 75. The provisions of Chapter II of Title II will enter into force as of January 2022.

Art. 76. The first monitoring cycle report and the first map will be prepared as of January 2022.

Art. 77. This decision takes effect on its date of publication.

**WALDERMAR GONÇALVES ORTUNHO JUNIOR**

Director-President