

Data Protection: Regulation for Calculating and Applying Administrative Sanctions

The Resolution regulates Articles **52** and **53** of the Brazilian General Data Protection Law (**LGPD**) and defines parameters and criteria for the ANPD to apply administrative sanctions, as well as the method for calculating the base value of fines.



The Regulation does apply to ongoing administrative proceedings, i.e., those that commenced before it was published.



Important concepts

A **breach** is a failure to comply with the obligations established in the LGPD and in the ANPD's regulations.

An **ongoing breach** is a breach of the same legal obligation that occurs continuously over an extended period of time, either through action or omission.

A **business group/conglomerate** is a set of de facto or de jure companies with their own legal personality, which are under the direction, control, or administration of a natural person, legal person, or a group of persons with individual or joint control over the others, provided integrated interests, effective communal interests and joint operations are demonstrated by the member companies.

Specific recurrence is when an entity repeats a breach of the same legal or regulatory provision within five years of being found guilty in administrative sanction proceedings (final and unappealable decision).

Generic recurrence is when an entity repeats a breach of any other related legal or regulatory provision within five years of being found guilty in administrative sanction proceedings (final and unappealable decision).

How are breaches classified?

Serious breaches

The prevention or impediment of inspections by authorities.

or

A medium-level breach that also involves **one or more** of the circumstances provided for in Article 8, paragraph 3 of the Regulation, such as the offender processing personal data on a grand scale, the processing of sensitive data or the personal data of children, adolescents, or the elderly.

Medium-level breaches

A breach that can significantly affect the interests and fundamental rights of data subjects, provided it is not classified as a serious breach.

Minor breaches

Breaches that are not classified as medium-level or serious.

What types of administrative sanctions exist?

1 Official warning

This can be applied:

- a) To **non-recurring** minor or medium-level breaches; or
- b) When the ANPD determines a need to impose **corrective measures**.

2 One-time fine

This can be applied:

- a) When the offender fails to comply with the ANPD's **preventive or corrective measures** within the established period;
- b) In the event of **serious** breaches; or
- c) When the ANPD deems it **inappropriate** to apply **other** administrative sanctions.

3 Daily fine

This can be applied:

- a) When the ANPD deems it necessary to **ensure compliance** with non-pecuniary sanctions or demands within a specified period;
- b) When, after being notified of the irregularities, the offender **fails to remedy them** within the specified timeframe;
- c) When the ANPD deems the fine necessary to stop the offender from impeding inspections; or
- d) When the offender commits an **ongoing breach** that has not ceased by the time the ANPD issues a decision.

4 Public disclosure of the breach

This sanction consists of **disclosing the breach** after it has been properly investigated and its existence has been confirmed by the offender, who must cover all costs related to the public disclosure. The ANPD may apply it due to the breach's relevance to the public interest and must indicate the disclosure's content, means and duration, as well as the deadline for complying with the sanction.

5 Blocked access to the personal data in question

This sanction involves the **temporary suspension** of any personal data **processing operations** linked to the breach. The data is **held in custody** until the offender has resolved the issue. To unblock the data, the offender must provide the ANPD with **evidence that it has adjusted its conduct**.

6 Destruction of the personal data in question

This sanction involves **destroying the data or dataset (stored in a database)**, regardless of the procedure used.

7 Partial suspension of database operations

This sanction can be applied for **up to six months** (extendable for an equal period) until the controller ensures data processing is conducted properly. The offender must **prove that its data processing operations are in accordance with the law** in order to fully restore the database's functions.

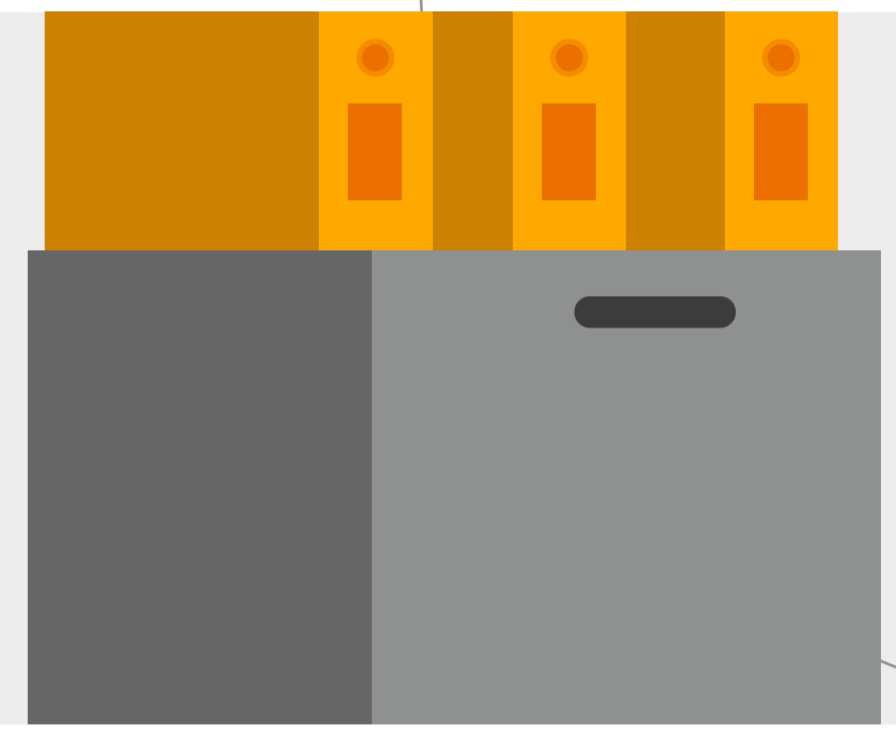
8 Suspension of data processing activities

This sanction can be applied for **up to six months** (extendable for an equal period).

9 Partial or total prohibition of data processing activities

This sanction can be applied:

- a) When a **recurrent** breach has already been punished with sanction 7 or 8;
- b) When personal data is processed for **illegal purposes** or **without legal grounds**; or
- c) When the offender **does not meet or no longer has** the **technical and operational requirements** to process data correctly on a continual basis.



Paying fines

Fines must be paid within **20 business days** of the offender officially acknowledging the decision to apply the sanction. Any payments made upon being notified of the decision to apply the fine do not affect the right to file an administrative appeal. Offenders who **expressly waive the right to appeal** first-level decisions are entitled to a **25% reduction** in the value of the fine if it is paid within the stipulated timeframe.



Aggravating Circumstances

The value of **one-time fines** is increased if aggravating circumstances exist, such as 10% for each specific recurrence, and 30% for each corrective measure not complied with.



Mitigating circumstances

The value of **one-time fines** is reduced if mitigating circumstances exist, such as 20% if good practices and governance policies are implemented, and 5% in the event the offender shows good faith and a willingness to cooperate.



The offender must **immediately inform** any processing agents who enjoy **shared use of the data in question** that it must be blocked or destroyed so that they repeat the same procedure. The only exception regards situations where reporting proves to be impossible or implies a disproportionate amount of effort.



Sanctions 7, 8, and 9 can be applied **if at least one of the other sanctions has already been imposed in regard to the same breach(s)**.

When this occurs (and if applicable), the ANPD will **inform the main sectoral body or entity (with sanctioning powers) that oversees the offender's area of business activity**, so that it may express its opinion on the potential consequences imposing sanctions could have on the offender's regulated economic activities and to provide any other information it deems relevant.

Key points

Ongoing administrative proceedings

Sanctions are **only** applied after being analyzed via an administrative proceeding that ensures the right to a full defense, adversarial proceedings, and the due process of law.

Administrative sanction applied

Administrative sanction + **Corrective measure**

The imposition of an administrative sanction does not remove the possibility of the ANPD **simultaneously** applying other measures provided for in the LGPD and in the Regulation, such as **corrective measures**.

Please note! In the event the severity of the sanction is **disproportionate** to the seriousness of the infraction, the ANPD may opt to apply a different method for measuring and calculating administrative fines and sanctions than the one provided in the Regulation.



In the event of a breach involving multiple offenders, sanctions will be applied **individually**.

If you would like to learn more, please see the complete publication we prepared on this subject by [clicking here](#) or scanning the QR code to the right:

