



ADMINISTRATIVE PROCESS TRAIL

# SANCTIONING ADMINISTRATIVE PROCESS

PREPARATORY PROCESS

 Guide 03

## Authors:

Matheus Botsman Kasputis

Thiago Xavier Peregrino

Adele Mendes Weinberg

## Reviewers:

Fernando Bousso

Felipe Gabriades

**b/luz**

# SUMMARY



## 1. INTRODUCTION



## 2. INITIAL NOTIONS ON THE REPRESSIVE ACTIVITY OF ANPD



## 3. SANCTIONING ADMINISTRATIVE PROCESS



## 4. HOW DID ANPD'S REPRESSIVE ACTION MODEL EMERGE?



# 1. INTRODUCTION

In the second [Guide of the Administrative Process Trail](#) by b/luz, we discussed the monitoring, guidance, and prevention activities that comprise the inspection process of the Brazilian National Data Protection Authority (ANPD).

In this third Guide, we will address the beginning of the ANPD's repressive activities, including the initiation and preliminary stages of the sanctioning administrative process, its scopes, means, and requirements, as well as the similarities and differences with the repressive activities of other regulatory entities.



## 2. INITIAL NOTIONS ON THE REPRESSIVE ACTIVITY OF ANPD

The structuring of ANPD's repressive activity was initiated by Resolution CD/ANPD No. 01/2021, which, as discussed in the second [Guide of the Administrative Process Trail](#), approves the Regulation of the Inspection Process and the Sanctioning Administrative Process of ANPD<sup>1</sup>. Title III of this regulation is exclusively dedicated to repressive activity and its nuances.

The Brazilian regulatory framework of privacy and personal data protection is based on a responsive regulation approach, blending the allocation of rewards and incentives with command-and-control mechanisms. Therefore, if the ANPD's actions in the inspection stages – i.e., monitoring, prevention, and guidance – reflect a perspective of rewards and incentives, the Authority's actions in the repressive phase and during the sanctioning administrative process – the subject of this Guide's analysis – express, to some extent, a command-and-control perspective.

Thus, repressive activity is understood as ANPD's coercive action aimed at interrupting situations of harm or risk, bringing data controllers and processors back to full compliance, and penalizing those responsible for violations through the application of the sanctions provided for in Article 52 of the Brazilian General Data Protection Law<sup>2</sup> (LGPD)<sup>3</sup>. In other words, it is the imperative action of the Authority in contexts where harm or risk has already been materialized.

---

1 BRAZIL. Resolution CD/ANPD No. 1 of October 28, 2021. Official Gazette of the Union: Brasília/DF. Available at: <https://www.in.gov.br/en/web/dou/-/resolucao-cd/anpd-n-1-de-28-de-outubro-de-2021-355817513>. Accessed on June 19, 2024.

2 BRAZIL. Law No. 13,709 of August 14, 2018. Official Gazette of the Union: Brasília/DF. Available at: [https://www.planalto.gov.br/ccivil\\_03/\\_ato2015-2018/2018/lei/l13709.htm](https://www.planalto.gov.br/ccivil_03/_ato2015-2018/2018/lei/l13709.htm). Accessed on June 19, 2024.

3 According to art. 15, § 4, of Resolution CD/ANPD No. 1/2021.



## What are the sanctions provided for in the LGPD?

The LGPD provides for the possibility of applying the following administrative sanctions by the ANPD within the context of the sanctioning administrative process:

- Warning;
- Simple or daily fine;
- Publicizing the infractions;
- Elimination or blocking of data until the infraction is corrected;
- Partial suspension of database operation;
- Partial suspension or prohibition of the data processing activity.

Resolution CD/ANPD No. 4/2023, which approves the Regulation on Dosimetry and Application of Administrative Sanctions<sup>4</sup>, is the instrument published by the ANPD aimed at regulating the application of these sanctions. The regulation establishes criteria for the application of sanctions, including evaluation aspects such as the nature and severity of the infraction, its duration, the degree of fault of the infringer, the economic advantage gained through the infraction, recidivism, among others.

The Regulation on Dosimetry seeks to ensure that the sanctions are proportional, fair, and effective, encouraging compliance with the LGPD and protecting the rights of data subjects. The regulation ensures the individualization and gradual application of sanctions; guarantees that, as a rule, stricter sanctions are applied after less severe ones; and regulates the right to full defense, adversarial proceedings, and due legal process. This is a normative that directly interacts with the ANPD's sanctioning administrative process.

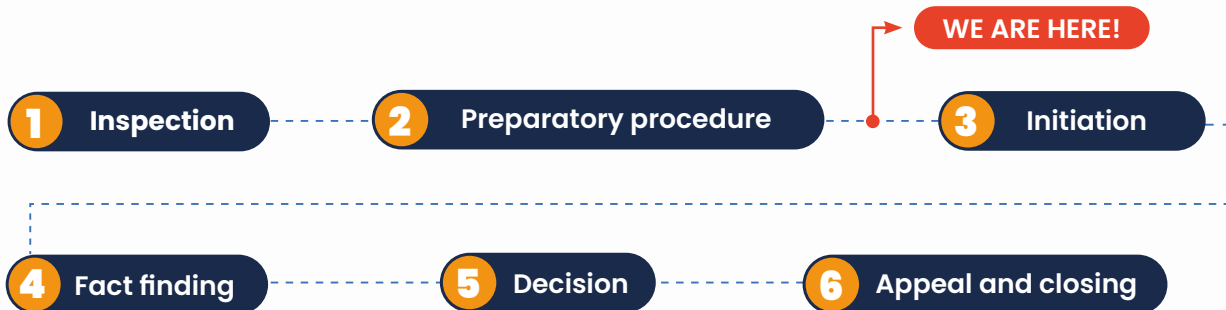
This Guide aims to introduce the repressive activity of the ANPD and to describe and analyze the preparatory procedure used by the Authority to initiate the sanctioning administrative process (PAS).

<sup>4</sup> BRAZIL. Resolution CD/ANPD No. 4 of February 24, 2023. Official Gazette of the Union: Brasília/DF. Available at: <https://www.in.gov.br/en/web/dou/-/resolucao-cd/anpd-n-4-de-24-de-fevereiro-de-2023-466146077>. Accessed on June 19, 2024.



# 3. SANCTIONING ADMINISTRATIVE PROCESS

The repressive action of ANPD is expressed in the form of the sanctioning administrative process, which aims to investigate violations of privacy and data protection laws. It is divided into several phases:



## 3.1. HOW DOES THE SANCTIONING ADMINISTRATIVE PROCESS BEGIN?



The first aspect of the repressive activity addressed by the Regulation of the Inspection Process and the Sanctioning Administrative Process concerns the means of initiating the sanctioning administrative process, which are:

- i**  
Ex officio by the General Coordination of Inspection  
  
*(one of the specific singular bodies that structure ANPD, as discussed in [the first Guide of the Administrative Process Trail](#));*
- ii**  
As a result of monitoring processes (a function detailed in the second  
  
*(a function detailed in [the second Guide of the Administrative Process Trail](#)); ou*
- iii**  
Upon request, where the General Coordination of Inspection decides on the immediate opening of a sanctioning process after an admissibility analysis.

The analysis of these means demonstrates that the General Coordination of Inspection plays an essential and active role within ANPD. Its responsibilities include not only penalizing but also monitoring activities involving the processing of personal data, investigating suspicious or illegal activities, and conducting processes that may lead to penalties.

It is important to note that there is no administrative appeal against the decision to initiate the sanctioning administrative process by ANPD<sup>5</sup>. Despite this, repressive actions must adhere to the principles outlined in both the Regulation of the Inspection Process and the Sanctioning Administrative Process and other normative instruments that regulate the limitations and scopes of ANPD's activities, such as the Regulation on Dosimetry and Application of Administrative Sanctions and the Administrative Procedure Law (Law No. 9,785/1999)<sup>6</sup>.

In this regard, the Regulation of the Inspection Process and the Sanctioning Administrative Process explicitly refers to Article 55-J, paragraph IV, of the LGPD, which establishes ANPD's authority to oversee and apply sanctions in cases of data processing non-compliance through an administrative process that ensures due process, including *the right to be heard, defense, and appeal until a final decision*.

Furthermore, in line with the Administrative Procedure Law, ANPD is bound to observe the principles of legality, purpose, motivation, reasonableness, proportionality, morality, due process, adversarial proceedings, legal certainty, public interest, and efficiency in its actions. Based on these principles:

### **The Regulation of the Inspection Process and the Sanctioning Administrative Process aims to adhere to the following criteria:**



servicing the general interest;



adequacy between means and ends, with the prohibition of imposing obligations, restrictions, and sanctions exceeding those strictly necessary to serve the public interest;



observance of essential formalities to ensure the rights of the parties involved;



adoption of simple forms sufficient to provide an adequate level of certainty, security, and respect for the rights of the parties involved;



initiation ex officio of the administrative process, without prejudice to the involvement of the parties concerned; and



interpretation of administrative norms in a manner that best ensures the achievement of the public purpose they are intended for, with retroactive application of new interpretations prohibited.

<sup>5</sup> Regulation of the Inspection Process and the Sanctioning Administrative Process: "Article 38: There is no administrative appeal against the decision to initiate the sanctioning administrative process."

<sup>6</sup> BRAZIL. Law No. 9,784 of January 29, 1999. Available at: [https://www.planalto.gov.br/ccivil\\_03/leis/19784.htm](https://www.planalto.gov.br/ccivil_03/leis/19784.htm). Accessed on June 7, 2024.

Thus, ANPD seeks to ensure respect for the principles guiding its actions while intervening administratively as minimally as possible. This concern is also explicitly stated in LGPD<sup>7</sup> itself, requiring ANPD to observe the principle of minimal intervention while ensuring the foundations, principles, and rights of data subjects when imposing administrative conditions on the processing of personal data.

Adherence to these principles provides legal certainty to those governed by them and allows ANPD to focus resources and attention on more serious violations.

## 3.2. PREPARATORY PROCEDURE OF THE SANCTIONING ADMINISTRATIVE PROCESS



Before delving into the nuances of the sanctioning administrative process and the applicable sanctions, the Regulation of the Inspection Process and the Sanctioning Administrative Process creates the possibility of a *preparatory procedure* that may occur prior to the actual initiation of the sanctioning administrative process, when there is a perceived need for repressive action.

It is worth noting that the initial draft of the Regulation of the Inspection Process and the Sanctioning Administrative Process, submitted for public consultation, did not clearly outline how the inspection procedure would progress from preventive activities to sanctioning procedures, nor did it directly address the escalation of actions from inspection to sanctioning, lacking coherence between the phases of the process<sup>8</sup>. In the final document published by ANPD, this issue was partially addressed with the introduction of the preparatory procedure, which occurs “*when there is insufficient evidence of an infraction to immediately initiate a sanctioning administrative process*”<sup>9</sup>.

However, this preparatory procedure is not a prerequisite for initiating the sanctioning administrative process; rather, it serves as a preliminary investigation into alleged infractions committed by a data controller<sup>10</sup>.

---

7 LGPD: “Article 55-J, XXIV, § 1: When imposing administrative conditions on the processing of personal data by private data controllers, whether they are limits, obligations, or requirements, ANPD must observe the requirement of minimal intervention, ensuring the foundations, principles, and rights of data subjects provided for in Article 170 of the Federal Constitution and in this Law.”

8 KELLER, Clara I. et al. Contribution to the Public Consultation on ANPD’s Inspection Regulation. Data Privacy Brasil, 2021. Available at: [https://www.dataprivacybr.org/wp-content/uploads/2021/07/dpbr\\_contribuicao\\_consulta\\_publica\\_anpd.pdf](https://www.dataprivacybr.org/wp-content/uploads/2021/07/dpbr_contribuicao_consulta_publica_anpd.pdf). Accessed on June 7, 2024.

9 Article 40 of the Regulation of the Inspection Process and the Sanctioning Administrative Process.

10 Regulation of the Inspection Process and the Sanctioning Administrative Process: “Article 42. Upon conclusion of the fact finding phase of the preparatory procedure, the General Coordination of Inspection may either archive it or initiate a sanctioning administrative process, without prejudice to adopting guidance and prevention measures, as appropriate. Sole paragraph. The General Coordination of Inspection may immediately initiate a sanctioning administrative process, regardless of a preparatory procedure or the adoption of guidance and prevention measures, due to the severity and nature of the infractions, the affected personal rights, recidivism, the degree of harm, or the applicable administrative prescription period.”



Although the preparatory procedure is not mandatory for initiating the sanctioning administrative process, this preliminary stage is significant as it allows stakeholders to explore other avenues for resolving the issue.

The ANPD, for example, allows data controllers and processors to enter into a Conduct Adjustment Agreement (TAC) during the preparatory procedure. The TAC<sup>11</sup> provides an opportunity for the accused party to acknowledge responsibility for the investigated act and propose a resolution, typically involving suspension of activities and restitution for damages caused. Full compliance with the agreement terms will result in the shelving of the administrative process by the ANPD.

It is important to note that while the Regulation of the Inspection Process and the Sanctioning Administrative Process includes provisions for TAC, further guidelines on the procedure are still pending ANPD<sup>12</sup> regulation and are prioritized in the Authority's Regulatory Agenda for the Biennium 2023-2024<sup>13</sup>.

Additionally, it should be highlighted that the TAC is initially a procedure established between the Brazilian Federal Government and a Public Agent, regulated by Normative Ordinance CGU Nº. 27/2022<sup>14</sup>. There is no indication in the ANPD regulations that it can also be used by the private sector to resolve administrative processes. This absence aligns with criticisms raised during the public consultation period, particularly regarding the lack of symmetry in oversight between the public and private sectors in compliance with LGPD<sup>15</sup>. This gap remains unresolved in the current version but is expected to be addressed through ANPD's ongoing regulation and interpretation efforts on the subject.

Thus, the Regulation used the preparatory procedure as a means of linkage, in specific situations, between the moment of inspection and that of administrative sanction. It serves primarily to assess and investigate a potential violation, but it is not necessary for the initiation of the administrative sanctioning process. Practical implementation and further clarification from ANPD regarding the requirements and principles of the preparatory procedure are awaited.

---

11 Regulation of the Inspection Process and the Sanctioning Administrative Process: Article 43. The interested party may submit a proposal for the execution of a Conduct Adjustment Agreement to the General Coordination of Inspection. § 1. The proposal shall be submitted to the Board of Directors for deliberation, observing the provisions of ANPD's Internal Regulations. § 2. The suspension of the process shall commence upon the execution of the Conduct Adjustment Agreement. § 3. The sanctioning administrative process shall be closed upon verification of full compliance with the Conduct Adjustment Agreement.

12 Regulation of the Inspection Process and the Sanctioning Administrative Process: Article 44. The Conduct Adjustment Agreement shall follow specific regulations of ANPD and applicable legislation.

13 Brazil. Resolution CD/ANPD No. 11, December 27, 2023. Official Gazette of the Union, Brasília/DF. Available at: [https://www.gov.br/anpd/pt-br/documentos-e-publicacoes/documentos-de-publicacoes/resolucao\\_cd\\_anpd\\_11\\_2023-27122023.pdf](https://www.gov.br/anpd/pt-br/documentos-e-publicacoes/documentos-de-publicacoes/resolucao_cd_anpd_11_2023-27122023.pdf). Accessed on June 7, 2024.

14 Brazil. Normative Ordinance CGU No. 27, October 11, 2022. Official Gazette of the Union, Brasília/DF. Available at: <https://pesquisa.in.gov.br/imprensa/jsp/visualiza/index.jsp?data=14/10/2022&jornal=515&pagina=143>. Accessed on June 7, 2024.

15 KELLER, Clara I. et al. Contribution to the Public Consultation on ANPD's Inspection Norm. Data Privacy Brazil, 2021. Available at: [https://www.dataprivacybr.org/wp-content/uploads/2021/07/dpbr\\_contribuicao\\_consulta\\_publica\\_anpd.pdf](https://www.dataprivacybr.org/wp-content/uploads/2021/07/dpbr_contribuicao_consulta_publica_anpd.pdf). Accessed on June 7, 2024.



# 4. HOW DID ANPD'S REPRESSIVE ACTION MODEL EMERGE?

The repressive action model of the ANPD is inspired by the regulations on privacy and personal data protection of the European Union (EU) and the administrative procedures of other Brazilian regulatory bodies. Therefore, analyzing the actions of other entities can provide important insights to better understand the Authority's own actions in the future, as will be discussed further ahead.

## 4.1. THE EUROPEAN MODEL OF REPRESSIVE ACTION



Similarly to Brazil, the European Union also opted to adopt a strategy of repressive action in extreme cases, assigning to the national authorities of each Member State the competencies to oversee and ensure compliance with the General Data Protection Regulation (GDPR), and, when necessary, to apply fines and other penalties to the parties involved in the data processing.

For the adoption of such measures, EU regulation deems it necessary to analyze the severity of the violation in order to substantiate a decision on which sanctions to adopt.



**Criteria that must be considered include, among others:**

the intent, the degree of negligence regarding risk mitigation measures, and the lack of cooperation with authorities<sup>16</sup>.

<sup>16</sup> WOLFORD, Ben. "What are the GDPR Fines?". GDPR.eu, n.d. Available at: <https://gdpr.eu/fines/>. Accessed on June 5, 2024.

Additionally, GDPR sets forth in **Articles 83(4)<sup>17</sup> and 83(5)<sup>18</sup>** specific types of violations and the levels of fines to be applied, which can amount to **€20,000,000 or up to 4% of the annual worldwide turnover of the undertaking**, not limited to a single legal entity but encompassing the group to which it belongs for calculation purposes<sup>19</sup>.

Establishing a cap on fine amounts, albeit high, marked a historic shift in how Europe dealt with its repressive action strategy. This is because the EU's previous data protection legislation – the Data Protection Directive (Directive 95/46/EC – DPD) – did not prescribe general rules for fine imposition, allowing each Member State to determine penalties according to its own national laws.

Such absence created strong divergence among the countries in the region – for example, Spain's data protection authority set a ceiling of €600,000 for its fines, France imposed a maximum fine of €300,000 in cases of recurrence, and the UK set it at £500,000<sup>20</sup>. GDPR, however, despite not preventing divergence in values, established parameters to determine the level of violation and the corresponding fine, ensuring consistency in the application of sanctions among Member States, and setting a legal cap to prevent excessive enforcement<sup>21</sup>.

---

17 GDPR: Article 83(4). Violations of the following provisions are subject, in accordance with paragraph 2, to fines of up to EUR 10,000,000 or, in the case of a company, up to 2% of its total annual worldwide turnover for the preceding financial year, whichever is higher: a) The obligations of the controller and processor, under Articles 8, 11, 25 to 39, 42, and 43; b) The obligations of the certification body under Articles 42 and 43; c) The obligations of the supervisory authority under Article 41, §4.

18 GDPR: "Article 83(5): Infringements of the following provisions shall, in accordance with paragraph 2, be subject to administrative fines up to 20 000 000 EUR, or in the case of an undertaking, up to 4 % of the total worldwide annual turnover of the preceding financial year, whichever is higher: (a) the basic principles for processing, including conditions for consent, pursuant to Articles 5, 6, 7 and 9; (b) the data subjects' rights pursuant to Articles 12 to 22; (c) the transfers of personal data to a recipient in a third country or an international organisation pursuant to Articles 44 to 49; (d) any obligations pursuant to Member State law adopted under Chapter IX; (e) non-compliance with an order or a temporary or definitive limitation on processing or the suspension of data flows by the supervisory authority pursuant to Article 58(2) or failure to provide access in violation of Article 58(1)".

19 TOSONI, Luca. Article 4(19). Group of undertakings. The EU General Data Protection Regulation (GDPR): A Commentary. New York, 2020. Oxford Academic. Accessed on June 5, 2024.

20 GRANT, H; CROWTER, H. "How Effective Are Fines in Enforcing Privacy?". Enforcing Privacy: Regulatory, Legal and Technological Approaches. Law, Governance and Technology Series, Vol. 25. Springer International Publishing. London, 2016. Accessed on June 5, 2024.

21 WOLFF, J; ATALLAH; N. Early GDPR Penalties: Analysis of Implementation and Fines Through May 2020. Journal of Information Policy, Vol. 11, p. 63–103. Pennsylvania, 2021. Available at: <https://doi.org/10.5325/jinfopoli.11.2021.0063>. Accessed on June 5, 2024.

## Today, when analyzing the impacts of GDPR, certain authors divide Europe into four groups of countries based on their approach to sanctioning:

- 1** countries with numerous fines but low amounts, such as **Spain, Germany, and Romania**;
- 2** countries with few fines but high amounts, like **Ireland, Luxembourg, and France**;
- 3** countries with few fines and low amounts, such as **Poland, Hungary, and Cyprus** and;
- 4** countries with no fines imposed, a group becoming increasingly smaller<sup>22</sup>.



In the first group, **Spain has been a leader** for several years with its strategy of imposing multiple fines of low value. Prior to the GDPR, Spain had the highest fine ceiling for non-compliance with domestic data protection laws, ranging from **€600 to €600,000** depending on the classification of the violation: minor infringement, serious infringement, and very serious infringement<sup>23</sup>.

Spain has already imposed a total of 857 fines between 2019 and May 2024, with 98% of them being less than €1,000,000. More than half of these fines were for violations of data protection principles and lack of legal basis for data processing<sup>24</sup>.

Ireland, on the other hand, opted for the strategy of the second group – imposing few

22 Ibidem.

23 SPAIN. Ley Orgánica 15, de 13 de diciembre de 1999. Protección de Datos de Carácter Personal. Madrid: Boletín Oficial del Estado, 1999. Available at: <https://www.boe.es/eli/es/lo/1999/12/13/15/con>. Accessed on June 6, 2024.

24 GDPR Enforcement Tracker. Available at: <https://www.enforcementtracker.com/?insights>. Accessed on June 6, 2024.

finances, but of high value. In total, the country issued 27 fines from 2021 to May 2024, totaling €2,855,363,400, the highest among all European countries. The highest fine imposed by the country amounted to €1,200,000,000 against Meta Platforms Ireland Limited for continuing data sharing with the USA despite a court decision to the contrary.

Between these two extremes of enforcement strategies in Europe, there are several examples of countries that choose to adopt a middle-ground approach to fines, all in accordance with decisions made by their local authorities<sup>25</sup>:

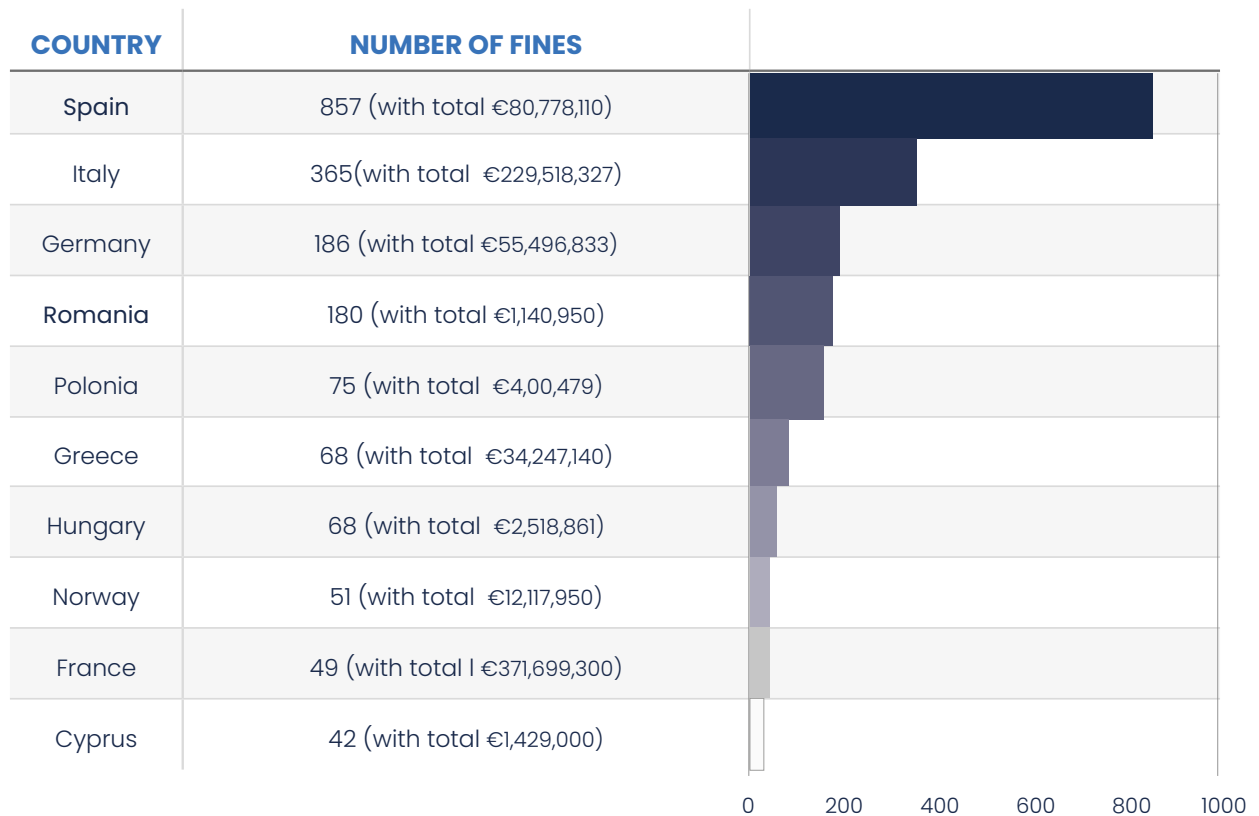


### I. BY TOTAL SUM OF FINES:



<sup>25</sup> Ibidem.

## 2. BY TOTAL NUMBER OF FINES:



Analyzing the data from the Enforcement Tracker, a tool that catalogs and compiles fines imposed for GDPR violations in Europe, one can observe the extremes among countries based on the number of fines issued and their amounts. These differences arise because, although the GDPR sets parameters aiming for standardization in enforcement, the law also recognizes the discretion of each Member State regarding which measures they believe to be appropriate or not for enforcement purposes.

Therefore, it is understood that there is no single form of enforcement in Europe, even when it comes to the imposition of administrative fines, but rather limitations and parameters that the GDPR establishes in pursuit of some form of unity. Despite the strong influence of European data protection on Brazilian legislation, it is still not clear whether the ANPD intends to adopt a strategy of issuing multiple fines of low value for non-compliance with the LGPD or if it will opt for a limited number of high fines in its enforcement actions.

Thus, beyond the European horizon, it is also relevant to analyze how Brazilian regulatory agencies conduct their enforcement actions.



## 4.2. REPRESSIVE ACTIVITY IN OTHER SECTORS IN BRAZIL

Similarly to the ANPD, other entities within the Brazilian Government exercise their powers in a repressive manner. The application of sanctions is regulated by specific normative instruments that determine the principles and rules guiding the actions of each entity. Below, we will briefly analyze, by way of example, the repressive action instruments of the Brazilian National Telecommunications Agency (Anatel) and the Consumer Protection and Defense Foundation of the State of São Paulo (Procon/SP).

### REPRESSIVE ACTIVITY AT ANATEL

The normative instrument that regulates the inspection activities carried out by Anatel is Resolution No. 746/2021<sup>26</sup>. This regulation also provides guidelines for the application of sanctions and their respective imposition procedures. Although it does not explicitly mention repressive activity, unlike the ANPD's Resolution on Inspection and Sanction Applications, Anatel's instrument shows similarities in its Article 2, §1, which states: "*Regulatory oversight will prioritize measures of education, guidance, monitoring, continuous improvement, prevention, **coordination and regularization of conduct, voluntary and effective remediation**, transparency, and cooperation*"<sup>27</sup>.

The themes of regularization and remediation of conduct correspond to the same idea of "interrupting situations of damage or risk, restoring full compliance, and punishing those responsible through the application of sanctions"<sup>28</sup> as set forth by the ANPD. Thus, similarly, Anatel has regulated mechanisms for post-damage activities related to its field of operation.

Among the repressive mechanisms, termed "control processes" by Resolution No. 746/2021, are: (i) dissemination of information, (ii) imposition of precautionary measures on the regulated entity; (iii) initiation of Procedures for Investigating Non-Compliance with Obligations (PADO); and (iv) signing of a Conduct Adjustment Agreement (TAC)<sup>29</sup>. The procedure for conducting these measures, however, is only described in Resolution No. 612/2013<sup>30</sup>, which regulates Anatel's internal rules.

26 BRAZIL. National Telecommunications Agency. Resolution No. 746 of June 22, 2021. Available at: <https://informacoes.anatel.gov.br/legislacao/resolucoes/2021/1561-resolucao-746#art2>. Accessed on: June 7, 2024.

27 See Resolution No. 746/2021, art. 2, sole paragraph.

28 See ANPD Regulation of the Inspection Process and the Sanctioning Administrative Process, art. 15, § 4.

29 See Resolution No. 746/2021, art. 55.

30 BRAZIL. National Telecommunications Agency. Resolution No. 612 of April 29, 2013. Available at: <https://informacoes.anatel.gov.br/legislacao/resolucoes/2013/450-resolucao-612#tituloIVcapXI>. Accessed on: June 7, 2024.

Among its chapters, Resolution No. 612/2013 stipulates that any violation of provisions established in law, regulation, norm, contract, act, authorization, or permit must be investigated by the PADO. Anatel's PADO follows a process very similar to the ANPD's PAS – both procedures go through the stages of initiation, fact finding, decision, and appeal.

It is interesting to note that, beyond the similar procedure, the resolutions applicable to ANPD and Anatel establish the same, or very similar, principles. See below:



Bolded items correspond to those that are similar or equivalent in the repressive action of each authority

CRITERION	ANPD	ANATEL
<p><b>PRINCIPLES</b></p>	<ul style="list-style-type: none"> <li>• <b>Legality</b></li> <li>• <b>Purpose</b></li> <li>• <b>Motivation</b></li> <li>• <b>Reasonableness</b></li> <li>• <b>Proportionality</b></li> <li>• <b>Morality</b></li> <li>• <b>Full defense</b></li> <li>• <b>Adversarial process</b></li> <li>• Legal certainty</li> <li>• <b>Public interest</b></li> <li>• <b>Efficiency</b></li> </ul>	<ul style="list-style-type: none"> <li>• <b>Legality</b></li> <li>• <b>Purpose</b></li> <li>• <b>Motivation</b></li> <li>• <b>Morality</b></li> <li>• <b>Efficiency</b></li> <li>• Speediness</li> <li>• <b>Public interest</b></li> <li>• Impersonality</li> <li>• Equality</li> <li>• Due process of law</li> <li>• <b>Full defense</b></li> <li>• <b>Adversarial process</b></li> <li>• <b>Reasonableness</b></li> <li>• <b>Proportionality</b></li> <li>• Impartiality</li> <li>• Publicity</li> <li>• Cost-effectiveness</li> <li>• Legal certainty</li> </ul>



CRITERION	ANPD	ANATEL
<p><b>MECHANISMS OF REPRESSIVE ACTIVITY</b></p>	<ul style="list-style-type: none"> <li>• <b>Warning</b></li> <li>• <b>Simple fine</b></li> <li>• Daily fine</li> <li>• <b>Public disclosure of the violation</b></li> <li>• Elimination or blocking of personal data</li> <li>• Suspension of database operations</li> <li>• Suspension or prohibition of processing activities</li> </ul>	<ul style="list-style-type: none"> <li>• <b>Disclosure</b> of information</li> <li>• Imposition of precautionary measures on the regulated entity</li> <li>• Initiation of PADO, which may result in fines, <b>warnings, suspension, and prohibition</b> from contracting and bidding for goods, materials, and services</li> </ul>
<p><b>PROCESS</b></p>	<p>Administrative Sanctioning Process (PAS)</p>	<p>Procedure for Investigation of Non-Compliance with Obligations (PADO)</p>
<p><b>PROCESS PHASES</b></p>	<ol style="list-style-type: none"> <li>1. Initiation</li> <li>2. Fact finding</li> <li>3. Decision</li> <li>4. Appeal</li> </ol>	<ol style="list-style-type: none"> <li>1. Initiation</li> <li>2. Fact finding</li> <li>3. Decision</li> <li>4. Appeal</li> </ol>
<p><b>NORMATIVE INSTRUMENTS</b></p>	<p>Resolution CD/ANPD N°. 01/2021</p>	<p>Resolution Anatel N°. 612/2013 and Resolution Anatel N°. 746/2021</p>
<p><b>SANCTION IMPOSITION CALCULATION METHOD</b></p>	<p>Dosimetry provided for in Resolution CD/ANPD No. 4/2023</p>	<p>Calculation methodology provided in Internal Resolution Anatel N°. 161/2022</p>






## REPRESSIVE ACTIVITY AT PROCON/SP

Procon/SP is the agency responsible for protecting and defending consumer rights in the state of São Paulo. Its main functions include consumer assistance, inspection, imposition of sanctions, education, and awareness.

Procon has the authority to act repressively within consumer rights. To do so, it adheres to the provisions of Law Nº. 8,078/1990 (Brazilian Consumer Protection Code or CDC), which establishes general guidelines and mechanisms for imposing sanctions. These are further regulated by Normative Ordinance No. 45/2015<sup>31</sup> of Procon/SP, which governs the administrative sanctioning process regarding violations of consumer protection norms.

Similar to the structures of Anatel and ANPD, Procon/SP establishes four phases for its processes: initiation, fact finding, decision, and appeal.

Normative Ordinance No. 45/2015 also provides for sanctions such as

- |   |   |
|---|---|
|  Seizure and destruction;                      |  Temporary suspension of activity; and |
|  Counter-advertising;                          |  Fines.                                |
|  Suspension of supply of products or services; |   |

The calculation of fines is based on the dosimetry provided in Article 33 of Normative Ordinance No. 45/2015, which follows the principles of: **(i)** recognizing consumer vulnerability in the consumer market; **(ii)** governmental action aimed at effectively protecting the consumer; **(iii)** harmonizing the interests of participants in consumer relations and reconciling consumer protection with the need for economic and technological development, thereby enabling the principles underlying the economic order (Article 170 of the Brazilian Federal Constitution), always based on good faith and balanced relations between consumers and suppliers; **(iv)** rationalization and improvement of public services; and **(v)** others listed in the CDC.

31 SÃO PAULO (Estado). Fundação de Proteção e Defesa do Consumidor. Portaria Normativa Procon nº 45 de 12 de maio de 2015. Disponível em: <https://www.procon.sp.gov.br/portaria-normativa-procon-no-45/>. Acesso em: 7 jun. 2024.

Despite not being explicitly addressed in the text of Normative Ordinance No. 45/2015, as established by the Administrative Process Law of the State of São Paulo<sup>32</sup>, every administrative process must be guided by the principles of legality, impartiality, morality, publicity, reasonableness, purpose, public interest, and motivation of administrative acts.

Therefore, the repressive activities of Procon/SP are compared below with the repressive activities of ANPD:



Bolded items correspond to those that are similar or equivalent in the repressive action of each authority

CRITERION	ANPD	PROCON/SP
<p><b>PRINCIPLES</b></p>	<ul style="list-style-type: none"> <li>• <b>Legality</b></li> <li>• <b>Purpose</b></li> <li>• <b>Motivation</b></li> <li>• <b>Reasonableness</b></li> <li>• <b>Proportionality</b></li> <li>• <b>Morality</b></li> <li>• <b>Full defense</b></li> <li>• <b>Adversarial process</b></li> <li>• <b>Legal certainty</b></li> <li>• <b>Public interest</b></li> <li>• <b>Efficiency</b></li> </ul>	<ul style="list-style-type: none"> <li>• <b>Legality</b></li> <li>• Impartiality</li> <li>• Morality</li> <li>• Publicity</li> <li>• <b>Reasonableness</b></li> <li>• <b>Purpose</b></li> <li>• <b>Public interest</b></li> <li>• <b>Motivation</b></li> <li>• Recognition of consumer vulnerability in the consumer market</li> <li>• Government action aimed at effectively protecting the consumer</li> <li>• Harmonization of the interests of participants in consumer relations and reconciliation of consumer protection with the need for economic and technological development</li> <li>• Rationalization and improvement of public services</li> </ul>

32 SÃO PAULO (State). State Law No. 10,177/1998. Available at: <https://www.pge.sp.gov.br/centrodeestudos/bibliotecavirtual/dh/volume%20i/respleil0177.htm>. Accessed on June 20, 2024.

CRITÉRIO	ANPD	PROCON/SP
<p><b>MECHANISMS OF REPRESSIVE ACTIVITY</b></p>	<ul style="list-style-type: none"> <li>• <b>Warning</b></li> <li>• <b>Simple fine</b></li> <li>• Daily fine</li> <li>• <b>Public disclosure of the violation</b></li> <li>• Elimination or blocking of personal data</li> <li>• Suspension of database operations</li> <li>• Suspension or prohibition of processing activities</li> </ul>	<ul style="list-style-type: none"> <li>• Seizure and destruction</li> <li>• <b>Counter-advertising</b></li> <li>• <b>Suspension of supply of products or services</b></li> <li>• <b>Temporary suspension of activity</b></li> <li>• <b>Fine</b></li> </ul>
<p><b>PROCESS</b></p>	<p>Administrative Sanctioning Process (PAS)</p>	<p>Administrative Sanctioning Procedure</p>
<p><b>PROCESS PHASES</b></p>	<ol style="list-style-type: none"> <li>1. Initiation</li> <li>2. Instruction</li> <li>3. Decision</li> <li>4. Appeal</li> </ol>	<ol style="list-style-type: none"> <li>1. Initiation</li> <li>2. Instruction</li> <li>3. Decision</li> <li>4. Appeal</li> </ol>
<p><b>NORMATIVE INSTRUMENTS</b></p>	<p>Resolution CD/ANPD N°. 01/2021</p>	<p>Normative Ordinance N°. 45/2015</p>
<p><b>SANCTION IMPOSITION CALCULATION METHOD</b></p>	<p>Dosimetry provided for in Resolution CD/ANPD N°. 4/2023</p>	<p>Normative Ordinance N°. 45/2015</p>

[← Return to summary](#)

Comparing the operational mechanisms of various national bodies with administrative sanctioning power, it becomes evident that the tendency is a procedural structure consisting of four stages. These stages reflect not only a national standard but also the relationship between their structuring and adherence to the principles of the administrative process, which also demonstrate compatibility among the institutions analyzed.

# b/luz

we get it, we got you

To learn more, visit our website or  
follow us on social media



[baptistaluz.com.br](http://baptistaluz.com.br)