

# Draft implementation framework released for Nigerian regulation

New guidance on implementation issued, as well as draft Data Protection Bill 2020 for public comment. By **Yimika Ketiku** of Nouvelle Legal in Nigeria.

In January 2019, the National Information Technology Development Agency (NITDA) released the Nigerian Data Protection Regulation (NDPR) (see *PL&B International Report*, April 2019, p.23). Later that year, on the recommendations of stakeholders, NITDA released the NDPR: Draft Implementation Framework (Draft Framework) as a guide to assist data controllers and administrators to understand the controls and measures they need to introduce into their environments to comply with the NDPR. The Draft Framework is a general strategic approach to enforcement of the NDPR, and not yet in force.

The Draft Framework adopted by the NDPR considers the Nigerian context and seeks to implement a non-obstructive and compliance-promoting approach. The NDPR uses a triangular compliance model. This model provides for the NITDA to appoint Data Protection Compliance Organisations which will provide auditing and compliance services for Data Controllers.

The proposed compliance approach seeks the following forms of compliance:

- Cooperation with concerned entities in achieving compliance with the applicable provisions.
- The use of technical assistance to assist concerned entities comply voluntarily with the applicable provisions. This is being done through the Data Protection Compliance Organisations.
- Self-reporting by concerned entities

through proactively providing information to show compliance with the applicable provisions.

- Signal detection using proactive monitoring and evaluation of data provided by concerned entities by utilizing analytic tools to identify patterns that reflect non-compliance.

## HIGHLIGHTS

**Appointment of Data Protection Compliance Organisations:** The Draft Framework creates a novel class of professionals called Data Protection Compliance Organisations (DPCOs) who have been licensed by the NITDA. A DPCO is any entity duly licensed by the NITDA for the purpose of training, auditing, consulting and rendering services and products for the purpose of compliance with the NDPR or any foreign Data Protection Law or Regulation having effect in Nigeria. The NITDA has so far licenced 70 organisations as DPCOs.

**Forms of Enforcement:** In order to ensure compliance, the NITDA intends to use different forms of enforcement namely: surveillance for careful monitoring of organisations to identify a breach, complaint filings by compliance officers or any person who believes a party is not complying, investigation of complaints, and imposition of administrative sanctions or the pursuit of criminal prosecution. If a data breach affects national security, the NITDA may seek an order of the Attorney General of the Federation (HAGF) or file a petition with any

sanctioning authority in Nigeria.

**Digital Consent:** The Draft Framework provides for three types of consent, identified as express, implied and opt-out consent. The use of cookies on a website or other digital platforms requires consent. However, the continued use of a website that has met particular requirements would also suffice as consent.

**Data Audits:** Data controllers who process the personal data of more than 2,000 data subjects in a period of 12 months shall, not later than 15 March of the following year, submit a summary of its data protection audit to the NITDA. The non-filing of an annual audit report by a data controller is a case of breach.

**Audit Verification Statement by DPCO:** DPCOs are expected to make an Audit Verification Statement as a precondition to the filing of an Annual Audit Report, or any other report requested by the NITDA.

**Transfer of Data Abroad:** The NITDA will be responsible for coordinating data transfer requests with the office of the Attorney-General of the Federation including compiling and publishing a White List of jurisdictions with an adequate level of data protection.

Where transfer to a jurisdiction outside the White List is being sought, the data controller shall ensure that there is a verifiable documentation of consent to one or more of the exceptions stated in Article 2.12 of the NDPR.

**Reporting of Data Breach:** Data subjects, civil society or professional

organisations or any government Agency may report a breach of the NDPR to the NITDA through an advertised channel. Data controllers and administrators also have a duty of self-reporting data breaches. The NDPR requires data handlers to have policies and procedures for monitoring and reporting violations of privacy and data protection policies. Data controllers and administrators have a duty to report to the NITDA within 72 hours of becoming aware of the breach.

**THE DRAFT FRAMEWORK VERSUS THE EU GDPR**

As earlier mentioned, the Draft Framework is a guideline to the implementation of the NDPR while the General Data Protection Regulation (GDPR) is a data protection law. It is worthy of note that the Draft Framework refers to provisions which are not included in the NDPR. The Draft Framework contains familiar concepts and principles similar to those in the GDPR. However, despite the similarities, the effect of the GDPR is far greater in terms of strengthened citizen fundamental rights in the digital age. Some of the similarities between the Draft Framework and the GDPR include:

1. The Draft Framework and GDPR require the designation of Data Protection Officers (DPOs) in specific circumstances.
2. Both the Draft Framework and the GDPR provide for restrictions and

exceptions to the cross-border transfer of personal data to a third country or international organisation. The transfer must be made based on legitimate grounds or to a third country or international organisation with an adequate level of data protection as prescribed by the relevant authorities. The Draft Framework also requires the data controllers to publish a list of third parties with whom the data subject’s data may be shared. This publication must be included in the audit filing report.

3. The Draft Framework and the GDPR provide for the conduct of Data Protection Impact Assessment (DPIA). The GDPR requires controllers and processors to conduct a DPIA in certain circumstances while the Draft Framework requires data controllers to conduct DPIA for compliance purposes.
4. Both require the reporting of data breaches within 72 hours of knowing of the breach. The Draft Framework requires that the data breach report shall include the number of data likely to be affected, cause of the breach, description of the circumstances of the loss or unauthorized access or disclosure and remedial actions being taken.
5. The Draft Framework and the GDPR provide for the possibility of administrative sanctions to be issued by the supervisory authorities in cases of non-compliance. The

NITDA established the Administrative Redress Panel for enforcement of the NDPR. In addition, the Draft Framework provides for criminal prosecution where there is a grave breach of the NDPR. This may occur when the breach affects national security, sovereignty and cohesion.

6. Both the Draft Framework and the GDPR provide the right for a data subject to lodge a complaint with their supervisory authority.

**CONCLUSION**

It is important to note that the Draft Framework has not been approved and is therefore not in effect. However, as at the time of writing this article in September, the Draft Framework is awaiting ministerial approval for final signing and there is no expected timeframe for the adoption of the Draft Framework.

**AUTHOR**

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**INFORMATION**

A copy of the draft Bill is at [nitda.gov.ng/wp-content/uploads/2020/08/Draft-Data-Protection-Bill-2020.pdf](https://nitda.gov.ng/wp-content/uploads/2020/08/Draft-Data-Protection-Bill-2020.pdf) Comments on the Draft Bill were sought by 10 September 2020.

**REVIEW OF THE NIGERIAN DATA PROTECTION BILL, 2020**

The EU General Data Protection Regulation stands as a model for many African countries in the adoption of laws and regulations to protect personal data. A total of 25 African countries have passed data protection laws while others have introduced bills which are under discussion. The National Identity Management Commission (NIMC) was taken to court over its launch of the biometric Identity scheme without data protection safeguards, forcing the government to speed the adoption of a data protection regulation in 2019. In March 2020, President Mohammed Buhari approved the constitution of the Digital Identity Ecosystem Project Steering Committee (PSC) which is the overall governing body of the digital identity ecosystem. In August 2020, the National Assembly of the Federal Government of Nigeria enacted the Data

Protection Bill 2020. The Legal and Regulatory Reform Working Group (LWG) has requested comments on the draft Data Protection Bill, 2020. The Data Protection Bill (the Bill) has 67 sections and is divided into 14 parts. Part I deals with the objectives, application and scope of the Bill; Part II provides for the basic principles and legal basis of for processing personal data; Part III deals with the establishment, composition, powers and functions of the Data Protection Commission; Part IV provides for the Data Protection Commissioner and other staff of the Commission; Part V deals with the rights of data subjects; Part VI provides for the processing of sensitive data; Part VII provides for the duties of data controllers and data processors; Part VIII deals with data location and security; Part IX provides for the administration and enforcement;

Part X deals with transborder flow of personal data; Part XI deals with offences and penalties; Part XII provides for the records obtained under data subjects right of access; Part XIII deals with financial aspects; and finally Part XIV provides for miscellaneous matters.

The Legal and Regulatory Reform Working Group will be reviewing the following parts of the Bill under the following headings:

Key terms under the Data Protection Bill 2020

1. Territorial Scope
2. Data Protection Commission
3. Data Subjects’ Rights
4. Data Controllers Obligations
5. Transfer for Personal Data
6. Data Security
7. Data Breach



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## Switzerland's DP Act revised

**David Rosenthal** of Vischer reports from Zurich on new aspects of the law which is expected to enter into force in 2022.

The splitting of hairs is now over and the revision of the Swiss Data Protection Act (DP Act) has finally been completed. Following the resolution of the last differences on "profiling", the Swiss Federal Parliament passed the new law on 25 September 2020. It is expected to come into force in 2022, with some sources even suggesting

summer 2022. As a next step, the supporting ordinances will now be drawn up and submitted for public consultation. How fast things now progress will of course also depend on the EU: Switzerland is still waiting for the renewal of the European Commission's adequacy decision,

*Continued on p.3*

## Egypt's Data Protection Law enters into force in October

It is likely that the law will not be fully enforced until 2022, but businesses should start preparing now. By **Dino Wilkinson** and **Masha Ooijevaar** of Clyde & Co.

On 13 July 2020, Egypt's Government issued its long-awaited Data Protection Law<sup>1</sup> (Law No. 151 of 2020) (the Law), which establishes various standards and controls governing the processing and handling of personal

data. The Law was published in the Official Gazette on 15 July 2020.

The Law is part of a growing trend of countries enacting comprehensive data protection laws, which

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**“ comment ”**

## New laws adopted in Egypt and Switzerland.

The influence of the EU GDPR continues to be felt far and wide. Egypt has adopted its first ever data protection law which enters into force on 16 October 2020 (p.1), and Switzerland has recently updated its 1992 data protection law, planning to retain its EU adequacy status (p.1).

The GDPR has also been a model for many African countries, several of which already have legislation in place. In this issue, we report on Nigeria's Data Protection Bill, 2020 (p.31).

How would a US federal privacy law interact with existing state level privacy laws (p.14)? In this issue we look at the private right of action under the California Consumer Privacy Act and how it might be expanded (p.29).

The *Schrems II* judgment of the Court of Justice of the European Union in July has had an impact on US business and is a major topic that will stay with us for some time, although the EU Commission is prioritising this work and is trying to find a solution for data transfers from the EU to the US (p.9). We may see revised Standard Contractual Clauses emerge before Christmas. An expensive alternative is using Binding Corporate Rules. Read on p.12 what the experience has been in 2020 with companies working with four national DPAs as lead authorities.

Professor Graham Greenleaf explores the relationship between trade agreements and new data privacy laws and Bills in Asia-Pacific countries (p.18), and together with Dr Katharine Kemp, the anti-competition developments in Australia regarding Facebook and Google (p.25).

We will return to these questions in our series of five *PL&B* webinars on German data protection legislative and judicial developments and their impact on business. The first webinar on 28 October will discuss how different laws are becoming more relevant to privacy issues, for example, in the Facebook decision of the Federal Cartel Authority (*PL&B International Report* December 2019 p.1) and the subsequent Higher Regional Court of Düsseldorf and Federal Supreme Court decisions. See [www.privacylaws.com/germany](http://www.privacylaws.com/germany) for the programme and on how to register (p.8).

**Laura Linkomies, Editor**

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Matthew Holman, Principal, EMW Law LLP

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