



**The Nigeria Data Protection Bureau
(NDPB) Compliance Notice For The
National Data Protection Adequacy
Programme (NADPAP) Whitelist.**



Introduction

With the enactment of the Start-Up Act¹ and technology taking its place in the central stage of digital innovations, utilization of personal data as a fuel to drive innovative products and processes is expected to be on the increase. In view of this expected surge in personal data utilization, there is also the need to protect data from unlawful processing by Data Controllers² and Administrators³. Heralding this development, the Nigeria Data Protection Bureau (“NDPB” or the Bureau”) was established and charged with the responsibility of enforcing the Nigeria Data Protection Regulation 2019 (“the NDPR or the Regulation”), an obligation previous undertaken by the Nigeria Information Technology Development Agency (“NITDA”). In view of this responsibility, the NDPB recently issued a compliance notice that established the National Data Protection Adequacy Programme (the “NaDPAP”) with a list of compliance obligations expected of organizations and establishments that are Data Controllers and Data Administrators (“the Compliance Notice”).



Compliance Obligations Under the Notice

a. Understanding the Nigerian Data Protection Regulation (NDPR) 2019 and Compliance with its Provisions.

While the data protection terrain of the Nigerian digital ecosystem awaits the passing of the Nigerian Data Protection Bill 2022 into law, the current framework regulating data processing and protection in Nigeria is the NDPR. The NDPR contains salient provisions on the governing principles on data processing in Nigeria as well as the legal basis on which data controllers and data administrators can process personal data. It also contains in-dept information on the rights of data subjects and the corresponding obligation on data controllers and administrators to ensure that adequate security measures, organizational mechanisms and policies are put into place to protect personal data within their control from hackers and misuse.

¹ An Act to Provide for the Creation and Development of an Enabling Environment for Technology-Enabled Startups in Nigeria and for Related Matters, 2022

² “Data Controller” means a person who either alone, jointly with other persons or in common with other persons or a statutory body determines the purposes for and the manner in which Personal Data is processed or is to be processed.

³ “Data Administrator” means a person or an organization that processes data.



The Compliance Notice issued by the NDPB therefore mandates all Data Controllers and Data Administrators to read and understand the Regulation with the aim of being conversant with their compliance expectations and obligations. The Notice also recognises the fact that Third Parties⁴ (agents, licensees, contactors or howsoever called) engaged by data controllers can be weak links in the compliance value-chain and can in turn create liability for data controllers who are their counterparties. Mindful of this fact, the Notice re-enforced the obligation on data controllers to ensure that third parties engaged by them for processing data or who have access to personal data collected by them comply with the provisions of the NDPR.

b. Develop and Implement a Privacy Policy that is Consistent with the NDPR and Notify Employees, Customers, and Online Visitors of Your Privacy Policy.

The Notice mandates Data Controllers and Data Administrators to develop privacy policies in accordance with the governing principles of data processing under the NDPR. A privacy policy is statement or information that prompts and notifies a data subject that his/her personal data would be processed by a Data Controller or Data Administrator. In order to give the data subject a clear idea of his personal information that is being collected. The NDPR requires that a privacy policy should disclose to the data subject in clear terms the description of collectable personal information, the purpose of the collection of personal data, the method of collection such as cookies, web tokens, including manual entries. Where personal data is collected digitally through a website or mobile application, the privacy policy should be placed on a conspicuous corner of website or application to prompt the attention of the site visitors or end users. In the same vein, the privacy policy may also be published in any digital or public media and in addition be posted at a conspicuous part of the Data Controller's business premises. Finally, it is of great importance that a privacy policy gives a clear indication or direction as to what constitutes consent by the data subject to the Data Controller to process his personal data. The NDPR supports an opt-in consent model. This means that consent is not given except a data subject indicates by affirmative action that he gives consent. This may be done by ticking a box, by clicking on "I agree" or "Accept" options provided. An opt-out consent model where consent is deemed to have been given by a data subject except, he negates by a clear affirmative action such as unticking a box already ticked by default, clicking on "I disagree" or "No" options is discouraged and may lead to liability.

c. The Designation of at least one or two members of staff as Data Protection Contacts (DPCs).

The NDPB compliance notice also mandates Data Controller's and Data Administrators to designate at least one members of their staff as Data Protection Contacts (DPCs). The DPCs after training would then become Data Protection Officers (DPOs). Under the NDPR, an organization is mandated to appoint a DPO within 6 months of commencing business if its core activities involve processing the personal data of over 10,000 (Ten Thousand) data subjects per annum or the organization processes sensitive personal data in the regular course of its business. The primarily duty of a DPO is to ensure that the organization complies to the provisions of the NDPR in the course of its activities. A DPO is required to have requisite professional expertise in Nigerian data protection laws and practices to advise the management, employees, and third party counterparties of their obligations under the NDPR.



⁴A third party is any natural or legal person, public authority, establishment, or any other body other than the Data Subject, the Data Controller, the Data Administrator, and the Persons who are engaged by the Data Controller or the Data Administrator to process Personal Data. [Article 1.3(xxvii) of the NDPR 2019].



In order to update the skills of the DPCs to enable them perform the responsibilities required of DPOs, the NDPB is offering a free Induction Course in Data Protection Regulation Compliance for Nigeria and Economic Community of West Africa States (ECOWAS) to not more than 3 DPCs from each Data Controller-organization.

Effect Of Non-compliance With The NDPB Compliance Notice

All organizations and establishments that comply with the Compliance Notice will be published on the NDPB website, in major newspapers and will be shared with local and international establishments. The NaDPAP will serve as a reference in relevant transactions and proceedings that an organizations or establishment is data-protection compliant. Any organization or establishment that fails or neglects to comply with the Compliance Notice on or before 25 November 2022 by taking steps to notify the Bureau of the technical and organizational measures it is taking for data privacy and protection will not be listed on the NaDPAP whitelist. Non-compliance may also attract the penalty under the NDPR for breach by an organization which may be as high as 2% of Annual Gross Revenue of the preceding year or payment of the sum of Ten Million Naira (N10,000,000) which ever is greater, or in the case of a Data Controller dealing with less than 10,000 data subjects, payment of the fine of 1% of the Annual Gross Revenue of the preceding year or payment of the sum of 2 million naira, whichever is greater.

Contact Persons

Solagbade Sogbetun

Partner

*Corporate, Commercial and
General Business Advisory*

T: +234 809 815 3914

E: ssogbetun@alp.company



Chidera Chikere

Associate

*Commercial Litigation & Dispute
Resolution Regulatory and Compliance*

T: +234 1 700 257 0 Ext 128

E: cchikere@alp.company

