

Compliance Analysis: Considerations on the Updated Registration of Data Controllers and Processors of Major Importance and All Matters Connected Therewith 2024

Introduction

The Nigeria Data Protection Commission (NDPC), by virtue of its *Guidance Notice on Registration of Data Controllers and Processors of Major Importance and All Matters Connected Therewith*. NDPC/HQ/GN/.VOL.03/B/24 (the "Updated Guidance Notice") and the Nigeria Data Protection Act 2023 General Application and Implementation Directive 2025 (GAID), has introduced changes to the Data Controllers and Processors of Major Importance (DCPMI) registration requirements. These changes follow the decision of the Federal High Court in its ruling in *suit no FHC/KD/CS/34/2024 Frank Ijege v Nigeria Data Protection Commission (2024)* where it determined that certain provisions of the NDPC's *Guidance Notice on the Registration of Data Controllers and Processors of Major Importance* NDPC/HQ/GN/.VOL.02/24 (the "Previous Guidance Notice") were ultra-vires, and as such void. See our publication in respect of the judgement [here](#).

This article highlights and examines the updates made by the NDPC to its Previous Guidance Notice with a view to help potential and current registrants understand key changes to their registration obligations.

Highlights and Analysis

Some of the notable developments in relation to the DCPMI registration requirements are as follows:

1. **Scope of DCPMI Classification:** The GAID introduces a definition of the term "*operating in*", which the erstwhile section 65 of the Nigeria Data Protection Act 2023 (NDPA) failed to do.¹ This definition is crucial to determining whether an organisation will be considered a DCPMI. Based on the new definition, an *entity that is not resident in or domiciled in Nigeria may need to register as a DCPMI where it targets data subjects in Nigeria*. Whilst the "targeting requirement" has been defined under foreign data protection regimes to include the offering of free/paid goods, and exclude activities such as mere accessibility of the organisation's website, email address or other contact channels; it would be interesting to watch closely how this provision is implemented by the NPDC.² We anticipate that this may introduce new considerations for foreign entities without specific Nigerian targets and other entities servicing the Nigerian market including those with resident representative offices or local entities for sales and marketing purposes. Typically, non-resident entities within the contemplation of non-resident suppliers within the Nigerian value added tax net are highly likely to be seen as targeting Nigeria and the use of

¹ By virtue of section 65 of the NDPA, a DCPMI is defined as a "data controller or data processor that is domiciled, resident in, **or operating in Nigeria** and processes or intends to process personal data of more than such number of data subjects who are within Nigeria, as the Commission may prescribe, or such other class of data controller or data processor that is processing personal data of particular value or significance to the economy, society or security of Nigeria as the Commission may designate"; Article 8(2) Nigeria Data Protection Act 2023 General Application and Implementation Directive 2025.

² Recital 23 European Union General Data Protection Regulation 2018

Nigerian country top-level domain name (.ng) would typically signal targeting data subjects in Nigerian etc. Notwithstanding, this would be subject to an evaluation of the circumstance of each case.

2. **Exemption to the Requirement to Register as a DCPMI:** Notwithstanding the statutory discretion granted to the NDPC, the Federal High Court determined that the NDPC ought to provide a list of persons who are exempt from the requirement to register as a DCPMI. The Updated Guidance Notice provides in paragraphs 1(2), 4 and 6 that the following persons are exempt from the requirement to register as DCPMI:
 - a. traders with less than 15 (fifteen) employees, or artisans who do not keep any specific filing system of personal data relating to their customers except routine phone contacts files, receipts data, contact addresses and electronic mail addresses;
 - b. traders or artisans who, may keep any specific filing system of personal data relating to their customers, but do not transmit personal data as a trade or business object to other data controllers or processors that may process the transmitted personal data for their business goals;
 - c. social media communities of friends, professionals or people of common interest;
 - d. community-based associations;
 - e. faith-based organisations;
 - f. foreign embassies and high commissions;
 - g. judicial establishments or bodies carrying out adjudicatory functions
 - h. multigovernmental organisations; and
 - i. persons processing personal data solely for personal or household purposes.

Accordingly, where entities, after their pre-registration assessment, fall within the exemptions in (a) – (i) above, such entity need not register as DCPMI, with the NDPC. For entities that had registered before the issuance of the Updated Guidance Note and the GAID, such entities may need to conduct post registration assessments to determine the need for continued compliance or apply for de-registration as soon as possible.

3. **Exemption to the Requirement to Register as a DCPMI by Virtue of Section 3(2) of the NDPA:** The NDPC specifies that the designation of DCPMI will not include the processing of personal data by data controllers and processors that is specifically excluded by Section 3 of the NDPA, *such as processing solely for personal or household purposes*.³ However, this exemption does not seem to include the limited exemptions in Section 3(2) of the NDPA. These limited exemptions include the following:
 - i. processing by competent authorities processing for any of the following purposes:
 - a) prevention, investigation, detection, prosecution, or adjudication of a criminal offence or the execution of a criminal penalty, in accordance with any applicable law
 - b) prevention and control of national public health emergency; or
 - c) national security.
 - ii. data controller/processor processing personal data
 - a) in respect of publication in the public interest, for journalism, educational, artistic and literary purposes to the extent that such obligations and rights are incompatible with such purposes; or
 - b) necessary for the establishment, exercise, or defense of legal claims, whether in court proceedings, or in an administrative or out-of-court procedure.

³ Paragraph 1(2) Registration of Data Controllers and Processors of Major Importance and All Matters Connected Therewith NDPC/HQ/GN/VOL.03/B/24

A careful read of the Updated Guidance Notice will reveal that Ministries, Departments, and Agencies (MDA) are required to register as DCPMIs. An MDA which may process personal data for any of the above listed purposes may also process for another purpose not specifically listed. Thus, it may not be the intention of the NDPC to exclude these entities from the obligation to register simply by the reason that one of their purposes include the above purpose in paragraph 3(i) and(ii). It may be a reasonable practice to limit this exemption to the specific processing activities mentioned therein – personal and house purposes only, unless otherwise clarified by the NDPC. The provision of Updated Guidance Notice must therefore be carefully considered in determining which persons are exempted from the obligation to register as a DCPMI under this exemption.

4. **Qualitative DCPMI Assessment:** In relation to the requirement to qualify as a DCPMI, the court held that the provision requiring data controllers and processors under a fiduciary obligation to register is void. It also deemed that “the need for accountability” and “legal competence to generate revenue on a commercial scale”, required as part of the qualitative assessment for DCPMI registration, as void. *Accordingly, these provisions have been excluded in the Updated Guidance Notice.*
5. **Changes to Sectoral Classification:** The Updated Guidance Notice recognises organisations and service providers in e-commerce and public service sectors as meeting the criteria to register as DCPMI. *Fintech organisations which were not earlier recognised under the Previous Guidance Notice have now been listed under the Ultra-High level (UHL) DCPMI classification.⁴ On the positive side, SMEs are no longer mandatorily deemed as DCPMI under the Ordinary-High level (OHL) category. However, independent medical laboratories, and hotels and guest houses with 1 - 49 suites are considered to fall within the OHL category.⁵ Similarly, processors who handle the sensitive personal data of more than 200 data subjects for commercial purposes are categorised under the OHL category.⁶*

In relation to the categorisation of processors of sensitive personal data as OHL, whilst this provision appears to be intended to replace paragraph 3(e)(iv) of the Previous Guidance Notice which placed “agents, contractors and vendors who engage with data subjects on behalf of other organisations that are in the category of MDP-UHL and MDP-EHL” within the OHL Category, it is unclear whether this creates any significant changes. This is given that data organisations (data controller/processors) who process the personal data (which could be sensitive or non-sensitive) of between 201 and 1000 data subjects within a 6-month period are also classified under the OHL category.⁷ This conundrum must be properly assessed during pre-registration assessment.

6. **Introduction of Data Processing Fees:** The New Guidance Notice introduces the requirement for data controllers within the UHL DCPMI category to pay a NGN 5,000 (approx. US\$3.00) data processing fee with respect to each processor they engage within a 12 (twelve) calendar months period.⁸ Transfers of processing activity from one processor to another within the same 12 (twelve) calendar months would not require new payment for the processor. Additionally, a controller who pays for renewal of its processors registration in the OHL category will not be liable to pay this processing fee in respect of those processors.

⁴ Paragraph 3(1)(a)(xi) Registration of Data Controllers and Processors of Major Importance and All Matters Connected Therewith NDPC/HQ/GN/VOL.03/B/24

⁵ Paragraph 3(1)(e)(iv)-(v) Registration of Data Controllers and Processors of Major Importance and All Matters Connected Therewith NDPC/HQ/GN/VOL.03/B/24

⁶ Paragraph 3(1)(e)(vi) Registration of Data Controllers and Processors of Major Importance and All Matters Connected Therewith NDPC/HQ/GN/VOL.03/B/24

⁷ Paragraph 3(1)(f) Registration of Data Controllers and Processors of Major Importance and All Matters Connected Therewith NDPC/HQ/GN/VOL.03/B/24

⁸ Paragraph 7 Registration of Data Controllers and Processors of Major Importance and All Matters Connected Therewith NDPC/HQ/GN/VOL.03/B/24. This US\$ conversion is based on the Nigerian Autonomous Foreign Exchange Market closing rate for 11 April 2025 (US\$ 1 = NGN1628)

7. **Renewal of DCPMI Registration and Compliance Annual Returns Requirements:** DCPMIs in the OHL category are required to renew their DCPMI registration annually.⁹ While this will not apply to DCPMIs in the UHL and Extra-High Level (EHL) categories, the GAID maintains the requirement for DCPMIs within the UHL and EHL categories to file a Compliance Annual Returns no later than 15 (fifteen) months after their establishment and, annually, by the 31st of March.¹⁰ Previously, the Nigeria Data Protection Regulation 2019 (NDPR) and the NDPR Implementation Framework 2020 (NDPRIF) required data controllers and processors who process the personal data of more than 2000 (two thousand) data subjects in Nigeria to file a CAR annually, by the 15th of March.¹¹ However, this has now been repealed by the issuance of the GAID. Entities may need to plan compliance ahead to determine whether they need to renew registration or file CAR.

Conclusion

The NDPC, by virtue of the Updated Guidance Notice and the GAID, has addressed some of the challenges that led to the Federal High Court's decision earlier mentioned and provided further clarity on the DCPMI registration regime. Entities that have registered or about to register may need to conduct a post-registration and pre-registration assessments respectively, to check their compliance requirements with the status of the Updated Guidance Notice.

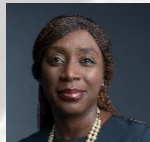
For more information on this article, please contact us at tmtpractice@aluko-oyebode.com.

⁹ Article 9(3) Nigeria Data Protection Act 2023 General Application and Implementation Directive 2025

¹⁰ Article 9(3) Nigeria Data Protection Act 2023 General Application and Implementation Directive 2025

¹¹ Article 3(3) Nigeria Data Protection Act 2023 General Application and Implementation Directive 2025

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