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DATA PROTECTION IN NIGERIA:
OVERVIEW OF THE 2019 NIGERIAN DATA
PROTECTION REGULATION ISSUED BY
NITDA

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On 25th of January 2019 the National Information Technology Development Agency (NITDA) issued its latest regulation on data protection - the Nigerian Data Protection Regulation 2019 (“the 2019 Regulation”).

The 2019 Regulation was issued pursuant to NITDA’s statutory mandate contained in Section 6 of its enabling law, the NITDA Act of 2007:

“6 (c) develop guidelines for electronic governance and monitor the use of electronic data interchange and other forms of electronic communication transactions as an alternative to paper-based methods in government, commerce, education, the private and public sectors, labour, and other fields, where the use of electronic communication may improve the exchange of data and information;”

The Regulation is an improvement on the Guidelines on Data Protection issued by NITDA in 2013. Unlike the 2013 Guidelines, the 2019 Regulation is more robust, utilises assertive language, imposes sanctions on organisations for non-compliance with its provisions and grants enforceable rights to data subjects.

The four-part Regulation stipulates conditions for obtaining and processing personal data of individuals (“data subjects”). The scope of the Regulation is wide and covers all transactions for the processing of personal data of natural persons in Nigeria, and Nigerian citizens resident abroad.

The key players under the regulation are:

- **the data subject** - the person whose identity is or may be revealed from the data;
- **the data controller** – any person/corporate who determines the purpose and manner for processing the data; and
- **the data processor** - any person/corporate who processes the data in any form e.g. storing, reproduction, modification etc.;

The Regulation stipulates that data is lawfully processed in any of the following instances:

- where consent (evidenced by an affirmative action) is given by the data subject;
- where the data subject is a party to a contract and the processing is necessary for the contract’s performance or to take steps at the request of the Data Subject before entering into the contract;
- where the processing is necessary for compliance with a legal obligation to which the Data Controller is subject;
- where processing is necessary in order to protect the vital interests of the Data Subject or of another natural person, and;



- where processing is necessary for the performance of a task carried out in the public interest or in exercise of official public mandate vested in the data controller.

The 2019 Regulation imposes liability on parties transacting on personal data to ensure the other party is accountable to regulators of data protection and does not act in violation of the rights of the Data subject. Data controllers are also required to enter into written agreements with Data Processors.

In addition to any possible criminal liability, the Regulation provides sanctions for breach of data privacy rights. Where the breach is by a Data Controller dealing with over 10,000 Data Subjects, the penalty would be 2% of the Data Controller's Annual Gross Revenue for the preceding year or 10 million naira, whichever is greater. For a Data Controller dealing with less than 10,000 Data Subjects, the applicable fine would be 1% of the Data Controller's Annual Gross Revenue for the preceding year or N2million naira, whichever is greater.

The Regulation mandates organizations handling data to:

- publicize their data protection policies within three months from the date Regulation was issued.
- Conduct a data protection audit within six months from the date of the Regulation and thereafter submit a copy annually to NITDA
- Designate a Data Protection Officer in the organisation or outsource Data Protection to a competent person/firm.

NITDA is required to set up an Administrative Redress Panel to investigate and redress instances of breach; however, this does not derogate from the data subject's right to seek redress in a competent court.

The Data Protection Regulation 2019 is a huge step in the right direction and is a long time coming considering the vagaries of this digital age we are in. NITDA's willpower to enforce the provisions in the Regulation remains to be seen.

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