

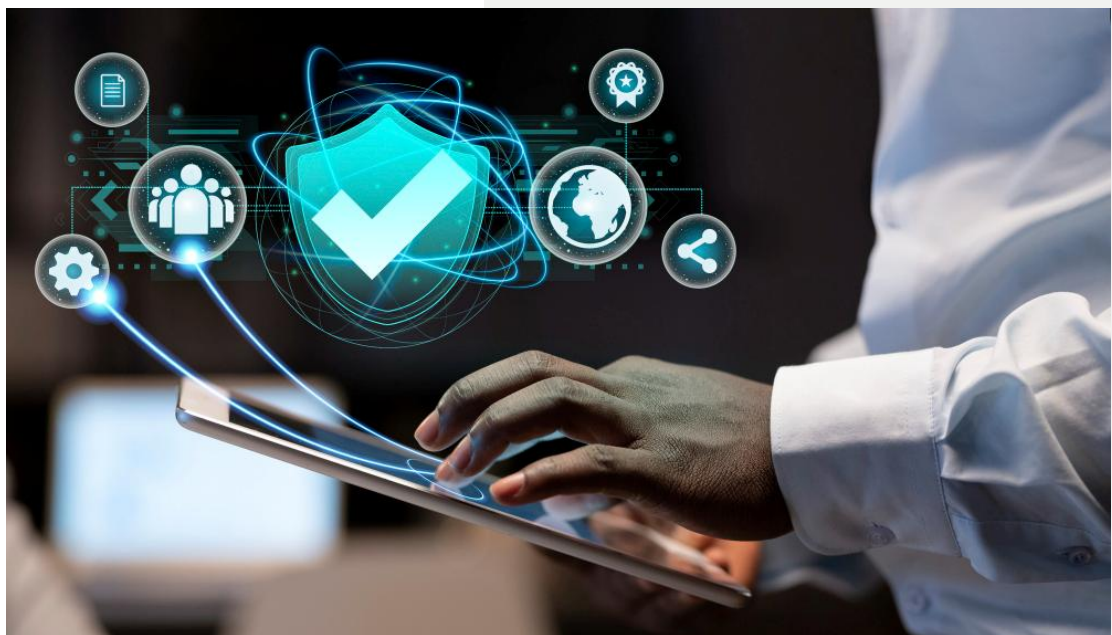
Newsletter:

Key Highlights of the Nigeria Data Protection Act (NDP Act) 2023 General Application and Implementation Directive (GAID) 2025.



March 27, 2025

"Although, the GAID has been released to the general public the National Commissioner/Chief Executive Officer, has clarified that full implementation of the directive will commence in September 2025"



Introduction

The Nigeria Data Protection Commission (NDPC) on 20 March 2025 issued the Nigeria Data Protection Act (NDP Act) 2023 General Application and Implementation Directive (GAID) 2025 ("NDP Act GAID" or the "GAID"). Supplementary to the NDP Act, the GAID provides guidance on the application of its provisions. It also introduces new concepts which was not provided in the NDP Act such as the deployment of emerging technologies, (artificial intelligence, blockchain and internet of things) in personal data processing, global best practices benchmarks using interoperable data privacy measures (IDPMs), data subject vulnerability indexes (DSVI), data subject's standard notice to address grievance (SNAG) etc.

Although, the GAID has been released to the general public, Vincent Olatunji, the National Commissioner/Chief Executive Officer, has clarified that full implementation of the directive will commence in September 2025, allowing for a six-month transition period. He also stated that all provisions in the GAID relating to fees will take effect from January 2026.

KEY HIGHLIGHTS OF THE PROVISION OF THE GAID

- Application of the NDP Act
- Effects of the Nigeria Data Protection Regulation (NDPR)
- Record of Processing Activity (ROPA)
- Exemptions Under the NDP Act
- Filing of Compliance Audit Returns
- Classification of Data Controller and Data Processors of Major Importance (DCPMI)
- DCPMI Registration and Removal
- Data Controllers Who Are Not of Major Importance
- Exemption of Certain Organisation as DCPMI
- Data Processing Fees for Data Controller of Major Importance in UHL
- Internal Semi-Annual Data Protection Report
- Implied/Constructive Consent
- Reliance on Legitimate Interest
- Data Privacy Impact Assessment (DPIA)
- Emerging Technologies (ETs)
- Interoperable Data Privacy Measures (IDPMs)

Application of the NDP Act

The GAID extends the application of the NDP Act, beyond data controllers and processors, specifying the categories of data subjects to which the Act will apply. These includes (a) a data subject who is within the territory of Nigeria regardless of nationality and migration status, (b) a data subject whose personal data has been transferred to Nigeria, (c) a data subject whose personal data is in transit through Nigeria-without more (provided that the obligation of the data controller or data processor responsible for the transmission through Nigeria to another jurisdiction shall be limited to data confidentiality, integrity and availability), and (d) a Nigerian citizen who is not within Nigeria (provided that the obligation of the data controller or data processor in this circumstance will be limited to the terms of mutual legal assistance between the NDPC, a relevant authority and any applicable international law).

Effects of the Nigeria Data Protection Regulation (NDPR)

The GAID has repealed the Nigeria Data Protection Regulation ("NDPR") and by extension, the Nigeria Data Protection Regulation 2019: Implementation Framework 2020 (the "Framework"). Consequently, the NDPR and the Framework will no longer apply. However, this change does not affect actions taken under the NDPR and its Framework prior to the issuance of the GAID.



Record of Processing Activity (ROPA)

The GAID expressly mentions form of information expected to be contained in a ROPA to be maintained by data controllers/data processors.

Exemptions Under the NDP Act

The GAID provides for the minimum provisions that must be complied with by a data controller, processor or individual that relies on or intends to rely on any exemptions in the NDP Act. Other than the exemptions specifically mentioned under section 3 of the NDP Act, data controllers, processors, or individuals are required to comply with other non-exempt provisions under the NDP Act. It also outlines key considerations of the NDPC in carrying out an assessment of the data processing activities exempted under the NDP Act.



Filing of Compliance Audit Returns

The GAID introduces changes to the compliance audit timeline, filing fee and responsible entity to file Compliance Audit Returns (CAR). Timeline: Data controllers and processors must now conduct a compliance audit within fifteen (15) months of commencing business and annually thereafter. Similarly, organizations classified as data controllers and processors of major importance (DCPMI) under the Ultra High-Level (UHL) and Extra High-Level (EHL) categories, established **after** 12th of June, 2023, must file their CAR within fifteen (15) months of establishment and annually thereafter whilst DCPMI registered under the UHL and EHL categories and established **before** 12th of June, 2023 must file their CAR by March 31st each year with the NDPC. OHL category is exempted from filing CAR.



Classification of Data Controller and Data Processors of Major Importance (DCPMI)

The GAID clarifies data controllers and processors that would constitute DCPMIs by expanding on the definition of the term “Operating in Nigeria” to include a data controller or a data processor who targets a data subject in Nigeria. This means that organisations without a physical presence in Nigeria, who target data subjects in Nigeria will be caught up under the definition of a DCPMI.

DCPMI Registration and Removal

The GAID mandates a one-time registration with the NDPC for DCPMIs who fall under the Major Data Processing -Extra High Level (MDP-EHL) and Major Data Processing -Ultra High Level (MDP-UHL) category. However, DCPMIs who fall under the category of Major Data Processing - Ordinary High Level (MDP-OHL) are required to renew their registration with the NDPC on an annual basis. DCPMIs who no longer qualify as a DCPMI can make a request to the NDPC for removal from the register of DCPMIs.

Data Controllers Who Are Not of Major Importance

The GAID identifies entities who will not be considered as data controller of major importance. These include (a) traders and artisans who do not transmit personal data as a trade or business object to data controllers/processors that may process such data for their business goals; (b) traders with less than 15 employees, and artisan who do not keep filing system of personal data relating to their customers, and (c) community of friends, professionals or people of common interest who interact on social media platforms.

Exemption of Certain Organisation as DCPMI

The GAID has exempted the following entities as DCPMI (a) Community-Based Associations (b) Faith-Based Organisations; (c) Foreign Embassies and High Commissions; (d) Judicial establishments or bodies carrying out adjudicatory functions; and (e) Multigovernmental Organisations.

Data Processing Fees for Data Controller of Major Importance in UHL

The GAID introduces payment of data processing fees in addition to the registration fees by data controllers of major importance in UHL category. Data controllers would be required to pay ₦5,000 (approx. \$3.3¹) as their data processing activities fee (for each processor engaged within 12 months). This obligation will not apply where the data controller transfers the data processing activities of its data processor to a new data processor within a twelve (12) month period. Where a data controller pays for the renewal of registration of its data processors in the OHL category, the data controller will not be required to pay a data processing fee for the same processor.

Internal Semi-Annual Data Protection Report

The GAID mandates data controllers or data processors to ensure that a semi-annual data protection report is compiled by their DPOs and submitted to their management. The semi-annual data protection report which is a detailed analysis of data processing within six (6) months, must be submitted to an officer of the data controller or data processor who is authorised to receive a Record of Processing Activities (ROPA). The Data Protection Compliance Organisation (DPCO) is required to verify such report during the NDP Act compliance audit.

¹ CBN rate as at 26/03/25

Implied/Constructive Consent

The GAID introduces the concept of “implied or constructive” consent by a data subject. Consequently, certain acts of a data subject will now be deemed to constitute an implied or constructive consent granted by a data subject for processing of his or her personal data. These acts includes: (a) when a data subject participates in a public event and his images are taken without consent, the data subject will be deemed to have given consent impliedly for the use of the images in a report of that event provided that such images are not used for profit or commerce-oriented advertisement, (b) the act of closing a privacy notice displayed on the centre of a webpage and which notice significantly obstructs the viewing of the webpage provided that the data collected in such circumstances is limited only to processing personal data necessary for the basic functionality of the website.

Reliance on Legitimate Interest

The GAID requires data controllers to carry out Legitimate Interest Assessment before embarking on data processing on the basis of legitimate interest.

Data Privacy Impact Assessment (DPIA)

The GAID expands the circumstances under which a DPIA must be conducted. Additionally, it requires DPIA to be filed with NDPC and the outcome be filed as part of the CAR. Deployers of software for processing of sensitive personal data, among other datasets are required to carry out a DPIA and submit same to the NDPC within four (4) months after the issuance of the GAID. Where data processing which requires a DPIA commenced before the coming into force of the NDP Act and the GAID, a DPIA is required to be carried out within six (6) months of the issuance of this GAID.

Emerging Technologies (ETs)

The GAID requires data controllers/processors who deploys or intends to deploy ETs (such as Artificial Intelligence (AI), Internet of Things (IoT) and Blockchain) for the purposes of processing personal data to take into consideration, the provisions of the NDP Act, public policy, the GAID and any other regulatory instruments issued by the NDPC. Deployers of ETs are expected to set technical and organisational parameters for the processing in order to design its ETs tools taking into account specific conditions listed in the GAID. The technical and organisational parameters are to be documented and filed with the NDPC as part of CAR.

Interoperable Data Privacy Measures (IDPMs)

A data controller or data processor may, subject to the approval of the NDPC, benchmark its data processing with Interoperable Data Privacy Measures (IDPMs) in circumstances where a specific directive is required by the Commission under the NDP Act. IDPM means best practice templates which are not limited by jurisdictional procedures and are particularly in furtherance of the globally interoperable principles of data protection. Some instance which IDPMs may be used include but not limited to: Data Subjects’ Access Request, Data Privacy Impact Assessment, deployment of Artificial Intelligence, Forensic Data Security Audit, Legitimate Interest Assessment, Pseudonymisation, Record of Processing Activities, etc.

Conclusion

The issuance of the GAID marks a significant milestone in Nigeria’s efforts to regulate personal data protection. The issuance of the GAID strengthens the implementation and enforcement of the NDP Act and also seeks to provide guidance on the use of emerging technologies in personal data processing. For more information kindly reach out to us at tmtpraticegroup@aluko-oyebode.com

