



NDPC

NIGERIA DATA PROTECTION COMMISSION

Data Privacy, Cross Border Data Transfer and the AfCFTA

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Learning Outcomes

- Understanding the key principles of data privacy and its relevance in the context of cross-border data transfer.
- Identifying the challenges and opportunities presented by cross-border data transfers in Africa.
- Compliance with data protection laws in cross-border transactions.
- Understanding the role of Data Protection Authorities (DPAs) in regulating cross-border data transfers.

Introduction

- In the digital age, personal information has become increasingly valuable than ever. With the rise of emerging technologies, e-commerce, online banking has fueled a surge in data collection and sharing.
- Consequently, cross-border data transfers have become more prevalent, raising concerns about data privacy and security.
- In view of this, it is imperative to protect personal data.



AfCFTA

- The Africa Continental Free Trade Agreement (AfCFTA) was established in 2018. It is the treaty establishing the African Free Trade Area and providing for the protocols on Trade in Goods, Trade in Services, Investment, Intellectual Property Rights, and Competition Policy.
- Its main aim is to enable the free flow of goods and services across the African Continent and boost the trading position of Africa in the global market. This can only be done with the free flow of personal data.
- It was signed on 21st March 2019 and came into force on 30 May 2019. Operational instruments governing trade under the AfCFTA regime were launched in July 2019.
- Trading under the AfCFTA regime commenced on 1 January 2021.

- Benefits of AfCFTA
 - Broader and deeper economic integration
 - Increase in investment
 - Boost Trade
 - Provide Better Jobs
 - Reduce Poverty
 - Increase Shared Prosperity in Africa

AfCFTA

Operational tools of the AfCFTA



Rules of Origin

Criteria that confer to a specific product 'an economic nationality.' These rules determine the minimum level of processing of a product on the continent, in order that it benefits from advantages provided by the AfCFTA Agreement.



Online tariff negotiation portal

A tool that aims to facilitate and accelerate the harmonisation of data needed for negotiations and to support the preparation and submission of offers based on countries' priorities, in accordance with the tariff liberalisation schedule of the AfCFTA.



Non-tariff barriers mechanism

An online mechanism for the notification, monitoring and elimination of non-tariff barriers under the AfCFTA. The tool is accessible via <https://tradebarriers.africa/>



Pan-African payment and settlement platform

A digital payment system that will help companies to clear and settle intra-African trade transactions for goods and services in their local currencies.



African trade observatory

An online platform that will collect, process and analyse intra-African trade data and other related information.

Cross Border Data Flows Under AfCFTA

- The AfCFTA is a game changer as it seeks to promote integration and economic growth among the 54 African Countries that have signed the AfCFTA Agreement.
- The AfCFTA provides a transformative platform to energise the digital landscape. At the centre of this revolution, is the facilitation of cross border data flows which will unlock immense opportunities for citizens, governments and businesses while enabling seamless connectivity.
- Cross Border Data Flow will enable the seamless exchange of information, services and products across borders, transcending physical limitations. free movement of services, goods and investments.

Cross Border Data Flows under AfCFTA

- A conducive environment for data flows can lead to accelerated innovation, expansion of market access, e-commerce growth, and multilateral companies.
- Cross Border Data Flow is an inevitable aspect of the 4th Industrial Revolution. As goods, services and valuables are created and exchanged across borders so does the personal data of persons.

Protocol on Digital Trade

- The Protocol aims to establish harmonised rules and common principles to enable and support digital trade across Africa. It was officially adopted by the African Union Heads of State and Government on 18 February, 2024.
- It focuses on promoting Intra-African digital trade, enhancing cooperation on digital matters among State Parties, and creating a transparent, secure, and trusted digital trade ecosystem.
- Key provisions of the Protocol include market access, treatment of digital products, facilitating digital trade, data governance, and consumer trust.
- One key thing for the Digital Trade protocol to fully work is that countries need to implement supportive regulatory frameworks that encourage digital trade while ensuring data protection, cybersecurity and fair competition.
- It has not been published.

Principles of Data Processing

- As personal data is being transferred across borders, the principles of data processing provided for in legal frameworks must be complied with by the Data Controllers and Processors.
- These principles are:
 - Fairness
 - Lawfulness
 - Transparency
 - Purpose Limitation
 - Data Minimisation
 - Accuracy
 - Storage Limitation
 - Security
 - Accountability
 - Duty of Care

Lawful Bases for Data Processing

- As personal data is being transferred across borders, Data Controllers and Processors must identify a lawful basis for transfer of personal data.
- Lawful bases provided for under legal frameworks are:
 - Consent
 - Contract
 - Legal Obligation
 - Public Interest
 - Vital Interest
 - Legitimate Interest

Privacy, Security Concerns and the Digital Divide

- Privacy and Security - The AfCFTA must strike a balance between facilitating seamless data flows and safeguarding sensitive information. This will involve ensuring African Countries implement robust data protection regulations and cybersecurity frameworks which will instill confidence among consumers and businesses by ensuring data is handled securely and responsibly.
- Digital Divide - With the growth of the digital economy, the AfCFTA must spearhead the initiative to bridge the digital divide between different African countries. A pertinent problem in Africa is uneven access to internet connectivity and digital infrastructure. This results in huge disparities in the ability to access and fully participate in cross-border data flows.
- AfCFTA should implement programs to improve digital literacy, skills training, promote inclusivity and build digital infrastructure.

Cross Border Data Transfer in Africa

- To ensure adequate protection of data while it is being transferred across borders, laws have been enacted and other regulatory instruments have been issued mandating various technical and organizational measures for data protection.
- The Common Grounds for cross border data transfer in the existing legal frameworks are:
 - There is a common recognition that cross border data transfer should be permitted under the following circumstances
 - Adequacy decision by the relevant Data Protection Authority (DPA).
 - Cross Border Data Transfer Instruments (CBDTIs) approved by the relevant DPA.
 - Consent of data subjects or other overriding grounds founded on rule of law in a democratic society. (e.g vital interest, public interest and defence of a legal claim)

Cross Border Data Transfer in Nigeria

- In Nigeria, Sections 41 - 43 of the Nigeria Data Protection Act 2023, provides for express provisions on Cross Border Data Transfer.
- Section 41 - Allows for Cross Border Data Transfer in the following instances:
 - Adequacy Decision from the Commission
 - Approved CBDTIs such as; Binding Corporate Rules, Standard Contractual Clauses, Code of Conduct , Certification Mechanism.
- Section 42 - Defines adequacy of protection to mean (a) availability of enforceable data subject rights; (b) existence of appropriate instruments; (c) access to a public authority; (d) existence of an effective data protection law; (e) existence of an independent data protection authority; and (f) international commitments.
- Section 43 - Requirements where there is no adequacy of protection and CBDTI.

Challenges and Opportunities

- The challenges are:
 - Differing data protection laws - For example, countries with data localisation requirements. The AfCFTA Digital Trade Protocol provides for the prohibition of data localisation. This could be a challenge for countries without data protection laws, as they will not be able to require companies to store data locally or to comply with their own data protection standards.
 - No harmonised framework for cross border data transfer within Africa
 - Infrastructure Limitations
 - Security Risks
- The opportunities are:
 - Economic Growth
 - Innovation
 - Collaborating
 - Harnessing the value of data

Compliance

- Identifying data protection laws in African Countries
- Identifying effective strategies for complying with data protection laws, such as obtaining the relevant approvals from DPAs for cross border data transfer, conducting data privacy impact assessments and implementing appropriate organisational and technical measures.
- Understanding how to identify and mitigate risks associated with cross-border data transfers.

Simple guidelines to understand Data Privacy and Protection

- In order to understand Data privacy, it is advised to have an idea of the **PARAMETERS** which are:

P- Principles

A- Accountability

R- Rights

A- Audit

M- Management of Records

E- Ethics in Data

T- Technological and Organizational Measures

E- Education

R- Remediation

S- Sovereignty



The Role of DPA in Regulating Cross Border Data Transfers

- Oversight and Enforcement
 - Monitoring Compliance
 - Investigating Compliers
 - Imposing Sanctions
- Cooperation with Foreign Authorities
 - Joint Investigations
 - Information Sharing
 - Mutual Legal Assistance
- Issuing Guidance and Requirements
 - Best Practices
 - Interpretations
- Raising Awareness
 - Public Education
 - Training and Capacity Building
- Staying updated and adapting to rapidly evolving technological landscape

African Union Efforts Encouraging Cross Border Data Flows

- Under the African Union Digital Transformation Strategy for Africa 2020-2023, countries are called upon to promote open data policies that can ensure the sustainability of data exchange platforms or initiatives to enable new local business models, while ensuring data protection and cyber resilience to protect citizens from misuse of data and businesses from cybercrime.
- The AU Data Policy Framework requires countries to create an enabling legal environment that would achieve and maximise the benefits of a data driven economy by encouraging private and public investments necessary to support data-driven value creation and innovation.

Recommendations and Way Forward

- The need for collaboration among African Countries to harmonise data protection laws and frameworks to allow for easy flow of data across borders.
- Capacity building and awareness across African Countries.
- Stronger implementation of AfCFTA protocols and available policies across African States.

Conclusion

- By embracing modern data practices, fostering regional and international cooperation, and demonstrating strong political will, Africa will establish a robust data governance framework for cross border data transfers within the AfCFTA. This framework will be instrumental in driving economic growth, innovation, and digital transformation across the continent.

Thank You For Listening



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Any Question?