

# Bridging The Gap Between Law and Practice: An Analysis of the Right to Data Portability Under Nigerian Law

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## INTRODUCTION

As online interactions shape everyday experiences, the right to data portability is increasingly gaining relevance within the broader framework of data protection law. Unlike other widely recognised data protection rights,<sup>1</sup> the right to data portability remains relatively unexplored by most Data Subjects<sup>2</sup> in Nigeria. This is attributable to the limited attention this right receives in public discourse and regulatory enforcement, resulting in its benefits being underutilised.

In light of this gap, this article considers the right to data portability, exploring its significance, practical applications, and the realities of implementation of the right under the Nigerian data protection legal framework.

## HISTORY OF THE RIGHT TO DATA PORTABILITY

The modern right to data portability can be traced to the European Union General Data Protection Regulations 2016 (GDPR). Originally proposed as Article 18(1) in the draft of the GDPR, this right was adopted as Article 20 in the extant version of the GDPR.<sup>3</sup> While the right to data portability is closely related to the right to access personal data, the right to access does not obligate data controllers to provide the requested personal data in a specific format. As a result, persons exercising only the right of access may receive their personal data in formats that are difficult to reuse or transfer,

limiting the practical benefits of that access. Thus, the right to data portability addresses this limitation by enhancing data subjects' control over their personal data.<sup>4</sup> By affirming the data subject's control over their personal data, the right to data portability helps rebalance the relationship between the data controller and the data subject.<sup>5</sup> Furthermore, it enhances competition among service providers by facilitating the switching of services, as data subjects can easily transfer their data between platforms<sup>6</sup> without data loss or the need to re-enter their information.<sup>7</sup>

Under the GDPR, the right to data portability enables persons to: (a) receive personal data earlier provided to an organisation, in a structured, commonly used, and machine-readable format; and (b) transmit their personal data to another organisation without any hindrance from the organisation to which the personal data had earlier been provided to. In exercising this right, the GDPR recognises that a person may request the direct transmission of personal data from one organisation to another if such transmission is technically feasible.<sup>8</sup> In line with this, using interoperable formats for processing and storing data would be the only practical way for organisations to handle requests to transfer personal data with minimal technical or financial obstacles that could slow down or prevent personal data transfer whenever this right is exercised in accordance with the GDPR.

1. More widely known and enforced rights are the right to object, right to be forgotten, and the right to withdraw consent.

2. Data Subject is an individual to whom personal data relates.

3. Regulation (EU) 2016/679; It provides that the data subject shall have the right to receive the personal data concerning him or her, which he or she has provided to a controller, in a structured, commonly used, and machine-readable format and have the right to transmit those data to another controller without hindrance from the controller to which the personal data have been provided, where, (a) the processing is based on consent or on the performance of a contract; and (b) the processing is carried out by automated means. It further provides that the processing is carried out by automated means. Additionally, the exercise of the right shall be without the right to erasure. That right shall not apply to processing necessary for the performance of a task carried out in the public interest or in the exercise of official authority vested in the controller. The right shall not adversely affect the rights and freedoms of others.

4. Recital 68 GDPR.

5. The Working Party, 'Guidelines on the Right to Data Portability' (European Commission, 5 April 2017) [https://ec.europa.eu/newsroom/document.cfm?doc\\_id=44099](https://ec.europa.eu/newsroom/document.cfm?doc_id=44099) accessed 10 April 2025.

6. Ibid.

7. Barbara da Rosa Lazarotto, 'The Right to Data Portability: A holistic Analysis of the GDPR, DMA and the Data Act' (2024) (European Journal of Law and Technology, Volume 15 No. 1 <The right to data portability: A holistic analysis of GDPR, DMA and the Data Act | European Journal of Law and Technology > accessed 5 February 2025.

8. Article 20 (1) and (2) GDPR.

Notably, the GDPR limits the applicability of the right to data portability to: (a) personal data processed based on the consent of a person or in connection with the performance of, or entry into, a contract; and (b) personal data being processed by automated means.<sup>9</sup> Accordingly, the right is not exercisable where processing activities are done manually or where the lawful basis for processing is not contract or consent, such as processing necessary for a task carried out in public interest or in the exercise of official authority vested in the controller.<sup>10</sup> Further, the exercise of the right to data portability must not adversely affect the rights and freedom of other persons.<sup>11</sup>

Lastly, the GDPR prohibits a data controller from charging data subjects any fee or cost for data portability requests unless the request to receive or transfer personal data is manifestly unfounded or excessive.<sup>12</sup> In such instances, the data controller may charge a reasonable fee, taking into account the administrative costs of providing the requested information, or refuse to act on the request.<sup>13</sup>

## SCOPE OF THE RIGHT TO DATA PORTABILITY IN NIGERIA

The ambit of the right to data portability in Nigeria aligns closely with the provisions of the GDPR, in that the Nigeria Data Protection Act, 2023 (**NDPA**) provides that the right to data portability is the right of a Data Subject to: (a) receive, without undue delay, his/her personal data in a structured, commonly used, and machine-readable format; (b) transmit the personal data to another Data Controller without any hindrance; and (c) where technically possible, have the personal data transmitted directly from one Data Controller to another.<sup>14</sup>

However, unlike the GDPR, the NDPA does not establish the right to data portability as an immediately enforceable right. Instead, the NDPA grants the Nigerian Data Protection Commission (**NDPC**) the authority to establish this right and circumstances for the exercise of the same through subsidiary legislation, meaning the right will only become enforceable once the relevant regulations are enacted.<sup>15</sup>

In this regard, the NDPC issued the Nigeria Data Protection Act General Application and Implementation Directive (**GAID**) 2025, which, inter alia, explicitly affirms that Data Subjects

have a right to data portability.<sup>16</sup> Consistent with the GDPR, the GAID provides that this right applies where personal data has been provided on the basis of the Data Subject's consent or where processing is necessary for the performance of a contract.<sup>17</sup> Unlike the GDPR, however, the GAID does not limit the right to data portability to processing carried out by automated means.

Additionally, while both the GAID and the GDPR exclude the applicability of the right to data portability in the performance of public duties, the GAID further clarifies that this exclusion may not apply if there is a compelling legitimate interest or where denying the right to data portability would infringe on the Data Subject's rights.<sup>18</sup>



## EXAMINING THE PRACTICAL REALITIES OF THE RIGHT TO DATA PORTABILITY IN NIGERIA

Prior to the enactment of the NDPA, the concept of data portability already existed in certain limited circumstances in Nigeria however, implementation has remained in the natal stages. For instance, in the telecommunications sector, individuals should be able to register a new SIM card or migrate SIMs across network providers using their National Identification Number (NIN), thereby eliminating the need to manually provide personal information each time. Similarly, the open banking framework in Nigeria anticipates interoperability of players in the open banking ecosystem.

9. Article 20(1) GDPR.

10. Article 20(3) of the GDPR.

11. Article 20(4) of the GDPR.

12. Article 12(5) GDPR.

13. *Ibid.* For example, a request could be manifestly unfounded or if the request is malicious in intent and is being used to harass an organisation with no real purpose other than to cause disruption.

14. Section 38 (2) NDPA.

15. The Commission may make regulations establishing the right to Personal Data portability. It further provides that the Commission may prescribe circumstances and conditions on which the Data Subject may exercise the right to data portability and the obligations it would impose on a Data Controller or Data Processor or categories of Data Controllers or Data Processors, including in relation to cost and timing; section 38(1) and (3) NDPA.

16. Article 37(1) GAID.

17. Article 37(2) GAID.

18. Article 37(3) GAID.



Similarly, the Bank Verification Number (BVN) system was designed to centralise individuals’ identity data across financial institutions. However, despite this centralisation, customers are often required to fill out forms with personal data already linked to their BVN when opening new bank accounts. Another often-overlooked case for data portability in Nigeria is the inability of persons to transfer their personal information from the National Identity Management Commission (NIMC) across government agencies. This limitation unduly delays processes such as obtaining a driver’s licence, applying for international passports, registering for utilities etc, all of which require persons to resubmit information already available in the NIMC database.

The aforementioned instances illustrate the absence of an effective and operational data portability framework within the financial services industry. There are several structural and systemic barriers which contribute to this including:

**Lack of clear mechanisms and procedural frameworks**

There is no clear framework or procedure for initiating and processing data portability requests. For instance, for data access, the Data Subject can request access to their data via a form; however, there is no clear medium or means for implementing data portability.

Further, without binding legal obligations on the right to data portability, most organisations are reluctant to build systems that support data export or cross-platform interoperability. This lack of a procedural process frustrates the practical exercise of the right.

**Low Public Awareness**

The public awareness of data portability rights remains low, and this knowledge gap has contributed to minimal exercise of the right. Most individuals seem to be familiar with consent-based requirements under Nigeria’s data only.

**Lack of Commercial Incentives**

Because implementing secure, interoperable, and machine-readable systems requires substantial investment. Many organisations, especially small and medium-sized enterprises, lack the financial and technical capacity to develop such infrastructure and are thus reluctant to invest in interoperable systems for data portability due to a perceived threat to their competitive advantage, as facilitating easy transfer of Personal Data could lead to customer attrition and diminish their competitive edge.

**Data Security and Liability Concerns**

Data controllers may also be hesitant due to fears about security risks or liability if transferred data is misused or breached by the receiving party.



In light of these issues and to give practical effect to the right to data portability and ensure that it is not merely symbolic, we recommend the following:

Firstly, there should be simple, accessible, and transparent processes through which individuals can exercise their right to data portability. To avoid frustrating the rationale of the right to data portability, a recommendation is that organisation should define a clear and accessible mechanism which will enable the implementation of this right. Also, the NDPA may work with regulatory entities such as Central Bank of Nigeria (CBN) to explicitly include provisions that define and support the operationalisation of data portability across sectors.

Further, the NDPC must take a more proactive role in setting standards, issuing guidance, and enforcing compliance. For example, updating its audit questionnaire to include questions on data portability in order to drive enforcement.

Lastly, there should be nationwide campaigns, literacy initiatives, and public service announcements to educate individuals about other rights under data protection laws and how to exercise them.

19. Open banking and open financing allow individuals to move seamlessly between service providers, with the initial provider being responsible for sharing the individual’s data, following their consent. While open banking is not yet fully operational in Nigeria, ongoing regulatory efforts suggest that its implementation is forthcoming.

## CONCLUSION

The right to data portability holds significant potential within Nigeria's data protection ecosystem. It empowers individuals with control over their Personal Data, promotes competition, and supports innovative initiatives such as open banking and open finance.<sup>19</sup>

However, despite its recognition under the NDPA and GAID, the practical exercise of this right remains limited due to legal, institutional, and infrastructural challenges highlighted in this article. Bridging the gap between law and practice requires coordinated efforts by regulators, public sector, private sector and Data Subjects.

## FOR MORE INFORMATION, PLEASE CONTACT :



**Damilola Salawu**

Partner

[dsalawu@olaniwunajayi.net](mailto:dsalawu@olaniwunajayi.net)



**Hopewell Nwachukwu**

Senior Associate

[hnwachukwu@olaniwunajayi.net](mailto:hnwachukwu@olaniwunajayi.net)



**Opeyemi Araromi**

Associate

[oararomi@olaniwunajayi.net](mailto:oararomi@olaniwunajayi.net)



**Ifeoluwa Adeniran**

Associate

[iadeniran@olaniwunajayi.net](mailto:iadeniran@olaniwunajayi.net)