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DATA PROTECTION ACT(ION)

Report on the Law of Data Disclosure in Ghana

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Abstract

This report highlights data law of the Republic of Ghana within the framework of a comparative study from legal studies, cultural studies and business informatics, which aims to investigate the extent to which decisions to disclose personal data are based on a cultural imprint as well as on the existing legal framework. To establish this, the country report sets a baseline. In addition to a brief overview of the Ghanaian legal framework, it deals decisively and in depth with issues relating to data law. The focus is on regulatory aspects relating to the collection, processing and dissemination of personal data. Central feature is the Data Protection Act 2012, which covers the processing of personal data and establishes fundamental privacy rights for data subjects, including the right to be informed by data controllers about data processing. Questions asked include: Which legal sources regulate Ghanaian data law? What are personal data in Ghanaian data law? How may these data be collected, processed and compliance enforced?

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Keywords

Data protection, privacy, Ghana, Data Protection Act 2012, data subject, processing, personal data, consent.

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A. Generalities*

I. Cultural Vectors of Data Disclosure

Identification of cultural preconditions for individual data disclosure: cultural parameters that may influence decision-making concerning individual data disclosure; narratives concerning data disclosure; synonyms for „Data Protection” and “Privacy” in the local language; cultural practices and expectations concerning data disclosure and use (taboos etc.); Data protection and privacy discourse, especially call for reform.

The Republic of Ghana is a nation in sub-Saharan West Africa and lies on the Gulf of Guinea. Its Population is 30.8 million.¹ GDP per capita is 2,28.50 USD, placing it among the lesser developed economies of the world but significantly above the average of sub-Saharan Africa.²

* This report is part of an interdisciplinary research project on individual data disclosure: *Vectors of Data Disclosure – A comparative study on the disclosure of personal data from the perspectives of legal, cultural studies, and business information systems research*, supported by the Bavarian Research Institute for Digital Transformation (bidt). <<https://www.bidt.digital/en/vectors-data-disclosure/>>. The author would like to thank Dr. Sena Dei-Tutu for her helpful comments that contributed to this report and Professor Dr. Moritz Hennemann for his support and guidance in the process.

¹ Ghana Statistical Service, ‘Ghana 2021 Population and Housing Census’ (September 2021) <https://census2021.statsghana.gov.gh/gssmain/fileUpload/reportthemelist/PRINT_COPY_VERSION_FOUR%2022ND_SEPT_AT_8_30AM.pdf> accessed 21 January 2022.

² The world bank, ‘GDP per capita (current US\$) - Ghana I Data’ (2022) <<https://data.worldbank.org/indicator/NY.GDP.PCAP.CD?locations=GH>> accessed 21 January 2022.

³ For a discussion on this, see Alex B. Makulilo, ‘The Context of Data Privacy in Africa’, African Data Privacy Laws, Law, Governance and Technology Series, vol 33 Springer, Cham (2016) <https://link.springer.com/chapter/10.1007%2F978-3-319-47317-8_10> accessed 21 January 2022.

⁴ For an in-depth study of privacy and data protection culture in Ghana, see Eric Agyei-Bekoe, ‘Empirical Investigation of the Role of Privacy and Data Protection in the Implementation of Electronic Government in Ghana’ (September 2013) <<https://dora.dmu.ac.uk/handle/2086/11150>> accessed 21 January 2022.

The context of privacy is different in Africa than in other parts of the world, with scholars noting that African cultures generally have a more group-oriented way of life.³ Similarly, collectives of people have great importance in Ghana, with extended family structures commonplace, with some arguing that this contributes to lower levels of concerns about privacy.⁴ On the other hand, reputation seems to be an important factor in Ghanaian society and law,⁵ appearing in several legal texts.⁶

A problematic feature of data protection legislation in Africa in general is its tendency to be less of an organic development arising from internal political discourse and more of a “legal transplant” from EU legislation,⁷ at least on paper.⁸ While the Data Protection

⁵ Ibid, p. 169: “individuals’ main concern is not about identity theft or an organisation’s misuse of their personal data, but rather the damage to their reputation”.

⁶ For example, sec. 164 of the 1992 Constitution explicitly allows freedom and independence of the media to be restricted by laws “reasonably required (...) for the purpose of protecting the reputations (...) of other persons.” The Protection against Unfair Competition Act 2000 concerns itself greatly with the damaging of reputation (see, *inter alia*, sec. 2). The Companies Act 2019, in sec. 190, includes an explicit obligation of company directors to have regard to the reputation of the company. The Cybersecurity Act 2020, in sec. 87 (2) (b), allows for taking down content from the internet for “the protection of reputation (...) of an individual”.

⁷ For a detailed comparative study on such developments in Africa, see Patricia Boshe, Moritz Hennemann and Ricarda von Meding, ‘African Data Protection Laws – Current Regulatory Approaches, Policy Initiatives, and the Way Forward’ (2022), Global Privacy Law Review (forthcoming).

⁸ Executive Director Patricia Adusei-Poku in a video interview: “The Ghana law is more or less the GDPR”. International Association of Privacy Professionals, ‘LinkedIn Live: Privacy Around the Globe: Ghana - Interview with Patricia Adusei-Poku, Executive Director, Data Protection Commission Ghana’ (IAPP.org, January 2021), minute 30 onwards. <<https://iapp.org/news/video/linkedin-live-privacy-around-the-globe-ghana/>> accessed 24 January 2022. Concerning the (significant) problem of enforcement, see *infra* Section C IV 3 e.

Act 2012⁹ differs, especially with its registration requirement, from the EU Data Protection Directive and especially the EU General Data Protection Regulation, which it precedes, there are many similarities.¹⁰ However, while the “law in the books” can be considered a piece of modern data protection legislation, enforcement is lackluster, with full compliance a long way ahead.¹¹

Despite these issues, technological development in Ghana is ever accelerating: Equivalent to 82 % of GDP, mobile payment adoption is one of the highest in the world.¹² On a similar note, the e-commerce sector is booming,¹³ leaving the question open as to how data protection legislation and enforcement will develop in this environment.

II. Legal System and Lawmaking

Central characteristics; Sources of law and legal hierarchies; classification of legal systems; Lawmakers and influential political and societal movements.

The Republic of Ghana, as a former British colony,¹⁴ belongs to the common law legal sphere.¹⁵ Sec. 11 of the 1992 Constitution enumerates the sources of law and clarifies in subsection (2) that “the common law of

Ghana shall comprise the rules of law generally known as the common law, the rules generally known as the doctrines of equity and the rules of customary law (...).” Thus, while grounded in the British understanding of common law, customary law also plays a role.¹⁶ Responsibility for the development of customary law is given to the National House of Chiefs, sec. 272 (b) 1992 Constitution.

As Ghana is a common law country, precedent and case law has an important role alongside statutes. However, case law is sometimes hard to access, with lower court decisions often going unreported and significant delays in the publication of others.¹⁷

Statutory sources of law are the 1992 Constitution, Acts of Parliament, and Orders, Rules and Regulations (sec. 11 (1) of the Constitution) in that hierarchy. Acts are based by Parliament and must be assented to by the President of Ghana (sec. 106 1992 Constitution). The Court structure is laid out in sec. 126 of the Constitution, with the most important courts being the Supreme Court, the Court of Appeal and the High Court.

On the international level, Ghana is part of the United Nations, the African Union (AU),

⁹ Parliament of the Republic of Ghana, ‘The Data Protection Act 2012 (Act 843)’ (*Data Protection Commission*, 2012) <<https://www.dataprotection.org.gh/data-protection/data-protection-acts-2012>> accessed 21 January 2022.

¹⁰ Pointing to the categorization of data into a more and less sensitive variant: Daigle Brian, ‘Data Protection Laws in Africa: A Pan-African Survey and Noted Trends’, *Journal of International Commerce and Economics*, p. 10 (February 2021) <https://www.usitc.gov/staff_publications/all> accessed 21 January 2022.

¹¹ On the topic of e-commerce platforms, see Issah Baako, Sayibu Umar and Prosper Gidisu, ‘Privacy and Security Concerns in Electronic Commerce Websites in Ghana: A Survey Study’ (*International Journal of Computer Network and Information Security (IJCNIS)* 2019) Vol.11, No.10, 19-25; Concerning compliance with registration, see *infra* Section C IV 1 a.

¹² Faustine Ngila, ‘Kenya, Ghana set global pace in adoption of mobile payment’ (24 September 2020) <<https://www.businessdailyafrica.com/bd/corporate/technology/kenya-ghana-set-global-pace-in-adoption-of-mobile-payment-2370420>> accessed 21 January 2022.

¹³ Gideon Boyetey and Samuel Antwi, ‘Perceived Risk versus Perceived Value for Money: Assessing Online Retail Shopping Behavior among Ghanaians’ (*IBusiness* 2021) Vol. 13, No. 3, 117-143.

¹⁴ And member of the Commonwealth of Nations, see: The Commonwealth, ‘Member Countries’ (2022) <<https://thecommonwealth.org/member-countries>> accessed 21 January 2022.

¹⁵ Victor Essien, ‘Sources of Law in Ghana’ *Journal of Black Studies*, 24(3), 246–262, (1994) <<https://www.jstor.org/stable/2784581>> accessed 21 January 2022.

¹⁶ *Ibid.* on the topic of customary law, the “repugnancy clause”, and the qualification of Sharia Law as customary law.

¹⁷ See Victor Essien, ‘Update: Researching Ghanaian Law’ (November/December, *GlobalLex*, NYU Law 2020) <<https://www.nyulawglobal.org/globallex/Ghana1.html>> accessed 21 January 2022.

the Commonwealth of Nations and the Economic Community of West African States (ECOWAS), with sec. 40 (d) of the 1992 Constitution enumerating these institutions and obligating the government to “adhere to [their] principles” and their “aims and ideals”. International treaties need to be ratified, sec. 75 Constitution 1992.

B. (General) Legal System of Information Law

I. Structure of Information Law

Constitutional and basic rights aspects; relevant regulations concerning intellectual property, secrecy, cybercrime (data privacy aut idem infra at C.); Which regulations are based on international provisions (especially concerning intellectual property)?

The 1992 Constitution of Ghana¹⁸ contains several provisions relevant for Information Regulation: Sec. 18 (2) protects the privacy of the home, property, correspondence or communication of individuals.¹⁹ Sec. 21 provides for “fundamental freedoms”, with the right to freedom of speech (Subsec. 1 a.) and freedom of thought, conscience and belief (Subsec. 2 a.) particularly relevant to informational aspects. Sec. 41 contains duties of citizens,

which include to obligation to “promote the prestige and good name of Ghana” (a.), “to co-operate with lawful agencies in the maintenance of law and order” (i.) and “to declare his income honestly to the appropriate and lawful agencies” (j.). Sec. 56 restricts government propaganda, while Sec. 162 protects the freedom and independence of media. Sec. 163 mandates that state-owned media allow for diverging opinions and dissent, with Sec. 164 allowing for limitations on the preceding two sections in certain contexts (e.g. national security). Sec. 173 limits the National Media Commission’s²⁰ power to allow for independence of journalists.

Intellectual property protections are governed by the Patents Act 2003,²¹ the Industrial Designs Act 2003,²² the Trade Marks Act 2004,²³ and the Copyright Act 2005.²⁴ Ghana is a signatory to 15 treaties administered by the World Intellectual Property Organization.²⁵

The Protection Against Unfair Competition Act 2000²⁶ prohibits acts such as causing confusion with another’s enterprise (Sec. 1), damaging other enterprises goodwill or reputation (Sec. 2) and misleading the public (Sec. 3), while also protecting secret information in commercial contexts (Sec. 5). The Credit

¹⁸ Parliament of the Republic of Ghana, ‘Ghana’s Constitution of 1992 with Amendments through 1996’ (2021) <https://www.constituteproject.org/constitution/Ghana_1996.pdf> accessed 21 January 2022.

¹⁹ Sec. 18 (2) Constitution 1992: “No person shall be subjected to interference with the privacy of his home, property, correspondence or communication except in accordance with law and as may be necessary in a free and democratic society for public safety or the economic well-being of the country, for the protection of health or morals, for the prevention of disorder or crime or for the protection of the rights or freedoms of others.”

²⁰ Established in Sec. 166 et seq. Constitution 1992.

²¹ Parliament of the Republic of Ghana, ‘Patents Act, 2003 (ACT 657)’ (31 December 2003) <[https://bcp.gov.gh/acc/registry/docs/PATENTS%20ACT,%202003%20\(ACT%20657\).pdf](https://bcp.gov.gh/acc/registry/docs/PATENTS%20ACT,%202003%20(ACT%20657).pdf)> accessed 21 January 2022.

²² Parliament of the Republic of Ghana, ‘Industrial Design Act, 2003 (ACT 660)’ (31 December 2003)

<<https://ictpolicyafrica.org/en/document/qw9n9try7to?page=4>> accessed 21 January 2022.

²³ Parliament of the Republic of Ghana, ‘Trade Marks Act, 2004 (ACT 664)’ (29 January 2004) <<https://www.wipo.int/edocs/lexdocs/laws/en/gh/gh013en.pdf>> accessed 21 January 2022.

²⁴ Parliament of the Republic of Ghana, ‘Copyright Act, 2005 (Act 690)’ (*WIPO-Lex*, 17 May 2005) <<https://wipo.int/en/text/148037>> accessed 21 January 2022.

²⁵ More information available here: WIPO, ‘WIPO-Administered Treaties’ (*WIPO-Lex*) <https://wipo.int/en/treaties/ShowResults?country_id=65C> accessed 21 January 2022.

²⁶ Parliament of the Republic of Ghana, ‘Protection Against Unfair Competition Act 2000 (Act 589)’ (19 December 2000) <<https://www.wipo.int/edocs/lexdocs/laws/en/gh/gh005en.pdf>> accessed 21 January 2022.

Reporting Act 2007²⁷ regulates the provision of credit reporting and scoring services. The Electronic Communications Act 2008²⁸ regulates the provision of such by electronic communications and broadcasting service providers and networks. The Electronic Transactions Act 2008²⁹ deals with online transactions. The Payment Systems and Services Act 2019³⁰ includes rules for providers of electronic payment services. The Cybersecurity Act 2020³¹ includes provisions aiming to improve cybersecurity through security measures as well as criminal provisions and corresponding investigatory powers.

II. Allocation of Informational Legal Positions

Commodity/commoditization, especially. “intellectual property”; collective goods; public goods. Several intellectual property rights are registrable under Ghanaian law: Patents (under the Patents Act 2003), Industrial Designs (under the Industrial Designs 2003 and Trade Marks (under the Trade Marks Act 2004). Copyright protections under the Copyright Act 2005 do not require registration; the same goes for what might elsewhere be called a trade secret: the protected secret information under Sec. 5 of the Protection Against Unfair Competition Act 2000.

In some instances, a form of quasi-public informational good is established through authority designation. This includes Sec. 35 of the Cybersecurity Act 2020, whereby certain computer systems and computer networks may be designated as “critical information infrastructure” for certain reasons of public interest (e.g. national security) and which leads to heightened regulatory scrutiny. Similar provisions are found in the Electronic Transactions Act 2008, which allows for designation as a “protected computer” (Sec. 55), “critical electronic records” (Sec. 56 (a)) and “critical databases” (Sec. 56 (b)).

III. Institutions

Information supervisory authorities; private institutions/organizations (industry and sectoral associations), including international institutions; public administration and cultivation/management of informational goods.

On the ministerial level, the Ministry of Communication is the most important information regulatory authority, with its stated goal being “to promote the development of Ghana into a knowledge-Based Society and a smart economy through the use of ICT”.³² The National Media Commission as an institution provided for by Sec. 166 Constitution 1992, responsible for regulating media and mass communication (see also Sec. 167).

²⁷ Parliament of the Republic of Ghana, ‘Credit Reporting Act, 2007 (Act 726)’ (05 April 2007) <https://www.bcp.gov.gh/new/reg_details.php?id=NjA> accessed 21 January 2022.

²⁸ Parliament of the Republic of Ghana, ‘Electronic Communications Act, 2008 (Act 775)’ (*Ministry of Communications*, 06 January 2009) <<https://www.moc.gov.gh/sites/default/files/downloads/Electronic%20Communications%20Act-775.pdf>> accessed 21 January 2022 and Parliament of the Republic of Ghana, ‘Electronic Communications (Amendment) Act, 2009 (Act 786)’ (*Ghana Business Regulatory Reforms Portal*, 31 December 2009) <[https://bcp.gov.gh/acc/registry/docs/ELECTRONIC%20COMMUNICATIONS%20\(AMENDMENT\)%20ACT,%202009%20\(ACT%20786\).pdf](https://bcp.gov.gh/acc/registry/docs/ELECTRONIC%20COMMUNICATIONS%20(AMENDMENT)%20ACT,%202009%20(ACT%20786).pdf)> accessed 21 January 2022.

²⁹ Parliament of the Republic of Ghana, ‘Electronic Transactions Act, 2008 (Act 772)’ (*Ministry of*

Communications, 18 December 2008) <<https://moc.gov.gh/sites/default/files/downloads/Electronic%20Transactions%20Act%20772.pdf>> accessed 21 January 2022.

³⁰ Parliament of the Republic of Ghana, ‘Payment Systems and Services Act 2019 (Act 987)’ (*Bank of Ghana*, 13 May 2019) <<https://www.bog.gov.gh/wp-content/uploads/2019/08/Payment-Systems-and-Services-Act-2019-Act-987-.pdf>> accessed 21 January 2022.

³¹ Parliament of the Republic of Ghana, ‘Cybersecurity Act 2020 (Act 1038)’ (*Cybersecurity Authority*, 2022) <[https://www.csa.gov.gh/resources/cybersecurity_Act_2020\(Act_1038\).pdf](https://www.csa.gov.gh/resources/cybersecurity_Act_2020(Act_1038).pdf)> accessed 24 January 2022.

³² Ministry of Communications, ‘About Us’ (*Ministry of Communications*) <<https://www.moc.gov.gh/about>> accessed 21 January 2022.

The central data protection regulatory authority is the Data Protection Commission³³ as established in the Data Protection Act 2012.

Additionally, there are several other authorities which play a role in regulation in the information context: The National Identification Authority Act 2006³⁴ created the National Identification Authority Responsible for maintenance of the system of national ID cards and the corresponding database. The National Communications Authority Act 2008³⁵ establishes said authority responsible for the regulation of communications services. The National Information Technology Agency Act 2008³⁶ establishes the National Information Technology Agency responsible for provision of informational communications (i.e. the internet). The Cybersecurity Act 2020 establishes the Cyber Security Authority (Sec. 1) and the Joint Cybersecurity Committee (Sec. 13), which includes a representative from the Data Protection Commission. The Security and Intelligence Agencies Act 2020³⁷ establishes the National Security Council as well as corresponding regional councils. The

³³ Data Protection Commission, 'Data Protection Commission' (*Data Protection Commission*) <<https://dataprotection.org.gh/>> accessed 21 January 2022.

³⁴ Parliament of the Republic of Ghana, 'National Identification Authority Act 2006' (*Refworld*, 11 April 2006) <<https://www.refworld.org/docid/548edfa94.html>> accessed 21 January 2022.

³⁵ Parliament of the Republic of Ghana, 'National Communications Authority Act 2008 (Act 769)' (*Ministry of Communications*, 11 December 2008) <<https://moc.gov.gh/sites/default/files/downloads/Ghana-National-Communications-Authority-Act-769.pdf>> accessed 21 January 2022.

³⁶ Parliament of the Republic of Ghana, 'National Information Technology Agency Act, 2008 (Act 771)' (*National Information Technology Agency*, 11 December 2008) <<https://nita.gov.gh/wp-content/uploads/2017/12/National-Information-Technology-Agency-Act-771.pdf>> accessed 21 January 2022.

³⁷ Parliament of the Republic of Ghana, 'Security and Intelligence Agencies Act 2020 (Act 1030)' (6 October 2020).

³⁸ Parliament of the Republic of Ghana, 'Anti-Money Laundering Act, 2020 (Act 1044)' (*Financial Intelligence Centre*, 29 December 2020)

Financial Intelligence Centre is established in Sec. 6 and 7 Anti-Money Laundering Act 2020³⁸ to analyze information concerning and take measures against money laundering. The National Signals Bureau Act 2020³⁹ establishes said bureau as a central authority for data analysis in national security and intelligence contexts.

IV. Procedural Aspects

Control and enforcement; individual; collective; through associations; by authorities (executive and judicial).

Generally, civil disputes are solved via individual litigation within Ghana's common law court system.⁴⁰ The central law concerning the court structure and fundamentals of such proceedings are covered by the Courts Act 1993.⁴¹ Collective litigation is also a possibility "where numerous persons have the same interest in any proceedings".⁴² A possibility in this context is also an amicable settlement.⁴³ The Alternative Dispute Resolution Act 2010⁴⁴ also allows for arbitration agreements, mediation and customary arbitration.⁴⁵

<[https://fic.gov.gh/AML%20ACT%202020%20\(Act%201044\).pdf](https://fic.gov.gh/AML%20ACT%202020%20(Act%201044).pdf)> accessed 21 January 2022.

³⁹ Parliament of the Republic of Ghana, 'National Signals Bureau Act 2020 (Act 1040)' (29 December 2020).

⁴⁰ Melisa Amarteifio, Isaac Aburum Lartey and Sam Okudzeto, 'Litigation and enforcement in Ghana: overview' (*Thomson Reuters Practical Law*, 01 May 2021) <<https://uk.practicallaw.thomsonreuters.com/0-619-2168>> accessed 21 January 2022.

⁴¹ Parliament of the Republic of Ghana, 'Courts Act 1993 (Act 459)' (*WIPO-Lex*, 06 July 1993) <<https://wipolex-res.wipo.int/edocs/lexdocs/laws/en/gh/gh033en.pdf>> accessed 21 January 2022.

⁴² Amarteifio, Aburum Lartey and Okudzeto (n 40).

⁴³ Ibid 42.

⁴⁴ Parliament of the Republic of Ghana, 'Alternative Dispute Resolution Act, 2010 (Act 798)' (*WIPO-Lex*, 31 May 2010) <<https://www.wipo.int/edocs/lexdocs/laws/en/gh/gh036en.pdf>> accessed 21 January 2022.

⁴⁵ See Sec. 93 (1) Alternative Dispute Resolution Act 2010: "A customary arbitrator shall apply the rules of

Another variant is the imposition of administrative sanctions by regulatory authorities.⁴⁶ When dealing with an administrative authority, an option is also to appeal to the Commission for Human Rights and Administrative Justice (CHRAJ) under the CHRAJ Act 1993,⁴⁷ which may then investigate (Sec. 8) and bring proceedings against (Sec. 9) such authorities.

C. Regulations Concerning Disclosure of Personal Data

I. Legal Structure of Data Disclosure

Existence of “Data Protection Law”; mandatory and nonmandatory regulation; Differentiation between public and private Sector; public or private sector as a role model for regulation; general or sectoral regulation; Self-regulation (codes of conduct); Basic principles of regulation [preventive ban or freedom of processing]; risk-based approach (potential for misuse; Protection of certain categories of data]; privileged areas [personal; family; media; research).

On the constitutional level, the protection of privacy (albeit not in a data protection/data privacy context) in Sec. 18 Constitution 1992 forms a starting point for Ghanaian privacy regulation.⁴⁸

However, the central data protection law is the Data Protection Act 2012.⁴⁹ While it is, in principle, non-sector-specific and applies to public authorities and private actors, Sections 60 to 74 set forth numerous complete or

partial exemptions for specific sectors (e.g. national security in Sec. 60, research in Sec. 65)

At the heart of the DPA is Sec. 17, whereby “a person who processes data shall take into account the privacy of the individual by applying the (...) principles” of accountability, lawfulness of processing, specification of purpose, compatibility of further processing with purpose of collection, quality of information, openness, data security safeguards, and data subject participation”. The DPA can therefore be said to be a principles-oriented data protection law.⁵⁰ Sec. 18 (1) then sets forward the general obligations of processing data “without infringing the privacy rights of the data subject”, “in a lawful manner” and “in a reasonable manner”. The general approach to processing of personal data is contained in Sec. 20, which relies on a preventive ban of all processing except where either consent is given or when one of the enumerated conditions are met. However, this preventive ban must be read together with the definitions of “processing”, “data” and “personal data” in Sec. 96. While the definition of “processing” is quite broad, the definition of “data” could be considered narrow when compared to other modern data protection laws,⁵¹ which means that not everything that would (comparatively) be considered data processing is subject to the preventive ban.⁵² A certain amount of risk differentiation can be found with the concept of “special personal data” in Sec. 37, where a stricter

natural justice and fairness and is not obliged to apply any legal rules of procedure in the arbitration.”.

⁴⁶ See, for example, Sec. 91 (5) Payment Systems and Services Act 2019.

⁴⁷ Parliament of the Republic of Ghana, ‘Commission on Human Rights and Administrative Justice Act, 1993 (ACT 456)’ (*International Labour Organization*, 06 July 1993) <https://www.ilo.org/wcmsp5/groups/public/---ed_protect/---protrav/---ilo_aids/documents/legaldocument/wcms_181172.pdf> accessed 21 January 2022.

⁴⁸ Concerning the right to privacy under the Constitution see, citing the Supreme Court, Sena Dei-Tutu, Africa Data Strategies - Is Ghana a Model African Country in the Data Protection Economy. in Moritz Hennemann (ed), *Global Data Strategies* (2022, forthcoming).

⁴⁹ Henceforth abbreviated as DPA.

⁵⁰ For an account of how the principles are related to the more specific sections, see Dominic N. Dagbanja, ‘The Context of Data Privacy in Africa’ in *African Data Privacy Laws, Law, Governance and Technology Series*, vol 33 Springer, Cham (*Springer*, 2016) <https://link.springer.com/chapter/10.1007%2F978-3-319-47317-8_10> accessed 21 January 2022.

⁵¹ See *infra* Section C II 1 on the definition of “data”.

⁵² Kai von Lewinski, ‘Informational Gold Standard and Digital Tare Weight – Report on the Law of Data Disclosure of the EU/Germany’ (2022) University of Passau IRDG Research Paper Series (forthcoming) <<https://www.jura.uni-passau.de/irdg/publikationen/research-paper-series/>>.

standard for processing is applied. Notable is the complete (criminal) prohibition of the purchase and sale of personal data in Sec.'s 88 and 89.

A highly interesting provision is contained in Sec. 18 (2), whereby “A data controller or processor shall in respect of foreign data subjects ensure that personal data is processed in compliance with data protection legislation of the foreign jurisdiction of that subject where personal data originating from that jurisdiction is sent to this country for processing” thus quasi incorporating foreign data protection legislation by reference.

On the international level, Ghana is party to the African Union Convention on Cyber Security and Personal Data (Malabo Convention) from 2014⁵³ and the Supplementary Act on Personal Data Protection by ECOWAS from 2010.⁵⁴ Ghana also has observer status

to Convention 108⁵⁵ and is aiming to accede to Convention 108+.⁵⁶ It should be noted that, despite dating back to 2014, the Malabo Convention has not yet entered into force, due to it requiring fifteen member states to ratify it (which Ghana has done amongst 7 other countries).⁵⁷

Ancillary to the Data Protection Act but also relevant to data disclosure contexts are several other sectoral laws. These include the Children’s Act 1998,⁵⁸ the National Identification Authority Act 2006, the Whistleblower Act 2006,⁵⁹ the Credit Reporting Act 2007, the Electronic Communications Act 2008, the Electronic Transactions Act 2008, the National Identity Register Regulations 2012,⁶⁰ the Revenue Administration Act 2016,⁶¹ the Payment Systems and Services Act 2019, the Right to Information Act 2019,⁶² the Anti-Money Laundering Act 2020, the

⁵³ African Union, ‘African Union Convention on Cyber Security and Personal Data Protection’ (*African Union*, 2000) <<https://au.int/en/treaties/african-union-convention-cyber-security-and-personal-data-protection>> accessed 21 January 2022.

⁵⁴ Economic Community of West African States, ‘Supplementary Act on Personal Data Protection 2010 within ECOWAS’ (*Economic Community of West African States*, 16 February 2010) <<http://www.tit.comm.ecowas.int/wp-content/uploads/2015/11/SIGNED-Data-Protection-Act.pdf>> accessed 21 January 2022.

⁵⁵ Council of Europe, ‘Parties - Convention 108 in the World - Data Protection’ (*Council of Europe*, n.d.) <<https://www.coe.int/en/web/data-protection/convention108/parties>> accessed 21 January 2022.

⁵⁶ Ghana Web, ‘Ghana preparing to accede to Convention 108+ on Data Protection – Veep’ (*Wnnghanaweb.com*, 27 June 2019) <<https://www.ghanaweb.com/GhanaHomePage/business/Ghana-preparing-to-accede-to-convention-108-on-data-protection-veep-758517>> accessed 21 January 2022.

⁵⁷ For more detail on developments on the international level of the African continent, see Patricia Boshe, Moritz Hennemann and Ricarda von Meding, ‘African Data Protection Laws – Current Regulatory Approaches, Policy Initiatives, and the Way Forward’ (2021), *Global Privacy Law Review* (forthcoming). See also Brian Daigle, ‘Data Protection Laws in Africa: A Pan-African Survey and Noted Trends’, *Journal of International Commerce and Economics*, p. 10 (*United States International Trade Commission*, February 2021) <https://www.usitc.gov/staff_publications/all> accessed 21 January 2022.

⁵⁸ Parliament of the Republic of Ghana, ‘The Children’s Act, 1998 (Act 560)’ (*International Labour Organization*, 30 December 1998) <<https://www.ilo.org/dyn/natlex/docs/ELECTRONIC/56216/101251/F514833765/GHA56216.pdf>> accessed 21 January 2022.

⁵⁹ Parliament of the Republic of Ghana, ‘Whistleblower Act, 2006 (Act 720)’ (*Laws Ghana*, n.d.) <[https://lawsofghana.com/post-1992-legislation/table-of-content/Acts%20of%20Parliament/WHISBLOWER%20ACT,%202006%20\(ACT%20720\)/163](https://lawsofghana.com/post-1992-legislation/table-of-content/Acts%20of%20Parliament/WHISBLOWER%20ACT,%202006%20(ACT%20720)/163)> accessed 21 January 2022.

⁶⁰ National Communications Authority, ‘National Identity Register Regulations’ (*National Communications Authority*, 2012) <<https://nca.org.gh/wp-content/uploads/2020/09/National-Identity-Registration-Regulations-2012-L.I.-2111-20th-Feb-2012.pdf>> accessed 21 January 2022.

⁶¹ Parliament of the Republic of Ghana, ‘Revenue Administration Act, 2016 (Act 915)’ (*Ghana Business Regulatory Reforms Portal*, 10 August 2016) <<https://www.bcp.gov.gh/acc/registry/docs/Revenue%20Administration%20Act,%202016%20%20%20%20%20%20%20%20.pdf>> accessed 21 January 2022.

⁶² Parliament of the Republic of Ghana, ‘Right to Information Act 2019 (Act 989)’ (*Judicial Service of Ghana*, 2019) <[http://elibrary.jsj.gov.gh/fg/laws%20of%20ghana/2%20REP/RIGHT%20TO%20INFORMATION%20ACT,%202019,%20\(ACT%20989\).htm](http://elibrary.jsj.gov.gh/fg/laws%20of%20ghana/2%20REP/RIGHT%20TO%20INFORMATION%20ACT,%202019,%20(ACT%20989).htm)> accessed 24 January 2022.

Cybersecurity Act 2020, the Security and Intelligence Agencies Act 2020 and the National Signals Bureau Act 2020.

The Cybersecurity Act 2020 especially was strongly criticized for giving the government strong surveillance powers and allowing the ordering of decryption of messages,⁶³ thus allowing the question of the level of privacy or data protection individuals have against the government.

More generally, while data protection legislation exists, sources indicate that enforcement and law in practice exists at a rudimentary level at best, with awareness for the existence of the DPA a core objective of the Data Protection Commission.⁶⁴

II. Notions

1. (Personal) Data as the Object of Protection

Situational (spoken words etc.); local (at home); logical (“spheres”); informational (datum, information); Treatment of public or publicized data; limitations and expansions of definition; categories.

The Constitution of Ghana, in Sec. 18, does not speak of data (protection), but of privacy.⁶⁵ The different contexts of its privacy protection can be characterized as “spheres or zones”.⁶⁶

The DPA, in Sec. 96, defines “data” as “information which (a) is processed by means of equipment operating automatically (...), (b) is recorded with the intention that it should be processed by means of such equipment, (c) is recorded as part of a relevant filing system (...), or (d) does not fall within paragraph (a), (b) or (c) but forms part of an accessible record⁶⁷”. The definition of “data” in Sec. 75 of the National Identity Register Act 2008 is similar, but does not require the processing to

be operated automatically and uses the phrase “may be processed” instead of “is processed” and is thus presumably broader in scope. This narrow understanding of “data” in the DPA corresponds to the inclusion of the term “exempt manual data” in Sec. 96, generally exempt from DPA provisions but with (minimal) other safeguards. The definition of “data” in the Anti-Money Laundering Act 2020, however, is identical to the definition in the DPA. The National Identification Authority Act 2006 in Sec. 19 uses an Act-specific and thus otherwise not very useful definition of “data”: “any personal details relevant to the national identification system”.

The term “personal data” can only be found in the DPA (Sec. 96), defined as “data about an individual who can be identified, (a) from the data, or (b) from the data or other information in the possession of, or likely to come into the possession of the data controller”, thus including identifiability from context but adopting a relative, not absolute approach to the scope of the relevant context.

The National Identity Register Act 2008 (Sec. 75) uses the term “personal information”, defined as “information or data about an identifiable individual”, followed by several examples. An almost identical definition of this is contained in Sec. 144 of the Electronic Transactions Act, only omitting the “or data” and giving many more examples (“included, but not limited to (...”).

The DPA also defines “special personal data” in Sec. 96, which include, *inter alia*, “race, colour, ethnic or tribal origin”, political opinion, religious beliefs, health conditions and sexual orientation.

Other defined terms for data are “biometric information” and “identity data”, defined as “physiographic characteristics (...)” and

⁶³ Freedom House, 'Ghana: Freedom on the Net 2021' (Freedom House, 2021) <<https://freedomhouse.org/country/ghana/freedom-net/2021>> accessed 24 January 2022.

⁶⁴ See Interview with Executive Director Adusei-Poku (n 8). See also *infra* Section C IV 3.

⁶⁵ Mentioned *supra* B I.

⁶⁶ Dominic N. Dagbanja, 'The Context of Data Privacy in Africa', *African Data Privacy Laws, Law,*

Governance and Technology Series, vol 33 Springer, Cham

(Springer, 2016) <https://link.springer.com/chapter/10.1007%2F978-3-319-47317-8_10> accessed 21 January 2022;

See also Dominic N. Dagbanja, 'Privacy in Context: Privacy and the Media under the Constitution of Ghana', *Review of Ghana Law*, vol. 22, 135-161.

⁶⁷ The term “accessible record” however, is not defined or mentioned further in the DPA.

considered personal information, in Sec. 75 National Identity Register Act 2008. The Cybersecurity Act 2020 uses and defines “content data” and traffic data” in its Sec. 97 in an (internet) communications context.

2. Allocation of Data to Individual Persons

Creation; possession/control; personal connection; differentiation between domestic and foreign nationals; treatment of multi-referential data; limitations and expansions of definition; categories.

Within intellectual property law, attribution of protected information (not necessarily personal data) depends on either creation or registration.

The DPA in Sec. 96 defines “data subject” as “an individual who is the subject of personal data, thus connecting data to the individual by it being about him or her, rather than through creation. While the DPA does not expand on the definition of the “individual”, the National Identification Authority Act 2006 (in Sec. 75) defines an “individual” as a “human being with respect to whom information is or was collected, used or disclosed”. Considering this definition and noting that “individual” is used instead of the term “person”, which could possibly contain “legal persons”, it is likely that this definition excludes corporate entities. There is no differentiation between domestic and foreign nationals.

Furthermore, ownership rights or similar concerning individuals’ personal data are not recognized in Ghanaian law. Data referring to more than one individual are not specifically dealt with.

3. Reception and Recipients

Special regulation for non-profit/non-commercial actors; the public as a legal recipient; use of public data; size-based obligations for companies; differentiation between recipients and third parties (especially within company groups); differentiation between local and international action; outsourcing options.

The DPA defines the term of “recipient” in Sec. 97 only in the meaning of a secondary recipient “in the course of processing for the data controller”, *inter alia*.

Concerning initial recipients as relevant for this report, the DPA gives two possible variants of (individual) recipients of personal data, these being the “data controller”, defined as “a person who (...) determines the purposes for and the manner in which personal data is processed or is to be processed”, and the “data processor”, defined as “(...) any person other than an employee of the data controller who processes the data on behalf of the data controller” (Sec. 96). As reception is considered “processing”,⁶⁸ a such a recipient will always fall into one of these categories when inside the scope of the DPA. Interesting in comparison is the definition of “controller” in the Electronic Transactions Act 2008 (Sec. 144), whereby a controller is “a person who electronically requests, collects, collates, processes or stores personal information from or in respect of a data subject”, which is worded differently but likely has significant overlap.

The public is not considered a recipient, “data controller” or “data processor” within the DPA from a technical perspective, as it cannot be considered a “person”. However, Sec. 21 (b) allows for collection of data where the data subject has deliberately made the data public, thus allowing for “re-use” of data available to the public.

Differentiation between recipients can be seen in the partial exemptions present in the DPA, for example in Sec. 64 (“Journalism, literature and art”) or Sec. 65 (“Research, history and statistics”).

Sec. 45 (1) of the DPA deals with the international applicability, whereby foreign recipients of data as data controllers must comply with DPA provisions when using “equipment or a data processor carrying on business in [Ghana]” (b) or when “processing is in respect of information which originates partly or wholly from [Ghana]” (c).

Sec. 91 clarifies that the DPA applies to governmental authorities. This, however, must be read together with the exemptions given in Sections 60 et seq. which remove some government activity from the scope of the Act.

⁶⁸ See *infra* Section C III 2 a.

III. Relationship between Discloser and Recipient

1. Provisions for Disclosure

Does regulation exist? personal data as intellectual property and commercial good; data law as a framework for action; “informational self-determination”. The “disclosure” of data is mentioned in the DPA only in contexts of further disclosure of personal data rather than in referral to the original act of an individual (see e.g. Sec. 29 (2), Sec. 33 (4), Sec. 85 and the definition of “recipient” in Sec. 96). Personal data *per se* are not subject to property rights of intellectual property protection. It could be imagined, however, that some personal data could *also* be protected by IP provisions, for example in case of texts subject to copyright. Commercialization of personal data can be seen to be actively opposed, at least to some extent, through the (criminal) prohibition of the purchase and sale of personal data in Sections 88 and 89.

A general “data law” does not exist in Ghana. However, there is a significant amount of legislation relevant to legal contexts of data use.⁶⁹ The concept of informational self-determination, however, is not a feature of Ghanaian law.

a. Prohibited Disclosures

Protections of secrecy; multi-referentiality; disclosure to actors abroad; communication towards the public. While freedom of speech and expression is protected under Sec. 21 (1) (a) of the 1992 Constitution, there exist several prohibitions of acts that, depending on the circumstances, can be considered prohibitions on the disclosure of personal data. To name some examples, such prohibitions can be found in Sec. 39 of the Children’s Act 1998 which prohibits the publication of children’s information in the context of family tribunals, the protection of secret information in Sec. 5 of the Protection Against Unfair Competition Act 2000, the protection of received credit information in Sec. 36 of the Credit Reporting Act 2007 and the provision for official secrecy and confidentiality in Sec. 7 of the Revenue Administration Act 2016.

An exception to these prohibitions can be found in Sec. 1 of the Whistleblower Act 2006, whereby “despite any other law on the contrary” acts of whistleblowing are expressly permitted.

In principle, the DPA could also prohibit disclosing data referring to other individuals alongside one’s own personal data (e.g. Sec. 88 (b)).

b. Disclosure Obligations

Identification obligations and prohibition of anonymity; tax and other control.

Corresponding to prohibitions on the disclosure of personal data are situations where personal data must be provided by a data subject. The Constitution itself contains, in Sec. 41 (j), the obligation to declare one’s income honestly. Ancillary to this is Sec. 27 of the Revenue Administration Act 2016, whereby persons “(...) shall maintain, within the country, necessary records (a) to provide information in respect of documents to be filed (...) under a tax law [and] (b) to enable an accurate determination of tax payable under a tax law (...)”.

As another example, Sec. 38 of the National Identity Register Act 2008 allows the relevant authority to require a person to provide information in the context of the information to be recorded in the register established by the Act, and Sec. 30 of the Anti-Money Laundering Act 2020 prohibits anonymity for bank account holders, while Sec. 36 of the same Act obliges entities or persons to provide the Financial Intelligence Centre with relevant information for combatting money laundering.

c. Voluntary Disclosure/Voluntariness

Protection in dependency and hierarchy contexts; access to alternatives; prohibition of coupling; voluntary commercialization of personal data; Incentives to data disclosure and protection therefrom (protection of adolescents; competition law; nudging); prerequisites for consent; “privacy fatigue”; peer pressure (e.g. WhatsApp).

The existence of the principle of data subject participation in Sec. 17 (h) of the DPA implies volition and individual participation in

⁶⁹ Please refer to sections B I and C I *supra*.

data processing is important. This is expressed in Sec. 20 (1) DPA, which sets forward the “prior consent of the data subject” as an important basis for processing of personal data, with all other categories structurally falling into the “other” category. Sec. 23 DPA states that “a data controller who collects data shall take the necessary steps to ensure that the data subject is aware of the purpose for the collection of the data”. The Ghanaian DPA thus has at its heart the “classical” notice-and-consent model.⁷⁰ Other specific provisions concerning nudging etc. are not to be found.

Competition Law is not even relevant as an instrument in this context as Ghana has no proper competition legislation⁷¹ The Protection Against Unfair Competition Act 2000 deals with damaging reputations, but not market concentration and other unfair acts typically regulated by such laws.

2. Recipient Obligations

a. Requirements for Personal Data Reception

Information; requirements concerning content and formalities; warnings; notifications; assurances.

Under the definition of processing in Sec. 96 DPA, whereby processing includes both “collection” (a) and “disclosure” (c), reception of personal data requires recipients to follow the general obligations of Sec. 18 and require either prior consent of the data subject, Sec. 20 (1), or must fulfil another basis for processing under Sec. 20 (1) (a) to (e).

Sec. 21 (1) of the DPA states that, in general, personal data shall be collected “directly from the data subject”, enumerating certain exceptions in subsection (2). Sections 23 and 27 contain certain obligations to inform the data subjects prior to “collection”. As stated earlier, Sec. 23 DPA requires data controllers to make the data subjects aware of the purposes

of processing. Additionally, Sec. 27 requires the data controller to make sure the data subjects are aware of certain facts, such as the “nature of the data being collected” (a) but also formalities such as “the name and address of the person responsible for collection” (b), *inter alia*.

b. (Procedural) Obligations Concerning Received Personal Data

Purpose dedication/limitation; technological and organizational measures; data security; deletion and retention; further transmission and limitations thereto, also concerning transmission abroad.

Principles dealing with the handling of received personal data in the DPA are found in Sec. 17 (c) as the principle of “specification of purpose” and in Sec. 17 (d) as the principle of “compatibility of further processing with purpose of collection”. Sec. 19 DPA states that “personal data may only be processed if the purpose for which it is to be processed, is necessary, relevant and not excessive”. The arising purpose limitation obligation is reiterated in Sec. 22, whereby data shall be collected for a specific, explicitly defined and lawful purpose. The obligations of Sec. 18 (1) DPA of processing personal data without infringing privacy rights (a), lawful (b) and reasonable (c) processing must also be respected. Sec. 26 of the DPA deals with “Quality of Information”, creating an obligation to “ensure that the data is complete, accurate and up to date”. Sec. 28 DPA requires data controllers take steps to ensure security of personal data, with subsection (2) requiring some measure of organizational prognosis concerning risks. Sec. 30 expands the obligation in case of processing by a data processor,⁷² requiring the data controller to ensure compliance of the data processor with the DPA, thereby covering this variant of further transmission.

Deletion and Retention of received personal data is extensively dealt with in Sec. 24 DPA

⁷⁰ Speaking of a “crisis of the traditional data protection framework” already in 2014: Alessandro Mantelero, ‘The Future of Consumer Data Protection in the EU Rethinking the ‘Notice and Consent’ Paradigm in the New Era of Predictive Analytics’, p. 16 (SSRN, 23 November 2014) <https://papers.ssrn.com/sol3/papers.cfm?abstract_id=2529245> accessed 21 January 2022.

⁷¹ Esther Koomson, ‘Developing without a Competition Legislation: An Analysis of Competition Law in Ghana and Its Impact on Competition and Development’, p. 7 (SSRN, 08 September 2021) <https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3903953> accessed 21 January 2022.

⁷² See *supra* Section C II 3 for the definition.

which links retention to the period necessary to achieve the purpose in subsection (1), naming exceptions, e.g. (1) (c) retention by virtue of contract. Subsection (5) deals with subsequent deletion, which can also be achieved by de-identification. Subsection (6) specifies that deletion must be “done in a manner that prevents its reconstruction in an intelligible form”.⁷³

Limitation to further transmission can be in conflict with Sec. 21 (1) of the DPA, whereby data must, in general, be collected directly from the data subject.⁷⁴ Exceptions to this rule are found in subsection (2), with cases of further transmission possible especially under (d), “not likely to prejudice a legitimate interest of the data subject”, (e) (vi), “for the protection of the interests of a responsible or third party to whom the information is supplied”, and (g), “compliance [with the direct collection requirement] is not reasonably practicable”.

Further transmission can also be subject to Sec. 25 DPA, which sets forth requirements for “further processing” in general and which includes mostly similar options to situations of collection not directly from the data subject. Sec. 25 (3) (f) DPA, however, stating that “further processing of data is considered to be compatible with the purpose of collection where (...) the further processing of the data is in accordance with this Act”, raises many questions, such as whether further transmission could always be possible in case of (just) general recipient compliance with the DPA overall.

With respect to international transmission, sec. 30 (4) especially requires that “the data controller shall ensure that the data processor complies with the relevant laws of [Ghana]” but does not apply to further transmission to recipients not considered such data processors. In general, however, sec. 45 (c) states the DPA is applicable to processing “in respect of information”⁷⁵ which originates partly or

wholly from [Ghana]”, thus requiring DPA compliance by foreign recipients.

3. Disclosure by Discloser

a. Transparency and Entitlement to Information

Sections 27 (2) and (3) of the DPA deal with general informational requirements (“shall ensure that the data subject is aware”, which could be interpreted to mean either an active notification requirement or the making available of the information, e.g. in a privacy policy), listing a catalogue of information to be provided. Transparency to some extent is also provided through the publicity of the Register (of registered data controllers) as mandated in sec. 54.

Entitlement to information in the sense of access rights is contained in sec. 32 DPA,⁷⁶ which requires the data controller to “confirm at reasonable cost to the data subject whether or not the data controller holds personal data about that data subject” (1) (a), and to describe said data (1) (b), and, more extensively as a “right of access” in Sec. 35 DPA. Sec. 36 provides special rules for such access requests regarding credit reporting by a credit bureau under the Credit Reporting Act 2007. Furthermore, an active notification requirement exists in Sec. 41 (2) (a) DPA in case of “automated-decision-taking”.

Informational requirements as a prerequisite for valid consent, as common in data protection legislation internationally, are not included explicitly in the DPA, with sec. 94 (1) (b) leaving the conditions for validity of consent open to regulation by the Minister of Communications.

Transparency provisions versus government and public institutions are contained in the Right to Information Act 2019, which establishes (sec. 1) a right of persons to information without need to give a reason and can

⁷³ Interestingly, Subsection (6) requires this explicitly for “destruction and deletion”, but not for de-identification, which is also an option in Subsection (5), leaving open the question of the degree of de-identification considered sufficient.

⁷⁴ This is an obligation for the further recipient, not for the party transmitting the data.

⁷⁵ Note the use of “information” instead of “data”.

⁷⁶ It is not entirely clear whether sec. 32 DPA contains its own catalogue of rights or merely enumerates the rights elaborated elsewhere in greater detail. See *infra* Section C III 3 d.

have relevance in parallel to DPA transparency rights and obligations.

b. Co-Determination and Co-Decision Concerning Data Use

Restrictions for use; permission requirements; revocation of consent; contestation and objection; special rules for international contexts; technical requirements for the act of permission/consent.

The principle of “data subject participation” in sec. 17 (h) of the DPA implies that the Act aims to give data subjects possibilities to influence acts of processing of their personal data.

Central for the enabling of co-determination for the use of data is the standard consent requirement in Sec. 20 (1) DPA,⁷⁷ with the wording supporting the perspective of a duality between consent on one side and all other bases for processing on the other. Combined with purpose limitation obligations, this is designed to afford data subjects some degree of agency over data use. Some other mentions of consent in the DPA are contained in sec. 21 (2) (c) (collection not directly from the data subject), sec. 24 (1) (d) (retention of personal data), sec. 25 (3) (a) (further processing of personal data), and sec. 35 (4) (disclosure of multi-referential data within right of access).

As mentioned above,⁷⁸ the details of consent are left open for regulation, with such regulation not having been passed. While such could theoretically be established in said regulations, there exists no general right to revoke consent in the text of the DPA, limiting co-determination to specifically mentioned rights.⁷⁹ These include the right to prevent processing “for a specified purpose or in a specified manner, personal data which causes or is likely to cause unwarranted damage or distress to the individual”, thereby requiring additional (potentially harmful) circumstances.

⁷⁷ And in sec. 37 (2) (b) DPA when dealing with special personal data.

⁷⁸ *Supra* Section C III 3 a.

⁷⁹ *Ibid.*

⁸⁰ Note that the legal text remains unclear as to whether the data subject may request one of the two

The right to “correction of personal data” in sec. 33 also gives some control to the data subject. The title of the section is somewhat misleading, as sec. 33 (1) (a) includes a request to “correct or delete” certain faulty data and could be construed to give more control over the keeping of data.⁸⁰

Specific rights giving more control to data subjects are afforded in sec. 40 concerning direct marketing and sec. 41 concerning automated decision-taking. Sec. 42 deals with data subject rights when dealing with exempt manual data.⁸¹

c. Revocation

Data portability; deletion; „right to be forgotten / to forget”.

As mentioned above, there exists no general right to revoke consent or to stop processing, with such rights being restricted to situations where data is in some way faulty or in certain contexts such as direct marketing (sec. 40 (2) DPA).

Sec. 24 DPA deals with the particularities of deletion and retention: subsection (1) states that generally, “a data controller who records personal data shall not retain the personal data for a period longer than is necessary to achieve the purpose for which the data was collected and processed (...)”. Further storage however after achieving the purpose is possible in case it is required by law, where retention is reasonably necessary, by virtue of a contract or in case of consent (subsection (1)). An exemption to this exists in subsection (2) for historical, statistical and research purposes.⁸²

Linked to sec. 24 DPA however is the right in sec. 33 (1) (b) DPA, whereby the data subject has the right to obtain from the data controller deletion of personal data retained without authority to do so.

variants or whether the decision to correct or delete can be taken by the responsible data controller.

⁸¹ For definition, see *supra* Section C II 1.

⁸² This wording would not be required in case the original purpose of collection is linked to historical, statistical or research purposes and thus likely allows such retention in situations where data was not originally collected for these purposes.

A general right to be forgotten apparently does not exist in Ghanaian law.⁸³

d. Procedural Aspects

Costs for and effectivity of the rights of the affected persons; consumer accessibility.

Mention of the cost aspect of data subject rights can only be found in sec. 32 (1) (a), which uses the wording of “confirm at reasonable cost to the data subject whether or not the data controller holds personal data about that data subject”. This leaves open the question of whether one can deduce from this that other access rights are to be provided at no cost or whether they may be provided for a cost not necessarily “reasonable”. Sec 32 (2) (b), with “after the payment of the prescribed fee, if any” implies fees can generally be taken for requests, leading to the question of the scope of sec. 32. While titled “Access to personal information” not directly citing the other sections, it could be understood to enumerate in (1) (a) to (c) rights found in sections 33 and 35, in which case one could argue that “payment of the prescribed fee” is a more general feature. In addition to the fact that there is no explicit prohibition of such fees, it is likely fees can be taken for exercise of data subject rights, creating a barrier to accessibility.

4. Enforcement

a. Damages and Compensation

Material and immaterial damages; reparations; profit forfeiture; punitive damages.

Sec. 43 (1) of the DPA states that “where an individual suffers damage or distress through the contravention by a data controller of the

requirements of this Act, that individual is entitled to compensation from the data controller for the damage or distress”. While no explicit reference to damages is made elsewhere in the DPA, the provision is quite broad, thus allowing for damages in case of any violation of the DPA by a data controller. While both compensatory and punitive damages can generally be sought in Ghanaian courts,⁸⁴ the section clearly uses the wording “compensation”, thus implying punitive damages are not relevant in this context.

However, there exist some relevant norms creating exceptions for the possibility to obtain compensation, such as sec. 18 Whistleblower Act 2006 (protection against civil and criminal liability for whistleblowers) and sec. 44 Anti-Money Laundering Act 2020 (protection against civil or criminal liability for responsible parties when gathering information in the context of combatting money laundering).

b. Procedural Aspects

“Threshold” for accessibility; right to initiation; burden of proof; dispute value; “small claims”; alternative dispute resolution; rights to bring/press charges; “rational apathy”.

Suing for damages occurs through the standard court system by the rules of civil procedure, the burden of proof being the preponderance of probabilities. The DPA or ancillary provisions do not provide for consumer-specific rules on accessibility. However, fees are usually awarded to the winner, with the losing party being made to pay costs.⁸⁵ Alternative Dispute Resolution is another possibility – however, it is unclear as to whether it is practically relevant, especially in data protection contexts.⁸⁶

⁸³ See this Ghanaian news article from 2019 discussing the Google Spain case stating (at the end) that “[c]ountries like Ghana, in considering how to deal with it, must consider its pros and cons (...)”:

Kwami Ahiabenu, ‘The right to be forgotten’ (*graphi.com.gh*, 14 November 2019) <<https://www.graphic.com.gh/features/features/the-right-to-be-forgotten.html>> accessed 21 January 2022.

⁸⁴ Melisa Amarteifio, Isaac Aburum Lartey and Sam Okudzeto, ‘Litigation and enforcement in Ghana: overview’ (*Thomson Reuters Practical Law*, 01 May 2021)

<[https://uk.practicallaw.thomsonreuters.com/0-619-2168?transitionType=Default&contextData=\(sc.Default\)&firstPage=true](https://uk.practicallaw.thomsonreuters.com/0-619-2168?transitionType=Default&contextData=(sc.Default)&firstPage=true)> accessed 21 January 2022.

⁸⁵ Godwin Mensah Sackey, Papa Owusu-Ankomah, Kwesi Owusu-Ankomah and Felix Opoku Amankwah, ‘Ghana: Litigation & Dispute Resolutions 2021’ (*International Comparative Legal Guides*, 15 February 2021) <<https://iclg.com/practice-areas/litigation-and-dispute-resolution-laws-and-regulations/ghana>> accessed 21 January 2022.

⁸⁶ Melisa Amarteifio, Isaac Aburum Lartey and Sam Okudzeto, ‘Litigation and enforcement in Ghana:

Additionally, an individual can put forth a complaint to the Data Protection Commission, which, under sec. 3 (c) DPA has as one of its aims to “investigate any complaint under this act and determine it in the manner the Commission considers fair”. Aside from this, sections 40 (1), 41 (5), 42 (3) and 44 DPA explicitly provide for action of the Commission on complaint of a person.

When dealing with government institutions, individuals can also file a complaint with the Commission on Human Rights and Administrative Justice, which may then investigate these.⁸⁷

IV. Objective Legal Obligations of the Recipient

1. Duties Concerning Received Data

a. Dependence on Authorization

Of business models, processing variants, terms and conditions.

Sec. 27 (1) and Sec. 46 (3) require DPA data controllers who intend to process personal data to register with the Data Protection Commission, with sec. 47 describing the particular information to be provided for such. Applications for registration may be granted or refused by the Data Protection Commission, sec. 48 and 49 DPA. This is however not a registration requirement for every new act of processing, but must (simply) be renewed every two years, sec. 50 DPA.⁸⁸ Processing of personal data without being registered is prohibited, sec. 53, and considered an offence,

overview’ (*Thomson Reuters Practical Law*, 01 May 2021) <[https://uk.practicallaw.thomsonreuters.com/0-619-2168?transitionType=Default&contextData=\(sc.Default\)&firstPage=true](https://uk.practicallaw.thomsonreuters.com/0-619-2168?transitionType=Default&contextData=(sc.Default)&firstPage=true)> accessed 21 January 2022.

⁸⁷ See Commission on Human Rights and Administrative Justice, ‘Administrative Justice Mandate’ (*Chrajongb*) <<https://chraj.gov.gh/administrative-justice-mandate/>> accessed 21 January 2022.

⁸⁸ See also the published register (section 54 DPA) available at Data Protection Commission, ‘Data Protection Commission’ (*Data Protection Commission*) <<https://dataprotection.org.gh/>> accessed 21 January 2022.

sec. 56 DPA. In practice, however, not all data controllers are properly registered, leading to significant discrepancy between the intended and actual situation⁸⁹ and to the Data Protection Commission announcing an amnesty for unregistered businesses between 1 October 2020 and 31 March 2021.⁹⁰ Registration is important as a key measure for the financing of the Data Protection Commission.⁹¹

b. Notification

Of business models and business activity; of processing activity.

Notification of processing activity occurs via the system of registration as discussed above.⁹² Sec. 55 DPA in this context includes the obligation to notify the Data Protection Commission of changes in the information contained in the registration.

Notification obligations of data processors can arise from sec. 31 DPA, which deals with “Notification of security compromises”, i.e. breach notification, whereby when “there are reasonable grounds to believe that the personal data of a data subject has been accessed or acquired by an unauthorized person”, the data controller has to notify the Data Protection Commission and the data subject of this fact.

c. Documentation

Accountability.

While accountability is listed as the first principle in sec. 17 (a) DPA, there exist no

⁸⁹ See Ghanaian German Economic Association, ‘Data Controllers granted 6-month relief to regularize their operations’ (*Http://ggeanet*, 12 October 2020) <<http://ggeanet/news/data-controllers-granted-6-month-relief-to-regularize-their-operations/>> accessed 21 January 2022. The article states that while there are 60,000 incorporated businesses in Ghana, only 2,000 data controllers were registered under the DPA.

⁹⁰ See Data Protection Commission, ‘Data Protection Commission’ (*Data Protection Commission*) <<https://dataprotection.org.gh/>> accessed 21 January 2022.

⁹¹ Interview with Executive Director Adusei-Poku (n 8): “(...) this is how we fund the commission (...)”, minute 25 onwards.

⁹² *Supra* Section C IV 1 a.

overarching rules for keeping of records or documentation in the DPA.

In order to be able to comply with the DPA, especially concerning data subjects' rights, a certain amount of documentation is imperative. For example, allowing for the right to access personal information (sections 32 (1) (a) and 35 DPA) is only possible when data is structured in a way that allows for identification of all data held about a certain data subject. Thus, *de facto* documentation obligations arise from the general need for compliance with the DPA.

An obligation related to documentation can also be seen in Sec. 33 (3) DPA, which states that "where the data controller and the data subject are unable to reach an agreement and if the data subject makes a request, the data controller shall attach to the record an indication that a request for the data has been made but has not been complied with".

D. Processing Requirements

Prohibition subject to permission; balancing of interests; restrictions for terms and conditions; business practices; APIs/interfaces for third parties.

Central requirements for processing are the observance of the principles named in sec. 17 and the compliance with sec. 20 DPA. The latter provision contains, as is evident by its wording ("shall not [...] unless") a general prohibition on the processing of personal data, subject to either consent or the applicability of one of the bases for processing enumerated in subsection (1). Bases other than consent are the necessity of processing for purpose of a contract (a), when authorized or required by law (b) or merely for the "proper performance of a statutory duty" (d), and existence of a legitimate interest, either from the perspective of the data subject (c), or the data controller or a third party (e).

All processing of personal data must, in order to be permitted under the DPA, fall under

one of these variants. Potentially problematic is the omission of a definition or further explanation of the term "legitimate interest" in the entire DPA. However, as the term is a staple in data protection legislation around the world⁹³ one can assume some sort of balancing exercise must take place. Otherwise, processing requirements are structured around conformity with the purpose of collection, sec. 22.

e. Prohibitions and Obligations

Prohibition of processing variants (e.g. profiling); criminal prohibitions; restrictions under competition regulations; prohibition of abuses (of power/market power); Further transmission to third parties, especially governmental bodies; elicitation from abroad.

Aside from the prohibition of processing outside of the range of sec. 20, processing of special personal data is generally prohibited and permissible only under stricter requirements as per sec. 37 DPA.⁹⁴

There exist a few other specific prohibitions, most strikingly the prohibition of the sale and purchase of personal data in sections 88 and 89 DPA. Others include prohibitions of conditional requests⁹⁵ for records⁹⁶ in sec. 82 and of demanding health records in sec. 83 DPA. Automated decision-taking significantly affecting an individual is prohibited only subsequent to a request by that individual, sec. 41 DPA.

2. Monitoring

a. Recipients Self-Monitoring

Self-restrictions; compliance mechanisms; internal responsibilities (company privacy officers; ombudspersons).

While recipients (data processors) are required to comply with the provisions of the DPA, there is little guidance to setting up monitoring or compliance system in the Act, an exception being Sec. 28 DPA, which deals

⁹³ See also, in this series, the Country Reports on the EU/Germany and the United States of America.

⁹⁴ And without registration with the Data Protection Commission, sec. 53 DPA, see *supra* Section C IV 1 a and b.

⁹⁵ Seemingly equivalent to the prohibition on "coupling" in other international data protection legislation.

⁹⁶ These two sections are in the section titled "Records obtained under data subject's rights of access", implying applicability only to such records accessed via these rights. However, the general term of "records" is not defined in the DPA, and the wording itself gives no hint, leaving the sections open for broad interpretation.

with taking steps to ensure the integrity of personal data (“Security measures”).

Furthermore, the Act provides for the appointment of a “data protection supervisor” or “data supervisor”,⁹⁷ defined in sec. 93 DPA as “a professional appointed by a data controller in accordance with section 58 to monitor the compliance by the data controller in accordance with the provisions of the Act”. Appointment is not mandatory (“may appoint”). The data supervisor must be “certified and qualified” (sec. 58 (1)) and “is responsible for the monitoring of the data controller’s compliance with the provisions of this Act”. Criteria for qualification are to be provided by the Data Protection Commission, sec. 58 (6) DPA.⁹⁸ The government, as per sec. 91 (3) DPA, is required to designate an officer as data supervisor (“shall”).

b. Regulated Self-Regulation

Sectoral and industry associations.

There seem to be no Ghana-specific industry codes of conduct or similar at the moment concerning data protection. However, sec. 28 (3) DPA explicitly states that “data controllers shall observe (a) generally accepted information security practices and procedure, and (b) specific industry or professional rules and regulations”. This could therefore be interpreted to include internationally accepted standards.

⁹⁷ Terminology is inconsistent. Context indicates these two are the same.

⁹⁸ See Data Protection Commission, ‘Data Protection Commission’ (*Data Protection Commission*) <<https://dataprotection.org.gh/whatwedo/accreditation-certification>> accessed 21 January 2022.

⁹⁹ See Ministry of Communications, ‘Data Protection Commission’ (*Ministry of Communications*) <<https://www.moc.gov.gh/agencies/data-protection-commission-dpc>> accessed 21 January 2022.

¹⁰⁰ See *supra* Section B III.

¹⁰¹ See Ghana Police Service, ‘Director - General Legal and Prosecutions’ (*Ghana Police Service*) <<https://police.gov.gh/en/index.php/legal-prosecution/>> accessed 21 January 2022.

c. Supervisory Authorities

Data protection authorities; competition authorities; economic oversight authorities.

The relevant authority for data protection in Ghana is the Data Protection Commission, established in sec. 1 (1) of the DPA and organizationally part of the Ministry of Communications of Ghana.⁹⁹ A description of its responsibilities are set out in section 3 DPA, these being ensuring compliance with the Act and maintaining the register. Other government bodies are not particularly relevant to data protection regulation, but some bodies exist in areas with points of contact with data protection.¹⁰⁰

d. (Specific) Criminal Prosecution

Specific prosecutors for informational crimes; (situational/special) investigators.

While the DPA contains some criminal provisions, it does not grant special powers of prosecution to the Data Protection Commission. Generally, prosecution is the domain of the Attorney General’s Department.¹⁰¹ Other special agencies involved in combating information-related crimes¹⁰² include the Financial Intelligence Centre (money laundering)¹⁰³, the Cyber Security Authority¹⁰⁴ and the Economic and Organized Crime Office established by the Economic and Organised Crime Office Act 2010, which can also investigate and prosecute cybercrimes (sec. 3 (a) (iv) of the Economic and Organised Crime Office Act).¹⁰⁵

¹⁰² For more information on action against cybercrime in Ghana, see Council of Europe, ‘Cybercrime policies/strategies’ (*Council of Europe*) <<https://www.coe.int/en/web/octopus/-/ghana>> accessed 21 January 2022.

¹⁰³ See Financial Intelligence Centre, ‘Republic of Ghana’ (*Financial Intelligence Centre*) <<https://fic.gov.gh>> accessed 21 January 2022.

¹⁰⁴ See Cyber Security Authority, ‘About Us’ (*Cyber Security Authority*) <<https://www.csa.gov.gh/about-us.php>> accessed 24 January 2022.

¹⁰⁵ Parliament of the Republic of Ghana, ‘Economic and Organised Crime Act, 2010’ (*Ministry of the Interior*, 06 September 2010) <<https://www.mint.gov.gh/wp-content/uploads/2017/06/EOCO-Act-804.pdf>> accessed 21 January 2022.

e. Procedural Aspects

Investigation powers; equipment of controlling institutions.

The DPA itself does not deal with the investigation phase of the Data Protection Commission, other than the inclusion of the obligation to “investigate any complaint” under sec. 3 (c). This is in stark contrast to the also information-related Anti-Money Laundering Act 2020 and the Cybersecurity Act 2020, which go into detail on the investigatory powers of the responsible enforcement agencies.

3. Enforcement

a. Intervention Concerning Data Processing

Restriction and prohibition of data processing.

The Data Protection Commission is given several possibilities to intervene in data processing situations by the DPA. Some of these concern intervention in situations where data controllers insufficiently respect data subject rights: for example, in case of non-compliance with data subject access requests, the Commission can order a data controller to comply, sec. 35 (11) DPA, with other examples being sec. 39 (3) concerning the right to prevent processing, sec. 41 (5) concerning the right not to be subjected to fully automated decisions and sec. 42 (3) for the data subjects rights against data controllers holding exempt manual data.

With regard to violations of the DPA in general, the Data Protection Commission can make a determination in writing of such violation (sec. 78 DPA) and issue an enforcement notice (sec. 75 DPA), noncompliance of which is an offense under sec. 80 DPA.

b. Intervention Concerning Business Models

Competition and economic authorities; government monopolies.

While Ghana has the Protection Against Un-fair Competition Act 2000, this Act comes nowhere near modern competition law frameworks and is thus ill-equipped to deal with the challenges of regulating modern data-oriented business models.¹⁰⁶ There exist, however, some business model-related intervention capabilities with impact on data protection regulation, such as in Sec. 11 (2) of the Credit Reporting Act 2007, whereby authorities may suspend the license of a credit bureau in case of data protection violations.

c. Sanctions for Data Processors

Prohibition orders concerning business activities; company sanctions; revenue-based sanctions.

Potential penalties concerning violations of the act can arise especially from sec. 80 DPA in case of noncompliance with enforcement notices of the Data Protection Commission, but also the various other offences (sections 47, 56, 57, 80, 88, and 89 DPA), violation of ancillary regulations (sec. 94 DPA) and the “General penalty” in sec. 95, which acts as a catch-all rule. One should note that administrative sanctions are not a feature of the DPA. Rather, all penalties are of criminal nature, with all but sec. 94 DPA also allowing for imprisonment as a penalty.

In this context, it should be noted that the Data Protection Commission can not apply fines on its own, but most go through the court system. In a recent interview, the Executive Director of the Commission, Patricia Adusei-Poku, acknowledged this as a hurdle for enforcement and as ineffective, but noted that work was going ahead for fast-track proceedings.¹⁰⁷ Most “enforcement” currently takes place not through fines, but via collaborative guidance and training.¹⁰⁸

Due to the potential reputational losses, a *de facto* sanction can also be seen in Sec. 31 (8) DPA, whereby the Data Protection Commission can direct the data controller to publicize the occurrence of security incidents.

¹⁰⁶ Esther Koomson, ‘Developing without a Competition Legislation: An Analysis of Competition Law in Ghana and Its Impact on Competition and Development’ (SSRN, 08 September 2021)

<https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3903953> accessed 21 January 2022.

¹⁰⁷ Interview with Executive Director Adusei-Poku (n 8), minute 49 onwards.

¹⁰⁸ Ibid.

d. Sanctions for Individual Actors

Directors' liability; individual criminal sanctions.

As penalty provisions in the DPA largely use the term of “person” (rather than, for example, “data processor”) in their wording and with respect to the criminal nature of the provisions, one should assume that all penalties are equally applicable to the individual (natural) persons who have committed the respective offence.¹⁰⁹

In corporate contexts, directors could also be liable for violations under sec. 199 et seq. of the Companies Act 2019.¹¹⁰

e. Procedural Aspects

Priority of data regulation enforcement; equipment of enforcers; shaming impact of breaches.

Low awareness of data protection issues in general¹¹¹ in Ghana corresponds to immense

difficulties in the handling of data protection from the regulatory side, especially with respect to the registration obligation set forth under the DPA.¹¹² While numbers on enforcement are not available, it would come as no surprise that recipients of personal data who have not even fulfilled the quite simple task of registration are not particularly compliant with the more complex concepts of the DPA. Additionally, it should be noted that the Data Protection Commission currently consists of only 5 full time employees, 15 contractors, assisted by university students and volunteers, a low number for an institution responsible for enforcement in an entire country.¹¹³ Furthermore, it is especially difficult for the Commission to find qualified persons as employees, with most needing on the job training.¹¹⁴

¹⁰⁹ Refer to *supra* Section C IV 3 c.

¹¹⁰ Parliament of the Republic of Ghana, ‘Companies Act, 2019 (Act 992)’ (*Registrar-General’s Department*, 02 August 2019) <<https://rgd.gov.gh/docs/Act%20992.pdf>> accessed 21 January 2022.

¹¹¹ See Eric Agyei-Bekoe, ‘Empirical Investigation of the Role of Privacy and Data Protection in the

Implementation of Electronic Government in Ghana’ (*De Montfort Open Research Archive*, September 2013) <<https://dora.dmu.ac.uk/handle/2086/11150>> accessed 21 January 2022.

¹¹² See Section C IV 1 a.

¹¹³ Interview with Executive Director Adusei-Poku (n 8), minute 22 onwards.

¹¹⁴ *Ibid.*, minute 42 onwards.

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