



# An appropriate level of protection in international transfers of personal data & regulatory co-operation

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Funded  
by the European Union  
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# International transfers of personal data

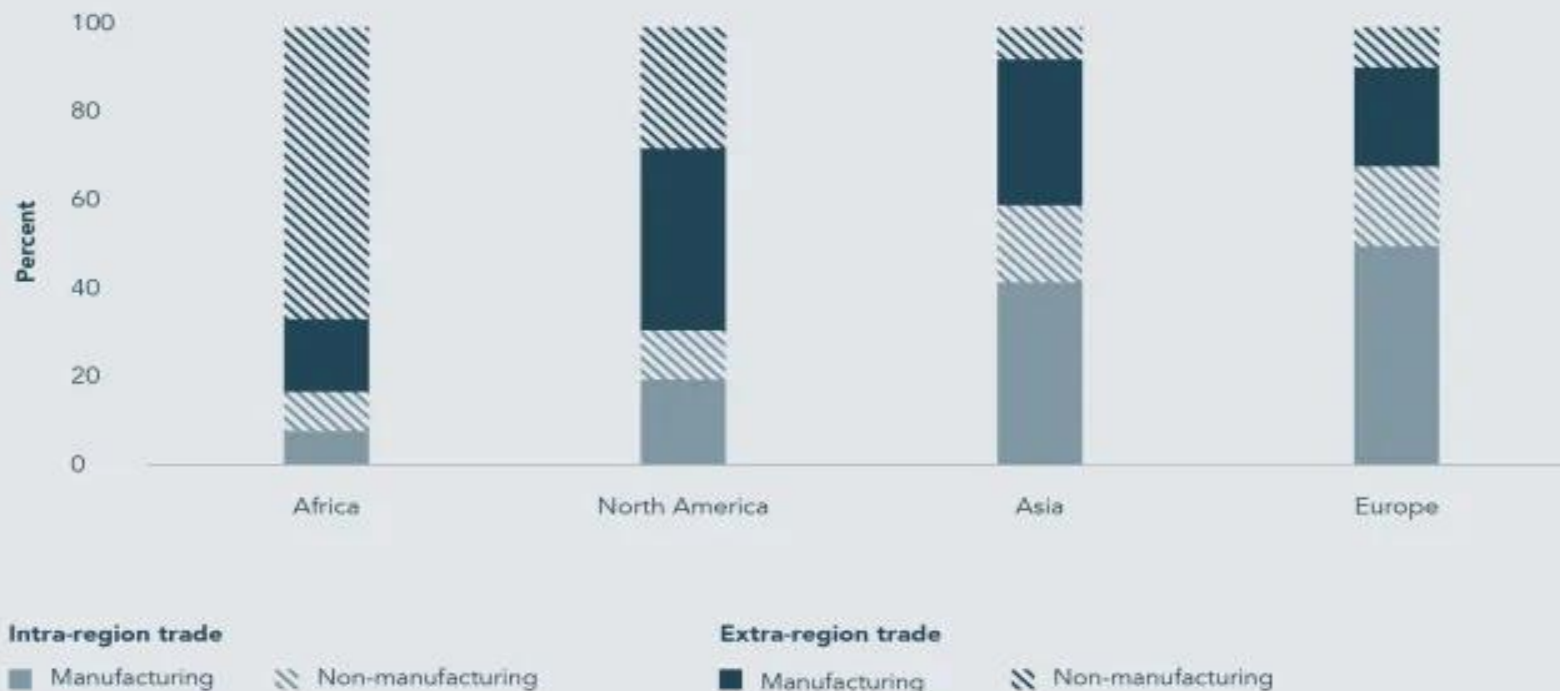
## Main catalysts

- technological innovation*
- globalisation*
- data-driven economy*
- common markets*
- foreign trade & investments*
- law enforcement*



**Figure 6.7 Intra-regional trade and manufacturing exports in Africa**

*In 2017, intra-regional trade made up 17 percent of Africa's exports, far lower than the 59 percent in Asia and 69 percent in Europe. This indicates an absence of regional value chains and challenges of cross-border trade in Africa. Intra-regional trade is expected to increase with the upcoming implementation of the Continental Free Trade Agreement. Also, manufactured goods make up a smaller share of Africa's intra- and extra-regional exports. This reflects the region's limited integration into global value chains.*



Source: UNCTAD.



## Cross-border data flows and frameworks

### An appropriate framework?

- Allowing free flow of personal data
- Protecting fundamental rights and freedoms of individuals

Fundamental questions:

- Who determines appropriateness?
- What criteria?



## Cross-border data flows and frameworks

European data protection  
regime as the most influential  
standards

*(GDPR)*

Mechanisms for transfer of personal  
data

- ❑ Adequacy decisions (Art. 45)
- ❑ Appropriate safeguards (Art. 46)  
e.g. Binding Corporate Rules &  
Standard Contractual Clauses )
- ❑ Derogations (Art. 49)



## Cross-border data flows and frameworks

European data protection  
regime as the most influential  
standards

(CoE 108/108+)

### Mechanisms for transfer of personal data

- ❑ Appropriate level of protection {(Art. 14(2)}

The appropriate level can be secured by:

- Law of the state/IO(international treaties/agreements { Art. 14(3) (a)}
  - *Ad hoc* or approved standardised safeguards { Art. 14(3)(b)}
- ❑ Derogations {Art. 14(4)}



## Cross-border data flows and frameworks

### Status of international transfer provisions in African data protection laws

*(AU/ECOWAS/SADC/EAC)*

#### ❑ AU Convention on Cyber Security and Personal Data Protection 2014

{Preamble; Arts.8, 9(1)(c); 10(6)(k); 11(1)(a); 12(2)(k)}

#### ❑ ECOWAS Supplementary Act A/SA.1/01/10 on Personal Data Protection 2010

{Arts. 2; 3(3); 7(1);7(11);14(1); 19(l); 36}

#### ❑ SADC Model Law on Data Protection 2012

{Arts. 1(21); 2(2);3(1); Part XI Arts 43, 44 & 44}

#### ❑ EAC Framework for Cyberlaws (2008)

Makes recommendation for Member states to “take  
into account fully international best practice” {See  
Recommendation 19}

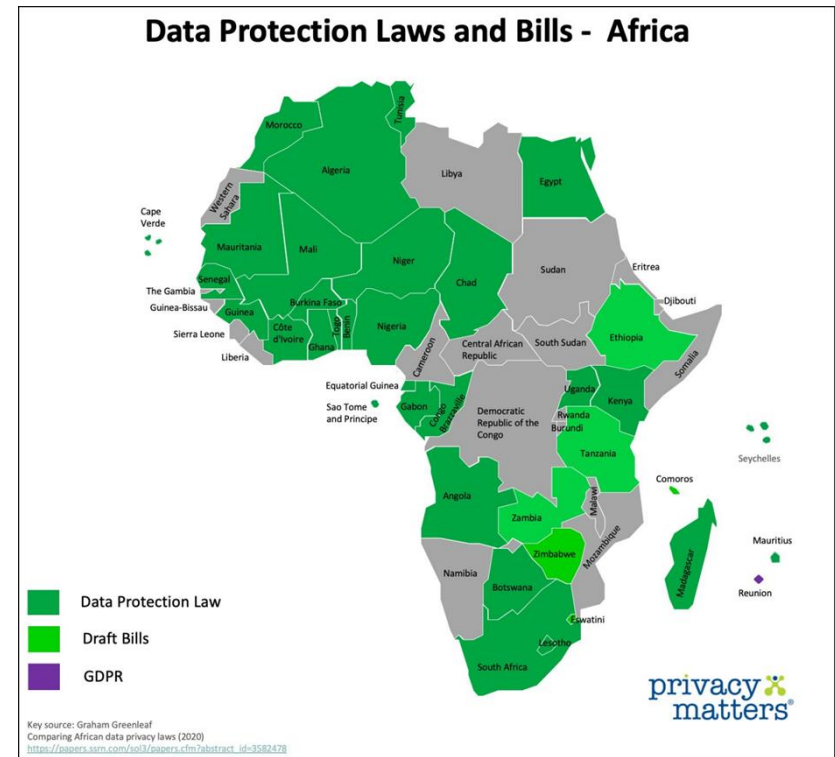


# Cross-border data flows and frameworks

Status of international  
transfer provisions in African  
data protection laws

*(National laws)*

*e.g. Ghana, South Africa, Kenya, Mauritius, Nigeria,  
Botswana*







## DPAs Regulatory co-operation

### Cooperation procedures (GDPR)

GDPR requires closer cooperation  
between SAs:

- Identification of LSA and CSA procedure (Art 56)*
- One stop-shop cooperation procedure (Art 60)*
- Mutual assistance request( Art 61)*
- Voluntary mutual assistance (Arts 57(1)(g) & 61)*
- Joint operations ( Art 62)*



# DPA's Regulatory co-operation

## Cooperation procedures (CoE 108/108+)

CoE 108+ requires closer cooperation and mutual assistance between SAs {Art. 16(1)}:

- ❑ *Exchange of relevant and useful information*{Art. 17(1)(a)}
- ❑ *Co-ordinating their investigations or interventions, or conducting joint actions* {Art.17(1)(b)}
- ❑ *Providing information and documentation on their law and administrative practice relating to data protection* {Art.17(1)(c)}
- ❑ *Assistance to data subjects* (Art. 18)



## DPAs Regulatory co-operation

### Institutional frameworks (GDPR)

#### Cooperation and consistency

Establishment of the EDPB to oversee correct and consistent application of the GDPR ( composed of the head of one supervisory authority of each Member State and the EDPS)

*Consistency mechanism ( Recitals 135,136,138, Art.63) include issuance of:*

- Opinion(Art. 64)*
- Binding decisions on dispute resolution( Art 65)*
- Urgent procedure (Art. 66)*



# DPA's Regulatory co-operation

## Institutional frameworks (CoE 108/108+)

Cooperation and consistency

- ❑ A network of supervisory authorities of the Parties {Art. 17(3)}
- ❑ Convention Committee {Art.22(1)}  
*Functions { Arts. 23(a)-23(i)}*



# DPA's Regulatory co-operation

## Cooperation procedures (AU/ECOWAS/SADC/EAC)

- ❑ *AU Convention on Cyber Security and Personal Data Protection 2014*

*{Art. 12(2)(m) establish mechanisms for cooperation with data protection authorities of third countries}*

*{Art. 12(2)(n) participate in international negotiations on personal data protection}*

- ❑ *ECOWAS Supplementary Act A/SA.1/01/10 on Personal Data Protection 2010*

*{Arts. 19(1)(n); 19(1)(o)}*

- ❑ *SADC Model Law on Data Protection 2012*

*{Arts. 5(8); 5(9)}*

- ❑ *EAC Framework for Cyberlaws (2008)*

*Makes recommendation for Member states to "take into account fully international best practice" {See Recommendation 19}*



## DPA's Regulatory co-operation

Institutional framework  
(AU/ECOWAS/SADC/EAC)





# DPAs Regulatory co-operation

African DPA Network

Statute of the African Network of Data Protection  
Authorities (RAPDP)

Institutional framework  
(AU/ECOWAS/SADC/EAC)

Art.5 Objectives of the Network

- ❑ *To create an institutional framework to share privacy practices*
- ❑ *To support the implementation of national data protection legislations*
- ❑ *To foster mutual cooperation between African DPAs*



## Critical issues

- Inadequate and/or inconsistent cross-border transfer of personal data legal framework (AU/RECs/some African countries)
- Lack of legal mechanisms for SAs cooperation in AU/RECs
- Lack of formal structure or follow up
- None-binding nature of declarations of existing SAs network
- Generally lack of harmonisation of data protection policies





## What next?

### Privacy law reform

CoE 108/108+ a useful starting  
point





Thank you

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