

# DIGITAL TRADE REGULATORY INTEGRATION

## COUNTRY PROFILE

### **Burundi**





# INTRODUCTION

The African Trade Policy Centre of the United Nations Economic Commission for Africa (ECA) has embarked on a Digital Trade Regulatory Integration (DTRI) initiative with four primary objectives:

- Provide information on digital services trade regulations that could facilitate the negotiation and implementation of the African Continental Free Trade Area (AfCFTA) Protocol on Digital Trade.
- Inform the development of a digital trade integration index that could become a component of the Africa Regional Integration Index.<sup>1</sup>
- Inform the addition of African countries to the Digital Services Trade Restrictiveness Index (Digital STRI), as developed by the Organisation for Economic Co-operation and Development.
- Offer a solid basis for further analytical work by ECA and others on digital trade.

The DTRI initiative researches the legal and regulatory environment associated with digital trade and will help African countries bet-

ter understand and address barriers to the growth and development of digital trade and e-commerce. Addressing the issues DTRI identifies will help promote digital trade and e-commerce and make it a more plausible choice for commercial transactions between businesses and consumers.

This country profile is based on observations from two datasets developed from the DTRI initiative. The first includes information on restrictions to digital services trade from 2014 to 2021 and is modelled after the Digital STRI. The second covers measures related to digital trade integration, beginning with the effective date of each measure, and reflects the latest available information. The legal and regulatory measures researched are categorized into policy areas in both digital services trade restrictions and digital trade integration, and the results are presented in the corresponding section of the profile. Where policy areas overlap, the profile presents results only once, to the extent possible.

This country profile presents the key findings for Burundi. Burundi is an African econ-

<sup>1</sup> See <https://arii.uneca.org/>.

omy with little digital adoption, and thus it is not equipped to leverage digitally enabled goods and services. Boosting digital adoption, expanding the digital economy and increasing internet access remain the most pressing priorities for the government and agencies overseeing the digital economy, such as the Telecommunications Regulatory and Control Agency (Agence de Régulation et de Contrôle des Télécommunications, ARCT).

The ARCT has regulated the information and communications technology (ICT) industry in Burundi since its establishment under Decree No. 100/182 of September 1997 as the country's telecommunication regulatory and control agency.<sup>2</sup> To enable ARCT to respond more effectively to the needs of the ICT sector, the agency was restructured under Decree No.100/112 of 5

April 2012 on the reorganization and functioning of ARCT.<sup>3</sup>

While Burundi's ICT sector has grown, mobile network coverage and mobile broadband uptake continue to be limited. As of 2020, just 9.4 per cent of the population was using the internet and 1.3 million people had mobile broadband subscriptions, with active mobile broadband subscriptions at around 10.7 people per 100 inhabitants.<sup>4</sup> Moreover, there are still supply network gaps, with only four competing mobile network operators (Lumitel Viettel Burundi S.A, Econet Leo, Onamob and Smart Mobile). Burundi would benefit from the entry of independent wholesale broadband operators and the creation of a local data centre market to reduce the price of international connectivity.<sup>5</sup>

<sup>2</sup> <https://arct.gov.bi/205/>

<sup>3</sup> <https://arct.gov.bi/208/>

<sup>4</sup> <https://www.itu.int/en/ITU-D/Statistics/Dashboards/Pages/Digital-Development.aspx>

<sup>5</sup> World Bank Group, 2020 "Burundi's Digital economic assessment" available at <https://openknowledge.worldbank.org/handle/10986/34999>

# RESTRICTIVENESS OF THE REGULATORY REGIME FOR DIGITAL SERVICES TRADE

To assess the degree of restrictiveness of digital services trade in Burundi, an in-depth review of policies, legislation and regulations on digital services trade restrictions was conducted under the five pillars of the Digital STRI:

- Infrastructure and connectivity.
- Electronic transactions.
- Payment systems.
- Intellectual property.
- Other barriers affecting trade in digitally enabled services.

## Infrastructure and connectivity

A regulatory framework for infrastructure connectivity is essential because it provides the basis for creating an environment favourable to digital trade. Specifically, infrastructure connectivity enables people to access local and global digital services, thus effectively embedding users in the global digital economy. Infrastructure con-

nectivity has four aspects: interconnection, market dominance, vertical separation and cross-border data flows.

Burundi's regulatory framework sets the conditions for interconnection activities (mobile and fixed) between telecommunication service providers (under Order No. 730/1056 of 7 November 2007).<sup>6</sup> This is vital as it reduces entry barriers for new entrants in digital trade. Market dominance is monitored by ARCT. ARCT produces annual market observatory publications, which are available on its webpage.<sup>7</sup> According to the market observatory publications, the dominant player for fixed internet market operations (in revenue generation and number of subscribers) between 2015 and 2017 was the Burundian Internet Centre (Centre Burundais de l'Internet, CBINET SA). No dominant player was recorded between 2018 and 2021. Burundi's regulatory gaps reflect an absence of regulation. Burundi has no specific regulation requiring vertical separation, the basis of mandatory accounting

<sup>6</sup><http://arct.gov.bi/index.php/regulation/regulation/46-ordonnance-relative-a-l-interconnexion-des-reseaux-et-services-des-telecommunications-ouverts-au-public>

<sup>7</sup><https://arct.gov.bi/publications/observatoire-des-marches/observatoire-du-marche-des-services-financiers-mobiles/>

separation by service providers. It also has no specific laws restricting the cross-border transfers of personal data or any data protection regulations.

Burundi's telecommunication sector has been liberalized, which is an important foundation for the digital economy. Through Decree No. 100/182 of 1997 laying down the organic provisions of the telecommunication sector and the reorganization of ARCT in 2012, Burundi successfully privatized and deregulated the telecommunications sector to facilitate its development and improve the quality of services.

### Electronic transactions

Facilitating digital trade also requires having an appropriate regulatory framework for electronic transactions. Decree No 100/97 of 18 April 2014 established the operating conditions for electronic communication networks and services.<sup>8</sup> However, the decree did not include several provisions needed to facilitate electronic transactions. For example, the law is silent on electronic signatures, digital contracts, consumer protections, liability for service providers, e-government services, regulatory initiatives to combat computer crime, cross-border trade dispute settlement, and online registration and declarations.

In 2014, the East African Community (EAC) adopted the Electronic Transaction Bill, and Burundi and all other member states committed to enacting the necessary national frameworks. Burundi still lags behind other

East African countries on electronic transactions legislation. As of December 2021, Burundi had not yet enacted a law on electronic transactions.

### Payment systems

Payment is also a major component needed to facilitate digital trade integration. The Central Bank of Burundi has issued regulations legalizing digital payments in the country.<sup>9</sup> The regulations recognize payment institutions (banks and microfinance institutions) and payment service providers along with their agents and lay out conditions for the provision of payment services and payment settlement methods. The regulations also set limits for payment service providers on international transfers, payment accounts and deposits.

The regulations do not discriminate against specific payment settlement methods, only requiring that they abide by Burundi's legal code. However, exclusive partnerships between credit institutions and payment or international transfer companies are forbidden. Additionally, Burundi has no restrictions on internet banking or insurance transfers as long as the provider has Central Bank authorization and pays the required operational fees before conducting activities.

Despite these advances, the government only partially adheres to international payment security standards. Burundi has not enacted a national law on electronic transactions and is not a signatory to the Model

<sup>8</sup> <https://arct.gov.bi/decret-et-lois/>.

<sup>9</sup> [https://brb.bi/sites/default/files/R%C3%A8glements%20Services%20paiement\\_adopt%C3%A9s.pdf](https://brb.bi/sites/default/files/R%C3%A8glements%20Services%20paiement_adopt%C3%A9s.pdf)

Law on Electronic Commerce of the United Nations Commission on International Trade Law.

## Intellectual property rights

Intellectual property rights regulations are primary determinants of investment in digital trade. To stimulate investment in digital trade, regulations should protect trademarks, trade secrets, copyrights, collective marks, certification marks, geographical indications and trade names. Intellectual property rights regulations play a crucial role in fostering innovation and creativity in the digital economy.

Although Burundi enacted an intellectual property law in 2007 that complies with international standards, the intellectual property rights regime is underdeveloped. Implementation of the law is poor, and enforcement lags. For instance, there are no specific legal framework, procedures and structures related to the enforcement of trade secrets.

As a member of the Paris Convention, the World Trade Organization (WTO) Agreement on Trade-Related Aspects of Intellectual Property Rights and the World Intellectual Property Organization, Burundi has enacted laws that provide for the registration of intellectual property. A 2009 law provides the legal framework to protect and enforce the rights of intellectual property creators and owners.<sup>10</sup> The law enables the establishment of a regulatory body for intellectual property rights and offers protection for patents (inventions), utility models, industrial designs, trademarks, geographical indications, trade names, integrated circuit designs, competition, undisclosed information (trade secrets), plant variety protection, genetic resources, traditional cultural expressions, traditional knowledge and industrial property. The regulatory regime protects individual intellectual property rights and provides standing to initiate legal proceedings against infringement of intellectual property rights.

<sup>10</sup> <https://wipolex.wipo.int/en/text/491082>

# INDICATORS OF DIGITAL TRADE INTEGRATION

This section discusses measures related to the level of digital trade integration in Burundi. The regulatory regime of digital trade integration was assessed under 11 pillars:

- Tariff and trade defence on measures applied to intraregional imports of information and communication technology (ICT) goods.
- Public procurement of digital goods and services.
- Foreign direct investment (FDI) for digital trade.
- Intellectual property rights.
- Telecommunications infrastructure and competition.
- Cross-border data policies.
- Domestic data policies.
- Intermediary liability and content access.
- Quantitative trade restrictions.
- Standards.
- Online sales and transactions.

Since the findings for some of these pillars are discussed in the previous section on Digital STRI, to the extent possible, a duplicative discussion is avoided in this section.

## Tariffs and trade defence

Burundi is not a signatory to the WTO's Information Technology Agreement and is therefore not required to eliminate tariffs and bind custom duties to zero on a most favoured nation basis for a list of specified ICT goods. However, as a member of the EAC Customs Union, Burundi is bound by the EAC Common External Tariff regime on ICT goods.

Burundi also relies on the EAC Customs Union trade defence measures. EAC member states agreed to cooperate in investigating allegations of dumping and subsidies and applying safeguard measures. Because Burundi does not have a national trade remedy legal and institutional framework, domestic producers cannot file for protection nationally.

Burundi's legal basis for contingency measures is the EAC Customs Union Protocol and the EAC Customs Management Act, which includes trade defence annexes with regulations covering anti-dumping measures, countervailing duties and safeguard measures.



## Public procurement of digital goods and services

This pillar considers restrictions on public procurement related to digital goods and services. In 2018, Burundi enacted legislation that complies with the principle of non-discrimination and free access to public procurement.<sup>11</sup> Moreover, there are no regulatory requirements to surrender patents or source code to participate in tenders or any requirement to use specific encryption standards. Although Burundi is not a signatory to the WTO Agreement on Government Procurement, it was granted observer status on 26 June 2019.<sup>12</sup>

Public procurement of digital goods and services can foster innovation in ICT. Based on Burundi's ranking on government procurement of advanced technology,<sup>13</sup> however, the government's purchasing decisions do not foster innovation.

## Foreign direct investment

Creating a favourable environment for foreign investors is essential for boosting private sector investment and its contribution to economic growth. Partnerships between foreign and local investors are highly desirable for building national capacity and for enabling the benefits of investment to remain in the country.

The government has no economic or industrial strategies that discriminate against foreign investors, nor are there any limits on

foreign ownership or control of enterprises. ARCT awards a license to any natural or legal person wishing to operate electronic communications open to the public based on technical criteria. ARCT grants operating licenses for links, independent private networks and value-added services, which include e-commerce.

## Cross-border data policies

Burundi does not have a national legal framework on the cross-border transfers of data, a crucial driver of trade in the digital era. Therefore, there are no specific measures restricting cross-border transfers, including on the location of data or local storage; bans on data transfers; or local processing requirements, including infrastructure requirements. However, as a member of the EAC, Burundi was involved in formulating the EAC Legal Framework for Cyber Laws in 2008.<sup>14</sup>

## Domestic data policies

Burundi has no comprehensive data protection law on the use and processing of data in the country. Therefore, Burundi's laws do not protect individual privacy or ensure national security.

## Intermediary liability and content access

Intermediary liability protection is the foundation of digital trade policies in the platform economy. Burundi has no specific leg-

11 [https://www.ilo.org/dyn/natlex/natlex4.detail?p\\_lang=fr&p\\_isn=110599&p\\_count=96893](https://www.ilo.org/dyn/natlex/natlex4.detail?p_lang=fr&p_isn=110599&p_count=96893)

12 [https://www.wto.org/english/tratop\\_e/gproc\\_e/gp\\_gpa\\_e.htm](https://www.wto.org/english/tratop_e/gproc_e/gp_gpa_e.htm)

13 <http://reports.weforum.org/global-information-technology-report-2016/networked-readiness-index/#indicatorId=NRI.A.02>

14 <http://repository.eac.int/handle/11671/1815>

isolation governing liability for intermediaries. This lack of clarity in the legal and regulatory framework for intermediary liability means that agents lack the legal certainty they need in order to conduct a wide range of activities without fear of potential liability and the chilling effect of potential litigation.

The decree regulating media enacted in 2015 specifies that media organizations are responsible for any material published on their portals, even material published anonymously.<sup>15</sup> In addition, some provisions cover liability for intermediaries. Furthermore, Decree No 100/97 of 18 April 2014 establishing the operating conditions of the electronic communications sector provides that operators of electronic communications are fully responsible for combatting fraud in their domains.<sup>16</sup>

### **Quantitative trade restrictions**

Burundi has no import bans on digital goods or services. As a member of the EAC Customs Union, Burundi is legally bound by the EAC Customs Management Act of 2004 and abides by the regional customs management and customs administration.<sup>17</sup> The EAC Common External Tariff,<sup>18</sup> therefore, applies to imports of digital goods and services. Burundi has no restrictions specifically targeting or limiting the volume of digital goods or services that can be imported.

### **Standards**

Technical standards can act as trade restrictions for digital goods and services. To avoid this distorted use of standards, internationally agreed procedures and best practices for standards on digital goods have been adopted. The Burundi Bureau of Standardization and Quality Control, in collaboration with ARCT, sets or adopts standards for the telecom sector, digital products and services, and products relevant to the digital economy.

Burundian law and regulations reference several standards, including the East African Standards, Codex Alimentarius Standards and the International Organization for Standardization (ISO) and its standards. ISO is the main reference for standards implemented in Burundi. However, because not all national standards are based on such global standards, inefficiencies can emerge in the market, resulting in higher trade costs.

### **Online sales and transaction**

Because most intra-regional trade occurs online, online sales and transactions are an important component of regional trade integration. Ensuring interoperability and having proper mechanisms for online transaction are essential to facilitate international trade.

Burundi still lacks a legal and regulatory framework related to many cross-cutting issues in the digital economy, particularly acts of buying and selling goods and services and sending money electronically.

<sup>15</sup> <https://arct.gov.bi/index.php/reglementations/decret-et-lois/>

<sup>16</sup> <https://arct.gov.bi/decret-et-lois/>

<sup>17</sup> <https://docs.wto.org/dol2fe/Pages/SS/directdoc.aspx?filename=q:/G/VAL/N1BDI1-02.pdf>

<sup>18</sup> <https://www.eac.int/documents/category/eac-common-external-tariff>

The Burundi Code of Commerce regulates physical sales, delivery and advertising. The importer is also required to pay taxes, and there is no de minimis amount for digital

trade. Burundi has no bans or restrictions on firms engaging in e-commerce (online sales, delivery and advertising.)

# CONCLUSION AND RECOMMENDATIONS

There are several gaps in Burundi's legal code that are likely to hinder digital trade integration. To enhance digital trade competitiveness, the government needs to enact legislation and adopt regulations that address legal and regulatory gaps in many cross-cutting issues affecting the digital economy and electronic transactions. Burundi still needs to enact laws or adopt international standards related to digital trade that are crucial to ensuring interoperability and that guarantee intellectual property rights related to international trade.

The government should consider adopting international standards and treaties. Moreover, Burundi should fast-track the drafting

and enactment of laws and regulations in the following areas:

- Electronic transactions.
- Data protection.
- Consumer protection.

In addition, Burundi should

- Establish a de minimis rule to engage consumers in the digital market and reduce tax uncertainty for small traders.
- Promulgate regulations related to national contingency measures (anti-dumping, countervailing duties, and safeguards).





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