

DIGITAL TRADE REGULATORY INTEGRATION

COUNTRY PROFILE

Chad



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.¹
- 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 Chad.

¹ See <https://arii.uneca.org/>.

RESTRICTIVENESS OF THE REGULATORY REGIME FOR DIGITAL SERVICES TRADE (DIGITAL STRI)

To assess the degree of restrictiveness among digital services trade in Botswana, 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

Interconnection has been mandatory for both mobile and fixed-line networks in Chad since 2014. Article 71 of Act No. 14/PR/2014 states that operators of electronic communications with open public networks must grant interconnection requests from

other public operators and providers of public electronic communications services.²

Beyond national interconnection, the act raises the issue of subregional interconnection. Operators are required to grant requests for interconnection from operators established in another Member State of the Economic Community of Central African States (ECCAS)³ or the Central African Economic and Monetary Community (CEMAC) that are submitted with a view to providing the public with electronic communications services at lower cost and of good quality.⁴ The article also stipulates that subregional interconnection must be provided in accordance with the principle of reciprocity.

Interconnection prices and conditions are regulated (for both fixed and mobile connections) by Act No. 14/PR/2014 covering electronic communications.⁵ The Electronic and Postal Communications Authority (Au-

² <https://arcep.td/sites/default/files/Loi-n%C2%B014.pdf>

³ The Economic Community of Central African States (ECCAS) comprises 11 countries: Angola, Burundi, Cameroon, Central African Republic, Chad, Congo, Democratic Republic of the Congo, Equatorial Guinea, Gabon and Rwanda.

⁴ The Economic and Monetary Community of Central Africa (CEMAC) includes six countries: Cameroon, Central African Republic, Chad, Congo, Equatorial Guinea and Gabon.

⁵ <https://arcep.td/sites/default/files/Loi-n%C2%B014.pdf>

torité de régulation des communications électroniques et des postes, ARCEP) is responsible for enforcement of the act.

Article 85 of Act No. 14/PR/2014 stipulates that enterprises operating a fixed public telephone network are required to publish reference offers for unbundled access to their local loop and to related resources every year.⁶ The 2014 act also requires vertical separation for both mobile and fixed telephony. Separation in this context refers to a concession or license (articles 12 and 17). On the question of the mandatory requirement for non-discriminatory management of internet traffic, the act makes clear that there is no discrimination in this respect.

Where market dominance is concerned, ARCEP has responsibility. Article 7 of the 2014 act defines dominance and dominant companies in the report of the telecommunications market observatory.

Finally, regarding cross-border data flows, Act No. 007/PR/2015 of 25 November 2014 discusses the protection of personal data and governs the collection, processing, transmission and storage of personal data subject to the protection of public order.⁷ Furthermore, the act stipulates that personal data may be transferred to another country that is not a member of ECCAS or CEMAC only if the country adequately protects the privacy, freedoms and fundamental rights of individuals who are or may be affected by the processing of those data.

The National Agency for Computer Security and Electronic Certification (ANSICE) must be informed before any such transfer.

Electronic transactions

Under Chad's regulatory and legislative framework, no license or authorization is required to engage in e-commerce. However, Article 39 of Act No. 008/PR/2015 of 25 November 2014 on electronic transactions provides that, without prejudice to other legal and regulatory requirements, any natural or legal person who engages in e-commerce shall be required to provide easy, direct and permanent access to information to those for whom the supply of goods or services is intended and to the certification authority.⁸

Chad is not a party to the United Nations Convention on the Use of Electronic Communications in International Contracts or the United Nations Convention on Contracts for the International Sale of Goods. However, the country is a signatory to the Bangui Agreement Relating to the Creation of an African Intellectual Property Organization. Accordingly, Chad has laws and regulations explicitly protecting confidential information.

The act on electronic transactions also accords the same legal validity to an electronic signature as to a handwritten one.⁹ Finally, articles 42 and 43 provide a mechanism for the settlement of disputes arising in cross-border digital trade.

⁶ Ibid.

⁷ <https://arcep.td/sites/default/files/Loi-N%C2%B007-PR-2015.pdf>

⁸ <https://arcep.td/sites/default/files/Loi-N%C2%B0-08-PR-2015.pdf>

⁹ <https://arcep.td/sites/default/files/Loi-N%C2%B0-08-PR-2015.pdf>

Payment systems

Chad is a member of the CFA franc zone and of CEMAC. Its payment systems are thus governed by existing regulation. No evidence was found that suggests that payment methods are discriminatory in any way.

National payment security standards are also aligned with those of CEMAC. As a result, there is no explicit reference to international payment security standards.

There are no broad restrictions to online banking or insurance. Some limitations do exist depending on the nature of the transaction and the person's official position.

Intellectual property rights

Chad is a member of the African Intellectual Property Organization and thus subject to its governing instruments. However, none of the legal texts associated with Chad's membership has been incorporated into the national legal framework. Moreover, although Chad is a member of the World Intellectual Property Organization (WIPO)'s, the country is not part of WIPO's Madrid System or International Trademark System. These restrictions imply that foreign firms are discriminated against with respect to trademark protection.

Chad's law on copyright and related rights sets out the principle of reciprocity.¹⁰ While there are discriminatory aspects to the regulations regarding copyright protection, it is important to note that Chad's protections

use international standards as a floor and are in line with these requirements.

Furthermore, judicial or administrative enforcement measures and remedies are available for issues related to intellectual property rights. The same applies to interim measures and criminal enforcement procedures and sanctions.

Other barriers affecting trade in digitally enabled services

This pillar highlights barriers affecting trade in digital services such as on-line advertising and commercial representation or local presence to provide cross-border services. No restrictions on these activities were found. For this reason, competition law provides remedies to businesses when business practices restrict competition in a given market.

Indicators of digital trade integration

This section discusses measures related to the level of digital trade integration in Botswana. 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.

¹⁰ <https://wipolex.wipo.int/fr/text/200693>

- 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.

Foreign direct investment

Chad has an investment charter that is in line with provisions of the charter adopted by CEMAC.¹¹ The charter covers productive investment and is applicable to both domestic and foreign investors. There are no restrictions on online advertising.

Domestic data policies

Chad has a legislative framework that regulates national data policy. Since 2015, the Personal Data Protection Act¹² and the Cybersecurity and Anti-Cybercrime Act¹³ have been in force.

The Data Protection Act stipulates that the transfer of personal data to non CEMAC or ECCAS members can take place only if the country ensures an adequate level of privacy protection and fundamental rights and freedoms. In the event of data transfers to third countries the National Agency for

Computer Security and Electronic Certification must be informed in advance by the person in charge of processing the data.

The Cybersecurity and Anti-Cybercrime Act requires the preservation and storage of data for up to 10 years. All persons that provide content across electronic communications networks or information systems are subject to this requirement.

Finally, as a part of CEMAC, Chad is required by the regulations of the Bank of Central African States to store personal data in the Central Bank, which will ensure its security and confidentiality.

Intermediary liability and content access

Although access to the internet is free, Act No. 014/PR/2014 on electronic communications requires that, in order to keep public order, provide for public security or ensure the national defence, the operator of an independent network shall comply with the instructions of the competent authorities.¹⁴ The application of these provisions by the authorities led Amnesty International, in its 9 April 2021 press release, to report that internet blackouts in Chad are hindering freedom of expression. Since 2016 there have been nearly 2.5 years of total internet blackout or disruptions.

Online sales and transactions

The electronic transactions act defines the purpose, scope and general principles of

11 <http://www.droit-afrique.com/upload/doc/tchad/Tchad-Charte-des-investissements-2008.pdf>

12 <https://arcep.td/sites/default/files/Loi-N%C2%B007-PR-2015.pdf>

13 <https://ansice.td/loi-n09-pr-2015-portant-sur-la-cybersecurite-et-la-lutte-contre-la-cybercriminalite/>

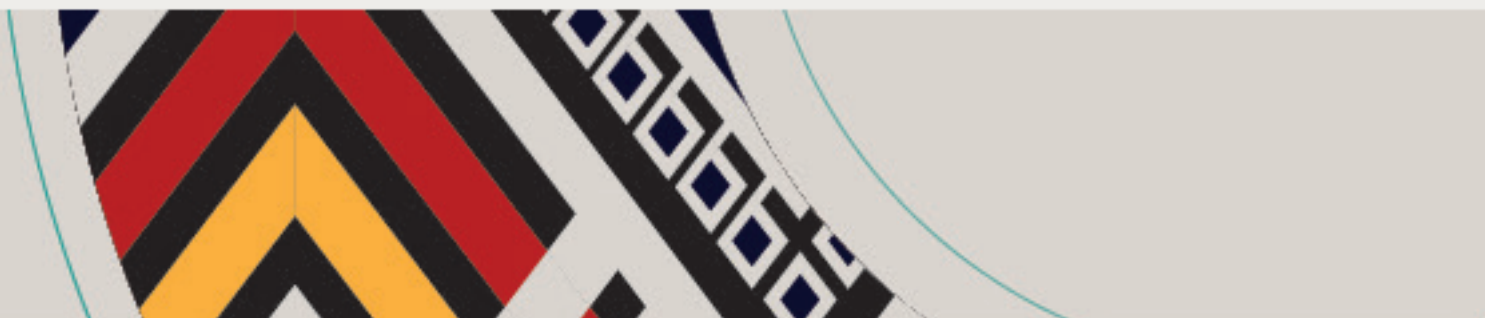
14 <https://arcep.td/sites/default/files/Loi-n%C2%B014.pdf>

online transactions.¹⁵Further, instructions from the Bank of Central African States are applicable to online payments and remote settlement of transactions. Online payments may be made outside the CEMAC area up to a limit of 1 million CFA francs per month and per person. The limit increases to 5 million CFA francs per person and

per trip for payments and withdrawal operations at counters and terminals outside CEMAC. For online payments above these limits, supporting documentation must be provided. As far as de minimis rules are concerned, a threshold is set at \$20, and there are no restrictions on domain names.

¹⁵ <https://arcep.td/sites/default/files/Loi-13-ARCEP.pdf>

CONCLUSION AND RECOMMENDATIONS



The information collected through this initiative clearly demonstrates the progress Chad has made in digital trade. Overall, Chad has several laws that regulate electronic transactions and communications and that protect personal data. Nonetheless, Chad's legal and regulatory regime for digital trade remains limited and is fairly general in scope.

In addition, foreign investment is governed by rules that do not take digital considerations into sufficient account. Chad is also not party to several international conventions that could facilitate fairness and validity in cross-border electronic contracting. To this end, the following measures are recommended:

- Ratification of the United Nations Convention on the Use of Electron-

ic Communications in International Contracts (New York, 2005).

- Ratification of the United Nations Convention on Contracts for the International Sale of Goods.
- Ratification of the United Nations Commission on International Trade Law (UNCITRAL) Model Law on Electronic Commerce.
- Ratification of the UNCITRAL Model Law on Electronic Signatures.
- Ratification of WIPO's Madrid International Trademark System, which provides a convenient and cost-effective approach to registering and managing trademarks worldwide.
- Adoption of a specific law on e-commerce.
- Review of the investment charter.

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