

DIGITAL TRADE REGULATORY INTEGRATION

COUNTRY PROFILE

Democratic Republic of the Congo



United Nations
Economic Commission for Africa



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 better 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 Democratic Republic of the Congo (DRC).

¹ See <https://arii.uneca.org/>.

RESTRICTIVENESS OF THE REGULATORY REGIME FOR DIGITAL SERVICES TRADE

To assess the degree of restrictiveness of digital services trade in DRC, 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

Infrastructure and connectivity are the backbone of digital trade. This section details findings on related measures such as interconnection, pricing conditions, dominant firms in the market and cross-border data flows. Overall, DRC's regulatory regime for infrastructure and connectivity is not overly restrictive, with the exception of cross-border data flows, which require con-

sent from data owners or the state prosecutor before any transfer is possible.

Prior to November 2020, DRC did not mandate non-discriminatory internet traffic management. However, Law No. 20/017 on Telecommunications and Information and Communication Technologies of 25 November 2020 grants all consumers of electronic communication services the right to non-discrimination in access and usability conditions of services.² The law regulates the collection, registration, treatment, storage and transfer of personal data, conditioning such operations on authorization by the concerned user or competent public authority.

Interconnection is mandated in DRC under several regulatory instruments, including the Framework Law No. 013-2002 of 16 October 2002 on Telecommunications,³ Decision No. 016/ARPTC/CLG/2006 of the College of Post and Telecommunication Regulatory Authority of Congo⁴ on the definition of interconnection principles and Law

²<https://legalrdc.com/2020/11/25/loi-n-20-017-du-25-novembre-2020-relative-aux-telecommunications-et-aux-technologies-de-linformation-et-de-la-communication/>

³ <http://www.leganet.cd/Legislation/Droit%20economique/telecommunication/LC.013.2002.16.10.2002.htm>

⁴ https://www.droitcongolais.info/files/744.06.06.1c-Decisio-du-23-jui-2006_Principes-d-interconnexion.pdf

No. 20/017 on Telecommunications and Information and Communication Technologies.⁵ Additionally, when interconnection transactions are related to technical and financial conditions, the involved parties are allowed to freely establish a convention on their respective needs but are required to notify the minister in charge. Article 169 of Law No. 20/017 goes further by outlining sanctions (a fine of 100–200 million Congolese francs) for any refusal of interconnection requests.

Vertical separation is not mandatory in DRC but may be requested by the minister of post and telecommunications. The minister may require operators to use an accounting analytic that enables them to identify different types of costs. The law also requires the regulatory authority to consult with all mobile telephone operators and produce a reference model for interconnexion cost evaluation.

Finally, the Mobile Telephone Market Observatory, an organ of the Post and Telecommunication Regulatory Authority of Congo, conducts market analysis of telecommunication operators' performance and publishes the list of dominant firms.⁶ In 2021, Vodacom mobile (34 per cent market share) and Orange mobile (30 per cent share) were classified as the dominant actors in telecommunication sectors, including for data services, voice traffic, number of subscribers, mobile money transactions, SMS and mobile voice traffic.⁷

Electronic transactions

The electronic transactions pillar covers issues like licensing for e-commerce transactions, online tax registration and declaration for non-resident firms, alignment to internationally accepted rules on electronic contracts, measures affecting the use of electronic authentication (notably electronic signature), and the availability of dispute settlement mechanisms.

No specific regulation covering e-commerce exists in DRC. Issues related to digital technology are regulated through Law No. 20/017 on Telecommunications and Information and Communication Technologies of 25 November 2020.⁸ Commercial activity is further regulated under DRC's 1973 law on commerce law which, due to its age, is not very relevant to e-commerce activities.

Online tax registration and declaration are not available to non-residents. Tax registration and declaration require a business domicile plan within DRC territory in order to obtain a tax registration number, which is required on the declaration form.

DRC is not a party to any international conventions, including the United Nations Convention on Contracts for the International Sale of Goods (Vienna, 11th April 1980) and the United Nations Convention on the Use of Electronic Communications in International Contracts (New York, 2005), which require state parties to align national legislation with their dispositions.

⁵ <https://legalrdc.com/2020/11/25/loi-n-20-017-du-25-novembre-2020-relative-aux-telecommunications-et-aux-technologies-de-linformation-et-de-la-communication/>

⁶ <https://arptc.gouv.cd/observatoire/>.

⁷ <https://arptc.gouv.cd/observatoire/>.

⁸ <https://arptc.gouv.cd/observatoire/>.

The DRC Penal Code prohibits disclosure of professional secrets. Law No. 82-001 on Industrial Property of 7 January 1982 protects industrial secrets such as inventions, industrial designs, distinctive signs, trade, geographic indication appellations, and patent or registration certificates.⁹ However, as a member of the World Trade Organization (WTO) since 1 January 1997, DRC follows WTO rules, including the Agreement on Trade-Related Aspects of Intellectual Property Rights, which protects the trade secrets and proprietary information of natural and legal persons from disclosure without their consent. Since 1975, DRC has also been a member of the World Intellectual Property Organization, which offers services to protect industrial and commercial secrets.

The revised Organization for the Harmonization of Business Law in Africa (Organisation pour l'Harmonisation en Afrique du Droit des Affaires, OHADA) Uniform Act on General Commercial Law of 2010, of which DRC is a state party, recognizes electronic signatures as valid in commercial transactions.¹⁰ However, the act includes a provision requiring state parties to take complementary measures domestically to establish the process to be used for electronic signatures, which DRC has not yet done.³

The revised OHADA Uniform Act on Mediation of 2017 provides for the use of arbitration procedures in all 17 OHADA states parties. DRC has established arbitration centres across the country to deal with mat-

ters such as cross-border trade. The act also requires the arbitration head office to be located in one of the OHADA state parties. In addition, the OHADA Uniform Act on Commercial Companies and Economic Interest Groups has provisions allowing commercial companies to be subject to its provisions, including companies whose partners are a state or a legal person governed by public law and whose head office is in the territory of one of the state parties to the Treaty on the Harmonization of Business Law in Africa.

Payment systems

The payment system pillar examines measures that affect financial transactions that involve digital tools. It concerns aspects related to access to payment methods, adoption of international security standards on domestic payment transactions, and restrictions on internet banking.

DRC grants equal access to payment methods in accordance with Law No. 18-019 on Payment and Securities Settlement Systems of 9 July 2018.¹¹ Firms that provide end-to-end payment services, such as mobile payment firms, remittance processors and card issuers, are required to have a commercial presence in the country. Furthermore, credit institutions and other issuers of payment instruments have the obligation to cooperate with each other to ensure the interoperability of payment methods under the best

⁹ <http://www.droit-afrique.com/upload/doc/rdc/RDC-Loi-1982-01-propriete-industrielle.pdf>

¹⁰ [https://pdfprof.com/DownloadPDF_Prof.php?pdf=http://www.droit-afrique.com/upload/doc/ohada/Ohada-Acte-Uniforme-2010-droit-commercial.pdf&titre=acte%20uniforme%20C3%A9%20portant%20droit%20commercial&title=\[PDF\]%20OHADA%20-%20Acte%20uniforme%20du%2015%20decembre%202010%20portant%20sur%20le%20droit](https://pdfprof.com/DownloadPDF_Prof.php?pdf=http://www.droit-afrique.com/upload/doc/ohada/Ohada-Acte-Uniforme-2010-droit-commercial.pdf&titre=acte%20uniforme%20C3%A9%20portant%20droit%20commercial&title=[PDF]%20OHADA%20-%20Acte%20uniforme%20du%2015%20decembre%202010%20portant%20sur%20le%20droit)

¹¹ https://www.droitcongolais.info/files/221.07.18-Loi-du-9-juillet-2018_Systemes-de-paiement.pdf

conditions, including speed, security and cost.

The regulatory environment in DRC is not aligned with international standards for national payment system operators. However, a technical standardization committee for the banking and financial sector, under the supervision of the Central Bank of Congo, ensures compliance with the minimum agreed standards contained in national legislation, such as Law No. 18-019 on Payment and Securities Settlement Systems and Law 04/016 on the Fight against Money Laundering and Financing of Terrorism.¹²

There are no specific regulations on internet banking or insurance in DRC. Licenses issued for commercial banks or payment system service providers refer to payment instruments without specific reference to internet banking. Despite the legal vacuum, United Bank for Africa's website indicates that it offers various packages of internet banking services.

Intellectual property rights

The intellectual property rights pillar focuses on regulatory requirements surrounding trademark, copyright and related rights protections. It considers alignment with international copyright rules, enforcement of intellectual property rights, and performance requirements affecting cross-border digital trade.

As a contracting party to the Paris Convention for the Protection of Industrial Proper-

ty, DRC is committed to granting the same protection to nationals of other contracting states as to its own nationals. Law No. 82-001 of 7 January 1982 on Intellectual Propriety Rights confers its benefit on nationals of countries not party to the International Union for the Protection of Industrial Property who are domiciled or located outside DRC if Congolese nationals benefit from protection reciprocity in their country in the application of the provisions of the Paris Convention for the Protection of Industrial Property.¹³

DRC is a signatory to the Agreement on Trade-Related Aspects of Intellectual Property Rights. Copyrights and related rights are protected in dispositions of Part II on Standards concerning the availability, scope and use of intellectual property.

DRC Ordinance Law No. 86-033 of 5 April 1986 on the Protection of Copyrights and Related Rights provides for exceptions to copyright protection within the limits of internationally established norms.¹⁴

Law No. 82-001 of 7 January 1982 on Intellectual Property Rights provides for judicial and administrative enforcement measures as well as remedies for violations of intellectual property rights.¹⁵ Judicial and administrative remedies include the confiscation of goods or instruments intended specifically to produce counterfeits and the payment of damages for the harm suffered. Criminal penalties such as fines and imprisonment may be applied.

¹² <http://www.droit-afrique.com/upload/doc/rdc/RDC-Loi-2004-16-lutte-blanchiment.pdf>

¹³ <http://www.droit-afrique.com/upload/doc/rdc/RDC-Loi-1982-01-propriete-industrielle.pdf>

¹⁴ <https://wipolex-res.wipo.int/edocs/lexdocs/laws/fr/cd/cd005fr.pdf>

¹⁵ <http://www.droit-afrique.com/upload/doc/rdc/RDC-Loi-1982-01-propriete-industrielle.pdf>

Furthermore, Industrial Property Law 1982-01 of 7 January 1982 provides relief for persons claiming harm from forgery through application for provisional measures via the president of the competent court.¹⁶ The president may order precautionary measures, such as having experts describe the allegedly counterfeit goods, with or without seizure. The court may request a financial deposit in the amount of the damage.

Criminal enforcement proceedings and penalties are provided for in Ordinance Law No. 86-033 on the Protection of Copyrights and Related Rights, including imprisonment for up to 12 months and fines of 5,000–10,000 Zaires.¹⁷

Other barriers affecting trade in digitally enabled services

Several other barriers exist in DRC that affect trade in digitally enabled services. For example, performance requirements affect cross-border digital trade as stipulated in both Framework Law No. 013-2002 of 16 October 2002 on Telecommunications¹⁸ and Law No. 20-017 of 25 November 2020 on Telecommunications and Information and Communication Technologies.¹⁹ These regulations require Congolese ownership of shares in any firm operating in the country's telecommunication sector.

The same two laws also impose limitations on data downloading and streaming in DRC.

The laws permit the interception of correspondence and require the safeguarding of connection and traffic data for a period of 12 months. The laws further require installation of a surveillance mechanism for data traffic across their networks. Stored data must be accessible during judicial investigations, under the conditions set by the laws and regulations in force. When the use of connection and traffic data infringes on the individual freedoms of users, the responsibility of network operators service providers is engaged.

DRC has no specific regulation on online advertising. However, various regulations address advertisement overall, such as Law No. 11/001 of 10 January 2011 on the Composition, Attribution and Functioning of the Higher Audio-Visual and Communication Council.²⁰ This legislation mandates the council to exercise a priori and a posteriori control over advertisements and covers the content of clips, films and documentaries, as well as programming procedures for advertising broadcasts, game contests and tele-shopping.

Local-presence requirements are contained in Ministerial Arrêté No. 092/CAB/MIN/FINANCE 2004²¹ on execution measures of Decree No. 03/012 of 18 July 2003 on requirements for a taxpayer number. Tax numbers can be assigned only after confirmation of the taxpayer's site plan within the national territory, which implies that a local pres-

16 <http://www.droit-afrique.com/upload/doc/rdc/RDC-Loi-1982-01-propriete-industrielle.pdf>

17 <https://wipolex-res.wipo.int/edocs/lexdocs/laws/fr/cd/cd005fr.pdf>

18 <http://www.leganet.cd/Legislation/Droit%20economique/telecommunication/LC.013.2002.16.10.2002.htm>

19 <https://legalrdc.com/2020/11/25/loi-n-20-017-du-25-novembre-2020-relative-aux-telecommunications-et-aux-technologies-de-linformation-et-de-la-communication/>

20 <https://www.leganet.cd/Legislation/JO/2011/JOS.16.01.2011.Loi.11.001.pdf>

21 https://www.droitcongolais.info/files/620.01.04-Arrete-du-13-janvier-2004_Numero-d-impot_mesures-d-execution.pdf

ence is needed to engage in cross-border trade. However, there is no specific legislation that regulates digitally enabled services in DRC. Decree-Law No. 011/37 of 11 October 2011 on the exercise of small trade and retail services provides a list of commercial activities in which foreigners may engage in DRC and grants powers to ministers to modify the list at their discretion.²²

As a member state of COMESA, DRC, through such measures as the Competition Regulations of 2004,²³ gives those who claim that they are victims of anti-competi-

tive practices the right to petition for compensation for damages, provided they can show a connection between the alleged practices and the damage suffered. Additionally, Law No. 18-020 of 9 July 2018 on Pricing Freedom and Competition provides for redress in cases where business practices restrict competition.²⁴

Commercial activities such as commercial services, retail distribution, and import and export services are reserved exclusively to nationals by the law.

22 https://www.droitcongolais.info/files/90.10.11-Decret-du-11-octobre-2011_petit-commerce_mesures-conservatoires.pdf

23 <https://comesacourt.org/wp-content/uploads/2020/01/COMESA-Competition-Regulations-December-2004.pdf>

24 https://www.droitcongolais.info/files/915.07.18-Loi-du-9-juillet-2018_Libre-concurrence.pdf

INDICATORS OF DIGITAL TRADE INTEGRATION

This section discusses measures related to the level of digital trade integration in DRC. 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 du-

plicative discussion is avoided in this section.

Foreign direct investment

The DRC imposes restrictions on foreign investments in the electronic communication sector. Law No. 20/017 of 25 November 2020 on Telecommunications and Information and Communications Technologies stipulates that nationals must own at least 30 per cent of an entity doing ICT business in the country.²⁵

DRC's Investment Code guarantees equal treatment for foreign and domestic investors, provided that the foreign investor's country guarantees equal treatment to Congolese investors. Fair and equitable treatment in accordance with the principles of international law is also granted for investors and investments in DRC.

Investors' rights to individual or collective property are further guaranteed by the DRC Constitution and various laws. Under the Constitution, investments cannot be na-

²⁵ <https://legalrdc.com/2020/11/25/loi-n-20-017-du-25-novembre-2020-relative-aux-telecommunications-et-aux-technologies-de-linformation-et-de-la-communication/>

tionalized or expropriated, wholly or partly, by any new law or decision by local authorities, except for reasons of public use or subject to the payment of a fair and equitable compensatory indemnity at current market values.

A law on subcontracting in the private sector enacted on 8 February 2017 restricts foreign investor participation in subcontracting in almost all sectors. In response to private sector complaints, the DRC government repealed, modified and completed certain dispositions in Decree No. 20/024 of 12 October 2020, which specifies rules on subcontracting in the private sector by opening up to foreign participation.

According to the Investment Code of February 2002, DRC does not impose maximum limits on foreign investment.²⁶ In general, there are no limits on foreigners owning a business or engaging in any form of remunerative activity, with the exceptions of small commerce and owning more than a 49 per cent share of an agribusiness. Many investors note that in practice DRC requires foreign investors to hire local agents and participate in a joint venture with the government or local partners.

Domestic data policies

DRC lacks a comprehensive regulatory framework on data protection, but some sectoral regulations protect data. Article 9 of Decision No. 016/ARPTC/CLG/2006 of the College of the Regulatory Authority of Post and Telecommunications of Con-

go mandates operators to take necessary measures to protect data including personal data and the confidentiality of information treated, transferred and stored.²⁷ In addition, Law No. 20/017 of 25 November 2020 on Telecommunications and Information and Communications Technologies provides that the collection, registration, treatment, storage and transfer of personal data shall be done only upon the authorization of the concerned user or competent public authority, as stipulated in Article 126. DRC has not ratified the African Union Convention on Cybersecurity and Personal Data Protection.

Intermediary liability and content access

DRC lacks a safe harbour law to shield intermediaries from liability and does not have specific regulations on digital trade services or cyber security. However, the government has repeatedly used existing laws, such as Article 52 of the Framework Law on Telecommunications²⁸ and Article 4 of Law No. 14/2002 of 16 October 2002 on the Creation of the Post and Telecommunication Regulatory Authority²⁹ to censor online content and block access to digital services. On the eve of the 24 December 2018 election, the Post and Telecommunication Regulatory Authority requested mobile telephone operators to limit access to videos and images on social media, such as Facebook, WhatsApp, Viber, YouTube and Twitter.

²⁶ <https://investmentpolicy.unctad.org/investment-laws/laws/133/download/6>

²⁷ <http://www.leganet.cd/Legislation/JO/2006/JO.01.08.2006.PT016.pdf>

²⁸ Ibid.

²⁹ <http://www.leganet.cd/Legislation/Droit%20economique/telecommunication/LC.013.2002.16.10.2002.htm>

Online sales and transactions

DRC does not have a legal framework on electronic commerce. While no cases of bans or licensing requirements for online sales have been found, limited restrictions have been found on delivery of products and online advertising. DRC has a de minimis trade value of \$100.

DRC's uptake of e-commerce is limited by low internet penetration rates, poor telecommunications infrastructure and the high cost of internet services. In addition, there is limited postal and delivery infrastructure. A few companies have websites, and many independent businesses maintain a Facebook page. Some companies use the application WhatsApp to take orders.

CONCLUSION AND RECOMMENDATIONS

The digital regulatory space in DRC requires investment to create an environment that reduces the restrictiveness of digital services trade and facilitates digital trade integration. Many of the measures governing digital services are derived from laws enacted between 1970s to 2000, when digital services trade was in its infancy. The research for this assessment found no laws specifically addressing issues related to e-commerce, cyber security or electronic transactions.

On a positive note, infrastructure and connectivity for digital services advanced significantly between 2002 and 2020, when reforms were made to Law No. 20/017 on Telecommunications and Information and Communication Technologies.

Electronic transaction regulations are limited in scope and coverage since DRC is not a party to most international conventions on the subject, including the United Nations Convention on Contracts for the International Sale of Goods and the United Nations Convention on the Use of Electronic Communications in International Contracts.

Efficient payment systems are also limited in DRC, especially related to internet banking, for which no formal legislation exists. Due to the dearth of legislation on payment systems, national payment security standards are lax and discriminatory access to payment mechanisms is possible. DRC also would benefit from updating its intellectual property rights regime to better protect rights holder, for example, by fully committing to international conventions.

With the issues mentioned above in mind, there are several ways DRC could advance its digital regulatory regime. For example:

- Conducting a regulatory impact assessment of its digital services trade laws and accelerating regulatory reforms. Major steps to take could include:
 - Fast-tracking accession to the United Nations Convention on Contracts for the International Sale of Goods, which seeks to provide a modern, uniform and fair regime for contracts for the international sale of goods.
 - Becoming a party to the United Nations Convention on the

Use of Electronic Communications in International Contracts, which provides international rules to facilitate the use of electronic communications in international trade.

Accession to these conventions will provide the legal backbone for aligning national laws on e-commerce, cybersecurity and electronic transactions with international standards. In addition, DRC should become a party to the Madrid Agreement Concerning the International Registration of Marks, making it possible to protect marks in other countries by obtaining international registration, which extends protection to all contracting parties.

The authorities and other stakeholders should engage in digital service sector reforms by building on existing knowledge

and best practices across the globe. DRC should consider the following:

- Completing its e-commerce law, which has been under consideration for more than five years but has not been presented to Parliament for debate. Passing an e-commerce law that meets global standards will facilitate regulatory compliance for companies and incentivize investment.
- Update legislation to replace the 1973 law on commerce, which constrains foreigners from engaging with DRC.
- Instituting rules for international payment systems that comply with global standards. Such regulations will build confidence among large investors, who are capable of directing significant amounts of capital to DRC.



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