

DIGITAL TRADE REGULATORY INTEGRATION

COUNTRY PROFILE

Rwanda



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 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 Rwanda.

¹ See <https://arii.uneca.org/>.

RESTRICTIVENESS OF THE REGULATORY REGIME FOR DIGITAL SERVICES TRADE

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 rights.
- Other barriers affecting trade in digitally enabled services.

Infrastructure and connectivity

In Rwanda, interconnection of telecommunications networks is required. Licensed operators in both mobile and fixed networks are required to interconnect with other electronic communications operators. The Law Governing Information and Communication Technologies of 2016² requires that interconnection reference offers be made public, giving due consideration to equality among conditions and charges.

Under the 2016 law, the Rwanda Utilities Regulatory Authority (RURA), Rwanda's mechanism for enforcement, is mandated to ensure that dominant operators in both fixed and mobile telephone services maintain separate accounts on each activity. Suppliers are also required to maintain separate accounts on matters relating to the supply of electronic communications apparatuses, among other matters.

To ensure that people have equal opportunity and access to telecommunications services, Rwanda also maintains a Universal Access Fund. Despite this, there is no specific provision on internet neutrality or non-discrimination of users. Similarly, despite a legal provision mandating that RURA identify the dominant telecommunications provider, it has not done so. However, RURA publishes telecommunications statistics that can be used as a proxy for determining dominance. According to the 2021 RURA Statistics Report for Telecom³, Airtel Rwanda Ltd is the de facto dominant fixed telephone service provider, with 9,521 subscribers, while MTN Rwanda Ltd is the de

² <https://rura.rw/index.php?id=50>.

³ https://rura.rw/fileadmin/Documents/ICT/statistics/ICT_Statistics_Report_for_Telecom__Media_and_Broadcasting_Sector_as_of_the_Fourth_Quarter_of_the_Year_2021.pdf

facto mobile telephone services provider, with 6.96 million mobile subscribers as of September 2020.⁴

Electronic transactions

The Law Governing Information and Communication Technologies of 2016 stipulates that companies need a license to engage in e-commerce.⁵ The law does not discriminate regarding the issuance of licenses for engaging in e-commerce. Additionally, there is no online tax registration and declaration for non-residents or their agents, and the disclosure of proprietary information without the consent of the right holder is unlawful and constitutes unfair competition in Rwanda.

Electronic and handwritten signatures have an equivalent legal identity, per the Law Relating to Electronic Messages, Electronic Signatures and Electronic Transactions of 2010.⁶

Regarding dispute settlement, RURA may be requested to initiate an investigation when business practices are deemed restrictive to competition. Further, a Mediation Committee Framework for mandatory mediation is sought prior to filing cases in courts.

Payment systems

In Rwanda, access to payment settlement is discriminatory, as highlighted in the Law

Governing Payment Systems of 2021.⁷ Only accounts opened with the Central Bank (local bank accounts) can be used. Security requirements of payment systems however, do not deviate from international standards.

Rwanda does have restrictions on internet banking according to the Regulation Governing Electronic Money Issuers of 2016.⁸ E-money accounts have set limits on the maximum balance and limits on daily and monthly transactions for both domestic and international fund transfers.

Intellectual property rights

Rwanda is party to key international conventions including the Berne Convention for the Protection of Literary and Artistic Works and the World Trade Organization (WTO) Agreement on Trade-Related Aspects of Intellectual Property Rights. However, Rwanda is not party to the World Intellectual Property Organization (WIPO) Copyright Treaty (WCT) and the WIPO Performances and Phonograms Treaty (WPPT).

Rwanda has requirements through the Guidelines for Intellectual Property Registration of 2020⁹ that outline a fair use doctrine governing intellectual property. The guidelines indicate that it is permissible to use limited portions of a work, including quotations, for purposes such as commentary, criticism, news reporting and scholarly reports. There is also an exhaustive and

4 https://rura.rw/fileadmin/Documents/ICT/statistics/ICT_Statistics_Report_for_Telecom__Media_and_Broadcasting_Sector_as_of_the_Fourth_Quarter_of_the_Year_2021.pdf.

5 <https://rura.rw/index.php?id=50>.

6 <https://www.dataguidance.com/legal-research/law-no-182010-12052010-relating-electronic>.

7 <https://www.bnr.rw/laws-and-regulations/payment-system/laws-regulations/>.

8 <https://www.bnr.rw/laws-and-regulations/payment-system/laws-regulations/>.

9 https://org.rdb.rw/wp-content/uploads/2020/09/Guidelines-for-intellectual-property-registration_compressed.pdf.

broad list of limitations and exceptions to copyright protection in accordance with international rules.

The Intellectual Property Act of 2009¹⁰ provides for criminal enforcement proceedings and specific criminal penalties in cases of violations of registration marks. An owner of a registration mark is entitled to undertake judicial proceedings, appeals and other specified actions against any person who uses the mark without the owner's consent.

Other barriers affecting digitally enabled services

Rwanda has investment requirements affecting cross-border digital trade under the new Investment Code of 2021.¹¹ There are also limitations on downloading and streaming. There have been several anecdotal reports of blocked websites without any explana-

tion and some websites have remained inaccessible, according to the Freedom House Report of 2021.¹² There are also restrictions on moral grounds of publications directed to children and youth, as stipulated in the Law on Media,¹³ which do not correspond to international standards.

The Regulation Governing Postal and Courier Services¹⁴ in Rwanda requires a local commercial presence (a local branch) to obtain a license as an international postal or courier service. Local presence requirements also restrict cross-border services trade because agents must be dispatched nationwide. Certain capital requirements may also be restrictive. To be recognized as an international company, a business must have at least US\$10 million invested or at least US\$5 million transacted internationally every year.

10 <https://rura.rw/index.php?id=50>.

11 <https://gazettes.africa/gazettes/rw-government-gazette-dated-2021-02-08-no-4bis>.

12 <https://freedomhouse.org/country/rwanda/freedom-world/2021>.

13 https://rura.rw/index.php?id=104&tx_news_pi1%5Bnews%5D=532&tx_news_pi1%5Bday%5D=8&tx_news_pi1%5Bmonth%5D=3&tx_news_pi1%5Byear%5D=2018&cHash=2199294ff58e504be0191f6676ff0867.

14 https://www.rura.rw/fileadmin/Documents/ICT/Laws/Regulation_Governing_Postal_and_Courier_services_in_Rwanda.pdf.

INDICATORS OF DIGITAL TRADE INTEGRATION

This section discusses measures related to the level of digital trade integration in Rwanda. 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 communications technology (ICT) goods.
- Public procurement of digital goods and services.
- Foreign direct investment 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.

Tariffs and trade defence mechanisms

The average tariff rate for ICT goods in Rwanda is 75.9 per cent, which is fairly restrictive. Rwanda is not a signatory of the 1996 WTO Information Technology Agreement or its 2015 expansion. On trade defence mechanisms, Rwanda has not imposed antidumping, countervailing or safeguard measures on imports of digital goods.

Public procurement and foreign direct investment

Rwanda does not exclude foreign firms from public procurement of ICT goods and online services. Additionally, there is no requirement for firms to surrender source code or provide access to encryption technology and trade secrets for them to participate in public procurement bidding. However, the Law Governing Public Procurement¹⁵ specifies local content requirements with a 15

¹⁵ <https://rppa.gov.rw/index.php?id=609>.

per cent preference for goods produced in Rwanda and a 10 per cent preference for bidders registered in Rwanda. Rwanda is not a signatory to the WTO Agreement on Government Procurement, nor is it an observer country participating in the Committee on Government Procurement.

There are no restrictions on maximum equity shares a foreign investor can hold, nor are there any formal joint venture requirements. However, the Law on Investment Promotion and Facilitation of 2021¹⁶ outlines the obligation to submit an Environmental Impact Assessment certificate to register as an investor in Rwanda.

Intellectual property rights and telecommunications infrastructure and competition

Regarding intellectual property rights, Rwanda is a Contracting Party to the Patent Cooperation Treaty.

Rwanda liberalized the telecommunications sector in 2001, which resulted in all telecom providers being privately owned. Despite liberalization of the sector, most internet service providers are no longer operational because of the dominance of MTN and Airtel. Both companies are reported to be acting in the government's interest by monitoring users, according to the Freedom House Report of 2021.

The Cybersecurity Regulation of 2020¹⁷ specifies that all networks, systems and applications of licensees, including all ICT infrastructure and services, shall be managed, hosted and remotely accessed in Rwanda. Under this regulation, MTN Rwanda was fined US\$8.5 million (10 per cent of its annual turnover) in 2017 for failing to comply with a license condition to process customer data in the country and for running its information technology services outside Rwanda.

Cross-border and domestic data policies

The Regulation Governing Licensing of Multimedia Services Provision of 2020¹⁸ requires multimedia service companies to retain recordings for 90 calendar days. The licensee must retain all network and performance-related data for a minimum of one year and all financial records for a minimum of five years.

A public or private corporate body that processes personal data that require regular large-scale monitoring must designate a data protection officer. Data Protection Impact Assessments must be carried out in cases where the processing of personal data is likely to result in a high risk to the rights and freedoms of a natural person.

The Law Relating to the Interception of Communications of 2013¹⁹ requires data-collecting firms to provide the government with direct access to collected per-

16 <https://gazettes.africa/gazettes/rw-government-gazette-dated-2021-02-08-no-4bis>.

17 https://rura.rw/fileadmin/Documents/ICT/Laws/Regulation_Governing_Cybersecurity.pdf.

18 https://rura.rw/fileadmin/Documents/ICT/Laws/Regulation_Governing_Licensing_of_Multimedia_Services_Provision_in_Rwanda_issued_in_May_2020.pdf.

19 <https://www.dataguidance.com/legal-research/law-no-0582021-13-october-2021-relating>.

sonal data. The full extent of the authorities' surveillance capabilities is unknown.

Rwanda enacted the Law Relating to the Protection of Personal Data and Privacy in October 2021.²⁰ Sharing and transferring personal data outside Rwanda are permitted under certain conditions, which include consent from the owner of the data and authorization from RURA. There are also data localization requirements. Critical government data are housed at the National Data Center (NDC). NDC offers backup services to government institutions that host applications in their own data centres. This regulation is outlined in the Ministerial Instructions on Information and Communication Technology (ICT) Procurement of 2016.²¹

Intermediary liability and content access

Intermediaries and telecommunications network service providers do not have any liability for the contents of documents or electronic messages transmitted through their networks by an individual. They are also not liable for providing access to information if they do not initiate the transmission of the information.

The Law Governing Information and Communication Technologies of 2016²² requires that Electronic communications service providers ensure that their users supply accurate personal information when using a service or a network. It is reported that the

ability to communicate anonymously has been compromised by mandatory SIM card registration requirements under the Regulation on Sim Card Registration of 2013.²³

Quantitative trade restrictions and standards

Rwanda does not impose any bans on imports or exports of ICT goods and online services. However, it is reported that local customs officials have attempted to charge ICT importers duties based on their perception of the value of an import, regardless of the actual purchase price. This could reduce imports of ICT goods.

Rwanda conforms to international standards for product screening and testing and accepts third-party certification from conformity assessment bodies recognized by the regulatory authority. Further, the Rwanda Standards Board is a member of the International Electrotechnical Commission (IEC) Affiliate Country Programme, which allows developing countries to participate in IEC standardization activities and conformity assessments as well as to adopt IEC standards.

Online sales and transactions

The Ministerial Order Establishing General Rules on Transfer Pricing of 2020²⁴ sets a de minimis threshold of US\$120, exempting goods that do not exceed that amount from duties and taxes. There are no restric-

20 <https://www.dataguidance.com/legal-research/law-no-0582021-13-october-2021-relating>.

21 https://rura.rw/fileadmin/Documents/ICT/Laws/Regulation_Governing_Cybersecurity.pdf.

22 <https://rura.rw/index.php?id=50>.

23 https://www.rura.rw/fileadmin/docs/Board_Decisions/FINAL_SIM_CARD_REGISTRATION_REGULATIONS_03.pdf.

24 <https://gazettes.africa/archive/rw/2020/rw-government-gazette-dated-2020-12-14-no-40.pdf>.

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tions on domain names to engage in electronic retail.

Especially important, in 2010 Rwanda adopted both the United Nations Commission on International Trade Law (UNCITRAL) Model Law on Electronic Commerce (1996) and the UNCITRAL Model Law on Electronic Signatures (2001), but it is not a party to the United Nations Convention on the Use of Electronic Communications in International Contracts (2005).

CONCLUSIONS AND RECOMMENDATIONS

Through the Law Governing Information and Communication Technologies, Rwanda has established a comprehensive legal and regulatory framework for digital services trade and regional digital trade integration measures and implementation. Similarly, Rwanda has advanced its digital regime through the new Investment Code and the Law Relating to the Protection of Personal Data and Privacy, enacted in 2021, to address the impediments to sharing and transferring personal data outside Rwanda. Rwanda does not have restrictive or discriminatory measures concerning the size of equity shares that can be held by foreign investors, public procurement of ICT goods and online services, telecommunications interconnectivity or issuance of licenses to engage in e-commerce, and the country is a party to key international conventions.

However, several gaps have been identified that could impede digital trade in Rwanda. There are no legal provisions on internet neutrality and tax laws do not provide for online tax registration or declaration for non-residents or their agents. Additionally, despite the legal provision that RURA identify the dominant telecommunications pro-

vider, it has not done so in practice. There are various restrictive and discriminatory measures related to payment settlement such as only being able to use an account opened with the Central Bank, and there are limits on fund transfers using e-money accounts.

At times, websites are blocked without explanation, and requirements to provide the government with direct access to personal data have been reported, but the full extent of surveillance is unknown. Further, commercial and local presence requirements restrict cross-border services trade. Rwanda is not a party to international treaties under the WTO and WIPO that relate to intellectual property rights and government procurement.

To improve the regulatory environment for digital services trade and digital trade integration, Rwanda should consider the following measures:

- Join international treaties relevant to digital trade, including:
 - » WIPO Copyright Treaty.

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- » WIPO Performances and Phonograms Treaty.
- » WTO Information Technology Agreement (ITA 1996) and its 2015 expansion (ITA II).
- » WTO Agreement on Government Procurement.
- » United Nations Convention on the Use of Electronic Communications in International Contracts (2005).
- Strengthen the legal and regulatory framework to support digital trade in the following areas:
 - » Provisions on internet neutrality and non-discrimination of users.
 - » Procedures for online tax registration and declaration for non-residents or their agents.
 - » Regulations guiding downloading and streaming by websites and procedures for penalizing nonconforming websites, with explanations.
 - » Lifting of requirements for commercial and local presence, to promote cross-border digital trade.
 - » Regulations to guide local customs officials in setting duties based on the true value of ICT imports rather than using their own valuations.
- Enact an e-commerce law as the basis for regulating digital trade in Rwanda.

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