Digital trade regulatory integration

Country profile: Chad
1. Introduction

The development of digital trade and its associated challenges have led States to develop new regulations to bring the legislative framework into line with these issues. The purpose of these regulations is to promote digital trade, attract foreign investment, secure the protection of personal data and ensure the sound and transparent application of international conventions to which Chad is a signatory.

In order to ensure the availability of data on digital trade and its regulations, the Economic Commission for Africa (ECA), through the African Trade Policy Centre, has launched a training and research initiative on the integration of digital trade regulations in Africa in several countries, including Chad. More specifically, this initiative consists of collecting information for the construction of two indicators: the digital services trade restrictiveness index of the Organisation for Economic Co-operation and Development (OECD) and the regional digital trade integration index.

This report provides a profile of digital regulation in Chad, based on the information collected as input for the two indices. Sections 2 and 3 summarize the main results for the digital services trade restrictiveness index and the regional digital trade integration index, respectively. Section 4 puts forward recommendations on improving the regulatory environment for digital trade in Chad.

2. Legislative and regulatory environment based on indicators of restrictions on the exchange of digital services

In the course of assessing the level of restrictions on trade in digital services, a review of the different pillars was conducted based on the OECD digital services trade restrictiveness index model, namely: infrastructure and connectivity, electronic transactions, payment systems, intellectual property rights and other barriers affecting trade in digital services. This review identifies the existing mechanisms and their impact on digital trade.

Infrastructure and connectivity: This pillar covers measures related to critical communications infrastructure used to engage in digital trade, such as policies on interconnection, vertical separation, market dominance and cross-border data flows.

In Chad, since 2014, interconnection is mandatory for both mobile and fixed-line networks. Article 71 of Act No. 14/PR/2014 clearly states that operators of electronic communications networks open to the public are obliged to grant interconnection requests from other operators of networks open to the public or providers of electronic communications services to the public.

Beyond national interconnection, the Act even raises the issue of subregional interconnection. The same article 71 states that operators are also required to grant requests for interconnection from operators established in another member State of the Economic Community of Central African States (ECCAS)1 and/or the Central African Economic and

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1 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.
Monetary Community (CEMAC), submitted with a view to providing the public with electronic communications services at lower cost and of good quality.\(^2\) The end of the article stipulates that subregional interconnection must, however, be provided in accordance with the principle of reciprocity.

As for interconnection prices and conditions, these are also regulated (for both fixed and mobile connections) by Act No. 14/PR/2014 on electronic communications. The Autorité de régulation des communications électroniques et des postes (Electronic and Postal Communications Authority – ARCEP) is responsible for application of the Act.

As for interconnection reference offers, since 2014, these must be made public. In its article 85, Act No. 14/PR/2014 stipulates that enterprises operating a fixed public telephone network open to the public are required to publish a reference offer for unbundled access to their local loop and to related resources every year.

As for vertical separation, both for mobile and fixed telephony, this is also required by the 2014 Act. This separation refers to a concession or license (articles 12 and 17 of Act No. 14/PR/2014).

On the question of the mandatory requirement for non-discriminatory management of Internet traffic, it is clear from the Act that there is no discrimination in this respect.

Where market dominance is concerned, this falls under the remit of ARCEP. Article 7 of the Act defines dominance. The dominant companies are identified in the report of the telecommunications market observatory.

Where cross-border data flows are concerned, Act No. 007/PR/2015 of 25 November 2014 on the protection of personal data governs the collection, processing, transmission and storage of personal data subject to the protection of public order. Furthermore, it stipulates that persons processing data may only transfer personal data to another country that is not a member of ECCAS or CEMAC if that country ensures an adequate level of protection of 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: This pillar focuses on issues such as licences for e-commerce activities, online tax registration and declaration for non-resident firms, compliance with internationally accepted rules on electronic contracts, measures affecting the use of electronic authentication (such as electronic signature), and the availability of dispute settlement mechanisms.

Under the legislative and regulatory framework of Chad, no licence or authorization is required for someone to engage in e-commerce. Article 39 of Act No. 008/PR/2015 of 25 November 2014 on electronic transactions provides, however, that, without prejudice to other information obligations provided for by the legislative and regulatory texts in force, any natural or legal person who engages in e-commerce shall be required to ensure easy, direct and permanent access to information by those for whom the supply of goods or services is intended, and also by the certification authority.

\(^2\) The Economic and Monetary Community of Central Africa (CEMAC) includes six countries: Cameroon, Central African Republic, Chad, Congo, Equatorial Guinea and Gabon.
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. Where contracts are concerned, however, the country is a signatory to the Bangui Agreement Relating to the Creation of an African Intellectual Property Organization. Accordingly, there are laws or regulations which explicitly protect confidential information.

In addition, the Act on electronic transactions accords the same legal validity to the electronic signature as to the handwritten signature. Lastly, in its articles 42 and 43, Act No. 008/PR/2015 of 25 November 2014 on electronic transactions provides a mechanism for the settlement of disputes arising in cross-border digital trade.

**Payment systems**: this relates to measures that affect payments made by electronic means. The system includes measures on access to payment methods, the adoption of international security standards for domestic payment transactions and other restrictions on Internet banking.

Chad is a member of the CFA franc zone and of CEMAC. Its payment system is governed by the regulations in force in this area. It would seem that access to payment methods is not in any way discriminatory.

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 restrictions on online banking or insurance. There may, however, be limitations, depending on the nature of the transaction and the person’s official position.

**Intellectual property rights**: This refers to national policies regarding the protection of intellectual property granted to foreigners under copyright and trademark law. Enforcement mechanisms to combat intellectual property infringements, including those perpetrated online, are also taken into consideration.

Chad is a member of the African Intellectual Property Organization. Consequently, the instruments governing this organization are invocable in Chad. None of these texts have been incorporated into the national legal framework. Moreover, Chad is not part of the Madrid system and the application of the instruments involves the condition of reciprocity. From all the above, it may be concluded that foreign firms are discriminated against in the area of trademark protection.

The law on copyright and related rights sets out the principle of reciprocity. In fact, however, this has the effect of discriminatory treatment for the protection of copyright and related rights and the exceptions to copyright protection are limited in accordance with international rules.

Furthermore, where the application of intellectual property rights is concerned, judicial or administrative enforcement measures and remedies are available. The same applies to interim measures and criminal enforcement procedures and sanctions.

**Other barriers**: This pillar highlights barriers affecting trade in digital services such as online advertising, commercial representation to provide cross-border services, and local presence to provide cross-border services. It appears that there are no restrictions on these
activities. For this reason, competition law provides remedies to businesses when business practices restrict competition in a given market.

3.  **Legislative and regulatory environment based on digital trade integration indicators**

Within the framework of regional integration in digital trade, a sound legislative and regulatory environment is conducive to foreign direct investments. Likewise, transparent and fair national data policies reassure businesses and create conditions that favour the development of digital trade. These actions will clearly only succeed if the responsibility of intermediaries is clear and access to online content is unlimited and free; the same applies to online sales and other transactions.

**Foreign direct investment in sectors relevant to digital trade:** Chad has an investment charter adopted pursuant to the provisions of the CEMAC investment charter. It covers productive investments and is applicable to both domestic and foreign investors. There are no restrictions on online advertising.

The charter provides for three special regimes that offer companies special customs and tax benefits: regime A applies to handicraft companies and small and medium-sized enterprises; regime B is for large companies; and regime C is for export-oriented companies.

In order to be approved for a particular scheme, the activity being exercised must contribute significantly to efforts to counter poverty, including by creating jobs, harnessing local resources, putting into effect a regional planning policy by moving activities to economically less developed areas and contributing to the improvement and recovery of the balance of trade and economic growth.

**National data policies:** There is a legislative framework which regulates national data policy. Since 2015, the Personal Data Protection Act and the Cybersecurity and Anti-Cybercrime Act have been in force.

The former Act stipulates that the transfer of personal data to a country that is not a member of CEMAC and ECCAS can only take place if that country ensures an adequate level of protection of privacy and fundamental rights and freedoms. By the same token, in the event of any transfer of personal data to a third country, the National Agency for Computer Security and Electronic Certification must be informed in advance by the person in charge of processing the data.

The latter Act indicates that persons providing content for the electronic communications networks and information systems shall be obliged to preserve that content and also the data stored in their installations for a maximum period of 10 years.

Lastly, in financial matters, since Chad forms part of the CEMAC area, the regulations of the Bank of Central African States provide that personal data shall be stored by the country’s central bank, which shall ensure their security and confidentiality.

**Responsibility of intermediaries and access to content:** Although access to the Internet is free, Act No. 014/PR/2014 on electronic communications in Chad provides among other things that, in the event of an exigency of public order, public security or national defence, the operator of an independent network shall comply with the instructions of the competent
Online sales and transactions: In Chad, the Act on electronic transactions defines the purpose, scope and general principles of such transactions. The instructions of the Bank of Central African States are applicable to online payments. The remote settlement of transactions is properly regulated. Online payments may be made outside the CEMAC area up to a limit of 1 million CFA francs per month and per person. This limit is increased to 5 million CFA francs per person and per trip for payment and withdrawal operations at counters and terminals located outside CEMAC. For amounts 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 (.td).

4. Conclusion and recommendations

The data collected in the digital services trade restrictiveness index and the regional digital trade integration index clearly demonstrate the progress made in the area of digital trade and its regional integration. Overall, it appears that Chad has at its disposal laws to regulate electronic transactions and communications and to protect personal data. These remain limited, however, and are fairly general in scope.

In addition, foreign investments are governed by a charter that does not take sufficient account of digital aspects. Furthermore, there are international conventions to which Chad is not a signatory, although they could facilitate the fairness and validity of cross-border electronic contracts. To this end, we recommend the following measures:

- Ratification of the United Nations Convention on the Use of Electronic Communications in International Contracts (New York, 2005);
- Ratification of the UNCITRAL Model Law on Electronic Signatures;
- Ratification of the Madrid International Trademark System, which provides a convenient and cost-effective approach to the registration and management of trademarks worldwide;
- Adoption of a specific law on e-commerce;
- Review of the investment charter.

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The country profile is part of the training and research initiative on digital trade regulatory integration in Africa, launched by the Economic Commission for Africa towards the end of 2020 to collect specific data on digital trade regulations and integration. Chad was selected as one of the pilot countries for the initiative.