

DIGITAL TRADE REGULATORY INTEGRATION

COUNTRY PROFILE

GUINEA



INTRODUCTION

The African Trade Policy Centre of the United Nations Economic Commission for Africa has embarked on a Digital Trade Regulatory Integration initiative with four primary objectives. First, the initiative provides information on digital services trade regulations that has the potential to facilitate the negotiation and implementation of the African Continental Free Trade Area (AfCFTA) protocol on Digital Trade. Second, it intends to inform the development of a digital trade integration index which could then become a component to possible future editions of the Africa Regional Integration Index.¹ Third, it will also 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. Fourth, data from the DTRI and tools derived from it will offer a solid basis for further analytical work by ECA and others on digital trade.

The initiative covering the legal and regulatory environment associated with digital trade will help African countries better understand and address barriers to the growth and development of digital trade and e-commerce. Addressing the issues identified will help promote digital trade and e-commerce and underpin continent-wide commercial transactions between businesses and consumers.

This country profile presents the key findings for Guinea and is based on observations from two datasets developed under the DTRI initiative. The first dataset, modelled on the OECD Digital STRI, compiled information on restrictions to digital services trade from 2014 to 2023. The second covers measures related to digital trade integration, beginning with the effective date of each measure and reflecting the latest available information. The legal and regulatory measures researched in the initiative are categorized into various policy areas in both digital services trade restric-

tions and digital trade integration. This country profile's two sections correspond to the two datasets. To avoid repetition

where there is overlap between the indicators, attempts are made to present results only once, to the extent possible.

RESTRICTIVENESS OF THE REGULATORY REGIME FOR DIGITAL SERVICES TRADE

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

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

Each pillar is explained below.

Pillar 1: Infrastructure and connectivity

Guinea's Law 2015/018/AN (henceforth the Telecom Law), Article 73, mandates interconnection among national public telecommunications networks for both fixed and mobile services.² Decree D/2021/091/PRG/SGG (henceforth the

Telecom Decree), Article 18, reaffirms this obligation.³

The Telecom Law, Article 75, specifies that interconnection agreements must detail the methods for traffic measurement, service pricing, billing, and settlement. Under the Telecom Decree, Article 31, the regulatory authority for posts and telecommunications—the ARPT—monitors interconnection rates through a capping method, and cost accounting methods must be audited by an independent body that it designates.

The Telecom Law, Article 77, obliges network or public service operators to publish annually an interconnection catalog containing a reference technical and pricing offer, subject to prior approval by the ARPT. The Telecom Decree, Article 25, requires operators in a dominant position to publish this catalog annually, with an announcement in a national or official newspaper, and on a website accessible to all interested parties.

Under the Telecom Decree, Article 29, operators must maintain separate accounts for their interconnection activities, thereby identifying all relevant costs, including general network costs, interconnection-specific service costs, costs of services other than interconnection, and common costs not classified in the previous categories.

Relevant texts on electronic communications in Guinea do not address internet traffic management and data non-discrimination. The Telecom Law, Article 69, defines as “powerful” operators with at least a 25% market share and access to non-replicable infrastructure unless otherwise decided by the ARPT.

In Decision 04/ARPT/CNRPT/2022, Articles 1 and 2, the ARPT designates dominant operators for six specific markets: ORANGE for mobile services, ORANGE FINANCE MOBIL GUINEE (OFMG) for mobile money services, SOGEB for national leased lines, ORANGE for mobile network access, GUILAB for international bandwidth access, and CELLCOM, MTN, and ORANGE for mobile terminations.⁴

Guinea’s cybersecurity and personal data protection law, Law L/2016/037/AN (henceforth the Cybersecurity Law), defines in its Article 28 the necessary conditions for data transfer to a third country.⁵ Cross-border data transfers require a guarantee of privacy protection and fundamental rights that is equivalent or superior in the receiving country, and such transfers

must be authorized by Guinea’s personal data protection authority.

Pillar 2: Electronic transactions

Guinea’s Law L/2016/035/AN of July 28, 2016 (henceforth the Electronic Transactions Law) does not explicitly discriminate between foreign and national service providers.⁶ But the country’s Economic Activities Code of 1992–1994, in Articles 17 and 20, stipulates that a foreigner can engage in economic activity provided that a Guinea national can do the same in the foreigner’s country of origin.⁷ In this context, the foreigner enjoys the same rights and obligations as a Guinea national but must comply with the rules on entry and stay in Guinea. Certain economic activities may be prohibited or subject to specific conditions defined by law.

Guinea’s Implementing Decree D/2021/0196/PRG/CNRD/SGG, Article 7, specifies that an e-commerce provider must have a dedicated domain name, subscribe to a trusted provider, implement a security system for electronic transactions, have a dedicated website, and register as an e-commerce provider.⁸

Memorandum 051/MB/DNI/2021, Article 1, and press release 00595/MB//CAB/SGG of December 17, 2021 make online tax registration and declaration mandatory for all taxpayers, including non-resident foreign service providers.⁹

Guinea's law on electronic transactions does not adhere to international standards for electronic contracts, and it has not signed the United Nations Convention on the Use of Electronic Communications in International Contracts or adopted the UNCITRAL Model Laws on Electronic Commerce and Electronic Signatures.¹⁰ But the Electronic Transactions Law, Article 34, provides that an electronic signature created by a reliable and secure device is equivalent to a handwritten signature.

Dispute resolution for cross-border digital trade is addressed in the Electronic Transactions Law, Article 21, which holds the e-commerce service provider responsible for contractual obligations—with exemptions for force majeure and attributable non-performance. Transactions are subject to commercial and civil law, particularly the OHADA Treaty, which provides for arbitration procedures under certain conditions.

Pillar 3: Payment systems

Guinea does not discriminate access to means of payment.¹¹ In the country's banking regulation law, Law L/2013/060/CNT, Article 5 defines means of payment as "all instruments that, regardless of the medium or technical process used, allow any person to receive or transfer funds." Guinea's payment security standards are not based on international standards, such as ISO standards for electronic cards and in-

tegrated circuits or EMV standards for remote payments.

Guinea does not impose restrictions on internet banking or insurance. Instruction from the Central Bank of Guinea 110/DGSIF/DSB, Article 4, requires formalities for cross-border electronic transfers equal to or greater than 10 million Guinean francs or their equivalent in a foreign currency.¹²

Pillar 4: Intellectual property rights

Guinea ratified the Bangui Agreement in 2018.¹³ The preceding Law 00342 of April 12, 2012, in its Articles 16–23, recognized authors' moral and economic rights over their work.¹⁴ Articles 24–33 of the same law allowed, under certain conditions, the reproduction and use of a lawfully published work without the author's permission. Under the same law's Article 141, disputes related to the application of the provisions of the law falling under the jurisdiction of the judiciary were to be brought before the competent civil courts and judged urgently, without prejudice to the aggrieved party's right to appeal to the criminal court under common law.

Guinea's copyright regime, Law L/2019/0028/AN (henceforth the Copyright Law), lists exceptions to copyright in its Articles 22–28.¹⁵ The exceptions include analysis and short quotations for critical, educational, scientific, or informa-

tive purposes; private use and reproduction with the author's permission; use by blind or visually impaired persons; ephemeral recordings by broadcasting organizations; and the reproduction, broadcasting, or communication of works permanently located in public places, except for commercial purposes.

Under the Bangui Agreement's Annex III, Article 47, civil actions related to trademarks are brought before civil courts and judged in summary proceedings. Under the agreement's Annex III, Article 8, applicants residing outside the member states must file through an agent in one of those states. The status of an accredited agent with the OAPI is governed in Guinea by the Regulations on the Profession of Accredited Agent.¹⁶

Guinea is a party to the Patent Cooperation Treaty. In the Bangui Agreement, Annex III, Articles 37 and 38 provide penalties for the unauthorized exploitation of a registered trademark and address mandatory trademarks and prohibited signs. Under Article 61.2 of the same annex, the national civil and criminal procedure codes on searches and seizures apply, *mutatis mutandis*, to infringements of protected intellectual property (IP) rights.

In Guinea's Copyright Law, Article 58, Part I makes a person who commits an intellectual property offense through a computer system liable to a prison sentence of two to ten years, or a fine of 100,000,000 Guinean francs, or both. These penalties may

increase depending on the extent of the damage caused by the offense. Anyone complicit in the offense is subject to the same penalty. Guinea punishes the crime of counterfeiting in accordance with Law 00342, Articles 147–152.

Guinea has ratified the WIPO Copyright Treaty¹⁷ and the WIPO Performances and Phonograms Treaty.¹⁸ Although Guinea has no comprehensive framework for the protection of trade secrets, limited measures exist in the Bangui Agreement, Annex VIII, Article 6.

Pillar 5: Other barriers affecting trade in digitally enabled services

Under Guinea's Cybersecurity Law, Article 31, it is an offense punishable by law to use a computer system to produce, disseminate, or make available data that may disturb public order or infringe on human dignity.¹⁹

Under the same law, Article 57, engaging in cryptology services or failing to remove cryptographic tools is a punishable offense, absent government authorization.²⁰ Cryptology is defined as the science of information protection and security, including confidentiality, authentication, integrity, and non-repudiation.

Under Decree D/2021/0196/PRG/CNRD/SGGE, Article 7, engagement in

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electronic commerce in Guinea is subject to conditions including:

- Having a “.gn” or “.com” domain name.
- Subscribing to a trusted service provider.
- Implementing a security system for transactions.
- Having a dedicated website.
- Registering as an electronic commerce provider.

Guinea’s legal framework does not mention any restrictions on online advertisements. Under the Electronic Transactions

Law, Article 5, no commercial presence in Guinea is required for cross-border services, and such services can be provided by entities or individuals of any nationality.²¹ But Guinea’s Law L2022/0016/CNT, Article 12, applies a 5% tax on income from digital services operated by local or foreign electronic commerce platforms.

In Guinea’s competition and price freedom law, Law L/94/40/CTRN, Article 33 allows individuals harmed by anti-competitive practices to bring civil actions for compensation.

RESTRICTIVENESS OF THE REGULATORY REGIME FOR DIGITAL TRADE INTEGRATION



This section discusses measures related to the level of digital trade integration in Guinea. The regulatory regime of digital trade integration was assessed under 12 pillars.

- Tariff and trade defense on measures applied to intraregional imports of ICT goods.
- Public procurement for 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.
- Content access.
- Quantitative trade restrictions for ICT goods and online services.
- Technical standards applied to ICT goods and online services.
- Online sales and transactions.

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

Pillars 1 and 10: Tariffs, trade defense, and quantitative trade restrictions for ICT goods and services

Guinea does not impose restrictions on imports of ICT goods or digital services, including on the quantity or volume of ICT goods or services that can be imported. Under the Telecom Law, Article 64, however, imports of radio equipment and terminal equipment must receive prior approval.²² This requirement applies to all equipment intended to be connected directly or indirectly to a telecommunications network endpoint for the transmission, processing, or reception of information, including any communication installation using radio frequencies for wave propagation.²³

Guinea is not a signatory to the 1996 World Trade Organization (WTO) Information Technology Agreement (ITA I) or to its 2015 expansion (ITA II).²⁴ The country does not impose any trade defense measures on ICT goods, such as antidumping measures, countervailing duties, or safeguard measures.²⁵ The country's effective tariff rate on ICT goods (applied weighted average) is 11.18%, and its zero-tariff coverage rate on ICT goods is 2.35%.²⁶

In Guinea's Law L/2022/0010/CNT (henceforth the Local Content Law), Article 14 requires any operator or company working on an operator's behalf to employ Guinean personnel according to minimum quotas by category.²⁷ The same law's Article 8 requires operators and companies working on their behalf to source goods and services in Guinea where available; in case of unavailability, sourcing from abroad is permitted with appropriate authorization.

No relevant Guinea law mentions restrictions on the export of ICT goods and services.

Pillar 2: Public procurement for digital goods and services

Guinea is not a member of the WTO Agreement on Government Procurement and does not hold observer status.²⁸

In the Local Content Law, Article 13 encourages companies contracted for public service provision to seek technological and

industrial partnerships with local firms.²⁹ While this article does not explicitly exclude foreign companies from public procurement, its requirement for them to subcontract at least 40% of their services to local firms could be interpreted as an implicit exclusion—deterring foreign companies that cannot find local partners capable of meeting a project's technical requirements. Furthermore, the Local Content Law provides that foreign companies' partnerships with companies in Guinea must include technology transfer and technical assistance clauses, and it provides for the effective transfer of technology to local companies in structuring projects, with specific conditions for patented technologies (implementing decrees for these provisions are not yet available).

Guinea's Decree No. D/333/PRG/SGG, Article 78, grants national preference margins to national offers and to temporary groupings with Guinean entities under certain conditions.³⁰ As noted previously, foreign operators must source goods and services in Guinea, except in cases of unavailability (for which authorization is required). Specific quotas of Guinean personnel are imposed; in case of non-compliance with the quotas, a training program must be provided.

Pillar 3: Foreign direct investment for digital trade

Under Guinea's Law 2015/No.008/AN, Article 5, individuals or private legal enti-

ties must obtain authorization to conduct activities including such as postal and telecommunications services within the country.³¹

The Local Content Law, Article 18, requires operators to develop a local content plan before starting their activities, including a percentage of revenue for community projects.³² The Regulatory and Control Authority for Local Content, ARCCL, issues a certificate of compliance to operators meeting local content requirements. Partnerships between operators and local companies must include technology transfer and technical assistance clauses, with details to be defined later. No specific commercial presence requirement is mentioned in the current Local Content Law, Article 12.2.

Pillar 5: Telecommunications infrastructure and competition

Guinea's Telecom Law, Article 82, mandates passive infrastructure sharing to provide telecommunications services to end-users.³³ The ARPT's Decree D/2021/091/PRG/SGG, Article 4.4, ensures the introduction of infrastructure sharing offers in the interconnection catalogue of dominant operators.³⁴ These offers cover all passive infrastructure, such as poles or ducts and dark fiber, as well as potentially active infrastructure. An infrastructure sharing request cannot be refused if it does not cause disruption or technical difficulty

for the proper functioning of the network and service. Under the same decree's Article 5, operators must respond to sharing requests objectively, transparently, and non-discriminatorily, and publish an annual infrastructure sharing catalogue.

The Telecom Law, Article 41, requires telecommunications operators in Guinea to be legal entities under Guinea law. There is no maximum share of foreign capital in the telecommunications sector, and Guinea's government does not own any shares in this sector.

Under Decree D/2021/091/PRG/SGG, Article 29, operators must maintain separate accounts for their interconnection activities. Guinea also imposes functional separation for operators with significant market power.

Under the Telecom Law, Article 39, companies operating a public electronic communications network must obtain "global" licenses, including the right to resell infrastructure. Providers of leased lines or national or international transmission capacity must obtain "infrastructure" licenses. All these licenses are to be granted based on objective, non-discriminatory, transparent, proportionate, and detailed criteria. Guinea has not annexed the WTO reference document on telecommunications to its schedule of commitments. Under the Telecom Law, Articles 8 and 9, the ARPT is to exercise its regulatory functions in the postal and telecommunications sector independently, neutrally, professionally,

impartially, and transparently, with legal personality and administrative and financial autonomy.³⁵

Pillar 6: Cross-border data policies

According to Guinea's Cybersecurity Law, Article 28, the transfer of personal data is subject to prior authorization from the personal data protection authority.³⁶ Any transfer of such data is subject to strict and regular control by the authorities regarding its purposes. Authorization is always necessary, and a controller of personal data may transfer this data to a third country only if that country ensures a level of protection for privacy, fundamental freedoms, and individual rights that is superior or equivalent to that in Guinea.

Guinea has no specific requirements for local storage or infrastructure, nor does it have a conditional data flow regime. The country has not adhered to any agreement with binding commitments on the openness of cross-border data transfers.³⁷

Pillar 7: Domestic data policies

Guinea has a comprehensive legal framework for the protection of personal data, established by the country's Cybersecurity Law.³⁸ This framework defines the rules, mechanisms, and tools for data management and protection, with penalties for

violations. Its Article 37 imposes a minimum retention period of 10 years for documents related to electronic transactions, with traceability and accessibility requirements. Additionally, its Articles 48 and 49 allow for the monitoring of online activities by a competent authority and require the cooperation of cryptography service providers and data controllers with the Data Protection Authority.

Pillar 8: Intermediary liability

Guinea has no basic legal framework regarding intermediary liability for copyright or other violations.

The country's Cybersecurity Law, Article 67, requires prior identification to access internet services in cybercafes. Under Decision D/001/ARTP/CNRPT/2021, Article 2, the activation of SIM cards and internet services is only allowed after the subscriber provides an identity document.³⁹ The Telecom Law also requires operators to transmit identification data to the competent authorities upon request.⁴⁰

Pillar 9: Content access

Guinea received a poor rating of 2 on the indicator "6.2.4—Government Internet shut down in practice" in the V-Dem Dataset, which tracks whether a government has the technical capacity to make internet service cease (interrupting domestic ac-

cess) or whether it has decided to do so.⁴¹ Specifically, Guinea's 2 rating means: "The government has shut down domestic internet access several times this year."

In May, 2023, it was reported that Guinean authorities imposed restrictions on social media platforms including Facebook, Instagram, WhatsApp, and TikTok.⁴²

Pillar 11: Technical standards applied to ICT goods and online services

Under the ARPT's Decision A/001/AEPT/CNRPT/2017, Article 3, the importation of radio and terminal equipment requires prior approval, and telecommunications equipment and radio installations must be certified to comply with regulations; self-certification is not allowed.⁴³ Standard requirements are not transparent, as the standards law is not made public. Under the Cybersecurity Law, Article 57, the importation, sale, or use of cryptography services without government authorization is prohibited.⁴⁴

Pillar 12: Online sales and transactions

Guinea's de minimis threshold in customs duties—the value below which goods or

services are formally exempt from duties—is \$80, below the threshold of \$200 recommended by the International Chamber of Commerce (ICC)⁴⁵

Under Guinea's Decree D/2021/0196/PRG/CNRD/SGG, Article 7, engagement in e-commerce in the country is conditional on meeting several requirements including:⁴⁶

- Obtaining a dedicated domain name with a ".gn" or ".com" extension.
- Subscribing to a trusted service provider.
- Implementing a security system for electronic transactions.
- Owning a website dedicated to the activity.
- Registering as an e-commerce provider.

To register a ".com.gn" domain, a local business is required.

Guinea lacks a comprehensive consumer protection framework for online transactions.⁴⁷ The country has not signed the United Nations Convention on the Use of Electronic Communications in International Contracts.⁴⁸ Nor has Guinea adopted national legislation based on UNCITRAL model laws for electronic commerce or for electronic signatures.⁴⁹

CONCLUSION AND RECOMMENDATIONS

Guinea has made significant strides in establishing a legal and regulatory framework for digital trade and e-commerce. The country has implemented laws and regulations to address infrastructure and connectivity, electronic transactions, payment systems, intellectual property, and barriers affecting trade in digitally enabled services. But gaps and challenges remain—particularly in cross-border data policies, domestic data protection, intermediary liability, content access, quantitative trade restrictions, technical standards, and on-line sales and transactions. These gaps can hinder the growth and integration of digital trade within Guinea and across the African continent. For a more conducive digital trade and e-commerce environment, and for Guinea's economic growth and integration within the African Continental Free Trade Area (AfCFTA), the following actions are recommended:

- To enhance cross-border data policies, Guinea should:
 - Establish clear guidelines and agreements for cross-border data transfers to facilitate smoother digital trade.
 - Ensure that the protection of privacy and data security aligns with international standards.
- To improve domestic data protection, Guinea should:
 - Strengthen the legal framework for personal data protection, including clearer penalties for violations and robust enforcement mechanisms.
 - Increase public awareness about data protection rights and obligations.
- To clarify intermediary liability and content access, Guinea should:
 - Develop a comprehensive legal framework addressing intermediary liability for copyright and other violations.

- Ensure transparent and fair processes for managing and restricting content access.
- To align technical standards with international norms, Guinea should:
 - Make technical standards for ICT goods and online services more transparent and accessible.
 - Allow self-certification for certain categories of telecommunications and radio equipment to simplify compliance.
- To facilitate online sales and transactions, Guinea should:
 - Raise the de minimis threshold for customs duties to align with international recommendations, thereby encouraging more online transactions.
 - Develop a comprehensive consumer protection framework for online transactions to build trust and confidence in e-commerce.
- To encourage public procurement and foreign direct investment, Guinea should:
 - Streamline regulations to encourage more foreign companies to participate in Guinea's public procurement processes.
 - Facilitate easier foreign direct investment in the digital trade sector by reducing bureaucratic hurdles.
- To strengthen infrastructure and connectivity, Guinea should:
 - Invest in expanding and improving the telecommunications infrastructure to ensure widespread and reliable internet access.
 - Promote competition among service providers to enhance service quality and reduce costs.

This country report was prepared by [XX].

Endnotes

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