Policy Considerations for Enhancing Digital Trade in East Africa

CIPESA

This policy brief highlights the progress made by the East Africa Community in advancing digital trade while outlining barriers affecting its deployment. The brief also outlines key recommendations for policymakers, civil society, and other actors to undertake in promoting a human rights-based digital economy in the region.

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Background

Digital trade and digital payments in Africa have experienced significant growth and transformation, driven by increased internet penetration, mobile phone usage, and innovative financial technologies. The *World Bank* projects that digital services exports in Africa will increase to USD 74 billion by 2040. In East Africa, *mobile money services* such as Safaricom's Mpesa, MTN's MoMo pay, and AirtelPay have revolutionised financial transactions. Emerging technologies like 5G, Internet of Things (IoT), and Artificial Intelligence are creating new economic opportunities, further transforming the digital landscape in the region. These developments are further supported by continental initiatives such as the African *Continental Free Trade Area* (AfCFTA) and the African Union (AU) Digital Transformation Strategy for Africa, which aim to further boost intra-African trade by reducing tariffs and simplifying trade regulations, and acknowledge the importance of harmonising digital policies across the continent to unlock the full potential of digital trade.

In July 2022, the East Africa Community (EAC) adopted an *e-Commerce Strategy* to contribute to enhancing capacities for growth, improve legal and regulatory frameworks, and increase trust in digital trade. The strategy further aims to strengthen cross-sectoral and public-private collaboration in developing regional approaches to cross-border e-commerce, a key building block towards a regional single digital market. Additionally, the regional bloc adopted the *One Area Network* (ONA), which eliminated mobile roaming charges. However, more efforts need to be put into harmonising digital trade and payments across borders. To succeed, the implementation and expansion of the ONA and the e-Commerce Strategy still require support from both the EAC and the Member States. Additionally, the EAC *Digital Single Market* (DSM) and *Common Market Protocol* seek to promote intra-regional trade by facilitating the seamless movement of people, goods, and services across the region.

The EAC secretariat and (IGAD) are implementing
USD 310 million
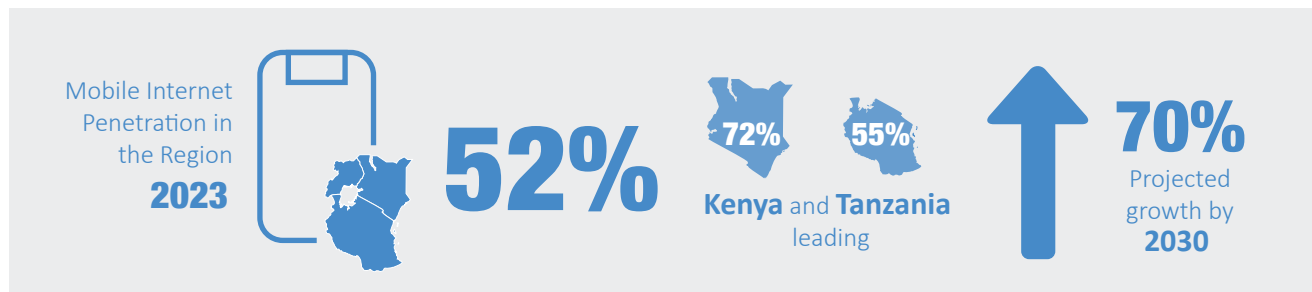Project funded by the World Bank

Currently, the EAC secretariat and the Intergovernmental Authority on Development (IGAD) are *implementing* a USD 310 million project funded by the World Bank, to foster digital market integration in the East African region while addressing barriers to digital trade. The measures include increasing access to digital connectivity and infrastructure, improving regulations, building capacity, and strengthening an enabling environment for cross-border digital services. While notable results from this project are yet to be realised, major concerns remain. Challenges such as infrastructural gaps that limit the reach of digital trade, especially in rural areas, fragmented regulatory environments, lack of interoperable and reliable digital policies, digital skills gap, and increased cybersecurity risks, including fraud and data breaches, are hindering the advancement of the digital economy in the East African region.

Barriers to Digital Trade in East Africa

## a) Limited Digital infrastructure and Access to the Internet

East Africa's telecommunications sector has experienced remarkable growth and transformation, emerging as a key contributor to the region's economic and social development. In 2024, *mobile internet penetration* in the region stood at 52%, with Kenya leading at 72%, followed by Tanzania at 55%. This growth can be attributed to accessibility to affordable smartphones, whose adoption is *projected* to rise to 70% by 2030, with Kenya and Tanzania taking the lead. Other growth attributes include investments by telecom operators offering competitive pricing and services. However, vulnerabilities such as *internet subsea cable cuts*, network disruptions, low digital literacy skills, affordability, and low connection speeds make it harder to attract digital businesses, further widening the digital divide in the region. Internet disruptions in the region have also had a significant economic impact on the region, with Kenya losing USD 75 million during the #RejectFinanceBill2024 protests in 2024. The Internet Society Pulse reports that the *DRC* registered high costs too, at USD 16.1 million. Internet disruptions have been recorded in all EAC member states, except Rwanda and Somalia.

Mobile Internet Penetration in the Region **2023**

52%

72% **55%**

Kenya and **Tanzania** leading

70%

Projected growth by **2030**

On the digital infrastructure aspect, telecom companies are further faced with *high costs* of deploying and maintaining networks, leading to the uneven distribution of infrastructure in their respective countries. More so, the slow adaption of regulatory frameworks adversely impacts the deployment of new technologies such as 5G and the extension of fibre optic networks in marginalised and underserved areas. For example, only Uganda, *Kenya*, Rwanda, and Tanzania have successfully deployed 5G networks within the East African region. The lack of electricity in some areas, high cost of devices, and low literacy rates create additional barriers limiting digital trade in the region.

b) Fragmented Approaches to the Taxation of the Digital Economy

The long-term advantages of investing in digital infrastructure and service enhancements are sometimes overlooked by the regulatory focus on generating income through taxes. Protecting internet data flows in trade policy initiatives is crucial for fostering economic growth, innovation, and the seamless operation of global trade. This restricted focus can impede innovation and cripple the digital economy. Uganda, Kenya, and Tanzania all *levy digital service taxes (DST)* on non-residents providing digital services to customers in their respective countries. Uganda's digital tax is 5% while Tanzania's is at 2%. Kenya's DST shifted from 1.5% on the gross invoice amount of the digital service to 3% on gross turnover under the Significant Economic Presence Tax (SEP), which came into effect in December 2024, *making it the highest* DST in East Africa.

Digital Service Tax in the Region

5% **3%** **2%**
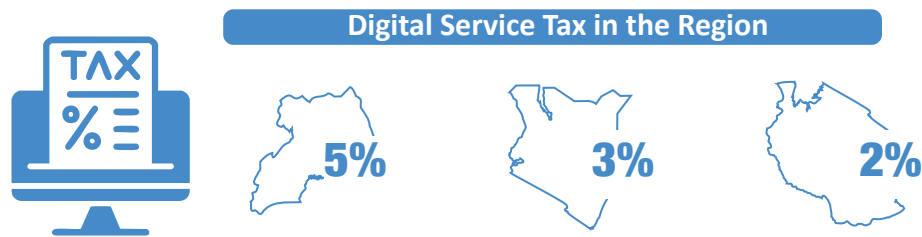
c) Data governance and privacy Concerns

The EAC Member States have adopted cyber-related legal and regulatory frameworks for e-transactions, e-signatures, computer crime, data protection, consumer protection, intellectual property, competition, taxation, and information security. However, there is a lack of a comprehensive approach to harmonise and improve the legal and regulatory framework in the region. This is true for issues such as data privacy, management, and data protection; digital identity, consumer protection, digital taxation, cybercrime; financial regulation including the introduction of digital finance and payment mechanisms; intellectual property; the standardisation and authentication of fiscal, customs, and cross-border trade requirements in trade agreements

Among the *eight EAC countries*, only Rwanda has ratified the 2014 African Union Convention on Cyber Security and Personal Data Protection. At a national level, only Uganda, Kenya, Tanzania, Rwanda, and Somalia have *adopted data protection and privacy legislation*. Burundi, DRC, and South Sudan are yet to adopt such laws. It is worth noting that even where privacy laws exist, their implementation is somewhat questionable.

Data protection laws permit the cross-border flow of personal data when certain requirements and conditions are met, and these vary from country to country. Also, data localisation requirements potentially *undermine* social, economic, and civil rights by eroding the ability of consumers and businesses to benefit from access to knowledge and international markets while giving governments greater control over local information. Likewise, unrestricted data flows can lead to a loss of jobs, tax revenue, and local capacity in areas such as data hosting infrastructure. Data flows are essential for advancing regional trade and supporting the production and distribution of goods and the trading of digital services.

The *AU Data Policy Framework of 2022 (AU DPF)* has called for African countries to shift their focus from data localisation to promoting free and secure data flows while safeguarding human rights, upholding security, and ensuring equitable access and sharing of benefits. The EAC secretariat is developing the *EAC Data Governance Policy Framework*, which aims to harmonise the region's approach to data management, ensuring that Partner States adopt common standards for data protection, privacy, and security. The adoption and implementation of this framework would be a crucial milestone that governments, civil society and the private sector should support.

d) Limited Local Data Centres

Data centres are the foundation of the digital economy as they enable the storage, management and distribution of vast amounts of data needed for smooth running of businesses. With ongoing efforts to harness Artificial Intelligence (AI) in Africa, data centres are increasingly becoming a necessity for both businesses and governments to realise their digital transformation journey. The *demand for localisation* of internet, data and content is also driving the growth of data centres in Africa. However, the limited number of data centres within the EAC makes data localisation an obstacle to advancing digital trade in the region. There are *30 data centres* in the East Africa region, out of which 16 are located in Kenya and four each in Tanzania and DRC. This is followed by Uganda which has three data centres while Rwanda and Somalia have two and one respectively.

Regulatory frameworks in some countries place restrictive measures for regional-based institutions that may want to leverage cloud solutions for their operations. For instance, *Tanzania's* Cloud Computing Guidelines for Financial Service Providers (2023) have been faulted for prohibiting financial service providers from hosting primary data centres, which are deemed critical for operations of institutions, outside Tanzania.

e) Rising Cyber Security Threats

Organisations in East Africa have *identified* cyber risks as one of the most pressing concerns to digital trade in East Africa. In the first quarter of 2024, Kenya *registered* over one billion cyber attacks. Uganda has not been spared, with *banks* and *telecom companies* often targeted. In the *2024 Global Cyber Security Index* (GSCI), Burundi performed the worst compared to the rest of the EAC countries. The GSCI measures a country's commitment to cybersecurity across five pillars – legal, technical, organisational, capacity, and cooperation development. Rwanda, Tanzania and Kenya are among the top-performing countries in adopting and implementing all the five pillars.

Cybercrime laws are largely based on addressing computer misuse and unauthorised access. Some provisions of these laws which are vague and overly broad in nature have been weaponised to curtail online freedoms, raising concern about their compliance with international human rights and the rule of law. These include provisions criminalising the dissemination of false information, offensive communication, hate speech, causing annoyance, or spreading rumours. From *South Sudan* to *Uganda*, Kenya, *Tanzania*, and *Rwanda*, cybercrime laws have been widely used to arrest and prosecute government critics.

Conclusion

The East African region has made tremendous progress in advancing digital transformation and trade. However, policy challenges related to regulating data governance, digital taxation, cybersecurity and digital infrastructure deployment are impeding this progress. Other challenges related to addressing the economic inequalities, including access to credit and consumer protection, coupled with a widening digital divide in an increasingly restrictive digital ecosystem, could cripple the environment for the region's digital economy aspirations. For EAC countries to leverage the digital economy to expand digital trade in ways that improve the livelihoods of its residents, policy makers will need to make progressive, decisive and timely changes.

Recommendations

- **Embrace Digital Transformation and Connectivity:** Member States are encouraged to embrace digital transformation and connectivity by investing in robust networks and backup systems. Internet service providers (ISPs) should address the single points of failure in internet connectivity such as reliance on few undersea cables for global connectivity by investing in more redundant infrastructure including terrestrial networks. Furthermore, stakeholders should collaborate to address such disruptions swiftly and effectively.
- **Implement robust cyber security frameworks:** Member States are encouraged to implement robust cyber security frameworks while ensuring effective cyber leadership and prioritising investments in cyber infrastructure, skilling and awareness.
- **Recognise data as a trade enabler:** Member States are encouraged to recognise data as a trade enabler by ensuring trade agreements have provisions that prevent unnecessary restrictions on data flows and that businesses operate efficiently across borders. States are called up to adopt balanced data localisation policies by ensuring policies strike a balance for free cross-border data flows while addressing legitimate concerns such as national security and data privacy.
- **Harmonise data protection standards:** Member States are called upon to harmonise data protection standards to reduce compliance costs for businesses and build trust among different stakeholders.
- **Adopt and implement Intellectual Property (IP) Laws:** Policies and frameworks for protecting intellectual property (IP) are also essential for advancing digital trade. Developing IP laws ensures that local innovators and individuals in the region also benefit. Collaboration with international organisations fosters innovation and incubation from research and academic institutions and offers solutions that enhance service provision and maximise opportunities.
- **Build robust digital infrastructure:** The region is encouraged to build robust digital infrastructure by necessitating capacity building in every aspect of communication, advancing the digital transformation agenda with a focus on Digital Public Infrastructure (DPI), data policy, privacy, and protection to ensure the safety of all East Africans. This may require the adoption of a regional data-sharing policy to facilitate communication, collaboration and smooth date flows within the region.
- **Speed up the adoption of the regional EAC Data Governance Policy Framework:** The EAC secretariat is urged to speed up the adoption of the regional EAC Data Governance Policy Framework and secure financial, technical and human capital for its implementation.
- **Assess and address the impact of emerging technologies:** Member States should collectively assess and address the impact of emerging technologies like artificial intelligence, blockchain and IoT, ensuring that policies foster innovation while addressing ethical and legal challenges related to the deployment of these technologies in digital trade.