

Can blockchain be regulated?

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If there is one subject that is in fashion in the field of digital banking it is without doubt blockchain. Most of the world's banks are studying the potential applications of this secure, distributed database which eliminates the need for a trusted intermediary. And although there is currently only one application, bitcoin, in practical operation, there is no doubt that for certain banking processes it could be a powerful tool for boosting efficiency. Moreover, its characteristics of inalterability, transparency and automation by means of smart contracts may form the basis for entirely new digital businesses.

However, as with any new technology, there are various factors that will influence its widespread adoption. One of the most significant of these factors is the means whereby it will be regulated, bearing in mind that regulation does not apply to the technology itself but to its various uses. In the case of blockchain, the exploratory phase we are in makes its regulation even more difficult to address.

Since bitcoin is the only case of active use in the real world, the regulatory debate has focused on this area. As far as the EU is concerned, the first step was to harmonise the tax treatment of transactions, since in some countries bitcoin was considered as digital money and in others as a commodity, purchases and sales of which were subject to VAT. In October 2015, the European Court of Justice ruled that bitcoin transactions were exempt from VAT and as such bitcoin is considered digital currency.

The next step tackled preventing the use of bitcoin for illicit purposes such as money laundering or the financing of terrorism. In this regard, in July 2016 the European Commission proposed including digital wallet providers and virtual currency exchange platforms in the Anti Money Laundering Directive to avoid the anonymous exchange of bitcoins.

Regulation of other uses of blockchain, which will have a greater disruptive impact on financial services, will inevitably have to wait. However, there are some questions that are common to all cases, deriving from the unique characteristics of blockchain, which should be addressed as soon as possible. For example, the global and distributed nature of blockchain makes it necessary to establish a legal framework in which its legal nature is defined, including the applicable jurisdictions and laws, as well as where responsibility lies in the event of error or malfunction. Apart from this, its inalterability opens up a debate on its recognition as an unfalsifiable "single source of truth", the legal validity of the documents stored as proof of possession or existence, and recognition of smart contracts as enforceable legal agreements.

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