

Important Concepts for any Blockchain-Related Legislation or Regulation

Blockchain for Europe (“BC4EU”) respectfully submits this outline of significant concepts that BC4EU believes should be present in any legislation or regulation proposed by a governmental, inter-governmental or similar entity related to blockchain or distributed ledger technology (“DLT”), including with respect to blockchain tokens, cryptoassets, cryptocurrencies or similar.

BC4EU is an EU-based trade association representing globally-active Blockchain companies at the EU level and across European states. Its aim is to increase understanding of the potential of Blockchain technology. We try to do this by offering our business and technical expertise to policy-makers to assist them in proposing innovative regulation which ensures the best possible outcome for Europe’s citizens and its businesses.

As a general matter, we would like to raise five concepts during the consideration of the proposed [legislation/regulation]. In particular, please consider the applicability of the following:

1. Blockchain is a database technology and part of the larger tech stack for any implementation. As a result, regulation of blockchain or of blockchain tokens, including digital assets, cryptocurrencies and the like, needs to occur in a technology neutral fashion.
2. There are many technologies that allow for the creation of digital representations of assets or other items. Blockchain is just one such technology and falls within the broader umbrella of distributed ledger technologies (“DLT”). Many non-DLT software programs can run databases and be used to digitally represent assets. In fact, much of the world runs on computers already, which means that there are numerous ways to digitally represent an asset or item. Careful thought should be given before creating new and different rules for DLT.
3. There are several dangers that arise when regulating a technology like DLT, rather than regulating the implementation of that technology.
 - a. First, new technology solutions to the same problems may arise, which would require the adoption of a new regulatory framework.
 - b. Second, devising a comprehensive set of rules is a difficult and time-consuming task, so it is often better to apply the existing laws and regulations.

- c. Third, the technology used does not provide assets or items with their legal status. Rather, determining the legal status of an asset or item has traditionally occurred without regard to the technology used.
 - d. Fourth, regulation is most effective when the technology implementation is considered because it reflects the value choices society has made with respect to a particular industry. In this way, the functions and features of the contextual usage of the technology can be considered in developing the rules.
4. We encourage the use of carefully defined terms in laws and regulations so that stakeholders can understand what is covered and what is meant. Too often people utilize broad terminology with the result that unintended items are unexpectedly covered by a rule. Moreover, broad terminology can result in regulation that is not technology neutral.
 5. Different activities and roles should be regulated in accordance with what they are, rather than as undifferentiated actions. Intermediaries occupy a different space than end users and their duties or obligations should vary accordingly. Similarly, a passive investor sits in a different position than an active operator.

We hope these concepts are helpful in the consideration of the proposal. We believe it is important to think through the context in which the proposed rule set will operate and how broadly it will apply. Without a thorough understanding of existing regulatory structures and how they might satisfactorily address the issues, the proposed changes might create confusion and result in overlapping coverage.