Policy, legislation and governance issues surrounding blockchain

Emmanuelle Ganne,
Senior Analyst, WTO
emmanuelle.ganne@wto.org

Author of the book "Can Blockchain Revolutionize International Trade?" (2018)

Structure

1. Recognition of e-signatures/e-documents
2. Confidentiality, privacy and data protection
3. Jurisdiction, dispute resolution and enforcement
4. Interoperability issues
5. Implications for blockchain governance

1. Recognition of e-signatures / e-documents

- Huge potential to digitalize transactions

… but only if the legal framework provides for the recognition of e-documents & e-signatures

→Still along way to go!

2. Confidentiality, privacy and data protection

Is GDPR an immovable block to blockchain?

Will GDPR compliance kill Blockchain?

Will GDPR block Blockchain?

GDPR

→Applies to all personal data
→Unless data has been anonymised
→Data defined as "any info relating to an identified or identifiable natural person"

→NOT company data
→Extraterritoriality in certain circumstances

Three issues:

1. Identification and obligations of data controllers and processors

2. Anonymisation of personal data

3. Rights of data subjects
   →Right of rectification
   →Right to be forgotten
   →Right of access

Issues to bear in mind to safeguard privacy and confidentiality when designing a blockchain:

- Avoid storing personal data on a blockchain

- Make sure that:

  - Transacting data cannot be identified by an unauthorized 3rd party from the info stored on the blockchain

  - Transaction details are not visible to unauthorized 3rd parties – unless one of the transaction parties has decided otherwise

  - Transaction details cannot be analysed, collated, matched with off-chain meta data to reveal info on the transaction.

3. Jurisdiction, dispute resolution and enforcement

- Jurisdiction and applicable law

→ Blockchains can span several jurisdictions

→Which law applies?

- Accountability/liability issues
    - → Who should be held accountable for breaches of law and regulation?

    - → Private vs public blockchains / DAO
    - → Sectoral specific liability issues
    - → Quid if a smart contract malfunctions?

- Automated transactions and the challenge of enforcement

- Admissibility of blockchain-based evidence

4. Interoperability issues

→ The digital island problem

→ Important to address interoperability issues at a technical, but also at a regulatory/policy level

5. Implications for blockchain governance

a. At the platform level
→ Code is only half the story
→ The other half is governance of the platform (applicable law, dispute resolution, etc.)

b. Need for common intergovernmental frameworks
→ Need for all stakeholders to work together

Thank you for your attention!