

Taguette highlights: legal concern

Data privacy/pseudonymity: Some digital currency schemes based on distributed ledgers have the scope to allow transactions to be made without disclosing personal details or sensitive payment credentials (although this is not an essential feature of distributed ledgers). The attractiveness of pseudonymity and the avoidance of banks and authorities may be partly driven by the desire to circumvent laws and regulation. In this respect, combined with their global reach, digital currency schemes are potentially vulnerable to illicit use. However, there are also legitimate reasons why users may prefer to use anonymous payment methods (eg when the payee is not trusted to protect the information disclosed: this may arise in person-to-person online sales where the parties commonly have no previous experience of interaction).

Document: Bank für Internationalen Zahlungsausgleich and Co **Tags:** legal concern

Maintaining privacy and complying with regulations (the latter which requires disclosure of information) present a dichotomy for a CBDC. This is further complicated by the need for proactive disclosure to prevent fraud.

Document: [bankofcanada.ca-Privacy in CBDC technology.pdf](https://bankofcanada.ca/Privacy-in-CBDC-technology.pdf) **Tags:** legal concern

Deposit based CBDC seems simpler and can protect better against money laundering and other illicit uses (Berentsen and Schär, 2018). It also seems to allow for a high level of security and control of the circulating amount of CBDC base money, without this requiring complex and/or computationally intensive solutions². One might argue that if banknotes would no longer be generally accepted in retail payments (assume that neither consumers nor retailers would want to continue using banknotes), a token CBDC could be nice to have as it could allow to preserve anonymous payments (e.g.

Häring, 2018, strongly advocates the anonymity of payments). However, others will argue that a more proportionate solution would consist in a sufficient protection of electronic payments data.

Document: Bindseil - Tiered CBDC and the financial system.pdf **Tags:** legal concern

B. Prevent illicit payment and store of value with central bank money

This argument, which assumes a discontinuation or at least strong reduction in the role of banknotes, is developed in most detail by e.g. Rogoff (2016). Obviously, this motivation of CBDC would not apply if CBDC circulates as anonymous token money even for high amounts.

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There needs to be a balance and an adequate level of an individual's privacy needs to be ensured. Anonymity per se is not always an asset; therefore, properly designed CBDC

could be unsuitable for the illicit transactions that currently exploit the anonymous nature of cash.

Document: cbdc-in-a-whirlpool-of-discussion.pdf **Tags:** legal concern

ensuring the appropriate degree of privacy while having in mind that a variant of anonymous CBDC would carry reputational risks as such currency could be used for illicit transactions.

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A key decision for society is the degree of anonymity vis-à-vis the central bank, balancing, among other things, concerns relating to money laundering, financing of terrorism and privacy.

Document: Cœuré and Loh - Central bank digital currencies.p **Tags:** legal concern

In addition to more efficient and safer payments and settlement systems, CBDC could come with additional benefits. Given that a CBDC can allow for digital records and traces, it could improve the application of rules aimed at anti-money laundering and countering the financing of terrorism (AML/CFT), and possibly help reduce informal economic activities. These gains may, however, be small in that the formal payment system, especially if there were to be a traceable CBDC, would not necessarily be the main conduit for illicit transactions and informal economic activities.

There are also costs. Commercial banks could lose a valuable interface with their consumers given that in some CBDC designs the “know-your-customer” function could fall to the central bank. Central banks would have to take on a much larger role in this field, with associated costs. Central banks could also be called upon to provide information to tax and other authorities (eg for judicial matters). Moreover, they would have to manage privacy and anonymity issues stemming from the insights obtained from private transactions. More generally, central banks might have to deal with many requests and customers, including some now excluded, for which they are not necessarily well equipped (although some of these challenges may be mitigated or avoided by careful design).

Document: Cœuré and Loh - Central bank digital currencies.p **Tags:** legal concern

Further, the more anonymous the instrument and the more decentralised the transfer mechanism was, the greater the opportunity for cross-border activity, arbitrage and concealed transactions would be, with related reputational risks for the central bank.

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Of course, privacy also has a dark side because it can hide illicit transactions such as those associated with money laundering, terrorist financing and tax evasion.

Document: Contingency Planning for a Central Bank Digital Cu **Tags:** legal concern

For example, if a CBDC were implemented as a public, permissionless blockchain, it could be a vehicle for abusive transactions, facilitating money laundering, terrorist financing, criminal activity and tax evasion. So, a CBDC could be designed to implement a form of privacy rather than cash-like anonymity, allowing it to satisfy anti-money laundering, anti-terrorist financing and other regulations that require disclosure of certain kinds of private information. Further investigation will be needed to determine the arrangement that could achieve this, including technology and governance. However, our initial research indicates that it would be possible to achieve both a high degree of privacy and well-controlled disclosure of information, for example, only with the presentation of a court warrant (Darbha and Arora, forthcoming).

Any acceptable design for a CBDC will need to include controls that ensure adherence to current laws while offering a sufficient level of privacy.

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For example, a CBDC that provides very strong privacy protection could create anti-money laundering and terrorist financing concerns.

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With respect to data protection, the introduction of the EU's General Data Protection Regulation is a major effort to address privacy concerns in a

digitalized economy, while antimoney laundering laws are regularly updated to address misuse of the financial system for illicit activity.

Document: digitalization_mop_ q4_19-screen-4.pdf **Tags:** legal concern

For example, CBDC could be designed in a way that protects users' privacy to a greater extent than some existing payment systems, subject to being fully compliant with all relevant regulations, particularly anti-money laundering requirements (see Chapter 4.6).

Document: Discussion Paper - Central Bank Digital Currency . **Tags:** legal concern

As discussed (Chapter 4.6), any CBDC would need to be compatible with AML obligations, ruling out truly anonymous payments.

Document: Discussion Paper - Central Bank Digital Currency . **Tags:** legal concern

And CBDC itself could also be well-suited for criminal activity if it were anonymous, as is cash.

Document: Engert and Fung - Central Bank Digital Currency Mo **Tags:** legal concern

Regarding other considerations, it seems likely that the benchmark (anonymous) CBDC would facilitate criminal activity unless some additional restrictions were imposed on its use.

Document: Engert and Fung - Central Bank Digital Currency Mo **Tags:** legal concern

This will include discussions on how to combine privacy with adequate safeguards against illicit use.

Document: Lane - Money and Payments in the Digital Age.pdf **Tags:** legal concern

Can CBDC Balance Privacy and Financial Integrity Concerns?

35. In designing money, national authorities already face a trade-off between satisfying legitimate user preferences for privacy and mitigating risks to financial integrity. Cash protects privacy because it is anonymous: no account is necessary, and there is no record of transactions.

However, it also facilitates criminal financial transactions such as money laundering, financing of terrorism, corruption, and tax evasion. Most of the cash in circulation is in the top two largest denominations, often associated with illicit payments or store of value.

Document: Mancini-Griffoli et al. - 2019 - Casting Light on **Tags:** legal concern