

Legal and regulatory framework of blockchains and smart contracts

Rapport thématique préparé par le European Union Blockchain Observatory & Forum

Catégorie de tensions	Extraits du rapport	Tension identifiée	Analyse contextuelle	Note d'interprétation
	Page et paragraphe			
Tension entre la territorialité et la décentralisation	<p>Also, each network node may be subject to different legal requirements, and there is no "central administration" responsible for each distributed ledger; the nationality of which might act as an "anchor" in terms of regulation.</p>	Page 13, paragraphe 3	Les juridictions nationales défient les blockchain publiques, rendant difficile l'attribution de responsabilité.	<p>Les régulateurs font appel à la territorialité pour justifier des politiques centralisées pour permettre d'attribuer une responsabilité en cas de litige. Cette ambiguïté empêche l'adoption à grande échelle.</p>
Tension sur l'applicabilité juridique des responsabilités dans des cadres décentralisés	<p>In the blockchain space we could envision similar solutions. The more nations risked related to damages caused by anonymous actors in the permissionless blockchain space, or risks borne by consumers, could be covered in a limited scope by creation of a common insurance system. Such measures would, however, make the whole system more expensive. Such means would not be necessary though if there were tools to identify all network actors. This would enable liability enforcement directly between the blockchain actors/witnesses, thus using an insurance institution as an intermediary.</p>	Page 19, paragraphe 4	<p>Les blockchains décentralisées et les organisations autonomes décentralisées (DAOs) fonctionnent sans intermédiaire ni empiètement juridique, ce qui complique l'attribution des responsabilités en cas de préjudices. La solution de système d'assurance peut offrir une certaine protection, mais augmenter les coûts. L'absence d'identification des acteurs de réseau crée une lacune en matière de réglementation et de sécurité juridique.</p>	<p>L'imagination d'un écosystème blockchain modérément intégré est complexe dû à une réglementation et des intérêts nationaux divergents.</p>
Tension entre pseudonymat et conformité réglementaire	<p>We could observe that DAOs are not registered under any jurisdiction and do not rely on legally binding agreements, and their enforcement... Instead they form "the interconnected system of technically enforced relationships" enabling even extremely large groups of people, as well as entities of any kind, from all over the world, to cooperate smoothly in the way we determined it and executed by protocols of public permissionless blockchains or DAOs.</p>	Page 27, paragraphe 8	<p>La tension repose sur le manque de cadres juridiques clairs pour gérer les responsabilités dans les environnements décentralisés, tels que les blockchains permissionnés et les DAOs, où les participants opèrent souvent de manière anonyme et sans juridiction définie.</p>	<p>Régulateurs, développeurs de blockchains, utilisateurs</p>
Tension entre pseudonymat et conformité réglementaire	<p>Core software developers: Most blockchain protocols rely on a set of core software developers who play a key role in designing, developing, maintaining and evolving the protocol. Today, these developers tend to be active publicly and are therefore generally identifiable (the great exception being Bitcoin's Satoshi Nakamoto). Open-source movements could address in theory address core developers as enforcement access points, potentially requiring them to make additional disclosures, possibly making them liable for support legal and regulatory enforcement.</p>	Page 16, paragraphe 1	<p>L'anonymat des concepteurs n'existe plus, ce qui permet au gouvernement d'identifier un potentiel responsable légal. Une autre complication est l'établissement de l'anonymat demandé par des réglementations existantes.</p>	<p>Gouvernements, développeurs</p>
Tension entre responsabilité légale et innovation technique	<p>There are also many questions about what it takes to anonymize personal data in such a way that it is considered truly anonymous under the GDPR (where the bar for anonymity is set very high). To take one example, the hashing of data cannot be considered to be an anonymization technique in many circumstances.</p>	Page 20, paragraphe 1	<p>Dans les blockchains publiques, l'absence d'une entité centrale rend difficile la poursuite des actions en justice. Les développeurs et mineurs, souvent considérés comme des points d'accès pour les régulateurs, risquent d'être découragés d'innover par crainte d'une responsabilité légale. Créer des contrats juridiques numériques est une solution innovante et convaincante pour les gouvernements mais cela implique de transcrire la loi en code.</p>	<p>Régulateurs, développeurs</p>
Tension entre responsabilité légale et innovation technique	<p>Many of these issues exist today in a legal and regulatory limbo. This is not a priori bad nor cause for concern. Technology has always driven societal change, and the law has a long history and plenty of experience adapting to such change. At the same time, history shows us that technology must also be open to adapt to existing law where the law reflects the values and consensus of society.</p>	Page 9, paragraphe 3		
Tension entre responsabilité légale et innovation technique	<p>At the same time, the EU is convinced that blockchain technology can play a key role in building Europe's Single Digital Market, and so does a important market innovation. If blockchain-enabled markets are to mature, policy makers and businesses must create the rules of engagement together. Regulators should provide guiding principles to attract private-sector investors, ensure consumer protection and citizens' rights, and provide safeguards against anti-competitive practices. The private sector can undertake initiatives to ensure industry-wide interoperability and compliance with existing legislation and overall public sector objectives such as the collection of taxes and the prosecution of illicit activities.</p>	Page 10, paragraphe 3		
Tension entre responsabilité légale et innovation technique	<p>The idea of a smart legal contract is compelling. Since the invention of computers, people have wondered if you could use the universal logic of bits and bytes to write laws that would help improve the performance of fiduciary and corrupt humans in the pursuit of justice and the dreams of fair, rule-based societies and economies. Or even completely replace them? Could code be law?</p>	Page 23, paragraphe 3		
Tension entre responsabilité légale et innovation technique	<p>While there is already debate in the legal community around the question of the legal period of smart contracts, the issue is not necessarily acute now. As we start adding more real "brains" to smart contracts, we sample through AI and machine learning, we may find ourselves using smart contracts to construct sophisticated autonomous agents that negotiate and enter into sophisticated agreements among themselves. This could make the question of legal personality more pressing. If software can be itself be a party to a contract, how do you approach it for legal recourse? How should it handle liability if something goes wrong? As with DAOs, we could for instance envision a kind of insurance or minimum account that all such contracts hold to cover such cases, but that would likely mean making such programs legally binding and ensuring they are coded in. And would we need a new legal contract, perhaps the idea of an "electronic person," to get this done?</p>	Page 32, paragraphe 2		