

VIRTUAL ASSET REGULATIONS IN SMALL ISLAND JURISDICTIONS

The Case of Malta

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Why does virtual asset regulation matter for small island jurisdictions?

What is the cost of staying in business?



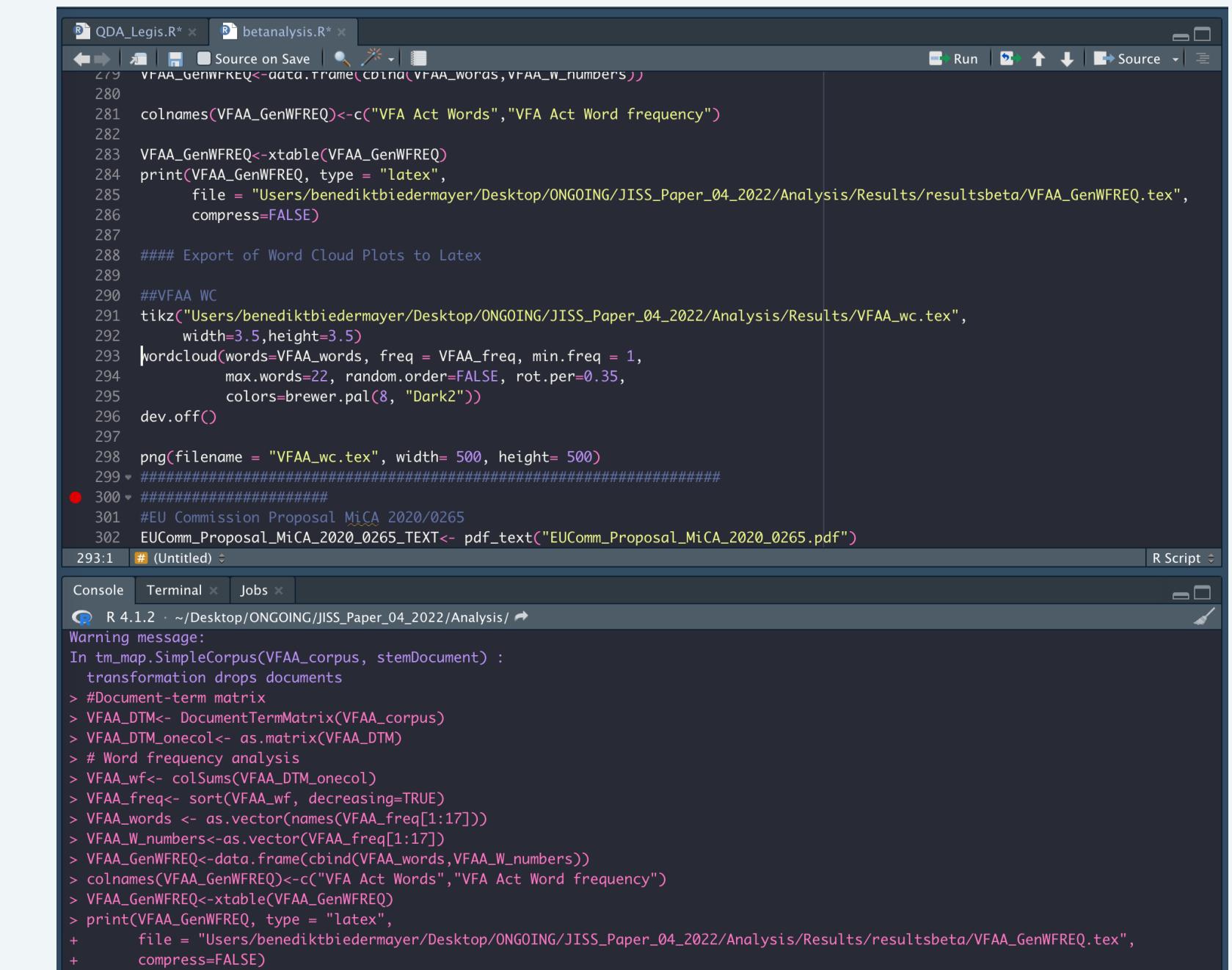
Islands and Small States are over-proportionally subject to a discourse of vulnerability [4].

A Bitcoin hedge fund located in **Malta** prohibits Untied States persons or institutions from accessing or investing in the fund, noting that the fund **wishes to avoid** "the FATCA reporting implications for foreign financial institutions." [5]

Tax havens, so it seems, are gradually transforming into **Blockchain Havens** [and] are already being illicitly used by some blockchain entrepreneurs. [6]

Methodology

- ▶ a mixed-method case study was designed to analyse linguistic data
- ▶ six pieces of legislation formed two corpora
 - ▶ The first contained Maltese data
 - ▶ In the second, European Union directives were aggregated
- ▶ text mining was performed on each legal document
- ▶ theoretically grounded keywords were then used to query the directives & acts
- ▶ prominent words and relevant keywords were aggregated to codes
- ▶ based on the occurrences of keywords, a qualitative data analysis was conducted



The screenshot shows an RStudio interface with two files open: 'QDA_Legis.R' and 'betanalysis.R'. The 'betanalysis.R' file contains R code for text mining and word cloud generation. The code includes:

```
279 VFAA_genWFREQ<-data.frame(cbind(VFAA_Words,VFAA_W_numbers))
280 colnames(VFAA_GenWFREQ)<-c("VFA Act Words","VFA Act Word frequency")
281 VFAA_GenWFREQ<-xtable(VFAA_GenWFREQ)
282 print(VFAA_GenWFREQ, type = "latex",
283       file = "Users/benediktbiedermann/Desktop/ONGOING/JISS_Paper_04_2022/Analysis/Results/resultsbeta/VFAA_GenWFREQ.tex",
284       compress=FALSE)
285 #### Export of Word Cloud Plots to Latex
286 ##VFAA_wc
287 tikz("Users/benediktbiedermann/Desktop/ONGOING/JISS_Paper_04_2022/Analysis/Results/VFAA_wc.tex",
288       width=3.5,height=3.5)
289 wordcloud(words=VFAA_Words, freq = VFAA_freq, min.freq = 1,
290           max.words=22, random.order=FALSE, rot.per=0.35,
291           colors=brewer.pal(8, "Dark2"))
292 dev.off()
293 png(filename = "VFAA_wc.tex", width= 500, height= 500)
294 #####
295 #EU Commission Proposal MiCA 2020/0265
296 EUComm_Proposal_MiCA_2020_0265_TEXT<- pdf_text("EUComm_Proposal_MiCA_2020_0265.pdf")
297
```

The 'Console' tab shows the R session output:

```
R 4.1.2 : ~/Desktop/ONGOING/JISS_Paper_04_2022/Analysis/
Warning message:
In tm_map.SimpleCorpus(VFAA_corpus, stemDocument) :
  transformation drops documents
> #Document-term matrix
> VFAA_DTM<- DocumentTermMatrix(VFAA_corpus)
> VFAA_DTM_onecol<- as.matrix(VFAA_DTM)
> # Word frequency analysis
> VFAA_wf<- colSums(VFAA_DTM_onecol)
> VFAA_freq<- sort(VFAA_wf, decreasing=TRUE)
> VFAA_Words <- as.vector(names(VFAA_freq[1:17]))
> VFAA_W_numbers<-as.vector(VFAA_freq[1:17])
> VFAA_GenWFREQ<-data.frame(cbind(VFAA_Words,VFAA_W_numbers))
> colnames(VFAA_GenWFREQ)<-c("VFA Act Words","VFA Act Word frequency")
> VFAA_GenWFREQ<-xtable(VFAA_GenWFREQ)
> print(VFAA_GenWFREQ, type = "latex",
+       file = "Users/benediktbiedermann/Desktop/ONGOING/JISS_Paper_04_2022/Analysis/Results/resultsbeta/VFAA_GenWFREQ.tex",
+       compress=FALSE)
```

Results

- ▶ 458 codings with a total length of 450,838 characters were retrieved from the documents
- ▶ the proposal for a directive on Markets in Crypto Assets (MiCA) dominated the EU corpus
- ▶ virtual asset regulation in Malta overlaps with provisions of the EU
- ▶ broader EU definitions lack the competitiveness of specific licensing clauses in Malta
- ▶ similar positioning of the EBA in the EU to the MFSA in Malta
- ▶ Malta supersedes EU provisions by following FATF recommendations [7]

Rank	Words EU	Word Frequency EU	Words VFAA	Word Frequency VFAA
1	articl(e)	4889	person	173
2	member	3945	asset	129
3	state	3843	subject	129
4	shall	3508	client	102
5	direct	3298	shall	101
6	inform	2399	act	68
7	european	2357	provid(e)	56
8	cryptoasset	2101	regul(ate)	52
9	person	1980	servic(e)	49
10	refer	1969	financi(al)	48
11	issuer	1960	term	43
12	legal	1845	money	39
13	council	1825	author(ity)	38
14	author(ity)	1743	control	37
15	money	1725	licenc(e)	36
16	ensur(e)	1712	virtual	34
17	token	1682	held	33

Results - Malta

- ▶ in 2018 Malta enacts the Virtual Financial Assets Act (VFAA)
- ▶ it charges the Malta Financial Services Authority with enforcing the act
- ▶ Malta complies with European Union (EU) anti-money laundering directives
- ▶ Malta follows a **risk-based approach** [7]
- ▶ Malta requires auditability & registration of assets and crypto-corporations
- ▶ the VFAA enables Malta to generate revenue for licensing crypto-firms

A word cloud diagram composed of various legal and financial terms related to the Virtual Financial Assets Act (VFAA). The words are arranged in a cluster, with larger words indicating higher frequency or importance. The terms include: person, act, subject, virtual, shall, asset, service, client, held, control, author, money, financial, term, provided, and author.

Results - MiCA

- ▶ the European Commission mirrors Malta's licensing approach
 - ▶ MiCA follows Maltese provisions and the practice to blacklist non-compliant service providers
 - ▶ the EC stays behind Malta in transposing FATF recommendations into law
 - ▶ MiCA confirms the controversial whitepaper requirement [8] of the Maltese VFAA
 - ▶ in line with the VFAA, MiCA only references applicable anti-money laundering legislations

Relevance

- ▶ MiCA is going into the third round of trilogues today June 14, 2022 [9]
- ▶ MiCA was never addressed as safeguarding consumers and controlling VASPs
- ▶ the research confirmed Malta's competitiveness in a European market of crypto-assets
- ▶ Malta is prepared for a crypto-asset industry **beyond proof-of-work**
- ▶ the study proves the structure of Maltese laws favourable for responding to an ever-changing discourse [10]
- ▶ the grey-listing of Malta by the FATF does not mean an end to the Maltese business in licences for crypto-asset service providers

References

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- [2] Cointelegraph (2018). *Blockchain Island | Cointelegraph Documentary*. URL: <https://www.youtube.com/watch?v=epK0FDL...-4>.
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- [4] Baldacchino, G. (2018). *Seizing history: Development and non-climate change in small island developing states*. *International Journal of Climate Change Strategies and Management*, 10(2), 217–228. <https://doi.org/10.1108/IJCCSM-02-2017-0037>
- [5] Gruber, S. (2013). *Trust, identity and disclosure: Are bitcoin exchanges the next virtual havens for money laundering and tax evasion*. *Quinnipiac Law Review*, 32(1), 135–ii.
- [6] Marian, O. (2019). *Blockchain havens and the need for their internationally-coordinated regulation*. *Journal of Law & Technology*, 20(1), 529–568.
- [7] FATF. (2019). *Guidance for a risk based approach to virtual assets and virtual asset providers*. Retrieved June 19, 2021, from <https://www.fatf-gafi.org/media/fatf/documents/recommendations/RBA-VAVASPs.pdf>
- [8] Chiu, I. H.-Y. (2021). *Hegemony, self-regulation or responsive regulation: International regulation competition in crypto-finance*. *Journal of International Economic Law*, 24(2), 3–28.
- [9] INATBA (2022). *Latest Policy Developments for DLT*. Newsletter No. 29: 13/05/2022–30/05/2022.
- [10] European Parliament and European Council (2022). *Regulation on information accompanying transfers of funds and certain crypto-assets (recast)*. URL: https://eur-lex.europa.eu/resource.html?uri=cellar:08cf467e-ead4-11eb-93a8-01aa75ed71a1.0001.02/DOC_1&format=PDF.



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