



Report on the debate regarding the Swiss Parliamentary Motion 21.4068 on Cryptocurrency & Cybercrime by Mr. Roger Nordmann

Published by CVA's Regulatory Working Group
2021.12.01.



www.cryptovalley.swiss



@thecryptovalley

1 / Context

Upon invitation by the Chair of the Regulatory Working Group (Mr. Gabriel Jaccard), the President of the socialist group of the Swiss Federal Assembly ([Mr. Roger Nordmann](#)) presented to the panel of legal experts of the CVA his [Motion 21.4068](#), which he submitted on 22 September 2021 to the Swiss Parliament.

The Motion denounces the worldwide increase in cyber criminality involving cryptocurrencies as means and/or proceeds. Among the proliferating criminal activities are mentioned cases of ransomware, scams, illegal mining, etc.

In order to solve the problem, Mr. Nordmann proposes to impose obligations at the roots of systems allowing transfers of cryptocurrencies, namely blockchains. Concretely, the motion proposes four things: First, to require the identification of the beneficial owner of all Swiss-based cryptocurrencies which, failing so, would be deemed non-compliant (1), to prohibit the use of non-compliant cryptocurrencies under Swiss law (2), to prohibit Swiss entities to transact with non-compliant cryptocurrencies (3), to promote the identification of the beneficial owner as a standard at international level (4).

2 / Arguments presented by Mr Nordmann

Cybercriminality is on the rise and Switzerland cannot allow the proceeds of criminal activities to be channeled unhindered. In the defense of common and public interests, the anonymity of cryptocurrency transfers should be limited. Indeed, public authorities need to

acquire the ability to identify the beneficiary owner of a public address or a non-custodial wallet involved in transactions related to illegal activities.

The possibility to request such an identity from a central authority gathering such information would solve the current problem of cyber criminality, as the use of cryptocurrencies would no longer be a safe haven, free from KYC, AML and similar requirements.

Accordingly, the necessary identification of the beneficial owner would need to be incorporated as a technical feature on the blockchain system which would no longer allow the creation of non-identified addresses. To be compliant under Swiss Law and be used by Swiss entities including banks and financial intermediaries, any existing cryptocurrency (e.g. BTC, ETH, Monero, Dash, etc.) would need to adapt.

This requirement is necessary because it is unacceptable to let a payment system thrive although it ensures compliance with no laws and accordingly, enables criminals. Such a situation results in an open invitation notably to launder money or conduct fiscal fraud at the detriment of the interest of the State. In essence, the mere “rule of code” pruned by some people cannot suffice in our society, as exclusively the rule of law and morals can adequately structure our social life, should it be translated into code or not.

3 / Arguments presented by the CVA Regulatory Working Group

In the view of the majority of the Regulatory Working Group, this Motion can be objected to based on the following key points: efficiency of the solution (1), proportionality (2), feasibility (3), and imprecision or misunderstanding (4).

First, the proposed solution is inefficient. The mere identification of people using crypto wallets will not solve cyber criminality at large, as many criminals do further use other payment systems (e.g. google gift cards, cash). In addition, the provided identity can relatively easily be hidden since the subsequent transfer of an identified public key or non-custodial wallet to a third party can occur verbally. Hence, the solution is illusory as criminals might still be able to hide behind third-parties. Moreover, the clear identification of individuals brings along new and complicated issues in terms of data protection regulations.

Second, this solution is not proportional. The group acknowledges the necessity to fight criminal activities. This being said, the existing reports (e.g. MELANI) do not seem to indicate an exponential use of cryptocurrencies in that domain. This is understandable if we consider the fact that the very functioning of blockchains leaves no space for pure anonymity (publicity of the record). It is rather qualified as generating pseudonymity. It is even more so since most members of the crypto industry are subject to regulations resulting in an user identification requirement, in particular when they fall under FATF/AML regulations (e.g. Travel rules). Also, the use of analytic tools for blockchain transactions (e.g. Chainanalysis or Merkle Science) has become mainstream, allows clustering of transactions, and ultimately, closer identification. Such analysis along with the available information gathered by entities subject to AML requirements, both seem much more proportionate and efficient tools to tackle the problem of criminal activities. Contrariwise, we consider the use of a central mandatory identification system on the blockchain as prone to misuse, especially by totalitarian States, or more simply, by hackers fishing for personal data. Finally, any transaction with cryptocurrencies leaves a stain that makes it relatively non-fungible since its laundering would require a complicit agent acting publicly. Hence, cryptocurrencies are more compliant than cash in this regard.

Thirdly, the creation of an identification system for all blockchains and its organisation in a multinational context seems simply not doable. Besides the fact that the blockchain communities around the world would likely be opposed to it, the blockchain technology is precisely meant to avoid a unique central authority. It has been proven resilient in this regard since no State, whatever its strengths, has the power to take down systems like

BTC or ETH. Further, the law being mostly limited to the reach of the power of a given State, a common view and a mandatory universal regulation on this matter would be required, even though it is very unlikely to be reached; especially when other much more important topics like climate change have failed to do so.

Lastly, the Motion is imprecise and seems misled. For instance, the notion of “swiss-based cryptocurrency” or the determination of which cryptocurrencies would be compliant is unclear. In addition, it does not take into account the current state of the law, as art.73d al.3 let.b FMIA for instance, which already discards the use of so-called privacy coins under Swiss law.

4 / Conclusion

The role of the Regulatory Work Group of the CVA is also to initiate dialogue with authorities, be it local or international, about blockchain technologies as well as to defend the crypto community interests.

Even though we believe the motion fails to provide a solution to the problem it wishes to solve, we feel confident in the proof of concept of our Swiss democracy by the fact that civil discussions take place and that Mr. Nordmann took the time to consult the industry via our Group.

Gabriel Jaccard, Founder at Arbitri, Chair of the RWG of the CVA.

With special thanks to Anne-Grace Kleczewski.

+++

**Building the World's Leading
Blockchain Ecosystem**
www.cryptovalley.swiss

