

The Implications of Decentralized Network Governance for Data Law

Decentralized Network Governance

- Blockchains as a form of institutional rather than technical innovation.
- Decentralize control over data across (many) different parties, that may or may not know/trust another (and be able to coordinate) and can be based in different jurisdictions.
- Legal implications, incl. in EU data law.
- Focus on two today: (i) the figure of the data controller under the GDPR; (ii) Data Governance Act.

Control over Data in EU Data Protection Law

- The data controller is the central figure in data protection law as the entity liable to ensure accountability / compliance with the GDPR.
- There can be a single controller or various different joint controllers in relation to a single data processing operation.
- The GDPR defines the data controller as the entity that controls the means (the 'how') and the purposes (the 'why') of personal data processing.

The Gradual Broadening of Control

Article 29 Working Party (2010): the determination of the purposes always triggers qualification as a data controller.

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- need to ensure broad interpretation of control as a means to ensure the complete and effective protection of data subjects.
- agreeing to other's determination of the means sufficient to be a data controller where one pursues a purpose.

Jehovan Witnesses

- *'a natural or legal person who exerts influence over the processing of personal data, for his own purposes, and who participates, as a result, in the determination of the purposes and means of that processing, may be regarded as a controller'.*

Implications for Blockchain-Based Decentralised Networks

- Applications
- Layer 1: public/permissionless private/permissioned etc.
 - Software developers
 - Miners / validators
 - Nodes
 - Users (even in relation to their own personal data?)

Two core concerns: (1) lack of legal certainty; (2) actors with no technical ability to exercise GDPR obligations may be legally required to do so.

General problem, upcoming (?) guidance from the EDPB.

The Data Governance Act

- Proposed EU secondary legislation that would e.g. create a notification framework for providers of data sharing services (which may use blockchain).
- Generally tech-agnostic (i.e. payment for data can take any form).
- But: requires a centralized legal entity that ensures legal compliance.

Concluding Thoughts

- Decentralised data networks can be an beneficial development for the data economy.
- The law currently imposes limits on such decentralisation.
- Need for further clarification, particular in relation to the concept of the data controller.
- Data law highlights just some of the general legal challenges of organisational innovation.