Federal Council adopts dispatch to improve legal framework for blockchain and DLT

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On 27 November 2019 the Federal Council adopted a dispatch message to improve the legal framework governing distributed ledger technologies (DLT) in Switzerland. The Federal Council's objective is to increase legal certainty, remove obstacles to DLT-based applications and limit the risk of abuse. Parliament will examine the dispatch message in early 2020. The government's press release is available in English, German, French and Italian.

DLT and blockchain

DLT allows for shared data management and in particular shared accounting among participants who do not know or trust each other. This technology allows for the direct electronic transfer of securities between participants in a network, without the need for a central authority to manage the accounts. Blockchain is one of the technologies that can be used to store data in such a system.

The fintech and blockchain ecosystem in Switzerland has developed strongly in recent years, particularly in the financial sector. This dynamism has allowed Switzerland to become one of the global leaders in this area. As early as December 2018, the Federal Council published a report on the legal framework governing blockchain and DLT in the financial sector. The goal of this report was to further strengthen the current legal framework so that Switzerland could maintain or even increase its lead in this field. The Swiss government also wanted to fight abuse and preserve the country's integrity and good reputation as an economic and financial hub.

Points for improvement

In the context of the dispatch message, the Federal Council has listed various points for improvement, including:

- in civil law, an increase of legal certainty when transferring rights by means of electronic registers to provide protection against tampering, as well as clarifications within the Federal Intermediated Securities Act;
- in insolvency law, clarifications relating to claims of cryptoactives and access to data without asset value;
- in financial markets legislation, a flexible authorisation category for blockchain-based financial market infrastructures; and
- in banking legislation, harmonising the provisions of bank insolvency laws with the amendments made to the general insolvency law.

These proposals were submitted to actors in the field who approved the government's measures in principle. As a result, the Federal Council adopted a revised message on 27 November 2019, which it will submit to Parliament in early 2020.

Comment

The advent of digitalisation is one of the main drivers of innovation of ongoing structural changes and, in the longer term, of the competitiveness of the Swiss economy. The increasing use of DLT and blockchain technology is a significant and promising development in this digital shift and the review of the current legal framework confirms that the Swiss government is prioritising this area and pro-actively looking to offer the best possible legal landscape for DLT and related technologies. Business and industry actors are advised to follow developments in this area, especially how the draft dispatch message will be implemented by Parliament.

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