

Digital finance

The Federal Council sets a course

Par Yannick Caballero Cuevas le 18 February 2022

In its [report on digital finance](#), the Federal Council defines the fields of action in the domain for the coming years. It notes that the digital transformation of the financial sector represents a strong potential for growth for Switzerland as a business centre. This transformation can lead to an improvement in the efficiency of the financial markets, increased transparency, better matching of customer services and a reduction in costs. However, the Federal Council notes that the use of new technologies can also increase the vulnerability of financial players to cyberattacks (see [Célian Hirsch – Thesis in progress](#)), encourage market manipulation (see [Yannick Caballero Cuevas – Thesis in progress](#)) or make it difficult to combat money laundering (see [Jeremy Bacharach – Thesis in progress](#)).

This report covers twelve areas of digital finance, including the emergence of new players, open finance, cybersecurity, artificial intelligence and distributed ledger technology. These topics are also covered in the [CAS Digital Finance Law](#) organised by the Banking and Finance Law Centre.

Among the points to remember, the principle of technological neutrality and the risk-based approach, namely *same business, same risks, same rules*, continue to be the leitmotifs in digital finance. The Federal Council then notes the emergence and proliferation of new players from new technologies. However, these FinTechs and BigTechs are not exempt from regulatory requirements. The report leaves the question of decentralised finance open.

In terms of open finance, the Federal Council wishes to encourage the opening up of interfaces, without making it compulsory, as in the European [Directive on payment services](#). This approach is therefore based on the active participation of traditional financial institutions. The latter will play a decisive role in the standardisation and opening up of interfaces. The Federal Council is working on the basis that financial institutions will be able to select the projects that best meet the needs of the sector and its customers. However, it reserves the right to regulate if developments in the open finance market are too slow or superficial.

With regard to the use of data, the Federal Council wishes to promote new business models. However, it reiterates that their use must be in accordance with the [law on data protection](#) and [circular 08/21 of FINMA on operational risks](#) (currently under review). Measures to promote digital self-determination will also have to be adopted, so that users have greater control over their data. The report states that a review of projects aimed at encouraging data exchange in the financial centre will be conducted. This will make it possible, in particular, to improve the

fight against money laundering.

This increasing use of data is not without risk, particularly in terms of data leaks. In this regard, the Federal Council reiterates that a high level of resilience to cyberattacks is necessary. This is also an important aspect when sensitive data is processed by several service providers. In addition, the Federal Department of Finance is working on the introduction of a general obligation for banks and financial market infrastructures to report cyberattacks (see [the report of 17 January 2022](#)).

Despite these risks, the increased use of data is enabling the rise of artificial intelligence. This technology has a strong disruptive potential that remains abstract at present. In particular, it will make it possible to improve risk management (e.g. transaction filtering) and to offer highly personalised services to customers. However, the adoption of this technology raises questions about the origin and use of data as well as the transparency of decision-making processes based on artificial intelligence. The use of *big data* could also lead to certain abuses. Market manipulation is one such abuse. The Federal Council therefore proposes to carry out an analysis of the legal framework governing the applications of artificial intelligence for the financial sector.

Finally, with regard to distributed ledger technology, the Federal Council welcomes the progress made by the DLT Act. However, it notes that it does not meet the needs of crypto funds. Thus, an adaptation of the [Act on Collective Investments](#) is necessary in order to explore the untapped potential of this technology in the conservation and administration of virtual assets, as well as the possibility of launching new innovative collective investment products.

In conclusion, this report takes stock of the current situation of digital finance in Switzerland and the regulatory issues it raises. It also presents the main lines of the Federal Council's field of action for the coming years. That being said, in our opinion, the Federal Council is still struggling to grasp the challenges of decentralised finance, both in terms of investor protection and its disruptive potential for the banking and financial sector.

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