

Berlin, 23 October 2018

Honorable Members of the Bundestag

Deutscher Bundestag

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This call to action is inspired by the ruling no. (4) 161 Ss 28/18 (35/18) of the Berlin Higher Regional Court from 25.09.2018¹ where it was held that Bitcoin is not a financial instrument. This ruling comes in spite of a qualification enforced over the last years by the German Financial Supervisory Authority (Bafin) which stated that Bitcoin should be considered as a “calculative unit” (Rechnungseinheit). In its ruling, the Berlin Higher Regional Court stated that by extending existing law beyond the intended purpose, or even attempting to create new law, Bafin exceeded its authority. The ruling means that exchanges for cryptocurrencies would not be subject to any existing regulation, thus they would suddenly no longer be subject to regulation.

Honorable Members of the Bundestag,

No week passes by without headlines in German press drawing comparisons between Berlin and Silicon Valley, and a major part of this conversation is focused on the inaccessibility of capital and funding, which is crucial for innovative companies to grow. Despite being aware of this issue for at least 20 years now, Germany still has not produced any “technological unicorn” the size of Apple, Netflix, or Twitter. We already missed the opportunities presented with the internet revolution.

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<https://www.online-und-recht.de/urteile/Handel-mit-Bitcoin-ist-nicht-strafbar-da-Bitcoin-kein-Finanzinstrument-im-Sinne-des-KWG-Kammergericht-Berlin-20180925/>

In order for innovation to thrive two things are needed: funding and regulatory certainty. Both of these elements are interlinked with one another. Where there is no regulatory guidance there will be no innovation. Only 1 in 10 startups is statistically successful, and taking that into consideration is an inseparable part of Venture Capital investments. Funding innovation is always risky, but if it additionally carries regulatory uncertainty, that risk is increased dramatically, beyond the threshold of what is bearable. As a result, investors do not invest, thus entrepreneurs do not innovate.

Over the last years Germany has been presented with a unique opportunity to take the lead on developing Distributed Ledger Technology (DLT). Our ecosystem of Blockchain companies across the country stands at the frontier of this thriving innovation, with such prominent examples as Ethereum, Lisk, Web3 Foundation or Polkadot.

Unfortunately, the current regulatory environment surrounding DLT in Germany is uncertain, and the ruling of Berlin Higher Regional Court² is a proof of that. If institutional watchdogs such as the German Financial Supervisory Authority (Bafin) do not have clear guidance from political bodies in place, they will not be able to execute their responsibilities. **And if watchdogs do not know how to act, how can we expect that from entrepreneurs and investors?**

It is a new situation for startups to deal with Bafin, and it is a new situation for Bafin to deal with startups. For such collaboration to work both sides have to adjust and find common ground. To delay, confuse, or refuse the dialogue to startups, means to stop them from growing.

Regulatory certainty needs to be assured now, otherwise we endanger the thriving Blockchain ecosystem in Germany. It is unacceptable that young entrepreneurs face criminal charges because watchdog institution have no clear regulation at hand. We can't allow that valuable Blockchain companies keep on becoming a collateral damage of bad actors in the scene.

Dear Members of the Bundestag, we ask you to put DLT-specific guidance in place. German entrepreneurs and investors do not want to miss the opportunity to become leaders in the next technological wave. Many leading economies have already done that, with France³ serving as a great example.

² Handelsblatt, 16.10.2018, "Bitcoin laut OLG-Urteil keine Rechnungseinheit – Bafin überschritt Kompetenzen", <http://bit.ly/2CwR9AI>

³ Cointelegraph, 04.05.2018, "French Crypto Regulation à la carte: Context, News, Perspectives", <http://bit.ly/2CyZjsA>

We are aware of the initiatives and activities pursued by Bundestag members. Recent consultations lead by the Minister of State for Digitization Dorothee Bär⁴ and a working group initiated by the Senator Thomas Heilmann are a step towards the right direction.

Today, we would like to ask you for your support in form of three steps:

1. Please, those of you who recognize Blockchain's potential, **step forward and express your views** in form of a newspaper column, Twitter post or interview with widely recognized titles such as Handelsblatt. Although there is political will among many, it remains unheard. It is a political decision whether Germany wants to see flying cars, electric scooters and Blockchain, too. And if the political will is not expressed, it can't have an impact
2. Please, start preparing an **official political statement coming from the Bundestag**, that will give guidance to watchdogs, founders and investors on how to interpret existing regulation. We know it is unrealistic to ask the Bundestag to enact new laws in months time, and this is exactly why we ask you for guidance first.
3. Intensify the efforts for preparing new regulations specific to Blockchain. Let's not stay behind prominent neighbours like France.

Remaining silent means leaving a unique opportunity to chance. Confused institutions and civil servants despite their best intentions have been left without the leadership they need. The leadership, that must come from you.

Sincerely,

Zoe Adamovicz, CEO at Neufund

Frank Thelen, Startup Founder and Tech Investor at Freigeist VC

Zoe Adamovicz – CEO and co-founder at Neufund. Being a Blockchain regulatory & security tokens experts Zoe actively advises to German and Maltese governments on DLT frameworks. Former Co-founder and CEO at Xyologic Mobile Analysis GmbH (exited to Nasdaq-listed venture Digital Turbine Inc.), Head of EMEA and Executive VP of Group Technology Development at Digital Turbine. Occasional angel investor. Mentor at Gaza Sky Geeks. Named one of the top 50 women in tech by Forbes in 2018.

⁴ Dorothee Bär Twitter post, 02.08.2018, <http://bit.ly/2ytdWup>

Frank Thelen – European serial founder, tech investor and TV personality. As the Founder & CEO of Venture capitalist Freigeist Capital, he focuses on seed investments like Neufund, Lilium Aviation, Wunderlist, myTaxi, kaufDA and Little Lunch.