

# BITCOIN & BLOCKCHAIN – ON THE WAY OUT OF THE BERMUDA TRIANGLE

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# DISRUPTIVE FACTORS FOR ENTREPRENEURS AND USERS

- #1: unclear legal character – **no definition**
- #2: unexplained legal protection for players
- #3: missing interdisciplinary research
- #4: no regulatory model

# UNCLEAR LEGAL CHARACTER

- Are cryptocurrencies really currencies?
- functional approach - Yes
- source-related approach - No
- structural characteristics
- no official (private) origin

# WHAT ARE BITCOIN & CO?

- NO MONEY, NO E-MONEY, NO OFFICIAL MEANS OF PAYMENT
- no governmental emission
- produced by “mining”
- production process
- digital asset – digital product



# FIRST INSTITUTIONAL DEFINING ATTEMPTS

- Definition ECJ:

“**virtual currency** Bitcoin has no purpose other than to be a **means of payment**” and “is accepted by specific economic operators”

- not useful – falsifying

## DEFINITION 5<sup>TH</sup> MONEY LAUNDERING DIRECTIVE (PROPOSAL):

“a **digital representation** of value that is neither issued by a **central bank** or a **public authority**, nor necessarily attached to a **fiat currency**, but is accepted by natural or legal persons as a **means of payment** and can be transferred, stored or **traded** electronically”

- + private origin, tradeability
- concept as a means of payment not appropriate

## CHANGES BY THE EU PARLIAMENT

- not fixed yet!
- “virtual currencies' means a digital representation of value that is neither issued by a central bank or a public authority, nor attached to a *legally established* currency, *which does not possess the legal status of currency or money*, but is accepted by natural or legal persons as a means of *exchange or for other purposes*, and can be transferred, stored or traded electronically”

++ no currency in a legal sense, no money, no means of payment  
→ means of exchange

# LEGAL PROTECTION I

- private asset – private autonomy
- EU-wide protection by the **fundamental right to property**
- restrictions must be appropriate, proportionate and the most moderate means
- protection of legitimate expectation (high investments)!



## LEGAL PROTECTION II

- **notion of goods** fulfilled (no currency or money, but means of exchange)
- **free movement of goods**
- only restrictions if there are «**mandatory requirements**»  
→ e.g. potential restrictions of freedom of capital (f.e. Cyprus '12, Greece '15) not applicable

# COORDINATED RESEARCH

- research platform
- interdisciplinary research (law, IT, finance, companies)
- development of legal framework
- elaboration of regulatory approaches
- bottom-up-approach/best practices



# SMARTBLOCKCHAIN BUNDLES THE VOICES OF THE AUSTRIAN BLOCKCHAIN COMMUNITY

## Experts support the smartblockchain initiative



### These renowned people contributed to the agenda:

Angela Berger (Technologieplattform Smart Grids Austria), Martin Brandstötter (Zielwerk), Julia de Jong (Wirtschaftsuniversität Wien, Global Tax Policy Centre), Gerhard Dinhof (IBM, FH Technikum Wien), Tina Ehrke-Rabel (Universität Graz, UCL Centre for Blockchain Technologies, Forschungsgruppe "Kryptostaat"), Natalie Enzinger (Enzinger Steuerberatung), Stefan Fölser (eWINGZ), Walter Helmberger (hdm helmberger), Ewald Hesse (Grid Singularity), Peter Hießberger (BMWFW), Elisabeth Hödl (Ubifacts, UCL Centre for Blockchain Technologies, Forschungsgruppe "Kryptostaat"), Magdalena Isbrandt (Bit-Trust store GmbH), Aljosha Judmayer (SBA Research), Jonas Jünger (EY), Harald Mahrer (Bundesminister für Wissenschaft, Forschung und Wirtschaft), Jeffrey Owens (Wirtschaftsuniversität Wien, Global Tax Policy Centre), Andreas Petersson (Minebox), Ralph Pichler (RIAT), Christian Piska (Universität Wien), Manuel Polzhofer (Fraunhofer FOKU), Marcus Presich (RBI), Markus Sabadello (Danube Tech), Luisa Scarella (Universität Graz, UCL Centre for Blockchain Technologies, Forschungsgruppe "Kryptostaat"), Sofie Schock (Universität Wien), Michael Schramel (VERBUND AG), Erwin Smole (Grid Singularity), Lukas Spitaler (Microsoft), Nicholas Stifter (SBA Research), Matthias Tarasiewicz (RIAT), Max Tertinegg (Coinfinity), Shermin Voshmgir (Blockchainhub Berlin), Oliver Völkel (Stadler Völkel Rechtsanwälte), Günter Waldhauser (MEI El DI), Rainer Will (Handelsverband), Thomas Zeinzinger (Blockchainhub Graz, lab10 collective) & Markus Zimmermann (RIAT)

## Bundled Expertise in:

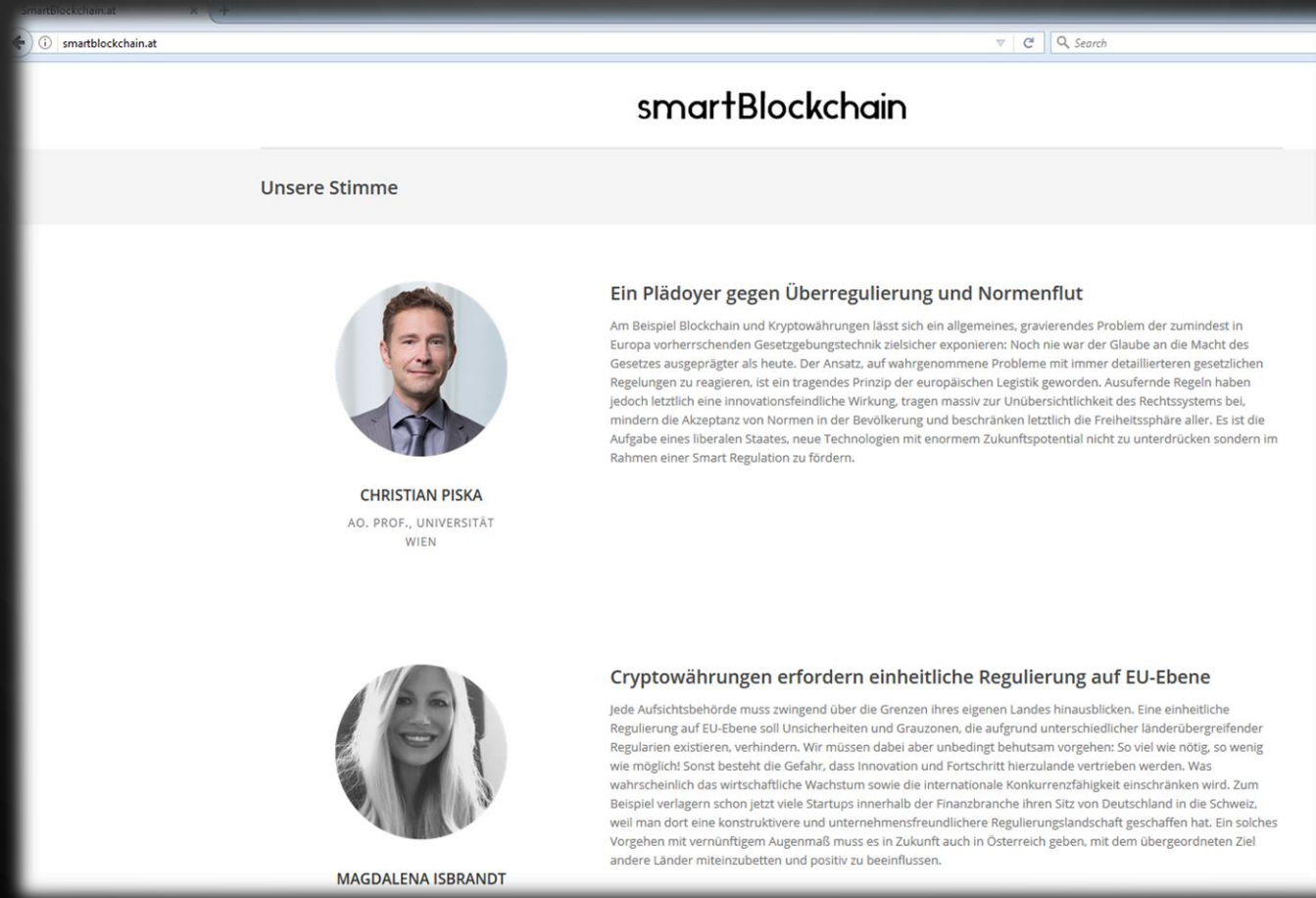
*Smart Law*

*Smart Tax*

*Smart Technology*

*Smart Finance*


# SMARTBLOCKCHAIN BUNDLES THE VOICES OF THE AUSTRIAN BLOCKCHAIN COMMUNITY



The screenshot shows a web browser displaying the smartBlockchain website. The browser's address bar shows 'smartblockchain.at'. The website has a white header with the 'smartBlockchain' logo. Below the header is a grey bar with the text 'Unsere Stimme'. The main content area features two articles, each with a circular profile picture of the author, their name, title, and a short text snippet.


smartBlockchain

Unsere Stimme

  
**CHRISTIAN PISKA**  
AO. PROF., UNIVERSITÄT  
WIEN

**Ein Plädoyer gegen Überregulierung und Normenflut**

Am Beispiel Blockchain und Kryptowährungen lässt sich ein allgemeines, gravierendes Problem der zumindest in Europa vorherrschenden Gesetzgebungstechnik zielsicher exponieren: Noch nie war der Glaube an die Macht des Gesetzes ausgeprägter als heute. Der Ansatz, auf wahrgenommene Probleme mit immer detaillierteren gesetzlichen Regelungen zu reagieren, ist ein tragendes Prinzip der europäischen Legistik geworden. Ausufernde Regeln haben jedoch letztlich eine innovationsfeindliche Wirkung, tragen massiv zur Unübersichtlichkeit des Rechtssystems bei, mindern die Akzeptanz von Normen in der Bevölkerung und beschränken letztlich die Freiheitssphäre aller. Es ist die Aufgabe eines liberalen Staates, neue Technologien mit enormem Zukunftspotential nicht zu unterdrücken sondern im Rahmen einer Smart Regulation zu fördern.

  
**MAGDALENA ISBRANDT**

**Cryptowährungen erfordern einheitliche Regulierung auf EU-Ebene**

Jede Aufsichtsbehörde muss zwingend über die Grenzen ihres eigenen Landes hinausblicken. Eine einheitliche Regulierung auf EU-Ebene soll Unsicherheiten und Grauzonen, die aufgrund unterschiedlicher länderübergreifender Regularien existieren, verhindern. Wir müssen dabei aber unbedingt behutsam vorgehen: So viel wie nötig, so wenig wie möglich! Sonst besteht die Gefahr, dass Innovation und Fortschritt hierzulande vertrieben werden. Was wahrscheinlich das wirtschaftliche Wachstum sowie die internationale Konkurrenzfähigkeit einschränken wird. Zum Beispiel verlagern schon jetzt viele Startups innerhalb der Finanzbranche ihren Sitz von Deutschland in die Schweiz, weil man dort eine konstruktivere und unternehmensfreundlichere Regulierungslandschaft geschaffen hat. Ein solches Vorgehen mit vernünftigem Augenmaß muss es in Zukunft auch in Österreich geben, mit dem übergeordneten Ziel andere Länder miteinzubetten und positiv zu beeinflussen.

# SMARTBLOCKCHAIN.AT

- Methods:
  - interdisciplinary collaboration among key players
  - creative potential due to lack of bureaucratic burdens
  - scientific focus guarantees objectivity and independence
- Targets:
  - specific concepts
  - Smart Regulation

# REGULATORY MODEL

- **Smart Regulation!**
- smart, modest and only the necessary minimum
- In this way: boost of innovation potential
- Important contribution of Austria for the EU Council Presidency 2018

# SMART CONTRACTS

- based on **Blockchain**
- legal challenge in the future
- control, fulfilment and provision automatized by **algorithms**
- new regulations or interpretation of existing legal provisions?
- a-typical contracts evaluated case-by-case





# SMART CONTRACTS – OPEN QUESTIONS

- Who is legally liable for errors in the code?
- How much control is still necessary?
- Data protection?
- Conflict with legal enforcement of the smart contracts?
- Practical issues (conventional contracts and their implicit contents)
  - e.g. “you’ll use best efforts”





# REGULATORY SANDBOX

- problem: legal uncertainty with cryptocurrencies
  - negative impact on economic innovation
- solution: additional process of licence award
  - ➔ innovative business model under strict supervision
  - ➔ boosting start-ups



# HOW CROWDFUNDING WORKS IN AUSTRIA

- subordinated loans due to legislative regulations
- subordinated creditors in an insolvency situation of the borrower
- high risk investment
- higher interest rates
- public offers → obligation to publish a listing prospectus
- prospectus approval

# INITIAL COIN OFFERING I

- Initial Coin Offering (ICO) or Initial Token Offering (ITO)
- new form of enterprise and project financing
- based on **Blockchain**
- legal classification not fixed yet – possibly falling within the scope of securities, depending on the aim!

# INITIAL COIN OFFERING II | HOW IT WORKS

- offering of a new coin or token for sale or for exchange against other cryptocurrencies
- usually motivated to buy the coins/tokens in the hope of higher cryptocoin values than before
- gained money is used for the company's needs
- Due to unregulated crypto-markets the values of the coins can increase exorbitantly as seen with Bitcoins.

## INITIAL COIN OFFERING III | ECONOMIC VIEW

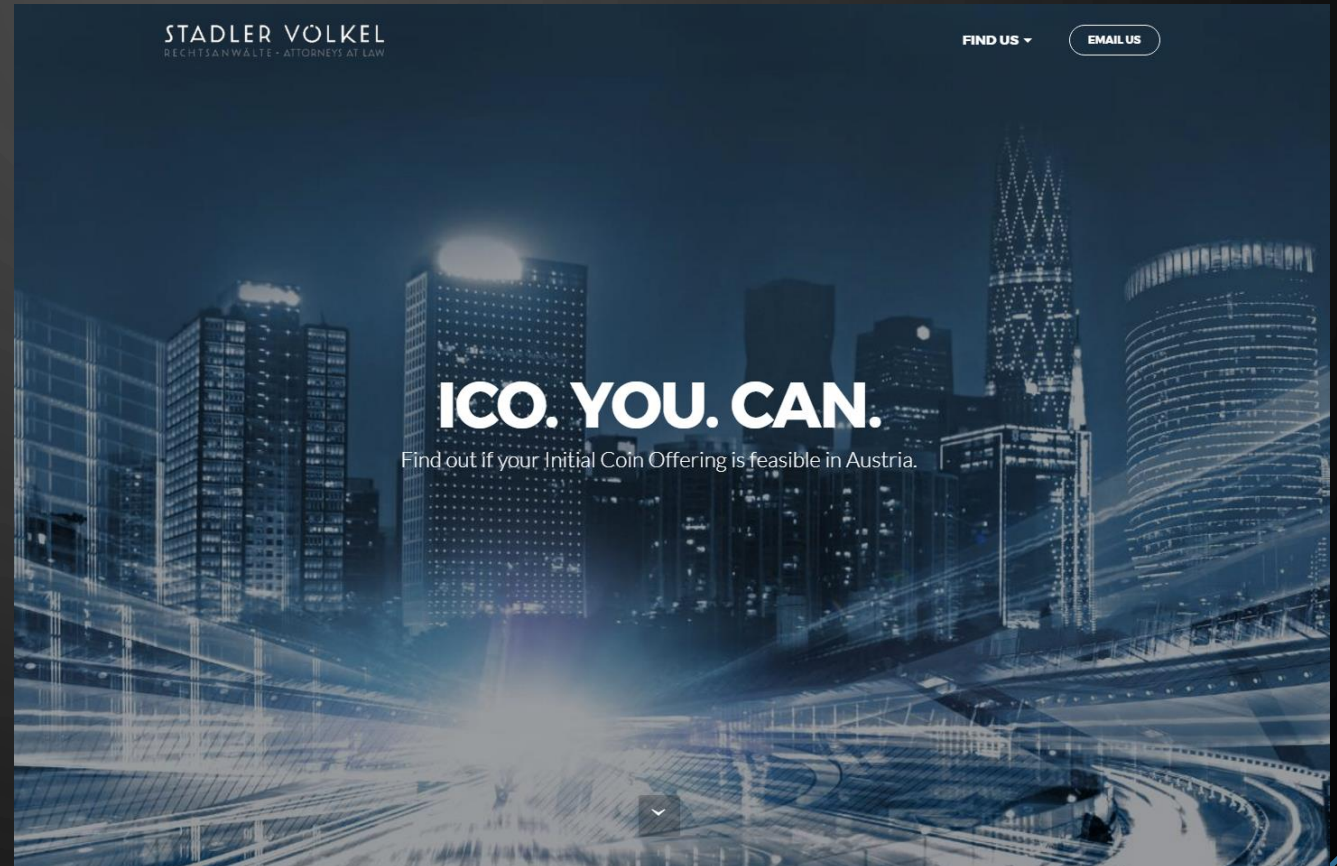
- **current situation:** subordinated loans – little protection of investors
    - heavy losses in an insolvency situation
  - **ICO:** fairer solution for all parties
    - value of coins restored, also in an insolvency situation!!
    - Even if the company has dissolved, the coins continue to exist.
- a new way of crowdfunding!

# ICO-YOU-CAN

Too complicated?

➔ [www.ico-you-can.com](http://www.ico-you-can.com)

Provides first legal  
classification



# PIONEERS

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universität  
wien

STADLER VÖLKE

RECHTSANWÄLTE - ATTORNEYS AT LAW

- specialised in the law of Blockchain-based technologies
- Regular online events concerning cryptocurrencies, Blockchain, ICO, etc.