

Digitalized Property. The Token Challenge

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My house.



INSTITUTE FOR LAW AND
REGULATION OF DIGITALISATION

My ship.



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My horse.



My car.



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My domain.

www.I-LOVE-LAW.com



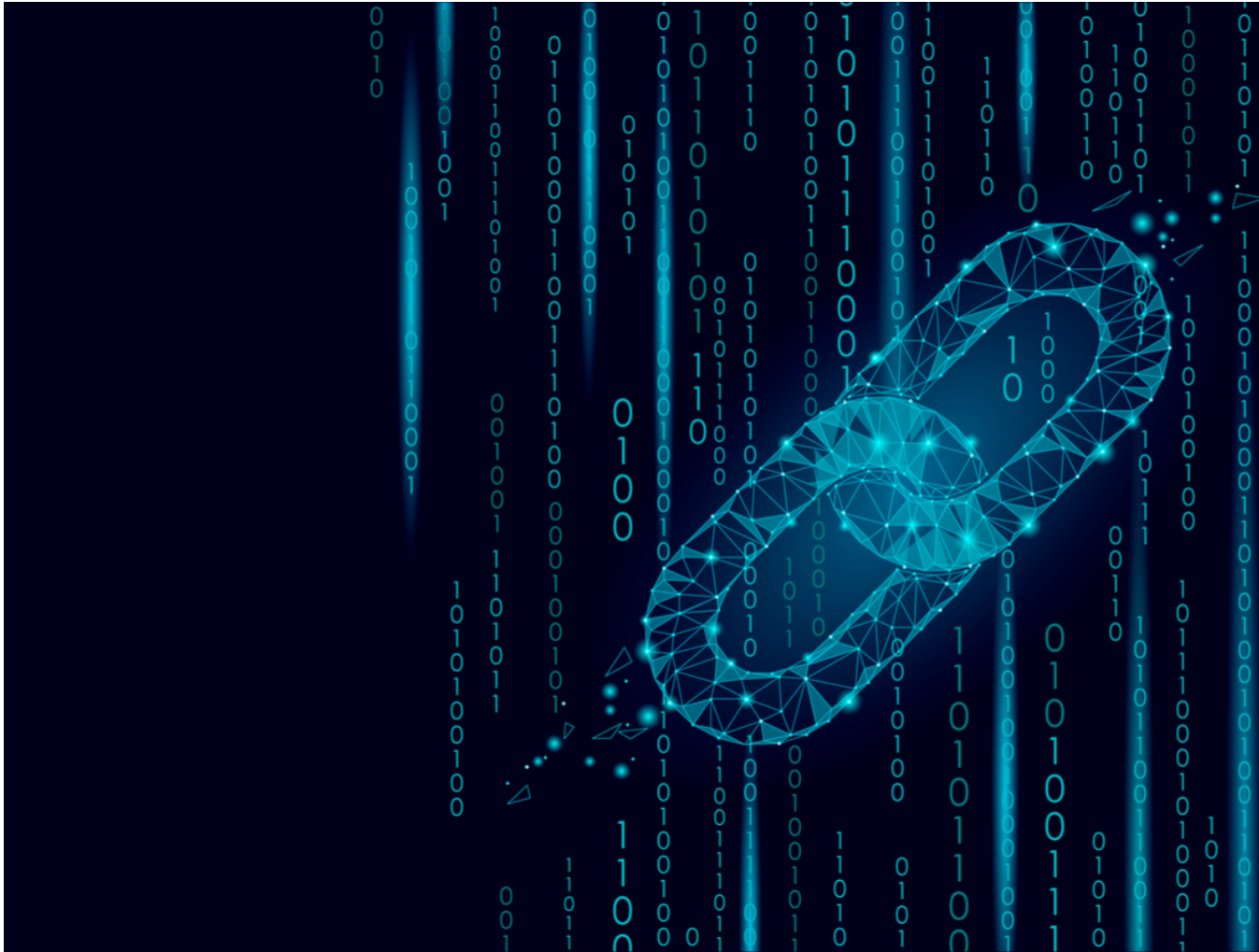
My token ...

... for love.



... for a legal position.

„My“ token?



Outline

I. The Process of Tokenization

II. General Private Law of Cryptocurrencies

1. Legal Classification
2. Protection
3. Proposal

III. Banking Law of Cryptocurrencies

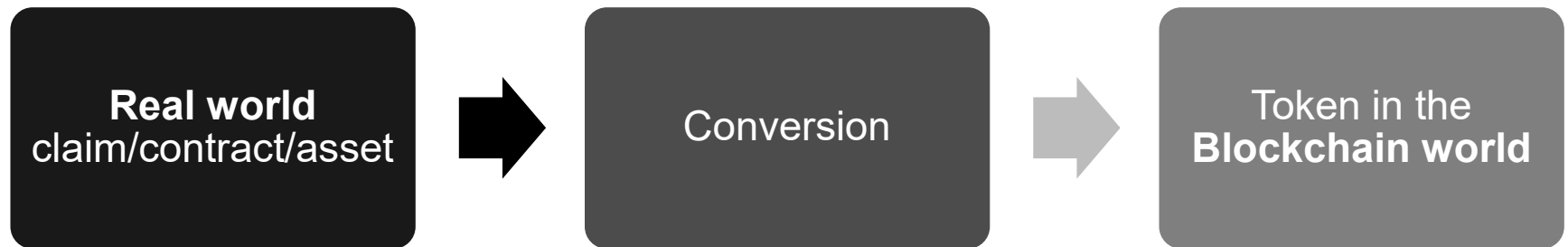
1. PSD2/ZAG
2. KWG

IV. Outlook

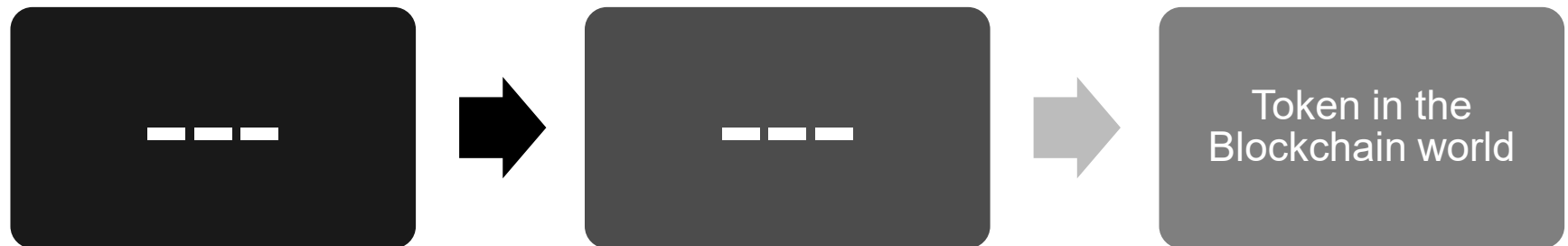


I. The Process of Tokenization

„Charged“ Tokens (e.g. security tokens)

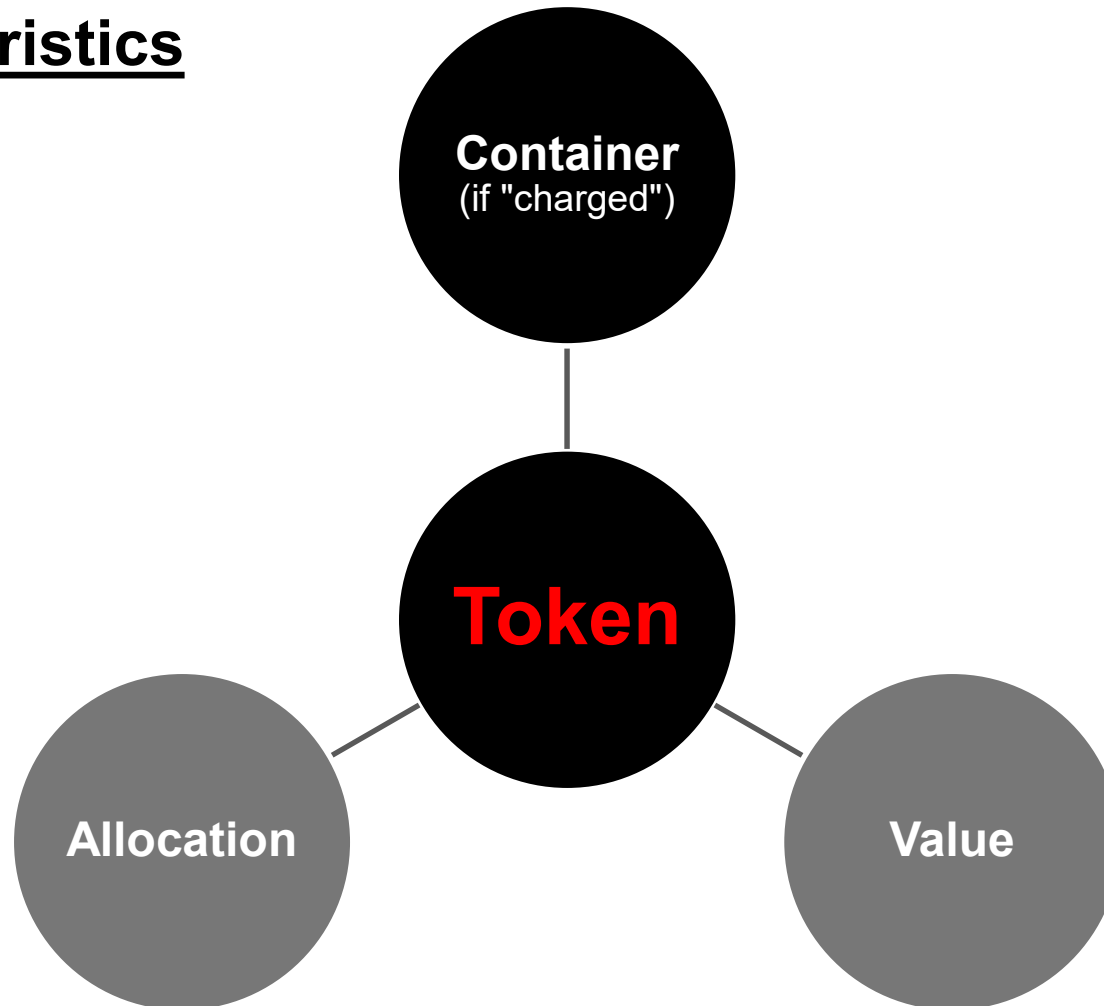


„Natural“ Tokens (e.g. Bitcoins)



I. The Process of Tokenization

Characteristics



II. General Private Law of Cryptocurrencies

1. Legal Classification

a) Property Law

Section 90 BGB (German Civil Code):

„Only corporeal objects are things as defined by law.“

→ Tokens: Section 90 BGB (-)

Data ownership:

de lege lata not covered by German property law

→ „**Stable coins**“ ≠ **property**



II. General Private Law of Cryptocurrencies

b) Securities Law

Section 793 BGB: Bearer Bond
(„Inhaberschuldverschreibung“)

(-), no signature, no document

Section 807 BGB: Bearer Tickets and Stamps

(-), no “issuer (that) intends to be obliged to an act of performance for the bearer“

(-), no „tickets, stamps or similar documents“



II. General Private Law of Cryptocurrencies

c) Law of Money

Legal concept of money

- Lack of a statutory definition
 - „Abstract“ and „concrete“ forms of money
 - Abstract definition:
unit of account + universal means of exchange
- Bitcoins: (-), **Libra: probably (+)**
- Law of money and monetary obligations: Libra (+)



II. General Private Law of Cryptocurrencies

2. Protection

Not applicable (inter alia):

- Sections 985 et seq. BGB (owner's claim for restitution)
- Section 812(1) BGB (unjust enrichment)
- Section 823(1) BGB (tort)

Applicable: Section 823(2) BGB (tort)
w/ sections 202a, 263a, 303a StGB

→ **Very low level of protection**



II. General Private Law of Cryptocurrencies

3. Proposal

a) Option 1: small-scale

Amendment to Section 90 BGB (e.g. Section 90b BGB):

„Tokens are not things. They are governed by the provisions that apply to things, with the necessary modifications, except insofar as otherwise provided.“

b) Option 2: mid-scale

Implementation of a new type of „crypto property“

c) Option 3: large-scale

Implementation of a new type of „data property“



III. Banking Law of Cryptocurrencies

1. PSD2/ZAG

Scope of application ratione materiae

a) Transfer of cryptocurrencies

aa) Cash (banknotes and coins) (-)

bb) Scriptural money (-)

cc) Electronic Money: „claim on the issuer“ (+/-)

→ Legislative option (EU): crypto money directive

→ Legislative option (GER): extended electronic money law

b) Exchange between fiat currencies and cryptocurrencies

Money remittance (+) → authorisation (Section 10 ZAG)



III. Banking Law of Cryptocurrencies

2. KWG

Scope of application ratione materiae

a) - 2019

Section 1(11)(7) KWG: „Rechnungseinheiten“

BaFin: Bitcoins (+), Case law/scholars: (-)

b) 2020 -

Section 1(11)(4) KWG (Draft): „Kryptowert“

Libra: propably (+)

→ Authorisation (Section 32 KWG), e.g. wallet providers, custodians



IV. Outlook

Transnational Phenomenon → Transnational Solution



IV. Outlook

≈ libra



**Primitive
Money**

**Coins
and
Notes**

**Book
Money**



**Digital
Money**

?

↑
2019





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