TABLE OF CONTENTS

Outline – Abstract V
The Author VI
Author‘s Foreword VII
Foreword by Bitpanda IX
Acknowledgements XI
Table of Contents XII
List of abbreviations XVI

1 Introduction to the Revised Edition 1
1.1 Introduction and changes to the legal framework 1
1.2 Preliminary remarks on the 2nd edition 1
1.3 Overview of terms 2
1.4 Content and relevance 4

2 Crypto-assets – Terminology, overview and milestones 7
2.1 Terminology, classification and definitions 7
2.2 Bitcoin – the starting point for crypto-assets 10
2.3 Ethereum – a significant expansion of the scope 14
2.4 Initial Coin Offerings (ICOs) 17
2.5 Digression: Overview of intermediaries in the crypto sector 20
2.6 Further developments since 2019 21
2.7 Regulatory developments, in particular MiCAR 22

3 An overview of the classification of crypto-assets and regulated market participants/MiCAR 25
3.1 Challenges of classification and a brief history 25
3.2 Three archetypes at a glance 27
3.3 (Previous) Opinions of supervisory authorities 30
3.4 Classification of crypto-assets under MiCAR 37
3.5 Overview of the regulation of market participants 39

4 Security tokens in detail 43
4.1 Definition and typical structure 43
4.1.1 Relevance of the question for classification under MiCAR 46
4.2 Legal classification and constituent elements 47
4.2.1 General 47
4.2.2 Securities within the meaning of the KMG/WAG or PVO/MiFID II 47
4.2.3 Other financial instruments within the meaning of the WAG 2018 67
4.2.4 Investments (“Veranlagung” in the sense of KMG) 74
4.2.5 Summary 77

4.3 Legal consequences of the classification 77
4.3.1 General....77
4.3.2 KMG/PVO....78
4.3.3 WAG 2018 80
4.3.4 Stock Exchange Act....85
4.3.5 AIFMD 87
4.3.6 BWG (Austrian Banking Act) 89
4.3.7 Market infrastructure requirements 99
4.3.8 Other financial market regulations....110
4.3.9 Summary of the legal consequences per actor/service 111
4.4 Security tokens under MiCAR....112
4.5 ARTs and their distinction from financial instruments 113
4.5.1 General, introduction and overview 113
4.5.2 On the distinction between ARTs and financial instruments 114
4.5.3 Approaches to distinguishing between ARTs and financial instruments 116
4.5.4 State of origin vs host Member State....118
4.5.5 Summary of the distinction between ARTs and financial instruments .121
4.6 Outlook on possible trends in security tokens 121
4.7 Summary on security tokens....122

5 Payment tokens and EMTs/ARTs in detail 125
5.1 Definition and typical structure 125
5.1.1 Relevance of the distinction under MiCAR....128
5.2 Legal classification and elements of the offence 129
5.2.1 General....129
5.2.2 E-money within the meaning of the E-GeldG 130
5.2.3 Means of payment within the meaning of the Banking Act 133
5.2.4 Payment instrument within the meaning of the ZaDiG 137
5.2.5 Summary....141
5.3 Legal consequences of classification 143
5.3.1 General....143
5.3.2 BWG (Austrian Banking Act) 143
5.3.3 Licensing requirements under the E-GeldG/ZaDiG 2018 150
5.3.4 Other licensing and conduct requirements 150
5.3.5 Summary....151
5.4 Payment tokens under MiCAR....152
5.5 EMTs in the light of payment law 153
5.5.1 Introduction, overview and definition of the EMT....153
5.5.2 A crypto-asset as e-money but not an EMT?....154
5.5.3 EMTs as funds and the scope of PSD II 154
5.5.4 Summary of EMTs in the light of payment instruments law....158

5.6 ARTs in the light of payment instruments law 159
5.7 Outlook on possible trends in payment tokens 160
5.8 Summary on payment tokens/EMT/ART 162
6 Utility tokens/other crypto-assets in detail 165
6.1 Definition and typical characteristics 165
6.1.1 Relevance of the distinction between OCAs and utility tokens under MiCAR 167
6.2 Distinction from security and payment tokens 167
6.2.1 General 167
6.2.2 Distinction between utility and security tokens 168
6.2.3 Distinction between utility and payment tokens 169
6.2.4 Summary 169
6.3 Discussion of proposed distinguishing criteria 170
6.3.1 Introduction and overview 170
6.3.2 Subjective expectations of value appreciation 170
6.3.3 Objectively generated expectations of value appreciation 172
6.3.4 Trading on the secondary market 176
6.3.5 Trading on the secondary market with the hope of capital appreciation 176
6.3.6 Existence of voting rights 177
6.3.7 Distinction between hybrid forms & 'minimal cash flows' 178
6.3.8 Products not yet in existence 179
6.3.9 Application of the Howey Test 181
6.3.10 Summary 182
6.4 Legal consequences of the classification 183
6.4.1 General 183
6.4.2 Securities/Financial Instruments 183
6.4.3 Means of payment in the broad sense 184
6.4.4 Interim summary 184
6.5 Overview of regulation under MiCAR 185
6.5.1 The utility token under MiCAR 185
6.5.2 Other Crypto-Assets (OCAs) under MiCAR 186
6.6 Outlook on possible trends regarding utility tokens/OCAs 187
6.7 Summary on utility tokens/OCA 188
7 Legal classification of other types of tokens 191
7.1 An overview of various other types 191
7.2 "No-rights" tokens/meme coins and their legal classification 191
7.3 The KYC token and its legal classification 192
7.4 Asset-backed tokens and their legal classification 193
7.5 Stablecoins and their legal classification 197
7.6 Privacy coins and their legal classification 199
7.7 Summary and Outlook 200

8 Regulation of crypto-asset issuers 203
8.1 Introduction and overview 203
8.2 Regulation of EMTs and their issuers 204
8.3 Regulation of ARTs and their issuers 207
8.4 Regulation of OCAs and their issuers 210
8.5 Points of reference for regulation as an issuer 213
8.5.1 Introduction and overview 213
8.5.2 Issuance vs public offering/listing 213
8.5.3 General exceptions to the regulation of issuers 215
8.5.4 CASPs and their distinction from issuers/offerors 216
8.5.5 Issuers/offers outside the EU 219
8.6 Market abuse prevention obligations for issuers 221
8.7 Summary of the regulation of issuers under MiCAR 223

9 Regulation of crypto-asset service providers 225
9.1 Introduction and overview 225
9.2 Licensing requirement under MiCAR 226
9.3 Regulatory requirements for all CASPs 227
9.4 Additional requirements for specific services 230
9.5 Further applicable regulatory requirements 235
9.5.1 Introduction and overview 235
9.5.2 Anti-money laundering regulations 235
9.5.3 Regulation on IT security/DORA 238
9.5.4 Summary of currently applicable regulations alongside MiCAR 239
9.6 Future requirements and regulations 239
9.6.1 Introduction and overview 239
9.6.2 DAC8/CARF – Tax transparency in the crypto sector 240
9.6.3 FIDA – Data Access and Open Finance 241
9.6.4 CSDDD – Supply Chain Due Diligence and ESG 241
9.6.5 PSD III/PSR – Payment services and overlaps with crypto 242
9.6.6 MiCAR 2.0 – Changes to the regulatory framework 243
9.6.7 Summary of future regulatory initiatives 243
9.7 Summary of CASP regulation 244

10 Overall summary and theses on interpretation 247
10.1 Results by chapter 247
10.2 Theses on the interaction and interpretation of MiCAR 251
10.3 Overall summary 254

Case Law Index 259
Bibliography 260