The association for DAOs

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An association acquires legal personality once its intention to exist as a corporate body is expressed in written articles that state its purpose, resources and organisation, with no notarial act and no minimum capital.[1] It has members who decide in a general meeting and a committee that manages it.[2] Members are not liable for the association's debts unless the articles so provide.[3] Those features map onto a DAO closely enough that the association has become the Swiss answer to the question what a DAO is in law. Token holders become members, the general meeting is held on-chain under articles that recognise token-weighted voting and the committee executes what the members decide.

The fit is imperfect in three respects. First, an association must have a non-economic purpose. An association that carries on a commercial business must register in the commercial register and is treated in some respects like a company, while one whose purpose is to make profit for its members is not an association at all.[4] A DAO that distributes protocol revenue to token holders is pursuing an economic purpose and should be a company, cooperative or foundation. Second, membership in an association is personal and admission is by decision of the association, whereas tokens change hands freely. The articles must deal with how a transferee becomes a member and how a transferor ceases to be one. Third,

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anonymity sits uneasily with membership. Swiss AML law does not apply to the association as such, but it does apply to any financial intermediation the association performs. A DAO treasury that pays contributors in tokens may be performing payment services for third parties. Part D, Chapter VII, discusses the alternative characterisation of an unwrapped DAO as a simple partnership with joint and several liability of its members, which is the risk the association wrapper is designed to remove.[5]

Notes

1. CC, SR 210, Art. 60 paras 1 and 2. ↩
2. CC, SR 210, Arts 64 to 69. ↩
3. CC, SR 210, Art. 75a. ↩
4. CC, SR 210, Art. 60 para. 1 (ideal purpose) and Art. 61 para. 2 (associations carrying on a commercial business must register). ↩
5. CO, SR 220, Arts 530 and 544 para. 3 (simple partnership; joint and several liability of partners); Federal Council, report on the legal framework for DeFi and DAOs of 2022 (see Part B, Chapter VII). ↩

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