The legal nature of a DAO under Swiss law

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Swiss law has no DAO statute. The Federal Council considered creating one in its 2018 DLT report and declined, concluding that existing legal forms suffice and that a bespoke DAO form would raise more questions than it answered.[1] The consequence is that a DAO operating without a wrapper falls to be classified under the general law of associations and partnerships.

The default classification is the simple partnership (einfache Gesellschaft) under Art. 530 ff. CO. A simple partnership exists whenever two or more persons agree to pursue a common purpose with joint efforts or resources without adopting another legal form. The agreement need not be written or even conscious. A group of token holders who vote on how to deploy a shared treasury and share in the protocol's success pursue a common purpose with joint resources. The author's view, shared by most Swiss commentators, is that an unwrapped DAO with Swiss-connected participants is a simple partnership under Swiss law.[2] The consequences are severe. Each partner is personally, jointly and severally liable for the partnership's obligations under Art. 544 para. 3 CO.[3] The partnership has no legal personality, cannot hold assets in its own name and cannot sue or be sued except through all its

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partners. Any partner may terminate it. A token holder who voted once on a Uniswap proposal may, on this analysis, be a partner in a Swiss simple partnership with unlimited liability for its debts.

The alternative classification is the association (Verein) under Art. 60 ff. CC. An association acquires legal personality as soon as its members express in written articles their intention to exist as a corporate body, with no registration required. If a DAO's constitution, published on its governance forum, states a non-economic purpose and an intention to be a body corporate, a Swiss court might treat it as an association with legal personality, which would protect members from liability. The difficulty is that most DAOs pursue economic purposes, which an association may do only if it conducts a commercial business and registers in the commercial register under Art. 61 para. 2 CC, which an unwrapped DAO cannot do.[4] The author therefore advises that an unwrapped DAO should be assumed to be a simple partnership, with the association analysis available as an argument but not a reliable protection.

Notes

1. Federal Council report of 14 December 2018, section 7.1.2 (no need for a specific DAO legal form; existing forms of the Civil Code and Code of Obligations available). The point was revisited and the conclusion maintained in the DeFi report of 16 December 2022, section 4.4. ↩
2. Code of Obligations, SR 220, Art. 530 para. 1 (definition of simple partnership) and para. 2 (residual form where no other company form is adopted). The commentary is surveyed in Part D, Chapter VII. ↩
3. Code of Obligations, SR 220, Art. 544 para. 3 (joint and several liability of partners for obligations incurred jointly or through a representative) and Art. 545 (dissolution). Part D, Chapter VII. ↩
4. Civil Code, SR 210, Art. 60 para. 1 (acquisition of legal personality on adoption of written articles), Art. 61 para. 2 (associations conducting a

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commercial business must register) and Art. 75a (liability limited to association assets). Part D, Chapter VII. ↩

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