

The decentralised autonomous organisation

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The foundations were designed as a transitional structure, since the projects intended to hand over governance to their token holders once the protocol was running. The instrument for that purpose was the decentralised autonomous organisation, a community of token holders who take decisions through votes on the blockchain, which smart contracts then execute automatically, for example the disbursement of funds from a common treasury. Swiss law does not recognise the decentralised autonomous organisation as a legal form. A community of token holders that acts together may qualify as a simple partnership under Articles 530 ff. of the Code of Obligations, with the consequence that its members are jointly and severally liable for its obligations.¹ That risk has led many projects to keep a foundation or an association as a legal wrapper around the decentralised autonomous organisation. The foundation holds the treasury, concludes contracts and employs staff, while the community's votes guide the board's decisions, although the board remains legally responsible and must be able to refuse a vote that would breach the law or the purpose of the foundation.

Some projects have preferred the Swiss association under Articles 60 ff. of the Civil Code, which has members, holds a general assembly and can admit token holders as members, so that its governance is closer to the idea of a community. However, the association, whose members must be identifiable, is less suitable for holding large assets than the foundation, which is supervised by a public authority. Swiss practice has not yet produced a standard solution to this question.

1 Notes

1. Legal doctrine; check in Swisslex or Weblaw. Confirmed so far: swissblawg.ch, note on Federal Supreme Court judgment 4A_73/2014, July 2014: under Art. 544 para. 3 OR, partners in a simple partnership are in principle jointly and severally liable to third parties. To be checked: Swiss literature classifying a DAO without legal wrapper as a simple partnership under Art. 530 para. 2 OR (commentaries on Art. 530 OR, e.g. Basler Kommentar and Zürcher Kommentar, and contributions on DAOs in GesKR, SZW and Jusletter). The Federal Council report on DLT and blockchain of 14 December 2018 mentions the DAO only as an example of a smart contract and does not address its classification. ↩

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