

# The Swiss Association as a Legal Wrapper for a Global DAO and vis-à-vis the MiCA Regime\*

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## Abstract

*The article explores the utilization of decentralized autonomous organizations (DAOs) and the legal framework of Swiss associations as a possible legal wrapper – particularly for globally operating DAOs. All against the backdrop of a steadily growing regulation to the likes of the EU's MiCA framework.*

*The discussion encompasses the essential characteristics of DAOs, emphasizing their decentralized nature, shared purpose, autonomy, and predefined rules.*

*The article highlights the legal complexities around DAOs. Considering many DAOs operating without a deliberately chosen legal structure, the argument is made that even though DAOs might be set up with the idea to not be regulated at law, the contrary might be the case. Legal concepts to the effect of 'joint ventures' or 'simple partnership' may lead to the inadvertent formation of legal entities. Thus, legal risks may very likely loom over participants of DAOs whether they may desire that outcome or not.*

*The article emphasizes liability as a driving force behind the need of a quest for legal wrappers. To mitigate unintended liabilities, selected solutions are being proposed. The text discusses further benefits of a legal wrapper. The argument is made that DAOs should deliberately chose a legal wrapper mirroring their nature and fitting their needs.*

*The discussion then turns to the Swiss association as an attractive choice for globally operating DAOs. The autonomy granted to Swiss associations under Swiss Law providing for freedom, self-governance, and flexibility mirror the nature of a DAO. The features of the Swiss association and its benefits as a legal wrapper for DAOs are then being scrutinized. The text posits the establishment of a Swiss association as a solution to limit liability for DAOs participants. Ultimately, the*

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*Swiss association is presented as a wrapper offering not only liability protection but also additional benefits for DAOs, which are further explored.*

**Keywords:** MiCA, DLT, DOA, legal wrapper, Swiss Association.

## **A. Introduction – the MiCA and the Swiss DAO**

The Regulation of the European Parliament and of the Council on Markets in Crypto-Assets (EU) 2023/1114 (MiCA) will be applicable fully from 30 December 2024, creating a special regulatory framework for crypto assets in the EU. While MiCA does not directly regulate decentralized autonomous organizations (DAOs), tokens issued or services provided by DAOs may fall within the scope of MiCA depending on their design.

Since the MiCA regulates the EU market at large, DAOs active on the EU market must review if their activities fall into the scope of the MiCA. The requirement to scrutinize one's activities applies equally for EU-based DAO and for foreign DAOs. In the case of the latter, the proper regulatory requirements must be met to enter that market. In other words, the cross-border access to the EU market remains open.

What may sound like a regulatory burden, may also benefit DAOs and other blockchain and crypto related projects. This applies in particular to enterprises present in Switzerland, even more if they span globally already. Based on the MiCA, DAOs based in Switzerland have gotten an almost unique opportunity to profit from two firm and predictable legal frameworks for the blockchain universe, *i.e.* an EU and a Swiss one, finally allowing to also legally merge their EU and Swiss ventures (and of course the global part of it).

In addition, DAOs are faced with the question of the legal form in which they wish to establish themselves. Here, the Swiss association – *i.e.*, with its registered office in Switzerland – offers an attractive opportunity to create a legal wrapper for DAOs. The concept of a Swiss association and the reasons why it is a form fitting (global) DAOs is discussed hereinafter.

## **B. A Little Something on the Key Features of a DAO**

In order to make a legal classification, the characteristics of a DAO must be set out first. In this context, it is important to note that there is no such thing as a universal DAO but that the structure of a DAO can differ from case to case. Accordingly, the legal classification of a DAO may vary. A typical DAO may feature the following elements:

- Decentralized organization: A DAO is a form of organization. Unlike conventional forms of organization, however, which according to traditional understanding can be divided into organizational structures and processes, functional, divisional and matrix organizations as well as mixed forms of these, the key feature of a DAO is the decentralized nature of its organization. In this

context, ‘decentralized’ means that there is no central unit of control or ownership. Inherent to the aspect of decentralization is also the absence of hierarchy or intermediation. In other words, a DAO is a decentralized form of organization lacking hierarchies and individual decision-makers and governing bodies (such as the board of directors or the management).

- Achieving a shared purpose: The purpose of this form of organization is shared and common but is not limited to a specific one and can differ in kind. Many DAOs are active in the De-Fi field. However, they can also be used for the development of technical applications or for the pursuit of charitable or political goals. The field of application or the objectives of DAOs are boundless.
- Autonomy: The idea of autonomy is that several people who may or may not know each other cooperate and work toward a common goal.
- Predefined, uniform rules: DAOs are independent of the underlying base-layer protocol such as Ethereum. Bitcoin can be said to have been the first and fully functional DAOs. Why? Because Bitcoin is based on predefined rules, functions in a decentralized manner (i.e., without hierarchically superior decision-makers), and decisions are made via a fully automated consensus mechanism on chain. Most of the current and, most likely, most of the future DAOs will be programmed typically to run on the Ethereum blockchain as base layer and achieving their goals thanks to predefined smart contracts.
- DAOs are basically governance smart contracts; they can be entityless or legally wrapped. There are four main reasons for a legal wrapper: limitation of liability, especially tax liability, legality of asset allocation and profit sharing, choosing governance and capacity to contract.

### C. Becoming Joint Ventures or Simple Partnerships Inadvertently or the Trap Set Out for the DAOs by the Law

It is fair to assume that many, if not most, DAOs currently still operate without a conscious legal dress or wrapper. However, many jurisdictions and their laws do not require a conscious or explicit manifestation of will to deem participants involved in common projects to be bound also legally and, as a consequence, to become liable for the acts and omission of the other participants.<sup>1</sup>

Swiss law also knows a similar legal concept. Under Article 530 para. 1 of the Swiss Code of Obligations (of 30 March 1911, the ‘SCO’), a ‘simple partnership’ is defined as a ‘contractual relationship in which two or more persons agree to combine their efforts or resources in order to achieve a common goal’. A simple partnership can come into being without a special act of formation and without complying with special formal requirements and only by a meeting of minds. Moreover, under Swiss law, a simple partnership can come into being consciously and intentionally but can also be established unconsciously and unintentionally.

1 For illustration purposes, cf. the illustrious New York case *Meinhard v. Salmon*, 164 N.E. 545 (N.Y. 1928) and, most recently, a complaint by the CFTC to hold liable the members of a DAO under general partnership law, see CFTC, In the Matter of bZeroX (‘BZeroX’), LLC et al., CFTC Docket No. 222-31 (22 September 2022).

Therefore, DAOs in their basic forms laid out above typically fulfil the elements of a simple partnership.

This is problematic in that a person who acquires a token in a DAO may unknowingly and unintentionally become part of a 'legal structure' and therefore liable for acts and omissions of other participants in the shared purpose. To avoid that outcome, negative declarations of intent must be included in a DAO's whitepaper stating that the DAO and its participants are not intending nor consenting to that outcome. These 'negative' declarations of intent should unambiguously state, or at least indicate, that there is neither a meeting of minds nor the will that either party wants to give their actions a legally binding effect in that sense that the respective token holder is consenting to join a simple partnership by acquiring the token. If possible, the negative declarations of intent should be programmed into 'predefined, uniform rules' or the smart contract.

#### **D. The Better Legal Wrapper for Global DAOs – the Swiss Association**

As stated above, it is fair to say that DAOs may be deemed simple partnerships at law. The fact that a simple partnership was established unknowingly is irrelevant. Yet, the simple partnership has disadvantages for its participants. This goes especially regarding the liability of the participants. Initiators of DAOs have become aware that the conscious choice of a legal wrapper has numerous advantages and may actually benefit the participants. In this context, the avoidance of potential risks of liability of token holders is relevant.<sup>2</sup>

#### **E. Liability as a Major Propeller for the Quest of a Legal Wrapper**

When forming a simple partnership, the members of a DAO are personally liable for the DAO's acts and omissions including those of the other partners and as provided for by Articles 543 and 544 SCO. According to Article 533 SCO, each partner has an equal share in profits and losses, regardless of the nature and amount of his contribution. And under Article 551 SCO, the dissolution of the partnership does not affect obligations entered into with third parties, keeping the participants of a DAO at risk well beyond the lifespan of the common project.

In order to avoid that kind of liability, an *association* can be established to provide for an appropriate legal wrapper. The association offers its members the pursuit of a common purpose and has the advantage that its liability can be limited. In the case of the association, the liability may be limited to the assets of the association. The members are thus no longer personally liable. Therefore, the Swiss association forms the ideal legal wrapper for a DAO, where the different members usually do not know each other personally.

The Swiss association provides also for further benefits for Decentralized Autonomous Organizations or DAOs, which are addressed hereinafter.

<sup>2</sup> See SEC Release No. 81207, Report of Investigation of the Security and Exchange Act of 1934: The DAO (25 July 2017) ('The first DAO').

## F. The Swiss Association – a Short Tour d’Horizon

### I. *The Autonomy Granted to Swiss Associations under Swiss Law Providing Freedom and Flexibility*

Under Article 23 Swiss Constitution (of 18 April 1999), freedom of association is guaranteed. Under the Constitution, every person has the right to form, join, or belong to an association and to participate in the activities of an association. All stakeholders of an association benefit from that freedom, be it the founders, members, board members, or further bodies and their members.

The freedoms under the Constitution are furthered by Swiss statutory law. The Swiss Civil Code (‘SCC’, of 10 December 1907) warrants the principle of the autonomy of the association. The SCC provides for only few mandatory provisions that must absolutely be adhered to. Moreover, the number of articles governing Swiss associations are limited in general. The SCC governs with only 24 provisions the matter of the Swiss association (see Articles 60-79 SCC), albeit there is extensive case law of the Swiss Federal Supreme Court furthering those bedrock principles and warranting the rule of law. That freedom is furthered by Article 63 SCC, which provides that the legal provisions on associations only apply where the articles of association do not provide rules for the association’s organization or its relationship with its members. Accordingly, only mandatory provisions of law cannot be altered by the articles of association. That provision fulfils also another purpose. In case that an association omits to regulate all aspects of its life, the provisions of the SCC step in. Thus, an association may be given almost any structure the parties wish for.

With regard to the few mandatory provisions, it should be added that their purpose and wording are not to curtail the autonomy (thereby revoking that very freedom). Rather, they warrant fundamental rights and provide for checks and balances (these are, among other things, due process or a balanced division of powers between the bodies).

Accordingly, stakeholders of a Swiss association (may) shape the rules and regulations applicable to their association in an independent, free and autonomous way while they remain protected at law.

The spirit of the Swiss law for how to regulate Swiss associations strives at ensuring that citizens form an association easily and without the government’s involvement (which always carry the spectre of curtailing fundamental rights of the citizens) for they know best why, how and what for an association is set up.

It is striking that since Swiss associations have been regulated by the SCC (while more ancient Swiss legal sources dealt with the concept of association already), that legal form has arisen as the form fitting best certain fields (it is also noteworthy that the numbers of associations meet the numbers of the company limited by shares [the Swiss ‘AG/SA/Ltd.’]), tallying more than 100,000 (seat in Switzerland). A global field particularly relying on the form of the association as a legal wrapper is traditionally sports (for example, the international Olympic movement), yet another are the commercial chambers (or business associations). The sheer number of associations expresses the wide variety of its use.

Moreover, and as we speak, the Swiss association is emerging as a legal wrapper appropriate to distributed ledger technology (DLT)-related projects. For instance, and as will be discussed hereinafter with regard to the DAO, a distinct feature of the association is that each member has equal say to determine the fate of an association under the concept of ‘one member one vote’, that core concept mirrors the nature of DLT. Conversely, other forms of legal organization lack that possibility, mostly because it is the pro rata share of the capital that determines the power structure of that given entity.

Lastly, while a foundation is also a viable concept for many DLT projects, which strive for independence, participants of a DAO cannot take any direct resolutions but will always depend on the approval or implementation by the foundation’s board or the supervisory. Thus, they would redelegate control to a centralized governance structure. Contrary to foundations, associations are directly controlled by the members and the control is not restricted to a closed group. An association can still delegate to most extent its powers and activities to selected bodies, and the board may take care of off-chain activities, such as managing its underlying assets.<sup>3</sup> Thus, the idea of decentralization of DLT meets the decentralized model of control of the Swiss association.

## II. *Setting Up a Swiss Association*

An association under the laws of Switzerland is an entity with an own legal personality. In order to get there, certain steps must be taken, which are rather straightforward. The key steps of those can be summarized as follows:

To create a Swiss association, two or more founding members are required. The founders can be either natural or legal persons. This even allows for a DAO – Sub-DAO governance structure. Those founding members must then hold a founding meeting, which can also happen online and which is formally recorded in minutes. At the founding meeting, the articles of association, which are also called the ‘statutes’ in Switzerland, are adopted. At that very meeting, the association’s bodies must be designated and selected.

An association has to pursue a noncommercial purpose, that is, an idealistic one – at least at its core.<sup>4</sup> That means that the final purpose of an association must not consist in providing financial benefits to the members. Still the association offers a legal way to share profits. Conversely, an idealistic purpose is given if third parties benefit under the purpose. That purpose has to be enshrined in the association’s articles, typically one or two simple sentences. Despite the fact that an association must not have a direct commercial purpose, it may conduct commercial business, which helps to fulfil its purpose.

While the main purpose must not be commercial, further auxiliary purposes may be, i.e., providing financial benefits to the members, such as providing retroactive rewards for past contributions to the development of the protocol.

3 For a rigid structure chosen for a DAO based not in Switzerland, yet one that still required several entities in different jurisdictions: <https://forum.sushi.com/t/recommendation-for-sushi-legal-structure/11158> (last accessed 14 November 2022).

4 See Decision of the Swiss Federal Court 88 (1962) II 209.

Further, profits out of the commercial activity must be allocated according to the purpose, while the association may reimburse any parties that contributed to the business and generated expenses. Moreover, board members can receive a salary (in which case, however, an exemption from taxes is likely to be defeated). Generally speaking, associations and their members are not barred from receiving indirect or further benefits, which come along with the activity of either.<sup>5</sup>

Finally, under Swiss law, business entities, in general, may take decisions and conduct business unless the purpose is contradicted directly thereby. That liberal approach applies to associations equally. Therefore, the association's activities need not be always fully in line with the purpose.

The user-friendly set-up can especially promote the creation of DAOs. The set-up can be associated with low costs and low effort. In particular, the possibility of limiting liability to the association's assets should be considered, as mentioned in Section 5.

### *III. The Governing Bodies – Flexible Design of Bodies and Membership Rights for a DAO under the Legal Wrapper of a Swiss Association*

In the organization of a Swiss association, the members are mostly free. Swiss law requires them to designate a general meeting of members and a board. These two bodies are mandatory. However, most of their powers can be delegated to further bodies. The law limits their powers that must not be delegated to the following few:

The general meeting of members is the supreme governing body of the association. By default, it elects the board. The board must consist of at least one board member. In exceptional circumstances, board members can be appointed. Because under Article 65 SCC, the general meeting of members decides on admission and exclusion of members, appoints committees, and decides all matters that are not reserved to other governing bodies of the association, a DAO is at liberty to delegate most decision-making to the board or to further bodies or committees of the association, which are set-up for specific tasks. The number of those further bodies is not limited. They can be designated freely and may consist of:

- General secretariat: often the entire management, or parts of it, is delegated to another body
- Director: if an association operates a commercial business, the management is transferred to a different body
- Special purpose bodies and committees (for example., in case of a DAO those bodies can fulfil activities often asked for by DAOs: administer a treasury, grants, on-chain governance process, resolve proposals and voting issues).<sup>6</sup>

The rights of the members of the association can be structured differently. It should be noted, however, that the essential rights, such as the right to vote in the general

5 See Riemer Hans Michael, in: *Vereins- und Stiftungsrecht* (Art. 60-89bis ZGB), mit den Allgemeinen Bestimmungen zu den juristischen Personen (Art. 52-59 ZGB), Berne 2012, Art. 60 N 16-17.

6 Cf. <https://forum.sushi.com/t/recommendation-for-sushi-legal-structure/11158> (last accessed 31 July 2023).

meetings of members, are in principle granted to all members. This means that the control over the protocol could be exercised by all members equally.

The mostly free design of the bodies of the association and the rights of the members has advantages especially for a DAO; in addition to the general meeting of members and the board, special purpose bodies and committees can be created. Many DAOs are currently experimenting with delegates taking certain decisions versus all members voting on all decisions. The association would allow for this form of governance.

For example, resolution of specific tasks can be delegated to an organ responsible for the admission of new participants (Whitelister) or for the development of certain projects or investments. For the treasury, a sub-DAO could even be established as a body. This provides members with the opportunity to adapt a Swiss association to their specific needs in concrete terms. Members can be combined into different groups, depending on their skills and preferences, and assigned to a specific body. This gives them a specific area of responsibility with specific rights assigned to it. However, not all members need to be assigned to a newly created body.

Thus, a Swiss DAO can tend to any aspect required for its activity and stated often by DAOs looking for a fitting legal wrapper:<sup>7</sup> administer a protocol (including smart contracts or staking), enter into a services agreement with service providers to assist with developing the protocol, operate the Graphical User Interface or GUI layer (front-end) of the protocol, enter into services agreements with service providers at any time and according to the government structure.

#### *IV. Voluntary Registration with the Commercial Registry*

Under Swiss law, an association need not to be registered with a cantonal commercial registry in order to be established and to conduct its activities, but it can, if the founders or members wish so. This allows for flexibility in joining or exiting membership, typically for many DAOs. Conversely, an association must be registered if it carries out a business in a commercial manner (*see* Article 91 Swiss Federal Ordinance on the Commercial Register of 17 October 2007, 'SOCR'). For purposes of that test, the meaning of a 'business' is not limited to trading or manufacturing but includes other businesses as well.

Entries in the commercial register are public. Therefore, certain information about a given association become public upon registration. This includes first and foremost the information that a given association exists. The entry also makes the articles of association or the names of the members of the board of the association accessible (also online).

From the entry in the register on, third parties can rely on the entry's content, which facilitates the business and the activities of an association because it adds trust in the relationship with the association (among other things, with regard to an association existence and the power of representation of the agents involved, typically the board members). Once registered, the name of the given association is protected throughout Switzerland – a further benefit of a registration.

<sup>7</sup> *Ibid.*



An association is well advised to further protect its Intellectual Property. For example, by registering a trademark. This relates to the need for legal wrappers to allocate assets such as IP rights and the need for a legal wrapper. Those kinds of special protection in combination with a legal wrapper (sometimes limited to a sub-DAO for the treasury) reach further than the mere protection of the name through the said registration in the commercial register. In the case of an association active globally, international protection is recommended, for example, via the World Intellectual Property Organization in Geneva.

#### V. *One Size Fits It All – Many Viable Levels of Corporate Sophistication for DAOs*

Founding an association amount by far not to rocket science. As already seen above, Swiss law allows for different levels of corporate sophistication, which allows the founders or members for choosing a level suitable for their given project. Accordingly, a more sophisticated level including a registration or the designation of newly established special purpose bodies, to which powers from the general meeting of members and the board are delegated, may be chosen but needs not to.

Compared to other legal entities available under Swiss law, for example, a company limited by shares ('AG/SA/Ltd.') or also a foundation, an association can be established fast, with little expenses involved. Thus, costs can be held low if required. Yet, an association can still be run in a sophisticated, professional and business manner if that is required for under its purpose and business. In other words, from a regulatory, corporate-legal and business point of view, the legal form of a Swiss association can reach the level of sophistication of any other legal form.

Moreover, associations may be fully or partially exempt from taxation if they pursue charitable, public or cultural purposes. In particular, the following requirements must also be met:

- The objective of the legal entity cannot be linked to profit-making purposes or other own interests of the legal entity or its members.
- The board must consist of volunteers; however, in order to fulfil the purpose of the association, the association may employ or commission persons.
- The funds dedicated to the tax exemption must irrevocably be used for the tax-exempt purpose.
- The purpose set out in the articles of association must be realized.

Within a DAO, as many centralization points as possible should be removed. With the free design option of a Swiss association, many centralization points can already be legally removed. It therefore offers the ideal legal wrapper for a DAO.

#### VI. *The Global Recognition of a Swiss DAO Association – The Export Appeal of the 'Swiss Passport'*

As mentioned at the outset of this article, MiCA has also extraterritorial application. Thus, Swiss-based DLT projects may fall under MiCA's scope depending on their degree of attachment to the EU territory and market. That 'benefit' applies not only to Switzerland and legal entities like DAOs based in Switzerland but also to other third countries.

Still, when looking beyond only the MiCA, and at other sources of law governing aspects pertinent to DAOs, a specific advantage of DAOs based in Switzerland unveils. That advantage can be called the ‘Swiss passport’ and is based on principles established under international (public) law:

Regulators’ domestic laws and regulations, but also their soft law,<sup>8</sup> may rely on the principle of *reciprocity*<sup>9</sup> or the principle of *recognition*<sup>10</sup> when it is required that foreign laws and regulations are either scrutinized or even applied for purposes of domestic law.<sup>11</sup> Under either principle, the outcome of that scrutiny leads to the result that if a subject (for example, a DAO) passes the bar under a given foreign law, that subject may be deemed to meet also the requirements of the domestic law (of what is at issue).

But even if a regulator or a court does not fully recognize the other law on what is at issue, it still may view a subject (for example, a Swiss DAO) in a positive light under its own domestic law – which is already key because regulators and courts typically entertain a wide margin of discretion.

Because of the excellent reputation of the Swiss rule of law globally, Switzerland and its laws are more likely than not to be recognized by other jurisdictions in a given case.<sup>12</sup>

Conversely, small ‘offshore’ jurisdictions or states, which do not prioritize the rule of law, either lack that benefit or offer it to DAOs on a smaller scale only.

Switzerland also knows that principle in its regulatory laws. For instance, under Article 59 Swiss Financial Institutions Act (of 1 August 2021), which governs among other things also securities firm trading in securities, the Swiss Financial Market Supervisory Authority (*FINMA*) shall grant the *foreign* financial institution authorization to establish a representation if, among other things, the foreign financial institution is subject to appropriate supervision by its competent foreign supervisory authorities.

Finally, and speaking based on practical experience, also foreign business parties of Swiss DLT projects and of Swiss DAOs, in order to comply with their legal and regulatory requirements, rely on that Swiss passport (for example, to meet money laundering requirements based on the fact that the Swiss DAO is supervised by an Self Regulating Organization of the purpose to ensure money laundering compliance).

8 For the notion of soft law, *cf.* Decision of the Swiss Federal Court 143 (2016) II 162 with regard to FATF Recommendations, and generally more on the topic can be found in K. W. Abbot and D. Snidal, ‘Hard and Soft Law in International Governance’, *International Organization*, Vol. 54(3), 2000.

9 For instance, under Art. 54 Financial Institutions Act, FINMA may make the granting of authorization to establish a branch of a foreign financial institution additionally contingent upon a guarantee of reciprocity with the states in which the foreign financial institution or the foreigners with qualified participations have their place of residence or registered office.

10 *Cf.* Art. 59 Financial Institutions Act, FINMA.

11 *Cf.* ‘[I]t is the sovereign of each who adopts the foreign rule’, *King et al. v. Sarria*, 69 N.Y. 24, 31 (N.Y. 1877); *cf. also Union Securities Co. v. Adams*, 33 Wyo. 45, 52 (Wyo. 1925).

12 *Cf. Union Securities Co. v. Adams*, 33 Wyo. 45, 54 (Wyo. 1925).

Thus, by establishing a DAO under the legal wrapper of a Swiss association, the DAO is granted a Swiss passport, which facilitates access to other jurisdictions at least to some degree.

### VII. *The Benefit of the Swiss Legal One-Stop-Shop for DAOs*

A further advantage for a DAO or for DLT project, in general, is that they get full-ratchet protection by the Swiss law. There is no need to establish further entities like foundations or share companies in other jurisdictions because those or part of the activity and business a DAO or a given DLT project pursue may not be available or viable (this means that a generally speaking legal undertaking is not regulated yet and thus barred). Under Swiss law, not only many different legal wrappers are available for a DAO and her projects: a Swiss DAO could, for instance, establish a foundation under Swiss law and that foundation could also own and run a Ltd. to fulfil its goals. Switzerland does not only offer an attractive set of different legal forms for DAOs but also a comprehensive and DLT-friendly legal framework for crypto-related activities. Therefore, under Swiss law the realm of DLT was recognized by Swiss law as equivalent to any other sphere of business or life. DLT and DAOs benefit from a recognition by and protection by the Swiss law. Moreover, in 2021, the Swiss lawmaker comprehensively overhauled the law applicable to DLT by either declaring elements of DLT on par with common and long-established ones (for example, digital property in case of bankruptcy) or issuing new provisions regulating specifically DLT (transfer of digital property).<sup>13</sup>

Adding to that law-making activity, also Swiss authorities have become familiar with DLT while the latter was expanding in numbers and sophistication. Swiss tax authorities have been already dealing with digital assets.<sup>14</sup> A further benefit of the Swiss one-stop-shop is that any DAO's complex structure, even if also including further legal entities, can be scrutinized by one and the same tax authority. Thus, contradicting tax decisions can be avoided. Moreover, tax rulings are available in Switzerland, giving a DAO the option to plan for tax costs and price them in well ahead.

## G. Conclusion

Since Web3 applications and DAOs, but arguably also Metaverse, enable the decentralized interaction between (natural and legal) persons, it can be assumed that the two concepts will increasingly converge. Yet, despite any efforts of further decentralization and digitalization, interested stakeholders will not escape the reach of the law and its long arms. To date, but for few exceptions, the concept of law is rooted deeply in a territorial attachment. Concepts to the likes of 'joint ventures' or 'simple partnerships' will keep applying, looming over the participants

13 See Federal Council brings DLT Act Fully Into Force and Issues Ordinance, [www.admin.ch/gov/en/start/documentation/media-releases.msg-id-84035.html](http://www.admin.ch/gov/en/start/documentation/media-releases.msg-id-84035.html) (last accessed 14 November 2022).

14 See D. Nazareno and S. Fuchs, 'Dezentrale Autonome Organisationen', *Expert Focus Special*, 2022, March, pp. 18-28, 21-22.

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of DAOs and other vehicles whether they want or even know about it or not.<sup>15</sup> To cut the proverbial knot, interested stakeholders should take a leap ahead by choosing a legal wrapper reflecting properly their project (for example, the level of decentralization), fitting their needs, matching the regulatory environment – taking into consideration not only domestic but also key foreign jurisdictions like the EU or the USA (for example, the MiCA) – yet providing freedoms and reducing formal and monetary burdens. The Swiss association provides for that.

15 The accelerated downfall of the crypto-exchange FTX show that any kind of DLT projects, even those more regulated and centralized, need to analyse what legal wrapper, if any, might be best for them to mitigate the risk inherent to a project and to be legally prepared for the worst. <https://protect-us.mimecast.com/s/db0GCn5l1ZcXGgpos9eJXx?domain=cNBC.com> (last accessed 14 November 2022).