# Decentralized Autonomous Organizations: Is a New Liability Regime Possible? Current Landscape of German and Turkish Company Law and a New Liability Regime Recommendation

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**Abstract** The socio-economic developments and the volume of Decentralized Autonomous Organizations ("DAO") are increasing day by day. However, debates in the field of law regarding the DAOs are still vigorous. One of the most crucial issues pertaining to DAOs is liability, which is related to their legal nature. Hence, this work first briefly reveals the current liability regime of DAOs within the context of the current landscape of German and Turkish Company Law. Particularly ordinary partnerships, joint-stock companies and limited companies will be examined. Then, the new liability regime for DAOs will be proposed, as a part of the recommendation of a "New Code". Finally, this work will be concluded with the outcomes and recommendations.

**Keywords** DAO · Liability · Legal nature

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# 1 Introduction

The socio-economic developments and the volume of Decentralized Autonomous Organizations ("DAO") are increasing day by day.[1] However, debates in the field of law regarding the DAOs are still vigorous. One of the most crucial issues pertaining to DAOs is liability, which is related to their legal nature. Because of the fact that, the main reason behind the preference for a new or existing legal wrapper in DAOs, especially after the SEC's legal explanations on "the DAO" [2–8] and "the bZx DAO case" [9], is the desire to limit the liability of DAO token holders and creators [10].

Therefore, this work first briefly reveals the current liability regime of DAOs within the context of the current landscape of German and Turkish Company Law. Particularly ordinary partnerships, joint-stock companies and limited companies will be revealed briefly. Then, the new liability regime for DAOs will be proposed, as a part of the recommendation of a "New Code". Finally, this work will be concluded with the outcomes and recommendations.

# 2 Current Landscape of German and Turkish Company Law

## *2.1 General*

After the token holders of a DAO were deemed liable under the premise of a general partnership in the United States [9], concerns about the liability regime for DAOs and their legal nature have risen. Therefore, the current liability regime for DAOs under Civil Law jurisdictions also becomes a crucial issue to be examined. Recognizing said liability regime requires checking the compatibility of the legal wrappers of the said jurisdictions. For that purpose, the most common legal wrappers of German and Turkish Company Law are preferred to be examined.[2] This examination will be generally conducted through these two jurisdictions' common features. Due to the page limitations, direct results will be presented instead of detailed examinations. For the same reason, only the most common legal wrappers, particularly ordinary partnerships, joint-stock companies and limited companies will be evaluated.

[1] As of 3rd of the March 2025 there were a total of 50,845 aggregated governances, encompassing all DAOs and sub-DAOs, with a total asset value of USD 21.8 billion, 11.8 million token holders and 3.3 million active voters and proposal makers [1].

[2] Undoubtedly, Civil Law comprises many significant jurisdictions such as French and Swiss Law, in addition Turkish and German Law. However, Turkish and German Company Law selected deliberately based on the following reasons: Analysing French, Swiss, or other Civil Law jurisdictions would exceed the length limitations of this study. Moreover, the author does not claim expertise in those jurisdictions. In contrast, the author has studied and is familiar with Turkish and German Law. Additionally, the similarities between these two legal systems are well established, making a comparative analysis not only feasible but also conducive to drawing joint conclusions.

## 2.2 Ordinary Partnerships

Ordinary partnership ("OP") could be basically defined as an agreement where more than one natural or legal person pools their assets (i.e. tangible, intangible or efforts) for a common purpose [11–18]. As a default form, OPs are regulated under Art. 620 et. seq. of Turkish Code of Obligations ("TCO") and Art. 705 German Civil Code ("BGB") aF/nF. According to said regulations, if an entity does not fall into any forms of specific entities regulated by law, OP regulations shall be applied [Art. 620/2 TCO, § 705 BGB, 12, 13, 16–19].

Both in German and Turkish Law, OP does not have a legal personality [20], thus partners are jointly, severally, and personally liable [11, 12, 14, 15, 18]. Even after the Act on the Modernization of Partnerships ("MoPeG"), which came into force as of January 1, 2024, registered OP (*eingetragenen GbR*, "eGbR") [21–25] does only have legal capacity ("*Rechtsfähigkeit*") but not have a legal personality which prevents liability limitation [23, 25].

Owing to its comprehensive nature, OP emerges as a frequently encountered structure possessing various facets that may be deemed suitable for DAO. Indeed, either DAO may opt for the OP structure or fall into that wrapper. Although prima facie and roughly classifying DAO as an OP may seem plausible *de lege lata*, the existence of numerous challenges becomes evident in the application of relevant provisions.

Firstly, it would be beneficial to reiterate the reservation regarding the ontological incongruity between DAO and centrally governed corporate forms. Secondly, it is noteworthy that in both Turkish and German Law, OP lacks legal personality, thereby rendering partners jointly, severally, and personally liable [11, 12, 14, 15, 18]. Besides the ongoing liability of partners [§ 708 BGB aF; § 721BGB nF, 17], the attribution of the status of a merchant to partners in the current state of Turkish Law and the potential disputes over the attribution of the merchant status in the evaluation of BGB nF, especially in the context of eGbR, pose a significant issue for DAO. This is due to the negative consequences, particularly for members, arising from the implications attributed to being a merchant [26, 27]. Furthermore, other vulnerabilities for DAO include, for instance, the liability of a new partner for pre-existing debts under Art. 721b BGB. Moreover, eGbR stipulates several obligations in various scenarios concerning the newly introduced register through the MoPeG [21–25]. Additionally, the necessary consent process for the admission of new partners, as well as the termination and liquidation process, will pose considerable challenges.

## 2.3 Joint-Stock Companies

Joint-stock company ("JSC"), which assumes a pivotal type of company in Turkish and German Law, is generally defined as a legal entity with a specified capital divided into shares, solely responsible for its debts with its own assets, possessing separate

legal personality and thus limited liability regime [Art. 329 TCC, Art. 125 TCC, § 1 AktG, 28, 11, 19, 29, 30].

Especially owing to attributes such as legal personality, limited liability, the current structure of shareholders, shares, and the decision-making process, the JSC has been acknowledged as a construct well-aligned with the operational principles of DAO.

Conversely, even procedural aspects like notarization and formal registration pose impediments to categorizing DAO as a JSC [*q.v.* 7, 19]. Furthermore, significant attention has been directed towards mandatory provisions regime [§ 23/5 AktG, 28, 30–35]. Within this framework, considering that numerous facets are explicitly "dictated" by law, JSCs find themselves constrained in adapting regulations to meet their specific requirements. This inherent constraint proves disadvantageous for innovative structures like DAOs, each of which boasts a distinctive organizational framework.

Moreover, formation audit is regulated under the German Stock Corporation Act ("AktG") [§ 33 AktG, 31] in addition to several other official procedures and approval requirements for certain sectors both in Turkish [Art. 339 et seq. TCC, 28, 11, 35] and German Law stands as important obstacles. Furthermore, it is opined that under both Turkish [36–38] and German Law [19, 39–42], the fulfilment of capital debt via tokens remains highly controversial within the existing regulations, in addition to several other incompatibilities.

Finally, despite recognizing the potential for opportunity within this constraint, it remains assertable, within the existing legal regime, that classifying DAO as a JSC is not feasible *de lege lata* neither under Turkish Law nor German Law.

### *2.4 Limited Companies*

Limited Company ("Ltd"), a significant corporation within both Turkish and German Law, is a commercial entity established by one or more person whose capital is registered and comprised of each capital shares [Art. 573 TCC, Art. 124 TCC, § 1 GmbHG, 43, 44]. It should be highlighted that Ltd possesses a separate legal personality [Art. 124 TCC, Art. 125 TCC, § 13 GmbHG, 43, 11, 45, 46], and as a consequence, the principle of limited liability prevails.

From the DAO compatibility perspective, several vital deficiencies should be emphasized. First of all, similar to JSC, *de lege lata*; formal registration, notarization and trade registry process constitute significant barriers [7, 19]. Additionally, the limitation imposed by Turkish Law, which restricts the number of shareholders to 50 individuals [11, 43], presents a significant disadvantage. Moreover, shareholders' loyalty and non-competence obligations [Art. 613 TCC, 43, 44] which are pivotal aspects of Ltd, may give rise to substantial challenges for DAOs. Furthermore, both Turkish and German Law foresees several restrictions and formalities for share transfer which are incompatible with DAOs [Art. 593 et seq. TCC, § 15/3 GmbHG, 43, 44, 46]. Lastly, considering these factors, it remains untenable, within the existing legal framework, to classify a DAO as an LTD *de lege lata*, neither under German Law [7, 19] nor under Turkish Law.

## 3 A New Liability Regime Recommendation

Previous sections revealed that, numerous issues arising from the compatibility of existing company law regulations with DAOs. Therefore, a "New Code" for DAOs has been proposed [20]. Generally speaking, this New Code is dedicated to; (i) proffering resolutions to previously identified issues, (ii) rectifying deficiencies in existing regulations, (iii) proposing a harmonized and internationally applicable regulation that (iii a) extracts salient aspects of both Civil Law and Common Law regulations, (iii b) incorporates considerations of the technical dimension of the subject matter, (iii c) able to be integrated easily to national laws.

As an incompatibility with the current liability regime has been revealed, this section aims to present a new liability regime proposal for DAOs as a part of a New Code Recommendation. Thus, Chapter 4 of the New Code focuses on the "liability" of DAOs will be presented with Article 3 of the New Code which regulates the legal nature of a DAO. For this purpose, the relevant Article and Commentaries in the following paragraphs until the "Conclusion" have been quoted directly in their original form [20]. However, certain sections have been abridged, indicated by (…), while necessary explanations have been added in ().

**Article 3: Legal Nature**

A DAO, meets the requirements of this Code, is a sui generis legal entity which is subject to a limited liability regime, possessing a separate legal personality and legal capacity, shall be established by one or more individuals for any lawful purpose.

**Commentary**

The intention behind the formulation within the paragraph is to maintain briefness and clarity in definition. Instead of lengthy provisions found in many existing regulations [*v.d*. Art. 104 Marshall Islands DAO Act, Art. 48-5-104 Utah DAO Act], compact legal terms are preferred.

(…)

As previously underscored, while DAOs may share similarities with various facets of company law, they do not conform precisely to any one model. Moreover, as articulated, the intention is to leverage specific elements of several different legal forms beneficial to DAOs while maintaining requisite flexibility. Therefore, the appropriate choice is deemed to be a "sui generis legal entity", tailored to the distinctive requisites of DAOs.

**Chapter 4: Liability**

**Article 18: Liability of Members**

1. The main and sole obligation of the members is to make contributions to the DAO to redeem the DAO's tokens, unless otherwise regulated under this Code.
2. Members shall not be held personally liable for any obligation incurred by the DAO, any excess liability if the DAO's assets have been exhausted, and the wrongful act or omission of the DAO or any other member of the DAO, unless otherwise regulated under this Code.
3. In case the DAO refuses to comply with an enforceable court decision, arbitration or any alternative dispute resolution award or official order, all members who do

not vote in favour of compliance shall be liable for any monetary payments ordered in that decision, award, or order in proportion to their contribution in the DAO pursuant to the first paragraph of this Article.

4. The above paragraphs shall not affect the personal liability of a member in case of the failure event attributable to its own bad faith or gross negligence.
5. The above paragraphs shall not affect the personal liability of a member in tort for its own wrongful act or omission.

**Commentary**

First and foremost, it is imperative to underscore that existing DAO regulations do not provide for a comprehensive liability regime as delineated within this chapter. Presently, emerging technologies such as blockchain, DAO, and cryptocurrencies remain unbound by specific liability regimes or compensatory regulations. Nevertheless, numerous supra-national reports unequivocally advocate for the necessity of such regulatory frameworks [47]. Indeed, this Code proposes to address liability concerns in this context. Unlike the existing regulations, this provision includes provisions from the existing corporate law liability regimes that could be advantageous and are implementable to DAOs. Undoubtedly, most of these provisions have not been directly adopted but have been incorporated into DAOs by harmonization. Indeed, proposals for fault-based liability rules [47] have been contemplated across various modalities and proportions herein. This may also be clearly seen in the subsequent provisions.

This provision regulates the liability regime of members whose definition and details are articulated under Article 14 (titled "Members", defines the members and regulates their rights and obligations). The first paragraph emphasizes that, in accordance with this Code and the fundamentals of DAO, the only obligation of the member is to make contributions to the DAO to redeem the DAO's tokens. Indeed, this framework notably parallels the sole obligation principle of shareholders in traditional corporate law systems [*v.d.* Art. 480 TCC, § 54 et seq. AktG].

The second paragraph explicitly dictates that beyond the principle of sole obligation, no additional liabilities shall be incurred to the members. Matters dispersed across various paragraphs or provisions in existing DAO regulations are consolidated into a singular paragraph herein. Thus, except for the members' contribution to DAO, it is explicitly stipulated that members shall not be held liable for any obligation incurred by the DAO, any excess liability if the DAO's assets have been exhausted, and the wrongful act or omission of the DAO or any other member of the DAO. Moreover, unlike existing regulations [Art. 5 COALA Model Law for DAOs], not only the wrongful acts or omissions of any other member of the DAO but also those of the DAO itself, are encompassed herein. According to the view posited herein, considering the DAO as a legal entity, such an inclusion is deemed requisite.

The third paragraph incorporates a provision, articulated under the existing regulations [Art. 485-202 Utah DAO Act, Art. 5 COALA Model Law for DAOs] appropriately and reasonably, into this Code. However, it diverges from these regulations in two crucial aspects. Firstly, the term, "enforceable court decision, arbitration or any alternative dispute resolution award or official order" delineated in this paragraph,

is preferred for more precise terminological usage, which could be more beneficial. It is imperative to note that, the term "enforceable" covers court decisions, awards, and orders. However, the enforceability shall be interpreted upon the applicable law of such decision, award, or order. It could be criticized for not preferring the phrase "final and binding" instead of "enforceable". Nevertheless, it should be kept in mind that interim decisions or interim awards could still be enforceable even they are not final and binding yet. Indeed, official orders often lack finality as they are subject to judicial review. Moreover, enforcement of them must precede any appeals process. Therefore, the more comprehensive term "enforceable" is preferred considering all the above matters. It should be reiterated that enforceability shall be contingent upon the applicable law governing the respective decision, award, or order. The second aspect that diverges from the existing DAO regulations [Art. 5 COALA Model Law for DAOs] is utilizing the term "who do not vote in favour of compliance" instead of "votes against", whose ground can be inferred from Article 10 which incorporates similar terminology preference.

The fourth paragraph stipulates the liability regime of members in case of a failure event [Art. 48-5-405 Utah DAO Act]. As expressed previously under the commentary of Article 4, neither in herein provision nor in this Code, particularly technical terms such as failure event is defined. Among several other grounds which could be inferred from the said commentary, one of the main reasons for that, it is anticipated that, pursuing a casuistical definition of each term may inadvertently lead to overly rigid regulations, potentially out of sync with evolving technological advancements and inadvertently creating loopholes. Therefore, namely by abstaining from certain definitions, the delineation of these terms is entrusted to the DAO practice, doctrine, and dispute resolution bodies.

Some views posit that, the failure event provisions bear a resemblance to the liability of the board of directors under traditional corporate law [Commentary of Art. 18 COALA Model Law for DAOs]. These provisions are designed to address instances where an individual possessing decision-making authority within a DAO leads a technical failure towards their own acts in bad faith or gross negligence resulting in the loss of members or other stakeholders. Undoubtedly, the corporate veil typically covers members for any incurred liability in case of a failure event. However, there exist circumstances where members may be found liable for acts of bad faith or gross negligence. In such a scenario, an analogy to piercing the corporate veil may arise, thereby enabling the pursuit of personal liability against the respective members. The concepts of bad faith and gross negligence shall be interpreted via accumulated corporate law discourse, it is imperative to consider specific features of the DAO universe.

The last paragraph reflects a tort liability as articulated under similar existing regulations.

**Article 19: Liability of Other Stakeholders**

1. Executive, legal representative or any individual vested with the authority for discretionary decisions in the interest of the DAO shall not have fiduciary duties towards each other, to the DAO, to the DAO members or to the third parties solely

on account of their role, unless otherwise explicitly stipulated by the resolution appointing them and conferring discretion upon them.
2. None of the aforementioned individuals may be personally liable for acts performed on behalf of the DAO, unless proven of bad faith or gross negligence.
3. The above paragraphs shall not affect the personal liability of any of the aforementioned individuals in case of the failure event attributable to their own bad faith or gross negligence.
4. The above paragraphs shall not affect the personal liability of any of the aforementioned individuals in tort for their own wrongful acts or omissions.

**Commentary**

This provision regulates the liability of the executive, legal representative or any individual vested with the authority for discretionary decisions in the interest of the DAO in a more detailed, comprehensive, and divergent manner from existing regulations. Considering DAO's decision-making process, organizational structure, and member-centric orientation, it is reasonable to not incorporate fiduciary duty [*v.d.* 48] to aforementioned individuals, who lack hierarchical superiority and discretionary prerogatives akin to those in corporate law regulations [*v.d.* Commentary of Art. 13 COALA Model Law for DAOs].

The second paragraph effectively merges the existing DAO regulations and corporate law regime, which reflects the innovative and distinctive approach introduced by this regulation. This paragraph both complies with the fiduciary duty regulation of the first paragraph and paves the way to the incorporation of "the due care of a prudent manager faithfully complying with the relevant duties" [§ 93/1 AktG, § 93/2 AktG] via its sub-sentence. More precisely, neither the first nor second paragraph imposes a fiduciary duty to the executive or similar individuals who have limited discretion in complying with the DAO principles. However, the more this discretion tends towards centralized authority akin to managers in traditional corporate law, the greater the possibility of triggering the term "unless proven of bad faith or gross negligence". Because, in that case, these individuals function akin to traditional corporate form managers, which necessitates them "to exercise the due care of a prudent manager faithfully complying with the relevant duties" [§ 93 AktG]. In other words, if a DAO keeps its decentralized structure as member-managed or smart contract-managed structure, there would be no executives reflecting the corporate law features. Therefore, this principle could not be applied in the interpretation of their duties. On the contrary, namely when there exists managerial power akin to traditional corporate law, then the interpretation of the liability regime also tends towards traditional corporate law. Henceforth, it is posited that in the event of the aforementioned scenario, despite the absence of fiduciary duty, the interpretation of "unless bad faith or gross negligence" may draw upon the AktG approach detailed earlier.

For the interpretation of the third paragraph, which stipulates the failure event liability, the preceding provision could be beneficial.

The last paragraph reflects a tort liability as articulated under similar existing regulations.

**Article 20: Remedy, Procedure, and the Statute of Limitation**

1. Pursuant to Article 18 and Article 19, if more than one individual is obliged to indemnify the same damage, they shall be jointly and severally liable. In that case, each shall be held liable in case of said damage attributable to their own bad faith or gross negligence.
2. None of the aforementioned individuals shall be held liable for the breaches of the law, SoD, or the principles of blockchain beyond their control.
3. Procedures for remedy, statute of limitation and other related details shall be regulated by the Contracting State in accordance with the liability regime regulated under Article 18 and Article 19.

**Commentary**

This provision introduces a novel regulation, which existing regulations do not incorporate. However, as stipulated before, this Code incorporates regulations based upon several phenomena of existing DAO regulations and traditional corporate law regulations, as appropriate. Therefore, liability regulations necessitate to regulate remedies. Considering all, remedy regulations based upon several aspects of Art. 759 the Swiss Code of Obligations ("OR"), Art. 553 TCC and Art. 557 TCC [28].

The first paragraph aims to merge DAO principles with Art. 557 TCC and Art. 759 OR. As it is recalled, Article 18 and Article 19 of this Code envisage a serious liability regime. In case of multiple individuals lead to liability, they shall all bear joint and several liability. However, it would be unfair to attribute such multiple-actors-liability to a sole individual, considering the potential variance in levels of bad faith or gross negligence among them. At this juncture, the second sentence of this paragraph shall be triggered and introduces differentiated solidarity [Art. 557 TCC, 11, 28]. It is imperative to remember that, the interpretation of this regulation from the DAO perspective requires benefiting from the doctrine and jurisprudence arising from the Art. 557 TCC and Art. 759 OR.

The second paragraph aims to merge DAO principles with Art. 553/3 TCC [28]. The underlying rationale is a simple yet fundamental logical inference: where there is no control over events, liability cannot be attributed. Indeed, similar approaches have been observed in discussions concerning the DAO liability regime [*v.d.* 48]. Therefore, while serious liability scenarios are regulated for the Executive, legal representatives or any individual vested with the authority for discretionary decisions and members in exceptional cases; they shall not be held liable for the breaches of the law, SoD (The "Statutes of the DAO" defined and regulated under Article 6 of the New Code. Broadly speaking, said article aims to regulate SoD as not only a foundational document but also internal relationship rules with non-exhaustive provisions), or the principles of blockchain beyond their control, pursuant to this paragraph. The establishment of such a merged-solution to the liability is not only fair but also allows to benefit from the accumulated doctrine and jurisprudence.

The last paragraph allows the Contracting States to regulate procedural law rules such as process, parties, and the timeframe within this proposed liability regime.

Indeed, it could be asserted that, existing DAO regulations do not encompass procedural law rules, let alone substantive law rules on this matter. Therefore, it is the appropriate and rational choice to delegate regulation of these matters to the Contracting States' discretion. However, it is imperative to consider the phrase "in accordance with the liability regime regulated under Article 18 and Article 19" when regulating these matters, which emphasizes that such regulations shall not eliminate the core of the provisions of this Code.

**Article 21: Compulsory Liability Insurance and Insurance Fund**

1. A DAO is obliged to submit proof of the compulsory liability insurance policy whose premiums, limits, values, and all other details shall be subject to the secondary legislation enacted by the Contracting State, in accordance with Article 6 of this Code.
2. An individual asserting a claim for compensation pertaining to their loss arising from Article 10 (Invalidity of Resolutions and Remedies), Article 12 (Dissolution), Article 18/2, Article 18/3, Article 19/1, Article 19/2, Article 22 (Hard Fork), and Article 23 (Restructuring) of this Code shall be applied for the aforementioned compulsory liability insurance. All procedural matters and the statute of limitations shall be subject to the secondary legislation enacted by the Contracting State, in compliance with the general principles of insurance law.
3. Any Contracting State may, at its sole discretion, enact secondary legislation to establish the insurance fund to redress the compensation not covered by the compulsory liability insurance. The financial and legal structure of this fund, the premiums paid by the DAOs, compensation limits, the statute of limitations and all other details shall be governed by that secondary legislation.

**Commentary**

This provision primarily regulates two concepts, namely compulsory liability insurance and the insurance fund. However, before delving into the detailed content of this provision, it is imperative to first articulate certain foundational observations and justifications.

Comprehensive explanations regarding the necessity for detailed liability regime regulations for the DAO and such novel technologies have been mentioned under the commentary of Article 18. Because of said grounds, it has been noted that this Code introduces a novel and comprehensive liability regime consisting of several provisions. Herein, compulsory liability insurance, which is an integral part of this liability regime, is regulated and will be examined. Despite fair criticism of the doctrine posits that compulsory insurance could not be deemed as the sole and comprehensive solution to liability matters [47], the proposal for such a liability system does not merely rely on the compulsory liability insurance but also includes it, which is considered one the most suitable solutions at present. Moreover, some scholars posit that, compulsory insurance constitutes one of the effective answers to remedy for the loss of the third parties [49]. Indeed, numerous existing regulations, especially those pertaining

to robots, the compulsory insurance are envisaged.[3] Beyond all these, this Code introduces not only compulsory liability insurance as a remedy for that problem, but also establishes a multi-perspective liability regime system consisting of several provisions.

The following point deserves a notable emphasis. This Code recognizes the fact that existing EU regulations especially subject to robotics rely mainly on, tort liability [49, 50*cf.*]. However, here, contractual liability has been preferred for the following two reasons: (i) previously noted grounds and (ii) the comprehensive nature and current applicability of the proposed solution. Lastly, it should be considered that, at the juncture of the current corporate law realm, § 93/2 AktG stipulates that members of the management board may be subjected to liability insurance, albeit optionally.

The first paragraph stipulates that DAOs are obliged to obtain compulsory liability insurance, parallel with Article 6 (The Statutes of the DAO). The specifics of these policies, including premiums, limits, values, and all other pertinent details, are to be determined by secondary legislation enacted by the Contracting State. While several factors will be considered in determining these limits, it is noteworthy to consider § 93/2 AktG which proposes up to a minimum of 150% of the annual fixed remuneration of such executives.

The second paragraph lists the grounds for the loss, as *numerus clausus*. According to that, an individual makes a compulsory liability insurance claim pursuant to the listed *numerus clausus* articles of this Code. All procedural law matters, such as conditions for being a claimant, the authority to file claims, the opposing party, statutes of limitation, and insurance law subjects shall be determined by the Contracting State. The general principles of insurance law constitute a crucial standpoint for all Contracting States, when formulating those regulations. Several aspects regarding this paragraph merit attention. Firstly, the determination of the claimant will fundamentally rely on the provision upon which the claim is based. Secondly, the concept of loss will be clarified over time through doctrine, practice, and jurisprudence in accordance with both the realm of private law and the general principles of DAO. Lastly, referencing general principles of insurance law in this paragraph also serves to prevent double compensation, which constitutes one of the cornerstones of such principles.

The last paragraph envisages the insurance fund, which is another integral part of a novel and unique liability regime. Inspired by the EU regulations, this concept aims to redress the compensation not covered by compulsory liability insurance. The term "compensation not covered by the compulsory liability insurance" herein, comprehensively encompasses the scenario, where the absence of insurance, is based on inspired regulations[4] but also includes scenarios where the loss remains inadequately addressed while there exists an insurance policy. Similar to the preceding paragraphs, for analogous reasons, the financial and legal structure of this fund, the

[3] Civil Law Rules on Robotics European Parliament resolution of 16 February 2017 with recommendations to the Commission on Civil Law Rules on Robotics (2015/2103(INL), pr. 57.

[4] Ibid., pr.58, [47]

premiums paid by the DAOs, compensation limits, the statute of limitations, and all other details shall be governed by secondary legislation.

## 4 Conclusion

The liability regime constitutes one of the most crucial issues related to DAOs, which is also applicable to the Turkish and German Company Law systems. Therefore, the most common legal wrappers of German and Turkish Company Law are required to be examined.

Although prima facie and roughly classifying DAO as an ordinary partnership may seem plausible, there exist several incompatibilities. Several formalities and obligations for eGbR prevent DAOs as OP. But more importantly, one of the most vital problems is, in both Turkish and German Law, OP lacks legal personality, thereby rendering partners jointly, severally, and personally liable.

Several formal requirements and obligations prevent the classification of DAOs as joint-stock companies or limited companies. Moreover, mandatory provisions regime, formation audit, and other establishment formalities stand as important obstacles from the JSC perspective. Furthermore, the fulfilment of capital debt via tokens remains highly controversial.

From the Ltd perspective, the 50-person upper limit under Turkish Law, formal registration, notarization, and trade registry process constitute significant barriers. Moreover, shareholders' loyalty and non-competence obligations which are pivotal aspects of Ltd, may give rise to substantial challenges for DAOs. Furthermore, both Turkish and German Law foresees several restrictions and formalities for share transfer which are incompatible with DAOs.

Therefore, despite recognizing the potential for opportunity within this constraint, it remains assertable, within the existing legal regime, that classifying DAO as a JSC or Ltd is not feasible *de lege lata* neither under Turkish Law nor German Law.

In light of the abovementioned problems, a "New Code" for DAOs has been proposed and its liability regime has been introduced in this work. Briefly speaking, this New Code is dedicated to; (i) proffering resolutions to previously identified issues, (ii) rectifying deficiencies in existing regulations, (iii) proposing a harmonized and internationally applicable regulation that (iii a) extracts salient aspects of both Civil Law and Common Law regulations, (iii b) incorporates considerations of the technical dimension of the subject matter, (iii c) able to be integrated easily to national laws.

Roughly speaking, the New Code classifies DAO as a sui generis legal entity that possesses a separate legal personality and thus subject to a limited liability regime (Art. 3). Chapter 4 of the New Code specifically regulates the liability regime. However, it should be emphasized that it is part of a puzzle. The New Code has its own reasoning and systematic structure, so each component complements each other. While Art. 18 regulates the liability of members, Art. 19 stipulates the liability of

the other stakeholders such as the executive, legal representative or any individual vested with the authority for discretionary decisions.

According to Art. 18, the main and sole obligation of the members is to make contributions to the DAO to redeem the DAO's tokens and they shall not be held personally liable for any obligation incurred by the DAO. However, parallel to the current DAO-centric regulations and the needs, paragraph 3 stipulates that, in case the DAO refuses to comply with an enforceable court decision, arbitration or any alternative dispute resolution award or official order, all members who do not vote in favour of compliance shall be liable, but proportion to their contribution in the DAO.

Article 19 regulates that any individual vested with the authority for discretionary decisions in the interest of the DAO shall not have fiduciary duties but, in case of proven bad faith or gross negligence, they shall be personally liable. Commentary of the said article provides detailed reasoning for that preference.

Article 20 identifies remedies, procedures, and the statute of limitation. It mainly regulates two following issues: If more than one individual is obliged to indemnify the same damage, they shall be jointly and severally liable. On the other hand, if there is no control over events, liability cannot be attributed. Indeed, similar approaches have been observed in discussions concerning the DAO liability regime.

Lastly, Art. 21 incorporates a compulsory liability insurance system and insurance fund to the DAO liability regime.

In conclusion, it is opined that, said liability regime proposal—with the other *sine qua non* components of the New Code—brings a new perspective to the DAO liability regime that benefits from the company law liability regime's accumulation of knowledge and also recognizes the ratio and needs of DAOs.

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