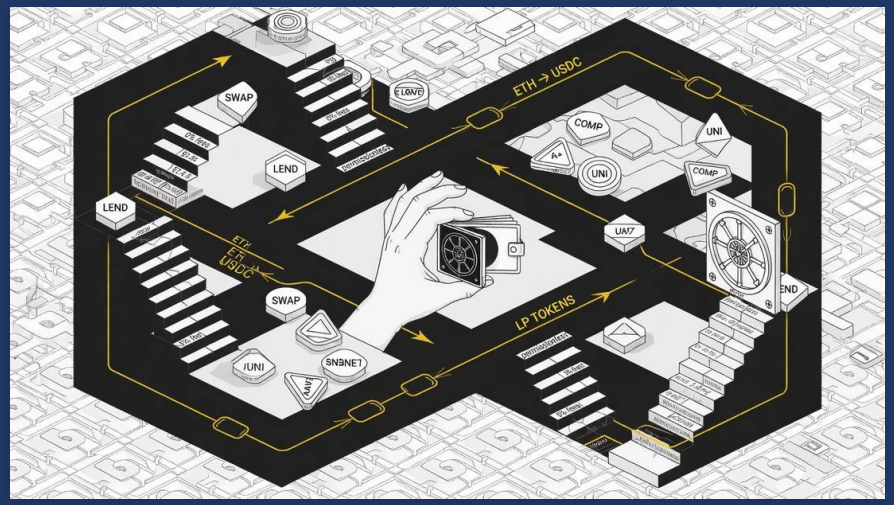
DeFi and DAOs: Finance Without an Address

What decentralised finance is, how it works, and when a specific person is liable for it after all



Webinar · June 2026 · approx. 90 minutes

Robert Nogacki, attorney-at-law (WA-9026) · Skarbiec Law Firm

THE OPENING QUESTION

Picture a currency kiosk with no owner. A machine on the street: feed in zlotys, out come euros at a rate set by mathematics alone.

One day the machine stops dispensing euros. Whom do you sue?

AGENDA

Ten steps in 90 minutes

I. What DeFi is and how it works: the ownerless kiosk, smart contracts, the layered stack, the core services.

II. The scale of the phenomenon: the figures that cool the hype and the figures that should worry us.

III. The law looks for a person: the Howey test, MiCA, and an exemption with no definition.

IV. What flows into the vacuum: laundering, sanctions evasion, fraud, gambling.

V. The decentralisation illusion: the costume and its economics.

VI. The four-seam test: how to examine a specific protocol.

VII. Ooki DAO: the anatomy of the case in which a protocol was sued.

VIII. The boundary points: Van Loon, Pertsev, bZx, Lido.

IX. DAOs as a legal problem: personality, liability, legal forms, taxation.

X. US statutes and operational takeaways: CLARITY, GENIUS, MiCA in practice, forecasts.

FRAMEWORK

Method and materials

Lex lata versus lex ferenda: the law as it stands kept distinct from the law as it ought to be.

Comparative perspective: EU law and US law, two techniques for the same determination.

Three levels of certainty: propositions that are settled, probable, and uncertain are flagged as such throughout.

Source materials: EBA/ESMA (Jan 2025), ECB WP 3208 (2026), BIS (Dec 2021), CRS (Apr 2026), US and Dutch case law, and four Skarbiec analyses (references on the slides).

Full list of sources and publications: appendix at the end of the deck.

PART I

What DeFi is and how it works

A loan with no lender, a deposit with no depositary. A program takes the place of the institution, and trust in mathematics takes the place of trust in the intermediary.

A working definition

DeFi (decentralised finance): financial services provided by software running on a blockchain, without a traditional intermediary (bank, exchange, brokerage).

The technical promise: transactions execute themselves once the encoded conditions are met.

The philosophical promise: if a piece of code provides the service, there is no one to defraud, no one to bribe, and no one to sue. The movement's slogan: code is law.

The thesis of this webinar: that promise is almost always broken, and testing it is a lawyer's job.

I

In depth: R. Nogacki, "Decentralised finance (DeFi): the MiCA exemption, the Howey test and the limits of regulation", kancelaria-skarbiec.pl, 5 Jun 2026.

Blockchain and the smart contract in three sentences

Blockchain: a distributed, public ledger of transactions; entries are cryptographically secured and cannot be altered unilaterally.

Smart contract: a program on the chain that executes itself once conditions are met; no one has to launch or supervise it.

The consequence: the rules of the service are written once and then run automatically. The lawyer's question is: who can change those rules.

The DEX, an exchange without an exchange

Decentralised exchange (DEX): a swap machine. The price is set by the ratio of two assets in a liquidity pool (the AMM mechanism, automated market maker), not by an order book and not by a market maker.

Liquidity pool: funds deposited by anonymous users who, in return, collect a share of the transaction fees.

No account with an intermediary: the user trades directly with the contract, from a self-custodied wallet whose keys they alone hold.

Examples: Uniswap, PancakeSwap, dYdX, Hyperliquid (we return to them when we apply the test).

Lending without a bank

Mechanism: instead of a creditworthiness assessment, over-collateralisation. A borrower posts crypto collateral; the code disburses the funds and itself liquidates the collateral if its value falls.

A pool instead of a lender: the funds come from anonymous depositors who earn the interest.

Examples: Aave, Compound, MakerDAO (issuer of the DAI stablecoin).

Why it matters: liquidity without selling assets, leverage, and at times sanctions evasion (Part IV).

Staking, stablecoins, mixers

Staking: locking assets to secure the network in exchange for rewards; liquid staking (e.g. Lido) issues a token representing the staked funds so liquidity is preserved.

Stablecoins: tokens pegged to a currency, most often the dollar; the bridge between crypto-assets and the fiat world and, de facto, the unit of account of DeFi.

Mixers: protocols that pool many users' funds to sever the link between the sending and receiving address (Tornado Cash, Parts IV and VIII).

Derivatives and leverage: trading on borrowed funds; on a DEX it can exceed the regulated market (the Ooki case, Part VII).

The layered stack: where everything lives

Settlement layer: the blockchain itself; it finalises transactions (Ethereum and others).

Application layer: the protocols' smart contracts; this is where the pools, the loans, the fees and the administrative keys live.

Interface layer: the website or app through which an ordinary user actually reaches the contract; someone maintains, pays for and designs it.

Why this map matters: each of the four questions of the decentralisation test (Part VI) sits on a specific layer. The map tells you where to look for the person.

Layer taxonomy after BIS Quarterly Review, Dec 2021.

The DAO: who governs the protocol

DAO (decentralised autonomous organisation): a community of governance-token holders; decisions are taken by vote and executed automatically by smart contracts.

Governance token: voting rights proportional to the number of tokens; the more tokens, the more power.

Scope of decisions: risk parameters, asset listings, treasury spending, the direction of development. This is real power, not folklore.

Examples: MakerDAO (DAI parameters), Uniswap DAO (development of the exchange).

In depth: R. Nogacki, "Decentralised autonomous organisations (DAOs): global legal solutions", kancelaria-skarbiec.pl, 22 Sep 2025.

The DAO, 2016: birth and collapse in a single act

Raised: 3.6 million ether, then worth over USD 70 million, in the first large organisation of its kind on Ethereum.

The exploit: a flaw in the code allowed roughly USD 50 million to be siphoned off.

Two lessons that still hold: code cannot easily be fixed once deployed, and in its 2017 report the SEC treated The DAO tokens as securities under the Howey test (Part III).

THE THOUGHT OF PART I

DeFi is not an exotic novelty but the familiar functions of finance in new technology: exchange, credit, deposit, derivatives.

The technology changes, the function does not. And the law follows the function.

PART II

The scale of the phenomenon

II

The figures cool the emotions on both sides: still a niche next to traditional markets, but a niche on a trajectory that cannot be ignored.

Total value locked (TVL): the trajectory

≈$54bn

early 2024

≈$237bn

peak, Q3 2025

≈$98bn

March 2026 (CRS), after the correction

The market matured and swung. For perspective: a fraction of a percent of global equity-market capitalisation, roughly one large listed company.

II

DEX share of spot trading

<10%

in 2021

>20%

in 2025, over one fifth of global spot trading in crypto-assets

One in five spot transactions now takes place where no one asks who you are. That is the figure worth keeping from this part.

II

Users in the European Union

7.2m

DeFi users in the EU, about 1.6% of citizens

<15%

of them regularly active

39 / 22 / 8

share of TVL (%): staking / lending / DEX

Penetration is low but not marginal. Structure: staking dominates; classic DEXs shrank from 31% to 8% of TVL.

II

Who really holds power (ECB WP 3208)

>80%

of governance tokens held by the 100 largest addresses

≈50%

with the five largest holders (Aave, Uniswap)

3–5%

typical turnout on material governance votes

A manual review of four protocols: Aave, MakerDAO, Ampleforth, Uniswap. The distribution is stable over time. We return to it in Part VI.

II

The structure of power: delegates and treasuries

Holdings: half or more of the tokens sit with protocol treasuries and exchanges (Binance up to 22% for Aave).

Voters: mostly delegates; the single most powerful voter in Uniswap is the venture-capital fund a16z, with 125 delegators.

Opacity: between one third and one half of the largest voters cannot be identified from public sources.

The name of the regime: timocracy, power in proportion to holdings. Not a dispersed democracy.

II

Born, Gati, Lambert, Naeem, Pellicani, "Who to regulate?", ECB Working Paper No 3208, 2026.

THE THOUGHT OF PART II

Dispersion of addresses is not dispersion of power.

You can have a hundred thousand token holders and five addresses that decide everything.

PART III

The law looks for a person

The whole of financial-market law rests on one unspoken premise: that somewhere there is someone. DeFi promises there is no one.

A law about persons, not about acts

The architecture: someone issues a security, someone runs an exchange, someone takes a deposit. The duties (disclosure, capital, consumer protection) have an addressee.

The injured party: has someone from whom to demand satisfaction.

DeFi: promises a service with no addressee of duties. If the promise were true, we would face a genuine regulatory vacuum.

The organising question: is that vacuum real, or merely declared.

III

The Howey test: a question about someone's effort

Source: SEC v. W.J. Howey Co., 328 U.S. 293 (1946); a Florida orange grove sold together with a cultivation contract.

Four elements: an investment of money, in a common enterprise, with an expectation of profit, derived from the efforts of others.

The Achilles' heel: the test asks about someone's effort. If an allegedly autonomous piece of code provides the service, whose effort is it? The founders who have left? Anonymous voters? The machine?

DeFi's first line of defence: if the code does everything, the element fails, and SEC oversight falls with it.

III

The Hinman myth

2018: a senior SEC official, William Hinman, suggested in a speech that a sufficiently decentralised asset (he was speaking of ether) might cease to be a security.

The status of the remark: a private view of an official, not a position of the Commission; the SEC later said so expressly.

The legal position: no provision of US law recognises an exemption on grounds of decentralisation. The myth nonetheless took on a life of its own, because it was convenient.

III

MiCA: a definition that looks for an undertaking

CASP (Art. 3(1)(16) MiCA): a legal person or other undertaking providing crypto-asset services on a professional basis. Again: there must be someone.

The exemption (Recital 22): services provided "in a fully decentralised manner without any intermediary" should not fall within the Regulation.

The gap: the Regulation nowhere defines "fully decentralised". The legislature cut a window into the rules but gave no dimensions for it.

III

In depth: R. Nogacki, "The CLARITY Act and MiCA decentralisation test. When a DEX is subject to regulation", kancelaria-skarbiec.pl, 6 Jun 2026.

The regulator concedes: there is no threshold

Joint EBA/ESMA report (16 Jan 2025, Art. 142 MiCA): expressly acknowledges that the Regulation does not specify how to read references to "full decentralisation", and deliberately offers no legislative recommendation.

ESMA, further: decentralisation exists on a spectrum, not as a binary state. Most projects retain elements of centralisation.

The market effect: widespread uncertainty as to status; some projects re-engineer themselves drastically toward decentralisation simply to avoid licensing.

III

The same Achilles' heel

The Howey test asks: whose effort it is.

MiCA asks: who the undertaking is.

Both presuppose that somewhere there is a person. DeFi promises there is none.

The stakes: if the promise is true, we have a financial service attributable to no one. First, let us see what flows into that supposed vacuum.

III

FURTHER READING

Decentralised finance (DeFi): the MiCA exemption, the Howey test and the limits of regulation

Skarbiec Law Firm publication, 5 June 2026

The full treatment of this part, with footnotes: from the Achilles' heel of both systems to the anatomy of the Ooki DAO case.

kancelaria-skarbiec.pl

PART IV

What flows into the vacuum

A space in which a transaction has no author acts like gravity on phenomena that flee the light. Removing the intermediary removes the eye that was meant to watch.

The Lazarus choreography

The pattern investigators recite from memory: break into a bridge or an exchange; within hours convert the haul into ether or stablecoins on a DEX (most often Uniswap first); run it through a mixer; cash out in tranches; exit to fiat via an exchange in a lax jurisdiction.

Scale: the Lazarus group (linked to North Korea) routed 30 to 40% of more than USD 2 billion in stolen crypto through DeFi protocols; the Ronin bridge hack was about USD 625 million (Mar 2022).

The highest stakes: in the assessment of the UN Panel of Experts and the US Treasury, these funds help finance North Korea's missile and nuclear programmes.

IV

Russia: evasion without theft

The mechanism since 2022: deposit ether bought for roubles into a lending protocol (Aave, Compound), borrow dollar stablecoins against it, withdraw to a private wallet.

The effect: dollar value held outside the sanctioned banking system, which never once passed through an identity check.

The telling feature: no theft, no mixer, nothing that trips an alarm. The ordinary machinery of DeFi turned to circumventing a financial blockade.

IV

The rug pull

The scheme: create a token, whip up enthusiasm, and once investors' funds flow into the pool, drain it in a single move and vanish.

The difference from the centralised world: there, an entity would have to exist for the prosecutor to reach. Here the founders hide behind a sentence: it wasn't us, it was an autonomous protocol.

Scale: the FBI and supervisors in many states estimate losses in the billions of dollars a year.

IV

Licensed activity without a licence

Betting and derivatives: decentralised platforms operate without a licence and without age verification, everywhere the internet reaches.

Leverage: trading on borrowed funds far exceeding the stake; permitted leverage on a DEX can exceed the regulated market (BIS).

A foretaste: this is precisely what the CFTC charged in Ooki DAO: leveraged commodity transactions for retail customers, without a licence and without KYC (Part VII).

IV

THE THOUGHT OF PART IV

These phenomena are not drawn to technical decentralisation as such.

They are drawn to the absence of a person at the end of the trail. DeFi sells that absence as a virtue. To a prosecutor it is a hiding place.

PART V

The decentralisation illusion

If the absence of a person paralyses the regulator, there arises an overwhelming temptation to simulate that absence. This is the costume of decentralisation.

Algorithm incompleteness

Source: Aramonte, Huang, Schrimpf, "DeFi risks and the decentralisation illusion", BIS Quarterly Review, Dec 2021.

The argument: no contract can be written for every state of the world (contract incompleteness, Coase); within a firm this is resolved by management. In DeFi the counterpart is algorithm incompleteness: one cannot encode a response to every unforeseen circumstance.

The BIS conclusion: every platform must have a centre that responds to the unforeseen; governance-token holders play a role not far removed from a company's shareholders.

Compound, October 2021: the costume slips by accident

The event: a botched upgrade mistakenly handed out rewards worth about USD 90 million.

The creator wrote publicly: there are no administrative mechanisms or community tools that could halt the distribution.

What the sentence was meant to prove: helplessness before autonomous code.

What it actually proved: the existence of a creator who speaks for the protocol and knows its powers. There is someone to ask why there is no court.

The costume-change scheme

The starting point: a team builds the protocol, runs its website, draws fees, and holds the technical ability to switch it off or change it. In legal terms: an undertaking providing a financial service.

The manoeuvre: establish a DAO, distribute governance tokens, and from then on answer every regulator's question with one formula: the community decides, we are merely one vote, the code provides the service.

The aim: to separate the one who reaps the benefit from the one who bears the liability. Liability is dispersed downward and sideways, onto an anonymous crowd of voters.

Who benefits from the escape

(a) Genuinely decentralised businesses: a rarity bordering on a curiosity, but they exist.

(b) Illegal activity: the absence of a control point is the goal, not a side effect.

(c) Prohibitive compliance costs: the temptation to provide the same service under a different label and without supervision grows with the ambition to scale.

The systemic effect: the principle "same activity, same risk, same regulation" loses force once the very existence of the exemption creates an incentive for arbitrage.

THE THOUGHT OF PART V

Decentralisation is not a fraud. It is a real technology and a real value.

Far more often, though, it is a declaration rather than a fact. And the declaration performs a legal function: to push liability away from those who very really reap the benefit.

PART VI

The four-seam test

VI

Good news for the legal order and bad news for those in costume: the disguise has seams. The regulator does not ask about philosophy. It asks about facts.

A two-stage functional test

Stage I, operational decentralisation: is the service provided solely by smart contracts that no one controls? Conditions: self-execution, autonomy (no editing of inputs), no special embedded rights (e.g. a fee stream to the creator).

Stage II, governance decentralisation: if not, can control be attributed to an entity?

The Danish principle (Finanstilsynet): an activity is decentralised only where the user is unable to identify the counterparty with whom they are contracting.

VI

Finanstilsynet, "Principles for the assessment of decentralisation in the markets for crypto-assets".

Three rules of construction

The timing rule: we assess the position at the moment of public release, not the declared end state. A promise of future decentralisation is legally irrelevant.

The distribution rule: dispersion of tokens is not the absence of a centre of control.

The single-seam rule: this is not a weighted test. Full decentralisation is a conjunction of conditions; a single trail leading to a person defeats the exemption.

VI

SZEW 1

Who collects the fees

The factual question: not whether there are fees, but where they flow; whether there is a recipient address and a protocol fee switch.

Evidence: the recipient address embedded in the contract and its link to a team or foundation; the on-chain record.

The defence that will not do: "it's just gas for the network". Gas goes to validators for computation; a protocol fee is revenue, and where there is revenue there is a business and a person who runs it.

Layer: application and treasury.

The image: the machine on the street turns out to have an owner who collects the coins each evening.

VI

SZEW 2

Who runs the interface

The factual question: who maintains the website and servers, imposes the terms of use, applies geofencing and performs KYC at the front end.

Evidence: the owner of the domain and hosting, an entity with terms and policies, KYC at the site level.

The defence that will not do: "the protocol belongs to no one, the front end is a separate matter". The interface provider may fall under MiCA regardless of the protocol's status; one can lose on the front end having won on the contract.

Layer: interface.

The image: someone opens the door of the machine each morning, too.

VI

SZEW 3

Who holds the key

The decisive fact: whether there is a technical ability to halt, change or upgrade the protocol, and who holds it.

Evidence: admin, upgrade and pause permissions; multisig configuration with the signer list; a proxy pattern with an upgrade function; on-chain verification that the key was relinquished.

The defence that will not do: "the key was abandoned, the community governs". That is a proposition to be proved, not assumed; surrendering the master key is not enough where roles such as Pause Manager or Oracle Feeder remain.

Layer: application.

The image: whoever can reset the rate in the machine or switch it off is its operator, however much they claim to have thrown the key away.

VI

SZEW 4

Who writes the future

The factual question: who sets the direction of development, deploys versions, audits the code, manages the treasury; what the real turnout and token concentration are.

Evidence: the distribution of governance tokens, the delegation map, data on turnout and on control of the treasury.

The defence that will not do: "a decentralised community governs". Turnout of 3 to 5%, a venture-capital fund as top voter, and votes that concern risk parameters and listings, that is to say real steering.

Layer: governance.

The image: the community votes, but someone else sets the agenda.

VI

The evidence table: a checklist for an opinion

Question	Evidence we demand	The defence that will not do
1. Who collects the fees	the fee recipient address in the contract; link to a team or foundation	"it's just gas for the network"
2. Who runs the interface	control of the domain and front end; terms of use; geofencing and KYC	"the protocol belongs to no one; the front end is separate"
3. Who holds the key	admin/upgrade/pause permissions; multisig and signers; proxy upgrade	"the key was abandoned; the community governs"
4. Who writes the future	turnout; token concentration; who deploys resolutions; treasury control	"a decentralised community governs"

VI

In depth: R. Nogacki, "The CLARITY Act and MiCA decentralisation test", kancelaria-skarbiec.pl, 6 Jun 2026.

Opacity is not decentralisation

The apparent counter-argument: if between one third and one half of the delegates cannot be identified, there is no one to whom control can be attributed.

The refutation: if a central bank, with resources available to no one else, could not establish dispersion from public data, then an entity invoking decentralisation will be even less able to prove it.

The principle: in law, opacity burdens not the party applying the regulation but the party seeking to escape it.

The evidentiary upshot: the exemption is an exception (exceptiones non sunt extendendae); the onus probandi rests on the party invoking it.

VI

Market leaders in light of the four questions

Protocol	What the regulator finds	Factual verdict
Uniswap	the website and interface are run by Uniswap Labs; fees and treasury are decided by token vote	partially decentralised; does not meet the full-decentralisation standard
PancakeSwap	contracts can be upgraded; the key sits with the team's multisig	centralised; within MiCA's reach where there is an EU nexus
Hyperliquid	its own chain with a narrow, initially closed set of validators	materially centralised; up close it resembles an ordinary exchange
dYdX	validators are chosen by token holders; the operator acts from the US	partially centralised; exposure to US regulators

VI

For every leader, at least one trail leads to a person. There are no clean ownerless machines on this street.

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Test decentralizacji Clarity Act i MiCA. Kiedy DEX podlega regulacji

FURTHER READING

The CLARITY Act and MiCA decentralisation test. When a DEX is subject to regulation

Skarbiec Law Firm publication, 6 June 2026

The four criteria as an evidentiary procedure, the rules of construction, and a comparison of the European and US models.

kancelaria-skarbiec.pl

PART VII

Ooki DAO: the anatomy of the case

September 2022: the CFTC sues an entity that formally does not exist and serves the complaint into a chat window. It sounds like a joke. It is the most significant ruling in the world on DeFi.

A costume change in real time

The starting point: the protocol was built and run by an ordinary company, bZeroX LLC, owned by two men (Tom Bean, Kyle Kistner): website, marketing, fees, administrator keys. A textbook financial intermediary.

The manoeuvre (Aug 2021): control and the keys were transferred to a newly created organisation, Ooki DAO.

The motive on the pleadings: the founders believed the DAO model would insulate the protocol from oversight and liability. The costume caught in the act of being put on.

After the change: the same transactions, the same fees, now gathered in the DAO treasury.

VII

What it was about

The CFTC charge: offering leveraged commodity transactions to retail customers without registration, and the absence of customer-identification procedures (KYC/AML).

In parallel: an administrative settlement with the founders and bZeroX (CFTC No. 22-31, 22 Sep 2022).

The procedural novelty: a suit against the organisation itself, served through the chat window and forum, and then personally on the founders as identified members.

VII

"This is not an entity, it is technology"

The argument: suing a DAO is like suing the internet or technology itself (so the amici curiae, industry organisations).

The court's answer (Judge Orrick, Dec 2022): since the CFTC could sue bZeroX for using the keys to control the protocol, it may sue Ooki DAO for using the same keys for the same purpose.

The principle: transferring control does not erase control; it merely changes the name of the one who wields it. This, in the language of our test, is the third seam.

VII

"There is no person the law recognises"

The court's construction: an unincorporated association; the CFTC statute defines "person" broadly, and California law treats as an association a group of persons joined by mutual consent in a common purpose.

The subsumption: Ooki token holders are a group of persons, their common purpose is governing the protocol (especially the treasury), and they act under a common name.

The blow to the tactic: even not voting and voting against are voluntary choices serving the common purpose. One cannot rely on community rule and at once claim the community is no one.

VII

The core and the judgment

The core in one sentence of the court: if the protocol operates contrary to the law, someone must be responsible. Decentralisation creates no lawless zone; at most it changes the name of the responsible party.

Default judgment (8 Jun 2023): USD 643,542 in penalty, a permanent ban on unregistered operation, an order to take down the websites (including ooki.com), and a finding of no customer-identification programme (the Bank Secrecy Act regime).

The takeaway: the machine that was meant to have no owner received a judgment like any other operator, and the state reached for its off switch.

VII

CFTC v. Ooki DAO (N.D. Cal.), order Dkt. 63 (20 Dec 2022), judgment Dkt. 77 (8 Jun 2023). Citations to be confirmed at source before quoting.

THE THOUGHT OF PART VII

The costume meant to protect became, of itself, the proof of membership.

Whoever holds a token co-creates the DAO, because the very point of holding a token is the ability to vote.

PART VIII

The boundary points

Where the law genuinely does not reach, and where it merely changes the door through which it enters.

Van Loon: code that truly belongs to no one

Background: OFAC sanctions on Tornado Cash (8 Aug 2022): over USD 7 billion laundered, including more than USD 455 million stolen by Lazarus.

The ruling (5th Cir., 26 Nov 2024): OFAC exceeded its authority, because the sanctioned immutable contracts cannot be modified, belong to no one and answer to no one's control, and therefore are not "property" within the meaning of the sanctions statute.

The exception that proves the rule: the law did not reach precisely the code that truly had no owner. Everything where someone still keeps a hand on the switch remains within reach. In Mar 2025 OFAC delisted Tornado Cash.

VIII

Pertsev: the code freed, the author convicted

The Dutch court (2024): the creator of the same mixing protocol was sentenced to 5 years and 4 months' imprisonment.

The juxtaposition: on one side of the ocean the sanctions were lifted from the code; on the other, the man who wrote it was convicted.

The lesson: the criminal liability of the author and the sanctions status of the code are two separate questions. The protocol's lack of a subject does not protect its author.

VIII

Four boundary points on one map

Case	Substance	Lesson for the test
CFTC v. Ooki DAO (2022-2023)	DAO liable as an unincorporated association; default judgment, penalty, ban, takedown	transferring control does not erase control
Sarcuni v. bZx DAO (S.D. Cal. 2023)	DAO as a general partnership; token holders as partners	a second route, the same result (Part IX)
Van Loon (5th Cir. 2024)	immutable contracts are not "property"; sanctions vacated	beyond reach only the code that truly has no subject
Pertsev (NL 2024)	the mixer's creator sentenced to 5 yrs 4 mths	a code's lack of a subject does not protect the author

VIII

PART IX

DAOs as a legal problem

New legal persons are born once a century. The DAO came into being first outside the law, and the legal order is only now trying to assimilate it.

The rarity of the birth of new legal persons

The catalogue of breakthroughs over four centuries is strikingly narrow: the joint-stock company (17th c., the Dutch East India Company, 1602), the limited-liability company (19th c.: the English Limited Liability Act 1855, the German GmbH 1892), foundations and associations (codified in the 19th and 20th c.).

The DAO: in its original form it has no legal personality and requires no registration; it exists as a set of smart contracts, a community of token holders, and a protocol.

The question of the century: whether the DAO joins this canon or remains a curiosity absorbed by the old categories.

IX

In depth: R. Nogacki, "Decentralized Autonomous Organizations DAO", kancelaria-skarbiec.pl, 14 Nov 2025.

The cascade of consequences of having no personality

Commerce: a DAO cannot contract in its own name: it cannot lease an office, hire an employee, or sign with a supplier.

Banking: it cannot open an account; confined to crypto-assets, with limited access to the traditional economy.

Intellectual property: it cannot register a patent, a trade mark or copyright; its innovations are exposed to appropriation.

Jurisdiction: members on three continents, infrastructure dispersed; which law applies and where to sue.

Liability: is a token holder a partner with joint and several liability, or merely a user of software? The courts answered, and the answer hurts.

IX

Sarcuni v. bZx DAO: a partnership against one's will

Background (S.D. Cal., Mar 2023): a phishing attack, USD 55 million stolen; the plaintiffs argue that holders of BZRX tokens form a general partnership and are jointly and severally liable.

California law: an association of two or more persons carrying on as co-owners a business for profit forms a partnership, whether or not they intended to form one.

Findings on the tokens: the right to propose changes, vote on treasury spending, hire, alter the purposes, and distribute assets akin to dividends. That suffices for co-ownership; sharing profits implies sharing losses.

The quote that sank the defence: a founder explained publicly that the move to a DAO was meant to ensure that, faced with regulators' demands, "nothing could be done, because we gave it all to the community".

Samuels v. Lido DAO: the end of the "just software" tale

The defence: Lido is merely autonomous software.

The court's answer (N.D. Cal. 2024): taking decisions by vote, maintaining a treasury, and employing more than seventy people are the acts of an entity run by people.

The far-reaching consequence: exposure of institutional investors (a16z, Paradigm, Dragonfly) to potential partner liability for securities-law violations.

The line of authority: if a structure operates like a partnership, it will be treated as a partnership, regardless of its technological sophistication.

IX

FURTHER READING

Decentralized Autonomous Organizations DAO

Skarbiec Law Firm publication, 14 November 2025

The general-partnership line in US case law, the tax implications, and hybrid architecture.

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Wyoming: the first jurisdiction in the world

DAO Supplement (1 Jul 2021): a DAO as a variant of the LLC; the articles declare DAO status and the scope of algorithmic management; limited liability of members; a public identifier of the smart contracts.

A radical departure: no fiduciary duties of members (beyond good faith), because trust in persons is replaced by trust in code. The critique: the minority loses protection against majority abuse.

DUNA (2024): a decentralised unincorporated nonprofit association; a minimum of 100 members, no distribution of profits; designed for public-goods-type protocols.

IX

The wrapper map: where to dress a DAO

Marshall Islands (2022/2024): dedicated legislation; an emphasis on beneficial-owner transparency; governance tokens without economic rights are expressly not securities.

Cayman: the foundation company (since 2017), an entity with no members or owners; documents may refer to on-chain votes; tax neutrality.

Switzerland: a foundation (Arts. 80-89 of the Civil Code) for large treasuries, or an association (two members, no capital); FINMA with a clear token taxonomy.

Singapore: a company limited by guarantee for non-profit projects; predictable MAS supervision.

UAE: ADGM (DLT foundations, capital from USD 25,000, formal recognition of token governance) and RAK DAO (a graduated path from Startup DAO to Alpha DAO).

FURTHER READING

Decentralised autonomous organisations (DAOs): global legal solutions

Skarbiec Law Firm publication, 22 September 2025 (also in Parkiet)

A survey of jurisdictions from Wyoming to the Emirates: dedicated frameworks and the adaptation of existing legal structures.

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Tax: the dark side of pseudonymity

No IRS guidance: by default an unwrapped DAO is a partnership, i.e. tax-transparent: income flows through to members pro rata.

Compliance is unworkable: a partnership return and an individual statement for each member, with thousands of pseudonymous, rotating token holders, is a fiction.

Traps for US persons: the CFC regime (the 50% threshold for US taxpayers) and classification as a publicly traded partnership (freely transferable tokens plus more than 10% active income → corporate, double, taxation).

Phantom income: in a transparent structure a member is taxed on the allocated share regardless of distributions; with an illiquid token this is tax with no cash.

IX

The practitioners' consensus: hybrid architecture

The base layer: a legal wrapper (Wyoming DAO LLC, Marshall Islands, a Cayman or Swiss foundation): limited liability, capacity to contract, certainty as to the governing law.

The operating layer: additional entities for risk segregation, sector compliance, and structuring of individual projects.

The governance layer: on-chain votes for the key decisions; transparency of the record; technical decentralisation without single points of control.

The tautology worth stating aloud: the more an organisation wishes to be a real entity capable of acting, the harder it becomes for it to claim that it is not an entity at all.

IX

THE THOUGHT OF PART IX

Courts do not sanction structures that try to secure for themselves all the benefits of commerce without the corresponding obligations.

Full decentralisation outside the legal order is unattainable for projects that aim at scale. The choice is not whether to have a legal form, but which one.

PART X

Statutory models and operational takeaways

America writes definitions where Europe left a test. Both models cut the same window; they differ in who supplies its dimensions.

The CLARITY Act: exemption by type of activity

Status: passed by the House of Representatives (Jul 2025), not taken up by the Senate. It allocates crypto-assets between the CFTC (commodities) and the SEC (securities).

Section 15H, the question reversed: a catalogue of activities that per se do not make an entity regulated: validating transactions, running a node or oracle, a read-only data interface, writing and publishing code, a self-custody wallet.

The boundary (subsection b): the exemption does not cover fraud or manipulation. The safe harbour goes to status, not to immunity from abuse.

The political message: the very effort of a statutory carve-out concedes that, without it, existing law would reach. Ooki proved the tools exist; CLARITY would take them from the courts.

The GENIUS Act: where there is an issuer, there must be control

Subject matter: the regime for stablecoin issuers (P.L. 119-27).

The telling obligation: an issuer must have the technical ability to block, freeze and reject transactions, and must monitor suspicious activity.

The message: a statutory admission that the point at which the law genuinely grips remains the centralised edge of the system. Where there is an issuer there is a control point; where there is none, there is no addressee.

X

The enforcement retreat and its limits

Signals from 2025: a new executive order (EO 14178) repealed the prior administration's cautious course; a DOJ memorandum, "Ending Regulation by Prosecution" (charges only for wilful breach of a known duty); the SEC dropped the Uniswap matter; OFAC delisted Tornado Cash.

But the letter endures: the 2019 FinCEN guidance still applies; the money-transmitter rules apply "regardless of the label".

A warning from the Senate: a Judiciary Committee letter (Grassley, Durbin, 14 Jan 2026) on a significant AML/CFT enforcement gap.

Assessment: this is a suspension of enforcement, not a change in substantive law; the durability of the course depends on the political cycle, not the text of the statute.

Two models of the same carve-out

Dimension	European Union (MiCA)	United States (CLARITY/GENIUS)
Basis of the exemption	Recital 22, no threshold and no definition	a catalogue of activities (s. 15H), no definition of DeFi
Real source of the norm	supervisory practice (Finanstilsynet) and EBA/ESMA reports	enforcement practice (DOJ, SEC) plus a bill
The exemption's boundary	control attributable to an entity	fraud and manipulation (subsection b)
Front end / interface	may be a separate CASP service	statutory silence; a developer without control is out of scope
Direction 2025-2026	tightening: MiCA fully applied, supervisors active	loosening of enforcement, politically reversible

Operational takeaways for adviser and client

1. The burden of proof lies on the party invoking the Recital 22 exemption of MiCA; a client's declaration will not discharge the onus probandi.
2. Semi-decentralisation (CeDeFi) is the worst position of all: the key, the interface and the treasury remain, hence an entity to charge, while the exemption does not apply. Whoever keeps the key should take the operator's role knowingly, with a licence, rather than play the machine.
3. The front end is always assessed as a potentially separate CASP service, regardless of the protocol's status.
4. The domestic thread: after migrating from the VASP register to a CASP licence, fleeing to a DEX as a compliance plan is usually illusory (confirm the cut-off date in the legislation).
5. The claim that "the US has freed DeFi" is a mirage: a suspension of enforcement, not a change in the law.
6. For a DAO with ambitions of scale: a legal wrapper plus on-chain governance, rather than faith that an informal structure will protect it.

PART X · FORECAST

Where this is heading

The interface front: front-end providers, not protocols, will become the principal addressee of obligations (registration, the CASP regime).

CeDeFi as the contested zone: most cases will be fought not at the poles but in the intermediate states, where control is partial but real.

De lege ferenda: a rebuttable presumption of control where even a single seam is met; duties of transparency for the treasury and the delegation map; a register of interface providers.

Supervision built in: reconstructing pools and flows from public data, with the durable boundary being the identity of users.

The deepest problem: the practical un-seizability of assets with no centre of control marks the limit of the sanctions law's effectiveness (Van Loon a contrario).

THE CLOSING THOUGHT

Wherever someone promises a return and assures you that an impartial mechanism, not a person, is responsible, **there is almost always a specific person after all, who simply prefers to stay out of sight.**

Recognising who holds the key is the first act of prudence. It is also the last resort, when the machine suddenly stops dispensing euros.

APPENDICES

Materials for participants

The checklist, the source publications, and notes on the state of the data.

A

APPENDIX A

Checklist for an opinion on the status of a DEX

Fees: is there a recipient address and a fee switch in the code? Can the address be linked to a team or foundation?

Interface: who owns the domain and hosting? Are there terms, policies, geofencing, KYC? Is the front end a separate CASP service?

Key: admin, upgrade, pause permissions; multisig and signers; a proxy with an upgrade function; roles such as Pause Manager, Oracle Feeder; on-chain verification that the key was relinquished.

Governance: turnout, token concentration, the delegation map, the agenda, deployment of resolutions, treasury control.

Timing: the position at public release, not the declared state.

The decisive rule: a conjunction of conditions; a single seam leading to a person closes the path to the exemption.

APPENDIX B

Skarbiec Law Firm publications (kancelaria-skarbiec.pl)

- "Decentralised finance (DeFi): the MiCA exemption, the Howey test and the limits of regulation" (5 Jun 2026): the full statement of the decentralisation-costume thesis.
- "The CLARITY Act and MiCA decentralisation test. When a DEX is subject to regulation" (6 Jun 2026): the four criteria as an evidentiary procedure and a comparison of the models.
- "Decentralized Autonomous Organizations DAO" (14 Nov 2025): legal personality, the general-partnership line, wrappers, taxation.
- "Decentralised autonomous organisations (DAOs): global legal solutions" (22 Sep 2025): a survey of jurisdictions from Wyoming to the UAE; also published in Parkiet.

APPENDIX C

External sources

- EBA/ESMA, "Joint Report. Recent developments in crypto-assets (Article 142 of MiCAR)", 16 Jan 2025.
- Born, Gati, Lambert, Naeem, Pellicani, "Who to regulate?", ECB Working Paper No 3208, 2026.
- Aramonte, Huang, Schrimpf, "DeFi risks and the decentralisation illusion", BIS Quarterly Review, Dec 2021.
- CRS, "An Overview of Decentralized Finance (DeFi)", R48883, 17 Apr 2026.
- Finanstilsynet, "Principles for the assessment of decentralisation in the markets for crypto-assets".
- SEC v. W.J. Howey Co., 328 U.S. 293 (1946); CFTC v. Ooki DAO (N.D. Cal., Dkt. 63 and 77); Sarcuni v. bZx DAO (S.D. Cal. 2023); Samuels v. Lido DAO (N.D. Cal. 2024); Van Loon v. Dep't of the Treasury (5th Cir. 2024); Pertsev (NL 2024).
- In re bZeroX, LLC; Bean; Kistner, CFTC No. 22-31 (22 Sep 2022); OFAC: sanctions 8 Aug 2022, delisting Mar 2025.

APPENDIX D

Verification notes

Figures: TVL and DEX share per CRS (Mar 2026) and industry data; EBA/ESMA figures as at Sep 2024. Refresh before the talk and state them as at a given date.

Citations and dates of rulings: in particular Ooki DAO (Dkt. 63 and 77), to be confirmed at source before quoting.

The basis of the MiCA exemption: the deck invokes Recital 22; the status of Art. 2(3) is to be reconciled with the firm's publications before delivery.

The VASP-to-CASP migration date: to be confirmed in the national legislation.

Thank you for your attention

Time for questions

Robert Nogacki, attorney-at-law (WA-9026)
Skarbiec Law Firm · kancelaria-skarbiec.pl · sekretariat@kancelaria-skarbiec.pl · +48 22 586 40 00