IDEA = Ideaconsult

DC = Douglas Connect

-- General Questions:

*IDEA: What is the advantage of creating an Association over the status-quo and how will it further the development of OpenTox?*

DC: It would provide a legal community-based non-profit organisation to progress OpenTox purposes including those of impact and legacy. Currently, for example, there is no well-formed sustainability solution for maintaining many resources such as data, software, and standards in the public domain in the area of activities of this community.

An Association is a more formal, but still flexible legal and democratic entity. It resembles in many ways a professional society formed around common interests in a particular area of scientific and/or technology.

The activities of the Association will be discussed and decided by its members to best further the purposes of the community.

*IDEA: An association (Verein) under Swiss law is indeed a fairly a flexible entity; you say that the GA meeting will be held within 180 days of the founding date. In their present refined form, the statutes offer several possibilities for a GA meeting to be called: 1) 1/5 of all Association members can call an extraordinary GA meeting (9.5) 2) The Committee can call an extraordinary GA meeting 3) There is a regular assembly meeting, which takes place once a year. There is no clarification of any period in the year when the GA meeting will take place (for instance in the beginning of month X each year). In addition, there is the possibility for the GA to change the statutes but that will require a majority of 4/5 of the members present at the GA meeting (9.9; this needs to be redrafted again, see below).*

DC:

We have updated 9.9 to read: Change of statutes requires a majority of 4/5 of the GA meeting.

We have added:

9.11 The first GA meeting is required to be held within 180 days of the founding date of the Association.

9.12 Each GA annual meeting will decide on the date of the subsequent GA annual meeting.

-- Articles of Association:

2) "OpenTox API" is a specification of an Application Programming Interface, which is developed by a workgroup of the Association" ->

*IDEA: What happens if a stakeholder who contributes significantly to the development of the OpenTox API is not member of the Association and/or the corresponding working group?*

DC: The workgroup is not prohibited from accepting contributions from any source.

*IDEA: Then this should be stated in the statutes.*

DC: We have respecified clause 3 to reflect the activities of the organisation as those the GA decides that best furthers the purpose of the association, including participation from non-members.

3.1 The activities of the Association are agreed by the GA. The Committee decides about the implementation of the activities of the Association so as to best further the objectives and purpose of the Association. The Committee decides in the best interest of the Association.

3.2 Association activities specified in 3.1 can involve both the participation and contributions of members and non-members.

*3) IDEA: "and other open standards maintained or approved by the Association." -> What other standards?*

DC: Can be elaborated by the group.

*IDEA: Then there should be a power in the statutes for the GA to approve such open standards and perhaps even a different procedure (if needed).*

DC: The clause says “The label “OpenTox Software“ is used for open source software implementations, complying to the OpenTox API and other open standards maintained or approved by the Association.” As the GA is the governing body, it already has the power according to the statutes to deliver on this clause.

*4) IDEA: "The Committee decides about the approval of the use of brands or other intellectual capital of the Association for commercial activities of member organizations." -> That is very unclear both in its original German version and in the English translation. In German it says that the Committee decides about the use of brands and other intellectual capital in general, it does not make it clear that it only the Association's intellectual capital. Furthermore, you should be aware that there is a distinction to be made between intellectual property and intellectual capital (http://en.wikipedia.org/wiki/Intellectual\_capital).*

DC: We have removed this clause as not necessary for founding. Articles of an Association are best formulated to be extensible in the beginning, otherwise we would restrict future development. Over the years, the articles can be extended and further specified, according to the needs and interests of the members. Currently we are founding a non-profit association without commercial activities. This does not prevent other structures being pursued by either the association or other groups in the future. We intend for example to also pursue related foundation and commercial goals, which we can of course communicate and discuss with the Association members.

*5) IDEA: "The association has no commercial objectives and does not aim for profit. Only the Association's assets may be used for obligations/commitments contracted in its name. Members have no personal liability." -> Arguably, the very nature of the association means that it will further the commercial activities of its members. More attention needs to be paid in regards to this article and it should be redrafted in a clearer manner.*

DC: We don't see what is not clear in this clause. Can you provide clarification? This is a standard formulation, found in a lot of Associations: If the Association would have any commercial interest, it would have to be registered as such.

*IDEA: Exactly because of the requirement to register if there is any commercial interest, we need to pay closer attention to the drafting of this article. If the purpose of association is to ‘promote the use of OpenTox Software and the OpenTox API in the scientific activities of predictive toxicology, safety assessment and risk management, including the “3Rs” goal of the Reduction, Refinement and Replacement of Animal Testing,’ would not that mean that it would involve some commercial activities? Of course it depends on what exactly the association’s activities would be, which is why we have repeatedly stated that we want to clarify why we want to create this association in the first place.*

DC: The Association is formulated in its founding state as non-profit and does not have commercial for-profit activities. Its members can have related commercial activities. The Association liability can be separated from its members. Currently we have 4.2 formulated as:

4.2 The association has no commercial objectives and does not aim for profit. Only the Association's assets may be used for obligations or commitments contracted in its name. Members have no personal liability for Association obligations.

*IDEA: 6) "A valid exclusion takes place on request of one Member, and with a 2/3rd majority of the GA meeting." -> There should be something along the lines of "in the presence of quorum, which will be reached when n members are present".*

DC: We have added:

9.13 The GA will decide on rules of quorum.

*7) IDEA "Change of statutes requires a quorum of 4/5 of all voters" -> But they will still be changed by a simple majority. We would argue that a qualified majority of at least 2/3rds would be the preferable way to go.*

DC: Currently we have:

9.9 Change of statutes requires a majority of 4/5 of the GA meeting.

*8) IDEA: "The committee consists of at least 3 members." -> Who is to decide of the number of the committee members? Will that be the GA? If that is the case, then it needs to be stated.*

DC: Currently, 9.6 has this covered with:

“To elect the president, as well as all members of the committee.” which implicitly also agrees on best number.

*9) IDEA "The committee issues regulations" -> What regulations? This power should be better qualified.*

DC: We have updated Article 3 and 10.4 so that it should be clearer that the GA decides on activities which the committee oversees.

10.4 The committee has all competences, which are not transferred to other bodies by law or by these statutes. Especially it:

• maintains and operates processes for the Association goals and activities

• may put in place workgroups to progress Association goals and activities

*IDEA 10) "The committee constitutes itself, with exception of the presidency." -> In other words there is no quorum. In addition, nothing mentions the way of decision-making of the committee, will this be by simple majority?*

DC. We have added:

10.9 The committee decides by majority vote. The President decides on best course of action in cases of a tied vote.

*IDEA 11) "In case of dissolution, the liquidation funds are given to a non taxable organisation with similar objectives. The distribution of funds amongst members is forbidden." -> What happens if there is no such organization?*

DC: This is a requirement of the Swiss law for non commercial Associations. If there is no similar organisation, we will have to find the "most similar" of organisations e.g., involved in work related to Toxicology or Computational Science.

*IDEA: This is only logical and we suppose this is stated somewhere in the Swiss law, however could you provide a citation (just to make sure)?*

DC: OK, noted here that citation could be added.

*IDEA: 12) "Über 100 Employees / Mitarbeiter, or in case of a membership organisation / oder im Falle einer Mitglieder Organisation: To be negotiated by the committee / Durch den Vorstand zu Verhandeln." Does that mean that the amount of the fee for any membership organization is to be decided by the committee? We would argue against that or at least for a qualification of what is 'a membership association'.*

DC: Currently updated with balance on specification with flexibility:

Over 100 Employees, or in the case of a membership-based legal structure such as an association or consortium:

To be negotiated by the OpenTox Association committee.

*IDEA: Also, we are not sure if the fee structure will be compliant with Swiss legislation, that needs to be confirmed.*

DC: Associations are free to select any fee structures; there are no restrictions by the law. A current point here is, that they should not be too high in order not to conflict with the "non commercial" rules.

*IDEA: 13) "Founding members will be invited because a) they participated significantly in the research activities leading to the initial development of OpenTox concepts, standards and software, b) they have participated in activities and discussions involving the further development of OpenTox, c) they show clear commitment to advancing the OpenTox Association goals" -> We thought any legal/natural person can become a member (as specified in article 6.1: "Membership is open for natural, as well as legal persons"). Can we become 3 members (Ideaconsult, Vedrin and Nina for example)? Can anybody become a member? That is deeply problematic, there needs to be some kind of an 'accession approval procedure'.*

DC: Founding members are simply a supportive and knowledgeable group who will help get the association going. Other members are free to join and we expect to work on such recruitment to what is an open and growing community. By law, a Swiss Associations is an open organization, which anyone can join, who shares the goals. It is difficult to restrict access, but of course the Association can EXCLUDE members, in case they don’t pay their fees, or they act against the interests of the Association. You can be both an individual member and a member of an organizational member but can only vote once in such a case.

*IDEA: Then possibly we should consider some other type of legal entity perhaps under a different jurisdiction, in order to be able to restrict access one way or another? It really depends on what* the association’s activities will be, which brings us back to our initial point.

DC: We believe that this structure should be an open community one and the Swiss tradition and successful for non-profit association activity from local through to international provides an excellent location, culture and framework for community-based association success, which is open to participation, development and growth. We emphasise this does not prevent us pursuing additional related and complementary strategies such as foundation or business ones. We should not however try to over-specify and control the future, whether it is one pursued by the democracy of the association and freedom to associate with it or not, or what individual members additionally pursue. We can however anticipate both reasonable synergies and some divergence, which should be healthy.

*IDEA. -- Regarding the compliance of the Articles of Association with Swiss legislation (we have only looked at http://www.admin.ch/ch/e/rs/2/210.en.pdf, there might be other relevant Acts as well, though if you want us to research that further we will need more time):*

DC: Suggest we complete the current articles in English, then translate, then get a final legal check, and try to keep costs reasonable.

*IDEA: 14) After the first GA meeting, there needs to be a consideration of "an entry in the commercial register" (Art. 61). Will the activities of the association constitute "commercial activities"?*

DC: We don't need to register there. The association will not have commercial activities itself, at least in this founding form.

*IDEA: 15) Art. 62: "Associations which cannot acquire or have not yet acquired legal personality are treated as simple partnerships." We are not sure of the meaning of this Article. It may be the case that the association will become a simple partnership and then its members might be wholly liable for the Association. That needs to be confirmed.*

DC: Not sure what the concern is here, as we would have legal status as a non-profit association not a simple partnership.

*IDEA: 16) Art. 68: "Each member is by law excluded from voting on any resolution concerning a transaction or dispute between him or her, his or her spouse or a lineal relative on the one hand and the association on the other." That should be noted.*

DC: Suggest that the Association develops and communicates a handbook which such information on rules and procedures.

*IDEA: 17) Art. 72: "The articles of association may specify the grounds on which a member may be excluded, but exclusion may also occur without reasons being given." Again, that should be noted.*

DC: OK, for handbook.

*IDEA: All of the above are fully relevant to the association on the basis of Art. 63 (2): "Mandatory provisions of law cannot be altered by the articles of association." Therefore, we consider that the potential founding meeting should be cancelled (or postponed), until all of the issues (including those that might have been identified later on upon further inspection) are properly resolved to all potential founding members satisfaction.*

DC: We have now put a more elaborated process in place, which was in the plans for coming months, but we are accelerating it now down to coming days and weeks.

*IDEA: We understand this, however as this is not two people creating an association but instead a number of partners creating an association as a follow-up to several projects, we would like to spend more time considering our options. Having in mind that the activities of the association are still unclear to us, as well as what the intellectual assets might be, we would propose to have a meeting to clarify those before proceeding with a review of what legal entity under what jurisdiction might be the best option for us.*

DC: We hope the process is helpful. The idea is a very simple one – the association structure will progress the goals and activities of the OpenTox community and framework in a longer term sustainable manner, so that open knowledge, data, software, tools, tests, standards and resources are progressed in their use and impact in safety science, assessment and application. We have only received encouragement in responses and discussions so far that this is a worthwhile endeavor!