

Legal Issues of Virtual Organizations

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INTRODUCTION

In the present economic context, organizations, especially of small and medium dimensions, can draw a substantial advantage by collaborating and setting up flexible, temporary ICT-enabled networks.

Identifying the legal issues relevant for virtual organizations can provide a knowledge basis to regulate their activities, thus providing support for their creation and management.

BACKGROUND

The concept of virtual organization (VO) finds its origins in the United States in the early 1990s, when some authors start to give it a first theoretical outline.

Since then, a certain scientific debate has opened, and several attempts to define and concretise it have been made. The most active research sectors with respect to this appear to be business and computer science. Until recently, however, the legal research has substantially disregarded VOs, with few exceptions.

REGULATING VOS

VOs are far from being a consolidated reality; being fluid and flexible structures, they continually evolve over time and are difficult to grasp.

The starting point for their regulation is to provide a definition for the purposes of legal research: “VO’s are ICT-enabled collaborations between legally independent subjects aimed at the joint provision of goods or services, where each partner contributes to specific activities. They do not aim at achieving an autonomous legal status but appear as one organization towards third parties.”¹

As a second step, a wide range of legal issues concerning them can be identified. By developing a legal taxonomy, it is possible to aggregate legal problems in major research areas. This makes it possible to focus on those issues most connected with the particular structure and nature of the VO.

The third step is to examine the identified issues in the light of the applicable legal framework at national and

international level, considering the nationality of the partners and their reciprocal agreements.

A TAXONOMY OF VO-RELATED LEGAL ISSUES

Hereinafter, a synthesis of the most relevant issues is presented.

Identity and Nationality of the Virtual Organization

The VO does not embody a formal institution separate from its partners, although it may appear as a separate, autonomous entity.

National legal orders will tend to consider the VO as a structure without legal personality and, consequently, also without nationality, provided that the partners do not opt to formally adhere to a company type as foreseen by the national law of one of them.

Role of the Virtual Organization Broker

A VO can be set up and managed without the intervention of a VO broker. This, however, would imply higher coordination costs, more complex negotiations, and a slower speed of action.

The legal status of the VO broker depends upon its actual role and activities in the VO. The broker will be subject to and have to comply with the applicable legal framework set for the legal structure it has opted for in the state in which its head office is located, as well as with the state- and contract-based rules applicable to the same VO.

Virtual Organization Framework Agreement

The VO framework agreement is a set of rules aimed at governing the internal relationships between the partners of a VO.

It has to be signed before the beginning of any activity and is generally drafted with the support of the broker, who may propose business templates on the basis of

which the detailed final provisions can be negotiated with the partners.

The absence of a clear agreement would possibly lead to difficulties in the management of the operation stage and, later, to possible disputes between the partners.

Contracting with Third Parties

Having no legal personality, the VO cannot directly close contracts with third parties. Therefore, if its members are to enter into contractual relationships, this will not be feasible for the VO as a separate subject; agreements can only be closed between third parties and some or all the individual members.

Once a partner—or a group of partners—has been selected, the other members can grant to it the power to act in their name and on their behalf to the purpose of closing contracts binding for all of them, or to take care of other jural acts, as it happens with mandates.

The Resolution in Disputes

The involvement in a lengthy dispute resolution procedure can cause severe economic damage or even disrupt a temporary entity like the VO. For this reason, before the final framework agreement between the partners is signed and, later, before the signing of every agreement with third parties, attention has to be placed upon developing and agreeing upon adequate dispute resolution mechanisms, which may range from legal actions before courts, to arbitration and mediation.

Liability Issues

It would be difficult to configure a liability on the VO as such, as there are no legal instruments to construct it. It thus appears more feasible to identify a liability on the individual partners. All of them may be held jointly and severally liable for the damages that can be imputed to the VO. Whenever one partner is held liable, those who have been sued without having contributed to causing the damage which is the object of the claim can resort to an internal redress.

Intellectual Property Rights

The VO activities are based on the reciprocal disclosure of relevant data and possibly on the sharing of immaterial goods. These can, in some cases, enjoy a precise legal protection, as happens with copyright, software, patents, and databases.

This applies both to the data and goods to which the individual partners are already entitled, as well as to the

outcome of their collaboration. In the former case, the legitimate owner can grant to the other partners a right of economic exploitation, for example, through licensing contracts. As to the latter case, specific agreements are to be clearly set.

If the individual contributions are not to be clearly identified, it can be assumed that all partners will be entitled to the data and goods produced by the VO and of the relative rights, on the basis of a coownership.

Data Protection

All the different activities of the VO imply the processing of personal data. Within the present data protection framework, attention has to be placed, in particular, on a series of elements, such as the processing through automatic means, the disclosure of data to third parties, and the transfer of data between European Union (EU) and non-EU countries. The VO partners will actually carry out most processing with ICT tools and may need to process data originally collected by one or more of them and perform cross-border data transfers.

Competition Law

Should a VO achieve a substantial dimension in terms of its overall turnover, attention shall be placed by the partners to its compliance with rules on antitrust and the protection of competition applicable to the partners. Specific procedures may be imposed in order to get the authorization of antitrust bodies, as well as to verify the law-abidingness of the collaboration.

ICT-Related Issues

The nature of ICT-enabled entities possessed by VOs requires their compliance with the applicable rules on the use of specific technology tools, for example, with reference to security, electronic signatures, e-commerce, or teleworking. Should certain ICT-based interactions not be specifically regulated, reference shall be made to analogically applicable norms.

FUTURE TRENDS

The present economic and legal scenario does not point toward the drafting of an ad hoc legislation for VOs. However, the growing relevance of collaborative entities, such as industrial districts, coupled with the strong support of the techno-legal scientific community, will make VOs known to a wider audience and stimulate targeted initiatives.

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