Legal Issues of Virtual Organizations

Claudia Cevenini
CIRSFID, University of Bologna, Italy

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.”

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

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...