Chapter XVII

What Regulation for Virtual Organizations?

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Virtual organizations are a complex subject which requires an interdisciplinary approach. In the absence of specific legislation, consolidated doctrine and case law, jurists can resort to three main cornerstones: agreements between members and with third parties, analogical application of laws in force, and informal rules and trade usage.

The preliminary step is to define the object of analysis as clearly as possible by building a model definition of virtual organizations for the legal research. On the basis of the model's features, the most relevant legal issues can be outlined.

At present, owing to the very nature of VOs, no definitive solutions are possible. However, some basic indications can be provided to enable potential and effective partners of a VO to understand from the start the possible legal implications of their activities.

INTRODUCTION

Rules and regulations are often regarded to as an unfathomable "attorney issue" and somehow feared by the business and IT world.

Projects are started, new strategic lines are followed, breakthrough products and services are brought to the market, and massive human and financial resources are invested only to sometimes discover *a posteriori* that some serious legal problem is acting as a paralyzing bottleneck.

This may be a consequence of thinking–or acting–in watertight compartments. Scientific research, project management and consulting in the fields of legal science, information technology and business organization have for a long time followed separate paths. This is no longer a rational solution in a world where

becoming global and networked is the prerequisite for the survival of both large corporations and small and medium enterprises.

Virtual organizations are an extremely complex, cross-section research subject, whose study strongly needs the development of interdisciplinary competencies.

Information technology law is the junction ring between the implementation of new technologies in the economic context and the rules applicable to them–which may constitute either a constraint or an opportunity or both.

Law intervenes in regulating phenomena which arise in social groups and are subsequently consolidated over time. It is the element which binds the members of a community together in their adherence to recognized values and standards.

Before national or supranational legislators deem it necessary to enact *ad hoc* legal frameworks on specific themes,[1] a shorter or longer period of legal uncertainty elapses. This is definitely the case of virtual organizations.

They have been widely studied from the business organization and information technology perspective over the last years but virtually no legal doctrine is to be found on them, nor any specific rules, regulations or case law. On the other hand, conceiving VOs as a legal "no-man's-land" could impair their future development and affirmation in a global market which strongly needs and requires them.

The IT-legal research is presently in the position to offer neither optimal nor definitive solutions but it can start to provide a solid foundation, references, general principles and directives on which to build awareness and case-by-case analyses.

This can be achieved by:
(1) defining the object of study by developing an "ideal" VO model;
(2) singling out the most relevant legal issues that may arise from the nature, activities and interactions of the model;
(3) understanding if the law in force on similar subjects and issues, be it national or supranational, shows some points of connection with the VO model and may be applied by analogy–on the whole or in part;
(4) analyzing the role of informal rules and trade usage for noncovered or controversial issues;
(5) discussing unresolved problems.

A TAXONOMY OF VIRTUAL ORGANIZATIONS FOR THE LEGAL ANALYSIS

At present a universally accepted, clear-cut legal definition of virtual organizations is still to be drafted. This is the most important obstacle that has to be faced, as every scientific analysis–first of all–needs an object.

Owing to its nature, however, a monolithic framing of the concept by the legislator would be premature or at the worst preposterous: in the absence of a consolidated experience, exceptions today are often the rule.

As in the scientific studies of complex phenomena, the IT-legal researcher can proceed by building a VO model, that is, by singling out, analyzing and structuring

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