

Oleksandr Bignyak*. Virtual organizations in the context of eurointegration

Suggested citation:

Bignyak O. (2018). Virtual organizations in the context of eurointegration. *Lex Portus*, no. 4, 35-46. <https://doi.org/10.26886/2524-101X.4.2018.3>

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ABSTRACT

The realization of the European integration aspirations of Ukraine requires, among other things, the appropriate legal framework, which is impossible without a proper theoretical substantiation. Integration processes in general and in the field of law, in particular, necessitate a coherent understanding of such basic concepts as “integration”, “integration right”, etc., as well as the diligent attention of researchers to legal phenomena that have emerged and evolve under the new conditions of integration processes. Of particular interest are the legal phenomena associated with the information society and information technologies, which, by their very nature, are a prerequisite, a means of securing or the result of integration processes (in particular, such as “virtual organizations”, startups, etc.).

The article deals with the legal problems of the existence of the phenomenon of “quasi-corporations”, which are becoming widespread in the information society in the conditions of integration processes. It is suggested to understand that quasi-corporations are “virtual organizations” and similar phenomena (startup, etc.). It is analyzed the concepts and types of virtual organizations. It is drawn attention to the lack of legal framework for quasi-corporations in national law. The analysis of national law shows that the organizational forms that exist at present are not always suitable for responding to the challenges of the information society, and therefore new organizational forms (in particular, virtual organizations) are emerging, more adapted to the realities of the present. It is concluded that the principles of legal regulation in the relevant field in the context of integration processes should be determined by international agreements, which are part of the integration (integrative) law.

Key words: quasi-corporations, virtual organizations, eurointegration, virtual offices.

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UDC 347.721:334:004.77
DOI 10.26886/2524-101X.4.2018.3

VIRTUAL ORGANIZATIONS IN THE CONTEXT OF EUROINTEGRATION

The article deals with the legal problems of the existence of the phenomenon of “quasi-corporations”, which are becoming widespread in the information society in the conditions of integration processes. It is suggested to understand that quasi-corporations are “virtual organizations” and similar phenomena (startup, etc.). It is analyzed the concepts and types of virtual organizations. It is drawn attention to the lack of legal framework for quasi-corporations in national law. It is concluded that the principles of legal regulation in the relevant field in the context of integration processes should be determined by international agreements, which are part of the integration (integrative) law.

Key words: quasi-corporations, virtual organizations, eurointegration, virtual offices.

Бігняк О. В. Віртуальні організації в умовах євроінтеграції. – Стаття.

У статті розглядаються правові проблеми існування явища “квзікорпорації”, які широко поширені в інформаційному суспільстві в контексті інтеграційних процесів. Пропонується розуміти, що квзікорпорації – це “віртуальні організації” та подібні явища. Проаналізовано поняття та види віртуальних організацій. Стаття привертає увагу відсутності законодавчої бази для квзікорпорацій у національному законодавстві. Зроблено висновок, що правове регулювання відповідного поля в контексті інтеграційних процесів повинно визначатися міжнародними угодами, які є частиною інтеграційного (інтегративного) права.

Ключові слова: квзікорпорації, віртуальні організації, євроінтеграція, віртуальні офіси.

Бигняк А. В. Виртуальные организации в условиях евроинтеграции. – Статья.

В статье рассматриваются правовые проблемы существования явления “квазикорпорации”, которые широко распространены в информационном обществе в контексте интеграционных процессов. Предлагается понимать, что квазикорпорации – это “виртуальные организации” и подобные явления. Проанализированы понятия и виды виртуальных организаций. Статья привлекает внимание отсутствию законодательной базы квазикорпораций в национальном законодательстве. Сделан вывод, что правовое регулирование соответствующего поля в контексте интеграционных процессов должно определяться международными соглашениями, которые являются частью интеграционного (интегративного) права.

Ключевые слова: квазикорпорации, виртуальные организации, евроинтеграция, виртуальные офисы.

The realization of the European integration aspirations of Ukraine requires, among other things, the appropriate legal framework, which is impossible without a proper theoretical substantiation.

Integration processes in general and in the field of law, in particular, necessitate a coherent understanding of such basic concepts as “integration”, “integration right”, etc., as well as the diligent attention of researchers to legal phenomena that have emerged and evolve under the new conditions of integration processes. Of particular interest are the legal phenomena associated with the information society and information technologies, which, by their very nature, are a prerequisite, a means of securing or the result of integration processes (in particular, such as “virtual organizations”, startups, etc.).

To some extent the relevant issues were the subject of scientific research, but a significant number of issues in this area remain unexplored. Suffice it to say, that the term “integration” is polysemantic and has about ten different meanings. In particular, this term refers to: 1) the combination, interpenetration: the process of uniting any elements (parts) into one whole, the process of mutual convergence and the formation of interrelations; 2) unification of political, economic, state and public structures within the region, country and the world; 3) economic integration – the process of internationalization of economic life, convergence, the unification of economies in a number of countries; 4) social integration – the existence of orderly relations between individuals, groups, organizations, states; 5) cultural integration – the assimilation of heterogeneous elements of culture into a single culture; 6) integration of languages – the process of language evolution, consisting in convergence of different dialects and languages up

to their merger; 7) integration in biology – the process of organizing, harmonizing and combining structures and functions in the whole organism, characteristic of living systems at each level of their organization; 8) integration in physiology – a functional combination of individual physiological mechanisms in the complex coordinated adaptive activity of the whole organism. In addition, the term “integration” is used to characterize the process of rapprochement and communication of sciences, etc. (Інтеграція).

Problems of the functioning of the VP are devoted to the domestic and domestic work foreign scholars, in particular V. Davydov and M. Melon, W. Franke, T. Podhaschova, A. Lagoda, V. Rudnitsky, L. Timashova, A. Gromov and M. Kamenova, F. Larin et al.

The integration processes that take place in the EU area involve deepening of the interconnection and strengthening of the states' interdependence that are part of it, which necessitates adequate legal regulation

The consideration of the relevant issue is the task of the authors of this article, and the **purpose** is the identification of the peculiarities of the “quasi-corporations” phenomenon and the principles of legal regulation in the relevant field in the context of integration processes.

Thus arose a problem of determining of the normative array essence that is formed in so doing. Most often it is called “integration right”.

However, using this term, we mean that it is used in different meanings, moreover, with respect to both domestic and international law.

Thus, before the intensification of regional and world integration processes, the term “integration law” was meant, first of all, the complex branches of internal law.

D.A. Kerimov drew attention to the fact that integration associations, depending on their legal status, are usually divided into two groups: international intergovernmental organizations (European Union, Council of Europe, etc.) and unions of states, which are not international organizations. In this, the processes of international integration are the subject of legal regulation of not only international treaties, which are the basis of these integration associations, but also international treaties regulating the processes of international integration (agreements on the establishment of free trade zones, agreements on cooperation between states in various spheres, aimed at consolidating the goals of integration, etc.). In addition, there are made decisions on issues of international integration by international intergovernmental organizations agreements of which concluded with States or with each other.

Despite the attempts of scientists to investigate the issue of virtual organizations, nevertheless, remains the least investigated issue of the very legal nature of the phenomenon and the possibility of legal regulation of virtual organizations in national legislation.

“Integration” is used in the sense of “unification of parts in the whole” and in phrases: the integration process, integration group, etc.

The word “integrative” is recorded in dictionaries since the 90s of the twentieth century, and stands for “solid, integral subject or phenomenon”: integrative consciousness, integrative function, integrative information, etc.

The devotional adjective “integrated” means “integrated; the one that is based on the association”, which means that it was integrated, which was subjected to integration. It is used in terms of: integrated management system, integrated method, integrated training, integrated summary, etc.

The adjective “integrating” more often refers to those phenomena that “themselves integrate, act as combining factors”. This word is new and still has no tradition of using in the literary language. However, his model is in accordance with the laws of the Ukrainian language, a language practice testifies to the birth of a somewhat different lexical meaning, which ultimately is considered the main hallmark of the word’s life.

Modern organizations have joined the sensational progress of mankind in less than two centuries, which is instantaneously in the overall scale of our time. None of the latest achievements in human history would have been possible without organizations (Lalu, 2017, 25). Throughout history, mankind was searching for new ways and forms of collaborative work, seeking to create new organizational models that are better than previous ones. As a result, today we have such organizational forms, which, it would seem, can meet the needs of any subjects of social activity.

In particular, in the legal field in Ukraine, the following organizational forms of implementation of diverse activities are currently used: individuals, entrepreneurs and legal entities.

A legal entity, in accordance with Art. 80 of the Civil Code of Ukraine, is an organization created and registered in accordance with the procedure established by law. A legal entity can be created by combining persons and/or property (Article 81 of the Civil Code of Ukraine). Depending on the order of creation, distinguish legal entities of private law and legal entities of public law. A legal entity of private law is created on the basis of constituent documents in accordance with the provisions of Art. 87 of the Civil

Code of Ukraine, and a legal person of public law is created by the decree of the President of Ukraine, the state authority, local self-government.

Legal entities may have the organizational and legal form of companies, institutions, and other forms established by law.

An economic society is a legal entity, the equity (compounded) capital of which is divided into stakes between the parties. Economic societies are created on the basis of the agreement by legal entities and citizens by combining their property and business activities in order to receive profit.

Economic societies include: joint-stock companies, limited liability companies, partnerships with subsidiaries, full and limited partnerships.

The general principles of the establishment and operation of economic societies are determined, in particular, by the Civil Code of Ukraine, Economic Code of Ukraine, the Laws of Ukraine “On Economic societies” and “On Joint Stock Companies”. Aside from economic societies, as mentioned, there are other forms that can be used in any activity.

At the same time, existing organizational forms are not always suitable for answering the challenges of a new, digital era, and therefore there are new types of companies that are more adapted to the realities of the present.

The need for them has predetermined, in particular, the emergence of so-called virtual organizations. This is due to the “virtualization” of many spheres of public life.

The virtualization space of organizations is conventionally divided into three main categories of events: the virtual market, virtual reality, virtual organizational forms.

The virtual market is a market of goods and services that exists on the basis of communication and information capabilities of global computer networks (Internet).

A virtual reality is a reflection and simulation of real objects and processes in cybernetic space.

There are different definitions of virtual organizations in the literature. In particular, the virtual organization is characterized as a network organizational form. This refers sometimes to a “virtual enterprise”, which is often identified with a “virtual organization”. The virtual enterprise, in particular, defines as a community of territorially separated firms or employees who exchange products of their work and communicate exclusively with electronic means with minimal or completely absent personal contact (Pleskach, Zatonatska, 2007, 256). Taking into account the peculiarities of the practical functioning of such structures, a virtual organization is

defined as a temporary cooperative network of enterprises (organizations, individual teams) that have key competencies for the best execution of a market order based on a single information system. It is characterized as the most advanced form of a modern enterprise, which is an association of a network of organizations with its nodes and communications with information and technical means (Hoshchynskyi, 2009, 47).

It is worth noting to the fact that the term “virtual organization” is used in a dual sense. In an abstract sense, a virtual organization means the most advanced and effective form of organization, which is the best in terms of the available technical and new economic conditions. In a more concrete sense, a virtual organization is understood as a network, computer-mediated structure of the company, consisting of heterogeneous parts, located in different places. In some works, virtual organizations or enterprises denote other terms: “network organizations”, “virtual enterprises” (Sidorenko), etc. Typically, it refers to network partners (enterprises, organizations, individual teams), which jointly carry out activities for the development, production and marketing of certain products, the provision of services of various types.

Legal experts also made attempts to define virtual organizations. In particular, virtual organizations define as those that exist in the virtual space, economic entities, which include natural and legal persons having an internal structure, division of duties and regulation of relations between the participants. The key feature of such organizations is the fact that the basis of the association of individuals and legal entities is modern information or communication technologies.

In our opinion, the proposed definition cannot be considered successful, because the basis of the association is either the union of individuals, or the pooling of capital. In this information technologies serve as technical means of providing activity in a certain space that have virtual nature.

Virtual organizations are also mentioned when describing Grid technologies. In particular, access to such technologies requires membership in virtual organizations. Virtual organizations provide access to Grid’s network technology by their own developed and approved rules, that is, they are engaged in providing services and local rulemaking (Strizhkova A.V, 2016, 34). In the Ukrainian National Grid (UNG) Regulation, a virtual organization is defined as a dynamic community of people and institutions that share the computing resources in accordance with the rules agreed between them and the owners of the rules governing access to all

types of means, including computers, software and data (Regulation on the Ukrainian National Grid (UNG)).

Virtual organizations have a number of distinctive features that distinguish them from organizations in the real sector of the economy. Thus, virtual organizations are more fragmented and volatile, focusing on new ideas, innovations, and rapid response to emerging market needs. In this case, virtual organizations have new opportunities that arise from the latest information technologies. Since virtual organizations essentially is the unification of the efforts of partners, as a rule, such cooperation within the organization is of equal nature, it is more characterized by creative color. Thus, the building of the relationships is based on the ideas, competences and partnerships of the partners involved in the virtual organization.

Being the organizational form of the information society in the field of business, public communications, innovations, etc., global communication networks such as the Internet, contribute to the formation of business structures, the list of which features is reducing the deficit of information and increasing the efficiency of its use, activation of accumulation processes and transfer of knowledge, establishment of high level of trust, intensification of cooperative relations between partner firms, etc. Such business structures, due to their flexibility, can quickly adapt to market changes and transform into new structures, creating the level of competence that is necessary for the organization of production of goods and services, depending on market needs.

Unlike a regular organization, a virtual organization can solve a problem that has arisen without the involvement of significant material resources by finding and engaging new partners with the appropriate resources, knowledge and capabilities for joint organization and implementation of the relevant activities. Typically, such a partnership is temporary, limited by a certain period, or the achievement of the goal set by the partners.

New types of organizational structures are characterized by openness, flexibility, autonomy, the priority of horizontal ties, the availability of resource-saving technologies.

Among the main features of such organizations are also called: unstable nature of functioning; implementation of communications and management actions on the basis of integrated and local information systems and telecommunications; the relationship with all partner and other interested organizations through the conclusion of a series of contracts and mutual ownership of the property; creation of temporary alliances of organizations

in related fields of activity; partial integration with the parent company and the preservation of joint ownership relations as long as it is considered advantageous; contractual relations of employees with administration at all levels (Віртуальні корпорації).

Virtual organizations are fully reflective of the digital environment, such as the Internet, with all its drawbacks and advantages.

As the researchers rightly emphasize, the novelty of the Internet is not even in virtuality, but in the liberation of ideas from the general limitations of space, time, matter and censorship. The element of the Internet is innovation and communication, not material things (Voynikanis, 2013, 87). The non-hierarchical structure of the Internet is an ideal environment for the growth and development of contractual and technological culture, it is the center of the world economy and a major factor in rapid innovation development.

As it follows from the foregoing, considering virtual organizations from the point of view of law, we can speak of unstable “organizational formations” of a contractual type without a legal entity status (quasi-corporations) created for the purpose of realization of innovative projects on the basis of mutual use of resources, reduction of expenses and expansion market opportunities that operate on the basis of self-government.

Virtual organizations are classified according to different reasons.

Thus, depending on the organizational form (the nature of corporate ties between the participants), it is distinguished a virtual organization, a virtual enterprise, a virtual corporation.

A virtual organization is a broader concept and covers all types of entities existing in the virtual space. At the same time, “enterprise” under the Civil Code of Ukraine is the only property complex used for business purposes (Article 191 of the Civil Code of Ukraine) and is not the subject of legal relations. However, “virtual enterprise” is considered as a joint operation of the activity of independent enterprises of various industry affiliates, forms and sizes of ownership. Such an enterprise is created on a temporary basis without the formation of a legal entity for the purpose of mutual use of resources, reducing costs and expanding market opportunities (Hoshchynskyi, 2009, 48).

The virtual corporation is an electronic association of capital (resources) of various types – financial, technological, human (in particular, intellectual) in the interests of implementing complex and unique projects for creating world-class products and maximally satisfying customer requirements (Віртуальні корпорації).

It contributes to solving two fundamental problems of a market economy: 1) raising capital for the implementation of unique projects or the distribution of business processes in order to increase the competitiveness of products; 2) risk sharing in investment projects.

The main foreign economic goal of creating virtual corporations is the pooling of key technologies and experience of partners from different countries for more effective actions on the world market. The virtual corporation is characterized by a certain independence from the participants (the possibility of easy change of partners) by the presence of an indirect management mechanism (delegation of authority), the transition from the individual to the collective responsibility of the partners. It provides contractual relationships between all the nodes of the organizational network and the formation of their joint ownership. Often, a virtual corporation is formed in the form of a parent virtual enterprise with a network of subsidiaries virtual branches and so on.

A virtual corporation is created from a variety of enterprises on a contractual basis, does not have a single legal organizational structure, but has a general communication and information structure, which ensures the integration of the efforts of partners in the execution of a project. It is a complex system, formed from remote groups of people (virtual teams), which are united on the basis of symbiosis of leading network and intellectual technologies, such as the Internet, and provided knowledge management. An artificial community that exists and evolves in a virtual space is formed electronically. On the one hand, there is a merger of network and intellectual technologies because the network as one of the most important forms of collective intelligence is closely linked with the processes of self-organization of the spontaneous emergence of new structures. On the other hand, we are talking about the formation of a unified system of support for communicative processes (Віртуальні корпорації).

There are three types of virtual enterprises:

Depending on the type of management within a virtual organization, are distinguished: virtual organizations with a centralized type of management (in which coordinating functions are transferred to the “main” enterprise, and knowledge and resources are available to all “agents”); virtual organizations with a distributed type of management (where knowledge and resources are distributed among “agents” but the general body of command management that makes decisions in conflict situations is kept); virtual organizations with a decentralized type of management (in which

all managerial processes are carried out only through local interactions between “agents”) (Віртуальні корпорації).

Depending on the purpose of generating revenue, virtual organizations may be commercial or non-commercial.

Depending on the extent of production (provision of services), virtual organizations can be small, medium, major (large).

Depending on the purpose of their creation, they are divided into innovation and others (e-commerce, provision of various services, etc.).

Depending on the time on that the virtual organization is created, it can be permanent or temporary.

There may be other classifications of virtual organizations.

In addition to virtual organizations, recently appeared such a concept as a “virtual office”. It is a term used to designate office services of collective use, which often include the business address of the organization for receiving correspondence, mail forwarding services, virtual telephone number, fax reception, as well as secretarial services provided, web hosting and rental of conference rooms and conference rooms for business meetings. The Virtual Office is also a generic term for describing the environment, which allows the team of employees to effectively conduct business using exclusively Internet communication capabilities. That is, the virtual office is an online resource (site) that allows geographically distant employees of the company to interact (exchange, process and transmit information) by means of electronic communications (Віртуальний офіс: переваги та недоліки).

It should be emphasized that at present the situation of virtual organizations and their activities in the vast majority of cases are not regulated by national laws of European countries. Such an approach, in our opinion, is justified in the information society in terms of integration, since the principles of legal regulation in the relevant field must be determined by international agreements, forming part of the integration (integrative) law.

Consideration of the problems associated with the existence of “quasi-corporations” allows us to draw the following conclusions.

The integration processes that take place in the EU area involve deepening the interconnection and strengthening the interdependence of the states that are part of it, which necessitates adequate legal regulation. Then there is a problem of determining the essence of the normative array that is formed at the same time, which is often referred to as the “law of integration”. The term “integration law” proposes to designate a set of principles, norms and rules that mediate integration processes. The term “integrative

law” in the context of our study justifies the law of the European Union, which is the result of the process of European integration.

The analysis of national law shows that the organizational forms that exist at present are not always suitable for responding to the challenges of the information society, and therefore new organizational forms (in particular, virtual organizations) are emerging, more adapted to the realities of the present.

Considering virtual organizations from the point of view of law, one can define them as unstable “organizational formations” of a contractual type without the status of a legal entity (quasi-corporation) created for the purpose of realization of innovative projects on the basis of mutual use of resources, reduction of expenses and expansion of market opportunities acting on basis of self-government. Since the situation of virtual organizations and their activities in the vast majority of cases are not regulated by the national legislation of European countries, the definition of the principles of legal regulation in this area by international agreements, which is an integral part of integration (integrative) law, is of great importance in the information society in the context of integration.

Based on the analysis of the characteristics of the startup, it can be characterized as a newly formed structure (which may or may not be a legal entity, and often is a “quasi-corporation”) in the sphere of small business, which is in the stage of development and builds its business on the basis of new innovative ideas, or on the basis of newly emerging technologies, in order to solve a specific problem by attracting investment.

However, since startups, as well as virtual organizations in general, are the product of an information society in terms of integration, the principles of their emergence and activities must be determined by international agreements, being part of the integration (integrative) law.

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