The Determination of Jurisdiction in Grid and Cloud Service Level Agreements

Davide Maria Parrilli
Interdisciplinary Centre for Law and Technology (ICRI),
K.U. Leuven, IBBT, Sint-Michielsstraat 6, 3000 Leuven, Belgium
davide.parrilli@law.kuleuven.be

Abstract. Service Level Agreements in Grid and Cloud scenarios can be a source of disputes particularly in case of breach of the obligations arising under them. It is then important to determine where parties can litigate in relation with such agreements. The paper deals with this question in the peculiar context of the European Union, and so taking into consideration Regulation 44/2001. According to the rules on jurisdiction provided by the Regulation, two general distinctions are drawn in order to determine which (European) courts are competent to adjudicate disputes arising out of a Service Level Agreement. The former is between B2B and B2C transactions, and the latter regards contracts which provide a jurisdiction clause and contracts which do not.

Keywords: SLA, Jurisdiction, Legal, Grid, Cloud.

1 Introduction

The commercial success of Grid and Cloud computing technologies relies to a great extent on the Service Level Agreements (SLAs) entered into by the parties involved in a Grid or Cloud value chain. In other words, SLAs are contractual instruments that allow the parties to construct a business relation that may be fruitful and satisfying for them or, conversely, may potentially lead to litigation and to the termination of the relationship. Given this consideration, SLAs do deserve great attention by both researchers and practitioners and shall be drafted in a consistent and viable way. SLAs, in fact, are contracts, and like any other contract, which is binding for the parties, shall be efficient and effective: the parties should be aware of their respective obligations and the agreement shall state clearly which sanctions (damages, service credits, etc) are linked to failures to comply with such obligations. As regards the former aspect, the core of the SLA, i.e. the definition of the mutual obligations, is the description and definition of the quality of services (QoS) promised by the supplier, the level of availability of the service, the indication of the security measures adopted by the provider, the fees to be paid by the customer, etc.

Nevertheless, the efficiency of the SLA is not limited to these aspects, but involves other issues that are often neglected by Grid and Cloud providers, suppliers of Grid and

---

1 I wish to thank Dr. Luca Penasa of the School of Law of the University of Padova (Italy) for his precious collaboration and support in writing this paper.
Cloud-based services and customers. We refer, in particular, to some clauses that should be included in all SLAs, like the indication of the law governing the contract and the choice of the competent court in case of disputes arising from the interpretation and/or the execution of the contract. This latter issue is particularly interesting and our aim is to provide an assessment of the topic in a pioneering and innovative way.

This paper will focus precisely on the problems linked to the individuation of the court that is competent to judge the disputes arising from a SLA entered into by the parties in a Grid or Cloud computing environment. First of all, our approach will be European, i.e. we will take into consideration the sources enacted by the European lawmaker in the field, with a special attention to Regulation 44/2001\(^2\) which is the most important legal source in the field of jurisdiction and recognition of foreign decisions in the European Union (EU). Furthermore, our study will be based on the experience arising from the consultancy provided to real pilot cases of implementation and adoption of Grid technologies by business operators in the framework of the FP6 European-funded project BEinGRID.\(^3\) This research project, in fact, is centered on a certain number (25) of cases (so-called Business Experiments) of commercial exploitation of Grid and Grid-based services by European companies and Universities.

In order to render this paper as general as possible, and thus interesting for a wide audience, we base our analysis on the SLAs adopted in simplified scenarios, i.e. we will take into consideration the provision of Grid and Cloud computing and storage resources and the supply of Grid and Cloud-based services, like for instance Software as a Service (SaaS).\([1]\) In the former situation, there will be a SLA between the technology provider and the client. If the customer is (basically) a company or an undertaking, the SLA will be qualified as a business to business (B2B) contract, while if the client is an individual acting outside his professional activity the SLA is a business to consumer (B2C) agreement. As it will be showed below, such a distinction has a great practical relevance and often the legal solutions in the two cases will radically differ. In case of supply of Grid or Cloud-based services, for instance SaaS, we will have typically two different SLAs, one between a technology provider and the SaaS provider (basically regulating the provision of Grid or Cloud resources) and one between the SaaS provider and the end user. The former SLA is a B2B contract while the latter can be, according to the concrete circumstances of the case, a B2B or a B2C agreement. The considerations expressed in this paper are applicable to both SLAs.

In the above business cases it is, of course, possible that the customer is not satisfied with the provision of the service, or that the client does not pay for the services, or that the data supplied by the customer get lost or damaged for some security failures, etc. In any case there will be a dispute, which can be solved amicably by the parties (e.g. through an out-of-court dispute resolution system) or judicially by a judge. If the parties want that the dispute is discussed in a court and decided by a judge, the problem that arises is the individuation of the competent court. This issue arises if the case has an international dimension, i.e. if the parties are located in different countries: if, of course, they are all established in the same country and the

---


\(^3\) For further information, please visit http://www.beingrid.eu