Defence of an EU member state against the effects of transnational administrative acts

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Abstract

A characteristic feature of transnational administrative acts is that their effects extend beyond the borders of the issuing State, i.e., they have also effects in the territory of other States. It is one of the institutes that is also used within the European Union to harmonise the activities of the Member States at the application level, too. It represents the so-called horizontal form of harmonisation. The aim of this paper is to analyse possible ways of defence of the Member State concerned against the effects of a transnational administrative act issued by another Member State. In addition, the paper also includes a debate about the new concept of such defence in European Union legislation. In preparing this paper, the basic methods of scientific research were used, consisting in the analysis of the current legal regulation of transnational administrative acts in European Union law, the synthesis of common features and groups of possible means of defence, and subsequently the description of possible proposals de lege ferenda for better legislation. The author concludes that in the current legislation there are several different ways of defence of a Member State against the effects of transnational administrative acts and also formulates his proposals for the unification of possible procedural defence.

Keywords: *Transnational administrative act, transnationality, European Union, mutual recognition.*

JEL Classification: K23, K33

1. Introduction

A transnational administrative act is one of the forms through which harmonisation of activities takes place within the Member States of the European Union. Through this form, activities between the Member States are harmonised at the so-called horizontal level. However, vertical harmonisation, i.e., harmonisation of activities in the territory of the Member States of the European Union on the basis of legal acts, whether regulatory or individual ones, adopted by the bodies and institutions of the European Union and having also direct or indirect effects in the territory of the Member States, is more common and better known.

In the new Member States of the European Union, law science, especially administrative law science, has barely addressed the definition of a transnational administrative act, its features and characteristics. On the other hand, this does not mean that such administrative acts do not exist in the territory of these new Member States. On the contrary, a large number of transnational administrative acts issued by

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public administration authorities of other Member States have their effects in their territory, and vice versa.

However, the absence of due attention by law science of the new Member States does not mean that this institute has not been addressed by the scientific community in other States; on the contrary, this institute has long been the subject of research interest in the old Member States. A number of authors have even presented their own definitions of this term. For example, Angelos Gerontas characterises this form as "any state decision of the executive branch directed to produce legal effects outside the territory of the state, where the competent issuing authority is located."[2] According to Matthias Ruffert, it is "an official decision in a specific case whose purpose is to produce legal effects abroad, while these effects occur outside the territory of the State either without anything else or as a result of the administrative authority itself crossing the state border in its activities."[3] Volker Neßler defines the transnational administrative act as "a national administrative act with cross-border effects whose aim is to bridge differences in national legislation in order to exercise the freedoms without the need for detailed harmonisation."[4]

In any case, it can be stated that transnational administrative acts are a form of sui generis administrative activity. Their necessary precondition is that there is a legal basis for their issue, whether in the form of a norm of international law or a legal act of an international organisation. In the European Union, such a legal basis is European Union law. Transnational administrative acts are the results of decision-making by an administrative authority of a Member State which also produce effects in the territory of other Member States. Although transnational administrative acts have cross-border effects, they still remain legal acts of the issuing State. The legislation of the issuing State governs the form in which they will be issued, which authority will issue them, the issuing procedure itself, and the methods of their examination. Finally, compliance with such acts is supervised by the issuing State, whether or not such an act has effects in the territory of another State.[5]

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[2] Gerontas, A., *Deterritorialization in Administrative Law: Exploring Transnational Administrative Decisions*, "Columbia Journal of European Law", 2013, p. 427.

[3] Ruffert, M., *Der transnationale Verwaltungsakt,* "Die Verwaltung", 2001, pp. 469-470.

[4] Neßler, V., *Der transnationale Verwaltungsakt: zur Dogmatik eines neuen Rechtsinstituts*, "Neue Zeitschrift für Verwaltungsrecht", 1995, p. 865.

[5] See also Seman, T., *Pojem a účinky transteritoriálnych aktov orgánov verejnej správy*, "Extrateritoriálne účinky činnosti orgánov verejnej moci" Univerzita Pavla Jozefa Šafárika v Košiciach, Právnická fakulta, Košice, 2018, pp. 33-48, Ruffert, M., *Der transnationale Verwaltungsakt*, "Die Verwaltung", 2001, pp. 453-470, Handrlica J., *"Inter-administrativní pouto" správních aktů v předpisech unijního práva,* "Societas et Iuurisprudentia", 2017, Vol. V, No. 3, pp. 82-113; Handrlica, J., *Vybrané problémy spojené s aplikací modelu transteritoriálních správních aktů,* "Studia Iuridica Cassoviensia", Vol. 5.2017, No. 2, pp. 49-59., Handrlica, J., *Transteritoriální správní akty. Studie z mezinárodního správního práva,* Národohospodářsky ústav Josefa Hlávky, Prague, 2016, p. 63, Handrlica, J, *International administrative law and administrative acts: Transterritorial decision making revisited*, "Czech Yearbook of Public and Private International Law", 2016, Vol.7, pp. 86-98, Somek, A., *The Argument from Transnational Effects II: Establishing Transnational Democracy*, "European Law Journal", 2010, Vol. 16, No. 4, pp. 375-394.

The research was based on the hypothesis that even though transnational administrative acts have their definition and characteristics in theory, a number of deviations also apply; these deviations also apply in connection with the possibilities for a Member State to defend itself against the effects of a transnational administrative act issued by another Member State. In addition, it can be assumed that these deviations are diverse in nature.

The aim of this paper is therefore to analyse the existing deviations from the above-mentioned defining features, in particular in relation to the possibility for the State in whose territory a transnational administrative act is to have its effects to defend itself against such effects. In this context, a focus is put on examining the individual modalities arising from the existing legislation and on assessing their suitability. Finally, I present my considerations about the strengthening of the rights of the State in whose territory a transnational administrative act is to have its effects to defend itself against such effects in legitimate cases.

Within this research, basic, theoretical research methods were mainly applied. First of all, it was necessary to analyse the legal regulation of individual transnational administrative acts in European Union law, which is scattered in various legal acts. Subsequently, it was necessary to synthesize the common and diverse features of transnational administrative acts, as well as the possibilities of defence against their effects. In order to achieve the goal, it was necessary to formulate, through deduction and aggregation, *de lege ferenda proposals* in order to improve the current legal regulation at the level of the European Union.

2. Administrative conflict in the application of transnational administrative acts

As a result of the effects of transnational administrative acts, a relationship arises between the public administration authorities of the Member States, i.e., between the public administration authorities of the Member State which has issued such an act and the public administration authorities of the Member States in whose territory the administrative act is to have its effects. This relationship is referred to as an inter-administrative tie.[6]

First, the transnational effect implies that the administrative act in question is directly binding on the other authorities. It is an inter-administrative tie itself.[7] The transnational effect is, in essence, a certain form of modification of the positive aspect of material legality of an administrative act. While the positive aspect of material legality in administrative acts, in principle, results in the binding nature of decisions for national executive authorities, international law, or European Union law, brings a modification of this binding nature and extends it to the entire

[6] In German literature, it is referred as the concept of Tatbestands-, Festellungs- und Bindungswirkung. See also Schmidt-Assmann, E., *Verwaltungskooperation und Verwaltungskooperationsrecht in der Europäischen Gemeinschaft*, "Europarecht", 1996, pp. 270-285.

[7] De Lucia, L., *Administrative Pluralism, Horizontal Cooperation and Transnational Administrative Acts*, "Review of European Administrative Law", 2012, p. 33.

(administrative) area of the European Union, or the Contracting States to an international treaty. Foreign state authorities cannot therefore prevent the enforcement of the granted authorisations (subject to the reservations set out below) and avoid or sanction them in their territory.[8] In case of a conflict between the effects of a transnational administrative act and a national one, the transnational administrative act prevails. And vice versa, national administrative authorities are bound by final administrative acts of foreign authorities which were issued in the form of a transnational administrative act.[9]

However, the scope of an inter-administrative tie is not the same for all types of transnational administrative acts. Its scope is wider with regard to authorisation with automatic transnational effects (i.e. when the country of origin has extensive decisional autonomy). Its scope is more limited, on the other hand, when an interconnection of decisional powers is provided for, i.e. with regard to joint decisions and in authorisation subject to recognition (including mutual recognition in parallel).[10] In the given cases, however, it is appropriate to ask whether they are in fact transnational administrative acts according to the above-mentioned conceptual features or administrative acts potentially having transnational effects.

The scope of an inter-administrative tie is also limited in case of the application of various other deviations from the understanding of a transnational administrative act in its pure contours. This is the case where a Member State has the option of refusing the effects of a transnational administrative act in its territory or examining it for compliance with additional conditions, in case of suspension of its effects in the territory of a certain State during an emergency situation, or in case of annulment of a transnational act issued by another State.

2.1 Refusal of the effects of transnational administrative acts

As stated above, the essence of a transnational administrative act in its pure contours is that it is fully subject to the legal regime of the issuing State, and the State in whose territory it is to have its effects unconditionally respects that administrative act in its territory without any necessity of its formal recognition.[11] One of the interventions in this concept is a possibility given by legislation of the Member State in whose territory the administrative act is to have effects to refuse those effects in its territory.

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[8] Ruffert, M., *Der transnationale Verwaltungsakt*, "Die Verwaltung", 2001, p. 472.

[9] Handrlica, J., *Transteritoriální správní akty. Studie z mezinárodního správního práva,* Národohospodářsky ústav Josefa Hlávky, Prague, 2016, p. 84.

[10] De Lucia, L., *From mutual recognition to EU authorization: A decline of transnational administrative act, "*Italian Journal of Public Law", 2016, Vol. 1, p. 101.

[11] The Court of Justice of the European Union also ruled on the nature of transnational administrative acts in its pure contours in its Judgment of 29 October 1998 in Case C-230/97, Awoyemi, EU:C:1998:521, paragraphs 41 and 42, quoting: "The obligation of mutual recognition applies without any formality and the Member States have no discretion as to the measures to be adopted in order to comply with those requirements."

However, just as the existence of a transnational administrative act must have its legal basis (especially in European Union law), so the existence of that exception must arise from legislation of the same nature. One of the typical examples[12] of this type of transnational administrative acts with the possibility of refusing its effects is a driving licence regulated by the Driving Licence Directive.[13]

The Directive is based on the principle of mutual recognition of driving licences as a result of which, if the authorities of a Member State have issued a driving licence in accordance with Article 1(1) of the Directive[14], the other Member States are not entitled to verify compliance with the requirements for its issue and the possession of a driving licence issued by a Member State must be considered as a proof that its holder has complied with the requirements of the Directive on the date of its issue. These requirements include, in particular, the requirement of residence in the Member State issuing the driving licence and the requirement of fitness to drive a motor vehicle.[15]

An exception from the application of unconditional respect for a foreign transnational administrative act – a driving licence in the territory of another Member State, is provided for in Article 11(4) of the Driving Licence Directive. According to that provision, "*A Member State shall refuse to recognise the validity of any driving licence issued by another Member State to a person whose driving licence is restricted, suspended or withdrawn in the former State's territory*." In this context, however, it should be noted that the Court of Justice of the European Union stated that the option provided for by Article 11(4), second subparagraph of the Directive constitutes a derogation from the general principle of mutual recognition of driving licences, and must therefore be interpreted strictly.[16]

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[12] Other examples arise, for example, from Article 36(3) of Regulation (EC) No 1107/2009 of the European Parliament and of the Council of 21 October 2009 concerning the placing of plant protection products on the market and repealing Council Directives 79/117/EEC and 91/414/EEC (OJ L 309, 24.11.2009, p. 1), Article 17(3) of Directive 2009/65/EC of the European Parliament and of the Council of 13 July 2009 on the coordination of laws, regulations and administrative provisions relating to undertakings for collective investment in transferable securities (UCITS) (OJ L 302, 17.11.2009, p. 32), or international laws, for example, from Article 7 of the Air Transport Agreement with the State of Kuwait of 1997, from Article 7 of the Air Transport Agreement with the United Arab Emirates of 2002, from Article 7 of the Air Transport Agreement with Armenia of 2010, from Article 16 of the Air Services Agreement with Georgia of 2010, etc.

[13] Directive 2006/126/EC of the European Parliament and of the Council of 20 December 2006 on driving licences (OJ L 403, 30.12.2006, p. 18).

[14] Member States shall introduce a national driving licence based on the Community model set out in Annex I, in accordance with the provisions of this Directive. The emblem on page 1 of the Community model driving licences shall contain the distinguishing sign of the Member State issuing the licence.

[15] Sangretova, M., *K niektorým otázkam vzájomného uznávania vodičských preukazov*, "Extrateritoriálne účinky činnosti orgánov verejnej moci", Univerzita Pavla Jozefa Šafárika v Košiciach, Právnická fakulta, Košice, 2018, p. 100-101.

[16] Judgment of the Court of Justice of the European Union of 26.04.2012, Hofmann, C-419/2010, EU:C:2012:240, paragraph 71.

Thus, that provision of the Driving Licence Directive establishes the possibility for a Member State to refuse the effects of a foreign transnational administrative act in its territory and also defines the reasons for which it is allowed to do so. The following features of such an exception can be abstracted from this:

The refusal by a Member State of the effects of a transnational administrative act has an impact exclusively on the existence of those effects in its territory. It does not in any way affect the existence of such effects of transnational administrative acts in the territory of other Member States or in the territory of the issuing State.

Likewise, the use of the possibility for one Member State to refuse the effects of a transnational administrative act has no impact on the validity, finality and enforceability of the transnational administrative act itself; it continues to be valid, final and enforceable under the conditions applicable in the home State, except that an inter-administrative tie has been broken in relation to the State which has refused its effects.

However, the existence of such an exception does not mean that it is not the case of a transnational administrative act, but an administrative act subject to recognition by the State in whose territory it is to have effects. In the latter case, an act of recognition is necessary for an administrative act to take effects in the territory of another Member State. On the contrary, by applying this exception an administrative act will take effects automatically (or by automatic recognition), but will subsequently lose those effects as a result of the application of the Member State's right to refuse its effects. This is, of course, a fundamental difference.

In this context, some authors[17] conclude that granting the possibility to refuse the cross-border effects of transnational administrative acts to the State in whose territory these effects are to occur results in a modification of the very concept of transnationality. The consequence of this legislative concept is a new decision-making model (an act with cross-border effects with the possibility of refusal) which may imply a potential instability of transnational effects with regard to possible interventions by the executive authorities of other States.[18] However, I consider that even in this concept the nature of transnational administrative acts has been preserved; but, on the other hand, the inter-administrative tie has been weakened, and such weakening has its legitimate basis consisting in the need to protect the interests of a Member State respected by the European Union[19].

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[17] Bassi, N., *Il mutuo riconoscimento in transformazione: il caso delle patendi di guida,* "Rivista italiana di dritto pubblico comunitario", 2008, p. 1517-1523; De Luca L., *Administrative Pluralism, Horizontal Cooperation and Transnational Administrative Acts,* "Review of European Administrative Law", 2012, p. 27.

[18] Handrlica, J., *Transteritoriální správní akty. Studie z mezinárodního správního práva,* Národohospodářsky ústav Josefa Hlávky, Prague, 2016, p. 90.

[19] Arising from Article 114 of the Treaty on the Functioning of the European Union and Article 4(2) of the Treaty on European Union.

2.2 Requiring additional verification of a transnational administrative act

A special category of transnational administrative acts are acts for which legislation requires the so-called additional verification. Its essence is that a State can carry out additional verification of the compliance of an act with its own laws or require such verification from the entity that is authorised to carry out such verification under the transnational administrative act (act with cross-border effects subject to additional verification).[20]

In this case, too, there must exist a legal basis for the issue of a transnational administrative act by one Member State having also effects in the territory of other Member States. At the same time, it is also necessary to establish the right of the State in whose territory the act is to have effects to require that the act be examined for compliance with the requirements of its national legislation, in response to the fact that there is the absence of full harmonisation, but certain differences may exist between the States in a respective area. This model responds to potential differences in national legislation. It is a model designed to balance the pros and cons of introducing a cross-border effect and the absence of full harmonisation of national legislation.[21]

A prime example[22] of the application of this model of deviation from a pure understanding of a transnational administrative act is reciprocal recognition of navigability licences for inland waterway vessels, which is regulated in the Directive of the same name.[23] Article 3(1) of that Directive establishes the legal basis of a transnational administrative act – navigability licence. Under that provision, "*Subject to paragraphs 3 to 6, each Member State shall recognise for navigation on its national waterways the navigability licences issued by another Member State in accordance with Article 2 on the same basis as if it had issued those licences itself.*" Thus, a legal basis has been established for the automatic recognition of navigability licences issued by another Member State without the need for a formalised recognition procedure.

The disruption of the inter-administrative tie in connection with the automatic recognition of the cross-border effects of navigability licences results from paragraph 6 of the above-quoted provision of the Directive. Under that paragraph, "*Member States may require fulfilment in maritime shipping lanes of additional*

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[20] Handrlica, J., *Transteritoriální správní akty. Studie z mezinárodního správního práva,* Národohospodářsky ústav Josefa Hlávky, Prague, 2016, p. 91.

[21] Biscottini, G., *Diritto amministrativo internazionale, Vol. 2*, Casa Editrice dott. Antonio Milani, Padova, 1966, p. 55-56.

[22] Other examples are provided in Article 41 of Regulation (EC) No 1107/2009 of the European Parliament and of the Council of 21 October 2009 concerning the placing of plant protection products on the market and repealing Council Directives 79/117/EEC and 91/414/EEC (OJ L 309, 24.11.2009, p. 1),

[23] Directive 2009/100/EC of the European Parliament and of the Council of 16 September 2009 on reciprocal recognition of navigability licences for inland waterway vessels (OJ L 259, 02.10.2009, p. 8).

conditions equivalent to those required for their own vessels." It follows that Member States automatically recognise navigability licences issued by another Member State; but, on the other hand, they may require that a person authorised under such a license fulfil requirements applied by the Member State concerned to its own vessels in its maritime shipping lanes. This concept results from the fact that requirements for vessels are not subject to full harmonisation and therefore there may be certain differences in requirements among Member States.

However, the application of this exception does not mean that such an administrative act of a foreign State would fall under the regime of necessary recognition and would only take effects as a result of such recognition. Such an administrative act will take transnational effects automatically, without the need to carry out the recognition process. However, the Member State in whose territory it is to have such effects may require that a person authorised under the administrative act fulfil additional conditions arising from the national law of that State. A failure by such a person to fulfil those additional conditions would result in an infringement of the national law of that Member State, with the possibility of imposing administrative liability. In the example above, this would not be because such a person did not have a valid navigability licence (he had it as a result of automatic recognition), but because he did not fulfil additional requirements which the Member State requires also in relation to its own vessels.

2.3 Suspension of the effects of transnational administrative acts

Another potential intervention in the concept of pure transnational administrative acts is the suspension of the effects of transnational administrative acts in the territory of the Member State where such an act is to have its effects. Such suspension can only be considered in case of an existing or potential danger in the application of transnational administrative acts and is therefore only of a temporary nature, for the duration of such a danger. It follows from its nature that it can only be applied in necessary cases and to a necessary extent. And this is a difference in relation to the application of the exception of refusal of the effects of transnational administrative acts, which is of a permanent nature.

However, these two exceptions have in common that the effects of a transnational administrative act are suspended or refused only in relation to the territory of the Member State which has made use of such an exception. This does not have therefore any impact on the validity, finality and enforceability of the administrative act in question as such, nor does it have any impact on its effects in the territory of other Member States.

Like in other cases of exceptions, in this case there must also be a legal basis for the application of this procedure – suspension of the effects of transnational administrative acts. Such a provision has the nature of the so-called safeguard clause

(*Schutzklausel*)[24]. The safeguard clause allows a Member State to take measures which deviate from the purpose of unification. The safeguard clauses are especially useful when, after an administrative act was issued, an unrecognisable or unknown danger arises which requires rapid intervention.[25] Such safeguard clauses are contained in a number of harmonisation legal acts of the European Union, in particular, in the safety of products[26] and the freedom to provide services[27].

One of the examples of the existence of a safeguard clause is the above-mentioned recognition of navigability licences under the Directive on reciprocal recognition of navigability licences for inland waterway vessels. As mentioned above, such navigability licences are transnational administrative acts which are subject to additional verification. However, this type of transnational administrative acts also provides for the option for the Member State in whose territory the navigability licence is used to suspend its effects. In particular, Article 4(2) of the Directive states: "*Any Member State may interrupt the passage of a vessel, where the vessel is found on inspection to be in a condition which constitutes a danger to the surroundings, until the defects have been corrected. That Member State may also do so where the vessel or its equipment is found on inspection not to satisfy the requirements set out in the navigability licence or in the other documents referred to in Article 3 as the case may be.*" It therefore follows from the above-quoted provision that any Member State (also other than the State issuing the navigability licence) may interrupt the passage, i.e., suspend the effects of the navigability licence. However, such suspension may only be in exceptional cases – where the vessel is in a condition which constitutes a danger to the surroundings or where the vessel or its equipment does not satisfy the requirements set out in the navigability licence or in other documents. In addition, such suspension may only be for a temporary period, until the defects have been corrected.

Under paragraph 3 of that Article, "*A Member State which has interrupted the passage of a vessel, or which has indicated its intention to do so if the defects are not corrected, shall inform the competent authorities of the Member State where the navigability licence or the other documents referred to in Article 3 were issued of the reasons for the decision it has taken or it intends to take.*" Thus, together with the application of the measure consisting in suspending a transnational administrative act, it is also necessary to fulfil the notification obligation in relation to the Member State that issued the transnational administrative act and, in certain

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[24] Burbaum, S., *Rechtschutz gegen transnationales Verwaltungshandeln,* Nomos Verlagsgesellschaft, Baden-Baden, 2003, p. 57.

[25] Krämer, L., *EWG-Verbraucherrecht,* Nomos Verlagsgesellschaft, Baden-Baden, 1985, p. 246.

[26] For example, Article 23 of Directive 2001/18/ES of the European Parliament and of the Council of 12 March 2001 on the deliberate release into the environment of genetically modified organisms and repealing Council Directive 90/220/EEC (OJ L 106, 17.04.2001, p. 1), Article 11(1) of Directive 2009/54/ES of the European Parliament and of the Council of 18 June 2009 on the exploitation and marketing of natural mineral waters (OJ L 164, 26.06.2009, p. 45-58).

[27] For example, Article 4(2) of Directive 2009/100/EC of the European Parliament and of the Council of 16 September 2009 on reciprocal recognition of navigability licences for inland waterway vessels (OJ L 259, 02.10.2009, p. 8).

cases, also in relation to the Commission. The existence of such a notification obligation also follows from the principle of sincere cooperation between Member States laid down in Article 4(3) of the Treaty on European Union.

The inclusion of a safeguard clause in national law is not a legal obligation of a Member State. It is left to the discretion of the national legislature whether or not to take over such safeguard clauses. Safeguard clauses contained in directives allow Member States to derogate, in exceptional situations, from the obligation to automatically recognise a foreign administrative act.[28] Safeguard clauses direct Member States' derogating measures into well-organised and verified tracks; in addition, they promote integration and contribute to the further development of European Union law.[29]

2.4 Annulment of a transnational administrative act

Perhaps the most radical intervention in the concept of transnational administrative acts is the possibility for a Member State to annul an act issued by another Member State. This exception negates the principle that a transnational administrative act is governed by the law of the issuing State, in particular, by its procedural rules, which also provide for the possibility of annulment.

Since it is the most radical intervention in the concept of transnational administrative acts, it is also the most sporadic intervention. The reason for such a procedure by another Member State may be a serious infringement of laws in issuing such an act which has also an impact on public policy in the State concerned or throughout the European Union. The legal consequence of the annulment of such an act is not only the elimination of its effects in the territory of the State which annulled it, but the elimination of its effects en bloc in the territory of all the Member States, including the issuing Member State. By annulling, the validity, finality and enforceability of this transnational administrative act lapses as such.

Having regard also to this fact, the existence of such an exception must also have its legal basis in the legal acts of the European Union. Without such a legal basis, another Member State is not entitled to unilaterally change or annul the decisions of another Member State, even if they have effects in its territory.

Perhaps the only case where this exception to the general concept of transnational administrative acts is possible is the option for any Member State to annul or revoke a visa issued by any other Member State. Under Article 34 of the Visa Code[30], "*A visa shall be annulled where it becomes evident that the conditions for issuing it were not met at the time when it was issued, in particular if there are serious grounds for believing that the visa was fraudulently obtained. A visa shall in*

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[28] Burbaum, S., *Rechtschutz gegen transnationales Verwaltungshandeln,* Nomos Verlagsgesellschaft, Baden-Baden, 2003, p. 58.

[29] Ipsen, H.P., *Europäisches Gemeinschaftrecht in Einzelstudien,* Nomos Verlagsgesellschaft, Baden-Baden, 1984, p. 240.

[30] Regulation (EC) No 810/2009 of the European Parliament and of the Council of 13 July 2009 establishing a Community Code on Visas (Visa Code) (OJ L 243, 15.09.2009, p. 1).

principle be annulled by the competent authorities of the Member State which issued it. A visa may be annulled by the competent authorities of another Member State, in which case the authorities of the Member State that issued the visa shall be informed of such annulment." This provision explicitly expresses the right of another Member State to annul the decision to issue a visa by another State, and such a procedure is not arbitrary but is subject to an explicitly defined reason. Such a reason stems from a breach of the conditions for issuing a visa or from fraudulent acts in issuing a visa, i.e., there must be a relevant reason that goes beyond the borders of the Member State that issued such an administrative act.

And finally, even in this case, the Member States must comply with the principle of sincere cooperation laid down in Article 4(3) of the Treaty on European Union. They must inform the Member State that issued a transnational administrative act that it has been annulled.

In this context, it should be noted that the Visa Code also provides for the possibility to revoke a visa issued by another Member State. Under Article 34(2) and (3) of the Visa Code, "*A visa shall be revoked where it becomes evident that the conditions for issuing it are no longer met. A visa shall in principle be revoked by the competent authorities of the Member State which issued it. A visa may be revoked by the competent authorities of another Member State, in which case the authorities of the Member State that issued the visa shall be informed of such revocation. A visa may be revoked at the request of the visa holder. The competent authorities of the Member States that issued the visa shall be informed of such revocation."* However, the difference between the annulment of a visa and the revocation of a visa consists in the time when a failure to meet the conditions for issuing a visa occurs (if such a failure occurs before the visa is issued, then the visa shall be annulled; if such a failure occurs after the visa is issued, then the visa shall be revoked). In other aspects, however, I do not see any difference between annulment and revocation in relation to the effects of transnational administrative acts. Thus, the same theoretical conclusions can be drawn in relation to the revocation as in relation to the annulment of a transnational administrative act.

3. Possible solutions to the administrative conflict *de lege ferenda*

From the presented excursion into various deviations from pure transnational administrative acts, certain conclusions can be drawn. First of all, it is evident that there are diverse deviations having a diverse nature, diverse legislation, as well as diverse effects. It is therefore possible to argue about whether such diversity is appropriate. In addition, it can also be seen that, over time, legislation prefers transnational administrative acts in which Member States have the possibility to derogate. Thus, pure transnational administrative acts are pushed to the background.

On the one hand, the existence of the possibility for a Member State to prevent the effects of a transnational administrative act issued by another State in its territory strengthens the protection of national interests of that State. On the other

hand, this trend creates obstacles to the effective achievement of the goal of transnational administrative acts – harmonisation of the application of law throughout the European Union. I do not think that this situation is appropriate.

In looking for a suitable solution, it would be necessary in the first step to define what should be the subject of vertical harmonisation and what should be the subject of horizontal harmonisation. If full harmonisation is required throughout the European Union, including in the application of law, it would be more appropriate for this area to be regulated in the form of regulations, with the European Union's bodies and institutions having the right to decide.

One example of the development of legislation from horizontal harmonisation in the form of transnational administrative acts to vertical harmonisation in the form of the issue of legal acts by the bodies and institutions of the European Union is the development in rail transport. New legislation on the European Union Railway Agency[31] gives that Agency a number of authorisations, such as issuing authorisations for the placing on the market of railway vehicles[32] or authorisations for the placing on the market of vehicle types[33]. In the past, such authorisations were issued by national authorities[34], and their authorisations had a transnational nature. A similar development can also be seen in the placing on the market of novel foods and novel food ingredients. In the past, the placing on the market of novel foods and novel food ingredients was subject to authorisation adopted within a joint decision of the Member States[35]. Since 2015, this measure has become a competence of the Commission, which acts with the support of the European Food Safety Agency[36].

In relation to activities where harmonisation is required, but vertical harmonisation would not be appropriate for various reasons, it would be necessary to opt for its horizontal form – through transnational administrative acts. But I do not consider that a pure form of such acts would be the most appropriate. It would not give a Member State the possibility to protect its interests, while such a possibility

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[31] Regulation (EU) 2016/796 of the European Parliament and of the Council of 11 May 2016 on the European Union Agency for Railways and repealing Regulation (EC) No 881/2004) (OJ L 138, 26.05.2016, pp. 1-43).

[32] Article 20 of Regulation (EU) 2016/796 of the European Parliament and of the Council of 11 May 2016 on the European Union Agency for Railways and repealing Regulation (EC) No 881/2004) (OJ L 138, 26.05.2016, pp. 1-43).

[33] Article 21 of Regulation (EU) 2016/796 of the European Parliament and of the Council of 11 May 2016 on the European Union Agency for Railways and repealing Regulation (EC) No 881/2004) (OJ L 138, 26.05.2016, pp. 1-43).

[34] Article 21 of Directive 2008/57/EC of the European Parliament and of the Council of 17 June 2008 on the interoperability of the rail system within the Community (OJ L 191, 18.07.2008, p. 1).

[35] Article 4 et seq. of Regulation (EC) No 258/97 of the European Parliament and of the Council of 27 January 1997 concerning novel foods and novel food ingredients (OJ L 043, 14.02.1997, pp. 0001-0006).

[36] Article 10 et seq. of Regulation (EU) 2015/2283 of the European Parliament and of the Council of 25 November 2015 on novel foods, amending Regulation (EU) No 1169/2011 of the European Parliament and of the Council and repealing Regulation (EC) No 258/97 of the European Parliament and of the Council and Commission Regulation (EC) No 1852/2001 (OJ L 327, 11.12.2015, pp. 1-22).

is provided for directly in the founding Treaties.[37]. On the other hand, it would not be appropriate if diverse deviations having diverse forms and diverse effects existed.

In this context, a reference should also be made to the model of automatic recognition of judicial decisions given by the Member States of the European Union. Under Article 36(1) of the Brussels Ia Regulation[38], "*A judgment given in a Member State shall be recognised in the other Member States without any special procedure being required.*" Thus, in relation to judicial decisions, an automatic model of recognition is applied without the need for a special recognition procedure. The same is also true in relation to transnational administrative acts.

On the other hand, Article 45 of the Brussels Ia Regulation regulates the manner and reasons for refusal of the recognition of a foreign judgment, always on an application. If the interested party does not apply for refusal of the recognition of a foreign judgment, the foreign judgment will be automatically recognised. The basic reasons for refusal of the recognition of a foreign judgment include, in particular, conflict with public policy (ordre public) in the State addressed, infringement of the right to a fair trial, irreconcilability with an earlier judgment given in the State addressed or in another State, etc.

I consider that the same concept could also be used in case of transnational administrative acts. This means that transnational administrative acts would be automatically recognised without the need for a special recognition procedure[39]. However, at the same time, the Member State concerned, as well as the party to the proceedings, would have the option of applying for refusal of their recognition. This could be decided by a court of the State concerned according to the rules of proceedings on the recognition and enforcement of foreign administrative decisions (according to the rules of administrative justice). The administrative court could also decide on preliminary suspension of enforceability in the territory of the State concerned in case of imminent danger (activation of *Schutzklausel*). The legal consequence of refusal of recognition would be that the transnational administrative act would lose its effects in the territory of the Member State concerned, but its effects in the territory of the State of origin and the other Member States would remain unaffected. Thus, these would be the same effects as currently in a situation where a Member State refuses the effects of a foreign transnational administrative act in cases explicitly set out in legislation. However, the difference would be that such a possibility would exist with respect of any transnational administrative act of another Member State, not only in a case explicitly stated in legislation.

In conclusion, it is also necessary to consider the existence of legislation at the European Union level in the form of a regulation that would generally regulate

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[37] For example, Article 114 of the Treaty on the Functioning of the European Union, Article 4(2) of the Treaty on European Union, etc.

[38] Regulation (EU) No 1215/2012 of the European Parliament and of the Council of 12 December 2012 on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters (OJ L 351, 20.12.2012, p. 1).

[39] For more details see Benko R., *Uznávanie a výkon rozhodnutí orgánov verejnej moci v EÚ,* "Extrateritoriálne účinky činnosti orgánov verejnej moci", Univerzita Pavla Jozefa Šafárika v Košiciach, Právnická fakulta, Košice, 2018, pp. 19-32.

requirements relating to transnational administrative acts (such as Brussels Ia in relation to judicial decisions). I consider that the existence of such a regulation would be desirable. In the first place, such a regulation should contain the definition of a transnational administrative act, since it may and does have a different content in each Member State. It should also contain the principle of automatic recognition of such an act in the territory of other Member States, and consequently the grounds for possible refusal of recognition, but only on the application of the Member State concerned or the party to the proceedings.

4. Conclusion

Transnational administrative acts are the results of decision-making by an administrative authority of a Member State which also produce effects in the territory of other Member States without having to be recognised by that State in a special procedure. They represent a significant intervention in the regulatory jurisdiction of another State; therefore, strict conditions for the admissibility of such acts must be fulfilled. Their necessary precondition is that there is a legal basis for their issue, whether in the form of a norm of international law or a legal act of an international organisation. In the European Union, such a legal basis is European Union law. Although transnational administrative acts have cross-border effects, they remain legal acts of the issuing State. The legislation of the issuing State governs the form in which they will be issued, which authority will issue them, the issuing procedure itself, and the methods of their examination. Finally, compliance with such acts is supervised by the issuing State, regardless of whether or not such an act has effects in the territory of another State.

As a result of the effects of transnational administrative acts, a relationship arises between the public administration authorities of the Member States, i.e., between the public administration authorities of the Member State which has issued such an act and the public administration authorities of the Member States in whose territory such an administrative act is to have its effects. This relationship consists in the fact that the public administration authority of a Member State is bound by an administrative act issued by the public administration authority of another Member State. However, this tie is not unconditional. Several models can be identified in the legal acts of the European Union where a Member State in whose territory a transnational administrative act is to have its effects may "oppose" such effects.

The first of such models is the possibility for a Member State to refuse the effects of a foreign transnational administrative act in its territory, but such refusal has no impact on the validity, legality and finality of the transnational administrative act as a whole in the territory of other Member States. Another model is that a foreign transnational administrative act is subject to additional verification of the fulfilment of national conditions by the Member State in whose territory the act is to have its effects. In addition to these two models, a Member State can defend itself against the transnational effects of a foreign administrative act by suspending its effects in emergency cases of the existence of a certain danger (activation of the so-called

Schutzklausel). Finally, the most radical intervention in the concept of transnational administrative acts is the possibility for a Member State to annul or revoke a foreign act with transnational effects as such.

It can be concluded from the above that there are several different models of defence of a Member State against the transnational effects of a foreign administrative act. These models have, however, diverse legislation, a different nature, different legal consequences and effects. I consider that it would be more appropriate to have a uniform defence model applicable to all transnational administrative acts.

In developing such a uniform model, it would also be possible to draw inspiration from the current legislation on the recognition of foreign judgments within the European Union, in particular, the Brussels Ia Regulation. Building on this, also in this case the basic rule should therefore be applied that transnational administrative acts would be automatically recognised without the need for a special procedure to be carried out by the Member State in which an administrative act is to have effects. On the other hand, either the Member State concerned or the party to the proceedings should have an option of applying for refusal of recognition of such an act in the territory of another Member State. This would be decided by the administrative court of the Member State concerned, and the administrative act whose recognition was refused would lose its effects in the territory of that State when the court decision becomes final. In order to activate *Schutzklausel*, the administrative court should also have the possibility of preliminary suspension of enforceability of an administrative act in the territory of the State concerned. It would also be appropriate to have a general regulation at the level of the European Union governing the recognition of transnational administrative acts, the procedure and grounds for refusal of their recognition, etc. (similar to the Brussels Ia or the Brussels IIa in relation to judicial decisions).

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