

CONSIDERATIONS REGARDING THE ATTRIBUTIONS OF THE PREFECT IN THE FIELD OF STATE AID

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Abstract

In recent years the prefect (in his capacity as representative of the Government at the local level) gained tasks relating to domestic proceedings in the field of state aids granted by local government authorities to various beneficiaries. The article aims at establishing to what extent this procedure (which is part of the domestic proceedings concerning the appropriateness analysis that is carried, prior to notification procedure to the European Commission by the national authority, by the Competition Council), is liable to affect the way the prefect carries out the legality review for acts issued by local administrative authorities.

Keywords: *State aid; the prefect; domestic procedure prior to notification; appropriateness analysis, legality review*

1. Short introduction

The 1st of January 2017, Romania celebrated a decade since the adhesion to the European Union. This celebration provided the opportunity to analyse a punctual issue, in the context of the mutations and evolutions incurred within the society, as well as the European and national law institutions. The analysis concerns the role of the Prefect, national authority invested by the Romanian state, in an internal procedure – the state aid – that **might however** generate effects at the level of the European Union, because of its articulation with the European Union law.

Our goal is to refer to the internal procedure regarding the state aid granted to beneficiaries at the initiative of local public administration authorities, in order to observe whether it affects or not the exertion of the legality review by the prefect towards the acts of the local public administration.

The first part of this paper will provide a detailed account of the **normative framework through which, at the level of the European Union, the rules of**

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procedure regarding the state aid have been established. In a second part, **the research will be focused upon the internal regulation regarding the state aid,** then we will emphasize **the role of the prefect in the internal procedure of granting state aid,** and, as a conclusion, we will analyse the nature of the underlying legislative changes in the matter, finalizing the present analysis with a few **brief conclusions.**

2. Considerations regarding the state aid in the European Union law

The European Union's policy in the field of *competition*, founded on free, undistorted competition, is essential to the functioning of the internal market and is based, together with the fight against anti-competitive agreements between companies functioning within the internal market of the EU, on the prevention of the abuse of dominant position and the **control of the aid provided by the state or throughout state resources.**

What do these aids, generically called **state aids**, consist in and **why would such a control be necessary?**

The answer lies in the states' attempts to allocate budgetary resources in order to support or to develop certain domains of activity or local enterprises², detrimental to other, affecting thus the free competitions on the EU market. The very Preamble of the Treaty on the Functioning of the European Union (TFEU)³ shows that „removal of existing obstacles calls for concerted action in order to guarantee steady expansion, balanced trade and fair competition”, and from the text of art. 3(1)b from TFEU it results that the branch **aiming at the establishment of the norms regarding competition, necessary to the functioning of the internal market, are an exclusive competency of the Union.**

Hence, the Treaty regulates the regime of state aid at a primary level, relevant provisions being presented within art. 107-109 TFEU⁴.

According to the provisions of art. 107, “any aid granted by a Member State or through State resources in any form whatsoever which distorts or threatens to distort competition by favouring certain undertakings or the production of certain goods shall, in so far as it affects trade between Member States, **be incompatible with the internal market**”, the text providing thus ground for the mutually compatible aid categories, respectively those who are compatible with the internal market. From the content of the article it can be observed that **exemptions from the principle of incompatibility** exist, according to whom

² For a clear distinction between an enterprise and a commercial society, please refer to Șandru D.M., *Dreptul societăților în România: manual elementar*, ediția a 3-a revăzută, Editura Universitară, București, 2017, p. 15-19.

³ Consolidated version of the Treaty on the Functioning of the European Union (TFEU) has been published in the **Official Journal of the European Union, C 326, of 26 October 2012.**

⁴ Article 107(*ex article 87 TCE*), article 108 (*ex article 87 TCE*) and article 109 TFEU (*ex article 87 TCE*).

state aid is or may be compatible with the internal market, but those situations **imperatively require the control by the European Commission on a case-by-case basis**. The review procedure is provided by the article 108 TFEU, while according to article 109 TFEU "The Council, on a proposal from the Commission and after consulting the European Parliament, may make any appropriate regulations for the application of Articles 107 and 108 and may in particular determine the conditions in which Article 108(3) shall apply and the categories of aid exempted from this procedure."

It should be emphasized that the state aid procedure within the European Union suffered successive reforms and several acts have been adopted⁵ - regulations, directives, orientations, communications, resolutions and guidelines which constitute the secondary legislation on this matter, without offering further details within this analysis, for the sake of relevance, the underlying topic being treated extensively in the doctrine⁶. One of the most important regulations regarding the **enforcement of the provisions of article 108 TFEU, concerning the control procedure is constituted by the Rule (EU) 2015/1589 of the Council**, of 13 July 2015, concerning the establishment of the application norms of article 108 from the Treaty on the Functioning of the European Union⁷, which replaced the former regulation on the matter⁸.

It is nonetheless important to reiterate art. 108 TFEU, which states clearly that the **competence to permanently review all the regimes of aid in place in the member states lies with the European Commission, together with the member states**, and if, after having fulfilled the procedures "the Commission finds that aid granted by a State or through State resources is not compatible with the internal market having regard to Article 107, or that such aid is being misused, it shall decide that the State concerned shall abolish or alter such aid within a

⁵ For a clear distinction between the normative and legislative acts of the European Union please refer to Banu C.M., *Introducere. Directiva - act de dreptul Uniunii Europene*, in Șandru D.M., Banu C.M., Călin D.A., *Directiva - Act de dreptul Uniunii Europene și dreptul român*, Editura Universitară, București, 2016, p. 27-28.

⁶ For example, please refer to, Craig P., de Burca G., *Dreptul Uniunii Europene. Comentarii, jurisprudență și doctrină*, ediția a IV-a, Editura Hamangiu, București, 2009, p. 1353-1385; Lazăr I., *Dreptul Uniunii Europene în domeniul concurenței*, Editura Universul Juridic, București, 2016, p. 370-384; Schoenmaekers S., Devroe W. and Philipsen (ed.), *State Aid and Public Procurement in the European Union*, Intersentia, Cambridge, 2014, p. 1-44. For example, to what concerns state aids in France, as well as the inherent procedure please refer to the activity report of the Office of Legal Affairs (from the French Ministry of Economy), *Vade-mecum des aides d'État- Edition 2016*, published on the 23 January 2017, available at <http://www.economie.gouv.fr/daj/vade-mecum-aides-etat-edition-2016-format-pdf>, accessed on 15 February 2017.

⁷ Council Regulation 2015/1589 (EU), of 13 July 2015, laying down detailed rules for the application of Article 108 of the Treaty on the Functioning of the European Union, published in the Official Journal of the European Union, L 248, 25 September 2015.

⁸ Council Regulation 659/1999 (EC), of 22 March 1999, detailed rules for the application of Article 108 of the Treaty on the Functioning of the European Union (state aid), published in the Official Journal of the European Union, L83, 27 March 1999.

period of time to be determined by the Commission” bearing also in mind that “if the State concerned does not comply with this decision within the prescribed time, the Commission or any other interested State may, in derogation from the provisions of Articles 258 and 259, refer the matter to the Court of Justice of the European Union direct”. Also, “the Commission shall be informed, in sufficient time to enable it to submit its comments, of any plans to grant or alter aid” and if “it considers that any such plan is not compatible with the internal market having regard to Article 107, it shall without delay initiate the procedure provided for in paragraph 2 (art. 108, TFEU), and “the Member State concerned shall not put its proposed measures into effect until this procedure has resulted in a final decision”⁹.

It may be advanced, under the incidence of these hypotheses, the issue of the failure to fulfil the due obligations by a member state, which can lead to the implementation of the provisions of articles 258-260 TFEU, while article 148 from the Romanian Constitution, amended in 2003¹⁰ establishes the guarantor authorities that must guarantee the fulfilment of the obligations deriving from the adherence to the founding treaties of the European Union and their revisions¹¹. These are the Parliament, the President of Romania and the judiciary.

In order to avoid the non-fulfilment of the due obligations by the member states and to ensure the respect of procedures established by the TFEU, the text provides, as shown previously, the **split of a part of the procedure between the Commission and the member states**, assigning the member states with the task of constantly reviewing their state aid regimes. In Romania, the institution in charge of this control is the **Competition Council**. Also, in Chapter X of the Council Regulation (EU) 2015/1589, quoted earlier, the article 29, named “*Cooperation with National Courts*” establishes the rules of cooperation of the Commission with the **national courts of the member states**, for the application of article 107(1) and article 108 TFEU.

⁹ For further details regarding the direct effect of the European law, please refer to, de Witte B., *Direct effect, primacy and the nature of the legal order*, in Craig P., de Burca G., *The evolution of EU LAW*, 2nd edition, Oxford University Press, Oxford, 2011, p. 323-362; Schütze R., *Dreptul constituțional al Uniunii Europene*, Editura Universitară, București, 2012, p. 303-306. Also, Banu C.M., *op. cit.*, p. 14 and footnote 7.

¹⁰ The Constitution of Romania has been republished in the Official Journal of Romania, Partea I, nr. 767 of 31 October 2003 (TN: available in English at <http://www.cdep.ro/pls/dic/site.page?id=371>, accessed on 3 May 2017).

¹¹ For a relevant analysis of the issue of Romanian authorities and institutions potentially responsible for the ascertainment of the lack of fulfilling of the obligations please refer to Șandru M.D., *Autoritățile potențial responsabile ale unui stat membru în situația constatării neîndeplinirii obligațiilor de către Curtea de Justiție*, in Bălan E., Iftene C., Văcărelu M., *Administrația publică în situații de criză/Public administration's action in unforeseen circumstances*, Editura Wolters Kluwer, București, 2015, p. 49-56.

3. Considerations regarding the state aid in Romania

The old national regulation regarding state aid, based on the Law n. 143/1999¹², was abrogated through the Government Emergency Ordinance n. 117/2006¹³ as a consequence of the EU accession, since its provisions would have contravened to the Treaty of Rome (EEC), as the Community legislation became directly applicable in Romania after the accession.

Together with the reform of the European legislation regarding state aid, a revision of the national legislation was necessary, therefore, starting with the 1st of January 2015, the Government Emergency Ordinance n. 77/2014¹⁴, a new regulation regarding the national procedure in the field of state aid entered into force, its provisions being the subject of this brief analysis. The rationale of urgency of the normative act has been motivated by the issuing Government throughout the necessity of the harmonization between the national and the European legislation in order to have a framework guaranteeing the **fulfilment of ex-ante conditionalities for accessing European funds** in the 2014-2020 programming period. Another reason invoked in order to justify the emergency was that the European reform in the field of state aid intended to **verify most state aid facilities nationally, followed by an ex-post control by the European Commission in order to ensure the respect of the conditions** imposed by the European Union on this matter. Meanwhile, the **implementation of a national control mechanism establishing the attributions and obligations of the suppliers, beneficiaries and of the Competition Council in implementing state aid measures** was sought, in order to facilitate the absorption of European funding and to avoid fund recovery.

The chosen regulation formula, the one of a Government Emergency Ordinance will not be a part of the analysis, given the fact that the doctrine¹⁵ and

¹²Law n. 143/1999 regarding the state aid, republished in the Official Journal of Romania, Part I, no. 1.080 of 19 November 2004, in force between 1 January 2000 - 31 December 2006 (In original: Legea nr.143/1999 privind ajutorul de stat, republicată în Monitorul Oficial al României, Partea I, nr. 1.080 din 19 noiembrie 2004, a fost în vigoare în perioada 1 ianuarie 2000 - 31 decembrie 2006).

¹³ Government Emergency Ordinance n. 117/2006 regarding national procedures in the field of state aid has been published in the Official Journal of Romania, I Part, nr. 1.042 of 28 December 2006 and entered into force at 1 January 2007. Has been abrogated with amendments by Law nr. 137/2007. It is currently abrogated. (In original: Ordonanța de urgență a Guvernului nr. 117/2006 privind procedurile naționale în domeniul ajutorului de stat a fost publicată în Monitorul Oficial al României, Partea I, nr. 1.042 din 28 decembrie 2006 și a intrat în vigoare la data de 1 ianuarie 2007. A fost aprobată cu modificări și completări prin Legea nr. 137/2007. În prezent este abrogată.)

¹⁴ Government Emergency Ordinance n. 77/2014 regarding national procedures in the field of state aid, as well as the amendments of the Competition Law n. 21/1996 has been published in the Official Journal of Romania, Part I, n. 893 of 9 December 2014. (In original: Ordonanța de urgență a Guvernului nr.77/2014 privind procedurile naționale în domeniul ajutorului de stat, precum și pentru modificarea și completarea Legii concurenței nr. 21/1996 a fost publicată în Monitorul Oficial al României, Partea I, nr. 893 din 9 decembrie 2014).

¹⁵ Please refer to Apostol Tofan D., Tănăsescu E. S., comentariul la *articolul 115 - Delegarea legislativă*, în lucrarea Muraru I., Tănăsescu E.S., *Constituția României - Comentariu pe articole*, Editura

the jurisprudence of the Constitutional Court of Romania¹⁶ debated extensively the constitutional boundaries and the practice of the last years when, following the own administrative lack of capacity, the Government fell back to a Government Emergency Ordinance¹⁷ in order to solve the issue. A study following the analysis of the preamble and of the means of justification of the Government Emergency Ordinances issued in 2014 aiming at transposing several European directives, points out in its conclusions the principle of democracy, according to whom the transposition of the European legislation throughout a law would be preferable, as a result of pluralistic parliamentary debates, as well the imperative of coherence, clarity and predictability of the transposition act, being obvious that a law has a bigger degree of stability than a Government Emergency Ordinance, which can be modified, completed, or even rejected during the parliamentary procedure¹⁸.

Such a situation regarding the modification and the completion of the initial text may be observed in the case of the Government Emergency Ordinance

C.H. Beck, București, 2008, p. 1096-1097 și 1103. Also, Apostol Tofan D., Tănăsescu E. S., *Ordonanța de urgență a Guvernului Delegare legislativă. Situații excepționale. Lege de aprobare a ordonanței de urgență. Camera decizională. Competența Curții Constituționale. Obiectul controlului de constituționalitate. Control preventiv. Control extrinsec (C.C., Decizia nr. 255/2005, M. Of. nr. 511 din 16 iunie 2005)*, in *Curierul Judiciar* nr. 10/2005, p. 25-33. Regarding the critics of the Emergency Ordinances regime please see Vedinaș V., *Drept administrativ*, ediția a IX-a, revăzută și actualizată, Editura Universul Juridic, București, 2015, p. 388-392. Alexe I., *Situația extraordinară - temeii sau pretext pentru puterea executivă de a reglementa în domeniul rezervei legii?*, in Bălan E., Iftene C., Văcăreanu M., *Administrația publică în situații de criză/Public administration's action in unforeseen circumstances*, Editura Wolters Kluwer, București, 2015, p. 128-135.

¹⁶ By the Decision of the Constitutional Court n. 255 of 11 Mai 2005, regarding the objection of unconstitutionality against the Law of approval of the Government Emergency Ordinance n. 100/2004 concerning the passing of forestry from the public ownership of the state and from the administration of Romsilva (National Forestry Fund) to the property of the Archdiocese of Suceava and Rădăuți, were reaffirmed the conditions in which the Government may issue a Government Emergency Ordinance.

¹⁷ Alexe I., *Înălții funcționari publici*, Editura Universul Juridic, București, 2014, p. 246-251; also, Alexe I., *Considerații referitoare la Decizia nr. 55/2014 a Curții Constituționale a României și la statutul juridic al unor înalți funcționari publici*, in *Curierul Judiciar* nr. 3/2014, p. 159-161; Alexe I., *Reforma reformei. Studiu de caz: Ordonanța de Urgență a Guvernului nr. 82 din 2013* in Bălan E., Iftene C., Văcăreanu M., *Reforma statului: instituții, proceduri, resurse ale administrației publice*, Editura Wolters Kluwer, 2016, p. 121-133.

¹⁸ Alexe I., Banu C.M., *Transpunerea directivei prin ordonanță de urgență. Exemple recente din dreptul român și aspecte comparate în volumul Directiva - act de dreptul Uniunii Europene - și dreptul român*, în volumul Șandru D.M., Banu C.M., Călin D.A., *Directiva - Act de dreptul Uniunii Europene și dreptul român*, Editura Universitară, București, 2016, p. 132-174. Alexe I., Banu C.M., *Transposition and/or implementation of European Union law by means of Government Emergency Order. Requirements set in the case-law of the Constitutional Court of Romania*, *Curentul juridic*, Year XVIII, NO. 2 (61) 2015, 49-56.

n. 77/2014, as well as in the parliamentary procedure of the invoked normative act¹⁹.

The most important regulations brought by the Government Emergency Ordinance are linked to the **definition of state aid, of state sources and resources, of beneficiaries, as well as to an ex-ante analysis of the opportunity of state-granted supportive measures, including those initiated by the local public authorities**. Other measures may include the creation of databases for granting state aid, in order to ensure transparency and to avoid state aid accumulation, **as well as fostering a more coherent competition policy by compliance control and development of EU-funded projects**. With regard to the measures financed by the national authorities, **a preliminary approval by the Government should be granted**. It also clarifies the role of the national instances dealing with litigations in the field of state aid and it creates the premises for the **reestablishment of a good administrative conduct in granting state aid** especially with regard to aids initiated by the **local public administration authorities**, in order to prevent further violations of EU norms and therefore to avoid sanctions for Romania. As discussed previously, those clarifications were also necessary following the modification of the cooperation framework between the Commission and the national courts, by the mean of the new regulation from 2015.

The question we will concentrate this analysis upon concerns the internal procedure of state aid, granted to the beneficiaries at the initiative of the local public administration authorities. Thereby, the question is: **to what extent this procedure, inherent to the larger internal procedure of opportunity analysis²⁰ (preliminary to the notification procedure of the European Commission by the Competition Council), is affecting or not the exercise by the Prefect of the legality review of the acts of the local public administration authorities**.

4. The role of the Prefect in the internal procedure of granting state aids

The place and the role of the prefect as an authority within the Romanian public administration framework has been largely discussed in the doctrine²¹,

¹⁹ Government Emergency Ordinance n. 77/2014, modified and amended, was approved by the Law n. 20/2015, published in the Official Journal of Romania, Part I, n. 160 of 6 March 2015. (In original: Ordonanța de urgență a Guvernului nr.77/2014 a fost aprobată cu modificări și completări prin Legea nr. 20/2015, publicată în Monitorul Oficial al României, Partea I, nr. 160 din 6 martie 2015.)

²⁰ To what concerns the administrative review please refer to Apostol Tofan D., *Instituții administrative europene*, Editura C.H. Beck, București, 2006, p. 199-204; Vedinaș V., *Drept administrativ*, op. cit., p. 147-156.

²¹ For example: Vedinaș V., *Drept administrativ*, op. cit., p. 500-514; Bălan E., *Prefectul și prefectura în sistemul administrației publice*, Editura Fundației „România de Măine”, București, 1997, p. 37; Györke Z., *Instituția prefecturii în perioada interbelică (1923-1938). Proiecții legislative*, in *Revista Transilvană de Științe Administrative* nr. 3(27)/2010, p. 79-96; Munteanu C.D., *Administrația publică teritorială*, Editura Universul Juridic, București, 2010, p. 157-158; Alexe I., *Categoria înalților funcționari publici. Tendințe*

along with its main attribution, namely the exercise of the administrative supervision²² regarding the acts of the public local administration authorities. In this context, the article 123 of the Romanian Constitution should be underlined, according to whom **the Prefect may challenge, in the administrative court, an act of the County Council, of a Local Council, or of a Mayor, in case he deems it unlawful, while the act thus challenged shall be suspended *de jure*.**

The question was raised following the fact that the Government Emergency Ordinance n. 77/2014 and subsequently its approving law regulated a procedure of informing the Prefect to what concerns the granting of state aids by local public administration authorities. Therefore, according to the provisions of art. 7 of Government Emergency Ordinance n. 77/2014 "in the case of a draft of measures susceptible to be funded by local public authorities, in order to ensure a high degree of coherence with Romanian economic and budgetary policies, the establishment of state aid or *de minimis* measures will be done after an opportunity analysis, which need to be accompanied by **a notification addressed to the institution of the Prefect and to the County Council regarding the intention of establishment of the said aid measure.**" The notification must contain, according to art. 3(4) of the Government Emergency Ordinance n. 77/2014, the "**opportunity analysis realised according to the law**", which imposes to the initiator or to the supplier, as appropriate, **the elaboration of some normative or administrative acts**, according to whom are established the state aid schemes or individual state aids or *de minimis*, which should stipulate at least the objective, the granting procedure, the beneficiaries, the application period, the amount of the funds allocated from the budget of the supplier, as well as the European applicable provision which gave a legal basis for the state aid measure. **Any documentation, including the preliminary consultations, should be analysed by the Competition Council only if it is accompanied by the aforementioned notifications. The request of approval of the measure susceptible to represent a state or *de minimis* aid, drafted by the supplier/initiator, as appropriate, should be sent in its draft form to the**

actuale in Bălan E., Varia G., Iftene C., *Administrația publică între misiuni și constrângeri bugetare: dimensiuni juridice și manageriale*, Editura Wolters Kluwer, București, 2014, p. 136-144.

²² Apostol Tofan D., *Puterea discreționară și excesul de putere al autorităților publice*, Editura All Beck, București, 1999; Apostol Tofan D., *Unele considerații cu privire la controlul de legalitate exercitat de prefect. Evoluția legislației în domeniu*, Caietul Științific al Institutului de Științe Administrative „Paul Negulescu” nr. 8/2006, p. 321-341; Petrescu R.N., *Reflecții asupra evoluției reglementărilor legale referitoare la controlul de legalitate exercitat de prefect*, Curierul Judiciar nr. 7/2008, p. 89-90; Petrescu R.N., Petrescu O., *Actualitatea recursului administrativ în dreptul român. Unele considerații cu privire la o reglementare recentă în dreptul francez*, in Revista Transilvană de Științe Administrative, nr.2/(31)/2012, p. 81-90; Petrescu R.N., *Drept Administrativ*, Editura Hamangiu, București, 2009, p. 57; Alexe I., *Înălții funcționari publici*, op. cit., p. 156-167 și 240; Dragoș D.C., *Discuții privind posibilitatea anulării unui act administrativ pe motiv de inoportunitate*, in Revista Transilvană de Științe Administrative nr. 1(10)/2004, p. 30-33; Randres D., *Code administratif – 2017*, 8^e édition à jour au 15 décembre 2016, Editeur Larcier, Bruxelles, 2017, p. 1251-1257.

Competition Council, which should issue a **Notice of Compliance**, regarding the correctness and the fulfilment of the obligations stipulated by the European legislation in the field of state aids.

It can be thus observed that, at the stage of the request of approval addressed to the Competition Council by the local public administration that aims to grant a state aid, the **only preliminary condition is that both the Prefect and the County Council to be informed on the matter**. The submission of the request of approval to the Competition Council is not legally conditioned either by a preliminary approval of the institution of the Prefect or of the County Council, neither is a distinction operated for the case in which the County Council, authority of the local public administration, that makes such a request must inform itself.

Also, it is not clear why the institution of the Prefect **needs to be informed**, at this stage, **given the fact that it does not dispose of any means of intervention in the undergoing procedure**. Of course, from its position as a representative of the Romanian Government at the local level, the Prefect can request data and information from public authorities or institutions.

The initial text of Government Emergency Ordinance n. 77/2014 provisioned, in its art. 18, now abrogated²³, the following: *"(1) On the analysis of legality review of administrative acts establishing support measures by the local authorities, the Prefect has the obligation to verify the existence of the approval issued by the Competition Council, as well as the fulfilment of national and European legal provisions in the field of state aid. (2) The Prefect may demand clarifications from the Competition Council regarding the incidence of national and European norms in the field of state aid."*

It may be observed that the initial intention of the delegated law maker was **to only regulate an intervention of the Prefect in the phase of the analysis of administrative acts** by which the local authorities establish supporting measures, and not regarding the preliminary phase, making this clear by the used term, this is to say **notification**. Nevertheless, there is at least one reason why the notification should be made during the preliminary procedure, and this is for the Prefect to become acquainted with the request of approval addressed to the Competition Council, and not for him to exercise the legality review on an administrative act in the absence of an opinion from the Competition Council, as long as the initiator of the act does not inform to what concerns the request previously send to the Competition Council.

It may thus be considered that **the regulation itself is not a new attribution given to the Prefect, knowing** that the legality review procedure of an act issued by the local public administration includes the obligation for the Prefect to verify both the formal and the material requirements of the analysed act, **including the presence or the absence of the approvals required by the law**, and, as

²³ Article 18 from the Government Emergency Ordinance n. 77/2014 was abrogated by article 1 point 11 of the Law n. 20/2015.

previously showed, **the necessity of an opinion by the Competition Council in order to establish a state aid measure was already previously regulated.**

Other considerations could be taken into account, like the necessity of **the prefect to verify, within the legality review, the opportunity of the measure, as a component of the administrative control act**, based on the notification received by the public local administration authority. The problem **which should be underlined here is that of the limits of the administrative control** regarding the activity of local public administration authorities, inscribed in the European Charter of Local Self-Government²⁴, being known that **between the Prefect and the local public administration authorities there are not existing any reporting relationship.** Nevertheless, an issue in need to be addressed is that of the **respect of the constitutional principles, including the principle of proportionality, as well as the importance of their respect**, of the legal provisions and of the **obligations** deriving from the accession to the European Union. We consider that such an approach should also take into account, as demonstrated at the beginning of this analysis, the **sanctions which would be applicable to the Romanian state for the lack of fulfilment of the obligations** deriving from the founding treaties of the European Union, despite the fact that these sanctions would be enforced for the failure to respect the provisions of a local public administration authority.

Besides, the Law n. 20/2015 approving the Government Emergency Ordinance n. 77/2014 pointed out these aspects, throughout its art.15¹, newly introduced by the Parliament in the text of the Government Emergency Ordinance n. 77/2014²⁵. Hence, **it clarifies the attributions of the Prefect**

²⁴ The European Charter of Local Self-Government is not an instrument of the European Union, but of the Council of Europe and was ratified by Romania through the Law n. 199/1997 for the ratification of the European Charter of Local Self-Government, adopted in Strasbourg on 15 October 1985, published in the Official Journal of Romania, Part I, n. 331 of 26 November 1997.

Article 8 from the European Charter of Local Self-Government, called *Administrative Supervision of Local authorities' activities* provides that "1. Any administrative supervision of local authorities may only be exercised according to such procedures and in such cases as are provided for by the constitution or by statute. 2. Any administrative supervision of the activities of the local authorities shall normally aim only at ensuring compliance with the law and with constitutional principles. Administrative supervision may however be exercised with regard to expediency by higher-level authorities in respect of tasks the execution of which is delegated to local authorities. 3. Administrative supervision of local authorities shall be exercised in such a way as to ensure that the intervention of the controlling authority is kept in proportion to the importance of the interests which it is intended to protect."

²⁵ Article 15 provides the following: " (1) During the legality review of administrative acts through which are established support measures by the local authorities, the Prefect has the obligation to verify the existence of the approval issued by the Competition Council. (2) In the case of *de minimis* aid measures, during the analysis of the existence of an approval issued by the Competition Council, the Prefect will verify the fulfillment of legal provisions in the field of state aid. (3) In the case in which the local public authorities adopted measures through which an economic advantage is granted to an enterprise, the Prefect will request the opinion of the Competition Council regarding the incidence of national and European norms in the field of state aid."

regarding the legality review of the administrative acts instituting support measures by local public administration authorities and it imposes verification procedures for the existence of an approval issued by the Competition Council, and in the case of *de minimis* aid measures the Prefect is obliged to verify and to fulfil the legal procedures in the field of state aid. Also, in the perspective of the adoption by the local public administration authorities of measures granting economical advantages to an enterprise **without the approval of the Competition Council, the Prefect must ask for an opinion from the Competition Council concerning** the incidence of national and European norms in the field of state aid.

The analysis of the justifications of the modifications proposed in the Parliament²⁶ shows that *"the modification was necessary in order to increase the clarity of the text, as well as in order to avoid doubling procedures regarding the notification of the Government and to reduce bureaucracy for the local authorities. The notification of the Government will be realised through the Prefects. Therewith, annexing the opportunity analysis to the notification addressed to the Prefect's institution and to the County Council, it is established a mechanism in order to ensure a better knowledge regarding the local necessities and of the possible solutions which could be implemented in order to avoid potential failures of the market."*

It is clear that all other legal provisions concerning the procedure through which the Prefect may demand to the issuing authority, the complete or partial modification or the nullification of the act, before addressing an administrative court are and remain applicable.

A question that arises is to **what extent the personnel from the Prefect's institution is specialized in the field of European Law, and in the very technical field of the state aid, in order to exercise such a control.** Given the legitimacy of this question, last year we launched a 15-month project²⁷, whose beneficiary is the National Agency of Civil Servants, having as a **general objective** the development of the public administration's capacity to realise an efficient implementation and absorption of European structural and investment funds (ESIF), **supporting simultaneously the process of enforcement of the European legislation in the field of state aids.** The training activity for the 378 professionals constituting the target group is targeted to the **training in the field**

²⁶ The justification can be found in the Report (Raportul). 4c-1/138 (nr. PL - x50/2015) of 17.02.2015 drafted by the Committee for economic policy, reform and privatization of the Chamber of Deputies on the Law for the approval of the Government Emergency Ordinance n. 77/2014 regarding national procedures in the field of state aid, as well as for amending and completing Competition Law n. 21/1996, available at: <http://www.cdep.ro/comisii/economica/pdf/2015/rp050.pdf> accessed on 15 February 2017.

²⁷ "Training concerning the application of state aid legislation for ESIF beneficiaries at the local level", project code 1.1.005, co-financed from the European Regional Development Fund through Operational Programme „Accessibility and Transport“ (OP) (TA) 2014-2020.

of state aid, and each of the 42 Prefect's institutions is having **two representatives**. Another category targeted by this project is the one of the personnel from the local public administration authorities, making part of the same target group.

Besides, there are already some examples²⁸ regarding the correct application by the Prefect, with the support of the administrative court of the provisions of the former article 18 from the Government Emergency Ordinance nr. 77/2014, abrogated and replaced, as shown previously, by the art. 15¹.

5. Conclusions

We may thus conclude that, in the field of state aid, the evolution of the institutions and of the European law were closely related to the evolutions of Romanian institutions and law, especially in the past 10 years, since the accession of the Romanian State to the European Union. Mentioning the **training program related to the** enforcement of the legislation in the field of state aid for the ESIF beneficiaries at the local level was not random, because it is a good example of cooperation between the three categories of authorities and public institutions (Competition Council, Prefect and local public administration authorities). We are convinced that **the existence of specialists in this area** within all the types of public authorities and institutions involved in the field of state aid may lead to **a decrease of the number of actions through which the Romanian state may violate the European legislation**.

Although the Prefect, representative of the Government at the local level, has been included in the new Romanian regulation as part of the internal procedure regarding the state aid granted to the beneficiaries by the local public administration authorities, we consider that **the regulation per se is not constitutive of a new attribution granted to the Prefect**, being widely known that, in the legality review of an act of a local public administration authority, the Prefect must verify **the existence of the notices required by the law** and, as shown previously, **the necessity of issuing an approval of the Competition Council in order to establish a state aid measure was already regulated**.

We consider that the law establishing the **obligation of the local public administration authorities to inform the Prefect, (that also concerns the**

²⁸ Please refer to Decision n. 889 of 16 June 2016 (Sentința nr. 889 din 16 iunie 2016) (Suceava Tribunal, nullification of an act issued by local public authorities (fiscal and administrative disputes department), unpublished, available at <http://www.rolii.ro>, accessed on 15 February 2017. In this case, despite that the Court of First Instance rejected the action of the Prefect asking for the nullification of an administrative act issued by the Local Council, the review body dismissed the case and sent the legal case to the same instance. Subsequently, the instance admitted the action presented by the Prefect and ruled the nullification of the decision issued by the Council, which established state aid measures, without an approval of the Competition Council, thus unlawfully.

opportunity analysis regarding the proposed measures, inherent to the state aid granting procedure), since the moment of the request of approval from the Competition Council, does not affect the exercise by the Prefect of the legality review regarding the acts of local public administration authorities, but has the purpose to clarify the attributions of the three categories of authorities and to establish a transparent and loyal cooperation between the two of them, in order to ensure that the final objective, the obligations deriving from the European membership, are being respected.