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Political and Legal Perspectives of the Ratification of the Next Generation EU in Poland*

Abstract

This study aims to present the nature of international organisations' treaty-making powers, with a particular focus on their implied powers. While the powers expressly granted in the constitutional instrument of a given international organisation are clear, implied powers — a special category of attributed powers — require a complex implication process based on uncertain foundations and therefore attract far more criticism. Nevertheless, implication of powers allows for a more dynamic interpretation of attributed powers, which is especially important given the constantly evolving activities of international organisations in areas beyond the scope of their statutes. Due to the unique nature of this category of treaty-making powers and the associated questions concerning their basis and implication, the author considers this issue within the broader context of international organisations' capacities and powers.

KEYWORDS: NextGenerationEU; Own Resources Decision; parliamentary accountability; fiscal sovereignty; Sejm; EU fiscal integration

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1 Introduction

Over the past two decades, the European Union (EU) has acquired a substantial authority in the fiscal policies of its member states. This result of polycrises, especially the Euro crisis and the Covid-19 pandemic, is exemplified by the European Semester, a framework for economic and fiscal policy surveillance, where governments and parliaments seem to surrender crucial aspects of governance and scrutiny to European control. They thus give away key policy leverage. Why? This is easy to understand for debtor states, who are at the mercy of the creditors. But why should creditors do this? Because they want to institutionalize fiscal conservatism beyond their electoral term? Because they think that it sounds good, but will in any case not be implemented? Regardless, this is not a policy like any other, but a crucial issue that deserves further inquiry, in order to solve this puzzle, especially after the EU substantially increased its financial capacity during the Covid-19 pandemic. The EU fiscal response to the pandemic in 2020 was the temporary recovery fund called NextGeneration (NGEU), with the Recovery and Resilience Facility (RRF) being its largest part. The NGEU is based on debt – the EU borrows funds on the market, and then distributes the funds, in both grants and loans, to the member states. The use of those funds are specified in the National Recovery and Resilience Plans, embedded in the European Semester procedures. The NGEU can be characterized as a form of "budgetary capacity" that relies on non-autonomous resources, through borrowing. However, it lacks a true "revenue capacity" understood as the authority to generate income through independent means, such as taxation (often synonymous with "federal fiscal capacity"[1]). Unlike a federal fiscal capacity, which implies the EU's ability to raise taxes directly, the NGEU involves very limited autonomous revenue mechanisms, to be used for the debt payment, such as an own resource based on non-recycled plastic packaging waste. Rather, it only envisages that the borrowed funds will be paid back by new "own resources," such as own resources on the emission trading system or digital levy.[2] On the expenditure side, the NGEU reflects a "transfer capacity" model. It draws

1 Tomasz P. Woźniakowski, *Fiscal Unions: Economic Integration in Europe and the United States* (Oxford: Oxford University Press, 2022), 10.

2 Tomasz P. Woźniakowski, Tiziano Zgaga, Sergio Fabbrini, "Comparative Fiscal Federalism and the Post-Covid EU: Between Debt Rules and Borrowing Power" *Politics and Governance*, No. 4 (2023): 1-5.

on funds raised by borrowing under the collective creditworthiness of member states, a dependent resource, and allocates these funds to member states rather than spending them centrally. Disbursements are conditional and tied to compliance with EU fiscal governance instruments, particularly the Country-Specific Recommendations (CSRs), under the European Semester. While the European Commission does not directly spend these funds, it plays a supervisory role through the evaluation and monitoring of National Recovery and Resilience Plans.[3] Conceptually, the NGEU aligns with a longstanding EU practice of using loan-based instruments within the legal framework of the Union. Historically, the Commission has used mechanisms such as the European Financial Stabilisation Mechanism or Macro-Financial Assistance. These instruments enabled the EU to borrow at favourable rates, leveraging its high credit rating, and to lend the funds to member states that would otherwise face higher borrowing costs. This topic is also important in terms of democratic accountability, as, historically, the right to adopt the budget was the subject of the fights over democratic, accountability and still constitutes the "crown jewels" of parliamentary power. By analysing the process of ratification of NGEU in Poland, in both its dimensions – legal and political, we aim to contribute to the literature of parliamentary accountability of EU's economic governance.[4]

Council Decision (EU, Euratom) 2020/2053 of 14 December 2020 on the system of own resources of the European Union, and repealing Decision 2014/335/EU, Euratom (OJ EU L 424/1 of 15 December 2020) sets out the sources of revenue for the EU budget from 2021 to 2027. It introduces a number of new revenues, including the digital levy indicated in paragraph 8 of the preamble of the decision, and an unprecedented EU debt mechanism to

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3 Tomasz P. Woźniakowski, "No borrowing without taxing? Fiscal Solidarity of Next Generation EU in Light of the American Experience" *Politics and Governance*, No. 4 (2023): 73-81.

4 Katrin Auel, "Democratic Accountability and National Parliaments: Redefining the Impact of Parliamentary Scrutiny in EU Affairs" *European Law Journal*, No. 4 (2007): 487-504; Ian Cooper, Aleksandra Maatsch, Julie Smith, "Analysing the Role of Parliaments in European Economic Governance" *Special Section of Parliamentary Affairs*, No. 4 (2017); Ben Crum, "Parliamentary Accountability in Multilevel Governance: What Role for Parliaments in Post-Crisis EU Economic Governance?" *Journal of European Public Policy*, No. 2 (2018): 268-286; Mark Dawson, Tomasz P. Woźniakowski, "How Differentiated is EMU Membership? The De Facto and De Jure Constraints of EU Economic Governance", [in:] *Redefining EU Membership: Differentiation In and Outside the European Union*, ed. Diane Fromage (Oxford: Oxford University Press, 2024), 41-56.

combat the effects of the COVID-19 pandemic crisis. Article 5(1)(a) accepts that the Commission is given the power to borrow up to EUR 750 million on behalf of the Union. Pursuant to Recital 25, this Decision should enter into force only after it has been approved by all Member States in accordance with their respective constitutional requirements, and thus in full respect of national sovereignty.

The primary research objective of this paper is an in-depth analysis of the legislative process of the Act approving the ratification of the EU's Own Resources Decision in Poland, which enabled the entry into force of the NextGenerationEU. The paper will explore the political and legal context, placing special emphasis on the positions of both the governing coalition parties (there was no unanimity within the coalition members regarding this issue) and the parliamentary opposition at the time. The following research questions will be explored: How the Polish parliament held the government to account and what kind of arguments were used during the parliamentary debates? The research method for studying the Polish legislative path for the ratification of Council Decision (EU, Euratom) 2020/2053 of 14 December 2020 on the system of own resources of the EU is the dogmatic-legal method combined with qualitative content analysis of relevant parliamentary debates. This paper is based on the analysis of official documents, such as legal acts, minutes of parliamentary debates/hearings, press releases on the positions of individual political parties.

2 Theoretical Framework

This paper uses the theoretical framework of accountability, which we define, building on the work of Katrin Auel and Mark Bovens, as follows:

> Accountability is the mechanism of control of an actor by a differentiated forum with at least two groups – those contesting [opponents] and those justifying [proponents] scrutinized behaviour of the actor, which has a right to demand, debate and question information both ex-ante and ex-post (in the form of actor's documents or negotiating position); to demand justification; which may be followed by a demand to change behaviour ex-ante or sanction the actor ex-post.

The demand for information constitutes a lower range of accountability, or even – a precondition for medium and full accountability. The fact that some actors, such as the European Central Bank (ECB), often do not reveal information due to the secrecy obligations shows that this precondition is not always met, and therefore should be included in the definition of accountability. Including information as a part of an accountability chain recognizes the fact that fora are not unitary actors, and some groups within them are likely to exercise their accountability rights by this demand for information only. Contrary to what scholars used to believe (the so-called "old dualism," for instance, of parliaments versus governments)[5] a forum composes of at least two different groups ("new dualism")[6] depending on the scrutinized issue, of "those contesting [opponents] and those justifying [proponents]." As shown in Table 1 below, in the case of national parliaments, the most fundamental distinction is between the parliamentarian majority and the government, on the one hand, and the opposition, on the other. In the case of the Members of European Parliament (MEP) the distinction may be between the MEPs from the creditor states versus those from the debtor countries. While the former group (majority in NPs/creditor states MEPs in the EP) tend to publicly demand information only and challenge/demand change or sanction of the actor in through informal channels (informal meetings, intraparty groups etc.), the latter (opposition; debtor states MEPs) is more likely to contest/challenge the conduct of the actor publicly (governments in the case of the NPs, and ECB in the case of the EP). Admittedly, the proposed definition suits particularly parliamentary fora. It may or may not also be useful for other types of fora, such as constitutional courts. One could think of treating them as a forum (fora?) divided over issues of the legality of given measures, such as ratification of NGEU or austerity policies, where in one group would be those justifying austerity and in the other group – the courts contesting austerity measures as violating social rights (e.g. the Portuguese Court), as summarized in Table 1 below.

5 Auel, "Democratic Accountability and National Parliaments," 487.
6 Ibidem.

Table 1. Examples of the differentiated accountability fora

Forum	Group 1 ('proponents')	Group 2 ('opponents')
National Parliaments	Majority	Opposition
European Parliament	Creditor states MEPs	Debtor states MEPs
Constitutional courts	Courts salient or justifying austerity	Courts contesting the legality of austerity measures as violating social rights

Source: own illustration.

According to Auel,[7] such an acknowledgement of the fact that parliaments are divided allows for recognizing different forms of scrutiny that the two parliamentary groups are likely to perform. Consequently, she introduces two elements of accountability – monitoring and political scrutiny – which correspond to the two first steps of the process. Moreover, for each step, different parliamentary groups are primarily "responsible." Consequently, monitoring scrutiny is the element of accountability which is conducted in the first stage, and is "an important part of, and a prerequisite to, full accountability."[8] Within this element (and stage), an "agent is obliged to inform the principal about his (planned) behaviour and actions, by providing information on the performance of tasks, on procedures and outcomes," in order to reduce "information asymmetries."[9] Significantly, without adequate information, one cannot speak about full accountability. Indeed, the role of this first step of 'monitoring scrutiny' is to demand information, and this stage is likely to be executed by the parliamentarian majority. Certainly, it is unrealistic to expect from this group to challenge the government it supports publicly.

However, the second stage – "political scrutiny" – is usually performed by the parliamentary opposition, and this is when the government's conduct is challenged and contested in public. This is the stage when the assessment and judgment of "appropriateness of the government's decision" takes place. This element of accountability is exercised by using various forms, such as "parliamentary questions and public debate" (either in the committees or in the plenary), as shown further down in this paper, which allows for "assessing and criticising the government's actions."[10] In contrast to the

7 Ibidem.
8 Auel, "Democratic Accountability and National Parliaments," 500.
9 Ibidem.
10 Ibidem.

definition of Bovens et al., who claim that "[a]ccountability is furthermore a retrospective – ex-post – activity,"[11] we argue instead that the most valuable form of accountability is *ex-ante*. This is the only time when the forum may not only sanction the actor for the (bad) conduct, but may prevent it from happening in the first place. Examples include, in the case of the NPs, the debates on the Stability Programs and the National Reform Programs in the parliaments, *before* they are submitted to the Commission by the government, and debates on the position of governments *before* the European Council (EC) meetings. Importantly, in the case of the EU affairs, ex-post accountability may be particularly difficult to exercise due to the nature of the EU decision making: once the governments take a decision within the EC, then the parliaments become accountable themselves for transposition of the EU law, to the Commission, which can take them to the ECJ for failing to implement EU directives. Indeed, as Auel notes, such monitoring scrutiny of governments is particularly important in "European policy making, as national parliaments, or more specifically, the majority parties, are not directly involved in decision making at the European level."[12]

3 The Legal Dispute over the Mode of Ratification by the Republic of Poland of European Council (EU, Euroatom) Decision 2020/2053 of 14 December 2020 on the own Resources System

In accordance with the Constitution in force in Poland,[13] it is the Council of Ministers that concludes international agreements requiring ratification (Article 146, paragraph 4, point 10 of the Constitution), and the President of the Republic that performs the act of ratification (Article 133, paragraph 1, point 1 of the Constitution). The legislator distinguished the following three modes of ratification of international agreements:

11 Mark Bovens, Thomas Schillemans, Robert Goodin, "Public Accountability", [in:] *The Oxford Handbook Public Accountability*, ed. Mark Bovens, Robert Goodin, Thomas Schillemans (Oxford: Oxford University Press, 2014), 6.

12 Auel, "Demoratic Accountability and National Parliaments", 498.

13 Constitution of the Republic of Poland of 2 April 1997 (Journal of Laws 1997, No. 78, item 483).

1. ratification with the consent of the ratification law – the so-called "big ratification" (Article 89(1) of the Constitution),
2. ratification without statutory consent – the so-called "small ratification" (Article 89(2) of the Constitution),
3. ratification by special procedure – the so-called "grand ratification" (Article 90 of the Constitution).

The requirement to enact an acceptance law applies to contracts concerning:

1. peace, alliances, political or military arrangements,
2. freedoms, rights or duties of citizens as defined in the Constitution,
3. the Republic of Poland's membership of an international organisation,
4. a significant financial burden on the state,
5. matters regulated by law or where the Constitution requires a law.

This is an exhaustive list, thus all other international agreements do not require the passing of a law of acceptance. In such cases, the Prime Minister merely notifies the Sejm, the lower chamber of Polish parliament, of his intention to submit them to the President for ratification.[14] The criteria adopted in Article 89(1) of the Constitution are not unambiguous, and leave Parliament with a large degree of discretion in deciding whether an international agreement requires the consent expressed in a law.[15] In case of doubt, there should be a presumption in favour of an obligation to obtain consent to ratification in statutory form. This is primarily influenced by the legal force of the ratified international agreement in the system of sources of law.[16] This is because, according to Article 91 of the Constitution, a ratified international agreement takes precedence over laws if they cannot be reconciled with the agreement. The ratification law proceeding under Article 89(1) of the Constitution is enacted in the general legislative procedure. There are no separate procedural provisions in this regard. In practice, the entity initiating the legislative path is the

14 Lech Garlicki, *Polskie prawo konstytucyjne. Zarys wykładu.* 6th ed. (Warsaw: Wolters Kluwer, 2019), 162.

15 Bogusław Banaszak, *Konstytucja Rzeczypospolitej Polskiej. Komentarz*, 2nd ed. (Warsaw: C.H. Beck, 2012), 518.

16 Piotr Radziewicz, "Komentarz do art. 89 Konstytucji," [in:] *Konstytucja Rzeczypospolitej Polskiej. Komentarz,* ed. Piotr Tuleja (Warsaw: Wolters Kluwer, 2019), 289.

Council of Ministers, which has the special duty to conclude international agreements.[17]

The procedure for a ratification law under Article 90 of the Constitution, the so-called "grand ratification," is different. It is applied when, on the basis of an international agreement, the competences of the organs of state authority are to be transferred to an international organisation or international body. In such a case, a law expressing consent to the ratification of such an agreement is passed by the Sejm, and then the Senate, by a two-thirds majority vote in the presence of at least half of the statutory number of deputies and senators, respectively. Under this special ratification procedure, consent to ratification may also be passed in a nationwide referendum. The expression of consent in a referendum supersedes the ratification law and constitutes the basis for the decision on ratification of an international agreement by the President. It should be emphasized that the result of a referendum in Polish constitutional conditions is binding when more than half of those entitled to vote participate in it. In a 2013 ruling. Constitutional Court stated that:

> [...] the necessity to apply Article 90 of the Constitution occurs when: 1) the subject of the agreement are sovereign competences, on the basis of which national authorities issue legal acts (in particular legislative acts) binding on subordinate subjects; 2) the competences are entrusted to an international (supranational) organisation or body; 3) the effect of this entrustment is that this organisation is able to exercise these competences in such a way that it can issue legal acts (primarily legislative acts) binding on subordinate subjects and national authorities; 4) as a rule, the entrusted competences are not a simple sum of the delegated competences.[18]

Furthermore, the same ruling also indicated that:

> It undoubtedly follows from the previous statements of the Constitutional Court that the application of the special procedure set out in Article 90 of the Constitution is justified in the case of modification of the scope of delegated competences as well as its extension (see judgment of 24 November 2010, ref. K 32/09), but not when there is an update of competences (see judgment

17 Ibidem.

18 Judgment of the Constitutional Court of 26 June 2013, ref. K 33/12, OTK ZU 5A/2013, item 63.

of 18 February 2009, ref. Kp 3/08). Furthermore, the Constitutional Court held that Article 90 of the Constitution should also be applied to changes in the provisions of the treaties constituting the basis of the European Union, which take place otherwise than by way of an international agreement, if those changes result in a transfer of competences to the European Union (see the judgment with ref. K 32/09).[19]

In practice, Article 90 of the Constitution has been applied to the Treaty on Poland's accession to the European Union and the Treaty of Lisbon. Thus, from the point of view of the current Constitution, the choice of the mode of ratification of an international commitment entered into by the Council of Ministers depends on the scope and substance of the interference of the international commitment with the competence of the Sejm.

The government bill on the ratification of Council Decision (EU, Euratom) 2020/2053 of 14 December 2020 on the system of own resources of the European Union and repealing Decision 2014/335/EU, Euratom, sailed to the Sejm on 28 April 2021. (Print No. 1123).[20] The ratification procedure chosen was in accordance with Article 89 of the Constitution. The explanatory memorandum of the draft indicates that: "The matters governed by this decision relate to the issues set out in Article 89(1)(3) and (4) of the Constitution of the Republic of Poland, i.e. the membership of the Republic of Poland in an international organisation and the significant financial burden on the state (approximately EUR 6.5 billion on average per year in 2018 prices), ratification will be required in this regard after obtaining consent expressed by law. Similarly, two previous decisions on the European Union's own resources system have been ratified, i.e. the Council Decision of 7 June 2007. (2007/436/EC, Euratom) and the Council Decision of 26 May 2014. (2014/335/EU, Euratom), which provided the basis for the transfer to the EU budget of the Polish contribution for the periods 2007-2013 and 2014-2020, respectively."[21] At the time of the filing of the government draft in question, two legal opinions on the modalities of ratification of Council Decision (EU, Euratom) 2020/2053 of 14 December 2020 were submitted

19 Ibidem.

20 https://www.sejm.gov.pl/Sejm9.nsf/PrzebiegProc.xsp?nr=1123 [accessed: 21.4.2024].

21 Explanatory Memorandum to the Government's draft..., print No. 1123.

by Cezary Mik[22] and Bogusław Przywora.[23] They consistently point out that the ratification should take place in accordance with the procedure of Article 89 of the Constitution, as Council Decision 2020/2053 concerns a significant financial burden for the state and the fact that this act is connected with the secondary membership of the Republic of Poland in an international organisation, such as the EU.[24] The authors, like the justification of the government's draft, refer to the historical aspect, arguing that previous Council decisions on own resources were also adopted under Article 89 of the Constitution. They also unequivocally reject the possibility of ratification under Article 90 of the Constitution, as, in their view, none of the grounds justifying the adoption of such a procedure exist. They point out that the decision does not make a transfer of competence, in particular, it does not deprive, modify or limit Poland's competence to borrow for its account on the capital markets.[25]

At a further legislative stage, further legal opinions were presented on the adopted mode of ratification of Council Decision 2020/2053. Szmulik confined himself to stating that the ratification in question would potentially entail a significant financial burden on the state. In his conclusions, after the analysis of the decision, he points out that the authorisation for the European Commission to borrow on the capital markets is an exceptional measure, related to counteracting the effects of the crisis arising from the COVID-19 pandemic.[26] Thus, he advocated ratification in a major ratification mode. A broader analysis of the European Commission's borrowing mechanism was given by Genowefa Grabowska. She indicated that this mechanism is not something new or unknown, giving as an

22 Cezary Mik, "Tryb ratyfikacji decyzji Rady Europejskiej (UE, Euratom) 2020/2053 w sprawie systemu zasobów własnych Unii Europejskiej oraz uchylającej decyzję 2014/335/UE, Euratom (Dz.Urz. UE L 424 z 15 grudnia 2020 r.)" *Zeszyty Prawnicze Biura Analiz Sejmowych*, No. 2 (2021).

23 Bogusław Przywora, "Tryb ratyfikacji przez Rzeczpospolitą Polską decyzji Rady Europejskiej (UE, Euroatom) 2020/2053 z 14 grudnia 2020 r. w sprawie systemu zasobów własnych" *Zeszyty Prawnicze Biura Analiz Sejmowych*, No. 2 (2021).

24 Przywora, "Tryb ratyfikacji przez Rzeczpospolitą Polską decyzji," 137.

25 Mik, "Tryb ratyfikacji decyzji Rady Europejskiej (UE, Euratom) 2020/2053," 118-119.

26 Bogusław Szmulik, "Tryb ratyfikowania decyzji Rady (UE, Euratom) 2020/2053 z 14 grudnia 2020 r. w sprawie systemu zasobów własnych Unii Europejskiej oraz uchylającej decyzję 2014/335/UE, Euratom" *Zeszyty Prawnicze Biura Analiz Sejmowych*, No. 3 (2021): 141, 144.

example the SURE instrument[27], which operates on a similar principle. She unequivocally takes the position that Council Decision 2020/2053 "does not introduce new solutions previously unknown in the European Union for the establishment of loan funds. The mandate given to the EC to build the Next Generation EU by borrowing on the financial markets cannot be equated with granting a new competence to the EU."[28] The adoption of a major ratification mode, in view of the demonstration that Council Decision 2020/2053 involves a significant financial burden on the state was also advocated by Aldona Domańska[29] as well as Jarosław Szymanek,[30] and Grzegorz Pastuszko[31]. Both Szymanek and Pastuszko reject the possibility of ratification under Article 90 of the Constitution pointing to the provisional nature of the adopted solutions. The legal opinions presented show that the solidarity mechanism proposed in Council Decision 2020/2053 does not deplete the economic sovereignty of a Member State. This would happen if monetary transfers from one Member State to cover the obligations of other States were non-refundable[32]. Pastuszko states that: "The EU debt to be contracted on the basis of the Council's decisions, is by its very nature, a temporary commitment, to be discharged with a precise deadline. This results in the European Commission, which is responsible for taking action in this field, acquiring time-limited competences. and cannot – even assuming the necessity of transferring competences under Article 90 of the

27 Council Regulation (EU) 2020/672 of 19 May 2020 on establishing a European instrument for temporary support to reduce the risks of unemployment in a situation of emergency (SURE) arising from the COVID-19 pandemic (OJ EU 2020 L159/1).

28 Genowefa Grabowska, "Tryb wyrażenia zgody na ratyfikację decyzji Rady 2020/2053 z 14 grudnia 2020 r. w sprawie systemu zasobów własnych UE w świetle Konstytucji RP" *Zeszyty Prawnicze Biura Analiz Sejmowych*, No. 3 (2021): 121.

29 Aldona Domańska, "Czy zgodnie z Konstytucją RP możliwa jest ratyfikacja decyzji Rady Europejskiej (UE, Euroatom) 2020/2053 z 14 grudnia 2020 r. dotyczącej systemu zasobów własnych Unii Europejskiej bez zgody wyrażonej w ustawie przez Sejm i Senat RP?" *Zeszyty Prawnicze Biura Analiz Sejmowych*, No. 2 (2021).

30 Jarosław Szymanek, "Tryb ratyfikacji decyzji Rady 2020/2053 z 14 grudnia 2020 r. w sprawie systemu zasobów własnych Unii Europejskiej oraz uchylającej decyzję 2014/335/UE, Euratom oraz przedstawionego Sejmowi RP projektu ustawy ratyfikacyjnej (druk sejmowy nr 1123)" *Zeszyty Prawnicze Biura Analiz Sejmowych*, No. 3 (2021).

31 Grzegorz Pastuszko, "Tryb ratyfikacji decyzji Rady 2020/2053 z 14 grudnia 2020 r. w sprawie systemu zasobów własnych Unii Europejskiej oraz uchylającej decyzję 2014/335/UE, Euratom" *Zeszyty Prawnicze Biura Analiz Sejmowych*, No. 3 (2021).

32 Szymanek, "Tryb ratyfikacji decyzji Rady 2020/2053 z 14 grudnia 2020 r.", 97.

Constitution – take over the authority of the Polish authorities in this field on a permanent basis."[33]

Bartłomiej Opaliński is of a different opinion as to the ratification procedure carried out. Opaliński[34] and Jacek Zaleśny.[35] The former, analysing Council Decision 2020/2053, points out that there will indeed be a transfer of competences of the Polish Parliament in terms of the right to levy taxes, which is related to the digital levy regulated in the decision. Moreover, the power belonging to the Minister of Finance to contract loans or credit will be transferred to the EU, as well as the issue of new rules of contracting loans by the European Commission for the account of the Republic of Poland, bypassing the statutory procedure of cooperation between the Council of Ministers and the minister responsible for public finance.[36] Zaleśny makes the same conclusions, pointing more broadly to the delegated powers of the Minister of Finance under the Public Finance Act.[37] At the same time, adding that from the point of view of the Constitution, the temporariness of the introduced mechanisms of EU financing is irrelevant, as Article 90 of the Constitution only indicates the delegation of powers without specifying exceptions, including temporal exceptions. In the conclusion of the legal opinion, drawn up, Zaleśny advocates the ratification of Council Decision 2020/2053 pursuant to Article 90 of the Constitution.[38] Opaliński indicates as the best form of expressing consent for the ratification of the decision in question the designation by the Sejm of a referendum procedure (nationwide referendum), in accordance with Article 90(3) of the Constitution.[39]

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33 Pastuszko, "Tryb ratyfikacji decyzji Rady 2020/2053 z 14 grudnia 2020 r.", 133.

34 Bartłomiej Opaliński, "Czy zgodnie z Konstytucją RP możliwa jest ratyfikacja decyzji Rady Europejskiej (UE, Euroatom) 2020/2053 z 14 grudnia 2020 r. dotyczącej systemu zasobów własnych Unii Europejskiej bez zgody wyrażonej w ustawie przez Sejm i Senat RP?" *Zeszyty Prawnicze Biura Analiz Sejmowych*, No. 2 (2021).

35 Jacek Zaleśny, "Czy zgodnie z Konstytucją RP możliwa jest ratyfikacja decyzji Rady Europejskiej (UE, Euroatom) 2020/2053 z 14 grudnia 2020 r. dotyczącej systemu zasobów własnych Unii Europejskiej bez zgody wyrażonej w ustawie przez Sejm i Senat RP?" *Zeszyty Prawnicze Biura Analiz Sejmowych*, No. 2 (2021).

36 Opaliński, "Czy zgodnie z Konstytucją RP możliwa jest ratyfikacja", 158.

37 Act of 27 August 2009 on public finances (Journal of Laws of 2009, No. 157 item 1240 ze zm.)/Act of 27 August 2009 on public finance (Journal of Laws 2009 No. 157 item 1240 as amended).

38 Zaleśny, "Czy zgodnie z Konstytucją RP możliwa jest ratyfikacja," 148-149.

39 Opaliński, "Czy zgodnie z Konstytucją RP możliwa jest ratyfikacja," 161.

4 Conclusions

It seems that, both in the matter of the choice of the mode of ratification of Decision 2020/2053 by the Polish side and the enactment of the National Recovery Plan, political factors prevailed over legal arguments.[40] This is because the party in power at the time could not count on a cross-party consensus, and ratification of this decision under Article 90(2) of the Constitution. For this, as shown above, it is necessary to have a 2/3 majority in the Sejm and the Senate, and the Law and Justice party, more broadly operating as the United Right, did not have such a majority on its own. In addition, by its actions against the opposition at the time, it led to mutual hostility and suspicion, which gave no guarantee that an adequate majority could be achieved for the so-called "grand ratification" to take place. On the other hand, the adoption of this decision by way of a nationwide referendum would require the participation of more than half of those entitled to do so, which, in Polish conditions, could be problematic. There is no doubt, however, that Polish society is very positively disposed towards EU membership. The score of supporters of EU membership ranges from 84% to 92%.[41] Moreover, at the time of the ratification of Council Decision 2020/2053, there was a state of epidemic emergency in Poland,[42] which provided additional, public health arguments for not holding a nationwide referendum on the issue. This does not change the fact that on the basis of Council Decision 2020/2053 there is a transfer of competence in financial matters, as demonstrated by Opaliński and Zaleśny in their opinions. Thus, in the case in question, ratification should have been carried out pursuant to Article 90 of the Constitution.

The fact that the NGEU has a symbolic and institutional dimension – it is a joint venture of the entire EU, an expression of the fact that all Member States should work together – was downplayed. Instead, attention focused on the risk of a member-state default: for instance, Solidarna Polska warned that if any country failed to meet its NGEU debt obligations,

40 Cf. in more detail also Maciej Serowaniec, Michał Przychodzki, "The introduction of the National Recovery and Resilience Plans in the light of the Visegrád Group countries' experience" *Prawo i Więź*, No. 1 (2023): 49-58.

41 Beata Roguska, "Opinie o członkostwie w Unii Europejskiej" *Komunikat z Badań CBOS*, No. 55 (2023): 2.

42 Regulation of the Minister of Health of 20 March 2020 on the declaration of a state of epidemic emergency in the territory of the Republic of Poland (Journal of Laws 2020, item 491).

the entire EU would have to cover the shortfall – using this collective liability as yet another reason to oppose the proposal.[43] As we showed in this paper, the Polish parliament was able to hold to account the government in the process of ratification of NGEU and enacting the National Recovery Plan. However, one has to note, that this division of two groups [Group 1 ("proponents") and Group 2 ("opponents")], as presented in Table 1, is simplified, as any theoretical framework must be, as in real political life of democratic systems, it may be the case that not only opposition members of parliaments are those who fall within the opponents group, and reversely – it may be the case that within the opposition there are some "proponents." Indeed, this paper shows exactly this – during the ratification of the NGEU in Poland, some members of the governing coalition – Solidarna Polska and some members of PiS – opposed the government's stance on the ratification, while some members of the parliamentary opposition, such as the Left, Koalicja Polska-PSL and Polska2050, supported it.

This paper examined how national parliamentary accountability operates in the context of deepening European Union (EU) fiscal integration, using Poland's ratification of the Own Resources Decision (ORD), enabling the NextGenerationEU (NGEU) recovery fund, as a case study. The creation of the NGEU raises important questions of democratic legitimacy, particularly since budgetary powers are traditionally considered central to national parliamentary sovereignty. How much of this sovereignty was pooled to the EU with the ORD decision was central to both legal and political arguments over the ORD ratification. The NGEU, launched in response to the COVID-19 pandemic, introduced a form of fiscal capacity for the EU based on collective debt issuance and conditional transfers to member states. While it expanded the EU's ability to act in crises, it also challenged established principles of national fiscal sovereignty. In Poland, this process became politically contentious, revealing deep divisions within the ruling coalition and between the government and opposition parties. The primary objective of the paper is to provide a detailed analysis of the legislative process approving the ORD in Poland, focusing on how the Sejm (lower house of parliament) exercised its accountability function. Using a combination of legal-dogmatic methodology and qualitative content analysis, the study examines parliamentary debates, legal documents, and political party

43 Tomasz Markiewka, National Recovery Plan – a sad tale of Poland. https://magazynkontakt.pl/krajowy-plan-odbudowy-smutna-opowiesc-o-polsce/. [accessed:7.12.2022].

statements. It explores the motivations of both proponents and opponents of ratification, shedding light on how national actors framed the EU's fiscal expansion and the trade-offs involved in pooling sovereignty. The paper shows that the determination of the constitutional mode for ratification was driven by precedent and political feasibility. Legal advisors and government proponents uniformly favoured Article 89's "acceptance law" procedure, citing the Polish Parliament's prior ratifications of the 2007 and 2014 Own Resources Decisions. Although some academics and minority legal opinions argued that the unprecedented jointborrowing mechanism and new ownresource streams (e.g., the digital levy) warranted "grand ratification" under Article 90, political realities, a lack of supermajority, and the impracticality of a referendum amid a pandemic, made Article 89 the only viable route. The theoretical framework draws on the accountability literature. Accountability is defined here as a structured interaction, in which actors are required to justify their actions before a forum capable of demanding information and issuing consequences. The paper paid close attention to whether parliamentary scrutiny met these conditions during the Polish ratification process. The analysis revealed that, despite formal parliamentary involvement, the depth of accountability varied. Some parties focused on legal-constitutional arguments about sovereignty, while others viewed the vote as a referendum on the EU or domestic political alliances. Ultimately, the paper argues that understanding how national parliaments navigate EU-level fiscal integration is critical for assessing the democratic legitimacy of future steps toward deeper Union-wide fiscal capacities.

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