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Borrowing: a new resource for the European Union in the period of COVID-19 epidemic

**Pożyczka: nowy środek unijny
w kontekście epidemii COVID-19**

Abstract. After more than two years of difficult negotiations, marked by a withdrawal of the United Kingdom from the European Union and an eruption of the COVID-19 health crisis, the European Union has succeeded in adopting a multi-annual financial framework for the years 2021–2027. The agreement reached at the European Council of 17 and 21 July 2020 constitutes a turning point in the construction of the European Union insofar as it transforms the multiannual financial framework into an instrument of a macroeconomic stabilization by backing it with a new recovery instrument called “Next Generation EU”. This change is linked to a new EU’s own resources decision for 2020, which establishes borrowing as a temporary resource for the European Union. Recourse to borrowing is strictly limited. However, for member states, recourse to borrowing could be

a factor in accelerating the creation of other own resources in order to avoid using member states' budgets (in a complementary manner) to repay the loan.

Keywords: European Union; European budget; Own resources; Next Generation EU; Borrowing; COVID-19 epidemic.

Streszczenie. Po ponad dwóch latach trudnych negocjacji Unii Europejskiej udało się przyjąć wieloletnie ramy finansowe na lata 2021–2027. Wpływ na proces negocjacji wywarły wystąpienie Wielkiej Brytanii z Unii Europejskiej i wybuch kryzysu zdrowotnego związanego z wirusem COVID-19. Porozumienie osiągnięte na posiedzeniu Rady Europejskiej w dniach 17 i 21 lipca 2020 r. stanowi punkt zwrotny w tworzeniu Unii Europejskiej, ponieważ przekształca wieloletnie ramy finansowe w instrument stabilizacji makroekonomicznej. Ramy te wsparto nowym instrumentem naprawczym – „Next Generation EU”. Zmiana powiązana jest z nową decyzją w sprawie zasobów własnych UE na 2020 r., w świetle której pożyczka to środek tymczasowy dla Unii Europejskiej. Odniesienie do pożyczki jest ściśle ograniczone. Jednak odwoływanie się do pożyczek jest dla państw członkowskich ważnym czynnikiem przyspieszającym tworzenie innych zasobów własnych, aby uniknąć wykorzystania budżetów państw członkowskich (w sposób uzupełniający) w celu spłaty pożyczki.

Słowa kluczowe: Unia Europejska; budżet Unii Europejskiej; zasoby własne Unii Europejskiej; „Next Generation EU”; pożyczki; epidemia COVID-19.

1. Introduction

After more than two years of difficult negotiations, marked initially by the United Kingdom's withdrawal from the European Union and then by an eruption of the COVID-19 health crisis, the European Union has succeeded in adopting a multi-annual financial framework for the years 2021–2027.

The agreement reached at the European Council of 17 and 21 July 2020 constitutes a turning point in the construction of the European Union insofar as it transforms the multiannual financial framework into an instrument of macroeconomic stabilization by backing it with a new recovery instrument called “Next Generation EU”. This development is an im-

portant innovation in European budgetary programming, linked to a decision on own resources for 2020, which establishes borrowing as a new resource for the European Union.

The new decision of 14 December 2020¹, which takes up part of the 2014 decision², does not restructure the entire EU's own resources system. It logically takes up provisions of classic application, similar to those of the previous decisions. The establishment of the rules for the allocation of the Union's own resources to ensure the financing of its budget is thus renewed³, as is the carrying over to the next financial year of any budgetary surplus of revenue during a financial year⁴.

In addition, pursuant to Article 311 of the Treaty on the Functioning of the European Union (TFEU), Article 10 of the new EU's own resources decision stipulates that the Council shall lay down implementing measures relating to the procedure for calculating and budgeting the annual budgetary balance (taking account of the carryover of any surplus of resources) and the provisions and arrangements necessary for the control and monitoring of the collection of own resources. In addition to these traditional provisions, the previous principles for calculating and adjusting revenue from past budget years have been renewed⁵.

The reiteration of previous provisions should not obscure the essential point: the PRD of 14 December 2020 marks a major step forward for development of the EU. For the first time, the European Union will go into debt to jointly and severally finance the EU's expenditure. This procedure will be on a sufficiently large scale to enter into a logic of a mac-

¹ Council Decision 2014/335/EU, Euratom of 26 May 2014 on the system of the European Union's own resources <https://eur-lex.europa.eu/legal-content/FR/TXT/PDF/?uri=CELEX:32014D0335&from=fr>.

² Council Decision (EU, Euratom) 2020/253 of 14 December 2020 on the system of the European Union's own resources and repealing Decision 2014/335/EU, Euratom.

³ Art. 1^{er} Decision (EU, Euratom) 2020/253 of 14 December 2020.

⁴ Art. 8 Decision (EU, Euratom) 2020/253 of 14 December 2020.

⁵ L. Levoyer, *Budgets post covid-19 des Etats membres de l'Union européenne: comment préserver les générations futures?*, "Revue du Droit de l'Union européenne" 2020, No 4, pp. 183–200.

roeconomic stabilization⁶. This major advance is due to the exceptional authorization of borrowing provided by the own resources decision.

Although recourse to borrowing is strictly regulated, it remains a powerful factor in the creation of the EU's own resources.

2. An exceptional authorization with a framework

The main innovation of the own resources decision of 14 December 2020 is the authorisation given to the European Union to borrow⁷. Article 5 of the decision authorises the European Commission to borrow on behalf of the EU 750 billion euros between now and 2026, of which 360 billion euros will be for loans and 390 billion euros for grants⁸. This recourse to borrowing remains strictly regulated, while its legal basis is under discussion.

2.1. Strictly controlled borrowing

Article 5 of the “own resources” decision strictly frames the amount, purpose and timing of the borrowing by referring to 750 billion euros by 2026 by the European Union.

First of all, the loan must be made for the sole purpose of dealing with the consequences of the health crisis⁹. Secondly, the repayment of the capital and of an interest is to be borne exclusively by the budget of the European Union¹⁰. Repayment of the capital will not begin until 2028 and must be completed by 2058 at the latest. In addition to the interest payments, the EU cannot repay more than 7.5% of the capital each year, i.e. 29.3 billion euros 2018. This rule limits the amount of money that can

⁶ 5.4% of GDP 2019, including 2.8% of GDP for the subsidy component.

⁷ A. Potteau, *La réforme des ressources propres de l'Union européenne*, “Gestion & Finances Publiques”, 2020, No 4, p. 103.

⁸ Borrowing is at 2018 prices. Amounts are adjusted for inflation of 2% per year. No net new borrowing is to occur after 2026.

⁹ Art. 5 Decision (EU, Euratom) 2020/253 of 14 December 2020. Article 4 also prohibits the EU from using the funds raised “to finance operational expenses”.

¹⁰ Art. 5 Decision (EU, Euratom) 2020/253 of 14 December 2020.

be called up for a repayment of the principal by the Member States on the basis of a linear amortization of the loans contracted.

The exceptional borrowing authorisation is accompanied by a temporary increase in the ceilings for commitment and payment appropriations of 0.6% of GNI until 31 December 2058. The aim is to ensure that the Union can meet its obligations in all circumstances¹¹. This increase in the ceilings is in addition to the permanent increase of 0.2% of GNI to take account of the contraction of GNI due to the economic crisis and the departure of the United Kingdom from the European Union. If the authorized appropriations, entered in the budget, are not sufficient to meet its obligations resulting from the borrowing or if a country does not honour its commitments, Article 9 authorizes the European Commission, as a last resort, to make Member States contribute up to a maximum amount corresponding to their share of the temporarily increased own resources ceiling, i.e. 0.6% of GNI.

For the first time, the European Union is taking on debt to finance expenditures jointly. This debt is large enough to enter into a logic of a macroeconomic stabilization. This is an important difference compared to what was done during the sovereign debt crisis

The question arises as to whether the possibility of borrowing will be maintained beyond the economic support linked to the health crisis and the period set by the Own Resources Decision. More broadly, isn't borrowing a step towards a federal model of the EU?

The use of Article 122 TFEU as the legal basis for borrowing limits its durability. It be used only in the event of an exceptional crisis situation. It will not be possible to change the ceiling, the purpose or the date of the termination of the loan. The EU's own resources decision adopted unanimously by the Council with the approval of the national parliaments of the Member States provides a framework for a recourse to the loan. The European recovery instrument Next Generation EU remains temporary¹². However, borrowing has no other purpose than to finance it. Any addi-

¹¹ Art. 6 Decision (EU, Euratom) 2020/253 of 14 December 2020.

¹² F. Martucci, *Le covid-19 et l'Union européenne*, "Revue Française de Droit Administratif", 2020, p. 650.

tional recourse to borrowing will, therefore, require to adopt a new own resources decision. Unanimity voting and an approval of each of the Member States of the decision constitute a real political lock against a silent move towards an introduction of a permanent borrowing mechanism. The necessary agreement of national parliaments limits any inclination towards creeping federalism.

Should the control of borrowing prohibit any reflection on the generalization of borrowing as a permanent resource of the European Union? Should we also fear such a development? Should we not consider that the surplus of investments made thanks to this financing will, in the long run, constitute a decisive asset for the European Union in global economic competition? We must hope so. This could then transform a nature of this mechanism to generalise it.

2.2. A legally discussed recourse to borrowing

The conformity of the loan with the treaties was validated in an opinion issued by the Legal Service of the Council of the European Union on 30 June 2020¹³. However, this conformity may be questioned since, under Article 310 of the TFEU, it is traditionally considered that the European Union cannot resort to borrowing to finance its expenditure. Article 310 TFEU states that “revenue and expenditure shall be in balance” and that, in accordance with the principle of budgetary unity, “estimates of all the Union’s revenue and expenditure shall be prepared for each financial year and entered in the budget”. Until the COVID-19 crisis, the interpretation of these two principles made it impossible for the EU to use borrowing to finance its budget. On the other hand, it was allowed to use borrowing to make loans because these financial operations were considered as a budgetary expenditure. In contrast to this classical reading of budgetary principles, the Next Generation EU plan offers a striking contrast.

¹³ Agence Europe, *EU Council lawyers validate architecture of Next Generation EU*, Europe Daily Bulletin No 12516, 30 June 2020.

In order to achieve the objectives of the Union and to support the economies of the Member States, the Commission argues that exceptional circumstances justify recourse to borrowing. Article 122 TFEU is invoked to override the provisions of Article 310 TFEU. Article 122 TFEU, and subsequently its exceptional circumstances, apply however “without prejudice to the other procedures laid down by the Treaties”. Can we then consider that these circumstances allow the principles of budgetary balance and unity to be set aside¹⁴? For the Commission, the Next Generation EU instrument respects the principle of budgetary balance. The funds to be borrowed are analysed as extra-budgetary funds. They are neither revenue nor expenditure of the annual budget¹⁵. According to the Commission, they are “external earmarked revenue”¹⁶ that is added to the annual budget. However, this method is questionable in terms of the strict interpretation of the principle of a budgetary unity. In this respect, the budgetary practice of the European Union tends to be similar to that of the French state, which has largely practiced de-budgeting. The rapprochement with French public finance also concerns the EU’s newly adopted concept of a balanced budget. French local authorities must, in fact, vote and execute their budget in balance¹⁷. This rule requires that the operating and investment sections of their expenditure should be balanced. Moreover, this rule provides for a penalty for any infringement of this principle, aimed at restoring it. However, for their investment expenditure, local authorities may resort to borrowing. The principle of a real balance simply

¹⁴ It should be remembered that in addition to the principle of budgetary unity, the DRP 2020, like its predecessors, enshrines in Article 7 the principle of universality of the budget, which stipulates that revenue shall be used indiscriminately to finance all expenditure included in the Union’s annual budget.

¹⁵ European Commission, *Questions – Answers: Next Generation EU – Legal Construction*, 9 June 2020.

¹⁶ See in particular Article 3 of Council Regulation (EU) 2020/2094 of 14 December 2020 establishing a European Union instrument for recovery to support the recovery from the COVID-19 crisis and Article 5 of the final compromise on the proposal for a Regulation of the European Parliament and of the Council establishing a recovery and resilience facility.

¹⁷ Art. L. 1612-4 Code Général des Collectivités Territoriales.

requires to finance the repayment of loans by definitive resources¹⁸. Thus, like the French local authorities, a broad interpretation of the principle of equilibrium probably does not prevent the European Union from resorting to borrowing to finance investments in particular.

3. A factor of new own resources

In order to allow the repayment of the “COVID-19” loan of the European Union, the budget of the Member States may be called upon in a complementary manner, unless the latter agree to provide the Union with new own resources.

3.1. Additional calls on the Member States’ budgets to repay the loan

The exceptional borrowing authorisation is accompanied in the own resources decision by a temporary increase in the ceilings for commitment and payment appropriations. The purpose of this increase is to guarantee the European Union’s financial resources needed to repay the borrowing. Unlike the Member States, the EU cannot rely on a future revenue from compulsory levies to repay its loans. The ceilings for commitment and payment appropriations are, therefore, “temporarily increased by 0.6%”¹⁹.

The purpose of this increase is to respect the principle of a budgetary discipline²⁰ and to ensure that the Union can meet its financial obligations to third parties²¹. If the authorised appropriations entered in the budget are not sufficient to meet the obligations resulting from the loan or if a country does not honour its commitments, Article 9 of the PRD authorizes the European Commission to make the Member States contribute, as a last

¹⁸ See, D. Ytier, *Equilibre réel*, [in:] G. Orsoni (Ed.), *Finances publiques, Dictionnaire encyclopédique*, 2^{ème} éd., 2017, pp. 401–403.

¹⁹ European Commission, “Questions - Answers: Next Generation EU – Legal Construction”, 9 June 2020.

²⁰ Art. 310 of the TFUE § 4.

²¹ Art. 323 of the TFUE.

resort. This additional contribution may reach a maximum amount corresponding to their share of the own resources ceiling temporarily increased by 0.6% of GNI.

In the absence of sufficient own resources, the reimbursement of subsidies will, therefore, be calculated on the basis of each Member State's share of the European Union's total gross national income, and will be added to the usual national contributions.

In the end, this solution should encourage Member States to develop new EU's own resources. Only the introduction of new resources will make it possible to relieve national budgets, which will otherwise find themselves on a front line of repaying the recovery plan.

3.2. Uncertain paths to new own resources

While the Council and the Parliament have mentioned several avenues for adopting new EU's own resources, none of them has yet reached a consensus. Among these avenues, a carbon adjustment mechanism at the borders, a digital fee, a resource based on the emissions trading scheme, a tax on financial transactions, a financial contribution linked to the business sector and a new common consolidated corporate tax base (Accis) have been mentioned.

Of these, the resource based on the carbon trading system is probably the most relevant at the moment. The trading system has the advantage of existing and being able to benefit from a good return. Moreover, such a resource would be consistent with European environmental policies and the objective of a carbon neutrality which has to be met by the year 2050. In addition, modification of the carbon adjustment mechanism at the borders could eventually become necessary as soon as the price differential between the European Union and third countries is expected to increase. This resource would also have the advantage of correspond with the philosophy of the Green Pact for Europe by constituting a lever for the European Union's trade policy. Above all, the carbon adjustment mechanism at the borders has the advantage of not replacing existing revenues of the Member States and can only make sense on a vast territorial scale.

Thus, the prospect of paying for the stimulus package solely through national contributions could lead to accelerating the adoption of a new resource based on the carbon trading scheme – or any other clean resource – in order to find resources to repay the COVID-19 loans.

While the question of revising the financing mechanism of the general EU budget is recurrent, the recourse, even temporary, to borrowing raises the question of the purpose of own resources. This issue was already at the heart of “Agenda 2000”²². In this communication, the Commission ruled out the possibility of revising the financing arrangements for the general budget, as set out in the decision of 31 October 1994²³. However, it promised to submit a report on the operation of the own resources system before the end of 1999. The report was presented on 7 October 1988²⁴. It is still relevant today in terms of its method of analysis. The report examines the operation of the own resources system according to five criteria: adequacy, equity, financial autonomy, transparency/simplicity and cost/efficiency. It found that the Union’s own resources system was not entirely satisfactory. The Commission proposed to create new own resources on the basis of previously defined criteria. Eight types of new resources were, thus, retained. The Commission favoured the option of creating a resource based on an introduction of a differentiated VAT system. Circumstances have, of course, changed since Agenda 2000, but the question remains whether the system of own resources should be aimed primarily at rebalancing the contributions of the member states or more at improving the methods of financing the general budget.

In order to repay the European loans, the paradox would naturally be to endow the EU with new resources that would accentuate the tendency to “renationalise” the system of own resources²⁵, thus turning its back on the deepening of integration promoted by the Next Generation EU plan.

²² H. Nallet, *Agenda 2000: quel élargissement pour quelle Europe?*, Rapport, Délégation de l’Assemblée nationale pour l’Union européenne, DIAN, No 425, 6 November 1997.

²³ Decision 94-728 (E.C. Euratom) OJEC No L 293 of 12 November 1994.

²⁴ Com(1998) 560 final.

²⁵ B. Nabli, *Du caractère fictif de l’autonomie financière de l’Union Européenne*, “Revue française d’administration publique”, 2007/3, No 123, p. 353.

4. Conclusion

With the recourse to borrowing, the own resources decision of 14 December 2020 brings a major innovation to the system of revenues of the European Union budget. This major step forward should not obscure the improvements relating to certain traditional EU's own resources, which unfortunately do not escape the damaging renewal of a rebate logic.

With regard to customs duties, the decision of 14 December 2020 increases the rate of withholding by the Member States from 20% to 25%. At the same time, a reinforced rebate for large importing states has been retained. Any reduction in the contribution for customs duties is automatically compensated by an increase in the contribution for the "GNI resource". This maintenance of significant "collection costs" is therefore analysed as an increase in the rebate in favour of the Member States with the lowest GDP.

The rebates for the resource based on gross national income, the so-called "GNI resource", have not been abolished. For the years 2021 to 2027, this resource will continue to correspond to the application of a rate – fixed during the budgetary procedure – to a base made up of the GNI of each Member State. As a balancing resource for the European budget, this resource is subject to flat-rate reductions benefiting Germany, Austria, Denmark, the Netherlands and Sweden. This is all the more regrettable given that, with the withdrawal of the United Kingdom from the European Union, the abolition of the "British cheque" could have led to an expectation that the correction mechanisms would disappear.

Finally, the introduction of a new contribution based on the recycling of plastic packaging waste does not escape the logic of rebates. This new resource is accompanied by a new compensatory mechanism, of the "flat rate rebate" type, for the benefit of Member States whose national income per capita is lower than the European Union average. The introduction of a mechanism to reduce the contribution of certain Member States is naturally likely to limit the ambition of this new resource. Its scope will remain relative at this stage since the reduction should benefit 17 Member

States, corresponding to a reduction of 3.8 kilograms of non-recycled plastic packaging per inhabitant.

It will be understood that maintaining the logic of the rebate is the counterpart of the recourse to the loan. Without this art of compromise, the European Union would not have found the means to cushion the economic shock of the COVID-19 epidemic.

Bibliography:

- Levoyer L., *Budgets post covid-19 des Etats membres de l'Union européenne: comment préserver les générations futures?*, „Revue du Droit de l'Union européenne”, 2020 No 4, pp. 183–200.
- Martucci F., *Le covid-19 et l'Union européenne*, „Revue Française de Droit Administratif”, 2020, No 4, pp. 650–660.
- Nabli B., *Du caractère fictif de l'autonomie financière de l'Union Européenne*, „Revue française d'administration publique”, 2007/3, No 123, pp. 353–372.
- Nallet H., *Agenda 2000: quel élargissement pour quelle Europe?*, Rapport, Délégation de l'Assemblée nationale pour l'Union européenne, DIAN, No 425, 6 November 1997.
- Potteau A., *La réforme des ressources propres de l'Union européenne*, „Gestion & Finances Publiques”, 2020, No 4, pp. 103–108.
- Ytier D., *Equilibre réel*, [in:] G. Orsoni (Ed.), *Finances publiques, Dictionnaire encyclopédique*, 2^{ème} éd., 2017.