

CONT fact-finding mission to the Czech Republic

26-28 February 2020

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I. WORDS OF INTRODUCTION FROM THE COMMITTEE CHAIR

The European Parliament's Committee on Budgetary Control (CONT) controls and monitors the correct and targeted use of the EU budget. CONT Members scrutinise the implementation of the budget by the European Commission and all the other EU institutions, bodies, offices and agencies. Some 80% of the EU budget goes to the Member States.

In follow-up to reports on possible irregularities in the compliance with the EU law on how the cohesion and agricultural funds are managed, the CONT Committee organised a fact-finding mission to the Czech Republic from 26 to 28 February 2020. A delegation of six CONT Members travelled to the Czech Republic to gain insights into the distribution of EU funds.

The purpose of the mission was to retrieve more information on how the Czech management and control systems comply with the EU regulatory framework concerning structural funds and agricultural policy and, in particular, the measures taken by the Czech authorities to prevent and remedy conflict of interests. In essence, the mission as all CONT missions, aimed to protect the appropriate use of EU taxpayers' money.

I believe the fact-finding mission achieved its objective and allowed CONT Members to get better insight into the use of EU funds in Czechia. The CONT delegation concluded that in the Czech Republic there is currently no clear mechanism to prevent and address situations which may objectively be perceived as conflict of interests, as required by Article 61 of the Financial Regulation.



MEP Monika HOHLMEIER
Chair of the CONT Committee

Fair cooperation with the governmental authorities and other partners

The CONT delegation was in most parts positively welcomed. The meetings and the respective arrangements were done in excellent cooperation with the administrative bodies, associations, journalists and NGOs. However, the delegation was faced with outrage by the Czech government and threats and slandering on individual MEPs.

The meetings foreseen with the Czech Prime Minister and Minister of Agriculture were unfortunately cancelled with very short notice.

Meetings with the ministerial authorities

The CONT delegation strived to find out the responsible entities and officials in the relevant ministerial departments to identify, prevent and fight the conflict of interests as defined in particular by Article 61 of the Financial Regulation (2018/1046; as revised in 2017, entry into force in July 2018) and by Article 4(c) of the Czech Act on Conflict of Interest (159/2006; as amended in February 2017).

According to the European Commission*, and in accordance with the Financial Regulation, namely Articles 36 and 63 thereof, the Member States shall act first by means of the following measures, inter alia:

- establishing and auditing internal systems, including for avoidance of conflict of interests;
- taking preventive measures (verifying the absence of conflict of interests, providing access to the list of beneficial owners, disclosing assets);
- establishing whether a conflict of interests exists, and by applying mitigating measures.

* In reference to the conference on *Managing conflict of interests for better use of EU funds*, organised by the Commission on 10 April 2019 in Brussels, with representatives from the Member States present.

The programme for the fact-finding mission (Annex I) was mapped out to facilitate extensive discussions and information exchange with relevant entities; ministerial authorities, representatives of the civil society, associations, journalists and NGOs - to provide for an as comprehensive as possible picture of the functioning of the management and control systems in the Czech Republic, and the deficiencies thereof, in particular with regard to the issue of conflict of interests. The CONT delegation examined thoroughly whether the Czech implementation of relevant legislation provides for sufficient means to answer to the obligations set out by the Treaties and the Financial Regulation.

The second section of this report provides short summaries of the meetings of the CONT delegation, followed by the third section with recommendations made by the Chair and the Members of the delegation.

The documents received from the Czech authorities, as annexed to this report, were received only after the fact-finding mission. The contents did not fully correspond to the findings of the delegation.

II. SUMMARY OF MEETINGS

Ministry of Finance

Meeting with Lenka DUPÁKOVÁ,
Deputy Minister, Section of International Relations and Financial markets

Participants:

Tomáš Vyhnánek - Deputy Minister, Section of Financial Management and Audit;
Ondřej Landa - Deputy Minister, Legal Section and State Property;
Stanislav Bureš - Director of Audit Organ;
Jiří Machát - Deputy Director, Methodology and Legal Support to Audit Authority and Operational Programme Technical Assistance;
Veronika Ondráčková - Director of National Fund;
Luboš Rendl - Deputy Director of Legal Department;
Michal Žurovec - Director of External Relations and Communication Department.

Explanations were provided on the capacities of the Audit Authorities and the Certifying Bodies, pointing out the essential role of the Managing Authorities as to the identification of conflict of interests, them being the officials in charge of payments. However, no one seemed to assume any part of responsibility as to the management of an overall comprehensive system to avoid conflict of interests, such as recommended by the European Commission.

Regarding the responsibilities of the department in charge of managing the operational programmes, reference was made to a declaration of honour of the applicant, and the duty to provide further supporting documents as regards their beneficial owner upon request of the Managing Authority. No data was available as to the number of cases where declarations of honour take place, nor to the number of performed audits or of mitigating measures.

Members of the delegation were surprised to learn about the concept of “systemisation of workplace arrangement”. The authorities could not dispel the suspicion that this process actually covered restructuring or reorganisation with the aim of dismissing civil servants - also those who refuse to follow instructions that run contrary to any code of conduct of civil service, which requires the state administration to act independently and impartially, and solely in the interest of the public.

Ministry for Regional Development

Meeting with Daniela GRABMÜLLEROVA,
Deputy Minister, Section of Coordination of EU Funds and International Relations

Participants:

Magdaléna Ovesen - Director, International Relations Department;
Radek Kobza - Director, EU Publicity Department;

Denisa Bornová - Acting Head of Unit, European and International Law;
Martin Fatura - European and International Law Unit;
Radana Leistner Kratochvílová - Head of Unit, Regional Development Strategy Management;
Věra-Karin Brázová - Acting Head of Unit, Unit of Urban Policy and Strategies;
Jan Jelínek - Unit of Urban Policy and Strategies;
Sandra Illínová - Head of Unit, Preparation and Completion;
Petr Hrazdil - Methodological Management Unit;
Lenka Szabová - Program Coordination Unit.

The ministerial authority stated that managing payments or individual programmes and projects does not fall under their competence, nor does checking for any possible conflict of interests. The ministry however put in place a single framework for the management of risks in all the areas.

Questioned by CONT Members, the representatives of the Ministry assured that they have established a *traffic light system for the management of horizontal risks*. The avoidance of conflict of interests is a principle to be respected by all the civil servants in accordance with the general rules on the administration. It applies to all civil servants in charge of the payments.

The issue of conflict of interests has, however, not been mentioned as one of those horizontal risks. In general, there seems to be no culture of responsibility as to the management of conflict of interests. Complementary information is included in Annexes II and III.

Ministry of Agriculture - State Agricultural Intervention Fund (SZIF)

Meeting with Martin ŠEBESTYÁN,
Director of State Agricultural Intervention Fund (SZIF) - Payment Department

The head of the Paying Agency told the members of the fact-finding mission that he would be responsible for the management of conflict of interests cases. According to the Paying Agency, internal and external audits are performed each year; the staff has to refer to the hierarchy when a problem occurs and the applicants have to make a declaration on their honour.

The delegation inquired about a letter of 6 November 2019, signed by the State Secretary for Agriculture, recommending not to examine if a trustee company receiving EU money is linked to Agrofert. There was no precise answer provided.

The authority insisted on a special historical situation in which much more land would be in the hands of larger conglomerates, and that in their point of view, no disadvantage for small and medium sized farms would exist. The authority did not give a clear explanation on the selling or distribution mechanism, and the definition of criteria for the right to cultivate land with unclear property status.

Furthermore, the Czech authority implied that the national legal understanding of the definitions of SMEs and of conflict of interests differ from those of the European Commission.

The CONT delegation was concerned if subsidiaries of large conglomerates could be spun-off to fall under the definition of SME and receive aid earmarked for SMEs.

The delegation was also informed by the representatives of the Ministry of Agriculture about an increase in investment subsidies for large-scale livestock breeding, meaning that spending money for intensification in animal husbandry, beyond a factor of 0.4, would mean more subsidies for farms that hold a large number of animals.

The authority informed that in the first pillar of CAP (direct payments) subsidies to larger enterprises are reduced by a degressivity mechanism, and that the Czech authorities decided to apply the obligatory minimum cut rate of 5% to amounts above the 150 000 EUR threshold.

State Secretary for European affairs

Meeting with Milena HRDINKOVÁ,
State Secretary for European Affairs

Participants:

Štěpán Pech - Director of Department of EU Politics Coordination;

Ondřej Hoffman - Head of Legal and Analytic Support;

Ondřej Kaleta - Head of EU Institutional Support;

Marika Mad'arová - Department of EU Politics Coordination.

The State Secretary noted that, according to her views and of other experts, Article 61 of the Financial Regulation concerns the management of EU funds only, and it has nothing to do with the negotiations of the Multiannual Financial Framework (MFF). She also pointed out that there is a conflict between the positive concept of the Czech legal system (through positive basic assumption of self-declaration) and the principle based European legislation (through prohibitive rules) – the Czech rules on conflict of interests rely on self-declaration of the presence of a conflict, rather than a declaration of absence of a conflict.

In the State Secretary's view, only judges and courts are in charge of determining whether a conflict of interests is present.

Members of the fact-finding mission were under the impression that there appears to be no interest on the Czech side to put in place a specific method or a system to implement Article 61 of the Financial Regulation.

Supreme Audit Office

Meeting with Miloslav KALA,
President of the Supreme Audit Office

Participants:

Stanislav Koucký - Senior Director of the Control Section;
Josef Polák - Director of the Department of Agriculture and Regional Development;
Michaela Rosecká - Director of the International Relations Department;
Jaroslav Rucký - International Relations Officer;
Václav Kešner - Communication Officer;
Jana Gabrielová - Communication Officer.

The Supreme Audit Office (SAO) is an independent audit institution with the mission to review the state's management of public revenue and expenditure. The SAO checks whether national and EU public funds have been used efficiently and whether all binding legal regulations have been followed, and submits its reports to the government, the Chamber of Deputies, the Senate and to the public. As an exception from the practice in the EU the Czech SAO is not authorised to audit finances of municipalities, towns and regions or to audit beneficiaries, e.g. co-financed by public funds.

The SAO informed members of the fact-finding mission that they can only receive documents for their audits provided by the state ministries which presents a serious limitation to their audit work.

The CONT Members acknowledged the excellent work of the SAO, but noted that due to the national legislation the competences of the SAO are limited, which does not facilitate the task of the Court as an external auditor in general and, in particular, in the fight against conflict of interests.

The SAO also informed the CONT delegation that they are harshly criticised in public by the Czech government. It appears that it is not possible for the SAO to get the full picture and follow the money all the way to the beneficial owners due to the limitations in their auditing competences, and that the auditors cannot have any insight into the beneficial owners of the complex company structures. Furthermore, the Supreme Audit Office does not perform systematic on-the-spot checks of final beneficiaries.

Association of private farming of the Czech Republic

Meeting with Jaroslav ŠEBEK,
President of the Association

Participants:

Jan Štefl - Vice-President of the Association;
Veronika Jeníková - Secretary of the Association;
Šárka Gorgoňová - Head of Chancellery.

The association of private farming is a voluntary professional organisation of private farmers composed of 49 regional associations covering almost the entire area of the Czech Republic; its activities are based on the conviction that the family farms are the foundation of the modern European agriculture and lively countryside.

The discussions mainly centred on the instruments which the Czech Republic are not using with its full potential to achieve the main objectives of the CAP, and the thorough checking of the fairness of the targeting of financial support. These instruments include, for example, the definition of eligibility for agricultural subsidies, effective monitoring of the true ownerships of farms and their surroundings, setting conditions under the Rural Development Program, and the number of other support measures that could better target the vast majority of farms in the Czech Republic including micro enterprises with less than 10 employees, but also SMEs.

The CONT Members asked about the fairness of the allocation of EU agricultural funds in the Czech Republic, to which the representatives of APF expressed concerns as to the access to EU funds by small farms in contrast with the companies belonging to industrial conglomerates, such as Agrofert. Members also expressed concerns about the land with unclear ownership structures – concerns that small and family farms will not have the same access to distribution in land auctions as large players.

Representatives of APF informed the delegation about the alleged ability of Agrofert Group's companies to artificially move assets among subsidiaries, thus meeting the eligibility criteria for subsidies to small and medium sized companies, or in another case allegedly joining their operations in order to present themselves as a large company, thus winning the public tenders.

The APF representatives announced that the EU subsidies in the Czech Republic are, with a few exceptions, mostly and systematically aimed at keeping post-socialist agriculture structures going. This could be harmful to the rural areas and the environment in many respects, and in the future can be detrimental to everyone. The reluctance against capping is a clear sign.

Members of the CONT delegation were also informed that there is currently no redistribution mechanism in place in the Czech Republic to grant increased subsidies for the first 50 hectares – there is no redistribution from large farms to smaller ones.

Representatives of the APF also shared their concerns that land property rights were often not clearly defined and remained classified as state land under the supervision of the State Land Office, which tended to lease it to large-scale farm corporations. The delegation was informed that the Czech authorities would aim to identify the rightful owners until 2023 and that small and medium-sized farmers feared that they would not have equal opportunity in the future land auctions.

The CONT delegation posed several questions to the association. The APF provided replies in writing after the fact-finding mission (Annex VI).

Temporary Senate Commission on Draft Audit Reports

<p>Meeting with Zdeněk NYTRA, Member of Senate, Chairman of the Temporary Senate Commission on Draft Audit Reports</p>

Participants:

Mikuláš Bek - Vice-Chair of Commission;

Jiří Dienstbier - Vice-Chair of Commission;

Tomáš Golář - Vice-Chair of Commission;
Ladislav Václavec - Vice-Chair of Commission;
Miroslav Adámek - Commission member;
Miroslav Nenutil - Commission member;
Lukáš Wagenknecht - Commission member;
Silvie Mejdrechová - Commission Secretary;
Eva Decroix - Commission Advisor;
Milan Petřík - International Relations Department of Senate Secretariat.

The CONT Members presented questions inter alia on the following topics: the cooperation between the Czech government and the Senate as to ongoing audits and the access to documents; the respect of the provisions of the Anti-money laundering directive; the equality and fairness of treatment between small farms and companies belonging to industrial conglomerates, such as Agrofert; the negotiations of the next MFF; and the future mechanisms to finance and control the CAP subsidies and to limit unfair allocation of agricultural grants.

Senators complained about their lack of overview of possible public tenders, Czech national level subsidies or state-supported public investments Agrofert Group might still continue to profit from.

Senator Wagenknecht set up the elements leading to what he considers to be a conflict of interests of the Prime Minister of the Czech Republic, Mr Andrej Babiš:

- The Czech Constitution gives the Prime Minister the task to manage the government and the power to propose to the President to appoint Ministers;
- The Civil service act with the duty of hierarchical subordination implies that the Managing Authority has to follow the instructions of the Prime Minister;
- Bank account statements demonstrate that subsidies from EU funds are paid to Agrofert as a final beneficiary; Statement by The Czech commercial registry establishes that Prime Minister Babiš' private trust controls Agrofert company; Statement from the Slovak registry of beneficial owners proves that Prime Minister Babiš is, as the sole settlor and the sole beneficiary, a beneficial owner of his private trust.

In these conditions, Senator Wagenknecht considered that Prime Minister Babiš should not participate in the negotiations of the next MFF for financial years 2021-2027 until his potential conflict of interests is fully resolved. He added that if the Czech Prime Minister continues to take part in the negotiations, the European Commission should ensure that Agrofert does not receive EU funds in the upcoming 7 years.

Visit to the ELI Beamlines EU project

The CONT delegation paid a visit to the ELI Beamlines project, a part of the ELI (Extreme Light Infrastructure) pan-European project aiming for scientific excellence in Europe. It is customary for CONT delegations to visit projects that are funded by the EU. The project provides a positive example of how EU money is spent properly and to the benefit of the Czech people and EU citizens as a whole.

The ELI Beamlines research centre aims to run the world's most intense laser system. The objectives of the project are, inter alia:

- to become a multidisciplinary, user-oriented infrastructure for carrying out revolutionary scientific experiments and applications in various fields;
- to study the interaction of light with matter, in yet unrealised light intensity;
- to facilitate research of the electron structure of atoms;
- to facilitate research of the nuclear physics phenomena.

The CONT members presented questions about the financing of the project and the added value it provides.

Investigative journalists and the civil society



Investigative journalists:

Filip Nerad - Český rozhlas;

Karolína Vavrková - Echo24;

Johana Hovorková - Forum24;

Kateřina Frouzová - Hospodářské noviny/economia;

Jan Moláček - Deník N.

NGO representatives:

L. Kraus - Reconstruction of State;

O. Závodský, K. Škácha, B. Chádrovaá - Anticorruption foundation;

M. Eibl, J. Dudák - TI;

M. Minář, L. Steiner - Million moments for Democracy.

The participants discussed issues such as the freedom of the press and respect of the rule of law in the Czech Republic, transparency in the financial management of EU funds (tender procedures etc.), fairness and legality in the allocation of EU funds, the implementation of the Anti-money laundering directive, and the independence of the judiciary powers in the Czech Republic. References were also made to the role of whistle-blowers, and the impact of the Civil act on the way whistle-blowers are or are not protected in the Czech Republic.

The CONT delegation expressed interest towards the interrupted payment of EU funds by the Commission, and inquired whether this action is actually effective as to the rural development, regional and social funds, or is the Czech Government granting the money from the Czech budget instead.

The participants also shed light on the situation of the beneficial owners in the case of trust funds, particularly in reference to Prime Minister Babiš being stated as an end-user of benefits from the Agrofert group in the Slovak Register of Public Sector Partners.

In addition, the CONT delegation received opinions and information on the evolution of the personal wealth of Prime Minister Babiš, the adoption of specific legislation allegedly favouring the interests of Agrofert (particularly in building sector and in forestry), and the alleged monopoly status and profits of the Agrofert conglomerate, alleged land-grabbing in the Czech Republic, and Lex Babiš.

III. RECOMMENDATIONS

Recommendations of the Chair and the Members of the CONT delegation are as follows:

- The government and the ministerial authorities of the Czech Republic should without any further delays ensure that any current and potential situations of conflict of interests that could compromise the implementation of the EU budget and undermine EU citizens' trust in the proper management of EU taxpayers' money are handled transparently in a legal and regular manner, in accordance with the Treaties and the Financial Regulation;
- The Czech authorities, in cooperation with the Commission and in accordance with the obligations set by the Financial Regulation, should establish efficient and effective internal systems for the avoidance of conflict of interests, and take preventive and mitigating measures, such as systematically verifying the absence of conflict of interests, providing public access to the list of ultimate beneficial owners of legal entities and trusts, and disclosing assets of the beneficiaries;
- The Commission should step up its efforts to fight all forms of conflict of interests and evaluate the preventive and mitigating measures taken by the Czech Republic to avoid them; furthermore, the Commission should ensure a policy of zero tolerance towards conflict of interests, and the swift recovery of irregularly paid out subsidies whilst respecting rule of law and procedural requirements, and intervene decisively, particularly when national authorities fail to act to identify, prevent and remedy conflict of interests of their highest representatives; the Commission is encouraged to make proposals for the next MFF on how legal procedures on conflict of interests and recovery of irregularly paid-out subsidies can be speeded-up;
- The Czech Prime Minister ought to cease calling into question the impartial and objective exercise of his functions, contravening Article 61 of the Financial Regulation, being actively involved in the implementation of the EU budget in the Czech Republic in his position as Prime Minister, while still controlling the Agrofert company as a founder and the sole beneficiary of two trust funds; The Czech Prime Minister should, therefore, renounce to participate in any budget-related negotiations in the European Council until his potential conflict of interests is fully resolved; The Council shall take all measures to ensure that any conflicts of interests are avoided during current and future budget/MFF negotiations;
- The Commission should ensure that the Agrofert company does not receive EU funds until the Czech Prime Minister's potential conflict of interests is fully resolved; The Commission should furthermore investigate whether the Czech government is continuing to pay subsidies to the Agrofert company to circumvent the Commission's precautionary measures and if this is the case, check whether this is line with the applicable rules on state aid;
- Should the existence of the Czech Prime Minister's potential conflict of interest be confirmed, he must resolve it by either selling his business interests, stop receiving any public subsidies or funding distributed by his government including EU funds, or stepping down as Prime Minister;

- The Czech authorities should address the systematic weaknesses in the detection, prevention and abolition of conflict of interests in the Czech Republic without delay, and inform both the Commission and the European Parliament's Budgetary Control Committee on the remedial measures taken; the Czech authorities should ensure that questions on unclear landownership are quickly clarified – in particular, it must be ensured that small and family farmers are not treated in a disadvantageous way vis-a-vis larger conglomerates in land auctions; the same must apply regarding the cultivation of the land; The Commission and Czech authorities must ensure that oligarch structures which lead to such inequalities in the allocation of EU agricultural and cohesion funds are avoided;
- The Czech authorities should step up their efforts in order to increase budgetary transparency, by ensuring that relevant data concerning public procurement procedures in the granting of publicly funded contracts is easily and freely accessible to the general public; furthermore, the fourth and the fifth Anti-Money Laundering Directives should be fully and correctly transposed, and provisions on beneficial ownership transparency should be fully implemented;
- The Czech Financial Intelligence and Analysis Unit should take a more proactive approach in tackling fraud, corruption, and tax crimes; the Czech authorities should fully reclaim illegally or irregularly paid subsidies from those who unlawfully benefited from them; the Czech authorities should also inform the EU institutions of the outcome of the reopened investigation related to the Stork Nest;
- The Czech legislators should consider revising the mandate of the Supreme Audit Office in order to enable it with the right to check the regularity and performance of public spending at all administrative levels in the country; the Supreme Audit Office should also be authorised to perform systematic on-the-spot checks of final beneficiaries; moreover, the composition of the Supervisory Board of the State Agricultural Intervention Fund should be politically balanced, and also include specialists;
- The Czech authorities should require verifiable declarations of absence of conflict of interests from the public officials whereby they provide a list of their respective financial interests; furthermore, the Czech civil servants exercising public duties should be able to carry out their work impartially and independently without facing negative repercussions such as dismissal under the pretext of "systemisation";
- The Czech State Land Office should make increased efforts to clearly define land property rights and to identify the rightful owners; land auctions should be carried out in a fair manner providing equal opportunities for small and medium-sized farmers as well as young farmers to acquire the land.

Brussels, 26 February 2020

**Fact finding mission
of the Budgetary Control Committee to Czech Republic
26-28 February 2020**

FINAL PROGRAMME

Members of the delegation:

1. Monika HOHLMEIER, **CONT Chair**, (EPP, DE)
2. Tomáš ZDECHOVSKÝ (EPP)
3. Sándor RÓNAI (S&D)
4. Lara WOLTERS (S&D)
5. Daniel FREUND (Greens)

Accompanying Members out of quota

6. Mikuláš PEKSA (Greens)

CONT Secretariat

7. Philippe GODTS - CONT
8. Katarina HESSLEVIK - CONT

Advisors of Political Groups

9. Balazs SZECHY (EPP)
10. Hana RAISSI (EPP, Press Officer)
11. Diana POPOVA (S&D)
12. Robert GODINA (Greens)

Court of Auditors

13. Tony MURPHY, ECA Member, Chamber II - Investment for cohesion, growth and inclusion
14. Wolfgang STOLZ, Head of private office of Mr Tony Murphy

Interpreters, technician

15. Eliska BOKOVA
16. Susan ASHCROFT-HEMPSALL
17. Tillmann HAAK
18. Neil Francis HARFORD
19. Barbara HORVATH
20. Maria VAS
21. Hana VEJROSTKOVA
22. Krisztina VIGH
23. Timo AHONEN (technician)

Languages covered

DE, HU, CZ, NL

DG COMM

24. Agnese KRIVADE
25. Charlotte DURJETZ

Coordination in CZ- European Parliament Liaison Office

26. Jiri KUBICEK, Head of Unit
27. Marketa BURIANKOVA, Assistant

Accommodation

Art Deco Imperial
Na Poříčí 15, 110 00 Petřská čtvrť, Tchéquie

Shuttle Transport

FurraBus; Penízovková 198, Praha 22

Flights proposed:

26 February 2020

15:50 – 17:15 Bruxelles – Prague – **SN2811**
or
20:40 – 22:05 Bruxelles – Prague – **SN2815**

28 February 2020

18:05 – 19:35 Prague – Bruxelles – **SN2812**

Day 1 - Wednesday, 26 February 2020

Time	Meeting/visit	Location
17:15	Arrival of the delegation	Prague Airport
18:00	Departure from the airport to Prague	
19:00	Check in the hotel and dinner	Art Deco Imperial, Na Poříčí 15, 110 00 Petřská čtvrť, Prague

Day 2 - Thursday, 27 February 2020

Time	Meeting/visit	Location
8:30	<i>Departure from hotel</i>	Art Deco Imperial, Na Poříčí 15, 110 00 Petřská čtvrť, Prague
9:00	European Parliament Information office: briefing on the political and economic situation	PRA - PRA BUR.INF. Jungmanova 24, Prague 1
9:15	Meeting with Investigative journalists ¹	PRA - PRA BUR.INF. Jungmanova 24, Prague
10:30	Meeting with NGO representatives ²	PRA - PRA BUR.INF. Jungmanova 24, Prague
12:30	Meeting with Vice Minister of Finance - Ms L. Dupáková	Letenská 15, Praha 1
	<i>Walkig transfer across Wellenstein garden</i>	
13:30	Working lunch with Temporary Committee on draft Audit reports - Senate of the Czech Republic	Valdštejnské nám.17/4 , Praha 1
15:00	Association of Private Farming in the Czech Republic; Chairman Mr J. Sebek	Samcova 1, Praha 1
16:15	<i>Transfert to the next visit - LASER project (traject of 45 minuts)</i>	
16:45	Visit of LASER ELI Beamlines EU project	Za Radnicí 835, Dolní Břežany
18:00	<i>Return to hotel and dinner (traject of 45 minuts)</i>	Art Deco Imperial, Na Poříčí 15, 110 00 Petřská čtvrť, Prague

¹ 1. Český rozhlas (Filip Nerad); 2. Echo24 (Karolína Vavřková); 3. Forum24 (Johana Hovorková); 4. Hospodářské noviny/economia (Kateřina Frouzová); 5. Deník N (Jan Moláček)

² 1. Reconstruction of State - L. Kraus; 2. Anticorruption foundation - O. Závodský, K. Škácha, B.Chádová; 3. TI - M. Eibl, J. Dudák; 4. Million moments for Democracy: M. Minář, L. Steiner

Day 3 - Friday, 28 February 2020

<i>Time</i>	<i>Meeting/visit</i>	<i>Location</i>
8:30	<i>Departure from hotel</i>	Art Deco Imperial, Na Poříčí 15, 110 00 Petřská čtvrť, Prague
9:00	Meeting with Agriculture Vice Minister and State agriculture intervention fund Director General Mr M. Šebestýán	Stěpánská 63, Praha 1
10:30	Ministry of Regional Development - Deputy Minister Ms D. Grabmullerova	Pařížská 4, Praha 1
12:00	Meeting with State Secretary for EU Affairs , Ms M. Hrdinková	Office of the Government, nábřeží E. Beneše 4, Praha 1
13:30	Meeting with President of the Czech Republic Supreme Audit Office , Mr M. Kala	NKU, Jankovcova 2, Praha 7
15:00	Press conference	PRA - PRA BUR.INF. Jungmanova 24, Prague
16:00	<i>Departure to the Airport</i>	

INTEGRATED SYSTEM OF RISK MANAGEMENT (ISRM)

National Coordination Authority (NCA) in cooperation with relevant stakeholders (e.g. Ministry of Finance) identifies **risks to all ESIF programmes** in CZE. These risks are then evaluated and NCA suggests **measures for eliminating the most significant implementation risks**.

NCA submits the results of ISRM **to the Government of the Czech Republic**. The Report presents the results of programmes risk assessment, the proposals for new measures and information on the fulfillment of measures. The Managing authorities (MAs) of the programmes and the relevant horizontal institutions are obliged **to report the NCA on the fulfillment of the measures four times per year** (given by the Government Resolution).

A specific example of **program risk and measure** (SMEs status):

As part of the risk assessment of programs in February 2019 a high risk of “**the Legality and Regularity of expenditures resulting from audits**” was identified in the Operational Programme Entrepreneurship for Competitiveness (OP EIC) based on a high error rate exceeding 5 % (7,8 %) which was stated in Annual Audit Report 2018.

The identified shortcomings concerned the checks and administrative verifications of the Payment requests and the conditions prior to the signature of the Grant Decision. As a result of these findings, **payments for OP EIC were interrupted by European Commission (EC)** in January 2019.

MoRD-NCA set a measure to eliminate this high risk in accordance with the OP EIC Action Plan set by the Audit Authority, namely “*To carry out checks on the status of SMEs when approving payment applications or submitting for certification of projects that were approved before the newly established procedures became effective. To perform these checks in accordance with the new procedures as of 1 January 2018, as amended*”.

MA now verifies the control of the SME status twice using new methodology. First check is done before issuing a Grant Decision and the second one is done to the date of the signature of the Grant Decision. With regard to the changes in the methodology of the OP EIC in checking the SME status of applicants, EC decided to lift the interruption of the payment for OP EIC on 23rd October 2019.

A specific example of **horizontal risk and measure** (Conflict of interest):

This risk is based on insufficient implementation of requirements from financial regulation in term of Conflict of interest (art. 61 of Financial Regulation no. 2018/1046).

The NCA established measures for the MAs to incorporate the Financial Regulation on Conflicts of Interest into its internal and management documentation.

The MAs had to report to the NCA that they had regulated the issue of conflict of interest in their internal regulations and in the management and programming documentation, in accordance with the requirements of the Financial Regulation. The area continues to be monitored. In case of change in EU legislation, the corresponding change in the relevant documentation will be checked again.

Role of the National coordination authority (NCA) in the area of monitoring and evaluation:

NCA runs central monitoring system for beneficiaries as well as for managing authorities

One of the key activities of NCA is monitoring progress of interventions and programs. It fulfills not only requirements from the general regulations but also national needs. Monitoring is focusing on financial as well as material progress (output and outcome indicators).

These data are used for monitoring, publicity, and evaluation purposes. Some of these data are also publicly available as a list of beneficiaries: <https://www.dotaceeu.cz/cs/statistiky-a-analyzy/seznamy-prijemcu>

NCA runs evaluations focusing on cross-cutting topics and provides central register of evaluations

NCA realizes evaluations at the level of process (how we can make process more effective, efficient?) as well as result and impact (what are the results and impacts of the interventions or programs?).

NCA realizes its own evaluations as well as is coordinating evaluation activities done by managing authorities. NCA uses data from central monitoring system for evaluations of horizontal or cross-cutting issues that cannot be realized by managing authorities (while they evaluate the lower level, such as calls, projects and their priority axis).

NCA transforms requirements for evaluation from regulations into methodological guideline and unifies the understating on the national level. Furthermore, NCA runs central register of all evaluations focusing on EU funds: <https://www.dotaceeu.cz/cs/evropske-fondy-v-cr/narodni-organ-pro-koordinaci/evaluace/knihovna-evaluaci>.

NCA shares good and bad practices among managing authorities and other relevant partners by realizing working groups for evaluation and by active cooperation with the European Commission.

Evaluation results have significant impact and are used by NCA as well as other important stakeholders

NCA evaluations improve transparency: Two relevant evaluations were delivered focusing on the transparency and anti-corruption theme (realized e.g. by Transparency International). Evaluations assessed the use of methodological tools as generally sufficient. Specific recommendations for improvement were presented to all relevant stakeholders and ministries; afterwards were implemented into the wording of the relevant guidelines.

NCA evaluations simplify and reduce administrative burden: Evaluation of the unified methodological environment helped to simplify methodological environment for the programming period 2021+. One of the main recommendations is that the guidelines should be generally reduced at all levels of implementation.

NCA improves intervention logic of OPs: NCA realized several workshops and trainings for managing authorities focusing on intervention logic. The aim was to use all relevant evidence,

knowledge and experience in preparation of new operational programs. NCA also realized several ex-post evaluations. These were communicated with relevant ministries and were used for setting interventions for 2021+.

NCA improves the evidence-based culture in the EU funds as well as in the Czech Republic: While evidence-based culture is very low in the Czech Republic, NCA aims to support and develop evaluation capacity also through educational activities. For example, the international evaluation conference is already recognized platform among relevant experts and stakeholders.

Instrukce pro jednání pracovní skupiny Rady EU

Název pracovního orgánu: Rozpočtový výbor

Identifikační číslo pracovního orgánu: D.7

Datum, místo a čas zasedání: 6. února 2017, 10:00

...

Pozice ČR:

...

V případě střetu zájmů (čl. 59 a 60 FN – řádek 722 a 726) nedošlo k žádné úpravě následků prokazaného střetu zájmů, tzn., jaký následek bude mít prokázaný střet zájmů konkrétní osoby na její jednání (např. dochází k zneplatnění úkonů osoby jednající ve střetu zájmů apod.). ČR podporuje, aby do Finančního nařízení byl doplněn i následek prokazaného střetu zájmů. Dále bude ČR požadovat, aby se definice střetu zájmů upravila tak, aby ji bylo možno jednoznačně interpretovat, resp. aplikovat na všechny osoby, které jsou zapojeny do implementace rozpočtu EU. Stávající definice zůstává poměrně vágní a neurčitá, není zřejmé, jak by pro účely tohoto ustanovení měly být vykládány pojmy „rodina“, „politická spřízněnost“ a „národní spřízněnost“, zde by bylo rovněž vhodné tyto formulace zpřesnit. Institut hospodářského zájmu („economic interest“), který je taktéž součástí definice střetu zájmů podle navrženého čl. 59 odst. 2, je mj. obtížné interpretovat ve vztahu ke kontrole, resp. auditu výdajů spolufinancovaných např. z technické pomoci na úrovni jednotlivých národních orgánů.

Připomínky ČR k navrhovaným čl. 59 a 60 – střet zájmů:

- Došlo k rozdělení čl. 57 současného FR v tom smyslu, že v čl. 59 návrhu nového FR je popsán střet zájmů účastníků finančních operací a jiných osob podílejících se na plnění rozpočtu a na jeho správě, včetně přípravy na tuto činnost, na jeho auditu či kontrole a čl. 60 se vztahuje pouze na střet zájmů v případě zaměstnanců EU.
- Pokud jde o samotnou definici střetu zájmů, nedošlo k úpravě.
- I v navrženém znění přetrvávají zásadní problémy, a to zejm. následující dva: samotná definice střetu zájmů a absence úpravy pro případ, že ke střetu zájmů přes veškerá preventivní opatření dojde, resp. jaký vliv má prokázaný střet zájmů za dotčený právní úkon.
- 1. Pokud jde o definici střetu zájmů, zůstává poměrně vágní a neurčitá: „*ke střetu zájmů dochází, je-li z rodinných důvodů, z důvodů citových vazeb, z důvodů politické nebo národní spřízněnosti, z důvodů hospodářského zájmu nebo z důvodů jiného společného zájmu s příjemcem finančních prostředků ohrožen nestranný a objektivní výkon funkcí účastníka finančních operací nebo jiné osoby*“. Není přítom ani naznačeno, jak ustanovení vykládat v konkrétním případě. Není zřejmé, jak by pro účely toho ustanovení měl být vykládán pojem „rodina“, zda se jedná pouze o nejbližší příbuzné v prvním stupni nebo i příbuzné přes vzdáleného předka v minulosti. Není zřejmé, jak vykládat pojem politická spřízněnost (jedná se o členství v jedné politické straně nebo o pouhé sdílení politických názorů?). Stejně tak lze jen obtížně vyložit spojení národní spřízněnost, které by v extrémním případě mohlo být vykládáno tak, že z finančních operací týkajících se

Od: REGIO-ESIF-EXPERT-GROUP@ec.europa.eu <REGIO-ESIF-EXPERT-GROUP@ec.europa.eu>

Odesláno: středa 16. října 2019 16:57

Komu: Hrazdil Petr <Petr.Hrazdil@mmr.cz>

Kopie: Charlie.Grant@ec.europa.eu; REGIO-ESIF-EXPERT-GROUP@ec.europa.eu

Předmět: Answers to questions in relation to conflict of interest

Dear Mr Hrazdil,

Please find below the answers to your questions submitted in relation to conflict of interest. Apologies for the delayed reply.

Best regards,
EGESIF Secretariat

1. Is there any interpretation from the Commission regarding the legal provisions on conflict of interest applicable before 2 August 2018? Has it been made available for the member states? (Czech Republic has not received any). According to the legal service document sj.d(2018)6614885, article 57 of the former financial regulation (966/2012) should not be applicable to shared management. This document refers to former Legal Service statement Ares(2015)2799918. The Czech republic kindly request sharing the Ares(2015)2799918 document.

Reply: *The Commission does not make public opinions of the Legal Service. The Commission did not consider Article 57 of the 2012 Financial Regulation on conflict of interests applicable to shared management.*

2. Is there any ruling from the Court of Justice regarding the institute of conflict of interests according to (former or latter) financial regulation?

Reply: *To our knowledge, there are no specific rulings regarding Article 57 of the 2012 Financial Regulation or Article 61 of the 2018 Financial Regulation. There are several Court of Justice rulings concerning conflict of interests under the public procurement directives, e.g. C-531/16 Specializuotas transportas, C-538/13 eVigilo, T-415/10 R Nexans France.*

3. Has the conflict of interest situation been within the scope of any audit performed by the Commission in the past? If so, have there been any findings in this field? Have there been any measures taken?

Reply: *The issue of conflict of interest has been included in the standard scope of the Commission audits (such as early preventive system audits, thematic audits and compliance audits). During their audits, the Commission auditors verify whether the risk of conflict of interest has been adequately addressed by the national authorities through their Management and Control Systems (in particular during selection of operation) and whether the national controls and audits also cover the aspect of preventive measures put in place and effectively implemented. Several findings related to conflict of interest have been identified in the past, both at system level as well as at the level of individual operations. In case of findings related to the system established in the Member State to prevent, detect and mitigate the conflict of interests, system recommendations have been issued. Flat rate corrections have been applied in some cases to correct system deficiencies, covering also issues related to conflict of interest. In case of individual projects being affected by conflict of interests, the findings resulted in 100% financial corrections of expenditure affected by the conflict of interest.*

Main problems of distribution of EU CAP funds

The situation in the Czech Republic and the perspective of APF CR

1. Natural persons receive up to 20 % less operating subsidies per hectare compared to legal persons

Year 2016: legal entities subsidies 467 EUR/ha, natural persons only 394 EUR/ha, i.e. differences – 20 % (source: FADN CZ output)

Main reasons for this inequality according to APF CR:

- non-introduction of payments for the first hectares (redistributive payments);
- introduction of just mandatory 5 % degressivity over 150 000 EUR;
- the complexity and conditions of the national subsidies – for example measures to support animal welfare, which are used to exhaust funds for ineffective measures, especially for larger farms;
- the voluntary coupled support based on fixed yields, minimal obligatory level of stock per hectare; minimal obligatory level of stock in LFA/ANC for all hectares of the company, including those that the concerned company registration number does not have in LFA/ANC;
- the degressivity of LFA/ANC payments is calculated for company registration number, i.e. for individual businesses and not for the whole conglomerate with one owner, the final recipient of the subsidies.

2. Direct payments

In the first pillar, the area of direct payments, none of the voluntary schemes offered by the European Union for the benefit of small and medium-sized farms has been adopted in the Czech Republic since 2013.

Examples of measures to support small and medium-sized enterprises, which were not implemented:

- simplified support for small beneficiaries up to EUR 1,500 (Small Farmers Scheme);
- payment for the first hectares;
- capping over EUR 100,000 or EUR 150,000 as in some other states; there is not even any national limit for legislative restriction of companies receiving subsidies - such as in Poland for areas over 300 ha etc;
- degressivity of direct payments above the mandatory minimum 5 % degressivity over EUR 150 000;
- monitoring the connectedness of companies (the degressivity of direct payments is calculated for the company registration number and not for the whole interconnected conglomerate with one owner, which favours corporate groups);
- active farmer requirements are not applied correctly (corporate groups draw subsidies from other sectors of the national economy).

In the current debates on the CAP 2020+, there are even proposals for making the direct payments conditional on a minimum production volume of CZK 500,000 and/or the minimum farm area of 5 ha (in the Czech Republic, there is about 7,000 farms with area not exceeding 5 ha)!

The main proposal of the APF CR for direct payments:

- ***APF CR requires the introduction of mandatory capping of SAPS without the inclusion of payments for greening, strict monitoring of the connectedness of companies and the non-introduction of the possibility of salaries deduction. Allowing the deduction of salaries (even in the case of 50 % of the costs) is likely to disadvantage not only Czech small family farms, that will not be able to e.g. include the 'salary' of a spouse.***
- ***APF CR is afraid, that if the capping is set by the EU as voluntary and it is possible to replace it by payment for the first hectares - as currently proposed by the EP agricultural committee, the CR will use this possibility and will further preserve the current unsatisfactory state of concentrated and industrial agriculture in the Czech Republic. Thus, the capping of payments will be reintroduced only in countries where this measure will have only minimal effect, and will not be implemented, where it is most needed. Moreover, states that would not use capping of their direct payments disadvantage not only small farmers in their country, but also all other farmers including, but not limited to the small ones, in other EU countries. Other EU countries (with the exception of Slovakia, where the situation is similar to that in the Czech Republic) may not fully understand the need to introduce compulsory capping, since potential capping will have little or no effect on them. Therefore, they often do not feel the need to make this measure mandatory.***
- We enforce a mandatory redistributive payment for all businesses on all first hectares.
- ***APF CR supports the introduction of a simplified scheme for the smallest farms (SFS).***

3. Insufficient monitoring of connectedness of businesses and incorrect application of the term 'active farmer'.

- large enterprises purposefully divide themselves into individual entities with their own company registration number and repeatedly submit applications within the Rural Development Program;
- individual company registration numbers within the agri conglomerate then specialize in a certain type of agricultural production (e.g. dairy farming, pig, poultry or rabbit farming...) and then more easily succeed in RDP investment measures where the Czech Republic has set a point preference to facilitate these specialized companies to succeed more easily at the expense of those farmers and family farms with a more varied agricultural production;
- the definition of an active farmer does not sufficiently affect conglomerates but, on the other hand, may have negative influence on diversified smaller family businesses;
- the term 'family farm' is not applied in the Czech Republic.

The main proposals of the APF CR to define a genuine/active farmer:

- *APF CR proposes to exempt all micro and small enterprises from the condition of fulfilling the definition of 'active/genuine farmer'. This would easily avoid penalizing family farms that have diversified their activities in the past (often with the support of public money).*
- *We believe that the purpose of the proposal for monitoring the compliance of so-called 'genuine farmer' is to deny public resources to large companies whose main source of income is not agriculture but e.g. the real estate business or the chemical industry. For example in the Czech Republic there are only few dozens of these companies and there is no reason to burden micro and small enterprises by meeting this condition since they are the majority in agriculture and do not pose a risk of misuse of public resources.*
- *A fundamental condition for achieving the purpose of the genuine farmer requirement is again a strict monitoring of the interconnection of enterprise properties. However, businesses connected by family ties must not be considered as connected enterprises! This could negatively affect family farms and also endanger young beginning farmers. The interconnection of enterprises must be monitored only according to the specific natural person of the owner, his personal identification number etc. It is simple and sufficient.*

4. Rural Development Programme in the Czech Republic - in general

- degressivity within the LFA is implemented from 300 ha only on company registration number, i.e. large enterprises and agri conglomerates purposefully divide themselves;
- **decisive project measures for the modernization of agricultural businesses in the first six years in the period 2007-2013 were drawn by only 1 665 companies (there was much more applications) from a total of 30,000 farmers in the Czech Republic. Almost 98 % of funds of the whole programming period were drawn by only ca. 5.5 % of agricultural businesses** (source: Minutes of the 18th meeting of the Monitoring committee of the Rural Development Programme);
- **the original maximum project limits in the RDP have changed from CZK 30 million since 2014 to CZK 150 million;**
- **since 2014, only one application for one measure in one round of Modernisation of agricultural holdings in RDP can be submitted per one company registration number; here again comes the purpose-based division of companies and insufficient monitoring of their property interconnections, where agri conglomerate with various company registration numbers submits several applications for a given measure in particular round, while a farmer doing a business with just one registration number can only submit one application for a given measure;**
- within the RDP, large enterprises are favoured by preferential points for example for employees, while in the case of natural person its wife is not included, there is also a purposeful transfer of employees between various company registration numbers to gain preferential points;
- specialized agricultural companies (usually parts of agricultural conglomerates) are afterwards preferred in RDP due to preferential points for example for the intensity of livestock production;

- everything is focused primarily on already existing businesses and farmers starting their businesses are marginal or not preferred at all.

5. RDP - Young beginning farmers

- insufficient support, allocated small amount of money (max. EUR 45,000);
- the requirement for submitting a business plan and meeting a minimum level of production - contradicts the concept of a 'beginning' farmer;
- very strict compliance checks and minimal tolerance in case of exceptional crisis situations;
- up to ca. 25 % of young applicants fail or do not meet the standards.

6. RDP - Grants for processing of agricultural products

- the overwhelming majority of the funds have been used up by large enterprises (EU exception seems to be applied, since also large enterprises with a total of more than 250 employees apparently benefit from these subsidies?) for giant operations;
- lack of support for local processing and regional production.

7. RDP - Grants for machinery

- according to demands of the Agrarian Chamber and the Agricultural Association, preference is given to support the large enterprises, which is justified by a better return on the project.

8. RDP Monitoring Committee

- the RDP MC acts only as an advisory body without possibility to influence anything, most of its members are representatives of ministries together with members of the Agrarian Chamber of the Czech Republic and a specially established Initiative of Agricultural and Food Enterprises (Iniciativa zemědělských a potravinářských podniků), which unites several largest agri conglomerates in the Czech Republic;
- only the annual billing of subsidies is voted on (by simple majority present at the meeting);
- all of the subsidy setting of rules and preferential norms is decided by the Government of the Czech Republic and the Ministry of Agriculture.

9. Statistics of the Institute of Agricultural Economics and Information, FADN outputs

- for example, agricultural income for natural persons is not objectively determined in statistical surveys to perform realistic the actual viability of natural persons as compared to legal entities - the wage costs of the farm owner are not deducted and the final output is thus distorted - apparently purposefully;
- reports on the state of agriculture for 2017 and 2018 are currently not published.

The situation in the Czech Republic in general

- There are almost 30,000 applicants for subsidies in the Czech Republic, 90 % of them are family businesses - small and medium-sized farms, which manage about 40 % of the land.
- **The average farm area is about 133 ha (EU average is 16 ha). However, this figure does not take into account the interconnections of enterprise properties and therefore can be considered very misleading and completely inaccurate for the evaluation of e.g. the final beneficiaries of subsidies in the Czech Republic.**
- The average subsidy for an enterprise in the Czech Republic is approximately EUR 33,000, and within the EU approximately EUR 3,800 (source: European Commission).
- The largest beneficiaries of agricultural subsidies include:
 - holding **Agrofert** of Andrej Babiš,
 - holding **Agro Měříň** - owned by billionaire Gabriel Večeřa, vice-chairman of the Agricultural and Food Enterprises Initiative,
 - group **Spojené farmy** (United Farms) - owned by the 2nd richest Czech Radovan Víték, whose main activity is real estate trade,
 - **Rabbit** group - owned by the Chairman of the Agrarian Chamber and the Initiative of Agricultural and Food Enterprises Zdeněk Jandejsek,
 - British **Spearhead Int.**
 - holding **Úsovsko** - owned by former Minister of Agriculture Jiří Milek and vice-chairman of the Initiative of Agricultural and Food Enterprises,
 - **Rhea Holding** Dešná

Main office of APF CR, 20th March, 2020