



Plenary sitting

B9-0303/2021

2.6.2021

MOTION FOR A RESOLUTION

to wind up the debate on the statements by the Council and the Commission

pursuant to Rule 132(2) of the Rules of Procedure

on the conflict of interest of the Prime Minister of the Czech Republic
(2021/2671(RSP))

Monika Hohlmeier

on behalf of the Committee on Budgetary Control

B9-0303/2021

**European Parliament resolution on the conflict of interest of the Prime Minister of the Czech Republic
(2021/2671(RSP))**

The European Parliament,

- having regard to Articles 310(6) and 325(5) of the Treaty on the Functioning of the European Union (TFEU),
- having regard to Article 61 of Regulation (EU, Euratom) 2018/1046 of the European Parliament and of the Council of 18 July 2018 on the financial rules applicable to the general budget of the Union¹ (the Financial Regulation),
- having regard to the Commission Notice Guidance on the avoidance and management of conflicts of interest under the Financial Regulation²,
- having regard to its previous decisions and resolutions on discharge to the Commission for the years 2014, 2015, 2016, 2017, 2018 and 2019,
- having regard to its resolution of 13 December 2018 on conflicts of interest and the protection of the EU budget in the Czech Republic³ and its resolution of 19 June 2020 on the reopening of the investigation against the Prime Minister of the Czech Republic on the misuse of EU funds and potential conflicts of interest⁴,
- having regard to the fact-finding missions to the Czech Republic undertaken by the Committee on Budgetary Control from 26 to 27 March 2014 and from 26 to 28 February 2020,
- having regard to the final report of November 2019 on the audit of the functioning of the management and control systems in place to avoid conflict of interest in Czechia, carried out by the Commission's Directorate-Generals for Regional and Urban Policy (REGIO) and for Employment, Inclusion and Social Affairs (EMPL), which was published on 23 April 2021,
- having regard to Regulation (EU, Euratom) 2020/2092 of the European Parliament and of the Council of 16 December 2020 on a general regime of conditionality for the protection of the Union budget⁵,
- having regard to the Commission's 2020 Rule of Law report, and in particular the Country Chapter on the rule of law situation in Czechia (SWD(2020)0302),

¹ OJ L 193, 30.7.2018, p. 1.

² OJ C 121, 9.4.2021, p. 1.

³ OJ C 388, 13.11.2020, p. 157.

⁴ Texts adopted, P9_TA(2020)0164.

⁵ OJ L 433I, 22.12.2020, p. 1.

- having regard to the Group of States against Corruption (GRECO) Fourth Evaluation Round Interim Compliance Report on the Czech Republic, adopted by GRECO at its 84th plenary meeting in December 2019,
 - having regard to the Country Report Czechia 2020 of 26 February 2020 (SWD(2020)0502) accompanying the Commission communication on the 2020 European Semester: Assessment of progress on structural reforms, prevention and correction of macroeconomic imbalances, and results of in-depth reviews under Regulation (EU) No 1176/2011 (COM(2020)0150),
 - having regard to Rule 132(2) of its Rules of Procedure,
 - having regard to the motion for a resolution of the Committee on Budgetary Control,
- A. whereas Articles 61 and 63 of the Financial Regulation, Article 24 of Directive 2014/24/EU on public procurement rules on avoiding conflicts of interest, Articles 144 and 145 of the Common Provisions Regulation for shared management funds, Regulation (EU) No 1303/2013, the case-law of the Court of Justice and Czech Act No 159/2006 on conflicts of interest as amended on 29 November 2016 set specific obligations and provide tools to effectively address situations of conflict of interest;
 - B. whereas Agrofert is a conglomerate founded and established by the Czech Prime Minister Andrej Babiš and consisting of over 230 companies; whereas Prime Minister Babiš has been revealed to be one of the beneficial owners of Agrofert, the controlling company of the Agrofert group, including among others a number of important Czech media outlets, through trust funds AB Private Trust I and AB Private Trust II, of which he is also the beneficial owner;
 - C. whereas in January and February 2019 a coordinated, comprehensive audit was carried out by several Commission services (DG REGIO/DG EMPL, DG AGRI (associated DG)) on the application of EU and national law; whereas an ongoing AGRI audit is examining alleged conflicts of interest in the implementation of the common agricultural policy in Czechia;
 - D. whereas in April 2021 the Commission published a duly redacted version of the final audit report on the legal implementation of ESI Funds as verified by DG EMPL and DG REGIO; whereas the second audit report by DG AGRI has still not been published;
 - E. whereas the published audit report highlights serious shortcomings in the management and control system⁶ in the Czech Republic and deficiencies to be addressed by financial corrections;
 - F. whereas the DG REGIO audit report identified three grants under the European Regional Development Fund that breached Czech law and the EU's Common

⁶ The final audit report found serious deficiencies in the design of the control system to avoid conflict of interest, as evidenced by the seven breaches of Article 4c of the Czech law on conflicts of interest and the high error rate of 96.7 % in the sample audited.

Provisions Regulation;

- G. whereas the criminal investigation into Prime Minister Babiš, originated by the European Anti-Fraud Office (OLAF) report on the irregular use of EU subsidies intended for small businesses, which was initially closed and then re-opened and which was the subject of Parliament's resolution of 19 June 2020, is still ongoing;
 - H. whereas after one year the Commission has still not provided a comprehensive reply to Parliament's request to quantify the total amount of subsidies received by entities of the Agrofert group;
 - I. whereas after Parliament's resolutions of December 2018 and June 2020 on Prime Minister Babiš's conflict of interest and more than two years after the start of the Commission's audits, the situation around the conflict of interest of Prime Minister Babiš remains unresolved;
 - J. whereas sound financial management can only be ensured by Member States if public authorities act in accordance with the law, both national and EU, and if criminal misconduct originated by improperly handled cases of conflict of interest is effectively pursued by investigative and prosecution services;
 - K. whereas under Article 3(b) of Regulation (EU, Euratom) 2020/2092 failure to ensure the absence of conflicts of interest may be indicative of breaches of the principles of the rule of law;
 - L. whereas having in place detailed policies and rules on avoiding and managing conflicts and perceived conflicts of interest is an essential part of good governance and sound financial management;
 - M. whereas the mission of the Committee on Budgetary Control in February 2020 revealed concerning limitations in the legal framework that impede an efficient and effective working of the national Supreme Audit Office by preventing it from checking the regularity and performance of public spending at regional and local level or performing on-the-spot checks of final beneficiaries;
1. Welcomes the publication of the final audit report by DG REGIO and DG EMPL on the functioning of the management and control systems in place to avoid conflicts of interest in Czechia, following the repeated calls by Parliament, which confirms the current and ongoing conflict of interest of Prime Minister Babiš in relation to the Agrofert conglomerate, thereby confirming Parliament's position as expressed in previous resolutions and discharge reports;
 2. Welcomes the fact that DG REGIO and DG EMPL acknowledge the important public interest in transparency and information on this exceptional situation as reasonable grounds for publication; regrets nonetheless that findings were only published in April 2021 despite the final audit report having been sent to the Czech authorities in November 2019 and the Commission having received replies in May 2020; urges DG AGRI to accelerate its audit procedure and follow-up, and to publish its final audit report without undue delay; requests that particular attention be given to payments made to companies directly and indirectly owned by Prime Minister Babiš or other members

of the Czech Government;

3. Considers it regrettable that audit and contradictory procedures, as well as procedures on the application of financial correction, currently stretch out over several years; urges the Commission to revise the rules of audit and financial correction procedures to allow for more timely conclusions and recovery of unduly paid out EU funds; reiterates its call on the Commission to publish all documents related to the case of the Czech Prime Minister's conflict of interest;
4. Is deeply concerned by the findings of the audit report showing that:
 - ESI Funds were unduly granted to entities under the Agrofert group,
 - The Prime Minister is the beneficial owner of the Agrofert Holding and since February 2017 of the Trust Funds AB Private Trust I and AB Private Trust II, which he controls, keeping a direct economic interest in the success of Agrofert,
 - Prime Minister Babiš was actively involved in the implementation of the EU budget in the Czech Republic, and was in a position to exercise influence over bodies such as the ESIF Council and the National Coordination Authority, while at the same time being involved in decisions affecting the Agrofert group,
 - The identified projects were awarded in breach of Article 4c of the revised Czech Conflict of Interest Act, as well as the EU Financial Regulation,
 - During the audited period the impartial and objective exercise of Mr Babiš's functions as Prime Minister, Chairman of the ESIF Council, Minister for Finance and Deputy Prime Minister for the Economy was compromised;
5. Insists that a conflict of interest at the highest level of government of a Member State, now confirmed with the publication on 23 April 2021 of the final Commission report on the audit of the functioning of the management and control systems in place to avoid conflict of interest in the Czech Republic, cannot be tolerated and must be fully addressed by:
 - a) taking measures that will ensure that Prime Minister Babiš no longer has any economic interest or other interests falling within the scope of Article 61 of the EU Financial Regulation or Czech Conflict of Interest Act in relation to Agrofert group, or
 - b) ensuring that the business entities under Prime Minister Babiš's control cease to receive any funding from EU funds, public subsidies or funding distributed by all levels of public authorities across the EU, or
 - c) fully abstaining from participation in any EU decision-making process which might directly or indirectly concern the interests of the Agrofert group; stresses, however, that in the light of the functions and powers of the Prime Minister and members of his government, it seems doubtful that such a measure could adequately address the conflict of interest in practice, if the persons in question continue to exercise their public functions, and that resigning from public duty therefore constitutes a more adequate means to fully address the conflict of interest;
6. Regrets that the audit findings confirm the existence of serious systemic deficiencies in the functioning of the management and control system and in particular in the detection

of conflicts of interest; deplores that the ineffectiveness of cross-checks and opaque processes and structures hamper the reliability of any prevention and detection of conflicts of interest in the Czech Republic;

7. Is deeply concerned that even after the entry into force of Articles 61 and 63 of the Financial Regulation in 2018, the deficiency of the management and control systems – as regards the avoidance of conflict of interest – continues to exist and that little and insufficient action is taken by the Czech authorities to ensure compliance;
8. Deplores the reported attempts by the Czech Government to legalise Prime Minister Babiš's conflict of interest via a law, proposed at the beginning of the COVID crisis in March 2020 rather than resolving the conflict of interest itself;
9. Expects the national authorities to implement all recommendations requested, aiming, among other things, at improving the management and control system and verifying all grants awarded after 9 February 2017 that may violate the Conflict of Interest Act;
10. Asks the Commission to inform Parliament about the implementation of the audit's recommendations by the Czech Government, in particular concerning the scrutiny of all funds awarded to the Agrofert group that were not part of the audit sample;
11. Is deeply concerned by the weaknesses of the overall regulatory framework, which make it difficult to identify systematically the beneficial owners of entities that receive EU funds; recalls that the Commission has confirmed having made payments under the CAP to companies belonging to the Agrofert group, and also to other companies whose beneficial owner is Prime Minister Babiš in several other Member States, but is unable to exhaustively identify all economic operators who benefited; insists that the Commission is expected to provide the discharge authority with a complete and reliable overview of all payments made to companies of the Agrofert group and to companies with the same beneficial owner in all Member States for the financial years 2018 and 2019; calls on the Commission to also include information for the year 2020; considers that this shows the urgent need for the Commission, in cooperation with national agencies, to come up with a standardised and publicly accessible format to disclose the end beneficiaries of CAP disbursements;
12. Notes the recent correction in the records of the beneficial ownership register of companies (Transparenzregister), which now lists Prime Minister Babiš as a beneficiary and shareholder of an Agrofert subsidiary in Germany; reiterates that Prime Minister Babiš is listed as one of six active persons with significant influence or control over the trustees of a trust related to the Agrofert subsidiary named GreenChem Solutions Ltd. in the UK; calls on all Member States in which subsidiaries of Agrofert are active to review the beneficial ownership register in this regard;
13. Regrets that entities of the Agrofert group continue to receive payments under the first pillar of the CAP; recalls that the Czech Conflict of Interest Act prohibits providing any subsidy, including CAP direct payments, to a company in which a public official or an entity controlled by a public official owns a 25 % or greater share; stresses the serious doubts about the independence of the Czech authorities that decide on the eligibility and control of direct agricultural payments; identifies risk indicators in the fact that the companies which are a part of the Agrofert group continue to receive these funds in

violation of the Czech Conflict of Interest Act;

14. Notes that the existing Czech legislation on conflicts of interest in place since 2006 had severe gaps and significant lacks in the implementation, which allowed the establishment and growth of deep oligarchic structures; regrets that the mission by Parliament's Committee on Budgetary Control in February 2020 discovered severe deficiencies in the systems for avoiding, detecting and resolving conflicts of interest in Czechia;
15. Is astonished by the seemingly different approaches to similar violations of the Czech Conflict of Interest Act and Article 61 of the Financial Regulation by DGs REGIO and EMPL and DG AGRI; while DGs REGIO and EMPL consider that a breach of the Czech Conflict of Interest Act constitutes a violation of Article 61(2) of the Financial Regulation, DG AGRI does not seem to apply the same logic; points out, furthermore, that eligibility checks of entitlement-based payments (direct payments) also include an element of decision-making in the verification; emphasises that this verification decision may be influenced by a conflict of interest; calls on the Commission to provide Parliament with a detailed legal explanation of the different impact of violations of national conflict of interest legislation and Article 61 of the Financial Regulation, and to include a detailed explanation on how the Commission ensures that the verification decisions for entitlement-based payment were not impacted by a conflict of interest;
16. Is astonished by the Commission's evaluation that the Czech Minister of Agriculture is not in a conflict of interest situation despite his family members receiving substantial amounts of agriculture subsidies while he is in charge of the programming and implementation of agricultural programmes under the CAP; asks the Commission to share this evaluation with Parliament; calls on the Commission to ensure the uniform interpretation and application of Article 61 of the Financial Regulation;
17. Asks the Commission to assess the effectiveness of Article 61 of the Financial Regulation in successfully preventing or revealing and resolving cases of conflict of interest when they occur, and, as appropriate, make proposals in the context of the next revision of the Financial Regulation to further strengthen the rules governing conflicts of interest, paying special regard to definitions, scope (who is covered), the identification of sensitive functions or activities at risk, the 'situations which may objectively be perceived as a conflict of interest' and the obligations in cases of conflict of interest; recalls that Article 61 of the Financial Regulation does not differentiate between different types of payments from the EU budget and that the mere possibility of using a position stemming from the conflict of interest is a sufficient indicator;
18. Is concerned about the narrow interpretation of Article 61 of the Financial Regulation by the Czech Agriculture Paying Agency (the State Agricultural Intervention Fund), which considers it non-applicable for members of the government; reiterates Parliament's concerns regarding a number of shortcomings identified in the management of the Czech Agriculture Paying Agency, especially the Supervisory Board's lack of independence, as stressed in Parliament's report on its mission to the Czech Republic in February 2020⁷; asks the Commission to open an audit procedure to

⁷ Report on the fact-finding mission of the Budgetary Control Committee (CONT) to the Czech Republic, 26-28

ensure the agency's sound management;

19. Considers the Commission's guidance on the avoidance and management of conflicts of interest under the Financial Regulation an important tool to further strengthen the measures to protect the EU budget against fraud and irregularities; asks the Commission to raise awareness and promote a uniform interpretation and application of the rules on avoidance of conflicts of interest, including direct payments under the first pillar of the CAP, and to monitor the independent functioning of Paying Agencies and audit structures in this regard; calls on the Commission to provide concerned Member States' authorities with further practical examples, suggestions and recommendations to assist them in the avoidance of conflicts of interest;
20. Reiterates that Czech citizens and taxpayers should not pay or suffer any consequences deriving from the conflict of interest of Prime Minister Babiš, and that companies belonging to the Agrofert group should repay all subsidies unlawfully received from either the EU or Czech national budget; urges the Czech authorities to reclaim all subsidies that were unduly paid to any entity of the Agrofert group;
21. Insists that further disbursement of funds, either from the EU or Czech national budget, to the companies ultimately controlled by Prime Minister Babiš or members of the Czech Government must be halted until the cases of conflict of interest are fully resolved;
22. Urges the Czech Government to improve the overall fairness of EU subsidies distribution and set up a system that will guarantee full and complete transparency in the distribution of EU funds; notes with concern that according to information available to the Commission, there have been no decisions changing the Czech direct payments system since it was set up in 2014 and to create an effective mechanism against conflicts of interest;
23. Recalls that as part of the 'Stork Nest' project Agrofert artificially created a medium-sized company, which remained under Agrofert's control, in order to obtain funds intended for small and medium-sized businesses, amounting to a total of around EUR 2 million; finds it unacceptable that after serious irregularities were concluded in the 'Stork Nest' investigations, Czech authorities withdrew the project from EU funding with the goal of financing it from the national budget, shifting the financial burden to Czech taxpayers; considers this to be a confirmation that the Czech authorities failed to convince the Commission of the legality and regularity of these payments; regrets that this means that OLAF no longer has the right to investigate and only the national prosecutor is able to press charges; is seriously concerned that the Czech prosecutor temporarily closed the proceedings and later reopened the case; calls on the Czech authorities to inform the EU institutions of the outcome of the 'Stork Nest' investigation as soon as possible;
24. Is deeply concerned by the political pressure against independent media and independent institutions in the Czech Republic, which was recently highlighted by the resignation of the Prosecutor General, who stated pressure from the Minister of Justice

February 2020.

as the reason for his resignation;

25. Asks the Commission to look into vulnerabilities of the Czech judicial system and to launch the necessary actions; asks the Commission to carefully examine and analyse whether any other cases involving members of the Czech Government have been withdrawn or prematurely closed potentially following pressure; calls on the Commission to keep Parliament informed without undue delay about its findings and conclusions;
26. Is concerned by reports that the Czech Government already paid over CZK 150 million to Agrofert from the Czech national budget during the audited period⁸; as this may constitute illegal State aid and compromise fair competition in the EU single market, as well as its integrity, asks the Commission to fully investigate these cases of funding from the national budget and to inform Parliament about the investigation's conclusions and the measures taken;
27. Condemns the practice of withdrawing projects from EU funding in order to finance them from the national budget following the detection of irregularities by the Commission or the European Court of Auditors; asks the Commission to closely monitor and conduct a careful legal analysis in these cases, paying particular attention to potential violations of State aid rules;
28. Deplores the public comments made by Prime Minister Babiš in reaction to the publication of the final audit report of DGs REGIO and EMPL⁹; considers it unacceptable that Commission auditors are called 'mafia' by a member of the European Council;
29. Condemns Prime Minister Babiš's defamatory remarks against news organisations reporting on his conflict of interest and the operations of his businesses; points in this regard to his negative comments on the Deník Referendum in the Czech Parliament in November 2020;
30. Is deeply concerned by the low level of compliance with the GRECO recommendations contained in the Fourth Round Evaluation Report – only one of the fourteen recommendations has been implemented satisfactorily, seven recommendations have been partly implemented and the remaining six recommendations have not been implemented at all;
31. Urges all Member States to prohibit cases of three-digit million euro payments of subsidies to individual natural persons under the new multiannual financial framework (MFF) and to move towards Parliament's position of guaranteeing full transparency and the possibility to aggregate payments as well as digital monitoring and audit procedures across Member States' borders in programmes under shared management;
32. Calls on the Council in the ongoing negotiations on the CAP Regulation to pay due

⁸ iROZHLAS, *Penam, Lovochemie, Cerea. Česko vyplatilo Agrofertu podle Bruselu na dotacích neoprávněně 155 milionů*, 27 April 2021.

⁹ Euractiv, *Czech PM slams EU Commission auditors as 'mafia'*, 26 April 2021.

consideration to budgetary effectiveness and fairer and more transparent distribution of direct payments, to move towards Parliament's position of establishing specific caps per natural person for both pillars of the CAP, as well as degressivity, mandatory capping and redistributive payments to ensure a positive perception of the CAP overall by EU citizens; emphasises that negotiations in the Council must not be impacted by conflicts of interest and that no minister, member or representative of a national government must participate in negotiations while affected by a conflict of interest; finds it unacceptable that Prime Minister Babiš, while being the beneficial owner of the Agrofert group, took part in the negotiations on the CAP and fought against the capping of subsidies; strongly underlines that the caps per natural person for the first and second pillar of the CAP must be uniformly applicable, including to members of national governments in order to prevent them from negotiating in the Council to their own benefit;

33. Strongly disapproves of oligarchic structures drawing on EU agricultural and cohesion funds, whereby a small minority of beneficiaries receive the vast majority of EU funds, and calls on the Commission, the Council and the European Council to prevent the fostering of such structures, which are decreasing the competitiveness of small and medium-sized farmers and family farms, which should be the core beneficiaries of the CAP;
34. Stresses its grave concern over the fact that Prime Minister Babiš is in a conflict of interest while participating in decision-making on the alignment of the CAP with the overall European climate policy goals, as the business interests of the Agrofert group might override the public interest in supporting more sustainable agriculture and limiting the negative impacts of climate change;
35. Considers that the lack of action by the Czech Government in tackling the conflicts of interest of Prime Minister Babiš has a negative impact on the functioning of the Czech State authorities, including the law-enforcement authorities and management and control systems, and on compliance with EU legislation;
36. Calls on the Commission to assess the above situation, together with Prime Minister Babiš's influence on Czech media and on the judicial system, with a view to identifying breaches of rule of law and, if confirmed and on the ground of its findings, activate in due time the conditionality mechanism for the protection of the Union's budget;
37. Is still concerned about the increasing concentration of media ownership in the hands of a few oligarchs¹⁰;
38. Notes that there are ongoing investigations and audits at both national and European level into potential conflicts of interest and the use of EU funds; is worried about concerns expressed in the Commission's 2020 rule of law report that high-level corruption cases are not pursued sufficiently and some gaps have been identified in the integrity frameworks applicable to members of parliament;
39. Calls on the Council and the European Council to take all necessary and appropriate

¹⁰ Reporters Without Borders, *Czech Republic*, <https://rsf.org/en/czech-republic> [accessed 2.6.2021].

measures to prevent conflicts of interest in line with Article 61(1) of the Financial Regulation; expresses concerns that the Czech Prime Minister has been, and is still, actively part of negotiations on the EU budget and EU programmes while being in a conflict of interest; asks the Council and the European Council to explain to Parliament how they plan to take into account and act with respect to Prime Minister Babiš's participation in CAP- and EU budget-related decision-making upon the conclusion in the Commission's audit reports;

40. Considers that the case of the conflict of interest of Prime Minister Babiš also confirms an urgent need to establish an interoperable digital reporting and monitoring system for EU finances; deeply regrets that the co-legislators did not reach a satisfactory agreement on provisions establishing the interoperability of the IT systems, which would allow standardised and uniform reporting and foster cooperation; calls for an effort from all the relevant actors to strive for equally effective solutions for the sake of improved accountability;
41. Calls on the Commission to ensure that the provisions of the Financial Regulation on conflict of interest, including in the case of the conflict of interest of Prime Minister Babiš, are fully applied in the implementation of the 2021-2027 MFF and Next Generation EU so that no payments are being made to companies directly or indirectly owned by Prime Minister Babiš¹¹; calls for further scrutiny of any potential conflict of interest as well as other rule of law elements in the national recovery plans;
42. Strongly emphasises that Members of the European Parliament must be able to conduct their work free from threats and that national governments are responsible for ensuring their protection in their home countries;
43. Instructs its President to forward this resolution to the Commission, the Council and the Government and both chambers of the Parliament of the Czech Republic.

¹¹ List of companies and projects approved by the Czech Government to put forward for funding from the Just Transition Fund, includes more than CZK 6 billion for Lovochemie, a company that is a part of the Agrofert group, previously run by the current Czech Minister for the Environment, Richard Brabec.