



Plenary sitting

09.03.2020

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 reopening of the investigation against the Prime Minister of the Czech
Republic on the misuse of EU funds and potential conflicts of interest

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European Parliament resolution on the reopening of the investigation against the Prime Minister of the Czech Republic on the misuse of EU funds and potential conflicts of interest

- having regard to Article 13 (2) and Article 17 (3) of the Treaty on the Functioning of the European Union (TFEU),
- having regard to its previous decisions and resolutions on discharge to the Commission¹ for the years 2014, 2015, 2016 and 2017;
- having regard to fact that the European-Anti Fraud Office (OLAF) conducted administrative investigations [...] into the project in the Czech Republic known as ‘Stork Nest’ and found serious irregularities’;
- having regard to the fact-finding mission to the Czech Republic of the Budgetary Control Committee which took place between 26th and 27th march 2014;
- having regard to its own resolution of 13 November 2018 on conflicts of interest and the protection of the EU budget in the Czech Republic (2018/2975),
- having regard to Czech Act No 159/2006 of 16 March 2006 on conflicts of interest, Article 4(c) of which entered into force in February 2017,
- having regard to the entry into force of the new Financial Regulation on 2 August 2018, and in particular to Article 61 thereof,
- having regard to Articles 144 and 145 of the Regulation No 1303/2013,
- having regard to the questions and complaint to the Commission sent to the European Commission regarding the potential conflict of interest in the Czech Republic²,
- having regard to the opinion of the Commission’s Legal Service of 19 November 2018 entitled ‘Impact of Article 61 of the new Financial Regulation (conflict of interests) on payments from the European Structural and Investment (ESI) Funds’,
- having regard to the press conference of the prosecutor general of 4.12.2019 regarding the reopening of the investigation against the Prime Minister of the Czech Republic on the misuse of EU funds,
- having regard to the plenary debate of the European Parliament of 18.12.2019 on “Conflict of interest and corruption affecting the protection of EU’s financial interests in Member States”,
- having regard to the plenary debate of the European Parliament of 15.01.2020 on “the reopening of the prosecution against the Prime Minister of the Czech Republic on the misuse of EU funds and potential conflicts of interest”,

¹ OJ L 246, 14.9.2016, p. 1, OJ L 252, 29.9.2017, p. 1, and OJ L 248, 3.10.2018, p. 1.

² https://www.europarl.europa.eu/doceo/document/P-8-2019-001656_EN.html

- having regard to the fact-finding mission to the Czech Republic of the Budgetary Control Committee which took place between 26th and 28th February 2020,
 - having regard to Rule 132(2) of its Rules of Procedure,
 - having regard to decision Pl. ÚS 4/17 of the Czech Constitutional Court of 18 February 2020,
- A. whereas the criminal investigation against the Czech Prime-Minister that followed OLAF's report on irregular use of EU's subsidies intended for small businesses, which was suspended two years later, has recently been reopened by the Chief State Prosecutor; reminds that in the so called Stork Nest project Agrofert artificially created a medium size company, still controlled by Agrofert, in order to obtain funds intended to for small and medium size business for a total of around 2 million euro;
 - B. whereas the dropping of the criminal investigation was announced by the Czech general prosecutor as "unlawful and premature", since EU law had not been taken into account, adding also that the process of allocating subsidies had lacked sufficient checks;
 - C. whereas Article 61(1) of the Financial Regulation (in conjunction with Article 61(3)) lays down:
 - (i) a negative obligation on financial actors to prevent situations of conflict of interest in relation to the EU budget;
 - (ii) a positive obligation on financial actors to take appropriate measures to prevent conflicts of interest from arising in the functions under their responsibility and to address situations which may objectively be perceived as a conflict of interest ;
 - D. whereas Article 63 of the Financial Regulation requires the Member States to put in place management and control systems that, as required by Article 36(3), should be capable of avoiding conflicts of interests;
 - E. whereas the Czech Act No. 159/2006 on conflict of interest amended with an expanded list of forbidden activities; as of February 2017, among other provisions the Act lays down that the provisions preventing certain companies from being involved in public procurement even as a subcontractor or receiving grants and aims at avoiding conflicts of interests in all its forms;
 - F. whereas public procurement rules oblige Member States to avoid conflicts of interest (Article 24 of Directive 2014/24/EU), including direct or indirect personal interests, and rules are in place to address situations perceived as conflicts of interest or specific obligations in shared management (e.g. Regulation (EU) No 1303/2013);
 - G. whereas according to the case law of the Court of Justice of the European Union³ 'a conflict of interest constitutes, objectively and in itself, a serious irregularity without

there being any need to qualify it by having regard to the intentions of the parties concerned and whether they were acting in good or bad faith’;

- H. whereas the Commission is obliged to suspend EU fund payments in cases where a serious deficiency in the functioning of the management and control systems exist and where undiscovered, unreported and uncorrected serious irregularities related to a conflict of interest have come to light;
- I. whereas Agrofert is a conglomerate existing of over 230 companies, established by the Mr. Babis and has over 34,000 employees (2017); whereas Mr Babiš has been revealed to be the beneficial owner of Agrofert, the controlling company of the Agrofert Group, including among others a number of important Czech media outlets, through trust funds AB I and AB II of which he is the founder and, at the same time, the sole beneficiary; pointing out the fact that whenever he decides to dissolve these trust funds he re-gains full ownership of all assets they possess;
- J. whereas in January-February 2019, a coordinated, comprehensive audit was carried out by several Commission services (DG REGIO/DG EMPL, DG AGRI associated) regarding the application of Union and national law, and an ongoing AGRI audit is also examining alleged conflicts of interest regarding the Czech minister of agriculture;
- K. whereas in November 2019 the Commission sent the final audit report by DG REGIO and DG EMPL to the Czech Authorities, following up on allegations of conflict of interest in the Czech Republic based on Article 61 of the Financial Regulations, which was leaked to the Czech media;
- L. whereas the Budgetary Control Committee held an in camera meeting with Commissioner Hahn on 16th December 2019;
- M. whereas Commissioner Hahn informed the Budgetary Control Committee that the Commission will only make its audit’s conclusions public once all evidence has been duly considered and thoroughly analysed; whereas the Czech authorities have submitted their replies to the final audit report by DG REGIO on 29th May 2020;
- N. whereas the Commission audit is still ongoing and, as a precautionary measure and until the situation is clarified, no payments from the Union budget under the ESI Funds are being made to companies directly or indirectly owned by PM Babiš that could potentially be affected by the alleged conflict of interest;
- O. whereas in relation to the Rural Development Fund, the Commission is not reimbursing to the Czech authorities the amounts related to Agrofert Group projects that could potentially be affected by the alleged conflict of interest;
- P. whereas the Czech Parliament has no overview on possible public tenders, Czech national level subsidies or state-supported public investments Agrofert Group might still continue to profit from;
- Q. whereas the Agrofert Group owns two of the largest Czech daily newspapers, Mlada fronta Dnes and Lidove Noviny and controls the Ocko television station as well as Impuls and RockZone radio stations; whereas according to the report by European Federation of Journalists, PM Babiš is de facto owner of 30 % of private media in Czech

Republic⁴;

- R. whereas the revenues of the Agrofert Group have grown significantly during the time Mr. Babis has served in public office, while at the same time the Agrofert group benefited from EU agricultural subsidies amounting a total of CZK 970 414 000 in 2016, CZK 1 048 685 000 in 2017 and CZK 973 284 000 in 2018; in the Czech Republic alone; whereas the Agrofert Group allegedly received subsidies from EU Cohesion Funds amounting to CZK 427 385 000 for the period 2014-2020 in the Czech Republic; whereas the Agrofert Group most likely has received additional subsidies in other Member States, such as Slovakia and Germany;
- S. Whereas the Constitutional Court of the Czech Republic in its judgment Pl. ÚS 4/17 of February 2020 dismissed legal action brought forward by the President of the Czech Republic and by Members of the Parliament of the Czech Republic for the cancellation of the Czech law which defines conflict of interest of public officials; whereas the Constitutional Court clarified in the same judgement that elections are not for the seizing of control over the state with the purpose to use or even abuse its capacities and resources by a winner by any proper means;
1. Welcomes the re-opened criminal investigation against the Czech Prime Minister into so-called Stork Nest project; trusts the national judiciary system will proceed with this process independently and free of any possible political influence;
 2. Condemns any potential situations of conflicts of interests that could compromise the implementation of the EU budget and undermine EU citizens' trust in the proper management of EU taxpayers' money;
 3. Requests that the Commission, as the Guardian of the Treaties, fights all forms of conflict of interests and evaluates the preventive measures taken by the Member States to avoid them;
 4. Calls on the Commission to set up a control mechanism to address the issue of conflicts of interests in the Member States and to set active avoidance of conflicts of interest including the identification of final beneficiaries of the EU subsidies as one of its priorities
 5. Calls on the Commission to ensure a policy of zero tolerance towards conflicts of interests and ensure a swift recovery of potentially irregularly paid out subsidies whilst respecting rule of law and procedural requirements and to intervene decisively, especially when national authorities fail to act to prevent conflicts of interests of their highest representatives;
 6. Stresses that national legislation on the prevention of conflicts of interests must be compatible with the letter and the spirit of the new Financial Regulation, hereby calls on the Commission to propose common guidelines to help the Member States in the avoidance of conflicts of interest of high-profile politicians;

⁴ <https://europeanjournalists.org/wp-content/uploads/2019/10/Czech-Republic-fact-finding-mission.pdf>

7. Urges the Council and European Council to adopt common ethical standards on all issues related to conflicts of interests and to strive for a common understanding in all Member States;
8. Calls on the Commission, in the case of non-compliance with the rules, to take appropriate measures to protect the Union budget, including corrective actions for the past to recover all funds that have been illegally or irregularly paid out, where this is provided for;
9. Calls on all Member States to step up their efforts in order to increase budgetary transparency, by ensuring that relevant data concerning public procurement procedures and the granting of publicly funded contracts is easily and freely accessible to the general public;
10. Is concerned about reports from different parts of the Union of the increasing political influence of politicians with vested interests, close to or in government, on law-making and the use of public money, with the aim of potentially serving the self-interest of specific individuals rather than the general public;
11. Deplores that the Czech Prime Minister was and continues to be actively involved in the implementation of the EU Budget in the Czech Republic in his position as Prime Minister (and formerly the Chairman of the ESIF Council) while he still controls the Agrofert Company as a founder of two Trust Funds and the sole beneficiary, and therefore calling into question the impartial and objective exercise of his functions in contravention of Article 61(1) of the Financial Regulation; is deeply concerned about recent media reports⁵ that the Prime Minister continues to exert control over business decisions taken at Agrofert;
12. Insists that a conflict of interests at the highest level of government of a member state, if confirmed, cannot be tolerated and has to be resolved by the person(s) concerned either by:
 - 1) taking measures that ensure that this person no longer has any economic interest or other interests falling within the scope of Art. 61 of the Financial Regulation in relation to a business entity,
 - 2) the business entities under their control ceasing to receive any funding from EU funds, any public subsidies or funding distributed by the national government,
 - 3) abstention from participation in decisions which concern their interests; however with the view of functions and powers of the Prime Minister or members of government it seems doubtful that such measure could in practice adequately address the conflict of interests if the persons in question continue to exercise their public function, thus resigning from public duty constitutes a more adequate option to address the conflict of

⁵ <https://www.seznamzpravy.cz/clanek/babis-mu-zadal-praci-pro-agrofert-ja-jen-splnil-pokyn-rika-exnamestek-90945>; <https://www.seznamzpravy.cz/clanek/soukromy-obchod-agrofertu-na-stole-premiera-poslete-odpoved-napsal-babis-90494>; <https://www.seznamzpravy.cz/clanek/dukazy-z-e-mailu-babis-kvuli-agrofertu-ukoluje-vladou-placene-experty-90815>

interests..

13. Calls on the Commission to thoroughly supervise the process in the Czech Republic, especially EU Fund payments being made to companies directly and indirectly owned by the Prime Minister or any other member of the government involved in budget implementation;
14. Calls on the Commission to assess, without undue delay, whether cases in which companies belonging to the Agrofert Group continue to receive subsidies from the national budget comply with state aid rules; notes the potential risk of financial damage that these cases may pose and calls on the national authorities to assess these situations; considers that Czech and Union's taxpayers should be duly informed of such a situation;
15. Is deeply concerned over reports⁶ about the 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 joining their operations in order to present themselves as a large company, thus winning the public tenders;
16. Deplores reports that the auditors detected serious deficiencies in the functioning of the management and control systems in the area of regional and cohesion funds in the Czech Republic, and therefore suggested a financial correction of almost 20 %; calls on the Commission to critically assess whether these cases represent cases of systemic misuse of EU funds;
17. Is concerned about the financial loss caused by deficiencies in national paying agencies and controlling bodies; calls in this light on the Council to urgently adopt the proposal for a Regulation on the protection of the Union's budget in the case of generalized deficiencies as regards the rule of law in Member States;
18. Is deeply concerned about the legal framework in the Czech Republic denying the national Supreme Audit Institution the right to check for regularity and performance of public spending at a regional and local level thus preventing them from having any insight into the beneficial owners of the complex company structures; deplores reports⁷ that the Supreme Audit Office does not perform systematic on-the-spot checks of final beneficiaries; is worried about the derogatory remarks made by the Czech prime Minister relating to the work of the Czech Supreme Audit Office;
19. Stresses the fact that a politically imbalanced composition of the Supervisory Board of the State Agricultural Intervention Fund (SZIF) bears the risk of political influence, thereby undermining the ability to perform independent audits;
20. Is concerned about reports by civil servants⁸, that they received instructions and were pressurised not to check on potential conflict of interests allegations related to the

⁶ Information received from the Association of Private Farming in the Czech Republic during the fact-finding mission.

⁷ Information received from the Supreme Audit Institution of the Czech Republic during the fact-finding mission.

⁸ Reports by civil servants and representatives of the NGOs, brought to the attention of members of the fact finding mission to the Czech Republic.

Agrofert Group and were allegedly instructed to assess commercial offers received by Agrofert; is deeply worried by reports that civil servants were facing negative repercussions, such as dismissals under the pretext of systemisation upon refusal to follow such orders; stresses that these measures call into question the impartiality of the state administration and the independent exercise of public duties;

21. Regrets indications of systemic weaknesses in the detection of conflicts of interests; deplores that there are no cross checks, and that divergent responsibilities foster opaque structures that hamper the effective prevention and detection of conflicts of interest in Czech Republic; recalls that a positivist approach whereby public officials are required to submit self-declarations of absence of conflict of interest is not sufficient for effectively preventing situations of conflict of interest; calls on the Czech authorities to address these systemic shortcomings without any delay, in particular, by requiring a verifiable declaration of conflict of interests; whereby public officials provide a list of their respective financial interests;
22. Regrets that EU funds affected by financial corrections related to irregularities can be re-used again without any further consequences or restrictions; is of the opinion that such a system threatens the EU's financial interests; therefore calls on the Commission to closely monitor the re-use of EU Funds and to consider developing a system whereby corrections are also accompanied by restrictions on their further use;
23. Takes note of the Commission decision from 28 November 2019 to suspend the relevant amounts included by the Czech authorities in their interim declarations of expenditure for Q4-2018 and Q1-2019 for the Czech Rural Development Programme;
24. Calls on the Czech authorities to ensure the fair and balanced distribution of EU funds, so that European taxpayers' money benefits the vast majority of the population, both economically and socially;
25. Is concerned about the inadequate implementation of the Directives (EU) 2015/849 and 2018/843 on preventing the use of the financial system for money laundering or terrorist financing (4th and 5th Anti-Money Laundering Directives); highlights the obligation to fully and correctly transpose both directives and to ensure that all provisions, including those on beneficial ownership transparency are fully implemented;
26. Urges the Czech Financial Intelligence and Analysis Unit to take a more proactive approach in combatting tax crimes, fraud and corruption as well as to ensure effective checks of beneficial owners by the obliged entities under the AML rules;
27. Regrets that the authorisation, distribution and auditing of the EU funds in shared management are complex and opaque processes where only the Member States have full access to the data, thus the Commission is unable to provide in a timely manner a comprehensive overview to Parliament when asked for information on payments to certain beneficiaries in several Member States; emphasises that this severely hampers the Parliament's budgetary control committee's and the European Court of Auditors' efficiency and ability to carry out their functions as control entities;
28. Calls on the Commission, in full acceptance of the principle of shared management, to establish uniform and standardised means for Member States to report information on the final beneficiaries of EU funds; emphasises that information on final beneficiaries

should include specification on the beneficial owners of companies (natural and legal persons); propose a regulation for the establishment of an IT system that allows for uniform and standardised reporting in real-time by the Member States' authorities ensuring interoperability with the systems in the Member States, to guarantee a better transparency and cooperation between Commission and Member States and to improve further accountability of the payments, and particularly to contribute to an earlier detection of systemic errors and misuse;

29. Regrets that none of the Regulations governing the use of agricultural or cohesion funds impose an obligation on the national authorities to publish the ultimate beneficial owner of an individual, legal entity or trust benefitting from the funds; calls on the co-legislators to pay special attention to this issue and address it comprehensively when deciding on future rules for transparency of EU subsidies;
30. Insists that the register of beneficial ownership shall contain only fully verified information on the controlling person(s) and shall be fully open to the public;
31. Strongly disapproves of the creation and establishment of oligarch structures drawing on EU agricultural and cohesion funds whereby a small minority of beneficiaries receive the vast majority of EU funds; calls on the Commission together with the Member States to develop effective legal instruments to respect the rule of law and avoid fostering such structures;
32. Reiterates its concern that cases of conflicts of interests damage the goals of the cohesion policy and CAP which have important economic, social and environmental dimensions and creates a negative image for these policies;
33. Calls on the Commission to table a proposal modifying the CAP rules towards a more fair allocation of EU funds, to ensure that the CAP is fairly allocated to active farmers who cultivate the land and does not result in land deals that benefit a select group of political insiders or incentivise abusive practices during auctions privatising state-owned land; acknowledges the Commission proposal for a new delivery model including a capping combined with a degression mechanism; is, however, of the opinion that a capping, with the introduction of labour cost offset before capping is insufficient to guarantee a more fair allocation of direct payments; in addition supports the idea of a mandatory redistribution mechanism;
34. Takes note, 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 cooperations; acknowledges the efforts of the Czech authorities to identify the rightful owners until 2023; insist that auctions of land where the rightful owners cannot be established must be carried out in a fair manner, providing equal opportunities from small and medium sized farmers and young farmers to acquire the land.
35. Urges the Commission to table a proposal for a maximum amount of direct payment per natural person as beneficial owner of one or several companies, while applying a zero tolerance for those in conflict of interest; underlines that it should not be possible to receive EU-subsidies amounting to three-digit million Euros in one MFF-period;
36. Insists that those responsible for the misuse of Union funds should suffer the

consequences, and in case of financial corrections, the burden should not be shifted to the national taxpayers; calls on the Czech national authorities to reclaim unduly paid out subsidies from those who unlawfully benefitted from them; is of the opinion that an enabling condition for using EU funds should be introduced for the next programming period requiring national legislations to include an obligation the recovery of the funds affected by wrongdoing to be done by the responsible beneficiary;

37. Strongly condemns the use of defamatory language and hate speech publicly used by the Prime Minister during his press conference against participants of the fact-finding mission; finds it unacceptable that Members of the European Parliament who took part in the fact-finding delegation of the Budgetary Control Committee in the Czech Republic received death threats and other verbal attacks while carrying out their work;
38. Calls on the Budgetary Control Committee to report back to the Parliament about relevant insights gained during its fact finding mission and inform the Commission and relevant authorities accordingly;
39. Calls on the Commission to do its utmost to finalise the still ongoing audit procedures without undue delay and make its findings public as soon as all evidence has been duly evaluated; encourages the Council and the European Council to consider findings from these audits and give due attention to Article 61 of the Financial Regulation with regards to the negotiations for the next multiannual financial framework;
40. Calls on the Commission to equally follow up on allegations of non-resolved conflicts of interests in other Member States;
41. Reiterates its regret that the country-by-country report was discontinued in a second EU Anti-Corruption report by the Commission (ARES (2017)455202); calls on the Commission once again to resume reporting, separately from the Economic Semester, on the status of corruption in Member States, including evaluating the effectiveness of EU-supported anti-corruption efforts; reiterates its call on the Commission not to evaluate anti-corruption efforts only in terms of economic loss;
42. Stresses the importance of upholding the rule of law, the separation of powers, the independence of the judiciary, and independence and pluralism of the media, as a precondition to the successful use of EU funding;
43. Highlights the importance of independent public media and of the investigative journalism and non-governmental organisations working on strengthening the rule of law; underlines in this light that EU support for independent journalists and civil society organisation is paramount, also in the context of the next MFF; is concerned of the high concentration of private media in the Czech Republic in the hands of a few;
44. Calls on the Commission to take concerns expressed in this resolution into account when monitoring the situation in the context of the rule of law mechanism;
45. Calls on Czech authorities to inform the Union's institutions of the outcome of the reopened investigation related to Stork Nest as soon as possible;
46. Calls on the Council and European Council to take all necessary and appropriate

measures to prevent conflicts of interest in the context of the negotiations of the future EU budget and the next multiannual financial framework, in line with Article 61(1) of the Financial Regulation

47. Expresses solidarity with Czech people who call for fairness, justice and the resolution of the incompatibility of the business interests with the political role and power of the Prime Minister;
48. Instructs its President to forward this resolution to the Commission, the Council and the Government and Parliament of the Czech Republic.