**Follow-up to the European Parliament non-legislative resolution on the conflict of interest of the Prime Minister of the Czech Republic**

1. **Resolution tabled pursuant to Rule 132(2) of the European Parliament's Rules of procedure**
2. **Reference numbers:** 2021/2671 (RSP) / B9-0303/2021 / P9\_TA-PROV(2021)0282
3. **Date of adoption of the resolution:** 10 June 2021
4. **Competent Parliamentary Committee:** Committee on Budgetary Control (CONT)
5. **Brief analysis/ assessment of the resolution and requests made in it:**

The European Parliament adopted the resolution on 10 June 2021 with a large majority (505 in favour, 30 against and 155 abstentions). It comes in the context of increased European Parliament scrutiny and strong public interest in the use and possible misuse of EU funds in shared management, particularly in relation to individual recipients receiving large amounts of Union support, individuals being the effective beneficial owners of entities entitled to Union support, and politicians in situations of conflict of interest benefitting from Union support.

The resolution calls on the Council and the European Council to take measures to prevent conflicts of interest and expresses concerns that the Czech Prime Minister has been actively taking part in the negotiations on the EU budget and EU programmes under shared management while being in a situation of conflict of interest.

The resolution states that the Commission has still not provided a comprehensive reply to the Parliament’s request to quantify the total amount of subsidies received by entities of the Agrofert group and requests attention to be given to payments made to companies directly and indirectly owned by Prime Minister Babiš or other members of the Czech Government. It calls on the Commission to publish all documents related to the case of the Czech Prime Minister’s conflict of interest. It considers an 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 Common Agricultural Policy (CAP) disbursement.

The resolution urges the Commission to revise the rules of audit and financial correction procedures and to assess the effectiveness of Article 61 of the Financial Regulation. It asks the Commission to look into vulnerabilities of the Czech judicial system, to explore potential violations of State aid rules and to further scrutinise the national recovery plans in this regard.

1. **Response to the requests in the resolution and overview of the action taken, or intended to be taken, by the Commission:**

**Response to paragraphs 2, 13, 23 and 43**

1. The implementation of the EU budget in full legality and regularity is crucial for the trust of EU citizens in the proper management of the EU taxpayers’ money. This includes compliance with the rules on conflict of interests set out in the Financial Regulation, in the sectorial legislation and, where required (see for instance Article 6 of the Common Provisions Regulation (EU) No 1303/2013), in national legislation.
2. Non-respect of EU rules on conflict of interests, and in particular Article 61 of the Financial Regulation, which is applicable to all management modes, by a person involved in the implementation of the EU budget, is an irregularity. Whenever the Commission is made aware or finds situations, which could amount to a conflict of interests under the Financial Regulation, it acts to protect the EU budget. Moreover, the Commission has zero tolerance for fraud and acts whenever it learns about possible fraud cases. The Commission has the power to interrupt or suspend payments to recipients or to Member States, impose financial corrections and recover EU funds unduly paid.
3. With respect to shared management, Article 61 of the Financial Regulation entails that appropriate action is taken in the implementation of EU funds, including decisions taken at any Member State level on preparation, audit and control, to deal with conflicts of interest. National authorities shall ensure appropriate measures are taken to avoid conflict of interests. Non-respect can lead to financial corrections in line with applicable rules. In shared management, the functioning of the different funds must be taken into account: the level of Member States’ discretion when implementing the EU budget is different for project-based expenditure (e.g. European Agricultural Fund for Rural Development, European Social Fund and European Regional Development Fund), where support is awarded by the Member States following a selection process entailing a margin of appreciation/discretion, and for entitlement-based expenditure (e.g. European Agricultural Guarantee Fund direct payments), where support is paid by the Member States to all eligible applicants without a selection procedure and thus exercising a very limited margin of appreciation/discretion, as eligibility criteria are set out in EU law.
4. On 4 December 2020, the Commission provided the European Parliament with information on the largest recipients of EU funding under programmes co-funded by the European Regional Development Fund (ERDF), the Cohesion Fund (CF) and the European Social Fund (ESF), as provided by the Member States. The Member States that were not in a position to supply the 50 largest beneficial owners, recipients of ERDF and CF funding, brought several considerations to the Commission’s attention: Managing Authorities do not collect information on beneficial owners of ERDF/CF funds recipients in their information systems, as this information does not fall into the categories of data listed in Annex XII of the Common Provisions Regulation (EU) No 1303/2013 or in Annex III of the Commission Delegated Regulation (EU) No 480/2014. There have been no payments to Agrofert declared to the Commission for 2020. Each payment request includes a specific disclaimer with regard to this subject. The situation is similar for CAP: the Commission provided the European Parliament with information on the largest beneficiaries of CAP funds. There have been no reimbursements of Rural development Funds for relevant projects that could be potentially affected by conflict of interests.
5. For the type of information which has to be collected and stored by the Member States, including beneficial ownership data, important progress was achieved in the legislative framework for implementing the MFF (multiannual financial framework) 2021-2027. This concerns the 2021 Common Provisions Regulation, the European Globalisation Adjustment Fund, the Recovery and Resilience Facility, the Common Agricultural Policy and the Brexit Adjustment Reserve. Member States will have to collect and store this data for control and audit purposes, which should allow for strengthening controls and audits. In addition, for CAP, it was agreed that the beneficiaries will have to inform to which group they belong to, if the case, at the moment of requesting the aid and that this information will be made public along with the information of the payments to beneficiary.
6. The Commission had also proposed the mandatory use, by the Member States, of a single data-mining and risk-scoring tool that the Commission would provide.
7. The legislation as adopted does not make the use by the Member States of a single data-mining and risk-scoring tool obligatory. The Commission made a number of statements[[1]](#footnote-1) considering that this outcome is not sufficient to enhance the protection of the Union budget and NextGenerationEU against fraud and irregularities and to ensure efficient checks on conflicts of interests, irregularities, issues of double funding, and criminal misuse of the funds. The Commission will do its best to encourage the Member States to use a single date-mining and risk-scoring tool. For CAP, a revision clause was agreed by the co-legislators, with a report by the Commission on the use by the Member States and the interoperability of the tool (see also paragraph 10 below). The Commission is also reflecting on further actions to enhance the quality and interoperability of data on beneficiaries and final recipients of EU funding.

**Response to paragraphs 36 and 44**

1. In its proposals for the CAP 2021-2027, the Commission proposed compulsory capping of direct payments. However, the legislator has turned this into a voluntary measure.
2. In points 30 to 33 of the Inter-institutional Agreement between the European Parliament, the Council and the Commission on budgetary matters (OJ L 433I, 22.12.2020, p. 28–46), the three institutions agreed that collecting “data on those ultimately benefitting, directly or indirectly, from Union funding under shared management (…), including data on beneficial owners of the recipients of the funding, is necessary to ensure effective controls and audits” (point 31). Moreover, the Commission is required to “make available an integrated and interoperable information and monitoring system, including a single data-mining and risk-scoring tool, to access and analyse the data referred to in point 31 with a view to a generalised application by Member States” (point 32). The Commission continues to investigate possible actions to fully reflect the desired ambition and spirit of the Inter-institutional Agreement.
3. For the CAP there will be an obligation for the Commission to provide such a tool to the Member States at the latest in 2023. There will be an obligation for the Commission to do a report at the latest in 2025, assessing the use of the single data-mining tool and its interoperability with a review clause with possible legislative proposals. Furthermore, there will also be an obligation for the Member States to collect the information about the group a beneficiary is a member of and to publish this information in line with the transparency requirements in the CAP legislation.
4. As explained in the Commission proposal laying down certain transitional provisions for the support by the European Agricultural Fund for Rural Development (EAFRD) and by the European Agricultural Guarantee Fund (EAGF) in the year 2021, with respect to farm income, both the level and the distribution of support matter. Securing an adequate level of support and thus farm income remains a key element for the future, in order to ensure food security, environmental and climate ambition, as well as rural vitality. Better targeting of support to small and medium sized farms and areas with natural constraints can help keeping more jobs on farms and farming activity on the whole territory, hence strengthening the socio-economic fabric of rural areas. Capping and convergence can also improve the distribution of direct payments.
5. When assessing the Recovery and Resilience Plans, the Commission is evaluating the internal control systems of the Member States for the management of the facility and the protection of the financial interests of the Union allowing to prevent, detect and correct conflict of interests, fraud, corruption and double-funding.
6. During the implementation of the Facility, the Member States must ensure sound financial management and recover amounts unduly spent. For the purpose of audit and control, the Member States are required to collect data on the recipients ultimately benefiting, directly or indirectly, from support under the Facility. The Commission, the European Anti-Fraud Office (OLAF), the European Public Prosecutor’s Office (EPPO) (where applicable), the European Court of Auditors (ECA) must be granted access to such data upon request. The Commission will also make available a single data-mining and risk-scoring tool to access and analyse the data.
7. Before disbursing the funds, the Commission will assess the fulfilment of milestones and targets based on payment request that will be accompanied by a management declaration by the Member State concerned. The management declaration, among other things, certifies that the control systems put in place give the necessary assurances that the funds were managed in accordance with all applicable rules, in particular rules on avoidance of conflicts of interests, fraud prevention, corruption and double funding. In particular, the management declaration needs to specify that controls have been carried out, including as regards potential conflict of interests when trust funds are involved. For the purposes of the related milestones on control and audit, the definition of beneficial owner as per Article 3(6) of Directive (EU) 2015/849 on the prevention of the use of the financial system for the purposes of money laundering or terrorist financing is applicable. Moreover, the declaration must also be accompanied by a summary of the audits carried out, including weaknesses identified and any corrective actions taken. In case of doubts, the Commission will undertake audits, which can lead to suspension of payments. The Commission will also perform risk-based ex-post controls. The Commission can reduce the contribution under the Facility if it finds fraud, corruption, conflict of interests, double funding and serious breaches of the financing and loan agreements signed with a Member State and the Member State has not recovered the funds at stake.

**Response to paragraphs 2, 3, 4, 12, 17, 18, 20, 21, 28, 29 and 30**

1. Coordinated Commission’s audits have been carried out in the Czech Republic, which, among other issues, also relate to situations of conflict of interests. Access to the draft and final reports were provided on a regular basis to the CONT Committee under confidentiality procedures. It is important to recall that no payments from the EU budget under the European Structural and Investment Funds were made to operations affected by the ongoing audit and therefore to companies directly and indirectly owned by Prime Minister Babiš that could potentially be affected by the alleged conflict of interests. No reimbursements of national payments under the European Agricultural Fund for Rural Development (EAFRD) are being made for relevant projects that could be potentially affected by conflict of interests. The audit on EAFRD is still on-going.
2. The audit procedures are conducted in compliance with the applicable EU legislation, international auditing standards and in full respect of the auditees’ rights. The audit procedures have respected all deadlines set out in legislation. Commission auditors are independent and should work free of pressure and influence. The protection of the EU financial interests is ensured in an adversarial system, allowing auditees to exercise their rights of defence against findings.
3. The Commission services have published the final audit report for the European Regional Development Fund and the European Social Fund. This was exceptional since the audit rules and administrative practice do not require such publication. The Commission services took into account the great public interest in these audits, including a request by the European Parliament’s CONT committee and a European Ombudsman recommendation to make this report public once finalised.
4. The Commission is fully aware of the general interest and expectation and is doing its utmost to finalise the audit procedure with respect to the EAFRD.
5. Exchanges between the Commission auditors and the Czech authorities continue in order to close remaining open issues with respect to the EFRD and the ESF. This is the follow-up phase. The next steps of the follow-up depend on progress on the remaining open recommendations. If the Commission auditors conclude that sufficient action was taken to effectively address the recommendations in the audit report, the audit is closed. If the Commission auditors conclude that insufficient action was taken, further exchanges with the Member State may be necessary. Otherwise, the audit procedure per se can be brought to an end. If necessary, the Commission would launch any further procedures it considers appropriate. The Commission will continue informing the CONT Committee about the implementation of the audit’s recommendations by the Czech Government, in line with confidentiality procedures.
6. Compliance with State Aid rules is part of the national obligations and the concerned management verifications carried out for all private companies applying for EU funding, whether they belong or not to the Agrofert Group. Importantly, the Commission ensured that the EU budget is protected: since 6 December 2018, for the regional funds concerned by the audit, the Czech authorities have agreed not to declare any expenditure for the Agrofert Group projects until the audit procedure is finalised and to confirm this in each payment claim submitted to the Commission. When the Commission becomes aware that the Member State has included expenditure in future expenditure declarations for any of the affected operations, the Commission could use the possibility of interrupting, suspending the interim payments or making financial corrections in relation to these operations on the basis of an irregularity.
7. The Commission reminds that Article 61 of the Financial Regulation on conflict of interest applies to national authorities at any level involved in budget implementation; this includes members of governments. When it comes to Agricultural Funds, the Commission normally carries out more than 100 audit missions per year and opens conformity procedures in order to check that EU rules are complied with by the Paying Agencies when making payments to beneficiaries or recovering undue payments.
8. All regulatory deadlines were respected by the Commission regarding the contradictory procedures regarding the audits and their follow-up. Nonetheless, the Commission is committed to conduct as fast as possible, whilst respecting the legal deadlines, its audit procedures and the procedures on application of financial corrections and will deploy all efforts to achieve swift procedures as much as is possible. Its procedures need to respect the specific rules under the regulatory framework of the Common Provisions Regulation. These rules require respect for the principles of the contradictory procedure and to duly allow the authorities concerned as an auditee to make their views known and exchange all factual evidence relevant to the audit within the deadlines set out in applicable provisions and in accordance with audit standards. These principles apply throughout the audit process at the stages of the on-the-spot visit, when preparing the draft report and at the moment of the final audit report/ letters of findings and proposing financial correction. The application of financial corrections follows a distinct procedure for which the Member States again benefit from a separate set of procedural guarantees in accordance with the applicable regulatory procedures.
9. The Commission is committed to protect the financial interests of the European Union taking all appropriate measures to prevent EU-funds from being spent in a way non-compliant with the requirements under the applicable legal and regulatory provisions. However, under the Treaty it is not competent to control and monitor the expenditure financed by the Member States or its regions from their own funds apart from the mentioned respect of State Aid rules.

**Response to paragraphs 38, 39 and 44**

1. The 2021 Rule of Law Report was adopted on 20 July 2021. The report analyses four pillars essential for the rule of law: the justice system, the anti-corruption framework, media pluralism and media freedom and other institutional issues related to checks and balances.
2. Regulation 2020/2092 on a general regime of conditionality for the protection of the Union budget provides that in case a Member State fails to ensure the absence of conflict of interests, this may be indicative of a breach of the principles of the rule of law.
3. In order for the Conditionality Regulation to apply, a breach of the principles of the rule of law in a Member State must affect or seriously risk affecting the sound financial management of the Union budget or the protection of the financial interests of the Union in a sufficiently direct way. Where these conditions are fulfilled, the Commission shall trigger the procedure unless it considers that other procedures set out in EU legislation would allow it to protect the Union budget more effectively.
4. The Financial Regulation obliges the Member State authorities at any level, involved in budget implementation of the Union budget, not to take any action which may bring their own interests into conflict with those of the Union. Member State authorities have the obligation to take appropriate measures to prevent conflict of interests from arising in the functions under their responsibility and to address situations which may objectively be perceived as a conflict of interests.
5. In the case of the Czech Republic, the EU budget continues to be protected. The Czech authorities confirm with each payment claim for the European Regional Development Fund and the European Social Fund that no expenditure in relation to operations affected by the audit findings for these funds is declared by the certifying authority to the Commission, with the exception of one specific payment claim, for which the Commission has taken the appropriate measures to interrupt the payment deadline. As regards the EAFRD, there have been no reimbursements of Rural development Funds for relevant projects that could be potentially affected by conflict of interests. The minor amount which has been declared has been suspended so no reimbursements have been made.

**Response to paragraphs 19**

1. The Commission takes note of the European Parliament’s request.

1. See for instance the one relating to Regulation (EU) 2021/691 of the European Parliament and of the Council on the European Globalisation Adjustment Fund for Displaced Workers (EGF) and repealing Regulation (EU) No 1309/2013, 2021/C 161 I/01 [↑](#footnote-ref-1)