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TEXTS ADOPTED

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**P8\_TA(2018)0530**

**Conflict of interest and the protection of the EU budget in the Czech Republic**

**European Parliament resolution of 13 December 2018 on conflicts of interest and the protection of the EU budget in the Czech Republic (2018/2975(RSP))**

*The European Parliament,*

- having regard to its previous decisions and resolutions on discharge to the Commission<sup>1</sup> for the years 2014, 2015 and 2016,
  - having regard to 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 Union<sup>2</sup> (the new Financial Regulation), in particular Article 61 thereof on conflicts of interest,
  - having regard to the questions to the Commission sent by the Czech Pirate Party on 2 August 2018,
  - having regard to the official complaint lodged with the Commission by Transparency International Czech Republic on 19 September 2018,
  - 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 presentation given on 20 November 2018 by the Commission’s Directorate-General for Budget to Parliament’s Committee on Budgetary Control, entitled ‘Conflict of Interests Rules in the Financial Regulation 2018’,
  - having regard to Rule 123(2) and (4) of its Rules of Procedure,
- A. whereas the provision in the 2012 Financial Regulation on conflicts of interest did not apply explicitly to shared management, but Member States were required to ensure effective internal control including the avoidance of conflicts of interest;

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<sup>1</sup> 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.

<sup>2</sup> OJ L 193, 30.7.2018, p. 1.

- B. whereas public procurement rules oblige Member States to avoid conflicts of interest (Article 24 of Directive 2014/24/EU<sup>1</sup>), including direct or indirect personal interests, and for situations perceived as conflicts of interest or specific obligations in shared management, rules (e.g. Regulation (EU) No 1303/2013<sup>2</sup>) are already in place;
- C. whereas the Council adopted its position on the new Financial Regulation on 16 July 2018 and the final act was signed on 18 July 2018; whereas Article 61 of the Financial Regulation, which prohibits conflicts of interest, entered into force on 2 August 2018;
- D. 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 conflicts 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;
- E. whereas according to the case law of the Court of Justice of the European Union<sup>3</sup> ‘a conflict of interests 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’; 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 exists and where undiscovered, unreported and uncorrected serious irregularities related to a conflict of interest have come to light;
- F. whereas on 19 September 2018, Transparency International Czech Republic lodged a formal complaint with the Commission claiming that the Czech Prime Minister, Andrej Babiš, had persistently violated EU and Czech law on conflicts of interest;
- G. 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;
- H. whereas Mr Babiš is also Chair of the Czech Council for the European Structural and Investment Funds;
- I. whereas companies belonging to the Agrofert Group take part in projects subsidised by the Rural Development Programme of the Czech Republic, which in turn is funded by the European Agricultural Fund for Rural Development;
- J. whereas companies belonging to the Agrofert Group have received significant sums from the European Structural and Investment Funds during the 2014-2020 period, ranging from EUR 42 million in 2013 to EUR 82 million in 2017;

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<sup>1</sup> OJ L 94, 28.3.2014, p. 65.

<sup>2</sup> OJ L 347, 20.12.2013, p. 320.

<sup>3</sup> *Ismeri Europa Srl v Court of Auditors*, Judgment of 15.6.1999, Case T-277/97, ECLI:EU:T:1999:124.

- K. whereas the opinion of the Commission's Legal Service states that according to the declaration of income of Czech public officials, Mr Babiš received an income of EUR 3.5 million during the first six months of 2018 from the Agrofert Group via his trust funds;
- L. whereas Parliament has repeatedly called on the Commission in its discharge resolutions to speed up a conformity clearance procedure with the aim of obtaining information on the risk of a conflict of interest concerning the State Agricultural Intervention Fund in the Czech Republic; and whereas Parliament has stressed that failure to take the necessary measures to prevent a conflict of interest could oblige the Czech authority to withdraw the accreditation of the paying agency and could also lead to the application of financial correction by the Commission;
- M. whereas in September 2018, Parliament's Committee on Budgetary Control decided to address this issue within the framework of the annual discharge procedure, notably in the hearings with the Commissioners most concerned;
- N. whereas these hearings did not provide MEPs with clear and sufficient answers on the state of play of the potential conflict of interest of the Czech Prime Minister;
- O. whereas on 1 December 2018, European media outlets such as *The Guardian*, *Le Monde*, *De Standaard* and the *Süddeutsche Zeitung* published information about the legal opinion issued by the Commission's Legal Service confirming Mr Babiš's conflict of interest;
1. Is deeply concerned about the Czech Republic's non-compliance with Article 61(1) of the Financial Regulation regarding the conflict of interest of the Czech Prime Minister and his links to the Agrofert Group;
  2. Deplores any kind of conflict of interest that could compromise the implementation of the EU budget and undermine the trust of EU citizens in the proper management of EU taxpayers' money; calls on the Commission to ensure that a zero tolerance policy with no double standards will apply regarding conflicts of interest of any EU politicians, and to find no excuse for delays when protecting the financial interests of the Union;
  3. Recalls its resolution of 27 April 2017 on discharge for the financial year 2015<sup>1</sup>, in which it 'notes that the European-Anti Fraud Office (OLAF) opened administrative investigations [...] into the project in the Czech Republic known as 'Stork Nest' on the basis of alleged irregularities' and 'calls on the Commission to inform its competent committee immediately when the investigations are completed'; recalls its resolution of 18 April 2018 on discharge for the financial year 2016<sup>2</sup>, in which it 'welcomes the fact that the OLAF has completed its administrative investigation into the Czech 'stork nest' project' and 'regrets that OLAF found serious irregularities';
  4. Takes note of the answer of 29 November 2018 provided by Commissioner Oettinger within the 2017 discharge procedure to written question 51 informing Parliament that in accordance with the OLAF recommendation on the Stork Nest case, adopted in December 2017, the Czech authorities have withdrawn the project investigated by

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<sup>1</sup> OJ L 252, 29.9.2017, p. 28.

<sup>2</sup> Texts adopted, P8\_TA(2018)0121.

OLAF from the final claim of the Regional Operational Programme for Central Bohemia, and that no EU funds have been paid into this operation; notes in addition that OLAF has recommended to the national judicial authorities that they open a criminal investigation into the matters uncovered by the OLAF investigation and that they are now the competent authorities for this case;

5. Stresses that given the direct applicability of Article 61(1) of the Financial Regulation on conflicts of interest, all those involved in EU budget implementation, including heads of government, are responsible for complying with the obligation of preventing conflicts of interest and for addressing situations that may objectively be perceived as conflicts of interest;
6. Regrets that for a long time the Commission remained passive, despite there having been strong indications since 2014 that Mr Babiš had a conflict of interest in his role as Minister of Finance and later as Prime Minister;
7. Recalls the obligation of national authorities to ensure that the Union's legislation on conflicts of interest is applied in all cases and to all people;
8. Calls on the Commission to set up a control mechanism to address the issue of conflicts of interest in the Member States and to set active avoidance of conflicts of interest as one of its priorities; calls on the Commission to intervene decisively, especially when national authorities fail to act to prevent conflicts of interest of their highest representatives;
9. Calls on the Commission to follow up on this issue without delay, on the basis of the opinion of its Legal Service stemming from the complaint by Transparency International Czech Republic, and to implement the necessary corrective measures and procedures to amend any possible illegal state of affairs, including a measure to suspend all EU funding to the Agrofert Group until the conflict of interest has been fully investigated and resolved;
10. Calls on all national authorities and government officials to proactively apply the new Financial Regulation, in particular Article 61 on conflicts of interest, in order to prevent situations harmful to the EU's reputation, that of its Member States, democracy and the EU's financial interests, and to serve as an example of working for the public good rather than personal gain;
11. Calls on the Member States' national parliaments to make sure that no national legislation on the prevention of conflicts of interest goes against the letter and the spirit of the new Financial Regulation;
12. Takes note of the opinion drafted by the Commission's Legal Service on the possible conflict of interest of the current Czech Prime Minister, Mr Babiš, in his role as Minister of Finance in 2014; demands that the Commission fully investigate the legality of all EU subsidies paid to the Agrofert Group since Mr Babiš joined the Czech Government, taking into account the previous Financial Regulation applicable prior to 2 August 2018 and the section therein on conflicts of interest;
13. Requests that the Commission publish all documents at its disposal related to the possible conflict of interest of the Czech Prime Minister and Minister of Agriculture,

and explain what steps it intends to take to remedy the situation;

14. Urges the Commission to recover all funds that have been illegally or irregularly paid out;
15. Insists on full transparency on any connections Mr Babiš may have with the Agrofert Group, and that these must not interfere with his role as Prime Minister of the Czech Republic;
16. Calls on the 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;
17. Instructs its President to forward this resolution to the Commission, the Council and the Government and Parliament of the Czech Republic.