

Czech Republic: PM Babiš and his conflict of interest comes under European Commission scrutiny

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At the turn of June, the European Commission sent the Czech Republic draft versions of reports on two audits which show that the country's prime minister, Andrej Babiš, has been violating national and EU law on conflicts of interest. As prime minister Babiš can influence how the country manages EU funds, and at the same time he benefits from them via his company Agrofert (a major player on the agri-food and chemical products market), which according to the report was only formally handed over to trust funds in 2017. The EU institutions are taking action to force the Czech Republic to rectify the situation by clearly separating Babiš's political and economic interests. However, the Czech PM has interpreted these measures as an attack on the interests of the Czech state. He has resorted to strong rhetoric on national sovereignty and criticised the EC, appealing to the emotions of the large section of Czech citizens who are distrustful of the EU.

The unresolved dispute over Babiš's conflict of interest is a problem for the Czech Republic in the context of its negotiations on the EU's multiannual financial framework, during which Prague has been seeking the right to spend EU funds more flexibly, and fighting in the interests of the country's large agricultural producers. The EU reports have also complicated Babiš's international position; having opted for confrontation with the EC, he is becoming an increasingly uncomfortable partner for some members of the Renew Europe political group, composed of the liberal ALDE group and the party of Emmanuel Macron. In the Czech Republic, the Prime Minister's conflict of interest has mobilised the opposition and a certain section of public opinion (on 4 June around 120,000 people demonstrated in Prague), but his political position is not under any threat. Babiš government is guaranteed to remain stable by President Miloš Zeman, as well as the Social Democrats and the Communists who cooperate with Babiš in parliament, and are afraid of early elections. The final version of the reports from the European Commission's audits is expected in the autumn, and will represent the outcome of the political and legal game between Prague and the EC. Whether Andrej Babiš remains prime minister, and whether Agrofert can keep using EU funds, will depend on its results.

The Czech PM under fire

The size of Agrofert's business interests means that Babiš has been in a permanent conflict of interest since the beginning of his political career in 2014, although the subject of the current dispute between the European Commission and the Czech government is whether

he has actually violated Czech and EU law in this area. The Commission's officials carried out the audits at the beginning of this year at the request of the European Parliament which, after an intervention by MEPs and the Czech branch of Transparency International, raised the conflicts of interest of PM Babiš and (to a lesser extent) the agriculture minister Miroslav Toman. In response to the steps taken by the MEPs, the European Commission has not provided any funds to the Czech Republic from the EU budget for Agrofert's projects and investments since December 2018. In 2017, the holding received nearly €24 million of public subsidies at a consolidated profit of €187 million. Meanwhile Agrofert still receives direct payments under the Common Agricultural Policy (almost €53 million in 2017).

One of the things which the EC's audit revealed was that the people managing Agrofert's trust funds (which includes Babiš's wife) are obliged under a statute to protect the interests of the prime minister – the only beneficiary of the funds – and its members may be freely replaced by him. In practice, therefore, the transfer of Agrofert to the trust funds is a mere formality. The EC also highlighted systemic errors in the distribution of EU funds in the Czech Republic, and concluded that the Czech Republic should repay around €23.5 million of the misallocated funds. Such allegations have not yet been levelled at the Czech agriculture minister; his close family does control a company producing meat products, but it received the EU funding before he took up his ministerial post.

The preliminary version of the EU auditors' report refers primarily to the Czech law on conflicts of interest, which since February 2017 has outright banned companies owned by a member of the government from receiving public subsidies. However, the Czech government argues that Babiš has acted in accordance with Czech laws, and the Commission has no power to interpret those laws for itself. Regardless of how this legal dispute turns out, Andrej Babiš, as a politician who has a personal interest in the profits of Agrofert, will remain in a conflict of interest. All decisions by the government in Prague amending the conditions for competition in the agri-food and chemical sectors affect the financial state of Agrofert. That is because this holding, which Babiš has built up since the 1990s, is in fact the country's key player in these industries, and the companies included in its composition have received subsidies from both EU and national funds. Meanwhile, these funds are allocated to institutions which the Prime Minister can influence either directly or indirectly. Agrofert is now the second largest private employer in the Czech Republic (after Škoda Auto), and employs more than 25,000 people there; however, the holding is only around twentieth on the list of the largest Czech taxpayers. In 2017 it received nearly three times more subsidies of various kinds than it transferred to the state budget in the form of corporate income tax.

Defence by attack

In response to the report's content, the Czech Prime Minister said that it represented "an attack on the Czech Republic" (the agriculture minister spoke of "an attack on Czech agriculture"), and that the auditors had merely repeated "absurd" accusations formulated by the Czech opposition and the "corrupt" Transparency International. Babiš announced that he would raise the subject of the incompetence of the report's authors in talks with the EC's President during the June summit of the European Council. After Prague sends its formal response to the reports' draft versions to the EU, the EC will probably present its final

version in autumn.

Babiš's strong reaction to the draft EC reports (the content was supposed to be confidential, but a copy of one of the reports was leaked to the Czech media) is primarily targeted at the Czech public. In attacking the European Commission, the Czech Prime Minister is resorting to the rhetoric that brought his party victory in May's elections to the European Parliament: he campaigned under the slogan of a "tough and uncompromising" defence of the Czech Republic's interests. In recent months Babiš has started to make public appearances wearing a red cap, modelled on that used in Donald Trump's campaign, bearing the slogan 'Silné Česko' [Strong Czechia]; he has also emphasised that (together with Orbán and other V4 leaders), he has managed to protect the Czech Republic against "senseless" migration quotas, and now intends to protect the country against "more senseless ideas from Brussels", such as certain climate policy goals or attempts to limit the use of nuclear energy. This narrative has struck a chord with the public, as up to 44% of Czechs do not trust the EU. This year's Eurobarometer showed that the Czech Republic has the second highest percentage of citizens (after the UK) who would vote for the country to leave the EU in a possible referendum (24%), and the second lowest percentage of people who would vote to remain in the EU (45%). Playing on these emotions has brought Babiš political benefits; in the long term, however, it could also be risky from the point of view of Agrofert, which largely benefits from the EU market and EU funding. For these reasons, after running through all the legal options to delay the EU's decisions in his case, in the end the Czech Prime Minister will probably give way to their rulings.

Repercussions for the Czech Republic and ANO

It is unlikely that the final version of the EC's report will be significantly different from its present form. The Czech Republic will probably be obliged to introduce another amendment to the law on conflicts of interest. Then Babiš will have to decide whether to resign from his position in the government, loosen his ties with Agrofert, or give up a large part of the subsidies for its companies of which he currently is a beneficiary owner (it is only the investment subsidies which are at stake, rather than the direct payments). In the first variant, as a parliamentary deputy and the undisputed leader of his ANO party, Babiš would retain his influence on the government's key decisions, and formally he would have no direct influence the management of EU funds in the Czech Republic. At the moment, however, he strongly rejects the possibility of such a scenario. The auditors failed to prove that the conflict of interest in the cases of Prime Minister Babiš and Agriculture Minister Toman did in fact result in fraud using EU funds; so it is not a foregone conclusion that the Czech Republic will be obliged to repay any EU funds.

Regardless of what the reports' final versions look like, the conclusions of the EC audit as revealed pose a serious problem for the Czech Republic at the European level. They highlight the systemic violation of the regulations regarding the use of EU funds, and will affect the negotiations on the EU's multiannual financial framework. In particular, these reports undermine the Czech demand that member states should have maximum flexibility in spending EU funds; but they also weaken the arguments opposing the capping of grants for larger companies under the Common Agricultural Policy.

The EU reports have struck directly at Prime Minister Babiš, which will weaken his international position. He is now threatened with being marginalised in the EU, as his confrontation with the Commission is becoming a burden for the Renew Europe political group in the European Parliament, newly created by the ALDE (to which his ANO group belongs) and the party of the French President Macron. In its talks with the socialists and the European People's Party (EPP), ALDE has demanded that the latter expel Hungary's Fidesz from its ranks. In this situation, the EPP politicians can attack ALDE by pointing to Babiš's problems, as they have after all already done during the parliamentary term which is coming to an end. A compromise solution could lie in the two groups mutually withdrawing their accusations, or in expelling the two controversial parties from ALDE and EPP. In recent talks, the Czech PM said that he plans to remain in ALDE after this year's European elections, but he also admitted that he has been unable to find a common language with the other heads of government in this group on many issues, such as immigration policy and the fight against climate change. If he has to cease cooperation with the liberal parties, ANO may have trouble joining another prominent political family at the European level. Membership for Babiš's group will be blocked by other Czech parties, which are still in sharp conflict with ANO.

Repercussions in the Czech Republic

In reaction to the disclosure of the EU auditors' conclusions, on 4 June about 120,000 people held a protest in Prague calling on Babiš to resign. It was one of the largest protests in the Czech Republic since 1989, and another demonstration in the capital is scheduled for 23 June. This was also the fifth in a series of anti-government demonstrations to have taken place within a month, primarily under the banner of maintaining the independence of the judiciary. The first four were each attended by between 15,000 and 50,000 people, mostly in Prague, and the impetus for the protests was the appointment as justice minister of Marie Benešová, a politician close to President Zeman. This occurred shortly after the police submitted a request in mid-April to the prosecutor to prepare an indictment in the case of the 'Stork's Nest' case, in which PM Babiš is suspected of defrauding EU funds (although the holding linked to the Czech PM has repaid the disputed sum of around €2 million).

The EU report will not affect the stability of the minority coalition government, and will probably only translate to a slight decline in the popularity of Babiš's group. ANO is still leading the polls and has a clear advantage over the opposition, mainly due to its efficient redistribution of the fruits of economic growth and its clever use of political marketing. Although Babiš has many enemies, and up to 60% of Czechs do not trust him, he has managed to maintain a relatively stable group of people (around a third of the population) who accept his arguments and believe in his intentions to cleanse Czech politics of the "corrupt traditional politicians".

The Social Democrats remain in their alliance with Babiš out of fear of early elections, even though their cooperation has led to a gradual fall in their support since 2015 in favour of ANO. The Social Democrats' attitude could change if the prosecution indicts Babiš over the 'Stork's Nest' affair. However, the minority government is also continually supported by the Communist party and President Miloš Zeman, who – if the prime minister resigns – has the right to fill this office with a person freely chosen by himself. Thanks to Babiš's informal

political alliance with President Zeman, the former can count on the fact that even if he is forced to leave the government, the head of state will appoint a person enjoying Babiš's confidence as the next prime minister.

ANNEX

The Czech PM's business empire

Andrej Babiš is the second richest man in the Czech Republic. As a businessman he worked mainly in the agri-food and chemical industries. The Agrofert concern (currently comprising over 250 companies), which he founded in 1993 and ran directly until 2014, has become the Czech Republic's leader in the production of fertilisers, the purchase of agricultural produce and the production of and trade in meat, milk and bread products. The holding is also active in Germany, Slovakia, Poland and Hungary, as well as other countries. After entering politics (2011), in 2013 Babiš bought the Mafra media group (now part of Agrofert), which includes two prominent opinion-forming daily newspapers (together with popular websites) and the most listened-to radio station in the Czech Republic. At the beginning of 2014 Babiš was appointed deputy prime minister and finance minister, and since the end of 2017 he has headed the Czech government.