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**TEXTS ADOPTED**

*Provisional edition*

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**P9\_TA-PROV(2020)0164**

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

**European Parliament 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 interest (2019/2987(RSP))**

*The European Parliament,*

- having regard to Articles 13(2) and 17(3) of the Treaty on European Union (TEU),
- having regard to its previous decisions and resolutions on discharge to the Commission for the years 2014, 2015, 2016, 2017 and 2018,
- having regard to the administrative investigations conducted by the European Anti-Fraud Office (OLAF) into the project in the Czech Republic known as ‘Stork Nest’, which found ‘serious irregularities’,
- having regard to the fact-finding mission to the Czech Republic undertaken by the Committee on Budgetary Control on 26 and 27 March 2014,
- having regard to its resolution of 13 December 2018 on conflicts of interest and the protection of the EU budget in the Czech Republic<sup>1</sup>,
- 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 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), which entered into force on 2 August 2018, and in particular to Article 61 thereof,
- having regard to Articles 144 and 145 of Regulation (EU) No 1303/2013 of the European Parliament and of the Council of 17 December 2013 laying down common provisions on the European Regional Development Fund, the European Social Fund, the Cohesion Fund, the European Agricultural Fund for Rural Development and the

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<sup>1</sup> Texts adopted, P8\_TA(2018)0530.

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

European Maritime and Fisheries Fund and laying down general provisions on the European Regional Development Fund, the European Social Fund, the Cohesion Fund and the European Maritime and Fisheries Fund<sup>1</sup>,

- having regard to the questions and complaint sent to the Commission regarding the potential conflict of interest in the Czech Republic<sup>2</sup>,
  - 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 given by the Chief Public Prosecutor on 4 December 2019 regarding the reopening of the investigation into the Prime Minister of the Czech Republic for the misuse of EU funds,
  - having regard to its plenary debate of 18 December 2019 on conflicts of interest and corruption affecting the protection of the EU’s financial interests in the Member States,
  - having regard to its plenary debate of 15 January 2020 on the reopening of the prosecution against the Prime Minister of the Czech Republic on for the misuse of EU funds and potential conflicts of interest,
  - having regard to the fact-finding mission to the Czech Republic undertaken by the Committee on Budgetary Control from 26 to 28 February 2020,
  - having regard to Decision Pl. ÚS 4/17 of the Czech Constitutional Court of 18 February 2020,
  - having regard to Rule 132(2) of its Rules of Procedure,
- A. whereas the criminal investigation into Czech Prime Minister Andrej Babiš that followed OLAF’s report on irregular use of EU subsidies intended for small businesses, which was suspended two years later, has recently been reopened by the Czech Chief Public Prosecutor; recalls that as part of the ‘Stork Nest’ project Agrofert artificially created a medium-sized company, which remained in Agrofert’s control, in order to obtain funds intended for small and medium-sized businesses amounting to a total of around EUR 2 million;
- B. whereas the Czech Chief Public Prosecutor denounced the dropping of the criminal investigation 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:
- a) a negative obligation on financial actors to prevent situations of conflict of interest in relation to the EU budget;

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<sup>1</sup> OJ L 347, 20.12.2013, p. 320.

<sup>2</sup> [https://www.europarl.europa.eu/doceo/document/P-8-2019-001656\\_EN.html](https://www.europarl.europa.eu/doceo/document/P-8-2019-001656_EN.html)

- b) 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 interest;
- E. whereas in February 2017, Czech Act No 159/2006 on conflicts of interest was amended with an expanded list of forbidden activities, including provisions preventing certain companies from being involved in public procurement even as a subcontractor or from receiving grants; whereas the act aims to prevent conflicts of interest in all their forms;
- F. 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 rules are in place to address situations perceived as conflicts of interest, as well as 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 Union<sup>2</sup> ‘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 exists and where undiscovered, unreported and uncorrected serious irregularities related to a conflict of interest have come to light;
- I. whereas Agrofert is a conglomerate established by the Czech Prime Minister, consisting of over 230 companies and 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; whereas whenever Mr Babiš decides to dissolve these trust funds he regains full ownership of all assets they possess;
- J. 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 with regard to 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 conflicts of interest in the Czech Republic on the basis of Article 61 of the Financial Regulation, which was leaked to the Czech media;

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<sup>1</sup> Directive 2014/24/EU of the European Parliament and of the Council of 26 February 2014 on public procurement (OJ L 94, 28.3.2014, p. 65).

<sup>2</sup> *Ismeri Europa Srl v Court of Auditors*, Judgment of 15.6.1999, Case T-277/97, ECLI:EU:T:1999:124.

- L. whereas the Committee on Budgetary Control held an in camera meeting with Commissioner for Budget and Administration Johannes Hahn on 16 December 2019;
- M. whereas Commissioner Hahn informed the Committee on Budgetary Control that the Commission would only make its audit's conclusions public once all evidence had been duly considered and thoroughly analysed; whereas the Czech authorities submitted their replies to the final audit report by DG REGIO on 29 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 EU budget under the ESI Funds are being made to companies directly or indirectly owned by Mr Babiš that could potentially be implicated in the alleged conflict of interest;
- O. whereas the Commission is not reimbursing the Czech authorities for payments made under the Rural Development Fund to Agrofert Group projects that could potentially be concerned by the alleged conflict of interest;
- P. whereas the Czech Parliament has no oversight over possible public tenders, Czech national-level subsidies or state-supported public investments that the Agrofert Group might continue to profit from;
- Q. whereas the Agrofert Group owns two of the largest Czech daily newspapers, Mladá fronta Dnes and Lidové Noviny, and controls the Óčko television station and the Impuls and RockZone radio stations; whereas according to a report by the European Federation of Journalists, Mr Babiš is the de facto owner of 30 % of the private media in the Czech Republic<sup>1</sup>;
- R. whereas the revenues of the Agrofert Group have grown significantly during Mr Babiš's time in public office, while at the same time the Agrofert Group has benefited from EU agricultural subsidies amounting to 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 EU Cohesion Fund subsidies amounting to CZK 427 385 000 for the period 2014-2020 in the Czech Republic; whereas the Agrofert Group has most likely received additional subsidies in other Member States, such as Slovakia and Germany;
- S. whereas the Constitutional Court of the Czech Republic in Decision Pl. ÚS 4/17 of February 2020 dismissed legal action brought by the President of the Czech Republic and Members of the Parliament of the Czech Republic over the repeal of the Czech law which defines conflicts of interest among public officials; whereas the Constitutional Court clarified in the same decision that elections are not to be used as a means to seize control over the state for the purpose of using or even abusing its capacities and resources;
- 1. Welcomes the re-opened criminal investigation into the Czech Prime Minister for his involvement in the 'Stork Nest' project; trusts that the national judiciary system will proceed with this process independently and free from any possible political influence;

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<sup>1</sup> <https://europeanjournalists.org/wp-content/uploads/2019/10/Czech-Republic-fact-finding-mission.pdf>

2. Condemns any potential situations of conflicts of interest that could compromise the implementation of the EU budget and undermine EU citizens' trust in the proper management of EU taxpayers' money;
3. Asks the Commission, as the Guardian of the Treaties, to fight all forms of conflicts of interest and evaluate 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 interest in the Member States and to establish active avoidance of conflicts of interest, including the identification of final beneficiaries of EU subsidies, as one of its priorities;
5. Calls on the Commission to ensure a policy of zero tolerance towards conflicts of interest, to ensure the swift recovery of potentially irregularly paid-out subsidies while respecting the rule of law and procedural requirements and to intervene decisively, especially when national authorities fail to act to prevent conflicts of interest among their highest representatives;
6. Stresses that national legislation on the prevention of conflicts of interest must be compatible with the letter and spirit of the new Financial Regulation; calls on the Commission to propose common guidelines to assist the Member States in the avoidance of conflicts of interest among high-profile politicians;
7. Urges the Council and the European Council to adopt common standards for all issues related to conflicts of interest 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 EU budget, including corrective actions 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 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 EU 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 potential aim of serving the self-interest of specific individuals rather than the general public;
11. Deplores the fact 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 Chair of the Council for the European Structural and Investment Funds) while still controlling the Agrofert Group as a founder and the sole beneficiary of two trust funds, in contravention of Article 61(1) of the Financial Regulation, and therefore calls into question the impartial and objective exercise of his

functions; is deeply concerned about recent media reports<sup>1</sup> that the Prime Minister continues to exert control over business decisions taken at Agrofert;

12. Notes that recent media reports have seemingly revealed that Mr Babiš and his wife are still listed as among the six active persons with significant influence or control over the trustees of a trust related to the Agrofert subsidiary GreenChem Solutions Ltd. in the UK;
13. Insists that a conflict of interest at the highest level of government of a member state, if confirmed, cannot be tolerated and must be resolved by the person(s) concerned either by:
  - a) taking measures that ensure that this person no longer has any economic interest or other interests falling within the scope of Article 61 of the Financial Regulation in relation to a business entity;
  - b) the business entities under their control ceasing to receive any funding from EU funds, public subsidies or funding distributed by the national government;
  - c) abstaining from participation in decisions which concern their interests; 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 address the conflict of interests;
14. Calls on the Commission to thoroughly supervise the payment allocation 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;
15. 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 EU taxpayers should be duly informed of such a situation;
16. Is deeply concerned over reports<sup>2</sup> about the ability of Agrofert Group companies to artificially move assets among subsidiaries, thus meeting the eligibility criteria for subsidies to small and medium-sized companies or, conversely, to join their operations in order to present themselves as a large company, thus winning public tenders;
17. 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

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<sup>1</sup> <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>

<sup>2</sup> Information received from the Association of Private Farming in the Czech Republic during the fact-finding mission of 26 to 28 February 2020.

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;

18. Is concerned about the financial loss caused by deficiencies in national paying agencies and controlling bodies; calls on the Council in this context to urgently adopt the proposal for a regulation on the protection of the Union's budget in the case of generalised deficiencies as regards the rule of law in Member States;
19. Is deeply concerned about the legal framework in the Czech Republic denying the national Supreme Audit Institution the right to check the regularity and performance of public spending at regional and local level, thus preventing the institution from having any insight into the beneficial owners of the complex company structures; deplors reports<sup>1</sup>.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 about the work of the Czech Supreme Audit Office;
20. Stresses that a politically imbalanced composition of the Supervisory Board of the State Agricultural Intervention Fund (SZIF) carries the risk of political influence, thereby undermining the ability to perform independent audits;
21. Is concerned about reports that civil servants<sup>2</sup>received instructions and were pressurised not to investigate potential conflict of interest allegations related to the Agrofert Group and were allegedly instructed to assess commercial offers received by Agrofert; is deeply worried by reports that civil servants faced negative repercussions, such as dismissals on 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;
22. Regrets indications of systemic weaknesses in the detection of conflicts of interest; deplors the fact 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 the 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 delay, in particular by requiring a verifiable conflict of interest declaration, whereby public officials provide a list of their respective financial interests;
23. Regrets that EU funds affected by financial corrections related to irregularities can be re-used without any further consequences or restrictions; is of the opinion that such a system threatens the EU's financial interests; 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;

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<sup>1</sup> Information received from the Supreme Audit Institution of the Czech Republic during the fact-finding mission of 26 to 28 February 2020.

<sup>2</sup> Reports by civil servants and representatives of NGOs, brought to the attention of members of the fact-finding mission to the Czech Republic of 26 to 28 February 2020.

24. Takes note of the Commission decision of 28 November 2019 to suspend the relevant amounts included by the Czech authorities in their interim declarations of expenditure for the Czech Rural Development Programme for Q4-2018 and Q1-2019;
25. Notes that the Commission has confirmed that it made payments under the common agricultural policy (CAP) relating to the year 2018 to companies belonging to the Agrofert Group, and also to companies with the same beneficial owner in several other Member States outside the Czech Republic; insists that the Commission should provide the discharge authority with a complete and reliable overview of all payments made to the Agrofert Group and to companies with the same beneficial owner in all Member States for the financial years 2018 and 2019;
26. Calls on the Czech authorities to ensure the fair and balanced distribution of EU funds, so that EU taxpayers' money benefits the vast majority of the population, both economically and socially;
27. Is concerned about the inadequate implementation of Directives (EU) 2015/849 <sup>1</sup>and (EU) 2018/843 <sup>2</sup>on preventing the use of the financial system for money laundering or terrorist financing (fourth and fifth 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;
28. Urges the Czech Financial Analytical Unit to take a more proactive approach to combating tax crimes, fraud and corruption, as well as to ensure effective checks of beneficial owners by the entities responsible under the anti-money laundering rules;
29. Regrets that the authorisation, distribution and auditing of EU funds in shared management are complex and opaque processes where only the Member States have full access to the data, meaning that the Commission is unable to provide a timely and comprehensive overview to Parliament when asked for information on payments to certain beneficiaries in several Member States; emphasises that this severely hampers the Committee on Budgetary Control's and the European Court of Auditors' efficiency and ability to carry out their functions as control entities;
30. 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 of the beneficial owners of companies (natural and legal persons); calls on the Commission to propose a regulation for the establishment of an IT system that allows for uniform and standardised reporting in real time by Member State authorities, ensuring interoperability with the systems in the Member States, in order to guarantee better transparency and cooperation between the Commission and the

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<sup>1</sup> Directive (EU) 2015/849 of the European Parliament and of the Council of 20 May 2015 on the prevention of the use of the financial system for the purposes of money laundering or terrorist financing, (OJ L 141, 5.6.2015, p. 73).

<sup>2</sup> Directive (EU) 2018/843 of the European Parliament and of the Council of 30 May 2018 amending Directive (EU) 2015/849 on the prevention of the use of the financial system for the purposes of money laundering or terrorist financing (OJ L 156, 19.6.2018, p. 43).



Member States, to further improve accountability with regard to payments, and in particular to contribute to the earlier detection of systemic errors and misuse;

31. Regrets that none of the regulations governing the use of agricultural or cohesion funds impose an obligation on national authorities to publish the ultimate beneficial owner of an individual, legal entity or trust benefiting from the funds; calls on the co-legislators to pay special attention to this issue and to address it comprehensively when deciding on future rules for the transparency of EU subsidies;
32. Insists that the register of beneficial ownership must contain only fully verified information on the controlling person(s) and must be fully open to the public;
33. Strongly disapproves of the creation and establishment of oligarchical 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 ensure respect for the rule of law and prevent the fostering of such structures;
34. Reiterates its concern that cases of conflicts of interest damage the goals of cohesion policy and the CAP, which have important economic, social and environmental dimensions, and creates a negative image for these policies;
35. Calls on the Commission to table a proposal modifying the CAP rules towards a fairer allocation of EU funds, to ensure that the CAP is allocated fairly 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 capping combined with a degression mechanism; is of the opinion, however, that capping, with the introduction of a labour cost offset before capping, is insufficient to guarantee a fairer allocation of direct payments; supports the idea of a mandatory redistribution mechanism;
36. Takes note of the fact that land property rights were often not clearly defined and land remained classified as state land under the supervision of the State Land Office, which tended to lease it to large scale-farm corporations; acknowledges the efforts of the Czech authorities to identify the rightful owners until 2023; insist that the auction of land whose rightful owners cannot be established must be carried out in a fair manner, providing equal opportunities for small and medium-sized farmers and young farmers to acquire the land;
37. 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 policy for those with a conflict of interest; underlines that it should not be possible to receive EU subsidies in the hundreds of millions in one multiannual financial framework (MFF) period;
38. Insists that those responsible for the misuse of EU funds should suffer the consequences, and that in the case of financial corrections, the burden should not be shifted to national taxpayers; calls on the Czech national authorities to reclaim unduly paid subsidies from those who unlawfully benefited from them; is of the opinion that an enabling condition for using EU funds should be introduced for the next programming

period, requiring national legislation to include provisions obliging the beneficiary responsible to recover the funds wrongfully claimed;

39. Strongly condemns the public use of defamatory language and hate speech against participants in the fact-finding mission of 26 to 28 February 2020 by the Prime Minister during his press conference; finds it unacceptable that Members of the European Parliament who took part in the fact-finding mission of the Committee on Budgetary Control to the Czech Republic received death threats and other verbal attacks while fulfilling their responsibilities as Members of the European Parliament;
40. Calls on the Committee on Budgetary Control to report back to Parliament about any relevant insights gained during its fact-finding mission and to inform the Commission and relevant authorities accordingly;
41. Calls on the Commission to do its utmost to finalise the ongoing audit procedures without undue delay and to make its findings public as soon as all the evidence has been duly evaluated; encourages the Council and the European Council to consider the findings of these audits and to give due attention to Article 61 of the Financial Regulation with regard to the negotiations for the next MFF;
42. Calls on the Commission to follow up on allegations of unresolved conflicts of interest in other Member States;
43. 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;
44. Stresses the importance of upholding the rule of law, the separation of powers, the independence of the judiciary, and the independence and pluralism of the media as a precondition for the successful use of EU funding;
45. Highlights the importance of independent public media and of the investigative journalists and non-governmental organisations working to strengthen the rule of law; Underlines in that connection that EU support for independent journalists and civil society organisations is paramount, including in the context of the next MFF; is concerned about the high concentration of private media in the hands of a few in the Czech Republic;
46. 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;
47. Calls on the Czech authorities to inform the EU institutions of the outcome of the reopened ‘Stork Nest’ investigation as soon as possible;
48. 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 for the future EU budget and the next MFF, in line with Article 61(1) of the Financial Regulation;

49. Expresses solidarity with the Czech people calling for fairness, justice and the resolution of the incompatibility of the Czech Prime Minister's business interests with his political role and powers;
50. Instructs its President to forward this resolution to the Commission, the Council and the Government and Parliament of the Czech Republic.