

## **Beslut i ärende 193/2020/EWM om Europeiska kommissionens vägran att ge allmänheten tillgång till ett rättsligt yttrande i samband med en påstådd intressekonflikt i Tjeckien**

Beslut

**Ärende** 193/2020/EWM - **Undersökning inledd** den 18/02/2020 - **Beslut** den 25/03/2020 -  
**Berörda institutioner** Europeiska kommissionen ( Inget administrativt missförhållande upptäckt ) |

Ärendet gällde kommissionens vägran att ge allmänheten tillgång till ett yttrande från rättstjänsten som gällde en påstådd intressekonflikt för den tjeckiske premiärministern.

Den klagande ansåg att det fanns ett övervägande allmänintresse i att handlingarna lämnades ut. Enligt den klagande behöver medborgarna kunna ta del av innehållet i det rättsliga yttrandet så att de kan bilda sig en egen oberoende uppfattning om de berörda parternas agerande och trovärdigheten i de argument som framförts.

Ombudsmannen fann att allmänintresset av att det rättsliga yttrandet lämnas ut inte i detta skede går före allmänintresset av att skydda möjligheten för kommissionen att genomföra revisioner som syftar till att säkerställa att EU:s medel skyddas och att rättsstatsprincipen respekteras. Ombudsmannen konstaterade därför att inget administrativt missförhållande förelåg och avslutade undersökningen.

## **Background to the complaint**

1. The European Union provides funding to its Member States to support economic development and to strengthen social cohesion across the EU. The Member States select, monitor and evaluate the projects that receive EU funding.
2. In 2018, the European Commission responded to allegations of potential conflicts of interest related to certain projects in Czechia that had received EU funding. It started an audit in relation to EU funds granted to Agrofert, a company founded by the Prime Minister of Czechia.
3. On 13 December 2018, the European Parliament adopted a resolution on conflicts of interest and the protection of the EU budget in Czechia [1] . The resolution mentions a legal opinion of



the European 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*'.

4. The resolution pointed out that “ *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*”. The resolution “[called] *on the Commission to follow up on this issue without delay, on the basis of the opinion of its Legal Service [...], 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*”.

5. The complainant requested public access to this legal opinion. The Commission refused public access to it in both its initial decision and its confirmatory decision. The complainant therefore turned to the Ombudsman.

## The inquiry

6. The Ombudsman opened an inquiry into the Commission's refusal to grant public access to the opinion of the Legal Service related to an alleged conflict of interest of the Czech Prime Minister. In the course of the inquiry, the Ombudsman's inquiry team examined a copy of the requested document.

## Arguments presented to the Ombudsman

7. The complainant considered that the Commission should disclose the requested document. He noted that the Commission has forwarded the legal opinion to the Parliament and the Parliament has published extracts of it. Hence, the Commission has apparently agreed that the Parliament could make the opinion public, at least partially. The complainant stated that it is one of the foundations of a parliamentary democracy that Parliament works in public. According to the complainant, this implies that documents debated by Parliament and on which Parliament bases its deliberations must be accessible to the public.

8. In addition, the complainant argued that there is an overriding public interest in disclosure. He stated that this opinion concerns potentially serious conflicts of interest of a member of the European Council, i.e. at the highest level of the EU. The complainant argued that the EU Commission must ensure that the Czech Prime Minister has not enriched himself or is not able to enrich himself using EU subsidies. In his view, citizens need to be fully aware of the content of the opinion, so that they can form their own independent view of the actions of the parties involved and the credibility of the arguments put forward.

9. The Commission explained that the legal opinion is relevant in the context of the ongoing



discussions with the Czech authorities. Disclosing the document would be detrimental to the proper conduct of the Commission's ongoing audits of the Czech control systems for the prevention of conflicts of interest. [2] It would jeopardise the cooperation between the European Commission and the Czech authorities, which is an essential condition for the effective performance of the institution's investigative tasks. It could also reduce the willingness of the authorities of the Member State concerned to participate constructively in current and future audits of Union funds.

**10.** Moreover, the Commission explained that the document contains a legal analysis of a delicate and complex issue, which is the subject of ongoing investigations. [3] At this stage, disclosure of the requested document would significantly limit the European Commission's interest in seeking and obtaining legal advice and the ability of the Legal Service to assist the European Commission in assessing this matter.

**11.** In addition, according to the Commission, the complainant's general considerations regarding transparency do not indicate an urgent need for the public to have access to the requested document. Furthermore, this interest would not outweigh the public interest in the proper conduct of ongoing audits and the full alignment of control systems in the Member States with the necessary Union standards, or the protection of legal advice. The public interest is best served by allowing the European Commission to complete the audits in smooth cooperation with the Member State.

## The Ombudsman's assessment

**12.** The requested document is part of the administrative file regarding ongoing audits into potential conflicts of interest in Czechia. It includes proposals for measures to be taken before and after the entry into force of the EU's current financial rules applicable to its budget [4] . It also includes proposals on the measures taken to avoid conflicts of interest in the allocation of resources of the European Union.

**13.** EU citizens have an interest in being reassured that the Commission is acting appropriately to investigate and take action regarding allegations of potential conflicts of interest involving a high-level public representative and funds coming from the EU budget. The Ombudsman agrees that an adequate degree of transparency guarantees that the EU enjoys greater legitimacy and is more accountable to citizens in our democratic society.

**14.** However, the rules that govern the release of documents recognise that at times, the public interest is best served by not releasing documents, for example, if to do so would damage an investigation the completion of which serves to protect the public interest. The Commission's audit into conflicts of interest in Czechia is still ongoing. It is important, for the public, that the Commission's ability to conduct audits, aimed at ensuring that EU funds are protected, and that the rule of law is respected, is not undermined. Having carefully reviewed the document, the Ombudsman agrees that disclosure, at this stage, when the Commission's audits are on-going, could damage this public interest.



**15.** The Ombudsman also considers that, *at this stage* , there is no public interest which overrides the public interest in enabling the Commission to effectively carry out the audit. The position may well be different once the audit has been completed.

**16.** When examining the requested document, the Ombudsman has carefully assessed whether the Commission could grant partial access that would not damage the public interest in protecting the Commission's ability to conduct audits. However, she has concluded that the content of the requested document is such that this cannot be achieved in a way that would allow for any meaningful public access.

**17.** The complainant argues that since the Commission has provided the European Parliament with a copy of the document, the Commission should make the document public. The Ombudsman notes that providing a copy of the document to the European Parliament does not mean that the document should be made public. Parliament received the document in the context of its role in overseeing the actions of the Commission. Its work in this context is not comparable to its legislative work, which, the Ombudsman agrees, should , be carried out in a wholly transparent manner, in accordance with the principle of a parliamentary democracy. Parliament can, in its oversight role, obtain all necessary documents from the EU institutions, bodies, offices and agencies, including documents that are confidential. The fact that Parliament can obtain such documents strengthens its oversight role and deepens the democratic nature of the EU. The provision of documents classified as confidential to Parliament does not, however, in any way alter the analysis as regards whether these documents should be made public.

## Conclusion

Based on the inquiry, the Ombudsman closes this case with the following conclusion:

**There was no maladministration by the European Commission.**

The complainant and the European Commission will be informed of this decision .

Emily O'Reilly

European Ombudsman

Strasbourg, 25/03/2020



[1] [Länk] P8\_TA(2018)0530, available at [https://www.europarl.europa.eu/doceo/document/TA-8-2018-0530\\_EN.html](https://www.europarl.europa.eu/doceo/document/TA-8-2018-0530_EN.html) [Länk] .

[2] [Länk] Exception to the right of access under Article 4(2) third indent of Regulation 1049/2001.

[3] [Länk] Exception to the right of access under Article 4(2) second indent of Regulation 1049/2001.

[4] [Länk] 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, available at <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX:32018R1046> [Länk].