



Press and Information

General Court of the European Union  
**PRESS RELEASE No 98/20**  
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Order in Case T-715/19  
Lukáš Wagenknecht v European Council

**The General Court dismisses an action seeking a declaration that the European Council unlawfully refused to exclude the Czech Prime Minister, on the basis of an alleged conflict of interest, from the meetings of that institution concerning the adoption of the Multiannual Financial Framework of the European Union 2021/2027**

*The Member States alone are competent to determine, as between their Heads of State or Government respectively, which of those persons is to represent them at European Council meetings and to establish the grounds which could lead to it being impossible for one of those persons to represent them at that institution's meetings*

By letter dated 5 June 2019 and received by the European Council on 10 June 2019, Mr Lukáš Wagenknecht, a member of the Senát Parlamentu České republiky (Senate of the Czech Republic), requested the European Council to exclude the Prime Minister of the Czech Republic, Mr Andrej Babiš, from the meeting of the European Council of 20 June 2019 and from future meetings relating to the negotiations for the Multiannual Financial Framework 2021/2027 of the EU. That request was based on an alleged conflict of interest of the Czech Prime Minister stemming from his personal and family interests in companies of the Agrofert Group, which is active, inter alia, in the agri-food sector, since those companies receive subsidies coming from the EU budget.

In its reply of 24 June 2019, the European Council, while stating that it was not defining its position on the substance of Mr Wagenknecht's allegations, explained that that EU Treaty<sup>1</sup> intangibly laid down the composition of the European Council by providing that it 'shall consist of the Heads of State or Government of the Member States, and of its President and the President of the [European] Commission'. Thus, the European Council did not consider itself to be in a position to alter that composition the EU Treaty does not provide for the possibility of such an alteration.

Furthermore, the European Council pointed out that the question of which person, as between the Head of State or Head of Government, should represent each of the Member States of the EU was a matter for national constitutional law alone. Thus, it did not fall within the discretion of the European Council to decide who should be the representative of each Member State within that institution, nor to decide whom, as between the Head of State or the Head of Government, should be invited to its various meetings. In consequence, the European Council noted that it was not in a position to exclude the Czech Prime Minister from the meetings to which Mr Wagenknecht referred.

Dissatisfied with those explanations, Mr Wagenknecht brought, before the General Court and on the basis of Article 265 TFEU, an action against the European Council seeking a declaration that that institution had failed to act in that, in breach of the rules of EU law on the protection of the financial interests of the European Union and on the avoidance of any conflict of interest in the management of EU funds, it had failed to act in accordance with his call to act.

By today's order, the Court recalls that, with regard to the admissibility of the action, where a natural or legal person seeks a declaration that an EU institution unlawfully refrained from adopting an act, that person must establish either that, had that act been adopted, he or it would have been

<sup>1</sup> Article 15(2).

its addressee, or that the act in question would have concerned him or it directly and individually in a manner analogous to that in which the addressee of such an act would be concerned. Moreover, such a natural or legal person must show an interest in bringing proceedings, the existence of which presupposes that the action must be liable, if successful, to procure an advantage to the party bringing it.

The Court notes that the act which Mr Wagenknecht requested the European Council to adopt would not have been, had it been adopted, an act addressed by that institution to him, but a decision which would have been addressed to the Czech Prime Minister.

As regard the argument put forward by Mr Wagenknecht that an interest in bringing proceedings flowing from his status as a member of the Senate of the Czech Republic is such as to establish that he has an interest in bringing proceedings in the present action for failure to act, the Court notes that, in accordance with the case-law, Mr Wagenknecht, like all physical persons, was required to prove a personal interest, both actual and existing, in bringing proceedings before the EC Courts. Thus, failing any demonstration by him of a personal interest in obtaining a finding that the European Council had allegedly failed to act, the condition requiring that he be directly and individually concerned by the measures sought from the European Council is, in any event, not satisfied.

Furthermore, the Court recalls that where, supported by explanations, an EU institution refuses to act in accordance with a request for the adoption of a measure, that constitutes, first, a definition of position bringing any failure to act on the part of that institution as regards the object of the call to act to an end and, second, an act open to challenge under Article 263 TFEU. That was exactly the situation in the present case and, in that regard, the European Council's reply of 24 June 2019 constituted a decision to refuse to act. However, Mr Wagenknecht did not challenge that decision before the Court on the basis of Article 263 TFEU, although he had the opportunity to do so.

In those circumstances, by upholding the plea of inadmissibility raised by the European Council, the Court considers that the **action for failure to act brought by Mr Wagenknecht is inadmissible.**

In any event, with regard to the substance of the request at issue, the Court notes that the European Council has no discretion when it invites the Heads of State or Government of the Member States to its meetings. In particular, in the absence of precision on that point in the EU Treaty, the Court considers that **it is the responsibility of the Member States to adopt national measures, including constitutional measures, making it possible to determine whether they should be represented, at European Council meetings, by their Head of State or their Head of Government.** Similarly, **it is for the Member States to establish, if appropriate, whether there are grounds which may lead to one of them being prevented from representing his respective Member State within that institution.**

Consequently, the Court holds that, irrespective of whether the Czech Prime Minister, as the representative of the Czech Republic within the European Council, is in a situation of conflict of interest, **the European Council was correct to take the view in the present case that, in the light of the wording of Article 15(2) TEU, it was not in a position to exclude him from its meetings as Mr Wagenknecht requested.**

Accordingly, the Court finds that, in addition to being inadmissible, **the action for failure to act brought by Mr Wagenknecht is, in any event, manifestly unfounded.**

Lastly, with regard to the allegations relating to the alleged conflict of interest of the Czech Prime Minister, the Court recalls that the regularity of payments made by the EU in respect of the funds granted, in his name and on his behalf, in the Member States, falls within the scope of the EU rules applicable to those funds and of the conditions laid down therein, such as those at issue, for example, in Case T-76/20, Czech Republic v Commission,<sup>2</sup> pending before the Court.

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<sup>2</sup> Czech Republic v Commission ([T-76/20](#)).

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**NOTE:** An appeal, limited to points of law only, may be brought before the Court of Justice against the decision of the General Court within two months and ten days of notification of the decision.

**NOTE:** An action for a declaration of failure to act seeks a finding that a European Union institution, in breach of European Union law, has failed to act. Under certain conditions, the Member States, European Union institutions and individuals may bring an action before the Court of Justice or the General Court seeking a declaration of failure to act. If the action is held to be well founded, the institution which is declared in breach of its obligation to act, contrary to European Union law, is required to take the necessary measures to comply with the judgment of the Court of Justice or of the General Court.

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*Unofficial document for media use, not binding on the General Court.*

The [full text](#) of the order is published on the CURIA website on the day of delivery

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