



## PRESS RELEASE No 162/22

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Judgment of the General Court in Case T-174/21 | Agrofert v Parlement

### **The Parliament's decision to refuse access to two documents relating to the investigation against Mr Andrej Babiš, the former Czech Prime Minister, on misuse of European funds and potential conflicts of interest is valid.**

*The General Court, first, finds that Agrofert's legal interest in bringing proceedings against the decision refusing to grant it access to a report which the Commission had drawn up in that regard has ceased to exist and, second, dismisses Agrofert's action against the decision refusing to grant access to a letter sent by the Commission to the Czech Prime Minister.*

The applicant, Agrofert, a.s., is a Czech holding company which controls more than 230 companies active in various sectors of the economy, such as agriculture, food production, the chemical industry or the media. It was initially established by Mr Andrej Babiš, who was Prime Minister of the Czech Republic from 2017 to 2021. In a Parliament resolution <sup>1</sup> on the reopening of the investigation against the Czech Prime Minister on misuse of European funds and potential conflicts of interest, it was stated that the latter continued to control the Agrofert group after his appointment as Prime Minister. Taking the view that that statement was inaccurate and wishing to know the sources and information held by the Parliament before it adopted that resolution, the applicant submitted to the latter an application for access to several documents. <sup>2</sup> In its initial reply of 14 September 2020, the Parliament identified certain documents as publicly accessible and refused access to a letter sent by the Commission to the Czech Prime Minister and to a final audit report of the Commission relating to the audit on the functioning of the management and control systems in place in the Czech Republic for the purpose of preventing conflicts of interests. <sup>3</sup> In response to a confirmatory application, the Parliament, by decision of 15 January 2021, <sup>4</sup> inter alia, confirmed its refusal of access to both those documents on the basis of the exception relating to protection of the purpose of inspections, investigations and audits provided for by Regulation No 1049/2001. <sup>5</sup>

<sup>1</sup> European Parliament resolution 2019/2987(RSP) 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 (OJ 2021 C 362, p. 37).

<sup>2</sup> Under Regulation (EC) No 1049/2001 of the European Parliament and of the Council of 30 May 2001 regarding public access to European Parliament, Council and Commission documents (OJ 2001 L 145, p. 43).

<sup>3</sup> In accordance with Articles 72 to 75 and 125 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 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 and repealing Council Regulation (EC) No 1083/2006 (OJ 2013 L 347, p. 320).

<sup>4</sup> Decision A(2019) 8551 C (D 300153) of the European Parliament of 15 January 2021, by which it refused the applicant access to two documents relating to the investigation against the former Prime Minister of the Czech Republic on misuse of European funds and potential conflicts of interest.

<sup>5</sup> Exception provided for in the third indent of Article 4(2) of Regulation No 1049/2001.

In an action for annulment of that decision, the Court, first, **finds that the applicant's interest in bringing proceedings against the Parliament's refusal to grant it access to the Commission's final audit report has ceased to exist** and, second, **dismisses the action against the decision refusing access to the Commission's letter to the Czech Prime Minister.**

### **Findings of the Court**

In the first place, the Tribunal examines whether, following the publication by the Commission of its final audit report, the applicant retained its interest in bringing proceedings, in so far as its application for annulment relates to the Parliament's refusal to grant access to that report.

It states that, **following publication of that report, the Parliament's refusal to grant access to that document is no longer effective** in so far as the author of the document, the Commission, decided to make it accessible to the public, and that **annulment of the contested decision**, in so far as it refuses access to that report, **would have no additional consequence** in relation to the disclosure of that document **and could not procure an advantage for the applicant.**

Those findings are not called into question by the fact that the Commission did not publish the full version of the final audit report. The Court points out that the effect of an application for access is to make the document in question accessible to the public and can only lead to the disclosure of its public version. In that regard, it observes that, in deciding not to make available to the public certain information contained in the final audit report, the Commission did not rely on the exception relating to the protection of the purpose of inspections, investigations and audits laid down in Regulation No 1049/2001, but on the requirements relating to the protection of certain information, such as personal data or business secrets. It infers from this that the annulment of the Parliament's decision refusing to grant access to the final audit report, on the basis of the exception relating to the protection of the purpose of inspections, investigations and audits provided for in Regulation No 1049/2001, would not have the effect of making that data public, since the Parliament was not the author of that report and could not therefore go beyond the disclosure granted by the Commission, the author of that document. Therefore, as a result of the publication of the final audit report, the applicant obtained the only advantage which its action could have afforded it.

The Court adds that the fact that the applicant chose to apply to the Parliament for access to the final audit report and not to the institution which is the author of it cannot lead to the conclusion that the publication of that document by the Commission constitutes disclosure by a 'third party', where the Commission is the author of that document.

It concludes that **the applicant's interest in bringing proceedings against the contested decision** inasmuch as the Parliament refused access to the final audit report **has ceased to exist.**

In the second place, the Court analyses the application for partial annulment of the contested decision inasmuch as the Parliament refused the applicant access to the Commission's letter.

First, it rejects the first plea, alleging infringement of the exception relating to the protection of the purpose of inspections, investigations and audits laid down in Regulation No 1049/2001 in so far as the Parliament allegedly failed to establish that the conditions for refusing access to the Commission's letter were met.

In that regard, the Court holds that, in the present case, the purpose of the Commission's investigation, namely to ensure that a Member State's management and control systems comply with EU law, had not been achieved with the adoption of the Commission's follow-up letter. That purpose cannot be limited solely to the analysis of the systems put in place by the Member State concerned; the implementation, by the latter, of the recommendations formulated by the Commission in its audit report also constitutes a stage in the achievement of that purpose. Thus, **the protection of the purpose of investigations ensured by that exception does not come to an end with the adoption of that report or with that of the follow-up letter** by which the Commission monitors the

recommendations set out in that report. In both cases, **discussion phases with the Member State are initiated**, one concerning the initial recommendations and the other concerning those recommendations that remain open, **which form part of the investigations covered by that exception**.

Furthermore, the Court rejects the applicant's argument that the Parliament did not establish that disclosure of the Commission's letter could undermine the investigation. On one hand, in order to establish the link between the Commission's letter and the audit investigation at issue, the Parliament had to show only that that letter formed part of the documents relating to the ongoing investigation. On the other hand, **the statement of reasons in the contested decision is sufficient to explain why disclosure of the Commission's letter was likely to undermine the purpose of the audit investigation**, especially as, since the Czech Prime Minister was directly involved, it was important to respect the confidentiality of the dialogue between him and the Commission.

Secondly, the Court rejects the second plea, alleging failure to take into account the existence of an overriding public interest justifying disclosure of the Commission's letter. It is true that the existence of the rights of the defence is in itself a public interest. However, the fact that those rights are manifested in the present case by the applicant's subjective interest in defending itself against serious accusations made with regard to it by the Parliament implies that **the interest on which the applicant relies is not a public interest but a private interest, so that the applicant has not shown that there is an overriding public interest warranting disclosure of the Commission's letter**.

**NOTE:** An action for annulment seeks the annulment of acts of the institutions of the European Union that are contrary to European Union law. The Member States, the European institutions and individuals may, under certain conditions, bring an action for annulment before the Court of Justice or the General Court. If the action is well founded, the act is annulled. The institution concerned must fill any legal vacuum created by the annulment of the act.

**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.

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

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