

## CZ Question to the EC on the application of Article 61 of the FR

Dear Mr. Waelbroeck,

We are addressing you regarding the interpretation and application of Article 61 of the *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, amending Regulations (EU) No 1296/2013, (EU) No 1301/2013, (EU) No 1303/2013, (EU) No 1304/2013, (EU) No 1309/2013, (EU) No 1316/2013, (EU) No 223/2014, (EU) No 283/2014, and Decision No 541/2014/EU and repealing Regulation (EU, Euratom) No 966/2012* (hereinafter referred to as the *Financial Regulation*) and we would like to ask you for your perspective on this matter.

Our question is aimed at the application of Article 61 of the Financial Regulation concerning a person who, during his term of office (as a member of the Government) was identified at potential risk of conflict of interests as stipulated in Article 61 of the Financial Regulation. Subsequently appropriate measures were adopted to eliminate this risk. Currently this person no longer holds any mandate or function as a member of the Government and the legal entity owned by this person is applying for a subsidy from EU funds.

We are interested in a general interpretation of the application of Article 61 of the Financial Regulation in following situations:

1) The project application was submitted by a legal entity owned by a person who was a member of the Government at that time, however, the grant procedure (project assessment process) is still ongoing or has lasted longer than the term of office of that person. Thus, situation of the applicant for a subsidy from EU funds, who could be at the time of submitting the application (at the beginning of the administrative procedure for the provision of support), in the position of a person in relation to the *other person involved in the implementation of the EU budget* in the sense of Article 61 (1) of the Financial Regulation because of its other direct or indirect personal interest, which can objectively be perceived as a conflict of interests.

The situation has changed during the grant procedure, since the term of office of a member of the Government, whose impartial and objective performance may have been affected by his conflict of interests, was terminated. This person currently only holds a parliamentary mandate on behalf of the opposition party. At the time of deciding whether or not to provide grant support, this process is no longer burdened by the relationship between the applicant and this person, as the loss of a Governmental post has ruled out the potential to influence further approval process and the outcome of administrative proceedings.

At the same time, it is a person who, from its position as a member of the Government, did not have a direct influence on the process of announcing calls, evaluation and selection of project applications, nor on direct approval, reimbursement and related control of provided support to a specific grant recipient. At the same time, no interference from this person's side in connection to the project in question has been detected nor documented. This person could (as a member of a collective body – the national Government) only influence the areas that determine the overall strategic framework (i.e. the approval of the Partnership Agreement, programme proposals and programmes structure), but not the specific projects or detailed form of the interventions, nor the form of the call and its rules and conditions.

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The project application in question was submitted within the framework of a competitive call, met all the requirements of this call, and achieved sufficient point evaluation for the project to be supported. But the grant decision has not been signed yet.

2) The project application was submitted by a legal entity owned by the person, after the termination of the function of a member of the Government. Other circumstances are similar to question 1).

We therefore ask for an interpretation in order to assess the conflict of interests from the point of view of a member of the Government who could co-decide on the adopted conceptual and strategic documents necessary for the preparation and implementation of the Partnership Agreement and Operational Programs 2014–2020, that is in the field of coordination of support provided from EU funds. However, the Commission Notice (2021/C 121/01) – *Guidance on the avoidance and management of conflicts of interest under the Financial Regulation* (chapter 3.2.3, point 7) describes the situation in which the larger the group to which the person belongs that would benefit from the measure, the more diluted the risk of a conflict of interest generally becomes as the person acts in the interest of a larger group of potential beneficiaries. The risk of a conflict of interests is thus very low for senior government officials.

We are aware that when assessing applications for support, it is necessary to consider the individual circumstances of each case. At the same time it is necessary to treat all applicants impartially and to proceed similarly in similar cases. Nevertheless, we would like to ask for a Commission explanation of how to proceed if the change in the Governmental position (as described above) occurs during the administrative process in the implementation of the EU budget in shared management.

We would welcome the reply at your earliest convenience and are looking forward to hearing from you.

Thank you in advance.

Kind regards,

Zbyněk Smetana