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Andrej Babiš and the European Union – what to expect in 2018?

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- **The Czech Republic is facing a decisive time. The two crucial elections, parliamentary and presidential, have taken place just a few months apart (October 2017 and January 2018) and both will have a major influence on the future direction of the country. The parliamentary elections brought a victory of Andrej Babiš and his ANO movement, yet his position in power is unstable – his minority government lost the first confidence vote in the parliament and even though he will most likely get a second try, his future depends on the outcome of the presidential elections, as well as an ongoing subsidy fraud investigation.**
- **What will it mean for his position in the EU? Babiš's position on the EU level will be weakened by his domestic issues and his sometimes Eurosceptic views. While he presents a different kind of leader than the other Central European troublemakers, his subtle attempts to consolidate power shouldn't however go unnoticed in Europe.**



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communists and the far right, have already made it clear before the October elections that they will not participate in a government led by an individual facing fraud charges.

Babiš has been a controversial figure since his entrance into politics in 2011, and there is no clearer symbol of this than the fact that his future as head of a government is already undermined by many scandals, most prominently by a decade-old subsidy fraud case for his Čapí hnízdo (Stork's nest) development project.² Not only has the Czech police repeatedly³ asked the Parliament to lift his immunity from prosecution, but at the end of 2017 the European Anti-Fraud Agency (OLAF) concluded its investigation and reached the same conclusion as the Czech police – confirming the possibility of subsidy fraud. The potential prospect of having a prosecuted Prime Minister is one of the main arguments why the other political parties have so far refused to join ANO in a coalition government.

Babiš therefore was only left with the option to form a minority government, which was inaugurated in December 2017. Due to absence of support from other political parties, it failed to get the parliament's support in a vote of confidence on January 16th, 2018.

Possible future scenarios on the Czech political scene

While the country still doesn't have a stable government three months after the general elections, the legal situation around the alleged case of fraud is developing rather fast. Shortly after Babiš's first minority government failed to secure the confidence of the Chamber of Deputies, the MPs voted to lifting his immunity (and his

right hand's, Jaroslav Faltýnek) on January 19th. The upcoming second round of presidential elections widens the range of scenarios for the future, but all options point to the fact that Babiš is here to stay.

President Zeman, who is seeking re-election, repeatedly mentioned that he would award Babiš a second attempt to form a government. Such a step, however foreseen in the constitution, is rather unprecedented, especially since Zeman announced his decision even before the first confidence vote took place. Many analysts argue that the certainty of a second attempt led Babiš not to eagerly attempt to secure the majority in the first attempt⁴, but whether Babiš will really be given a second chance depends on the outcome of the presidential elections.

A Milos Zeman victory: the reign of uncertainty

If Zeman wins, he will likely keep his word and secure his alliance with Babiš even if he already conditioned appointing such a government to being handed a list of 101 supporters from the lower chamber of the parliament, meaning Babiš will need to start seriously negotiating with other parties. There are several options that could lead to 101 votes, however many of them represent a stretch of the imagination, given the proclaimed desire of almost all parties not to cooperate with Babiš. His only hope are the Social Democrats (ČSSD), who are set to hold a party congress in February and where a fraction calling for a renewal of ČSSD, led by Jiří Zimola and Michal Hašek⁵, seems to be gaining traction and supports participation in a government. Such an alliance could in turn be supported by the Communists (KSČM).⁶ A coalition with KSČM and the extreme-right SPD, seeming likely in the immediate post-

² Other scandals have rocked Babiš in the past few years, especially accusations of conflicts of interest owing to his position as media owner, owner and founder of Agrofert and minister of finance. Scandals about manipulation of the media outlets he owned and suspicion of tax avoidance cost Babiš the seat of minister of finance in spring 2017, and it later was proven that his companies earned more on public procurement during his time as finance minister than ever before.

³ Babiš's and Faltýnek's immunity was lifted for the first time shortly before the elections and since they were re-elected, the vote had to be repeated in January 2018.

⁴ „Babišův kabinet bez důvěry“, Česká televize, 16. 1. 2018, <http://www.ceskatelevize.cz/ivysilani/11412378947-90-ct24/218411058130116/titulky> (accessed 16. 1. 2018).

⁵ „Zeman na Hrad, o vládě ať rozhodne celá ČSSD, navrhuji Hašek a Zimola“, iDnes.cz, 5. 1. 2018, https://zpravy.idnes.cz/platforma-zachranme-socialni-demokracii-ff0-/domaci.aspx?c=A180105_124926_domaci_kop (accessed 10. 1. 2018).

⁶ „Vládě ANO s podporou ČSSD a KSČM se otevírá cesta“, Novinky.cz, 29. 12. 2017, <https://www.novinky.cz/domaci/459044-vlade-ano-s-podporou-cssd-a-kscm-se-otevira-cesta.html> (accessed 10. 1. 2018).

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electoral period, when they voted together in order to secure committee chairmanships, now seems to be problematic since SPD and their leader Tomio Okamura insist on having a referendum about EU membership, which ANO refuses.⁷ On their side, KSČM insists on leaving NATO, something that ANO also does not seem willing to move on. Securing the 101 votes therefore won't be easy even on a second try for Babiš, even though most parties would like to avoid early elections, which would likely only strengthen ANO's power. As of now, the current distribution of power will most likely lead to another attempt at forming a minority government.⁸

Jiří Drahoš prevails: a weaker footing for Babiš

If, however, Drahoš beats Zeman in the second round, Babiš's second term will become less certain. Zeman would still have a chance to nominate Babiš if he is able to vouch for the support of 101 MPs, which would however need to happen before March 8th, when the current President's mandate officially ends. Two questions arise here – firstly, whether Zeman keeps his word regarding this condition of 101 supporters upon leaving politics (his SPO party not having reached the parliament, he would most likely retreat from active politics in case of a loss). Even if Babiš succeeds to get support for his government and Zeman appoints him, Drahoš may not appoint a cabinet that includes candidates from the Communist party or SPD, but he however admitted he would appoint a minority government supported by those two.⁹ If Zeman loses and chooses not to give Babiš a

second chance, according to political tradition the leader of the runner-up party should be given a shot at forming the government, – in this case Petr Fiala from ODS. However, his negotiating position is already perceived as weak and it is unlikely that he'd be able to get the support of a minimal 101 MPs for his cabinet.

In case the second Babiš government would eventually fail to gain the confidence of the MPs, the third attempt is constitutionally in the hands of the leader of the lower chamber of Parliament – namely Radek Vondráček from ANO. Babiš might be therefore given even a third chance by proxy, as it would be naïve to expect that Vondráček would make any other than his party leader, in a party that promotes strong leadership discipline.¹⁰

The likelihood of a "Kaczyński scenario"

Since Babiš's main problem in securing coalition partners is his own role in the Stork's nest case, the option of an ANO-led coalition without Babiš needs to be considered as well. In such a case, other parties, namely ODS and ČSSD, would be willing to consider their participation, while the Pirates, TOP 09 and the Mayors & Independents already said they would stay in opposition.¹¹ In such a scenario, Babiš himself mentioned Richard Brabec, first deputy prime minister and minister of Environment, as an obvious choice, with the media adding Karla Šlechtová, the minister of defence, to the list.¹² However, such a scenario would not mean the end of Babiš's influence, since this would create a situation similar to the "Kaczynski

⁷ „Babiš: Referendum ano, ale ne o zahraničních věcech a daních. Vláda se k návrhu SPD staví neutrálně“, Aktuálně.cz, 17. 1. 2018, <https://zpravy.aktualne.cz/domaci/babis-referendum-ano-ale-ne-o-zahranicnich-zavazcich-a-danic/r~e7f1942afb8711e7aaabec1f6b220ee8/> (accessed 17. 1. 2018).

⁸ „Filip bude ve vedení Sněmovny. KSČM upřesní požadavky pro toleranci vlády“, iDnes.cz, 16. 11. 2017, https://zpravy.idnes.cz/komuniste-pozadavky-vlada-ano-deg-domaci.aspx?c=A171116_141340_domaci_kop (accessed 10. 1. 2018), „Babiš zahájil jednání o podpoře vlády, ODS i KDU-ČSL ho odmítly“, Deník.cz, 19. 12. 2017, https://www.denik.cz/z_domova/babis-zacne-jednat-o-podpore-pro-jeho-mensinovou-vladu-20171219.html (accessed 10. 1. 2018).

⁹ „Jiří Drahoš: Vládu s KSČM a SPD bych nejmenoval. Zeman svou zahraniční politikou škodí zemi“, Forum24.cz, 28. 12. 2017,

<http://forum24.cz/jiri-drahos-vladu-s-kscm-a-spd-bych-nejmenoval-zeman-svou-zahranicni-politikou-skodi-zemi/> html (accessed 10. 1. 2018).

¹⁰ „Třetí pokus pro Babiše. Vondráček by mu poslední šanci sestavit vládu zřejmě dal“, Česká televize, 15. 11. 2017, <http://www.ceskatelevize.cz/ct24/domaci/2303977-treti-pokus-pro-babise-vondracek-mu-posledni-sanci-sestavit-vladu-zrejme-dal> (accessed 10. 1. 2018).

¹¹ „Vratká pozice Andreje Babiše. Další vláda už může být bez šéfa hnutí ANO, klíčové budou prezidentské volby“, iHned.cz, 17. 1. 2018, <https://archiv.ihned.cz/c1-66019280-vratka-pozice-andreje-babise-dalsi-vlada-uz-muze-byt-bez-sefa-hnuti-ano-rozhodnou-nejspis-prezidentske-volby> (accessed 17. 1. 2018)

¹² „Babiš oslovil všechny strany ve Sněmovně, nabídl jim spolupráci“, České noviny, 22. 10. 2017, <http://www.ceskenoviny.cz/zpravy/slechtova-lidovce-znovu-ve-vlade-nechci/1541104> (accessed 17. 1. 2018)

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model”,¹³ where he would be pulling strings from the background.¹⁴ Such a scenario may formally remove the biggest obstruction for the potential coalition of ANO with KDU-ČSL, ODS or ČSSD; however, it will most likely remain the solution of last resort, as Babiš seems to be keen to stay in – and incarnate – power.

The outliers: Babiš on trial, and early elections

Another situation might occur if he is forced to give up his prime minister position in case he is found guilty in the fraud suspicion case. With his immunity lifted in January 2018, judicial proceedings in the Stork’s nest case put him at risk of a 5 to 10 year imprisonment sentence. If proven guilty, it would be interesting to see how the party that has so far strongly stood by Babiš would react. So far, nothing suggests that Babiš would try to change his approach and narrative and admit his guilt, instead of playing a martyr and continue to call the case a campaign to get rid of him. His successors in the ANO movement would therefore face a decision between supporting a convicted fraudster and distancing themselves from the man who created and shaped the party.

President Zeman repeatedly stated that he would not call for early elections even if it would mean that Babiš’s government would be in power for four years without the confidence in the parliament. Such a scenario is technically possible due to the lack of a prescribed time frame in the constitution, but it has never been applied or even considered before. On his side, Drahoš said that in spite of considering early elections a last resort, he wouldn’t hesitate to call for a new vote in case all the other options would fail.

However, it is unlikely that the new elections would significantly change the political scene and division of power.

Babiš and the EU – theory and practice

Regardless of Babiš’s future, it seems that the Czech Republic and Europe are up for at least part of 2018 with Andrej Babiš. What can be expected from him on the European scene?

Euroscepticism vs. pragmatism: the two levels of discourse

Babiš ran the election campaign on an anti-European note, much like a vast majority of the other Czech parties. His criticism focused mostly on the need for the EU to do less, yet more efficiently, and prominently featured the evergreen of Czech EU policy, the rejection of the obligatory relocation mechanisms.¹⁵ In spite of his lack of optimism during the campaign, Babiš said in his victory speech that his party is essentially pro-European¹⁶, and his first European Council shows that he will not turn the fundamentals of Czech EU policy on their head.

There are two documents that may help us understand what to expect from Babiš as a leader - the ANO program for 2017 elections and the program of the first Babiš government, which are basically identical on the question of the EU. ANO calls for an active membership of the Czech Republic in the EU, while emphasising that the project needs reform; therefore the preferred scenario (out of Juncker’s six scenarios for the future of the EU) is doing less, but more efficiently. The key identified topic is migration, regarding which the government insisted that decision making must remain a state competence and all efforts must be put into better controlling the situation in the

¹³ „Babiš: Pokud bych byl zásadní překážka, nemusím být za každou cenu premiér”, iDnes.cz, 18. 1. 2018,

https://zpravy.idnes.cz/babis-premier-vlada-hledani-noveho-premier-fjq/domaci.aspx?c=A180118_171225_domaci_kop (accessed 18. 1. 2018)

¹⁴ „Babiš odmítl „model Kaczyński”. Pokud vyhraje volby, chce být premiér”, Česká televize, 20. 10. 2017, [http://www.ceskatelevize.cz/ct24/specialy/superdebata-](http://www.ceskatelevize.cz/ct24/specialy/superdebata-2017/2278891-babis-odmitl-model-kaczynski-pokud-vyhraje-volby-chce-byt-premier)

[2017/2278891-babis-odmitl-model-kaczynski-pokud-vyhraje-volby-chce-byt-premier](http://www.ceskatelevize.cz/ct24/specialy/superdebata-2017/2278891-babis-odmitl-model-kaczynski-pokud-vyhraje-volby-chce-byt-premier) (accessed 18. 1. 2018)

¹⁵ „Million dollar Babiš”, Politico.eu, 22. 10. 2017, <https://www.politico.eu/article/million-dollar-babis/> (accessed 18. 1. 2018)

¹⁶ „Je sečteno. ANO jednoznačně vyhrálo volby. Babiš nabídl jednání všem stranám”, Česká televize, 21. 10. 2017, <http://www.ceskatelevize.cz/ct24/domaci/2280709-zive-je-secteno-ano-jednoznacne-vyhralo-volby-babis-nabidl-jednani-vsem-stranam> (accessed 18. 1. 2018)

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countries of origin. Finally, both documents warn clearly against accepting the euro before a proper Eurozone reform.

The Central European context

In the months preceding the elections, some commentators likened Babiš to other Central European leaders, such as Victor Orbán or Jarosław Kaczyński.¹⁷ However, Babiš's approach seems to be different. Unlike Orbán or Kaczyński, he has not built his success on any structured ideology, and neither nationalism nor religion play any role in his approach to power. The ANO movement also doesn't qualify as an extremist party in any way; its policies can be qualified as centrist and it is rather its attempt to reach out to the widest electorate possible that makes it unpredictable and hard to comprehend. In his 2013 campaign Babiš used the motto of "running a state as a business" and these principles still seem to define his political style, however misguided it was proven many times.¹⁸

Reasons for concern

However, this does not mean there are no grounds for concern and the Czech Republic under Babiš's leadership may be one day monitored for the rule of law violations, as well as Poland or Hungary. Babiš promoted his pragmatic approach to a business-minded ideology, which seems to be widely accepted within the ANO movement. There is little (or rather no) opposition to his leadership, and his several latest attempts to "run the state as a firm" led to less transparency and potential loss of a democratic control. His minority government without confidence of the parliament attempted to change the rules of procedure for the government's voting. The original proposal would make the voting anonymous in order to make it impossible to identify ministers' votes in controversial cases, and was later

withdrawn after widespread criticism.¹⁹ Similarly concerning, the government is trying to change the Civil Service Act, in order to strengthen the role of the Prime Minister and allow for easier changes of deputy ministers. Such a change would allow for personal changes in key positions within the new administration, which is exactly what the law is supposed to prevent. The latter was adopted, under pressure from the European Commission, in order to depoliticize the state administration.²⁰

Such steps, subtle as they may seem in comparison with the judiciary reforms in Poland or some steps against civil society and media in Hungary, still show that Babiš is willing to destabilize certain elements of the rule of law in the Czech Republic. Close observation from the EU side is therefore highly recommended and the EU representatives, such as Presidents Tusk, Juncker or even representatives of the ALDE party, to which ANO belongs, should not hesitate to put pressure on Babiš if his party continues to take controversial steps.

What to expect from Czech EU policy in the upcoming months: a look at sectorial issues

Babiš's pre-election Euroscepticism might be partly outbalanced by a pragmatic need for strong ties with European partners, an obligation mainly driven by the nature of the Czech economy. Given that neither ANO's election program or the programmatic statement of the first Babiš government provide much details about sectorial politics, this paper will assess the potential consequences on key sectorial issues.

Migration

<https://domaci.ihned.cz/c1-66019410-vlada-bude-mit-novy-jednaci-rad-kritika-novej-je-jen-bublina-a-dezinformace-rekl-babis> (accessed 17. 1. 2018)

²⁰ „Babišova vláda bez důvěry překopává státní správu. Zbavuje se desítek úředníků“, info.cz, 22. 12. 2017, <http://www.info.cz/cesko/babisova-vlada-bez-duvery-prekopava-statni-spravu-zbavuje-se-desitek-uredniku-21282.html> (accessed 17. 1. 2018)

¹⁷ „Europe Could See Another Brexit-Like Rupture—Beyond Spain“, Bloomberg BusinessWeek, 5. 10. 2017, <https://www.bloomberg.com/news/articles/2017-10-05/europe-could-see-another-brexit-like-rupture-beyond-spain> (accessed 10. 1. 2018)

¹⁸ See for example Paul Krugman: „A Country is not a company“, Harvard Business Review 1996 (p. 40-44, 48-51).

¹⁹ „Vláda bude mít nový jednací řád. Babiš ustoupil, stále bude možné dohledat, jak ministři hlasovali“, iHned.cz, 17. 1. 2018,

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Migration seems to be the more urgent topic that Babiš will try to deal with on the EU level. It was his priority for the first European summit in December, where he planned to explain the Czech position and convince the European Commission to lift the infringement suit.²¹ In the upcoming months, Babiš will continue to fight the Dublin IV directive proposal and any other legislation which would feature the relocation quotas. This consistency with the previous government is not surprising, as the Czech public very strongly supports this approach.²² However, it is very unlikely that Babiš would manage to stop the judicial proceeding already initiated by the Commission: the Commission has no reason to step back, if the Czech side shows no willingness to compromise. Babiš, together with the other Visegrad leaders, recently pledged to provide 35 million EUR to fight causes of migration and prevent incoming flows from Northern Africa, but such a proposal can hardly compensate for ignoring the previously accepted relocation mechanism.²³ The migration question will therefore likely continue to be a factor of unity between the Visegrad countries and may continue alienating new and old member states. As the fines can be rather significant, it will be interesting to see how far the government will be willing to go to prove its point.²⁴

EU reform

Besides claiming to be a more active player in the migration debate, Babiš also aims to take part in the EU reform debate. While his overall position is rather clear – do less but more efficiently, he has never put forward any concrete proposal, such as those of Presidents Macron or Juncker. In the ANO election program, he says that the reform of the Eurozone is needed before the Czech Republic joins, without explicating what such a change should look like. Not much can be expected from Babiš in this sense. As

his former advisor, vice president of the European Parliament Pavel Telička said in the fall, when he announced his departure from ANO, one of reasons was that the ANO leader was never really interested in foreign policy and his interest in the general EU questions remains rather limited. Chances of his personal involvement will be further lowered by his personal problems and unstable situation at the domestic scene, which will diminish his political capital in Brussels and obligate him in any case to focus on domestic issues.

Security

Another topic where the Czech Republic had significant ambitions and that is explicitly mentioned in the party materials is security cooperation. Here, the Czech Republic is likely to continue to play an active role, however with the new minister of defence, who has little experience in the field, it is unlikely to expect any leadership aspirations in this sense either – especially because the state's investments into military are clearly significantly lacking behind the 2% target, and the road to achieve this by 2025 is far from being clear if the ministry cannot successfully conduct procurements.

MFF post 2020

The negotiations of the post-2020 Multiannual Financial Framework will kick off in 2018. ANO does not elaborate on its position regarding the new structure or priorities for the budget in neither of the two documents. Similarly, Babiš has kept largely silent on the topic – his lack of involvement in discussions about the future of the European budget might be a sign of his limited interest in strategic EU questions, although his own involvement in a subsidy fraud case concerning the EU money likely plays a role as well – questions on his own case would be hard to

²¹ „Evropa je pro Babiše místo, kam Česko patří, kvóty ale napáchaly víc zla než užítka, říká Charanzová“, DTVV.cz, 14. 12. 2017, <https://video.aktualne.cz/dvtv/evropa-je-pro-babise-misto-kam-cesko-patri-kvoty-ale-napacha/r~fed8e1d6e0c311e78337ac1f6b220ee8/> (accessed 12. 1. 2018)

²² „Češi jsou nekompromisní, uprchlické kvóty nechtějí akceptovat“, Týden.cz, 14. 12. 2017, <https://www.tyden.cz/rubriky/domaci/cesi-jsou-nekompromisni->

uprchlicke-kvoty-nejchteji-akceptovat-458935.html (accessed 12. 1. 2018)

²³ „V4 potvrdila, že finančně podpoří lepší ochranu libyjské hranice“, České noviny, 14. 12. 2017, <http://www.ceskenoviny.cz/zpravy/v4-potvrdila-ze-financne-podpori-lepsi-ochranu-libyjske-hranice/1562498> (accessed 12. 1. 2018)

²⁴ As the Czech argument is not against the numbers of relocations, but about the system itself.

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avoid in such a discussion. It is therefore likely that the voice of negotiation on the Czech side will be someone else and Babiš will try to stay away from the topic.

Conclusion

While the domestic situation will most likely not have a major impact on the formulation of policies (even though a coalition government might bring different emphasis, essential changes of direction are unlikely), the instability of the domestic environment will complicate Babiš's negotiating and search for allies on the EU level. Having a Prime Minister without the confidence of his Parliament and under prosecution does not send a signal of a stable party to form a coalition with – especially on the budgetary (MFF) topic, where the main negotiations will certainly go on for the next two years.

While Babiš mentioned that the Czech Republic also needs to look beyond Visegrad for ad hoc allies,²⁵ mostly to France and Germany in the question of the EU reform, it is unlikely that this would be the case – mainly because he

currently doesn't seem to have much to offer. For ANO, Europe and the EU are not a priority, but a necessary evil to deal with and while the speeches about being proactive might resonate with EU counterparts for some time, they will eventually need to be backed up by action. This is quite unlikely especially because the next few months will be very difficult for Babiš, who will face the uphill challenge of securing and sustaining majority in the Chamber of Deputies and at the same time will most likely face charges for subsidy fraud.

In the rhetorical sphere, it is likely that Babiš's newfound carefully positive approach to the EU will last when he's not facing any challenges from his political opponents or doesn't fight for votes in the early elections. Those would likely brought back the anti-EU rhetoric, as the rules of the two level game go. The EU is a useful scapegoat for any problems on the domestic scene during election campaigns, while on the EU scene every leader tries to look pro-active and constructive. Babiš will be no exception.



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²⁵ Program ANO, 2017
<https://www.anobudelip.cz/cs/volby/program/>, accessed 17. 1. 2018.