

Judgment of the Court (Third Chamber) of 14 July 2016 (request for a preliminary ruling from the Wojewódzki Sąd Administracyjny w Warszawie — Poland) — Wrocław — Miasto na prawach powiatu v Minister Infrastruktury i Rozwoju

(Case C-406/14) ⁽¹⁾

(Reference for a preliminary ruling — Directive 2004/18/EC — Public works contracts — Regularity of the obligation imposed on tenderers to perform a certain percentage of the contract without using subcontractors — Regulation (EC) No 1083/2006 — General provisions on the European Regional Development Fund, the European Social Fund and the Cohesion Fund — Obligation for the Member States to carry out a financial correction in relation to the irregularities identified — Concept of ‘irregularity’ — Need for a financial correction in the event of infringement of EU law on public procurement)

(2016/C 335/05)

Language of the case: Polish

Referring court

Wojewódzki Sąd Administracyjny w Warszawie

Parties to the main proceedings

Applicant: Wrocław — Miasto na prawach powiatu

Defendant: Minister Infrastruktury i Rozwoju

Operative part of the judgment

1. Directive 2004/18/EC of the European Parliament and of the Council of 31 March 2004 on the coordination of procedures for the award of public works contracts, public supply contracts and public service contracts, as amended by Commission Regulation (EC) No 2083/2005 of 19 December 2005, must be interpreted as meaning that a contracting authority is not authorised to require, by a stipulation in the tender specifications of a public works contract, that the future contractor of that contract perform with its own resources a certain percentage of the works covered by that contract.
2. Article 98 of Council Regulation (EC) No 1083/2006 of 11 July 2006 laying down general provisions on the European Regional Development Fund, the European Social Fund and the Cohesion Fund and repealing Regulation (EC) No 1260/1999, read in conjunction with Article 2(7) of that regulation, must be interpreted as meaning that the fact that a contracting authority imposed a requirement, in the context of a public works contract relating to a project receiving EU financial aid, that the future contractor perform by means of its own resources at least 25 % of those works, in infringement of Directive 2004/18, constitutes an ‘irregularity’ within the meaning of Article 2(7) of that regulation, justifying the need to apply a financial correction under Article 98 thereof, in so far as it cannot be excluded that that infringement had an impact on the budget of the Fund at issue. The amount of that correction must be calculated by taking into account all of the specific circumstances which are relevant in the light of the criteria referred to in the first subparagraph of Article 98(2) of that regulation, namely the nature and gravity of the irregularity and the resulting financial loss to the Fund concerned.

⁽¹⁾ OJ C 431, 1.12.2014.