

Lattanzio KIBS SpA and Others

v

European Commission

Judgment of the General Court (Eighth Chamber) of 23 July 2025

(Public procurement – Protection of the European Union’s financial interests – Action for annulment – Lack of direct concern – Partial inadmissibility – Criteria for exclusion from participation in public procurement procedures – Concept of ‘final judgment that the person or entity is guilty’ – Article 136(1)(d)(ii) of Regulation (EU, Euratom) 2018/1046 – Persons who have powers of representation, decision or control with regard to a person or entity who is excluded – Article 136(4)(a) of Regulation 2018/1046 – Obligation to state reasons – Proportionality)

1. Action for annulment – Natural or legal persons – Measures of direct and individual concern to them – Direct concern – Commission decision excluding an operator from participating in award procedures for public procurements and grants – Action by a person named in the grounds of that decision but not the subject of its measures – No effect on his or her legal situation – Inadmissibility

(Art. 263, fourth para., TFEU; European Parliament and Council Regulation 2018/1046)

(see paragraphs 15, 17-20)

2. EU budget – Financial regulation – Administrative penalties which may be imposed by the Commission – Exclusion of an operator from procurement and grant award procedures – Exclusion criteria – Concept of final judgment of guilt – Final judgment in an Italian plea bargain procedure (patteggiamento) – Included

(European Parliament and Council Regulation 2018/1046, Art. 136(1)(d)(ii))

(see paragraphs 35-41, 43, 44)

3. EU budget – Financial regulation – Administrative penalties which may be imposed by the Commission – Exclusion of an operator from procurement and grant award procedures – Natural persons – Conditions – Persons who have powers of representation, decision or control with regard to the company excluded from that procedure – No requirement to have the status of beneficial owner of the company

(European Parliament and Council Regulation 2018/1046, Art. 136(4)(a))

(see paragraphs 78-80)

4. EU budget – Financial regulation – Administrative penalties which may be imposed by the Commission – Exclusion of an operator from procurement and grant award procedures – Publication of the information on the exclusion on the internet site of the Commission – Registration of the directors in the Early Detection and Exclusion System (EDES) database – Breach of the principle of proportionality – None

(European Parliament and Council Regulation 2018/1046, Arts 136(1)(d) and (3), 140(1) and 142(1) and (3)(c))

(see paragraphs 97, 100, 106, 112-115)

Hearing an action for annulment, which it dismisses, the General Court clarifies the scope of the criterion of exclusion from award procedures for public procurements and grants funded by the general budget of the European Union laid down by Article 136(1)(d)(ii) of Regulation 2018/1046. ([1](#)) In particular, it clarifies for the first time the interpretation of the concept of final judgment establishing the guilt of the persons concerned and, in that regard, recognises that final judgments resulting from the ‘patteggiamento’ procedure, a special form of procedure provided for in the Italian Code of Criminal Procedure, may be classified as final judgments of guilt and thus form the basis of such an exclusion.

The applicants, Lattanzio KIBS SpA, a company established under Italian law (‘LKIBS’), as well as CY, CV and CW, three natural persons, sought the annulment of the decision by which the European Commission, inter alia, had excluded LKIBS from participation in award procedures for public procurements and grants until 26 April 2024. ([2](#))

In 2020, the company Lattanzio Advisory SpA had been excluded by the Commission from participating in public procurement procedures for awards of contracts financed by the general budget of the European Union, and from participating in procedures for the grant of EU funds for a period running into 2024, on the ground that there were a number of irregularities committed by that company in the context of certain public procurement procedures for awards of contracts financed by the European Union in North Macedonia. ([3](#))

By judgment of 13 July 2021, which became final on 8 October 2021, the Tribunale di Milano (District Court, Milan, Italy), imposed, first, on Lattanzio Advisory Spa (which became LA International Cooperation Srl (‘LAIC’)) a fine of EUR 80000, and, second, on CY and CV a suspended sentence of two years’ imprisonment for, inter alia, acts of corruption (‘the judgment of the District Court of Milan’), corresponding, in essence, to the irregularities that were the reason for the 2020 exclusion decision being adopted.

In 2022 and 2023, LKIBS submitted requests to participate in three public procurement procedures for the award of contracts financed by the European Union. When submitting those requests, LKIBS accredited its own experience in projects financed by the European Union by referring to earlier projects implemented by LAIC, of which it had acquired the branch responsible for carrying out those projects.

The Commission rejected those three requests by LKIBS on the ground that it had presented incomplete or misleading information because it had participated in those three procedures while being in an exclusion situation. The Commission considered, in essence, that the judgment of the District Court of Milan constituted a final judgment and that, by requesting the application of a reduced sentence and consenting to it, CY and CV had acknowledged their guilt for acts of corruption, such as referred to in Article 136(1)(d)(ii) of the Financial Regulation of 2018.

Findings of the Court

After dismissing, owing to a lack of direct concern, the action brought by CW, the Court examines, inter alia, several of the pleas raised alleging, in essence, that the Commission infringed Article 136(1)(d)(ii) of the Financial Regulation of 2018 by finding that the judgment of the District Court of Milan was a final judgment which established the guilt of CY and CV for acts of corruption.

According to that provision, the authorising officer responsible is to exclude a person or entity from participating in award procedures or from being selected for implementing EU funds where that person or entity is in one or more exclusion situations, including where it has been established by a final judgment that the person or entity is guilty of corruption.

At the outset, the Court observes that it is clear, in essence, from the judgment of the District Court of Milan that there was sufficient evidence to demonstrate incriminating facts, which qualified legally as acts of corruption within the meaning of the Italian Criminal Code. It noted that those acts could be attributed, in particular, to CY and CV, and that on conclusion of the special form of procedure of ‘patteggiamento’, requested by the accused persons and accepted by the public prosecutor’s office, a suspended custodial sentence was imposed on them for those acts. In addition, a financial penalty was imposed on Lattanzio Advisory for the same acts.

While it is common ground between the parties that the judgment of the District Court of Milan is final, the applicants dispute the second condition, according to which it must be established by such a final judgment that the person or entity in question is guilty of acts of corruption, has been satisfied.

In that respect, the Court observes that the wording of Article 136(1)(d)(ii) of the Financial Regulation of 2018 does not specify whether a final judgment delivered in the context of a special form of criminal procedure, such as the ‘patteggiamento’ procedure, must be regarded as satisfying that condition. Consequently, it carries out a contextual and teleological interpretation of that provision.

As regards, in the first place, the context of that provision, the Court states that the provisions of the Financial Regulation of 2018, including those in Title V, Chapter 2, Section 2 thereof, relating to the Early Detection and Exclusion System, which includes Article 136(1)(d)(ii) of that regulation, are administrative and not criminal provisions. In particular, pursuant to Article 91 of the Financial Regulation of 2018, which is within Title IV, under Section 1 of Chapter 5, entitled ‘Liability of financial actors’, is without prejudice to any liability under criminal law which could be incurred under conditions provided for in applicable national law and in the provisions in force concerning the protection of the financial interests of the European Union and the fight against corruption involving EU officials or officials of Member States. Thus, as an administrative provision, Article 136(1)(d) of the Financial Regulation of 2018 does not seek to establish the criminal liability, in national law, of a natural or legal person, but merely defines the cases in which that person must be excluded from award procedures governed by that regulation, which includes cases of corruption referred to in Article 136(1)(d)(ii) of that regulation.

As regards, in the second place, the teleological interpretation of Article 136(1)(d)(ii) of the Financial Regulation of 2018, the Court notes that it is clear from both recital 64 of that regulation and Article 135(1) thereof that the objective of the exclusion system is to ensure the protection of the financial interests of the European Union. Thus, first, Article 136(1)(d)(ii) of the Financial Regulation of 2018 seeks to exclude persons and entities that, owing to their conduct, are likely to represent a risk for the financial interests of the European Union from participating in award procedures governed by that regulation. Secondly, that provision enables the Commission to comply with the obligation of sound financial management of the EU’s resources which is imposed on it by Article 317 TFEU.

Next, it is specifically in order to avoid the risk of harming the financial interests of the European Union that the Financial Regulation of 2018 lays down the cases, such as those provided for in Article 136(2) and (5), permitting the provisional exclusion of tenderers from the award procedures that it governs, even in the absence of a final judgment establishing the guilt of the persons or entities concerned.

Lastly, the Court recalls that, where a provision of EU law is open to several interpretations, preference must be given to the interpretation which ensures that the provision retains its effectiveness. In those circumstances, it finds that a strict interpretation of Article 136(1)(d)(ii) of the Financial Regulation of 2018 would be liable to harm the effectiveness of that provision. It would have the consequence of enabling persons and entities upon whom, by a final judgment, sentences and financial penalties have been imposed for acts of corruption nevertheless to participate in award procedures for public contracts financed by the budget of the European Union, thus posing a risk for the financial interests of the European Union and the sound financial management of its resources.

Having regard to the foregoing considerations, the Court concludes that a final judgment, such as that of the judgment of the District Court of Milan, which, without giving a formal ruling on the guilt of the persons or entities accused, nevertheless establishes, in essence, that the acts of corruption that may be attributed to them and imposes on them, for those acts, a sentence and financial penalty, falls within Article 136(1)(d)(ii) of the Financial Regulation of 2018.

The Court adds that that conclusion is not called into question by the applicants’ arguments. In particular, first, the impossibility of delivering an acquittal under the relevant provisions of the Italian Code of Criminal Procedure, even if correct, has no effect since it is clear from the judgment of the District Court of Milan that there was sufficient proof of corruption. Secondly, the Court found that the differences that may exist, in Italian law, between the effects of such a judgment and those following a criminal conviction within the meaning of the relevant provisions of the Italian Code of Criminal Procedure are not capable of affecting the interpretation of Article 136(1)(d)(ii) of the Financial Regulation of 2018. Thirdly, it is true that the Commission made the incorrect statement that the applicants had acknowledged their guilt by accepting a reduced sentence. However, it did not rely solely on that statement in order to apply Article 136(1)(d)(ii) of the Financial Regulation of 2018, but also took into account the fact that, in the words of that judgment, there was sufficient proof according to which the incriminating facts could be attributed to the accused persons. It also took into account the fact that the relevant provisions of the Italian Code of Criminal Procedure treats judgments delivered

under the special form of procedure of ‘patteggiamento’, provided for by that code, as being equivalent to a conviction, and that Article 136(1)(d)(ii) of the Financial Regulation of 2018 does not distinguish between final judgments according to whether or not they were delivered following an agreement made between the persons concerned and the public prosecutor’s office. Fourthly, the Court rejects the argument that, pursuant to the relevant provisions of the Italian Code of Criminal Procedure, a judgment delivered under the special form of procedure of ‘patteggiamento’ does not produce effects and cannot be used as evidence in, inter alia, administrative procedures, such as that which led to the contested decision. It recalls that the principle of primacy of EU law prevents a national provisions from precluding the application of a provision of EU law. Fifthly, the Court also rejects argument that, in the judgment in *TP v Commission*, ([4](#)) the Court held that the authorising officer responsible when adopting an exclusion measure based on Article 136(1)(b) to (d) and (f) to (h) of the Financial Regulation 2018, appeared to be bound by the legal classification of the conduct in question, adopted in a final judgment or in a final administrative decision, without having the slightest margin of discretion in that regard. In the present case, the Court observes that it is not a matter of adopting a different legal classification of the conduct in question from that adopted in the judgment of the District Court of Milan, but of interpreting a provision of EU law in order to establish whether such a judgment, taking account of the legal classifications such as they are set out therein, falls within its scope.

([1](#)) Pursuant to Article 136(1)(d)(ii) of 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 ([OJ 2018 L 193, p. 1](#); ‘the Financial Regulation of 2018’). That regulation was replaced by Regulation (EU, Euratom) 2024/2509 of the European Parliament and of the Council of 23 September 2024 on the financial rules applicable to the general budget of the Union (recast) (OJ L, 2024/2509) of which Article 138(1)(d)(ii) is drafted in terms similar to those of Article 136(1)(d)(ii) of the Financial Regulation of 2018.

([2](#)) Commission Decision Ares(2023) 8545235 of 13 December 2023.

([3](#)) Commission Decision Ares(2020) 3816259 of 20 July 2020.

([4](#)) Judgment of 18 December 2024, *TP v Commission* ([T-776/22](#), [EU:T:2024:908](#)).