Uncompetitive Practices in Public Procurement in EU/Slovak Context

Hana Kováčiková*

Summary: As United Nations and European Union repeatedly confirmed in various documents, public procurement is one of the means to achieve sustainable development. Only well-operated public procurement in competitive environment is capable to ensure wide participation of competing business entities, which brings the procurement of goods, services and works for best market price. This article is focused on conflict of interests and collusion between the tenderers in the process of public procurement. Author analyses various forms of uncompetitive behaviour of public contractor and tendering undertakings in process of public procurement and the consequences of such behaviour.

Keywords: internal market – public procurement – conflict of interest – collusion

1. Introduction

One of the basic goals of the European Union is to achieve an internal market, where free movement of goods, services, capital and payments and freedom of establishment is guaranteed. Europe-wide public procurement is the integral part of this goal. EU has an eminent interest on open competition in public contracts market within its territory as this is a tool for sustainable development. This goal is followed also in 2014 Public Procurement Directives[1], which have reacted to differences in public procurement regimes in Member States and therefore

* Hana Kováčiková, Assistant professor, Comenius University in Bratislava, Slovakia. Contact: hana.kovacikova@flaw.uniba.sk. This paper is an output in a project granted by APVV-17-0641: Improvement of effective ness of legal regulation of public procurement within EU law context.

[1] Directive 2014/24/EU of the European Parliament and of the Council of 26 February 2014 on public procurement and repealing Directive 2004/18/EC (OJ L 94, 28. 3. 2014, p. 65–242), Directive 2014/23/EU of the European Parliament and of the Council of 26 February 2014 on the award of concession contracts (OJ L 94, 28. 3. 2014, p. 1–64), Directive 2014/25/EU of the European Parliament and of the Council of 26 February 2014 on procurement by entities operating in the water, energy, transport and postal services sectors and repealing Directive 2004/17/EC (OJ L 94, 28. 3. 2014, p. 243–374).

brought harmonisation and simplification of EU procurement processes. Only well operated competitive tender shall guarantee the effective spending of public finances. On the other side, if the public procurement process lacks the competition, there exist huge potential for ineffective, even abusive use of public funds. Preserving competition is therefore the essential part for effective public procurement.

Uncompetitive practises mostly occur in the form of conflict of interest between the public contractor (his employee) and one of the tenderers, where such tenderer "with the relation" to public contractor gains unfair advantage in procurement process or in the form of uncompetitive behaviour of tendering competitors. The consequence of both situations is deformation of competition, procurement of goods, services or construction work for more expensive prices (not most favourable) and ineffective spending of public sources.

These problems occur also in Slovak republic. European Commission in its *Country report Slovakia 2018*[2] pointed out, that only limited progress has been made in improving competition and transparency in public procurement as best procurement practices are still not widely adopted. A survey carried out by the Commission among company representatives who took part in public procurement recently revealed, that the most widespread anti-competitive procurement practices in Slovakia are collusive bidding, specifications tailor-made for particular companies and unclear selection or evaluation criteria.

2. Conflict of interest

Conflict of interest is a negative phenomenon that is generally prohibited. Where conflicts of interest appear, there a breach of the principle of equality and equal treatment due to links between the various parties to the proceedings exists. Conflict of interest in public procurement may arise in the relationship between the contracting authority and the supplier of the goods, services or construction works to be financed by public sources, whereby the relation between the contracting authority and tendering supplier will confer on that supplier an uncontested advantage over other tenderers, the result of which the best bid will not win.

OECD provides the definition of conflict of interest, as *"conflict between public duty and private interests of a public official, in which the public official has private-capacity interests which could improperly influence the performance*

[2] Available at: https://ec.europa.eu/info/sites/info/files/2018-european-semester-country-report-slovakia-en.pdf (26. 12. 2018)

of their official duties and responsibilities."[3] Conflict of interest may then appear as actual, potential and apparent. The actual conflict of interest between the public duty and the private interests of a public official occurs when a public official has private-capacity interests that could have a detrimental effect on the performance of his duties. A potential conflict arises where a public official has private interests which are such that a conflict of interest would arise if the official were to become involved in relevant (i.e. conflicting) official responsibilities in the future. An apparent conflict of interest can be said to exist where it appears that a public official's private interest could improperly influence the performance of their duties, but this is not in fact the case.

The EU law defines the concept of conflict of interest for the purposes of implementing the general budget of the EU and this definition applies to all types of public procurement financed with EU funds.[4] Under Article 61(3) of the Financial Regulation[5] conflict of interests exists where the impartial and objective exercise of the functions of a financial actor or other person including national authorities at any level, involved in budget implementation under direct, indirect and shared management, including acts preparatory thereto, audit or control, is compromised for reasons involving family, emotional life, political or national affinity, economic interest or any other direct or indirect personal interest. Under Article 24 of the Public Procurement Directive 2014/24 the concept of conflicts of interest shall at least cover any situation where staff members of the contracting authority or of a procurement service provider acting on behalf of the contracting authority who are involved in the conduct of the procurement procedure or may influence the outcome of that procedure have, directly or indirectly, a financial, economic or other personal interest which might be perceived to compromise their impartiality and independence in the context of the procurement procedure.

---

[3] OECD: „*Managing Conflict of Interest in the Public Service. OECD Guidelines and Country experiences*". OECD Publication Service, Paris, 2003. Available at: http://www.oecd.org/corruption/ethics/48994419.pdf (26. 12. 2018), p. 24–25.

[4] European Commission and European Anti-Fraud Office (OLAF): Identifying conflicts of interests in public procurement procedures for structural actions. A practical guide for managers elaborated by a group of Member States' experts coordinated by OLAF's unit D2Fraud Prevention". Available at: https://ec.europa.eu/sfc/sites/sfc2014/files/sfc-files/guide-conflict-of-interests-SK.pdf (26 December 2018), p. 9.

[5] 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 L 193, 30. 7. 2018).

Under the Slovak Public Procurement Act[6] contracting authority is obliged to ensure that there is no conflict of interest in a process of public procurement which could distort or restrict competition or violate the principles of transparency and the principle of equal treatment. "*Conflict of interest then includes, amongst other, a situation where a concerned party who may influence the outcome or the course of a procurement has a direct or indirect financial interest, an economic interest or any other personal interest which may be considered as threatening its impartiality and independence in public procurement.*" In this context, the concerned person shall be understood to mean an employee of a contracting authority engaged in the preparation or execution of a public contract or another person who provides public procurement support and who participates in the preparation or implementation of a public procurement or has decisive powers and may affect the result of the public procurement without necessarily being involved in its preparation or implementation. In the case of a conflict of interest, the concerned party shall immediately notify the contracting authority of any conflict of interest in relation to the economic operator involved in the preparatory market consultations, the tenderer, the tenderer, the participant or the supplier, and the contracting authority shall take appropriate measures and remedy. These include, for example, the exclusion of a concerned party from the process of preparation or implementation of the procurement procedure or the modification of its duties and responsibilities in order to avoid the persistence of a conflict of interest.

In this relation, a case ***Vakakis kai Synergates***[7] shall be put to the attention. The General Court dealt with conflict of interest between the employee of the winning consortium, who participated in preparation of tendering procedure by providing certain information, in particular the Terms of Reference. The Court in its judgement then held, that contracting authority is required to ensure at each stage of a tendering procedure equal treatment and, thereby equality of opportunity for all tenderers. Under the principle of equal treatment of tenderers, all tenderers must be afforded equality of opportunity when formulating their tenders, which therefore implies that the tenders of all competitors must be subject to the same conditions. Moreover, the principle of equal treatment means that tenderers must be on an equal footing both when they prepare their tenders and when those tenders are evaluated by the contracting authority. If a person who is a tenderer for the public contract at issue may, without even intending to do so, influence the conditions of the contract in a manner favourable to himself, that person may

[6] Act No. 343/2015 Coll. on public procurement and on change and amendment of certain legislation, Article 23.

[7] Judgement of the General Court of 28 February 2018 in Case *Vakakis kai Synergates v European Commission*, T-292/15, ECLI:EU:T:2018:103, points 94–102.

be in a situation which may give rise to a conflict of interests. Such a situation is liable to distort competition between tenderers and is characterised by an infringement of the principle of equal treatment between tenderers. There is a risk of a conflict of interests where a person responsible for the preparatory work for the award of a public contract participates in that procedure since, in such a situation, that person may be in a situation which may give rise to a conflict of interests. However, although (under Article 94 of the Financial Regulation) the candidates or tenderers who, at the time of the procedure for the award of a public contract, are in a situation of a conflict of interests are excluded from the award of that contract, that provision permits exclusion of a tenderer from a procedure for the award of a public contract only if the situation of a conflict of interests to which it refers is real and not hypothetical. Accordingly, a risk of a conflict of interests must actually be found to exist, following a specific assessment of the tender and the tenderer's situation. Therefore, it is for the contracting authority to determine and verify the existence of a real risk of occurrence of practices capable of jeopardising transparency and distorting competition between tenderers and to allow the tenderer who risks being excluded from the procedure the possibility to demonstrate that, in its case, there is no real risk of such a conflict of interests. Nevertheless, despite the lack of an absolute obligation imposed on the contracting authority to exclude systematically tenderers in a situation of a conflict of interests, the exclusion of a tenderer in a situation of a conflict of interests is essential where there is no more appropriate remedy to avoid any breach of the principles of equal treatment of tenderers and transparency.

Therefore, application of principle of proportionality balances the rigidity of above-mentioned legislation. This postulate is conforming with earlier case law of the Court of Justice[8]. The existence of a conflict of interest must lead the contracting authority to exclude the tenderer concerned, where that approach is the only measure available to avoid an infringement of the principles of equal treatment and transparency, which are binding in any procedure for the award of a public contract, that is to say, that no less restrictive measures exist in order to ensure compliance with those principles. It must be stated that a conflict of interest is, objectively and in itself, a serious irregularity without there being any need to qualify it by having regard to the intentions of the parties concerned and whether they were acting in good or bad faith. However, exclusion could not be applied in any event, the alleged conflict of interest was still uncertain and hypothetical.[9]

[8] See for example Judgement of the Court of Justice of 3 March 2005 in Fabricom SA v **État belge**, joined cases C-21/03 and C-34/03, ECLI:EU:C:2005:127, point 34.

[9] Judgement of the General Court of 27 April 2016 in *European Dynamics Luxembourg SA and Others v European Union Intellectual Property Office*, T-556/11. ECLI:EU:T:2016:248, points 46, 57.

OLAF identified in exemplificative way uncompetitive risks linked to a conflict of interests, which have effect on procedure or result of public procurement in its Guidelines on managing the Conflict of Interests by description of various model situations together with risk indicators, for example: someone who takes part in drafting the documents may directly or indirectly try to influence the tender procedure to allow, say, a relative, friend, or commercial or financial partner, to take part;[10] information on the tendering procedure may be leaked;[11] the bids received may be tampered with to conceal a bidder's failure to meet the deadline or to provide all the documentation required or when a member of the evaluation committee may try to mislead or put pressure on the other members to influence the final decision, for example by giving a wrong interpretation of the rules;[12] the contract is not drafted according to the rules and/or the technical specifications and tender documents or is poorly executed or monitored.[13] The list is just illustrative and is dynamically developing.

3. Collusion

As said earlier, ineffective public procurement realized in uncompetitive environment means ineffective use of public funds. Compliance of procurement procedure with competition rules is therefore essential for the goals of public

[10] Indicators of such risk may be, for example, if the person in charge of drafting the tender documents insists on hiring an outside firm to help draft the documents although it is not necessary, or organises the procedure in such a way that there is no time to revise the documents carefully before the tender procedure is launched, or when a negotiated procedure is chosen, even though an open procedure is possible

[11] Indicators of such risk may be, for example, unusual behaviour of an employee insisting on getting information on the tendering procedure although he is not in charge of this procedure or when an employee of the contracting authority worked for a firm which may bid, just before joining the contracting authority.

[12] Indicators of such risk may be, for example, if the official documents and/or certificates of receipt of the documents have obviously been changed, or some obligatory information from the winning bidder is missing, or Few of the companies that bought the bidding documents submit bids, especially if more than half of them drop out, or unknown companies with no track record win the contract.

[13] Indicators of such risk may be, for example, if standard contract clauses (audit, remedies, damages, etc.) are changed, In international projects, there is a long, unexplained delay between the announcement of the winning bidder and the signing of a contract (this may indicate that the contractor is refusing to pay or is negotiating on a demand for a bribe), labour hours are increased, with no corresponding increases in the materials used, There are any changes to the quality, quantity or specification of goods and services in the contract that deviate from the bidding document (terms of reference, technical specifications, etc.).

procurement. As Court of Justice held in ***Lloyd's of London***[14] the EU rules on public procurement were adopted in pursuance of the establishment of a single market, the purpose of which is to ensure freedom of movement and eliminate restrictions on competition. It is the concern of EU law to ensure the widest possible participation by tenderers in a call for tenders, as only competition with many independent competitors brings desirable results – winning of the best bid.

Collusion in public procurement is uncompetitive behaviour of tenderers, which not only deforms the functioning of competition, but also distorts the fair course of public procurement. By its nature, collusion is covered by legislation on cartel agreement, which at the EU level is in Article 101 of the Treaty on Functioning of the European Union (TFEU) and alongside at the Slovak level in Competition Act[15] (Article 4). By its judgement in ***Lombard club***[16] Court of Justice established the possibility of affection of the trade between Member States even in case, when cartel is implemented only in one Member state. Therefore, the EU competition law is applicable even to uncompetitive behaviour of "domestic" competitors inside the Member States.

Frequent meeting of tenderers in public procurement can lead to a loss of a mutual competition, which will be replaced by their cooperation. The cooperation of tenderers is characterised by a sharing of tender victories. Cooperation brings them profits form supplies for artificially increased non-market prices and possibilities to create market barriers for entry of new competitors. The behaviour of cartelists in public procurement is highly sophisticated, difficult to detect and usually lasts for a long period of time.

Collusion in public procurement has mostly the form of price agreements, agreements on division of market, limit production or the exchange of information. The core of the collusion is any expression of the will of the tendering competitor to behave and proceed in public procurement in certain way, written form is not the relevant condition. To conclude a cartel, it is sufficient, for example, to notify one of its competitors on its intention to participate or not to participate in the procurement or to announce its specific bid to a competitor without the need for a mutual recognition of a competitive bid. The purpose of such behaviour is explainable only by the fact that entrepreneurs manipulate or attempt to manipulate

[14] Judgement of the Court of Justice of 8 February 2018 in *Lloyd's of London v Agenzia Regionale per la Protezione dell'Ambiente della Calabria*, C-144/17, ECLI:EU:C:2018:78, point 33

[15] Act No. 136/2001 Coll. on protection of competition and on changes and amendments of Act No. 347/1990 Coll on organization of ministries and other central bodies of state administration of Slovak republic as amended.

[16] Judgement of the Court of Justice of 24 September 2009 in *Erste Group Bank AG (C-125/07 P), Raiffeisen Zentralbank Österreich AG (C-133/07 P), Bank Austria Creditanstalt AG (C-135/07 P) and Österreichische Volksbanken AG (C-137/07 P) v Commission of the European Communities*, joined cases C-125/07 P, C-133/07 P, C-135/07 P and C-137/07 P, ECLI:EU:C:2009:576, points 38.

the outcome of public procurement. An entrepreneur who receives such information from a competitor receives the opportunity to adapt his bidding process, for example by not submitting a bid or by deliberately submitting a bid that is higher than the competitor's bid published by him. Cooperating tenderers pretend towards the contracting authority a competitive struggle and healthy competition; in reality, however, the tender is inefficient, and the low price is non-market.

Above mentioned practices may be realized, for example, by cover bidding. This practise exists where competitors submit only formal bid, which is uncompetitive to cooperating competitor because its higher or contains conditions unacceptable for public contractor, or purposely does not meet some conditions for participation. Such practices were identified, for example, in case ***Commission v Stichting Administratiekantoor Portielje and Gosselin Group***[17] where the Commission found out, that one of the aims of the cartel was to establish and maintain high prices and to share the market, and the cartel itself took various forms: agreements on prices, agreements on sharing the market by means of a system of false quotes, known as 'cover quotes'and agreements on a system of financial compensation, known as 'commissions', for rejected offers or for not quoting at all. As regards 'cover quotes', the Commission stated in the contested decision that, through the submission of such quotes, the removal company which wanted the contract ensured that the customer paying for the removal received several quotes. To that end, that company indicated to its competitors the total price that they were to quote for the planned removal, which was higher than the price quoted by the company itself. Thus, the system in operation was one of fictitious quotes submitted by companies which did not intend to carry out the removal. The Commission took the view that that practice constituted a manipulation of the tendering procedure to ensure that the price quoted for a removal was higher than it would have been in a competitive environment.

In case ***Diaľničná výstavba***[18] the collusive behaviour of the carteling tenderers was reflected in the submission of bids showing, that basic unit prices of individual items of the tenderers were set at different levels but maintained a constant ratio to the other bidders' prices, practically for all items. The Antimonopoly Office in the Slovak Republic in the proceedings showed that such pricing is not possible to be explained other way than by the agreement of tenderers and therefore in the public procurement procedure they have coordinated their behaviour in an anti-competitive way in order to secure the victory of the intended tenderer.

[17] Judgement of the Court of Justice of 11 July 2013 in *European Commission v Stichting Administratiekantoor Portielje and Gosselin Group NV*, C-440/11 P, ECLI: ECLI:EU:C:2013:514, points 10 and 12.

[18] Judgement of the Supreme Court of the Slovak republic of 2 November 2016 in *Diaľničná výstavba*, No. 5Sžh/2/2015.

Other form of collusion is the bid rotation. It's a scheme, which is implemented in long-time cartel covering the important part of market. Cartelists regularly bids in tenders (pretending the fair competition), but the victory in tender is always predicted for particular member of cartel on a rotating principle determined by the criterion of awarding the same volume of winning contracts to each member of the cartel or the volume of cartel contract size.

This scheme was implemented, for example, in ***Marine Hoses***[19] case. In this case Commission found out that eleven companies in the period 1986-2007 within EEA territory in the relevant market of marine hoses, participated in anticompetitive arrangements which consisted of allocating tenders; fixing prices; fixing quotas; fixing sales conditions; geographic market sharing; exchanging sensitive information on prices, sales volumes and procurement tenders. Evidence uncovered shows that at least since 1986 members of the marine hose cartel ran a scheme to allocate among themselves the tenders issued by their customers. Under the scheme, a member of the cartel who obtained a customer inquiry would report it to the cartel coordinator, who would in turn allocate the customer to a 'champion', which means the cartel member who was supposed to win the tender. In order to ensure that the tender was allocated to the 'champion' in the tendering procedure, the cartel members adopted a reference price list and agreed on the prices that each of them should quote so that all bids would be above the price quoted by the champion. Moreover, evidence shows that the cartel members agreed to several measures to facilitate this process. They agreed to reference prices, quotas and sales conditions as well as a system of penalties to compensate cartel members who lost a tender which the cartel had allocated to them, but which was won by other cartel members.

This enumeration of collusive practices is illustrative only and does not cover all forms of collusion that are constantly evolving due to inventiveness of competitors.

4. Conclusion

As we can conclude from the text above, unfair uncompetitive practices in public procurement have serious negative consequences. Therefore, a key question is, how can we fight against them? The answer is not easy, as there exist several possibilities with different legal regimes.

In the regime of public procurement, the Slovak Public Procurement Office, when identifying the conflict of interest, has right to cancel the procedure of

[19] Commission Decision of 28 January 2009 in Marine Hoses, COMP/39.406 (2009/C 168/05).

procurement, or order to restore the unlawful situation. The Public Procurement Office is for this kind of infringement entitled to impose a fine of amount up to 30 000 EUR.

Specific sanction can be imposed, when the conflict of interest was identified with relation to grants from EU funds. If the granting agency finds, that the applicant, beneficiary, partner, user or the contractor is in conflict of interest, the grantor may, by applying the proportionality principle with respect to the gravity of the conflict of interest conflict, recognize the expenditure in the approved project partially or totally unjustified; terminate the contract; examine the decision approving the grant application; or refer the case to the law enforcement authorities. Also, criminal penalties can be considered for the possible commission of a crime[20] with sentence of up to five-years imprisonment.

As regards the fight against the collusion a prevention shall be applied through the Slovak Public Procurement Act (Art. 32) and conditions governing the personal status of competitors, which excludes from tenders those persons, who have imposed ban on participation in the public procurement. Another possibility is the application of Art. 40 of the Public Procurement Act, whereby the contracting authority excludes from the tendering procedure a competitor if, on the basis of credible information, it has reasonable grounds for suspecting that the competitor has entered into an anti-competitive agreement with another competitor. However, the suspected tenderer has the possibility to demonstrate that he has taken adequate remedies.

In addition to prevention, due to the effects of the collusion, it is also necessary to focus on the punishment of cartelising tenderers. In this respect, there is a single sanction in the Slovak Public Procurement Act, namely the cancellation of public procurement. From the competitor's point of view, this means a loss of expected profit. Since, until the announcement of the "victory" of his offer is just a potential gain, this sanction is highly inefficient.

The solution in this case we can find in competition law which allows the competition authority (the Antimonopoly Office of the Slovak Republic or the Commission) to impose a fine for a collusion in the public procurement procedure up to 10% of the competitor's total turnover for the previous closed accounting period and the sanction of the prohibition of participation in public procurement for three years . However, the length of the procedure, especially in Slovakia, is the weak points of this arrangement.

[20] Under Article 262 of Criminal Code who violates or fails to fulfil an obligation arising from his employment, occupation, position or function while managing or controlling the activity of persons under his management, and thereby allowing by this action the commission of fraud or illegal retain of finances form the budget of the EU, he or she shall be sentenced to a term of imprisonment of up to five years.

This "weakness" is equally negative in the case of possible criminal prosecution for the crime of manipulation of public procurement procedures.

However, as the public procurement as a tool of sustainable development raises on its importance, activity of both EU and national legislators and public authorities is to fight against these negative factors more and more effectively.

References

OECD: „*Managing Conflict of Interest in the Public Service. OECD Guidelines and Country experiences.*" OECD Publication Service, Paris, 2003. [online]. Available at: http://www.oecd.org/corruption/ethics/48994419.pdf (26. 12. 2018).

European Commission and European Anti-Fraud Office (OLAF): „*Identifying conflicts of interests in public procurement procedures for structural actions. A practical guide for managers elaborated by a group of Member States' experts coordinated by OLAF's unit D2 Fraud Prevention*".[online]. Available at: https://ec.europa.eu/sfc/sites/sfc2014/files/sfc-files/guide-conflict-of-interests-SK.pdf

Directive 2014/24/EU of the European Parliament and of the Council of 26 February 2014 on public procurement and repealing Directive 2004/18/EC (OJ L 94, 28. 3. 2014, p. 65–242).

Directive 2014/23/EU of the European Parliament and of the Council of 26 February 2014 on the award of concession contracts (OJ L 94, 28. 3. 2014, p. 1–64).

Directive 2014/25/EU of the European Parliament and of the Council of 26 February 2014 on procurement by entities operating in the water, energy, transport and postal services sectors and repealing Directive 2004/17/EC (OJ L 94, 28. 3. 2014, p. 243–374).

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 L 193, 30. 7. 2018)

Act No. 136/2001 Coll. on protection of competition and on changes and amendments of Act No. 347/1990 Coll on organization of ministries and other central bodies of state administration of Slovak republic as amended.

Act No. 343/2015 Coll. on public procurement and on change and amendment of certain legislation.

Judgement of ECJ of 3 March 2005 in *Fabricom SA v État belge*, joined cases C-21/03 and C-34/03, ECLI:EU:C:2005:127.

Judgement of the General Court of 28 February 2018 in Case *Vakakis kai Synergates v European Commission*, T-292/15, ECLI:EU:T:2018:103.

Judgement of the General Court of 27 April 2016 in *European Dynamics Luxembourg SA and Others v European Union Intellectual Property Office*, T-556/11. ECLI:EU:T:2016:248.

Judgement of Court of Justice of 8 February 2018 in *Lloyd's of London v Agenzia Regionale per la Protezione dell'Ambiente della Calabria*, C-144/17, ECLI:EU:C:2018:78.

Judgement of the Court of Justice of 24 September 2009 in *Erste Group Bank AG (C-125/07 P), Raiffeisen Zentralbank Österreich AG (C-133/07 P), Bank Austria Creditanstalt AG (C-135/07 P) and Österreichische Volksbanken AG (C-137/07 P) v Commission of the European Communities*, joined cases C-125/07 P, C-133/07 P, C-135/07 P and C-137/07 P, ECLI:EU:C:2009:576.

Judgement of the Court of Justice of 11 July 2013 in *European Commission v Stichting Administratiekantoor Portielje a Gosselin Group NV*, C-440/11 P, ECLI: ECLI:EU:C:2013:514.

Judgement of the Supreme Court of the Slovak republic of 2 November 2016 in *Diaľničná výstavba*, No. 5Sžh/2/2015.

Commission Decision of 28 January 2009 in Marine Hoses, COMP/39.406 (2009/C 168/05).