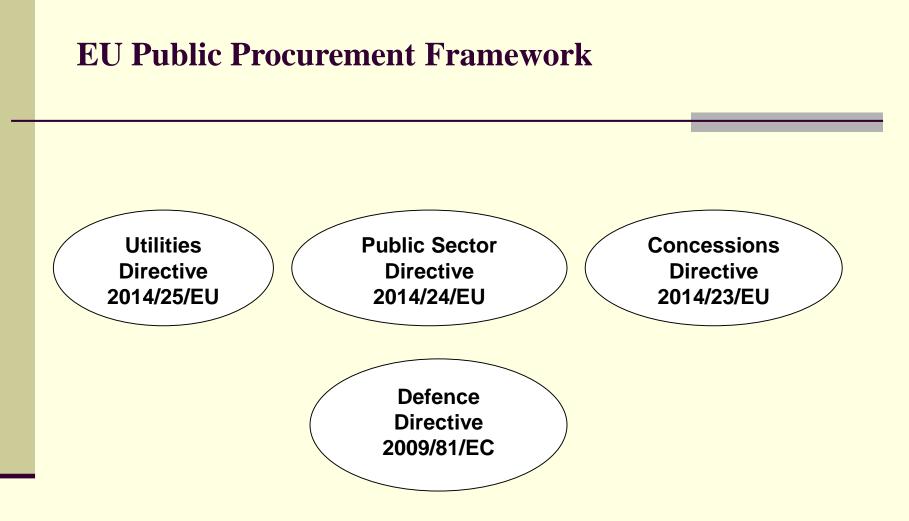
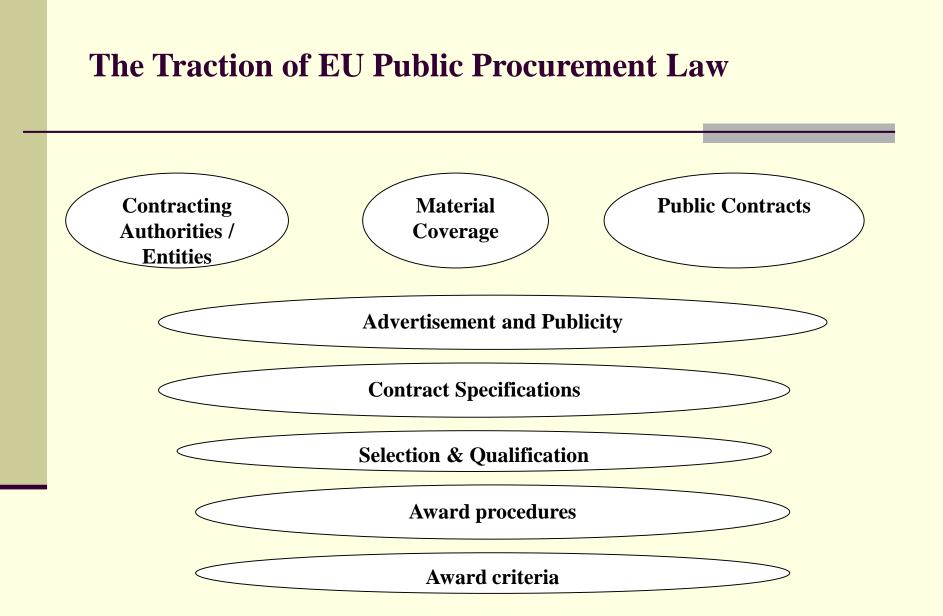
Innovation and Better Synergies of Public Procurement with other Policies

Professor Christopher Bovis FRSA

This presentation is commissioned by Policy Department A on request of IMCO Committee.







Governance (probity, professionalisation of procurers)

Strategic Procurement

Available tools

- Pre Procurement Engagement
 - Market consultation and pre-commercial procurement
 - Joint and cross-border procurement
 - Division into lots / disaggregation
 - Selection and Qualification
 - Financial and economic standing
 - Technical specifications, functional and performancebased specifications

- Award procedures
 - Competitive dialogue, negotiations, frameworks, Innovation Partnership
- Award criteria
 - BPQR and MEAT for environmental and social criteria and innovative characteristics
 - LCC
- Post procurement Engagement
 - Contract Performance
 - Social and environmental considerations

Barriers and Obstacles to Strategic Public Procurement

- Specifications
 - Standards (efficacy of CPV)
 - Qualification
 - Economic standing of SMEs (risk ratio)
- Award criteria
 - Cost based criteria (lowest price)
 - MEAT and now BPQR
 - LCC (methodology)

The 2017 Soft Law Package

- Communication on Making Public Procurement work in and for Europe
 - The priorities for action
- Communication on voluntary ex-ante assessment of the procurement aspects for large infrastructure projects
 - Compliance
- Resolution on Professionalisation of Public Procurement
- Previous Guidance
 - Strategic use of public procurement in promoting green, social and innovation policies (2015)
 - Supporting social responsibility in the economy through public procurement (2016)
 - *Europe 2020, A strategy for smart, sustainable and inclusive growth, (2010)*

Critical assessment of EU procurement implementation initiatives

Increase of strategic public procurement

- Voluntary *ex-ante* assessment mechanism for large infrastructure projects;
- Updated guidance on green and social procurement and innovation procurement
- Cooperative and joint cross-border public procurement, including innovation by large buyers
- Exchange good practices regarding strategic procurement, including key sectors (construction, healthcare, IT)

Procurer Professionalisation

- European competence framework for public procurement with the essential skills and competences
- Network of National Innovation Procurement Centres

SME access to procurement markets

- align third-country legal practice with EU acquis
- access to justice for SME disputes in public procurement

Digital transformation of procurement

- Extend the scope of the e-Certis
- European Single Procurement Document
- e-Invoicing

Soft Law - Discretion

Harmonisation vs uniformity

- Exhaustiveness coverage
- Tractability externalisation
- Competition decoupling in contestable markets
- Rule of reason
- Flexibility
 - Contracting Authorities in house, affiliation, public partnerships
 - Award criteria BPQR / MEAT, LCC
- Selection & Qualification capacity, standing, exclusions

Procedural autonomy – Remedies

Drivers of Discretion

Policy

Ordo approach = horizontal policies environment, employment, SMES, industrial

Preference

priority, protection

Boundaries of Discretion

Legal Principles

EU Public Procurement Directives	EU Treaties
 Transparency Accountability Objectivity 	 Free Movement of goods Right of establishment Right to provide services Non-discrimination Equal treatment

- Standards = equivalence
- Materiality contractual relevance
- Primacy via direct effect towards uniformity
- Judicial activism porosity cured
- Doctrinal interpretation = rule of reason Effectiveness, Functionality, Objectivity, Procedural equality
- Regulatory standardisation convergence

- Price vs cost conceptual foundation of strategic procurement
- Soft Law crucial in assisting effectiveness of acquis
- To buy or not to buy

Professor Christopher Bovis FRSA University of Hull c.bovis@hull.ac.uk