

# Modernising European Public Procurement

Professor Christopher Bovis FRSA

# EU Public Procurement Framework

**Utilities Directive  
2014/25/EC**

**Public Sector  
Directive  
2014/24/EC**

**Remedies  
Directive  
2007/66/EC**

**Concessions  
Directive  
2014/23/EC**

**Defence  
Directive  
2009/82/EC**

# Legal Principles Applicable

<b><i>EU Public Procurement Directives</i></b>	<b><i>EU Treaties</i></b>
<ul style="list-style-type: none"><li>• Transparency</li><li>• Accountability</li><li>• Objectivity</li></ul>	<ul style="list-style-type: none"><li>• Free Movement of goods</li><li>• Right of establishment</li><li>• Right to provide services</li><li>• Non-discrimination</li><li>• Equal treatment</li></ul>

# Legal Doctrines

The doctrine of *objectivity*

The doctrine of *effectiveness*

The doctrine of *procedural equality*

# 2014 EU Procurement Reforms: Objectives

- **Simplicity** (codification, modernisation and non-exhaustive harmonisation)
- **Strategic** (EU 2020 Growth Strategy, ESFI)
- **Access for SMEs** (dimensional / sub-dimensional)
- **Flexibility** (Innovation, Green, Sustainable, Socio-economic, SGEI)
- **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 performance-based 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

# Final remarks

- Price vs cost – conceptual foundation of strategic procurement
- Soft Law crucial in assisting effectiveness of acquis