

## Impact case study (REF3)

<b>Institution:</b> University of Hull		
<b>Unit of Assessment:</b> 17 Business and Management Studies		
<b>Title of case study:</b> Public procurement as a strategic tool for environmental protection and sustainable economic growth across the EU		
<b>Period when the underpinning research was undertaken:</b> 2014 – 2020		
<b>Details of staff conducting the underpinning research from the submitting unit:</b>		
<b>Name(s):</b> Professor Christopher Bovis	<b>Role(s) (e.g. job title):</b> Professor of Business Law	<b>Period(s) employed by submitting HEI:</b> 2007 – current
<b>Period when the claimed impact occurred:</b> 2014 – 2020		
<b>Is this case study continued from a case study submitted in 2014?</b> N		
<b>1. Summary of the impact</b>		
<p>Professor Bovis' research impacted significantly on the flexible application of European public procurement rules as an instrument of industrial policy. The research provided an enabling framework which allows the strategic use of procurement as a device for the protection of the environment and the transition of the European Industrial base to the €2.1 tr bio-economy. Equally his research contributed to legislative scrutiny conducted by the European Union (EU) Parliament on the strategic dimension of procurement, as well as influencing domestic legislative reforms for specific states (UK Parliament) on the compatibility of industrial policy with government procurement.</p>		
<b>2. Underpinning research</b>		
<p>Public procurement is the regulatory framework to deliver public services in the EU Member States and accounts for 19% GDP, which amounts to over €1 tr annually. Its compliance promotes transparency and accountability in public expenditure, as well as presents a benchmark for the EU internal market. Professor Bovis has published on issues of public procurement since 1994 with over 250 publications on the subject, making him a highly respected and internationally recognised expert. His research traces the conceptual origins of public procurement regulation in national policy instruments, which identifies preferential government purchasing practices as considerable non-tariff barriers and as hindering factors for the functioning of genuinely competitive markets. The research revealed the importance of public procurement for the EU integration process as an essential component of competitiveness and growth and as an indispensable instrument of delivering public services [R1].</p> <p>The key contributions of the research are: that it has revealed several regulatory treatments in the application of public procurement at national and international levels (2.1) and crystallized two diametrically opposed conceptual theories to balance the aims of public procurement - value for money versus national policy priorities (2.2).</p>		
<b>2.1. The inherent flexibility in the public procurement framework</b>		
<p>Prior to 1995 public procurement was regarded as primarily an economic task, to be administered by bureaucratic means in EU member states in order to ensure legal compliance. Research undertaken by Professor Bovis demonstrated the decisive influence of domestic policies in public procurement regulation in contrast to traditional methods of market integration which are based on competition and price convergence by awarding public contracts by reference to the lowest offer [R2]. The research established that public procurement represents a fundamental element of any government's planning ecosystem [R3]. Furthermore, it revealed how the application of public procurement reacts with regional development policies such as small and medium enterprises (SMEs), market access and state aid compliance of public funding [R4]. Based on the research findings, Bovis suggested that governments can use the inherent flexibility in public procurement in a strategic manner so as to contribute to an innovative, sustainable, inclusive and competitive economy. The flexibility of public procurement regulation represents an instrument of policy choice for national governments through the award criterion of public contracts which is based on the most economically advantageous offer and not on the lowest offer. Consequently, the public sector may award public contracts with reference to 'qualitative' criteria which pursue priority policies, in conjunction with price, and thus can legitimately deviate from the strict price competition environment set by the lowest offer criterion.</p>		

## 2.2. Casting public procurement regulation as enabler of national policies

Public procurement represents expenditure which is funded by tax revenue, and hence in the interest of accountability, objectivity and transparency as its underlying principles, it aims to achieve value-for-money (VFM) by enabling the award of public contracts by reference to the lowest offer and realise efficiencies and savings for governments and citizens. In parallel, public procurement as a powerful instrument of industrial policy represents a pool of national priority choices for governments, reflecting forward investment choices. These two dimensions can and do often contradict each other in practice. The VFM policy in procurement [R5], emphasises the need for strict economic compliance in the application of public procurement regulation. This need reveals the fact that public procurement regulation is an instrument of economic integration. Such integration introduces competitiveness in the market, resulting in significant price convergence and acting as the catalyst for rationalization and industrial restructuring. Bovis identified public procurement regulation as the cornerstone of market integration at national, EU and international levels by positioning public procurement as an instrument of the European economic integration process which underpins policies which reflect upon price competition and compel the award of public contracts to the lowest offer. The opposite approach in public procurement which Bovis consolidated in his research covered the industrial policy dimension which re-positions procurement regulation as a policy choice for national governments, revealing domestic priorities within the overall regulatory process for market integration. Such priorities emerge in the form of environmental policies, employment policies, social policies and sectoral policies. Bovis' findings [R6] provided a conceptual platform for the flexibility of public procurement to function as a conveyer belt of domestic policies while delivering public contracts.

## 3. References to the research

1. Bovis C, The Drivers and Boundaries of Discretion in the Award of Public Contracts, in Discretion in EU Public Procurement Law, Bogojevic, Groussot and Hettne (Eds), Hart Publishing, 2019, ISBN: 9781509919499
2. Bovis C (Editor and Author), Research Handbook on EU Public Procurement Law, Elgar, 2016, ISBN: 978 1 78195 325 9
3. Bovis C, The Function of Public Procurement in the EU, in Specialised Administrative Law, Turk, Hoffman and Rowe (Eds), Oxford University Press, 2019, ISBN: 9780199286485
4. Bovis C, The Social Dimension of Public Procurement Regulation, in The EU Social Market Economy and the Law: Theoretical Perspectives and Practical Challenges for the EU, Ferri and Cortese (Eds), Routledge, 2018. ISBN: 9781138478480
5. Bovis C, The Law of EU Public Procurement, Oxford University Press, 2015, ISBN: 9780199684687
6. Bovis C, Risk and its treatment in Critical Infrastructure, European Journal of Risk Regulation, 2015, Cambridge University Press, DOI: <https://doi.org/10.1017/S1867299X00004505>

The quality of the research outputs is evidenced by the international peer-reviewed outlets of the highest quality. These outputs have underpinned external funding grants and institutional engagement nationally and internationally. Such as:

- I. a €2.4m peer-reviewed and institutionally evaluated InnProBio Horizon 2020 grant between the University of Hull, the German Government, the Dutch Government, B.T.G. Biomass Technology Group BV, Sticing Nederlands Normalisatie, ICLEI European Secretariat and Nova Institut fur Politische und Okologische Innovation GMBH to construct a legal and policy framework for the public procurement of bio-based products.
- II. an appointment by the EU Big Science Organisations to assess of procurement systems of international organizations (2017-current);
- III. an appointment by the OECD to assess its procurement procedures (EUR 25.000) (2017-2018)
- IV. an appointment by the UK Government (Office of Fair Trading) to advise on the drafting of Social Value Bill (£15,000)

## 4. Details of the impact

The claimed research impacts are reflected at different stages: developing soft law to enable market access for bio-based products and services (4.1); influencing parliamentary debate at domestic (UK) and EU levels on public procurement regulation (4.2) and providing legislative scrutiny for the EU Institutions (4.3).

#### 4.1. Soft law to enable market access for bio-based products and services

InnProBio proved the legal discretion in contract awards and the flexibility of public procurement regulatory frameworks to pursue environmental policies. The project built upon Bovis' research on the role of public procurement in relation to the protection of the environment. Bovis was selected amongst European and UK legal academics for his experience and research record of accomplishment. The project also outlined roadmaps for the circular economy [A1].

A significant impact of InnProBio is the production of soft law in the form of official guidance that enables market access of bio-based products and services in public procurement. The *Handbook for the Public Procurement of bio-based products and services* [A2] (co-authored by Bovis who was responsible for the legal aspects of the guidance) has been adopted and published by the EU as the official legal guidance for the procurement for bio-based products and services by the public sector of the EU Member States. In corroboration, the European Commission considers the Handbook as *"a main technological achievement as well as state of the art solution to closer relations between procurers and suppliers of BBPS ... lowering barriers and increasing bio-based products market segments by triggering demand for innovation through public procurement"*. [A3] The Handbook has two implications:

a) The Handbook establishes parity in public procurement markets, between bio-based products and products derived from fossil-based materials. In corroboration, the Chief Assessors from the *Executive Research Agency* of the European Commission Charles de Chefdebien and Christophe Pons, who formally assessed the results and impacts of InnProBio verified that:

*"the scientific and technological quality of the results of InnProBio provided an immediate impact on technology and society for the transition of the European industrial base to bio-economy and resulted in significant technological achievements which have been identified as main innovation outputs and included a sizable contribution to the state of the art solutions of bio-based product and services"; [and that] "InnProBio has positively influenced the capacity in the industry and the public sector respectively for bio-based products and services which form the bio-economy sector with an annual turnover of 2.1 € trillion and 18.6 million people in employment constituting of 8.5 % of the jobs in all EU economic sectors to have access to public contracts across the EU member states without any legal and regulatory restrictions". [A3]*

b) The handbook outlines a standardised nomenclature for bio-based products and services, which has resulted in bio-based products being recognised by CEN-CENELEC (bio-based products have received the classification CEN/TC 411). In corroboration, the Chief Assessors from the *Executive Research Agency* of the European Commission Charles de Chefdebien and Christophe Pons, confirmed:

*"linking with the standardization processes at EU level, and in particular CEN and CENELEC, CEN/TC 411 enhance innovation capacity, create new markets opportunities, strengthen competitiveness and growth of companies, address issues related to climate change or the environment, address industrial and/or societal needs at regional level or bring other important benefits for society. [A3]*

#### 4.2. Influencing EU / UK parliamentary debate on the modernization of public procurement

Impacts occurred through Bovis' invitation as an expert witness before international parliamentary proceedings [B1], where he drew on his research findings on the impact of public procurement regulation and its socio-economic function on the single market and before national parliamentary proceedings [C1], where he drew on his research findings in integrating the VFM principle with the industrial policy dimension.

The influence is evidenced by Professor Bovis providing oral and written evidence during February 2018 to the European Parliament Internal Market and Consumer Protection Committee (IMCO) on the reform of public procurement framework, access of SMEs in public procurement, and horizontal national procurement policies. Equally, on June 2018, Professor Bovis provided expert testimony to the Internal Market and Consumer Protection Committee (IMCO) on the modernisation of EU Public Procurement [B2].

The outcome of Bovis' influence on the evidence and parliamentary debates triggered the adoption of a Motion by the European Parliament which resulted in *a European Parliament Resolution on*

*Public Procurement Strategy* [B3]. In corroboration, *The 2018 Motion for a Resolution on Public Procurement Strategy* is based on the evidence and recommendation provided by Bovis to the Internal Market and Consumer Protection Committee (IMCO) and officially refers to his contribution [B3]. Mr Carlos Coelho, Member of the European Parliament and Rapporteur of the IMCO specifically acknowledged Bovis' **influence to the drafting of European Parliament Resolution for the modernisation of EU Public Procurement** [B4].

In the UK, Professor Bovis provided oral and written evidence [C1] to the House of Commons Public Administration Select Committee (PASC) on defence procurement during its 2013-2014 session. The House of Commons Public Administration Select Committee acknowledged his evidence by publishing his written recommendations. The Chairman of the PASC RtHon Bernard Jenkin MP acknowledged and endorsed the evidence provided by Professor Bovis in relation to the industrial policy dimension of defence procurement in the UK. As a result, PASC incorporated the evidence recommendations before its hearings that the UK Government should apply defence procurement policy in line with industrial policy. The UK government fully endorsed the outcome of PASC and produced its Report on Defence and Government Procurement [C2]. The PASC report resulted in the UK Government establishing its National Security Strategy and Strategic Defence and Security Review in 2015 which made a direct reference to the PASC proceedings and Professor Bovis' written submission on industrial policy. The UK government now explicitly **incorporates the industrial policy feature of public procurement for defence acquisitions** stating:

*“6.50 [Britain’s Armed Forces] will always strive to get the best value for money for the taxpayer and we will do so in a way that strengthens our economy and bolsters the long-term prosperity of people across the country.” [...] “We will refresh our defence industrial policy and take further action to help the UK’s defence and security industries to grow and compete successfully. We will drive greater innovation into our defence procurement, and ensure that future investment decisions contribute to a more dynamic and productive economy.”* [C3], emphasis in original]

#### **4.3. Providing Legislative Scrutiny and Increased Policy Choice**

Impacts have been achieved by the commissioning of Bovis by the European Parliament to provide legislative review and assessment of the legal and policy framework on public procurement. Professor Bovis was tasked by the European Parliament in 2018 to provide a review and legal assessment of the European Commission’s initiatives on the introduction of a policy framework on the strategic and innovative use of public procurement. Specifically, Bovis drew on his research into the inherent flexibility of the system to propose a set of relevant recommendations. The impact of the review by Bovis has been (a) **the promotion of strategic procurement through soft law and guidance rather than regulation;** (b) **the introduction of priority areas including innovation, the utilisation of green and social criteria;** (c) **the improvement of SMEs’ access to procurement markets,** (d) **the professionalization of public buyers;** and (e) **the enhancing of governance of public procurement.** In corroboration, Professor Bovis’ assessment has been accepted and endorsed by the European Parliament through the adoption and official publication in 2018 of a European Parliament policy document which is authored by Bovis and cites him under the title *Policy Framework on Public Procurement Innovation and Better Synergies with other policies at EU level and at national level.* [D]. As per the terms of reference of Professor Bovis’ engagement by the European Parliament, the policy document serves as official guidance / soft law on EU public procurement by the member states.

Professor Bovis was also tasked by the European Parliament in 2018 to provide a review and legal assessment of the European Commission’s initiatives on the legal and policy framework of the European Union on public procurement during the during the 7<sup>th</sup> and 8<sup>th</sup> Legislature of the European Parliament (2009-2019). The impact of the assessment review by Professor Bovis has been **the verification of Public Procurement as an industrial policy component for the EU Growth Strategy reflecting on strategy, innovation, socio-economic and environmental objectives. In corroboration.** The European Parliament accepted and endorsed the review by the adoption and official publication in 2019 of a European Parliament policy document which is authored by Bovis and cites him under the title *Contribution to Growth: European Public Procurement Delivering improved rights for European citizens and businesses* [E]. As per the terms of reference of Professor Bovis’ engagement by the European Parliament, the policy

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document serves as an endorsement of the European Parliament actions on public procurement during the 8<sup>th</sup> and 9<sup>th</sup> Legislatures (2009-2019).

### 5. Sources to corroborate the impact

**[A1]** Bio-based Products and Services in the Circular Economy, Factsheet No. 4,

[www.innprobio.eu](http://www.innprobio.eu)

[https://innprobio.innovation-procurement.org/fileadmin/user\\_upload/Factsheets/InnProBio\\_Factsheet\\_n4.pdf](https://innprobio.innovation-procurement.org/fileadmin/user_upload/Factsheets/InnProBio_Factsheet_n4.pdf)

**[A2]** Handbook of Bio-Based Products and Services in Public Procurement, Agency for Renewable Resources, Germany (FNR), 2017.

[https://innprobio.innovation-procurement.org/fileadmin/user\\_upload/Handbook/InnProBio\\_handbook-EN\\_download.pdf](https://innprobio.innovation-procurement.org/fileadmin/user_upload/Handbook/InnProBio_handbook-EN_download.pdf)

**[A3]** European Commission Research Executive Agency, Review of InnProBio Project Ref. Ares(2018)3271576 - 20/06/2018

**[B1]** European Parliament, Internal Market and Consumer Protection Committee Proceedings February 2018, <http://www.europarl.europa.eu/website/webstreaming.html?event=20180710-1000-COMMITTEE-IMCO>

**[B2]** European Parliament, Internal Market and Consumer Protection Committee Double Proceedings, June 2018

[http://www.europarl.europa.eu/RegData/etudes/STUD/2018/619006/IPOL\\_STU\(2018\)619006\\_EN.pdf](http://www.europarl.europa.eu/RegData/etudes/STUD/2018/619006/IPOL_STU(2018)619006_EN.pdf)

[http://www.europarl.europa.eu/RegData/etudes/STUD/2018/626085/IPOL\\_STU\(2018\)626085\\_EN.pdf](http://www.europarl.europa.eu/RegData/etudes/STUD/2018/626085/IPOL_STU(2018)626085_EN.pdf)

**[B3]** European Parliament, Motion for Resolution on Public Procurement Strategy, 2018

[https://www.europarl.europa.eu/doceo/document/A-8-2018-0229\\_EN.html#title1](https://www.europarl.europa.eu/doceo/document/A-8-2018-0229_EN.html#title1)

**[B4]** Testimonials from Carlos Coelho MEP Rapporteur of IMCO

**[C1]** House of Commons Public Administration Select Committee (PASC) 2014, written evidence proceedings on defence procurement and industrial strategy

<http://www.publications.parliament.uk/pa/cm201213/cmselect/cmpubadm/writev/proc/proc31.htm>

**[C2]** House of Commons Public Administration Select Committee (PASC), Government procurement, Sixth Report Session, 2014

<http://www.publications.parliament.uk/pa/cm201314/cmselect/cmpubadm/123/123.pdf>

**[C3]** National Security Strategy and Strategic Defence and Security Review, 2015

[https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/555607/2015\\_Strategic\\_Defence\\_and\\_Security\\_Review.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/555607/2015_Strategic_Defence_and_Security_Review.pdf)

**[D]** European Parliament Internal Market and Consumer Protection Committee Strategic Assessment of Public Procurement, 2018

[http://www.europarl.europa.eu/RegData/etudes/IDAN/2018/626089/IPOL\\_IDA\(2018\)626089\\_EN.pdf](http://www.europarl.europa.eu/RegData/etudes/IDAN/2018/626089/IPOL_IDA(2018)626089_EN.pdf)

**[E]** European Parliament Internal Market and Consumer Protection Committee Review of Public Procurement, 2019

[https://www.europarl.europa.eu/RegData/etudes/STUD/2019/626088/IPOL\\_STU\(2019\)626088\\_EN.pdf](https://www.europarl.europa.eu/RegData/etudes/STUD/2019/626088/IPOL_STU(2019)626088_EN.pdf)