AbstrAct

The regained interest in the EU for public procurement as a means to stimulate innovation has prompted a debate regarding to what extent the laws regulating public procurement, in particular the EC Procurement Directives, hinder innovation. The rationale for committing to such a debate is presumably the assumption that problems currently slowing down the adoption of public procurement of innovation practices are exclusively of legal nature. This paper challenges this view and argues instead that many of the problems stem from other institutional levels than formal law. In particular this is true in public-procurement projects involving multi-organisational collaboration. The paper discusses a case in which an English local council, in collaboration with a number of other organisations, tried to procure a wood-chip-fuelled power plant intended to deliver sustainable energy to a renewed part of the town centre. The procurers made the decision, however, to terminate the project without rewarding the contract because of reasons that had very little to do with the EC Directives. It may even be argued that if the problems encountered are exclusively dealt with as legal problems, important aspects of the puzzle are missing. Based on the case findings this paper proposes that organisation-oriented institutional analysis may be particularly important for understanding how institutional factors may affect the success or failure of multi-organisational collaborations in public procurement of innovation.

Keywords: public procurement, innovation, EC Directives, institutions

1. Introduction

Over the last decade EU policy makers have increasingly emphasised the role of public procurement used as a demand-side innovation policy instrument (Edler and Georgiou 2007; Rolfstam 2009). The idea of using public procurement to stimulate innovation (e.g. Rothwell 1984; Dalpé 1994; Geroski 1990), or achieve any other social outcome (McCrudden 2004), is not new. To some extent it is actually more remarkable that this instrument was forgotten in the first place, than noting its
uptake on the policy agenda, as “[t]he effects of public procurement are felt in many
different substantive policy areas – defense, education, energy, transportation, envi-
ronment, and health care, to name just a few. Public-procurement policy is a prin-
cipal determinant of outcomes in each of those areas.” (Snider and Rendon 2008, 328)
In that sense, for the EU, the revival of a neglected policy tool started when public
procurement of innovation was identified as one instrument to be used to achieve
the Lisbon goals set in 2000 for the EU to become the most competitive and dynam-
ic knowledge-based economy in the world (European Council 2000). The idea was
that by placing orders for innovative goods, systems and services not currently exist-
ing on the market, public agencies could help increase the level of R&D investments
from 1.9 per cent of EU GDP in 2000 to 3 per cent of EU GDP in 2010 (European
Commission 2002; Guy et al. 2003). An array of different reports and communica-
tions has since then followed aiming at promoting the use of public procurement as
a means to stimulate innovation (e.g. Edler et al. 2005; Gavras et al. 2006; European
Commission 2005; Kok et al. 2004; Aho et al. 2006; European Commission 2007a;
European Commission 2007b). Also the future policy makers place much faith in
public procurement as a response to the current “innovation emergency” in the EU
(European Commission 2011). The fact that the term “public procurement” occurs
fourteen times in the EC communication from 2010, the Europe 2020 Flagship Ini-
tiative Innovation Union indicates that public procurement of innovation will remain
moving towards the centre of innovation policy making for many years to come
(European Commission 2010).

One could question, however, to what extent this policy development has deliv-
ered the expected outcomes in practice. A decade after the first concrete reflections
about utilising public procurement as an innovation-policy instrument the opinion is
still that “Europe has an enormous and overlooked opportunity to spur innovation
using procurement” (European Commission 2011, 16, italics added). The problem
remains: EU member states have not utilised public procurement as a means to
stimulate innovation to the extent countries like the USA, Japan and China have done
(National IST Research Forum 2006). The observation that the expected benefits of
using public procurement as an innovation policy instrument has not yet manifested
clearly in terms of concrete outcomes has sparked off debates. Innovation research-
ers have, for instance, claimed that the EC Directives on public procurement are not
innovation friendly (Edquist et al. 2000; Nyholm et al. 2001). Others have asked for
clarifications concerning the law (IEA 2000). There has also emerged a stream of
writings around the assertion that public agencies should become increasingly prone
to accept risk (Cox et al. 2005; Aho et al. 2006). Scholars have argued that “stamina
and sophisticated risk management are needed in order to cope with innovations in
public services” (Edler and Georgiou 2007, 960), and “that the public sector has to
be able to deal with different kinds of process risks” (Kalvet and Lember 2010, 259).
The European Commission also set up an expert group with the explicit assignment
to build knowledge on risk management for public procurement of innovation
(Tsipouri et al. 2010). There is also a process initiated aiming at revising the current
Procurement Directives “to make them better suited to deal with the evolving politi-
cal, social and economic context” (European Commission 2011 4), where enabling
innovation is one of the key issues that will be taken into consideration.
Good Rules or Bad Rules in Public Procurement of Innovation: But is it Really the (Right) Question?

What we know today has to some extent rendered some of these debates obsolete. It is now commonly accepted at least among policy makers working with the development of demand-side policies on the EU level, that successful public procurement of innovation can take place in full compliance with the EC Procurement Directives. The most tangible evidence of this position is the pre-commercial procurement model developed to demonstrate how innovation can be achieved within the legal frames as defined by the intersection of the procurement directives and competition laws (European Commission 2007a). The somewhat unlucky claims made earlier about a “tension” between the aim to achieve innovation and the EC Procurement Directives have also been falsified in research (Rolfstam 2007). Recent research has also proposed that rather than attempting to explain the problems by analysing formal law, attention should be given also to the endogenous institutions at play (Rolfstam 2009; Rolfstam et al. 2011). The current paper attempts to develop further this latter position by conducting and promoting a more profound analysis of matters. The claim made here is not that public procurement of innovation is free from problems. What the paper does try to do is to promote an analytical approach that would avoid too impetuous conclusions and policy recommendations on how to come to grips with whatever barriers one might find in the way for the realisation of public procurement of innovation.

The subsequent sections introduce the empirical research reported in this paper, which was collected through a case study (Yin 1994). The case concerns an attempt to procure a new power plant intended to supply sustainable energy to a new town-centre in a town in the UK. What justifies further attention to this case is the fact that the procurer eventually had to terminate the project without being able to find a supplier. In that sense, this is a case that failed to achieve the intended outcome. Thus the case offers the possibility to remedy one generic weakness in the literature on public procurement of innovation, namely the tendency to discuss only success stories. This is a natural problem as cases of “failures” tend to be much harder to get access to. Studying such a case is therefore justifiable simply because of the scarcity. This feature offers the possibility to add to prevailing knowledge on public procurement of innovation, in particular the debate concerning to what extent the EC Directives that regulate public procurement may have an impact on public procurement of innovation. Some claims have been made earlier, as reviewed above, that the Directives are not innovation friendly. This assertion has been contested in the policy realm but also in academic studies, where the generic point is that public procurement of innovation can certainly occur with the EC Directives, especially if certain “success factors” are in place (Rolfstam 2007; Rolfstam 2010; Rolfstam et al. 2011). Being able to say something about why a case fails might inform this debate further. If the reasons for failing could be attributed to features in the EC Directives, this would corroborate the critics’ claims. Alternatively, if other reasons are found to be the cause for failing, these other causes would offer an alternative explanation for why things go wrong in public procurement of innovation – and also suggest a focus for further improvement on matters that might not be affected by revising the Directives.

Data were collected through interviews with people representing the organisations involved in the process and by consulting various kinds of written material.
available in public reports and or online. The analysis of the empirical material that follows comes close to an explanation-building analysis (Trochim 1989; Yin 1994). Explanation-building analysis is a special case of pattern-matching and is iterative in nature. It starts out from an initial proposition which is compared with an initial case. This is followed by revision of the initial propositions, which are in turn compared with other details in the case, followed by further revisions of the propositions. This process was supported by consulting literature drawing on institutional theory. The paper ends with stating some concluding remarks, where the role of endogenous institutions for successful public procurement of innovation is emphasised.

2. A Case of Public Procurement of Innovation Terminated

This case evolved in Bracknell Forest, one of several towns in the UK developed after the Second World War, in itself a story of the times that prevailed characterised by elite decision-making, paying effectually less attention to local democracy (Dunleavy 1981). Today, situated within a thirty-mile radius of London, Bracknell Forest locates several major companies’ national offices, including BMW, 3M UK, Waitrose, Hewlett Packard and Panasonic (BRP 2006a). The case emerged, however, as one element in a rather grand attempt to avoid economic decline. Increased population and new developments around the town centre, in combination with relatively limited development in the town centre itself, had created stagnation and decline insofar as people began to do their shopping and other leisure activities elsewhere. Designed and constructed in the 1950s and 1960s, town developers realised that a major renewal scheme would be required to guarantee sustainability. As a response to this situation, activities were initiated in the late 1990s “to transform Bracknell Forest town centre into a culturally self-confident centre that is mature, vibrant and truly mixed-use, hosting a wide range of shopping and leisure activities which are accessible to all” (Bettison and McCormack 2002). This appreciation manifested in a rather impressive £750 million regeneration scheme. The plans included the development of 56,000 m² of new retail space, 15,000 m² of new bars, cafes, restaurants, entertainment and leisure, 1,000 new homes, 3,500 new parking spaces, up to 62,000 m² of new and replacement business space, a 4,000 m² food store, extensive public spaces, transport improvements, a large health centre, a new library, a new bus station, better CCTV, a new police station, a new magistrates’ court, and a new borough office (BRP 2006b). Concerns regarding sustainability and energy efficiency were also incorporated into the development plans. The town planners perceived that Bracknell Forest had a great opportunity “to show itself as an innovator and leader in this area by making the Town Centre demonstrably energy efficient” (Bracknell Forest Borough Council 2002 13). Opportunities and/or challenges mentioned were renewable energy technologies such as solar, wind and biomass energy; energy efficiency built into the design of the buildings; and issues concerning waste and transport (ibid. 2002). Among these opportunities was the idea to develop a renewable energy centre that would supply the new town centre with sustainable energy based on wood chips.

Eventually the formal procurement process started, and Bracknell Forest
Borough Council published a contract notice in the Official Journal of the EU in order to find a supplier and an operator of the power plant. The procurement procedure used was the negotiated procedure with a contract notice. This meant that only suppliers that managed to become pre-qualified were eventually allowed to submit a bid. In order to gain this status, bidders were asked to fill in a pre-qualification questionnaire to be returned to the procurer for validation. This questionnaire included questions on technical, economic and financial capacity. The tenderers also had to assure their sound legal position, i.e. demonstrate that their businesses operated in compliance with the law. The tenderers that successfully passed the evaluation of the questionnaire and became pre-qualified would then be asked to submit a complete proposal. The procurers expected to eventually invite to tender between two or five suppliers. The notice was published on 8 January 2005, specifying that the winner of the contract was to form an Energy Service Company (ESCO) to “commission the design, construction, installation of the facilities … and manage the commercial activities, maintenance and operation of the facilities and the distribution network over its economic life” (TED 2005). Four organisations became pre-qualified out of the rough dozen of suppliers that initially responded to the contract notice. Many of the bidders that did not pass the evaluation wanted to deliver (small) parts to the project and not a complete energy centre. There was also a category of bidders that had prior experience in the technology required, but on a much smaller scale. As the supplier was supposed to finance the project as well, and thus accept a big commercial risk, the procurers judged that only bidders with prior experience both of projects on that scale and of financing such projects would become pre-qualified.

This project would have brought about innovation if the procurers had not eventually had to terminate the procurement process without awarding a contract. The energy centre, if built according to the initial intentions, would have been an implementation of wood-chip energy technology on a scale never before attempted in the UK. The idea was also to get local farmers to grow fast-cropping timber that would be used as fuel for the power station. If successful, the project, at least as the Bracknell Forest Borough Council perceived it, would also have had a positive impact on an underdeveloped UK market for renewable energy in general. With reference to Schumpeter (1934), this project clearly was innovative. It involved, at least on the national level, the introduction of a new good, a new method of production, it would have opened up a local market for fast-cropping timber and, consequently, it would have meant the creation of demand for new raw materials. The “good” refers here to the physical plant, i.e. the energy centre, which was based on technology applied on a scale never before seen in the UK. At a later stage, when finally delivered, this energy centre would in turn also be delivering sustainable energy, which in itself was an innovative energy form. On 11 April 2006, the notice was officially cancelled. The reason given by the public procurers was that the scheme had been judged “commercially unviable” (TED 2006), ultimately because the procurement process had not generated a supplier willing to sign the contract.

At first glance the developments of this case appear to have a straightforward explanation: The reason for terminating the project was that there was no guaranteed market for the new energy centre. The ESCO that would have committed itself to
building and running the energy centre could in theory have ended up in a situation where town centre tenants were securing their energy supply from elsewhere. In that sense, the project failed to deliver an innovation that was successful on the market. This observation could essentially be seen as the lesson learned from the project and all involved could then just move on with their lives. However, although the analysis that follows will not change these factual circumstances, it will provide a more profound understanding of how organisation-specific endogenous institutions played a role in this case. In fact, the apparently obvious conclusion that there needs to be a market for an innovation may not be the most critical observation that this case has to offer.

3. Collaborating for Innovation: a Rationality Drama

Any student of scriptwriting for film or theatre will sooner or later be exposed to the thesis that “All Drama is Conflict”. This is the principle which any narrative play or film is following. In any good drama there should be a protagonist, a hero of some kind who wants to achieve something. There should also be an evil character, an antagonist who for some reason wants to prevent the hero from accomplishing his or her desires. A good “story” is basically about unfolding the conflicting rationalities of the characters involved. The protagonist’s struggle against the antagonist is what makes the story go forward until the final scene, when the hero, after hardships and adventures, eventually reaches the goal. If the tension between the protagonist and his or her desires did not exist, there would be no story. Leaving aside an attempt to identify the heroes and the evil ones in the current case, the parallel to rationalities among actors collaborating in public procurement of innovation should be clear.

The analogy to drama and thinking of the “character” of an organisation finds foundation in the innovation literature, as summarised in Rolfstam (2012). The starting point for this argument is the assumption that any organisation fulfils its purposes under scarce resources. This means that actions carried out by an organisation are purposefully selected (Vanberg 1997). This also implies that organisations must contain some kind of “procedure for determining the action to be taken” (Nelson and Winter 1982, 57), or, in the terminology used here, rationality. This rationality will affect the conditions for learning (Argyris 1994) and the creation of organisation-specific routines (Nelson and Winter 1982). This will all be a part of an organisation’s endogenous institutions. An organisation’s rationality is here understood as the endogenous evolutionary explanation to why organisations institutionalise in the way they do. In line with this view of an organisation’s evolution, van de Donk and Snellen (1989) distinguish between four different rationalities that may influence the actions and decisions in public administrations. These are political rationality, legal rationality, economic rationality and scientific rationality. This framework, slightly modified by Gregersen (1992), can be useful to help analysing institutional mismatches, understood as differences in rationalities. The rationalities can briefly be summarised as follows.

Political rationality refers to the tendency that the actions of the ruling group will be governed by the ambition to remain in power. In order to do this, it needs to address problems emerging in society, “the problems of the collectivity” (Van de
Donk and Snellen 1989, 10). This implies that “government actions and decisions reflect the – at any time – dominating political and economic interest groups or coalitions” (Gregersen 1992, 132). The solutions suggested by the ruling group will be sought in the direction of what the ruling group finds most desirable, but also within the limits dictated by the integrity of society. Legal rationality refers to the law and thus to the legal establishment. Public policy “must have its foundation in law, must honour the guarantee function of the law, and must ensure equality before the law and legal security” (Van de Donk and Snellen 1989, 10). One law relevant in this case is the law regulating public procurement, i.e. the national transposition of the EC Directives on Public Procurement. Economic rationality refers to restrictions on public policy due to budgetary limitations. A public agency, for instance, is not supposed to waste taxpayers’ money. The importance of economic rationality, following Van de Donk and Snellen (ibid., 10), varies over time, as the economic conditions change. Scientific or, as suggested by Gregersen (1989, 132), “paradigmatic” rationality refers to institutional specificity in e.g. specialist public agencies, i.e. that “each sector in society recognizes its counterpart in a social-scientific discipline or technological discipline” (Van de Donk and Snellen 1989, 11). For instance, we can expect agents occupied with technical infrastructure such as electricity or railway systems to give high priority to technical security, while medical, human and social professionalism and rationalities are expected in public welfare agencies and hospitals. A public agency does not have the same rationality as a private firm. A public agency will most certainly follow economic and political rationalities. A private firm, on the other hand, may follow economic and paradigmatic rationalities. Similarly, a not-for-profit, non-government agency with a specific agenda of promoting a specific behaviour essentially follows paradigmatic rationalities.

The point to make for our purposes here is that organisations evolve as a result of their specific rationalities, and this might have implications for their ability to collaborate with other organisations evolving based on other rationalities. This is why collaboration between organisations that are too incompatible is impeded – they lack “a shared language across organizations” and the “procedural memory” required to complete task routines adopted from other organisations (Amit and Belcourt 1999, 178). This is also why two organisations with initially mismatching institutional set-ups eventually tend to converge institutionally after interaction (DiMaggio and Powell 1983). This is also seen in the difference of public procurement conducted by one single agency as opposed to co-operative public procurement of innovation involving multiple buyers: “A monopsonistic public agency pursuing its own priorities can behave quite differently from one that attempts instead to lead a group of buyer organizations with related but perhaps only partly overlapping agendas” (Hommen and Rolfstam 2009, 17).

With the theoretical framework outlined above the case can be analysed further. The way this is done is through a description of the most important actors in the case, their rationalities how they played a role for the outcome of the attempt to procure a sustainable energy plant.

The Bracknell Forest Borough Council was the public agency that administrated the public procurement process. For the purposes of the present analysis, it is important to distinguish between two different bodies within the public agency. One is the
political side, i.e. the elected leadership of the Borough Council. The other is the professional entity consisting of public officers administrating the procurement process in the more practical sense. These two categories do not have the same rationality. For the political leadership political rationality is more central than for the procurers. The good publicity a successful project would render was clearly in the minds of the political leadership. The Bracknell Forest Borough Council’s Chief Executive, Timothy Wheadon, expected that the project would “add to Bracknell’s profile as a high performing local authority and will make us stand out as a high quality town centre” (University of Reading 2004). Political leaders obviously need to run their Borough Council within budget, according to the law and in agreement with expert knowledge in a way that the general public will find appropriate, if they are to be re-elected. The assumption here is, however, that the political rationality is strongest; politicians strive to stay in power. The professionals, i.e. the public procurers in the Borough Council did not have the same requirements to satisfy political rationality. As employees, they are not as dependent on public opinion to keep their jobs. Instead, the ambition among procurers was to achieve a good outcome in compliance with the EC Procurement Directives. Thus, one could say that the procurers were driven mainly by paradigmatic rationality.

The Bracknell Forest Borough Council developed the town-centre plans in collaboration with the Bracknell Forest Regeneration Partnership (BRP). BRP was set up as a private joint venture formed in April 2003 by the town’s two major landowners, Legal & General and Schroders Exempt Property Unit Trust. BRP also brought in a consultancy firm, Stanhope Plc in London. The underlying purpose of the establishment of BRP was to counteract the ongoing decline of commercial activities in the town centre, in other words to pursue the development and regeneration of the town centre. If the decline continued and commercial life were completely taken over by shopping malls situated outside the town centre, the consequences for property owners in the town centre would obviously be negative. As a commercial entity, this organisation had a rationality that was primarily economic. The reason for its existence was purely economic, to secure income for the landowners in the future, as well. The essential business of this organisation is property. Thus, it is also possible to distinguish a paradigmatic rationality embedded in BRP.

One organisation that played an important role early in the process was Thames Valley Energy (TV Energy). TV Energy was a not-for-profit regional renewable energy agency working on local, regional, national and international levels with “matters relating to the understanding, promotion and delivery of renewable energy projects”, funded by different organisations in the UK as well as the European Commission (TV Energy 2005). TV Energy was not paid directly for carrying out its activities, as a private company is. Nor was it dependent on public elections to conduct its activities. The inclination to prioritise a legal rationality was also rather low, in the sense that it would not be its responsibility to comply with, e.g., procurement laws. This organisation was driven mainly by a paradigmatic rationality, i.e. to contribute to the diffusion of renewable energy. This organisation played a significant role when it came to attracting funding for the project.

Funding rarely comes without expectations from the funder on how the funds should be utilised; it typically reflects a certain rationality the beneficiary should
endorse in return for the funding. The funding attracted in this case was no exception to that general rule. The project benefited from grant funding coming from two sources, the European Commission through the CONCERTO initiative and from a national source, the Energy Savings Trust (EST). The CONCERTO initiative was funded by the 6th framework research programme, supervised by the DG Energy and Transport of the European Commission. The purpose of the initiative, to be endorsed by the beneficiary, was to proactively address “the challenges of creating a more sustainable future for Europe’s energy needs” (CONCERTO 2006a). In principle, the programme was set up to work in two ways, as a promoter of the development of new knowledge and as an agent for diffusing this new knowledge to others. The initiative supported local communities in forming strategies and development towards self-supply of sustainable energy and energy efficiency, currently in nine projects involving some thirty communities. A central idea for the projects included in the initiative was also to offer “a platform for the exchange of ideas and experiences” between the participating communities, as well as with other cities committed to introducing similar strategies (CONCERTO 2006b). Among the projects in the CONCERTO initiative, Bracknell Forest Borough Council became involved in the Renaissance project (Renewable ENergy Acting In SuStainable And Novel Community Enterprises). In addition to Bracknell Forest, the communities of Lyon in France and Zaragoza in Spain were also active participants in the project. There was also an array of communities in Europe affiliated as “observer communities” (Renaissance 2006). The Bracknell Forest Renaissance team included an array of regional partners in addition to the Borough Council: the University of Reading, the Bracknell Forest Regeneration Partnership, TV Energy, Waitrose, South East England Development Agency (SEEDA) and Slough Heat and Power (University of Reading 2004). The main rationality governing this organisation was paradigmatic in the sense that it had a clear ambition to promote a certain paradigmatic idea, namely renewable energy.

The final category to be defined here consists of private firms that would respond to the tender call, to build and eventually operate the energy centre on a commercial basis. These companies are governed by essentially two rationalities. As commercial entities depending on making a profit, the economic rationality for a tenderer is central. The means to do this is through utilising their knowledge in energy technologies. Thus, it is possible to discern within these organisations a paradigmatic rationality as well. But in principle, for a commercial company, the paradigmatic rationality could be followed only if it complies with the economic rationality, i.e. that their activities render income for the company. Table 1 displays a summary of the organisations and rationalities discussed.
Table 1: **Involved organisations and their main types of rationalities.**

<table>
<thead>
<tr>
<th>Organisation</th>
<th>Primary Rationality</th>
</tr>
</thead>
<tbody>
<tr>
<td>Bracknell Forest Political Leadership</td>
<td>Political</td>
</tr>
<tr>
<td>Bracknell Forest Public Officers/Professionals</td>
<td>Paradigmatic, Legal</td>
</tr>
<tr>
<td>Bracknell Forest Regeneration Partnership</td>
<td>Economic, Paradigmatic</td>
</tr>
<tr>
<td>Thames Valley Energy</td>
<td>Paradigmatic</td>
</tr>
<tr>
<td>CONCERTO/Renaissance project</td>
<td>Paradigmatic</td>
</tr>
<tr>
<td>Energy Service Companies/Tenderers</td>
<td>Economic, Paradigmatic</td>
</tr>
</tbody>
</table>

4. **Public Procurement of Innovation as Coordination of Rationalities**

Public procurement in the EU is regulated by the European Directives issued by the European Parliament. All EU member states must implement these Directives into national legislation according to the subsidiarity principle. In other words, the rules must be followed, but it is left to the individual EU member to figure out how this should be done. The rules stipulate for instance that tenders for new contracts should be advertised Europe-wide; that winners of the contract should be determined through competition between interested firms; that firms lacking the necessary financial or technical capacity should be excluded; to respect minimum time limits to ensure that all interested firms have time to participate; to award the contract on the basis of criteria stated in advance; and to provide information on the decisions made (Arrowsmith 2005). Being a public agency procuring something above the threshold levels where the Directives apply, the Bracknell Forest Borough Council had to comply with these rules. In reality, however, compliance with these rules has historically been problematic. One could see this as a diffusion problem related to these rules being an exogenously imposed legislative package that might not settle in national contexts too easily. Lack of familiarity with the rules, the perception that the rules are inefficient and risk averseness are examples of factors brought up as reasons for why procurers might not apply the tender procedures as stipulated by the Directives (Gelderman et al. 2006). Even if it appears as if the general awareness of the Directives is growing and some of the negative perceptions have been gradually refuted, compliance might still not be self-evident among all potential actors in procurement projects. In the light of what at the time were prevailing attitudes, the decision to apply the EC Directives was not a self-evident one, as reported by one of the interviewees. There was a similar project evolving at the time in a town nearby where the procurers had chosen not to apply the EC Directives. The public procurers in the Bracknell Forest Borough Council had stronger faith in the benefits of the EC Directives, however. They thought that by complying with the directives – rather than seeing them only as a hurdle to get over – they might bring something more to the scheme. For instance, compliance with the directives and the obligation to advertise might attract suppliers previously unknown to the procurers. To the procurers, the project offered an interesting possibility to see the procurement directives at work.
TV Energy was the organisation emphasising renewable energy. Before the formal public procurement started, TV Energy helped Bracknell Forest Borough Council conduct a feasibility study funded by the Energy Savings Trust. TV Energy also played a significant role when it came to attracting funding to the project and developing the renewable aspects of the specifications of the new energy centre. One funding network was, as described above, the CONCERTO initiative, funded in turn by the European Commission. TV Energy did not emphasise the virtues of complying with the directives to the same extent as did the procurers at the Borough Council. The main concern of TV Energy were the technical aspects involved in promoting the development of renewable energy rather than the administrative procedures implied by the public procurement rules. To some extent, this tension grew due to the fact that the champion of sustainable technology and leader of the Environment Group in Bracknell Forest Council, Councillor Terry Mills, died at a pivotal moment of the project. In the initial stages of the project, TV Energy felt that all stakeholders were supportive of sustainable technology. Their perception changed after Cllr Mill’s death. The perception of TV Energy was that the “courage” required to undertake innovative projects vanished, and focus shifted towards more conventional technology in order to avoid the risks associated with innovation. They also felt that the project was slowed down further due to what they thought was unnecessary bureaucratic procurement procedures.

The different views on the public procurement process created friction between TV Energy and the procurers at Bracknell Forest Borough Council, and this condition contributed to the delay of the project. After the first step in the procurement procedure and the short-listing of four bidders, the project started to lose pace. The public procurers were exposed to a conflict between their legal rationality and TV Energy’s paradigmatic rationality.

Altogether, the delays meant that the procurers had to work in a tight time window in order to keep up with the development of the town centre. This further reduced the possibilities of coming up with innovative solutions in the interaction with the suppliers. This also put pressure on BRP, as it needed to know how the new buildings in the town centre should be configured in terms of the energy supply. The concern was that there would not be time enough to work with the winner of the contract to guarantee that there would be an ESCO and an energy centre in place on time. For the BRP, an organisation acting in the property business, priorities were the regeneration of the town centre and the commercial aspects of the whole project. Although BRP participated in the work to develop sustainable solutions, this would not be its first priority. BRP required that the proposed energy centre scheme should be able to deliver energy six months before the new town centre was to open. A failure to do this would basically mean that a completed, renewed town centre would be without an energy supply. Such a situation, if it occurred, would be very costly to BRP.

The different rationalities were also manifested in the way the specifications for the tenderers were written. Here, what can be seen as a conflict between the public procurers’ paradigmatic rationality and TV Energy’s different rationality becomes evident. Although it is still debated, the use of functional specification (van Weele 2002, 52) is often seen as a means of allowing innovative ideas to be submitted. Specifying outcomes rather than a specific technological implementation may create
room for the submission of creative and innovative solutions. On the other hand, if a procurer is confident about exactly what item to procure, the use of functional specification may seem unnecessary. As was remarked in the interviews, “TV Energy put in quite a lot of detail what they wanted to see, because they thought it should be based on renewable technologies.” This meant that the specifications became “[t]oo prescriptive”. The effect of the tight specifications was that potential tenders involving existing technology or technology with ambitions that were not as high when it came to sustainability, were excluded. For instance, solutions based on proven commercially viable gas-fired alternatives that would still have meant energy savings in the new town centre could not be submitted. What further supports this point is that the ambition in terms of scale and sustainability were reduced in later energy plans for the new town centre. Gas-fired options as well as conventional supply would also be considered. The envisaged capacity of the power plant was reduced to one-fourth to one-half that of the initially intended energy centre. One view reported was that the public procurers should have encouraged supplier innovation, asking suppliers what they would propose to deliver for the town centre. According to this view, instead of explicitly demanding renewable technology, the public procurer should have settled with encouraging and allowing submissions of such solutions. In that way, the procurer would have also allowed conventional solutions. This would have increased the chances of getting a supplier at all, even if that might have required a lower ambition concerning sustainability.

The CONCERTO initiative and the Renaissance project essentially promoted the use of renewable energy. This environment provided a platform for knowledge sharing among the project members as well as funding aimed at contributing to the development of the individual members’ projects. In that sense, the underlying paradigmatic rationality originates from these two activities, the promotion of certain behaviour (i.e. implementing sustainable technologies) and the diffusion of information. In order to get the funding for developing the renewable energy centre in Bracknell Forest, the participators had to sign an agreement. In the view of the BRP, the practical conditions provided by the CONCERTO agreement were not adapted to the conditions of commercial reality. The CONCERTO project involved some thirty communities in Europe. The grant was actually one grant shared by these different organisations that were each developing renewable technologies in their respective regions. In the way the agreement was written, the whole grant could be revoked if one of the participants failed to deliver its part. Although the European Commission had informally communicated clearly that it would not implement those terms, the actual existence in writing of such a possibility led the BRP to refrain from signing the agreement. The pre-qualified suppliers thought the requirements connected to the funding made participation “too complicated”. In addition to actually delivering the technology, they were supposed to share their experiences through written reports and by participating in training events across Europe. The position among suppliers was that their business is about supplying energy, not about tasks related to knowledge diffusion. These other tasks were also perceived as vaguely defined. In the view of the suppliers, they were being forced to make a more or less open-ended promise in return for the funding. Another problem was related to the time schedule of the funding provided by the CONCERTO initiative. The allocated money had to be spent
within a certain time frame, which was incompatible with the course of events for the regeneration project.

A claim that economic rationality for suppliers was not achieved is substantiated by the fact that all the pre-qualified suppliers withdrew from the competition and the public-procurement process was therefore terminated. One important circumstance contributing to this development were the stipulations placed on the winner of the contract. The selected supplier was supposed to form an ESCO and build and run the energy centre on a commercial basis. In order to borrow money to do this, a supplier would have to produce for potential financers a proposal demonstrating that there was going to be demand for the energy supplied by the new energy centre. As the planned buildings remained to be built, there were no tenants to make any commitment to rely on the energy centre. This situation made it impossible for BRP to provide guarantees that several years on from the completion of the whole regeneration scheme the tenants would be using the energy supplied by the energy centre. Also, BRP wanted to avoid a scenario in which it would have to turn down a large potential tenant because the latter had secured a supply of renewable energy from elsewhere.

One possible action Bracknell Forest Borough Council could have taken would have been to help create demand. There are lots of examples of public agencies that were able to use public procurement to create incentives for firms to engage in innovative activities they would otherwise be reluctant to do, for instance in telecom (Palmberg 2002; Berggren and Laestadius 2003); in the building sector (Westling 1991); in health technology (Phillips et al. 2007); in “eHealth” and “eEnergy” (Turkama et al. 2012 57-78). Being a public agency and also a fairly significant future tenant in the renewed town centre, a commitment from the Council to buy energy from the energy centre could have worked as a catalyst creating the initial market required for the renewable energy centre. One of the stakeholders suggested that such a commitment could have been included in the tender call. The position maintained by Bracknell Forest Borough Council was, however, that restrictions in the procurement law made such a commitment impossible. The argument brought forward was essentially related to the requirement to at all times achieve “best value” for money. Making a commitment to buy energy before the energy centre was built could later lead to a situation where the Borough Council would be unable to choose any cheaper alternatives offered in the future. According to this interpretation, such an advance commitment could not guarantee that the Council would get value for money at all times. Instead, the supplier of energy for the public premises in the new town centre would be appointed through a separate public-procurement process. It is not the purpose here to determine this specific legal issue. It was indicated in the interviews that such commitments had been made elsewhere in the UK, which might suggest that it would have been doable in this case, as well. It is also noteworthy that the UK has been pioneering in developing public procurement methods emphasising “forward commitment” (Environmental Industries Unit 2006). Another issue that had rendered some reflection concerned the Council’s capability to procure innovations in general. One position maintained by one of the interviewees was that “[it] is not the Council’s core business … it is not part of its everyday business, and it doesn’t have the experience. So the Council is always considering risk regarding the innovation as well. And the Council will always choose the least risky strategy.” Risk
aversion is an interesting phenomenon, as it fits analytically into several rationalities. In a way it can be seen as a political rationality, as a risk-averse behaviour will help avoid exposure to events that can threaten a powerful position. It can also be perceived as an economic rationality, as it may be regarded as a sound policy to avoid jeopardising taxpayers’ money. Given the perception of a procurer as risk averse in general, it is also a paradigmatic rationality, as it would then be seen as a norm within a given prevailing institutional set-up.

Related to the fact that the Council has limited experience in procuring innovations was the perceived lack of clearly defined goals for the project. Council staff stated that they “were drawn along by the agendas of … some of the other partners.” “We didn’t really take control and say ‘This is what we want, this is how it is going to be.’” To some extent, this, too, may be explained by the death of the project leader at Bracknell Forest Council, Cllr Mills. It may have been difficult to find a replacement that could have helped to maintain the high ambitions regarding renewable energy. This, in turn, provides an explanation for why the procurement was managed in a relatively poor manner (e.g. unclear goals, time delays, and eventual termination of the project). The ideas and visions seem essentially to have come from the private sector and, more specifically, the two major property owners, Legal & General and Schroders (Bracknell Forest Borough Council 2007). The Council’s involvement, in terms of the analysis here, seems to be more of a response than an initiative. From this perspective, the whole process at the Bracknell Borough Council can be seen as a response guided by a political rationality. That reflection brings the discussion back to the purpose of public agencies. No one can really argue against the assertion that the long-term institutional justification for the existence of public agencies is the public service each of them are set up to deliver. This reflects also how procurement activities are set-up, namely as a sourcing mechanism that in a rather static way supports the delivery of public service. In that light, one could say that the champions of this project challenged the long-term rationality of the Bracknell Forest Borough as a supplier of public service and instead push it somewhat to become a public innovator. A list of some identified rationalities among participants is displayed in Figure 1.

| TV Energy → Strict specification on sustainable technology |
| BRP → Energy on time |
| The Political Leadership → “Beacon for green energy” |
| Suppliers → Deliver and operate energy centre for commercial reasons |
| The Council Procurers → Comply with the rules, Time for developing tender call |
| Funding Schemes → Required sustainable technologies |
| Renaissance project → Diffusion of knowledge |

Figure 1. Collaborators and their specific rationalities
5. Concluding Remarks

The argument brought forward in this paper is essentially critical-realistic in character. The difference between intransitive knowledge and transitive knowledge is useful to explain this point (Bhaskar 1975, cited in Sayer 2000). These two knowledge dimensions central to a critical realist ontology can be contrasted as follows. The objects under study form the intransitive dimension. This might be certain properties of particles that interest the physicist, or a social phenomenon that interests the social scientist. The theories and paradigms governing the search process and how objects are studied belong to the transitive knowledge dimension. The theories and paradigms might change as the result of a scientific revolution, while the objects in the real world, the particles or the social phenomenon, will remain the same (Sayer 2000, 10-11). Applied in this context, it means that the problems observed in relation to attempts to procure innovation are not to be contested. The important issue is how these observed problems should be understood.

The case study dealt with a procurement project involving a set of actors where the ultimate aim was not reached: to build and operate a sustainable power plant. The “drama” that evolved in this case can be summarised as follows. Being a promoter of renewable energy TV Energy was rather specific regarding requirements for sustainable technology. The priority for BRP was to have a(ny) solution available on time. One benefit the political leadership appreciated was the “beacon effect”, i.e. the prestige the building of an innovative sustainable power would render. The potential suppliers needed to make sure there would be a market once the power plant was built. The council procurers wanted to comply with the rules and make a good procurement process. The funding schemes also required sustainable technologies. There was also attached an information diffusion programme that would require certain efforts from the winner of the contract.

One reflection worth reiterating here that belongs to the transitive knowledge dimension is partly methodological and partly theoretical. As was stated earlier in this article, the analysis of this case could have rendered rather “straightforward” conclusions, expressed in terms of events, their consequences, and maybe also the identification of, and potentially blame of actors that caused effects that undermined and eventually terminated the project. Such an analysis would help to identify problems and allow for suggestions how to remedy them on a rather operational level. Even if the importance of dealing with such issues should not be downplayed, thinking of stakeholders in terms of their rationalities, as was endeavoured in this paper, may offer a more profound analysis where the focus is not so much on the single events as they occurred, but their underlying reasons for occurring. Looked upon as isolated entities, all the involved stakeholders actually acted according to their own rationality and, in that sense, did what they were supposed to do. The problems occurred as institutional clashes in the interaction with other actors with incompatible rationalities. Given the assertion that collaborative public procurement involving innovation manifests as the result of the extent to which there prevails institutional match between collaborating actors, the case can be seen as an instance in which such a match did not occur. For public procurers this perspective raises issues concerning how public procurement of innovation projects can be set up in a way that
aligns with the rationality of commercial firms or any other stakeholder involved. For suppliers aiming at winning public contracts, this perspective raises issues concerning building awareness of the underlying principles on which public procurers act. Although most instances of public procurement of innovation probably occur as collaborative projects where several stakeholders are involved, either as partners in a consortium, as sub-suppliers or as contributors in consecutive tender processes, this assertion would be relevant also in cases where there is only one procurer and one supplier involved; in order to be successful, there needs to be an institutional match between involved rationalities.

These results also have implications for studies of public procurement of innovation in general. If reasons why public procurement of innovation sometimes fails are sought, the endogenous level needs to be taken into account. This approach contrasts with the old tendency to view the relation between EC Directives and public procurement of innovation as a single variable causality. In this case, different rationalities regarding the application of the public procurement law was one contributing factor that delayed the project. It was, however, the difference in rationalities, rather than the procurement rules per se, that created the delay and some of the problems that eventually forced the public procurers to terminate the procurement process. Then there was an array of other factors leading to the delay and the final termination of the project, which mainly can be explained by the lack of institutional match between the collaborating actors.

The rules for public procurement must strike a balance between maintaining transparency and competition in order to save tax-payers money, prevent fraud on one hand, and allow for interaction, negotiation and uncertainty, which is critical for innovation to take place, on the other hand. The current Directives do in many ways achieve this balance. This is, as was mentioned initially in this article, proven by the fact that Pre-commercial Procurement has been launched as a way of procuring innovation within the rules. This package does not contain any new legislation, but is entirely a scheme set up to demonstrate that public procurement of innovation can be done within the existing Directives. This is not the same as saying that public procurement of innovation works smoothly within the EU. There are indeed problems. Following the case discussed in this paper, the reasons for the problems are, however, not to be found in the Directives. Problems occur because (for instance) lack of procurement competence, lack of legal competence, lack of resources, lack of political support, lack of understanding for stakeholders needs, lack of supplier understanding of the procurement process, risk averseness and lawyers’ inadequate interpretation of the possibilities given by the Directives. Another often neglected aspect is the “total” institutional set-up a public procurer needs to deal with, a central challenge in the case discussed here.

What perhaps can be seen as a limitation of this study is the tendency to consider only the EC Directives as an exogenous institution and thereby neglect other exogenous institutions that may affect the possibilities for public procurement of innovation. Even if the main concern in this paper is the relation between the EC Procurement Directives and innovation, other macro institutional variables such as (national) culture, supra-national and national funding schemes are indeed examples of institutional variables that could be taken into account as well. The importance of
multi-level institutional analysis of public procurement of innovation has also been emphasized in the literature (Rolfstam 2012). Furthermore, “institutional analysis should consider the ‘part-wholeness’ of institutions, i.e. that what at first glance might be counted as an institution also consists of institutions, as well as potentially being part of another institution. Consequently, the institutional analyst faces a major challenge in identifying the appropriate level of analysis relevant to addressing a particular puzzle and learning an appropriate language for understanding at least that focal level and one or two levels above and below that focal level” (Ostrom 2005, 12). The results derived here, as in any institutional analysis, suffers from the limitations that come with any such identifying process.

The important point made here is that the challenges as captured in this paper belong to lower institutional levels developing within organisations, and many of them would probably not go away by changing the Directives, which is a conclusion that contests a too narrow-minded focus on the Directives as the only important variable in the puzzle. To what extent other exogenous institutions could be invoked to remedy these challenges remains for further research. It may still be argued that what is needed is a holistic approach, where changing some aspects of the Directives might be considered together with other measures addressing endogenous aspects of policy implementation. By such an approach, we will start asking the right questions.

References


National IST Research Directors Forum. 2006. *Pre-Commercial Procurement of


TED. 2006. “UK-Bracknell Forest: Wood-Fired Power Station.” Additional informa-
Good Rules or Bad Rules in Public Procurement of Innovation: But is it Really the (Right) Question?


Max Rolfstam, PhD, is Associate Professor at the Department of Business and Management, Aalborg University, Denmark. His main research interest are institutional theory and innovation policy, in particular how public procurement can be used as an innovation policy instrument. Correspondence: Max Rolfstam, Department of Business and Management, Aalborg University, Fibigerstræde 4, DK-9220 Aalborg O, Denmark; E-mail: max@business.aau.dk.