

Cabinet Secretary for Infrastructure and Capital Investment

Alex Neil MSP

T: 0845 774 1741

E: scottish.ministers@scotland.gsi.gov.uk



Michel Barnier  
European Commissioner for Internal Market and Services  
European Commission  
BERL 10/034  
B – 1049 Brussels

DELIVERING  
A GAMES LEGACY FOR SCOTLAND

7 December 2011

*Dear Michel*

I am writing to request a meeting with you to discuss the comprehensive review of EU public procurement legislation that is currently underway. By way of background information, it may be helpful for me to explain the Scottish Government's role in relation to public procurement, which falls within my portfolio.

While the UK Government has lead responsibility for liaising with the Commission on public procurement policy and the development of new legislation, the Scottish Government has responsibility (under the terms of the devolution settlement within the United Kingdom) for the development and application of public procurement policy in Scotland. In addition, implementation of EU public procurement legislation in Scotland is for the Scottish Parliament and it does so independently of the UK Parliament. Scotland therefore has the power to develop its own unique approach to procurement matters, either in the context of implementing EU public procurement legislation or the development of national policy.

I am pleased to see that discussions on the Commission's review appear to be progressing well and very much look forward to publication of the legislative proposal later this month. Improving public procurement and using procurement as a lever of social and economic development are very important issues for Scotland and we view the Commission's work on procurement as a key priority. Against that background, I am very keen to meet you to discuss the ongoing review and, in particular, a number of issues of particular relevance to Scotland.

In advance of that meeting, I would be grateful for the Commission's view on one specific issue - the issue of requiring contractors, as part of the public procurement process, to pay their staff involved in delivering the public contract a 'living wage'.

A living wage (not the UK National Minimum Wage) is defined as a wage that gives individuals and families in a particular locality enough income to meaningfully participate in society, rather than merely afford the basic necessities. The living wage is not universally applicable and is not required by law; it is calculated independently of the Scottish and UK Governments and the amount varies on a regional basis.

In response to a question from the European Parliament (E-0495/10), the Commission has stated that "living-wage conditions would appear to count among the contract performance clauses which may be included in a public procurement contract provided they are not directly or indirectly discriminatory". The Commission's guidance on social issues (Buying Social, a guide to taking account of social considerations in public procurement) makes reference to the Court of Justice of the European Union decision in the Ruffert case (C-346/06). This case suggests that requiring payment of a living wage may represent a restriction on the freedom to provide services guaranteed by article 56 of the Lisbon Treaty on the Functioning of the European Union and thus limit the extent to which public bodies can require payment of a living wage as part of a procurement process.

Payment of a living wage by contractors to their staff is clearly an important issue in helping to promote fair pay. In light of the foregoing, I would welcome the Commission's view on:

- whether public bodies are able to include payment of a living wage as a criterion of contract award in a public procurement process or as a contract performance clause; and
- the conditions that public bodies would have to meet to ensure that, in requiring payment of a living wage, they also complied with all other EU obligations, including obligations of non-discrimination.

The UK Government is aware that there are issues of particular relevance to Scotland (including payment of the living wage through procurement) and is aware of our approach to you for further discussions on these issues. I would be very grateful if your office could contact mine to arrange a date for us to meet in January or February next year. Please contact my Diary Secretary Aneta Kubik on 0131 3486971.

I am copying this letter to Francis Maude, Minister for the Cabinet Office and to Sir Kim Darroch, UK Permanent Representative to the EU.



ALEX NEIL