

MICHEL BARNIER

Membre de la Commission européenne

08.05.2014

Brussels,
OGI/vg A(14)1349761 D(14)

Dear First Minister,

Thank you for your letter concerning the reform of public procurement law in Scotland and in particular the debate about the introduction of a "living wage" to be paid to employees performing public contracts in Scotland.

I have taken note of your request for a meeting at ministerial level, and I would have been pleased to discuss this important issue with you. Unfortunately, due to travel commitments, I will not be able to meet you in person before 12 May. I sincerely regret this.

I fully understand and subscribe to your objective to ensure decent pay for Europeans with the lowest incomes. I also share your perception that Public Procurement is a powerful instrument which can usefully support other public policies, notably in the social field. This was one of the main objectives of the reform of the Public Procurement Directives that the Commission proposed in December 2012 and that the European Parliament and the Council adopted earlier this year.

However, we have to be aware that the particular issue of wage-related social conditions in public contracts raises a whole series of complex legal questions. It has already been highlighted in earlier correspondence that any such requirements must comply with the Posting of Workers Directive and the related case law of the Court of the Justice of the European Union if they are applicable to workers sent from another Member State for the provision of a service. As you acknowledge in your letter, a contractual condition to pay a living wage set at a higher rate than the general minimum wage is unlikely to meet the requirement not to go beyond the mandatory protection provided for by the Directive. Moreover, Member States and contracting authorities have to make sure that social requirements in public contracts are in compliance with primary European Law, in particular with the free movement of services (Article 56 of the Treaty on the Functioning of the European Union).

.../..

Rt Hon Alex SALMOND MSP
First Minister of Scotland
St Andrew's House
Regent Road
UK-Edinburgh EH1 3DG

In the months to come, my officials will be working closely with Member States to address the questions raised by the implementation of the rules on social requirements under the new Public Procurement rules. Our aim is to assist public authorities by providing advice and best practices in this highly important policy area. In this context, the services of the Directorate-General Internal market and services are available to discuss further the practical questions raised by the Scottish legislative project with your experts. My officials are already in contact with the Permanent Representation of the United Kingdom and with your officials to organise a meeting as soon as possible.

Yours faithfully, *S. Kierkegaard*



Michel BARNIER

Copy: Rt Hon Francis MAUDE MP, Minister for the Cabinet Office and Paymaster General
H.E. Mr Ivan ROGERS, Permanent Representative, Permanent Representation of the United Kingdom, Brussels
Mr Ian CAMPBELL, Head of Delegation, Scottish Executive EU Office, Brussels