



**Y Pwyllgor Menter a Busnes
Enterprise and Business Committee**

Jane Hutt AM
Minister for Finance and Leader of the House
Welsh Government

7 February 2012

Dear Minister

EU Procurement Task and Finish Group

On Thursday 2nd February the Enterprise and Business Committee agreed to write to raise concerns about two aspects of the European Commission draft proposal for a directive on public procurement¹, replacing Directive 2004/18.

The Committee's legal adviser drew the attention of the Committee to the final paragraph of Article 24.1 which would permit only partial transposition of the Directive in relation to procurement procedures: *"Member States may decide not to transpose into national law the competitive procedure with negotiation, the competitive dialogue and the innovation partnership procedure."*

The Committee's Task and Finish Group is still in the process of holding informal discussions with Welsh stakeholders on the possible implications of the draft proposals for Welsh contracting authorities and suppliers. However, the group is clearly concerned that should the UK Government decide not to transpose all possible procurement procedures into national law, this could reduce the scope both for

¹ Document reference COMM(2011) 895 final

innovation and for the securing of social and environmental benefits by negotiation.

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- 2 -

The group has not had sufficient time to discuss this issue fully with the Cabinet Office, but it would seem that the matter could be resolved either by removing the discretion of the Member State from the Directive, by persuading the UK Government to fully transpose all the procedures provided for in the Directive, or by obtaining a designation to enable Wales to transpose separately (as Scotland already does).

It would be helpful for the Committee to ascertain the views of the Welsh Government on this issue.

Secondly, as you are already aware, the Task and Finish Group has concerns regarding the implications of Article 84 of the draft directive, to establish a single 'national oversight body' for each Member State. The UK Government's explanatory memorandum notes that this may infringe the principles of subsidiarity and/or proportionality, and that the new proposals seem to be *"unjustifiably intrusive in requiring judicial and non-judicial functions to be combined in a particular way within a single body..."* The Task and Finish Group is concerned that as currently drafted, Article 84 does not recognise devolution, is too prescriptive, and it is unclear whether such a body would have positive benefits, or would simply add an extra layer of (possibly costly) bureaucracy to the procurement regime.

It is the role of the Assembly's Constitutional and Legal Affairs Committee to consider the legal implications of this particular proposal, and to flag up any concerns arising from a subsidiarity check with the relevant European Committees of the UK Parliament. However, as the proposals are currently already under scrutiny in those parliamentary Committees, I am copying this letter to the respective Chairs, with a request that, if at all possible, they explore these matters with the UK Government in the course of that scrutiny.

Yours sincerely

Nick Ramsay AM

Chair, Enterprise and Business Committee

Julie James AM

Chair, Task and Finish Group on EU Procurement policy, Enterprise and Business Committee

Copied to:

William Cash MP

Chairman, European Scrutiny Committee
House of Commons

Baroness O’Cathain,

Chair, EU Sub-Committee B – Internal Market, Energy and Transport
House of Lords

David Melding AM,

Chair, Constitutional and Legal Affairs Committee
National Assembly for Wales

Edwina Hart MBE OStJ AM

Minister for Business, Enterprise, Technology and Science
National Assembly for Wales