

**Y Pwyllgor Materion Cyfansoddiadol a Deddfwriaethol
Constitutional and Legislative Affairs Committee**

Cynulliad
Cenedlaethol
Cymru

National
Assembly for
Wales



Mr William Cash MP
Chairman
European Scrutiny Committee
House of Commons
7 Millbank
London
SW1P 3JA

23 February 2012

Dear Mr Cash,

**Proposal for a Directive of the European Parliament and of the Council
on Public Procurement**

Nick Ramsay AM the Chair of the National Assembly's Enterprise and Business Committee and Julie James AM, the Chair of that Committee's sub group looking at European Union (EU) procurement policy, wrote to the Welsh Government's Finance Minister, Jane Hutt AM, on 15 February 2012. The letter was copied to you and to Baroness O'Cathain. I enclose a copy for ease of reference.

The issue has now been considered by the Assembly's Constitutional and Legislative Affairs Committee, which is charged under our standing orders with considering whether draft EU legislation complies with the principle of subsidiarity. The Committee has laid its report before the Assembly today and I attach a copy for your information.

You will note that the Committee shares concerns about whether the national oversight body proposed in Article 84 of the draft Directive complies with the principle of subsidiarity, by requiring an administrative body to carry out functions that would normally be carried out by the courts in the UK. The

Bae Caerdydd
Caerdydd
CF99 1NA

Cardiff Bay
Cardiff
CF99 1NA

Ffôn / Tel: 029 8920 8242
E-bost / Email: David.Melding@wales.gov.uk

Committee would, therefore, support an objection to the requirement for a national oversight body because it breaches the principle of subsidiarity in that way.

The Committee is also concerned that the proposal also fails to have regard to the principle of devolution. Even if a national oversight body were to be established for the purposes of reporting under Article 84.2, Member States should be able to take account of their own constitutional structures. Such arrangements could be made by inserting into Article 84 the degree of flexibility provided for in Article 87. That would at least mitigate the degree to which Article 84 breaches the subsidiarity principle.

I would be grateful if you could give consideration to incorporating the Committee's representations, on behalf of the National Assembly, into any reasoned opinion that your Committee submits to the European Commission. I would also be grateful if you could keep me informed of developments.

I am writing in similar terms to Baroness O' Cathain, the Chair of House of Lords EU Sub-Committee B.

Yours sincerely

A handwritten signature in black ink that reads "David Melding". The signature is written in a cursive style with a long, sweeping tail that extends to the right.

David Melding AM
Chair

cc

Rosemary Butler AM, Presiding Officer, National Assembly for Wales
Lord Roper, Chair, European Union Select Committee, House of Lords
Nick Ramsay AM, Chair, Enterprise and Business Committee
Julie James AM, Chair, EU Procurement Policy Task and Finish Group
Jane Hutt AM, Minister for Finance, Welsh Government
Edwina Hart AM, Minister for Business, Enterprise, Technology and
Science, Welsh Government