

DOING GOOD IS GOOD BUSINESS

Bruno Herbots Partner at Herbots solicitors talks about ending the false economy of public spending



What if the Irish government had to consider the impact on society of every euro it spent? Not just to keep voters happy, but to improve the country's societal function now and into the future.

While most of us want to see our government spending less, should there be a trade-off between cost and value? Should we expect our government to spend more strategically? Should government spending in one sector achieve complementary benefits in another?

These questions are influencing the thinking in Europe today, and they have not gone unnoticed in Ireland.

New procurement Directives have been devised to guide public bodies toward a smarter way of purchasing goods and services, and of developing public infrastructure.

In the purchase of goods, services and works, public bodies are encouraged to award contracts not solely based on cost-competitiveness, but also on societal benefit.

These new Directives, as implemented in Ireland, go as far as saying that a social award criterion can relate to what is being procured "in any respect" and "at any stage" of the life cycle of the goods, services and/or works, "even where such factors do not form part of their material substance."

Earlier this year, the Public Services and Procurement (Social Value) Bill proposed by Frank O'Rourke and Darragh O'Brien, TDs, passed the Second Stage Debate in the Dáil (there are five stages in total before a bill is passed to the Seanad), and was referred to a Working Committee.

As a Dublin-based solicitor with one foot in Brussels, I welcome these developments in Europe and the movement toward this method of practice in Ireland.

This Bill proposes to put a statutory obligation on public bodies to “consider” social values whenever a procurement process commences. Whilst public bodies would not be required to include social value criteria in their scoring matrix (which ranks proposals according to pre-set objective criteria, such as price, timeframe, method statement etc.), they must consider how the procurement could improve the community interest that falls under that public body’s administrative area.

The Bill is not an end in itself; it is a tool to promote the wider uptake of social value. Like the English Social Value Act, 2012, and the Scottish Procurement Reform Act, 2014, the Bill encourages a new way of thinking that involves looking beyond the price of each contract by considering the collective benefit to a community. The contracting authority must ‘think and rethink’ what it is procuring and how it could achieve social benefits to that authority’s functional area, before it issues any contract notice. The contracting authorities should do so as the outcomes are worth it and it can make a great difference to people, to service delivery and to the bottom line.

For example, a county council might have to procure the supply of milk to local schools. After having considered how this procurement could benefit the wider community, this county council could widen the scope of the supply contract to include the provision of lessons on healthy living to the students of the local schools. This scope increase, and the inclusion of a community benefit award criterion in the scoring matrix, could incentivise tenderers to use the long-term unemployed (after some internal training) to provide the lessons. As such, the county council will not only have addressed the supply of milk, but would also have decreased the number of unemployed people; this is more value for money than the milk alone.

The Bill, rightly I believe, does not define “social value”. This term is to remain a permissive concept that can continue to develop through effective consultation, imaginative commissioning, and creative suppliers’ design; all demonstrative of the ability to “think outside of the box”.

This does not mean that the language in the draft Bill cannot be improved.

One criticism of the draft language in the Bill is that the authors may create some confusion in their use of the terms “social value” and “community benefit” interchangeably. It is best to use the broadest possible term and to use it consistently throughout.



Bruno Herbots,
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“THE BILL
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To deliver societal value in public procurement, such values should be woven through each stage of procurement; not only at the final stage of tendering.

These values must infiltrate the process from start (prior to the publication of any contract notice) to finish (to include contract monitoring). It should not be a contractual afterthought. The Bill would need some amendment to reflect this.

Having practiced in public procurement in Ireland for over a decade, I anticipate some potential issues in adapting to this new playing field.

One major bugbear for contracting authorities will be measuring and quantifying the social outcome they are seeking, so as to incorporate this into a scoring matrix. Contracting authorities could note the UK website www.socialvaluehub.org.uk which provides invaluable information and insight into the outcomes of social values for public bodies. The authors of the Bill could consider the introduction of a similar website in Ireland.

When assessing the social lifecycle cost, contracting authorities could also consider the Guidelines for Social Life Cycle Assessment of Products, drafted by the United Nations Environment Programme. Such pre-existing methodologies assist by going beyond the initial price and delving into the life cycle costs, such as the maintenance and the end of life management costs.

Admittedly, this is complex. This is where the EU Eco-label could assist. Indeed, the procurement directives accept such labels as proof that what is proposed meets the requested social characteristics.

Unfortunately, unlike Italy and France, Ireland has been unsuccessful in implementing many such labels. These failures are due to lack of resources provided by the Government to the National Standards Authority Ireland (the “NSAI”) to facilitate such Eco-labels.

The authors of the Public Services and Procurement Bill could increase the success of their social goal by increasing the NSAI funding of the Eco-label scheme.

Social value criteria linked to Eco-labels are widely used in Italy and France, and provide clear benefits and improve national procurement in a legally acceptable and clever fashion.

We have a significant opportunity now to legislate intelligently to increase social benefits in Ireland. I welcome the new Public Services and Procurement Bill as a smart legislative decision, and encourage our lawmakers to avail of this opportunity in the fullest sense.