[redacted]

From: Eamonn Moloney [redacted]
Sent: 14 May 2019 14:44
To: DRCD SEConsultatation
Subject: Social Enterprise Submission
Attachments: Socent Submission.docx

Dear Sirs,

Please find attached our submission to the consultation on Social Enterprise in Ireland.

Regards,

Eamonn Moloney
An Ait Eile

Submission to National Social Enterprise Strategy for Ireland 2019-2022 on behalf of An Ait Eile Cooperative Limited

As a start-up cooperatively-owned social enterprise with fully charitable objectives, we are compelled to object strenuously to the proposed policy, on the following grounds:

We incorporated as a mission-driven company, based on the clear guidance of the Forfas definition and the EU Operational Criteria for social enterprise. We are deeply concerned that the proposed redefinition directly affects our business model and future prospects - at least half our surplus is reinvested in our charitable goals, but we also seek to provide fair returns to our investors. We would hence be put in the peculiar position of being fully compliant with the EU criteria, yet noncompliant with the national definition.

As social enterprises internationally operate on both nonprofit and not-for-profit lines, restricting the national definition exclusively to nonprofits will not include the full range of activity and the full range of organizations active in the field - the wording excludes other forms such as social and solidarity economy actors, social business, social coops, and Designated Activity Companies. It also pre-empts further innovation in this emerging sector.

An unintended consequence of the proposed policy change is the prevention of equity-based investment in the sector from the worldwide venture philanthropic and impact investment markets. Impact investing is defined as ‘investments made with the intention to generate positive, measurable social and environmental impact *alongside* a financial return’.

As of 2018 there was a conservative figure of 1,340 active impact investment entities who manage USD 502 billion in investments intended to bring about positive change, such as achievement of the Sustainable Development Goals. As access to capital has been repeatedly identified as a challenge to the sector,Ireland cannot afford to be locked out of this market by a definition that does not reflect the international experience, and which will effectively eliminate access to this capital, thereby placing Ireland at a competitive disadvantage.[1]

This is in contrast to, for example, the recent regulatory reform in the UK of Community Interest Companies and Community Benefit Societies, which have played a vital role in the growth and impact of social enterprise in the UK. It is notable that in these corporate forms directors can derive a living wage from their enterprise, *and* accept equity investment.

‘The ‘new style’ social enterprises are seeking to better integrate social mission with entrepreneurial activity. Here the interest is in making a profit as a means of reinvesting and

---

[1] Global Impact Investing Network, Sizing the Impact Investing Market, 2019
https://thegiin.org/assets/Sizing%20the%20Impact%20Investing%20Market_webfile.pdf

furthering the social mission [...] Profits are therefore an *essential element* of the business model'[2]

A key differentiator of social enterprise in international and European context, and a key driver of sectoral innovation, is the development of market-led solutions that achieve social outcomes *in addition* to a financial return. By requiring social enterprise to reinvest all surplus, the sector will be limited to, and indistinguishable from, a trading subsection of an existing charitable sector. Such a move would achieve a chilling effect on sectoral innovation in Ireland, residualise social enterprise to grant dependency as opposed to market orientation, and place us out of line with international best practice.

On this basis we would respectfully request the retention of 'primarily', as in the Forfas (2013) definition of 51%. This is in line with current UK best practice certification standards which state 'that a principle proportion (51% or more) of any profit made by the business is dedicated to such purposes'[3]. We would also note the specifics of the OECD definition: "any private activity conducted in the public interest, organised with an entrepreneurial strategy, but whose main purpose is not the *maximisation* of profit but the attainment of certain economic and social goals, and which has the capacity for bringing innovative solutions to the problems of social exclusion and unemployment"[4]

Similarly, the EMES International Research Network clarifies the distinction between social enterprise and conventional voluntary activity with the the following criteria:

'a continuous activity producing goods and/or selling services; a high degree of autonomy; a significant level of economic risk; a minimum amount of paid work; an initiative launched by a group of stakeholders; a decision making process not based on capital ownership; a participatory nature, which involves the persons affected by the activity; limited profit distribution; and, an explicit aim to benefit the community.'[5]

Crucially, it is also provides harmonization with the European Commission operational definition:

'those whose profits are *mainly* reinvested to achieve this social objective' and that 'uses its profits *first and foremost* to achieve its primary objective and has in place predefined procedures and rules for any circumstances in which profits are distributed to shareholders and owners, in order to ensure that any distribution of profits does not undermine the primary objective'.[6]

---

[2] European Commission. Directorate-General for Employment, Social Affairs and Inclusion, (2015:40)
[3] Social Enterprise Mark UK
https://www.socialenterprisemark.org.uk
[4] OECD, Policy Brief on Social Entrepreneurship, 1999
[5] www.emes.net
[6] European Commission, Thematic Guidance Fiche: Social Economy and Social Enterprises (Thematic objective 9), 2014

In short, international definitions are clear on the distinction: social enterprises may be profit-making entities, but may not be profit-maximising. We would ask that the national policy accurately reflect this, to adequately include the varieties within the sector.

Secondly, we are concerned that the definition used for governance of social enterprises does not adequately reflect European best practice, with specific respect to the 5th EU Principle of inclusive governance. The EU operational definition of social enterprise recommends that organisations allow stakeholder views to be appropriately represented in decision making processes,

'where the method of organisation *or the ownership* system reflects the enterprise's mission, using democratic or participatory principles or focusing on social justice [and] it is managed in an open and responsible manner and, *in particular*, involves employees, consumers and stakeholders affected by its commercial activities'[7]

It is also notable that ownership of social enterprise is explicit in the EU definition, as are multi stakeholder and participatory governance methods based on principles of social justice. This is not currently adequately reflected in the proposed policy.

As the pool of charitable directors in Ireland is already shallow and strained, requiring social enterprises to match the status of charitable trustees will unavoidably prevent diversity, inclusion, and accessibility, especially to minorities and disadvantaged target groups. This raises equality considerations in relation to the Public Sector Duty, which places a positive duty on public sector bodies to have regard to the need to eliminate discrimination, promote equality, and protect human rights, in their daily work.

This will reduce the potential development of new social enterprises, especially those whose governance strongly reflects their beneficiaries. As social enterprise start-ups are frequently developed by communities affected by the social problems they seek to solve, this criteria appears counter-productive to initiation of new social enterprises by raising barriers to entry and considerable restrictions on the ability to participate in governance, with particular respect to economic disadvantage.

---

https://ec.europa.eu/regional_policy/sources/docgener/informat/2014/guidance_social_economy.pdf

[7] European Commission, Social Business Initiative, 2011

Recommendations:

1) Maintain the existing status quo 51% standard in line with regional, European and international best practice

2) Include both non-profit and not-for-profit social enterprise models within the definition.

3) Encourage Green and Social Procurement through methods such as use of Targeted Recruitment and Training clauses, in line with 'Buying Social – A Guide to Taking Account of Social Considerations in Public Procurement'.

4) Give due consideration to evidence-based outcomes-oriented commissioning methods such as impact bonds as opposed to output-oriented tendering and contracting arrangements.

5) Provide development assistance to social enterprises in alliance contracting and consortium development to enable cooperation both within the sector and across the B2B supply chain.

6) Give appropriate consideration to change in the 1893 IPS legislation, leveraging the learning from the UK regulatory experience towards corporate forms such as community interest companies and community benefit companies.

7) Provide guidance on configuring all the existing company types - LTD, CLG, DAC, IPS - towards good practice in social enterprise activity.