



## **Laga Newsflash**

### **Flemish Regional Act regarding Social Impact Bonds entered into force on 18 May 2018**

On 18 May 2018, the Flemish Regional Act regarding the implementation of social impact bonds (the "SIB Regional Act") entered into force.

In a social impact bond (SIB), a partnership comprising the government, investors, service delivery organisations and potentially an intermediary is formed to tackle a specific social issue. If the solution achieves the agreed-upon social outcomes, the government pays the investors according to a pre-agreed scale. As such, the non-performance risk shifts from government to investors, whose financial return is based on the achievement of results.

The number of SIBs worldwide is increasing. The first SIB was implemented in 2010 in the UK by HMP St Peterborough. Since then, approximately forty SIBs have been implemented. In Belgium, the first SIB was launched in 2014, for the "Duo for a job" project. It involves a coaching program that connects young job seekers of immigrant background with people aged over fifty years old with professional experience in related fields, and who can accompany and support them in their job search. The adoption of a legal framework in the Flemish Region aims to facilitate the implementation of these SIBs in the region.

#### **The "SIB" definition in the SIB Regional Act**

The SIB Regional Act defines a SIB as a "written agreement between one or more impact investors, an executing party, an evaluator and a government, whereby the impact investor

provides funds to the executing party with the aim of achieving a predetermined and measurable social purpose. The government either does not repay, partially repays or fully repays the funds to the impact investor, depending on the achievement of the predetermined targets, which are measured and evaluated by the evaluator. An interest rate can be granted”.

## Parties concerned

Four parties are involved in a SIB:

- The government, which outlines the social problem
- The impact investor(s), which provide(s) funds
- The executing party, often a non-profit organisation
- The evaluator, an independent third party that will evaluate the results of the project. The evaluation will determine whether a project has achieved its targets and whether the government must repay the impact investor(s). To ensure the evaluator’s independence, the SIB Regional Act provides for a number of legal incompatibilities.

A fifth party, namely an intermediary, is often included to assist the contracting parties with the implementation and execution of a SIB-project.

## Duration

The duration of a SIB, from the conclusion of the agreement until the end evaluation, is one to five years.

## Termination of the partnership

The SIB Regional Act provides that if the executing party, the impact investor or the intermediary (if any) is no longer able to fulfil its contractual obligations, no additional rights are created for the other parties vis-a-vis the government. However, the government can take all necessary measures to prevent the project’s termination, taking into account the rights of the remaining parties.

If however the evaluator is not able to fulfil its contractual obligations, a new evaluator will be appointed by mutual consent. In the absence of mutual consent, the project will terminate automatically.

## Further implementation provisions to be adopted by the Flemish Government

The SIB Regional Act is a framework act. Further implementation provisions can (and in some cases must) be adopted by the Flemish Government.

The latter can for example determine the conditions to which an evaluator or intermediary should comply. Furthermore, the Flemish Government can adopt an exhaustive list of parties that can act as evaluator or intermediary, and can determine

the methodology to be followed by evaluators and intermediaries.

## SIBs in practice

SIBs have a great potential. Completed SIB-projects have produced positive results. However, to ensure a successful implementation of SIBs in the Flemish Region, good preparation is key and the following points should be taken into account:

- The implementation of a SIB requires in-depth preliminary research to assess the financial feasibility and possible savings for the government. Based on this research, a strong business case must be prepared
- Before entering into contractual negotiations, public procurement and state aid rules must be duly considered
- Repayment by the government is subject to the achievement of certain predetermined targets. Consequently, the maximum amount to be repaid, the targets to be achieved and the performance indicators must be clearly defined in advance.

Laga is readily available to provide more information regarding SIBs.

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