



Performance Audit: An evaluation of the
regulatory function of the Office of the
Commissioner for Voluntary Organisations

December 2018



Performance Audit

An evaluation of the regulatory function of
the Office of the Commissioner for Voluntary
Organisations

Table of Contents

List of Abbreviations	4
Executive Summary	5
Chapter 1 - Terms of Reference	11
1.1 Background	11
1.2 Audit Objectives	14
1.3 Audit Methodology	14
1.4 Audit Limitations	15
1.5 Report Structure	16
Chapter 2 - Enrolment with the OCVO	17
2.1 Introduction	17
2.2 The number of unregistered VOs remains unknown	18
2.3 The opportunity exists for enrolment vetting to be more comprehensive	19
2.4 In 2016 and 2017, less than a quarter of enrolment applications were reviewed within 90 days	22
2.5 Conclusion	24
Chapter 3 - VOs' Funding	25
3.1 Introduction	25
3.2 Legal framework limitations prohibit the OCVO from being duly informed of public and material private funding of VOs	25
3.3 There is no Governmental policy which centrally regulates public funding to VOs	27
3.4 OCVO was not adhering to legal requirements relating to detailed reporting from VOs about fund-raising activities	29
3.5 Conclusion	30
Chapter 4 - OCVO's Monitoring	33
4.1 Introduction	33
4.2 A significant number of enrolled VOs are not complying with stipulated annual reporting requirements	34
4.3 OCVO's administrative capacity is not adequate to ensure an effective regulatory monitoring role	38
4.4 OCVO monitoring does not always ensure that information submitted by VOs presents a true and fair view	39
4.5 OCVO is still to develop action plans to address the recently determined VOs' risk status	41
4.6 OCVO's investigations are generally reactive to complaints received	42
4.7 OCVO has not imposed penalties on non-compliant VOs in terms of the VO Act	43
4.8 Conclusion	43

List of Tables

Table 1: Breakdown of Registered VOs (as at August 2018)	17
Table 2: VOs' compliance with 2016 annual reporting submission deadlines	37

List of Figures

Figure 1: Enroled VOs classified by Category of revenue generated (as at August 2018)	13
Figure 2: Duration of enroled VOs from application to enrolment stage (2008 to 2017)	23
Figure 3: Status of 2016 Annual Returns (as at August 2018)	35
Figure 4: Status of 2016 Annual Returns as per each VOs' category (as at August 2018)	36
Figure 5: OCVO's organisational structure (August 2018)	38
Figure 6: Risk Status of VOs as categorised by OCVO (2018)	41

List of Abbreviations

CDB	Common Database
CVO	Commissioner for Voluntary Organisations
EU	European Union
FIAU	Financial Intelligence Analysis Unit
IFRS	International Financial Reporting Standards
IIP	Individual Investors Programme
ISSAI	International Standards of Supreme Audit Institutions
KYC	Know Your Client
MCVS	Malta Council for the Voluntary Sector
NAO	National Audit Office
OCVO	Office of the Commissioner for Voluntary Organisations
SOPs	Standard Operating Procedures
VOA	Voluntary Organisations Act
VO	Voluntary Organisation

Executive Summary

1. The work of Voluntary Organisations (VOs) in Malta covers a wide spectrum of socio-economic areas. As at August 2018, the Sector included over 1,300 VOs enrolled with the Office of the Commissioner for Voluntary Organisations (OCVO) and a significant number of unregistered organisations. The various Service Agreements and grants from public coffers being distributed to VOs every year as well as private donations and fund-raising activities imply that the financial materiality within the Sector is significant. Within this context, this performance audit sought to determine the extent to which the regulatory function entrusted to the OCVO is conducive to good governance of all VOs, namely in terms of transparency and accountability.
2. In November 2018, new legislative provisions strengthened and extended the OCVO remit. In parallel, OCVO embarked on a number of noteworthy initiatives to strengthen its internal mechanisms to enable the Commissioner to strengthen its regulatory functions in terms of vetting and monitoring of VOs. The National Audit Office (NAO) took into consideration these amendments when drawing up this Report's overall conclusions and when proposing its recommendations. In the circumstances, this performance audit considered data and information available as at end August 2018. Consequently, the main thrust of this Report is to highlight the situation as at this date. Nonetheless, wherever possible, in view of the legislative changes concerning the remit of the OCVO, at the end of each Section, this Report will highlight the relative developments and ensuing initiatives as contended by the Regulator. The effect of these legislative changes and subsequent actions undertaken by OCVO will be, in due course, the subject of a follow-up audit.

Enrolment with the OCVO

3. The enrolment process is a critical phase within the regulatory function as it better promotes VOs' governance through enhanced transparency and accountability. The current enrolment vetting procedures at OCVO primarily aim to validate the documentation submitted in the application. However, the processes in place did not systematically seek to confirm the information submitted through the application with other official sources. To this end, OCVO was mostly dependent on VOs' cooperation. Consequently, prior to the recent legislative changes, the OCVO's regulatory function was somewhat weakened at the outset since more accurate risk assessments based on the financial status and scale of operations could not be conclusively undertaken.
4. Admittedly, prior to the November 2018 legislative changes, the OCVO's enrolment vetting was constrained since the then legislative provisions prohibited the Commissioner from sourcing such information directly. In part, the new legislative provisions reversed this

situation, particularly in connection with Bank Statements and financial information. Moreover, OCVO contends that subsequent to the new legislative provisions, the enrolment vetting process has been strengthened through liaising with external intelligence organisations to ascertain the integrity of VOs administrators.

VOs' Funding

5. Voluntary Organisations (VOs) fund their operations through public grants or other privately generated funds. OCVO has a limited direct regulatory role related to the funding of VOs. Nonetheless, it retains a critical function to ensure that VOs' funding is above board and that the relative sources and amounts can be subject to verification. Legislative limitations prohibit OCVO from being kept abreast of funding made to VOs in a timely manner. These limitations create management information gaps at OCVO and hinder the Commissioner from ascertaining, at the outset, the legitimacy of VOs' public and private funding.
6. The absence of Governmental policies aimed at harmonising public funding practices among Ministries and other Governmental entities, to varying degrees, hinders the OCVO's regulatory function. Moreover, stakeholder pressure resulted in the postponement of the implementation of legislative requirements related to VOs' fund-raising initiatives. In addition as to whether such a postponement constitutes *ultra vires* action, the issue arises as to the extent to which VOs can absorb the costs and find the resources required to enable them to comply with these administrative requirements, particularly the low revenue generating VOs.
7. Currently, the Malta Council for the Voluntary Sector¹ (MCVS) is in the process of compiling a National Policy on Volunteering, which is expected to be in force in early 2019. This policy is expected to provide guidance to enhance coordination across both national and local Government to better support, on all dimensions, the Voluntary Sector and to make better use of all available resources.

OCVO's Monitoring

8. OCVO's monitoring function was to varying degrees weakened through legislative provisions, administrative capacity limitations and procedural practices. As at end August 2018, OCVO's investigations were generally reactive to complaints received. These were mostly initiated following internal disputes between administrators or members of VOs. As noted earlier, the recently introduced legislative provisions facilitate OCVO's oversight of VOs since, in certain cases, the Commissioner can now request financial information directly from official sources.

¹ The main objectives of the MCVS is to provide support to Voluntary Organisations.

9. On the other hand, the smaller VOs, in particular, encounter severe constraints to satisfy the requirements of the VO Act. This situation has resulted in high levels of non-compliance within the Sector where 67 per cent of VOs did not comply with annual reporting requirements in 2016. New legislative provisions now mandate the OCVO to cancel the enrolment or strike off non-compliant VOs.
10. OCVO contends that its monitoring function has now been enhanced through the recently enacted legislative provisions. These provisions enable OCVO to refer any case where there is reasonable suspicion that VOs are acting irregularly for further investigation by the Financial Intelligence Analysis Unit (FIAU). The Regulator contends that his Office is already taking initiatives in this regard.

Overall Conclusions

11. The recent legislative amendments are a key step in the right direction as they broaden the OCVO's remit and streamline enforcement measures in cases of default. In parallel, OCVO embarked on a number of initiatives to strengthen its internal mechanisms to enable the Commissioner to strengthen its regulatory functions in terms of vetting and monitoring of VOs.
12. The extent to which legislative changes effectively improve the regulatory function and VOs' governance, however, remains greatly dependant on whether the OCVO's resources are augmented in line with the envisaged mandate. Another important element, which will enhance accountability and transparency within the VOs' Sector, depends on OCVO's ability to strengthen its internal mechanisms, based on risk assessments and financial materiality, as well as to vet and monitor VOs' finances and operations. This performance audit acknowledges OCVO's initial action related to the assignment of a risk level to VOs.
13. In the same vein, both the OCVO and the MCVS have already or are currently implementing measures, which seek to aid VOs to comply with legislative requirements. These include web-based guidance to facilitate compliance – a prerequisite for good governance within the Sector. It is up to VOs to exploit these services so that a culture of accountability and transparency becomes more apparent and complement the social benefits resulting from VOs' initiatives.

Recommendations

14. In view of the findings and conclusions emanating from this performance audit, the National Audit Office (NAO) is proposing the following recommendations:

Strategic

- a. The regulatory function within OCVO is to be adequately resourced. Investing in such resources strengthens monitoring and enforcement possibilities, all of which

contribute towards better governance within the Voluntary Sector in Malta. With the introduction of the new legislation, which obliges all VOs to enrol, it is imperative that OCVO's administrative capacity is augmented to enable it to implement and enforce its broader remit. To this effect, this performance audit acknowledges the work that is being done in this respect and encourages the entities concerned to maintain the momentum to ascertain that a more effective regulatory function is in place at the earliest opportunity.

- b. OCVO is to embark on further and sustained staff training programme on money laundering and tax evasion recognition. This will increase OCVO's capacity in better identifying risks and potential irregularities in connection with such a sensitive subject area.
- c. The Ministry for Finance is to consider issuing an MF Circular whereby Government Ministries and entities are directed to inform OCVO when public funds, including European Union (EU) funds and Service Agreements, are transferred to VOs. This will assist OCVO in developing its risk assessments and financial evaluation of VOs.
- d. The Ministry for Finance is to sustain its initiatives regarding the compilation of a central Government policy on the funding of VOs. This policy should clearly outline the objectives, criteria and method for the provision of funding to VOs. Such a policy would render public funding more transparent as well as provide an objective basis for OCVO's enforcement related to VOs' financing aspects.
- e. OCVO, together with the MCVS, should encourage the setting up of platform VOs, which would provide a national forum covering the various functions and sectors of VOs in Malta. Platform VOs would assist and guide their member organisations to develop, promote and advocate the values associated with their respective Sector and be a point of reference to assist VOs to comply with their legal and administrative requirements.
- f. OCVO is encouraged to invest in an integrated IT system, which would incorporate the various databases maintained by this Office. Such a system would minimise the data fragmentation within OCVO, facilitate the generation of statistics and enable more in-depth oversight of VOs' operations.

Enrolment of VOs

- g. OCVO's vetting of enrolment applications is to extend to the reconciliation of information submitted by VOs with other external sources, such as those referred to in Section 2.3.12 of this Report. The recent broadening of vetting concerning administrators is a step in the right direction. Nonetheless, through the enactment of new legislative provisions, OCVO is encouraged to reconcile with external sources, the information submitted by VOs, particularly that related to their financing.

VOs' Funding

- h. OCVO is to establish robust mechanisms to be able to enforce the provisions of the new legislation which oblige VOs to declare with OCVO private donations that exceed €15,000. Along the same lines, consideration is to be given to oblige VOs to provide related information to OCVO on any material loan arrangements undertaken.
- i. OCVO is encouraged to enforce the legal requirement whereby VOs report on their fund-raising initiatives. While acknowledging that completing the '*Statement of Account for Public Collections*' can be an added burden, particularly to the smaller VOs, legal compliance would be conducive to more transparency and accountability.

Monitoring of VOs

- j. The OCVO is to introduce mechanisms to encourage VOs to comply with legal requirements concerning the Annual Returns in terms of timeliness and information submitted. Such an initiative can be two pronged. Firstly, OCVO together with the MCVS should embark on an awareness campaign on compliance to Annual Return which in turn is conducive to better governance and enhances the public perception of VOs. While acknowledging recent efforts in this regard, which included a seminar and the provision of literature, OCVO is encouraged to sustain awareness campaigns through a structured programme. Secondly, OCVO can invoke the enforcement measures stipulated in the VO Act. These measures include penalties and eventually the striking-off of defaulters from the Register.
- k. OCVO is to develop mechanisms to enable a more systematic review of documentation submitted by VOs. To this effect, OCVO can also employ the recently developed risk analysis of VOs to ascertain that the limited resources available at this Office focus on the more problematic areas within this Sector.
- l. Standard Operating Procedures (SOPs), which have been recently compiled by OCVO, are to incorporate action plans or the Office's *modus operandi* relating to VOs' risk categories. To this end, OCVO is to develop a programme outlining the level, frequency and type of monitoring which is to be carried out for each risk category.
- m. OCVO is to increasingly approach investigations in a more dynamic manner. While acknowledging the importance of reacting to complaints received, the triggering of investigations should also encompass issues elicited by OCVO itself and which would have been reflected in the Office's risk assessment, such as long periods of non-compliance with legal reporting requirements.

Chapter 1

Terms of Reference

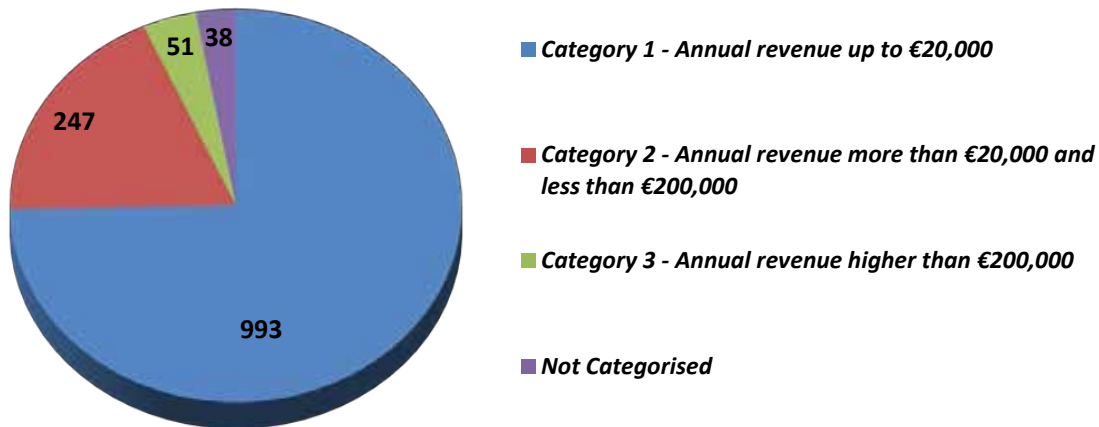
1.1 Background

- 1.1.1 Throughout the past years, Voluntary Organisations' (VOs') involvement and contribution to civil society has been indispensable. Their work covers a wide spectrum of areas ranging, amongst others, from the social, educational, health, sports, cultural and environmental fields. As at end August 2018 there were over 1,300 enrolled VOs. Moreover, various grants from public funds are being distributed to VOs every year. In view of the financial materiality of the Sector, it was deemed necessary that a performance audit is carried out to assess whether the regulatory function of the Office of the Commissioner for Voluntary Organisations (OCVO) is being carried out effectively.
- 1.1.2 The OCVO was set up by the *Voluntary Organisations Act (VOA), 2007*, with the task of strengthening the Voluntary Sector through various initiatives that promote the work of VOs as well as encouraging their role as partners with the Government. Chapter 23 of the *Voluntary Organisations Act (VOA), 2007*, came into force in November 2007. The Act was subsequently amended through various Legal Notices and is currently imposed into Chapter 492 of the Maltese legislations and supported by Subsidiary Legislation 492.01 *Voluntary Organisations (Annual Returns and Annual Accounts) Regulations, 2012*. Since June 2017, OCVO's remit fell under the responsibility of the Ministry for Education and Employment.
- 1.1.3 Other legislative amendments aimed at further strengthening the OCVO mandate came into force in November 2018. The main legislative changes oblige all VOs to enrol with OCVO. These changes have also widened the financial parameters which categorise enrolled VOs. Other important changes empower the OCVO to cancel enrolment in cases of non-compliance. Additionally, OCVO can now make direct enquiries with financial institutions to investigate and / or validate financial statements submitted by VOs. These legislative changes also empower the Commissioner to make regulations in relation to freezing orders and related matters.
- 1.1.4 OCVO also embarked on a number of initiatives to strengthen its internal monitoring and screening mechanisms related to VOs' activities and operations. These included the compilation of Standard Operating Procedures (SOPs), risk assessments of VOs as well as contributions towards the drafting of the new legislative amendments referred to in the preceding paragraph. This performance audit acknowledges these initiatives, and clearly refers to them throughout the Report.

- 1.1.5 Within this context, the findings and conclusions presented in this Report consider the provisions of the VO Act of 2007. In the circumstances, this performance audit considered data and information available as at end August 2018. Consequently, the main thrust of this Report is to highlight the situation as at this date. Nonetheless, wherever possible, in view of the legislative changes concerning the remit of the OCVO, at the end of each Section, this Report will highlight the relative developments and ensuing initiatives as contended by the Regulator. The effect of these legislative changes and subsequent actions undertaken by OCVO will be, in due course, the subject of a follow-up audit.
- 1.1.6 The ultimate mission of the OCVO is to give more visibility to the Voluntary Sector as well as to guarantee transparency and accountability of the organisations in the carrying out of their important work. In view of this, the OCVO is also the regulatory authority responsible for this Sector with the aim of monitoring the activities of these organisations as well as supporting them. The OCVO budget for 2017 and 2018 amounted to approximately €110,000 and €130,000 respectively. These amounts increased substantially to €500,000 for financial year 2019.
- 1.1.7 As at end of August 2018, 1,329 Voluntary Organisations² set up in Malta and Gozo were enrolled with the OCVO and thus subject to this Office's regulatory function. Nonetheless, currently, the OCVO does not have adequate information regarding the number of unregistered VOs as comprehensive studies to determine the number of VOs operating locally are yet to be commissioned. This situation is mainly the result of circumstances prior to the November 2018 legislative changes whereby VOs were not legally required to enrol unless they sought to benefit from Government funding or grants.
- 1.1.8 In accordance with Subsidiary Legislation 492.01 *Voluntary Organisations (Annual Returns and Annual Accounts) Regulations, 2012*, each enrolled VO is obliged to submit, on a yearly basis, an Annual Return. The Annual Return, amongst others, requires the submission of an Annual Report and a copy of the Annual Accounts. Depending on the Annual Revenue generated, enrolled VOs are classified under one of the three major categories. Subsidiary Legislation 492.01 outlines the reporting requirements for each category of VOs. As outlined in Figure 1, during August 2018, 75 per cent of enrolled VOs pertained to the first of three categories since their annual revenue did not exceed or was equal to €20,000. Figure 1 refers.

² Data maintained by OCVO shows that 1,589 VOs were registered with this Office as at end of August 2018. Out of the 1,589 registered VOs, the amount of enrolled VOs amounted to 1,329. As will be further outlined in Chapter 2 of this Report, the remaining 260 VOs were either VOs whose enrolment was terminated, refused application or applications who are currently awaiting confirmation for enrolment.

Figure 1 - Enroled VOs classified by Category of revenue generated (as at August 2018)



Source: OCVO (August 2018).

1.1.9 Information available at the OCVO as at end August 2018 revealed that only a relatively small fraction of enroled VOs were fully compliant in terms of their reporting obligations as only 40 and 33 per cent honoured their reporting obligations with the OCVO in 2015 and 2016 respectively.³ This will be discussed further in Chapter 4 of this Report.

Recent developments:

1.1.10 Through the November 2018 legislative changes, Government shall be strengthening the Regulator's remit, while at the same time streamlining VOs' obligations. As contended by OCVO, such changes will enable more effective monitoring and enforcement within this Sector.

1.1.11 As a minimum, the recently enacted provisions now oblige all VOs to notify their existence with the OCVO, thus ensuring that the Commissioner is aware of the existence of all VOs. Moreover, the VOs' categorisation thresholds referred to in Figure 1 has now been increased to €50,000, €250,000 and over €250,000. Through these legislative provisions, it is envisaged that Category 1 VOs will now amount to more than the 75 per cent as was the case in August 2018. The ensuing Chapters of this Report will make further references to the November 2018 legislative changes concerning OCVO's regulatory function.

³ Figures for 2017 were not available since the deadline for VOs' submissions of Annual Returns had not yet elapsed.

1.2 Audit Objectives

- 1.2.1 The main focus of this audit is to determine the extent to which the regulatory function entrusted to the Office of the Commissioner for Voluntary Organisations (OCVO) is conducive to good governance of all VOs, namely in terms of transparency and accountability. Towards this end, this audit's objectives sought to:
- a. assess the level of timeliness and quality associated with the enrolment process;
 - b. determine the extent to which OCVO is kept abreast of funds and grants received by VOs for regulatory and risk analysis purposes; and
 - c. evaluate the monitoring and enforcement functions assigned to the Commissioner through the VO Act.

1.3 Audit Methodology

- 1.3.1 The attainment of the above objectives entailed a number of methodological approaches. These included the following:
- a. **Adherence to ISSAIs:** The audit was carried out in accordance with the Standard for Performance Auditing, International Standards of Supreme Audit Institutions (ISSAI) 3000.
 - b. **Documentation review:** Legislation directly related to VOs was consulted throughout this performance audit. This primarily included the *Voluntary Organisations Act* (Chapter 492) regulating VOs and their administration, Subsidiary Legislation 492.01 relating to Annual Returns and Annual Accounts, the *Public Collections Act* (Chapter 279) relating to public collections for charitable and other purposes and the White Paper (dated April 2016) relating to amendments to the VOA. The National Audit Office (NAO) considered the November 2018 amendments when drawing the overall conclusion and proposing recommendations emanating from this performance audit. Annual Reports published by the OCVO were also reviewed.
 - c. **Semi-structured interviews:** Qualitative data provided to this Office through interviews undertaken were required to substantiate the various information and data gathered for the purpose of this performance audit. To this end, the audit team also performed a number of semi-structured interviews with the former and present Commissioners as well as other officials from both the OCVO and the Malta Council for the Voluntary Sector (MCVS). The major aim of such interviews was to understand the Sector's dynamics, identify any issues of concern, as well as highlight potential audit limitations. The interviews were also aimed at assessing the effective implementation of SOPs,

policies and other best-practice guidelines in place at the OCVO. Adopting a risk-based approach enabled more effective targeting of non-compliant VOs, especially in view of the limited resources at the OCVO's disposal.

- d. **Data analysis:** This audit also entailed analysing various spreadsheets and databases maintained for statistical and operational purposes by the OCVO. This performance audit was mainly concerned with the situation as at 2016. This was based on the fact that Annual Returns for the year 2017 would not have all been received by mid-2018, when the audit was carried out.
- e. **Case-study approach:** This audit entailed a detailed review of a randomly selected sample of registered VOs from the three categories, as defined in Schedule 5 of Subsidiary Legislation 492.01 *Voluntary Organisations (Annual Returns and Annual Accounts) Regulations, 2012*. Due to the large number of enrolled VOs under each category, a sample case study approach was adopted. An assessment of the documentation available at the OCVO with respect to the aforementioned sampled VOs enabled a better understanding of the various VO lifecycle stages namely, the enrolment, funding, operation and reporting stages.
- f. **Investigations review:** This Report also evaluated the Commissioner's monitoring and enforcement functions through a more detailed review of the investigations and their respective outcome carried out by OCVO in recent years, including those triggered through complaints.

1.4 Audit Limitations

- 1.4.1 During the course of this performance audit, NAO encountered a number of audit limitations. The following refers:
 - a. Databases and spreadsheets kept in digital format by OCVO were not comprehensive and integrated. Therefore, information available therein did not always readily lend itself for statistical analysis.
 - b. Research and enquiries carried out by OCVO during the vetting of enrolment applications was not always documented. In this regard, OCVO contended that such documentation is only recorded in exceptional circumstances rather than on a routine basis.
 - c. OCVO's monitoring function was assessed in terms of data pertaining to 2016 since at the cut-off time of this performance audit, OCVO was still receiving the 2017 Annual Returns from VOs as the deadline for such submissions had not yet elapsed. Consequently, for the purpose of this exercise, the last available complete dataset was that relating to 2016.

1.5 Report Structure

1.5.1 Following this introductory Chapter, the Report proceeds as follows:

- Chapter 2 assesses the VOs' enrolment process in terms of the level of timeliness and quality assurance associated with the approval of new applications processed by the OCVO. To this effect, the discussion within this Chapter considers VOs' compliance at the application stage and the effectiveness of vetting controls employed by the OCVO to enable the issuance of the Certificate of Enrolment or otherwise.
- Chapter 3 evaluates the mechanisms in place that enable the OCVO to remain abreast of funding made to VOs. The Chapter will also consider the extent to which such information about funds received by VOs is used by OCVO for risk analysis purposes.
- Chapter 4 evaluates the monitoring and enforcement mechanisms intended to regulate Voluntary Organisations enrolled with the OCVO. Within this context, the discussion mainly focuses on the OCVO's capabilities to detect irregularities. The review included an overview of the remedial action in such cases and the possibility of withdrawing the VO's certification.

1.5.2 The performance audit's overall conclusions and recommendations are included in the Report's Executive Summary on pages 7 to 9.

Chapter 2

Enrolment with the OCVO

2.1 Introduction

- 2.1.1** One of the regulatory functions of the Commissioner for VO's relates to the enrolment of Voluntary Organisations (VOs). Particularly prior to the November 2018 legislative changes, enrolment was especially critical since legislative provisions stipulated that a VO would not be entitled to benefit from Government grants, sponsorships, financial aid from Government or the Voluntary Organisations Fund and Service Agreements with Ministries unless enrolled with the Office of the Commissioner for Voluntary Organisations (OCVO). Nonetheless, enrolment and notification of existence with the OCVO remains key to the regulatory function as it is also a means to mitigate risks associated with VOs operating with illicit funds as well as other irregular or illegal activities concerning the finances of these organisations. Examples in this regard include tax evasion, money laundering and the financing of illegal activities.
- 2.1.2** This Chapter gives an overview of the enrolment process, that is, from the application stage up to the enrolment of a Voluntary Organisation, marked by the allocation of a "VO" number. As noted earlier, the thrust of this Chapter will be to portray the situation as at end August 2018. Developments, as resulting through legislative changes in November 2018 and ensuing initiatives as contended by OCVO, will be outlined at the end of each Section.
- 2.1.3** During the ten-year period since OCVO was founded - from 2008 until August 2018 – VOs submitted 1,589 enrolment applications, of which 1,329 VOs were still enrolled as at the end of this period. Table 1 refers.

Table 1 - Breakdown of Registered VOs (as at August 2018)

Description	Quantity (No.)	Percentage
Enrolled VOs	1,329	84
Enrolment Terminated ⁴	70	4
Refused Applications ⁵	109	7
Pending Applications ⁶	81	5
Total	1,589	100

Source: OCVO.

⁴ Enrolment terminated refers to those VOs that were closed down along the years, VOs being removed by Court Tribunal or VOs that were removed due to their Government involvement.

⁵ Refused applications refer to refused or cancelled applications as well as at other applications that cannot be vetted by OCVO.

⁶ Pending applications refer to VOs whose applications received by the OCVO are still in the process of being determined for enrolment purposes.

2.1.4 Table 1 shows that 70 (four per cent) enrolments were terminated over the years, of which 55 related to the respective VOs ceasing their operations. On the other hand, OCVO refused 109 (seven per cent) applications. The majority of refusals related to the non-conformity of the submitted VO's statute with legislation. The OCVO does not maintain information as to whether these VOs continued with their operations since enrolment was not mandatory prior to the recent legislative changes. As at August 2018, there were 81 (five per cent) pending applications.

2.1.5 In view of the foregoing, this Chapter mainly discusses the following issues:

- a. The number of VOs that are yet to enrol with OCVO remains unknown.
- b. OCVO vetting for enrolment purposes is not comprehensive.
- c. In 2016 and 2017, the enrolment process exceeded the legally stipulated timeframe in three quarters of cases.

2.2 The number of unregistered VOs remains unknown

2.2.1 Any Voluntary Organisation may apply for enrolment with the OCVO, and once enrolled may make public collections without any further authorisation. Nonetheless, in accordance with legislative provisions in force as at the time of the performance audit cut-off date, enrolment was not obligatory. During 2016 and 2017, the OCVO received 151 and 145 new enrolment applications.

2.2.2 Enrolment gives credibility to the VOs' activities, particularly fund-raising initiatives, as these become subject to the OCVO's regulatory function. Within this context, enrolment is conducive to better governance within VOs as it promotes transparency and accountability. Moreover, enrolled and compliant VOs can avail themselves of Governmental grants and benefits issued by different Governmental Ministries and entities through different funding schemes. Enrolled VOs are also exempt from acquiring police permits to carry out public collections.

2.2.3 On the other hand, many VOs view enrolment as an added administrative burden, which stretches further their limited resources and increases their cost of compliance. Non-enrolment, however, raises a number of risks as their activities remain beyond the cognizance and consequently, the OCVO's regulatory function. Such circumstances, therefore, heighten financial and operational irregularity risks.

2.2.4 The foregoing raises a number of issues. At the outset, the OCVO does not have adequate information regarding the number of unregistered VOs. In itself, this is a complex and problematic issue. Matters are further complicated as comprehensive studies to determine the number of VOs operating in Malta are yet to be concluded. Admittedly, such studies may not prove to be wholly conclusive, but it would provide a more realistic picture concerning

the number and functions of non-enrolled VOs operating locally. OCVO contended that the National Statistics Office is currently undertaking a study in this regard.

Recent developments:

2.2.5 Legislative changes enacted in November 2018 oblige all VOs to enrol with OCVO. VOs whose Annual Revenue does not exceed €5,000 will be exempt from enrolment. However, they will still be obliged to notify the Commissioner of their existence. While such legislative changes are a step in the right direction and seek to rectify the situation depicted in this Section, OCVO will encounter difficulties to cope with the unknown additional work unless the Office's administrative capacity is augmented. To this effect, OCVO contended that the Regulator will maintain a register in this regard and has initiated action related to capacity building.

2.3 The opportunity exists for enrolment vetting to be more comprehensive

2.3.1 Legislation in force at the time of the audit together with the recently enacted provisions empower the OCVO to vet enrolment applications. To this effect, the legislative framework stipulates that applicants are to submit a copy of the constitutive deed or statute of the organisation together with a copy of the Annual Accounts from the last financial year prior to enrolment (where applicable). Other additional requirements include information relating to the VOs administrators' personal details. When considering an application, the Commissioner, in terms of Article 13(2), may also request the applicant to provide:

- a. further information about the promoters, founders, administrators, donors and beneficiaries;
- b. the organisation's assets and liabilities;
- c. the purposes of the organisation and the intended activities through which they are to be achieved; and
- d. any other matter on which the Commissioner may have reservations or concerns in relation to the application.

2.3.2 Within this context, in instances that require further clarifications, legislative provisions empower the Commissioner to request other documentation or seek additional information to facilitate the OCVO's vetting of the enrolment application.

Recent developments:

2.3.3 In terms of the recently amended legislation, the Commissioner may also, in the case that the above-mentioned requirements are not fulfilled within the time periods stipulated by law, order the cancellation or suspension of the enrolment of the voluntary organisation.

The focus of OCVO's enrolment vetting is the appropriateness of VOs' statutes and screening of administrators

- 2.3.4 OCVO's review of enrolment applications generally encompasses a detailed review of the VOs' statutes. This review ensures that the statute complies with generally accepted principles and that the information submitted in the enrolment application form embraces the provisions detailed in the VOs' statute.
- 2.3.5 The enrolment vetting process also entails the verification of the VOs' administrators identity. Checks in this regard generally entail enquiries with the Common Database (CDB) to ascertain that the list of administrators provided relates to individuals listed therein. These processes are intended to ascertain that the list of administrators is factual.
- 2.3.6 The OCVO's vetting, in cases, seeks to determine the degree of trustworthiness of the administrators listed in the enrolment applications. Discussions revealed that, in certain instances, the OCVO carries out a web-based online search for potential court judgments that VOs' administrators might have. At the time of the audit cut-off date, this level of analysis was not carried out on each VO's enrolment application, but OCVO officials estimate that around 45 to 50 per cent of applications were randomly selected.
- 2.3.7 As the OCVO only documents the results of such procedures when an issue of concern arises, this review could not verify the number of sampled applications or embark on further substantive testing. To date, OCVO's line of enquiry concerning VOs' administrators has not been complemented by information included in police conduct certificates as the Commissioner's Office does not request or receive such documentation. However, OCVO claimed that this information may be retrieved from the Courts of Law as well as the Financial Intelligence Analysis Unit (FIAU) databases.

Recent developments:

- 2.3.8 CVO embarked on additional profiling of VOs' administrators. This entails that OCVO refers details of all VOs' administrators for screening by law enforcement agencies as well as intelligence systems, such as the FIAU. To this effect, NAO did not encounter any references in OCVO's files in relation to such enquiries as the practice of documenting details by exception prevails. OCVO stated that to date only one administrator has been flagged following screening by intelligence services.

OCVO does not corroborate all information received through the enrolment application with other sources

- 2.3.9 Due diligence of VOs during their enrolment phase is an important role of the OCVO as it encourages accountability and transparency of enrolled organisations. At this stage, OCVO seeks to establish the main purpose of the VO being setup as well as recognises its

associated risks. This entails that OCVO employs the appropriate mechanisms to detect any unusual or suspicious activities within the applicant VO's operations. To this end, OCVO is obliged, under Article 13 of the VO Act, to vet the documents submitted for each application and to verify their correctness as well as completeness. OCVO has to also ensure that an enrolment application satisfies the relevant legal requirements.

2.3.10 While legislative requirements make specific references to the documentation that VOs are obliged to submit, the legal framework empowers the Commissioner to request additional information and make the relevant representations, if deemed necessary.

2.3.11 Within this context, the OCVO's vetting of enrolment applications mainly extends to the mechanisms outlined in paragraphs 2.3.4 to 2.3.8, which relate to the appropriateness of the statute, the authenticity of documentation received and the validation of administrators' details. This approach, however, implies that the vetting process adopted by the OCVO does not fully cover aspects relating to financial aspects and status. This situation prolongs VOs' categorisation, which corresponds to reporting requirements, at a later stage within the VOs' life cycle.

2.3.12 A contributory factor of the circumstances outlined in the preceding paragraph is that the vetting of VOs' enrolment applications is not supported with additional documentation and information. During the course of this performance audit, it was noted that OCVO does not specifically request the following from applicants⁷:

- a. A copy of the VOs' Bank Statements.
- b. Police conduct of the administrators.
- c. A list of the VOs' total assets in instances where audited financial statements are not provided.
- d. A list of all debts and liabilities incurred by the VOs' in instances where audited financial statements are not provided.
- e. Copies of contracts in the case of a purchase or sale of an immovable property.
- f. A list of employees employed by the VO, including relevant employment contracts and FS3s (where applicable).
- g. List of VOs' bank signatories.
- h. A copy of pending or concluded lawsuits against both the VO and its administrators.
- i. A declaration relating to VO's involvement in commercial activities.
- j. A statement indicating the VO's involvement in international activities.

⁷ Prior to the November 2018 legislative amendments, OCVO was constrained to request additional information through VOs since legislative provisions at the time did not mandate the Commissioner to request such information through the relevant source.

2.3.13 While acknowledging that VOs are not commercial entities and that the OCVO cannot impinge on civil society initiatives, these organisations operate within a financial environment, which is subject to varying degrees of risks. OCVO's demand of such a list of documentation may be contrived as creating obstacles for the Sector to flourish. On the other hand, this would be a one-time submission and would enable OCVO to perform a more detailed screening on VO enrolment.

2.3.14 The non-availability of documents listed above, although not statutorily required by legislation, but which can be requested at the Commissioner's discretion, limits the extent of validation of the enrolment application with other external sources. This situation raises various risks within the enrolment process since OCVO is mainly relying on the information submitted by the applicant and screening on the administrators' integrity. This audit corroborated this situation through the random sample of enrolment applications used as case studies for the scope of this audit, which did not reveal any OCVO queries on significant line items of income and expenditure.

2.3.15 The due diligence process undertaken during the enrolment stage is not adequately robust to scrutinise financial information submitted in the application, where this is applicable.⁸ Moreover, if the applicant does not provide financial statements for the year prior to enrolment, the OCVO does not request any additional information as per list outlined in Section 2.3.12 to be in a better position to validate the application submitted and determine the applicant's risk ranking more objectively.

Recent developments:

2.3.16 The enrolment process is of utmost importance especially when considering that prior to the November 2018 legislative changes, once enrolled a VO could not have its enrolment terminated except through legal action, which was a lengthy and costly exercise. Through the recent legislative changes, the Commissioner may cancel the enrolment of a non-compliant VO without having to seek redress through the Administrative Tribunal.

2.4 In 2016 and 2017, less than a quarter of enrolment applications were reviewed within 90 days

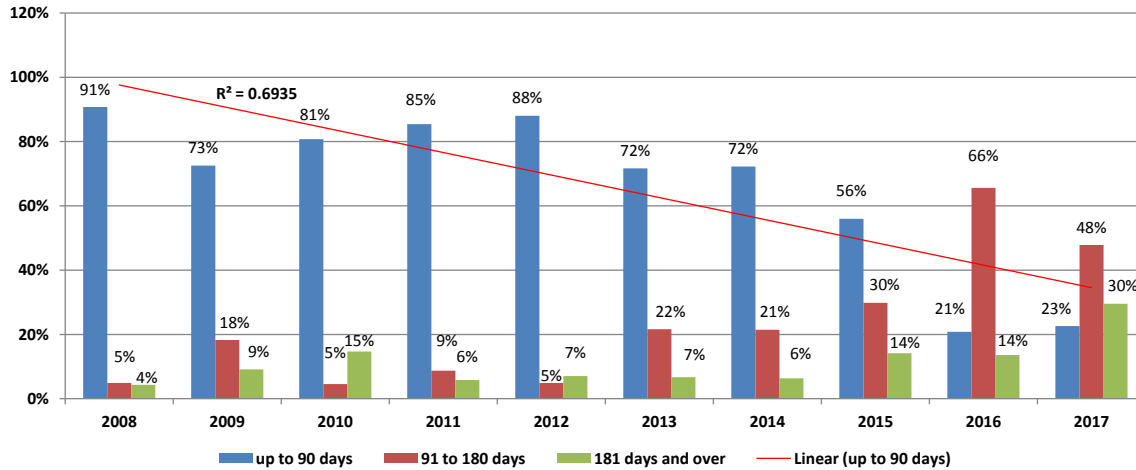
2.4.1 The legislative framework stipulates that the Commissioner shall seek to determine all enrolment applications within three months from the date of the application.⁹ Furthermore, once an application is reviewed, if any documentation is missing or further clarifications are required from the organisation, this three-month period can be extended by the OCVO by a further three months.

⁸ During the enrolment stage, financial statements are only presented if the VO has been operating for more than one year.

⁹ Voluntary Organisations Act Chapter 492.

2.4.2 During the period 2008 and August 2018, the OCVO reviewed and enrolled 67 per cent of the 1,329 applications within 90 days. The remaining cases exceeded this 90-day period, where in 12 cases, (0.9 per cent), the enrolment process took over 721 days. Figure 2 refers.

Figure 2 - Duration of enrolled VOs from application to enrolment stage (2008 to 2017)



2.4.3 As depicted by the trend line in Figure 2, over time, the number of enrolment applications processed within 90 days is decreasing. Whereas in the past years around 80-90 per cent of applications were enrolled in the first 90 days, this figure dropped to 21 and 23 per cent in 2016 and 2017. OCVO contended that the prolonging of the enrolment process is mainly attributed to the increased vetting of applications, which in cases emanated from legislative amendments in 2012.

2.4.4 To this effect, the OCVO embarked on deeper vetting of VOs' statute and took a more stringent approach to ascertain that VOs' financial records reflect the end of the calendar year rather than the date subjectively included in the VOs' statute. Moreover, the vetting process was prolonged as the OCVO sought to verify that the number of administrators listed in the application reconciled with the number noted in the statute. Rectifying these issues was also a contributory factor to the prolonging of the enrolment vetting process. In some cases, it was VOs themselves who lengthened the enrolment process by delaying the submission of additional complete and accurate documentation requested by OCVO.

Recent developments:

2.4.5 OCVO asserts that delays in the enrolment process are, largely, the result of administrative capacity shortages. The Regulator noted that this situation will be eliminated once the new organisation structure is in place and more people are employed.

2.5 Conclusion

- 2.5.1 The enrolment process is a critical phase within the regulatory function as it promotes better VO governance through enhanced transparency and accountability. The enrolment vetting procedures in place at OCVO primarily aim to validate the documentation submitted in the application.
- 2.5.2 Nonetheless, the processes in place do not always seek to confirm the financial information submitted through the application with other official sources. Admittedly, in this respect, the OCVO was constrained since legislative provisions at the time of carrying out this audit prohibited the Commissioner from sourcing such information directly – a situation that has largely been reversed through the recent legislative amendments. To this end, at the time, OCVO was fully dependent on VOs' cooperation. Consequently, the OCVO's regulatory function was somewhat weakened at the outset since more accurate risk assessments based on the financial status and scale of operations could not be undertaken.
- 2.5.3 The recent legislative changes concerning the functions and mandate of the OCVO further highlight the importance of the enrolment process, particularly as all VOs operating in Malta will be obliged to enrol or notify the Commissioner with their activities. To this effect, the findings and conclusions outlined in this Chapter take on added significance when considering the legislative changes of November 2018 and the risks of irregularities associated with VOs' operations.
- 2.5.4 The next Chapter of this Report discusses the extent to which OCVO is kept abreast of VOs' funding through public and private sources.

Chapter 3

VOs' Funding

3.1 Introduction

3.1.1 Voluntary Organisations (VOs) fund their operations through two main sources of funding. This is through either public funding or other privately generated funds. Public funding consists of Governmental and European Union (EU) funds provided to VOs through different schemes managed by Governmental Ministries and entities. On the other hand, privately generated funds consist of donations, fund-raising or other collections made exclusively by VOs. It is acknowledged that the Office of the Commissioner for Voluntary Organisations' (OCVO's) remit does not extend to the actual funding and management of funding schemes as this is incompatible with the Commissioner's regulatory function. Within this context, this Chapter will mainly assess the appropriateness of mechanisms in place to enable the OCVO to be kept informed of VOs' public and private funding for risk analysis in conjunction with its regulatory function.

3.1.2 In view of the foregoing, this Chapter mainly discusses the following issues:

- a. Legal framework limitations prohibit the OCVO from being duly informed of public and material private funding of VOs.
- b. There is no Governmental policy which centrally regulates public funding of VOs.
- c. OCVO was not adhering to legal requirements relating to detailed reporting from VOs about fund-raising activities.

3.2 Legal framework limitations prohibit the OCVO from being duly informed of public and material private funding of VOs

3.2.1 A critical function of OCVO is to ascertain that VOs are being funded through regular and legitimate means. Ascertaining the funding source is the first step of the regulatory function, which seeks to ensure sound financial governance within VOs.

3.2.2 On an annual basis, enrolled VOs are obliged to submit an Annual Return and Annual Accounts documents in accordance with the Subsidiary Legislation 492.01 which obliges VOs to declare their total sources of income and expenditure. Among the sources of revenue, VOs are obliged to declare their income derived from Government funds as well as other privately collected funds such as donations and fund-raising.

3.2.3 However, to varying degrees, up to the cut-off date of this audit of August 2018, four principal issues influenced the effectiveness of the regulator's functions through the OCVO's reliance on VOs' submissions for annual reporting purposes. Such circumstances materialised even though in material cases annual submissions included audited financial statements.

3.2.4 Firstly, OCVO did not have first-hand information regarding VOs' funding made by all Government Ministries. Secondly, the legal framework did not enable OCVO to request information from original sources to validate information received from VOs. Thirdly, legal provisions did not oblige VOs to inform the Commissioner of material private donations. Fourthly, VOs were not required to inform OCVO when entering into material credit arrangements with private individuals.

3.2.5 The following refers:

- a. *The Voluntary Organisations Act* (VOA) did not give legal power to the OCVO to request documentation from Governmental Ministries and entities relating to government funds provided to VOs, including a copy of the signed Grant Agreement between the respective Governmental body and the VO. Moreover, there is limited published information relating to Government grants to VOs – this mainly relates to the five schemes managed by the Malta Council for the Voluntary Sector (MCVS), which constitute a minor proportion of Government grants. In such a situation, the OCVO cannot determine the total sources of public funding made to VOs as well as the number of VOs that were beneficiaries of such funding. This situation prohibited the Office from reconciling financial information shown in the financial statements presented by the VO in their Annual Returns with third party documentation. This situation was tantamount to management information gaps at OCVO. Such circumstances, in turn, influenced OCVO's planning of monitoring initiatives connected with the regulatory function.
- b. Prior to the November 2018 legislative amendments, Chapter 492 of the Maltese legislation *Voluntary Organisations Act* (VOA) did not provide OCVO with the legal power to request Bank Statements from banks and other financial institutions. This limited the Office's power to reconcile major financial transactions with documentation presented by the VOs in their yearly returns.
- c. Legislative provisions prior to November 2018, did not oblige VOs to declare private donations that exceed an established threshold. Donations constitute a substantial portion of the VOs' revenue and the high amount of cash involved increases the risk of money being laundered from the proceeds of illicit activities. The lack of a proper system where details of individuals donating significant amount of cash to VOs were not recorded lessened transparency. Moreover, it increased the risk of OCVO, as the main Regulator of the Voluntary Sector in Malta, to combat money laundering as well as tax evasion.

- d. Prior to November 2018, legislative limitations were also evident in instances where private individuals, administrators or members provided credit facilities to VOs and in turn, an arrangement was made between the two parties to repay the loan with either low or non-specified interest rates. VOs were not legally obliged to report such arrangements to the OCVO and, generally, the Office became aware of this arrangement after a long period. Sometimes, OCVO encountered difficulties to detect such credit arrangements particularly in instances of Category 1 and 2 VOs where financial statements could be reported on a cash-basis system and were not subject to professional auditors' certification.

3.2.6 These four factors imply that, prior to November 2018, OCVO was hampered from verifying the sources of revenue generated by VOs. OCVO contended that, in instances, they become cognisant of public funding through media reports. The Office was not in a position to conduct reference checks and evaluate large contributors or grants made to VOs. Such a situation deviated from the concepts of *'Know your Client'* (KYC) as well as *'Know your Donor'* principles as outlined in various Anti-Money Laundering Regulations literature. KYC processes are employed by various regulators to ensure that institutions of all sizes are anti-bribery compliant. The next Chapter of this Report will outline further the main principles of the KYC processes.

Recent developments:

3.2.7 To varying degrees, the recent legislative changes have mitigated the concerns presented within this Section. The advent of new legislative provisions empowered the Commissioner to directly request VOs' Bank Statements from banks or any financial authority. New legislative provisions oblige VOs to declare private donations exceeding €15,000. Moreover, VOs classified as Category 1 or 2 will now be legally obliged to declare loan or credit arrangements. These legislative changes, however, still do not extend to oblige Government entities to formally inform the Commissioner when providing grants through public funds to VOs.

3.3 There is no Governmental policy which centrally regulates public funding to VOs

3.3.1 Presently VOs may benefit from over 20 different sources of public funding. Various Governmental Ministries and entities individually manage these funding schemes. In certain instances, VOs also benefit from specified European Union (EU) funds. However, a central Government policy is not yet in place to guide Ministries with respect to the disbursement of these public funds to VOs. This state of affairs creates a situation where information about public funding is not centrally maintained and each Governmental entity is responsible for the management, disbursement and monitoring of its own scheme.

- 3.3.2 Currently, information about public funding is spread between the various Governmental Ministries and entities making it difficult to have a central competent entity that is allocated clear responsibilities and a mandate to oversee VOs' funding. A step in the right direction relates to the role performed by the Malta Council for the Voluntary Sector (MCVS), which is responsible for the disbursement and monitoring of public funding to VOs through five schemes. Similarly, Ministries, such as the Ministry for Education and Employment have developed their own VOs' funding policies.
- 3.3.3 Nonetheless, central Government entities such as the National Statistics Office and the Treasury have fragmented information regarding public funding to VOs. Such a situation creates severe constraints for Government to have readily available reports which portray full and accurate information on all the sources, as well as amounts of public funding to VOs.
- 3.3.4 The main aims of a central Governmental policy, which regulates public funding made to VOs, should be to¹⁰:
- a. Establish a framework for funding and support to the local Voluntary Sector, which acknowledges why this is a sound investment and how such financing will deliver clear benefits to citizens.
 - b. Ensure that Government uses its resources efficiently and to the maximum effect for its citizens when supporting project and services delivered by VOs.
 - c. Enable the delivery of services, projects and activities meeting community needs that would otherwise not be provided.
 - d. Ensure that funding support aligns with the vision set out by Government and achieves outcomes that address its priorities.
 - e. Pave the way for a closer working relationship with the Voluntary Sector, which will eventually result into higher benefit to citizens.
- 3.3.5 The lack of an overarching Government policy on public funding to VOs, outlines a number of debatable issues within the Voluntary Sector, particularly on the method of financial support provided by Government to these organisations. The following issues refer:
- a. There is no coordinated Governmental direction to determine the circumstances where VOs become eligible to public funding. Furthermore, there is a lack of a coordinated approach concerning the amount of public funding to be granted to specific initiatives. This arises as general conditions and established criteria on the disbursement of public funding to VOs are not in place.

¹⁰ Source: Ashford Borough Council, Policy for Funding & Support of Voluntary and Community Organisations 2010 – 2013, page 4.

- b. There is no guidance on the circumstances where grant and Service Agreements are entered into by Governmental agencies. While the former arrangement is ideal for funding smaller VOs, the latter arrangement is more suited when Government is purchasing services from VOs.
- c. The absence of policy relating to public funding of VOs also raises the issue of information sharing between OCVO and other Governmental entities. The sharing of information with the Regulator responsible for the Voluntary Sector, concerning funding made to VOs by Governmental entities, is important to help determining the true and complete sources of VOs' funding generation. Such information would be a useful tool for OCVO to enhance its continuous due diligence mechanisms with respect to enrolled VOs.
- d. The lack of a Governmental policy on public funding made to VOs encroaches on transparency within the Sector. The provision of such funding could potentially be reactive to ongoing pressures made by stakeholders within the Sector rather than in adherence to Governmental pre-established criteria.
- e. The absence of policy direction and central coordination of public funding to VOs raises the risks associated with multiple funding from different Ministries for the same aim.

Recent developments:

3.3.6 OCVO contended that a National Policy on Volunteering is currently being drafted by MCVS and should be into force by January 2019. It is envisaged that such a policy will provide connection and co-ordination across both National and Local Government to support better on all dimensions the volunteer sector and make better use of all available resources. Moreover, MCVS has also created an Inter-Ministerial Committee to formulate guidelines relating to Government funding to VOs.

3.4 OCVO was not adhering to legal requirements relating to detailed reporting from VOs about fund-raising activities

- 3.4.1 VOs enrolled with OCVO are entitled to carry out public collections without the need to adhere to Chapter 279 of the Maltese legislation *Public Collections Act*. Chapter 279 stipulates that no public collection shall be made by organisations or individuals unless the requirements of this Act as to a license for the promotion thereof are satisfied and permission is sought from the Commissioner of Police.
- 3.4.2 Nonetheless, Subsidiary Legislation 492.01 *Voluntary Organisations (Annual Returns and Annual Accounts) Regulations* issued in 2012, stipulates that enrolled Voluntary Organisations are to submit a report entitled '*Statement of Account for Public Collections*'. This report is to be completed as part of the Annual Returns submitted by each VO. The scope of this report is to enhance transparency in the activities undertaken and in the

events organised by enrolled Voluntary Organisations to make public collections. For each fund-raising activity, each VO is to report a breakdown of the main proceeds of collection as well as expenses related to the respective activity.

3.4.3 However, OCVO retracted procedures in place relating to the implementation of this legislative requirement shortly after the enactment of these provisions in 2012. OCVO contended that there were adverse reactions from enrolled Voluntary Organisations on the filling in of the statutorily required form. It was stated that both OCVO and the MCVS received a number of complaints from VOs since this report was creating significant burden on VOs due to the high level of reporting being requested. Apart from having to submit various documents in line with the newly enacted Subsidiary Legislation, VOs also needed to fill in this Statement of Account for Public Collections for every fund-raising activity. Consequently, the MCVS and OCVO decided that the submission of this Statement will be suspended until VOs get accustomed to the filling of documents in accordance with the Subsidiary Legislation 492.01. Moreover, OCVO claimed that, although this Statement was not being filled, the net income of all fund-raising activities was still being included in the VOs' accounts.

3.4.4 The foregoing raises questions about the legality of this exemption by OCVO and the MCVS. Moreover, officials from OCVO contended that, at the time, no internal direction was issued to exempt VOs from providing such reports since this was only intended to be a temporary measure.

Recent developments:

3.4.5 OCVO confirmed that the provisions of the Subsidiary Legislation under discussion will be enforced as from the 2018 Annual Returns where all enrolled VOs will be legally required to submit this Statement for each public collection made during the year in question. To this end, all enrolled VOs were informed of these arrangements through a communication sent to them in the beginning of 2018.

3.5 Conclusion

3.5.1 At the outset, this Chapter acknowledged that although OCVO has a limited direct regulatory role related to the funding of VOs, it retains a critical function to ensure that VOs' funding is above board and that the relative sources and amounts can be subject to verification.

3.5.2 Nonetheless, this Chapter illustrated that legislative limitations prohibit OCVO from being kept abreast of funding made to VOs in a timely manner. These limitations create management information gaps at OCVO and, to varying degrees, hinder the Commissioner from ascertaining, at the outset, the legitimacy of VOs' public and private funding.

- 3.5.3 The absence of Governmental policies aimed at harmonising public funding practices among Ministries and other Governmental entities, to varying degrees, hinders the regulatory function. This is particularly relevant to enforcement where in the absence of policy, such a function naturally takes on a more subjective mode. It is augured that the work being undertaken in this regard by MCVS will be concluded as scheduled by January 2019.
- 3.5.4 Stakeholder pressure resulted in the postponement of implementation of legislative requirements related to VOs' funding initiatives. In addition as to whether such a postponement constitutes *ultra vires* action, the issue arises as to the extent to which VOs can absorb the costs and find the resources required to enable them to comply with additional administrative requirements. While acknowledging that transparency and accountability are imperative principles, which contribute to VOs' credibility and integrity, it is clear that in this case the appropriate balance was not struck.
- 3.5.5 The next Chapter of this Report evaluates the monitoring and enforcement mechanisms in place at the OCVO, which are intended to regulate VOs. The discussion will mainly focus on the monitoring undertaken by the regulator on Annual Returns submitted by VOs, detection of irregularities, withdrawal of certification as well as legal action through the Administrative Tribunal, if deemed necessary.

Chapter 4

OCVO's Monitoring

4.1 Introduction

4.1.1 The public and those donating to Voluntary Organisations (VOs) should have confidence that money donated to organisations is effectively used for legitimate purposes and is reaching the intended beneficiaries. The Office of the Commissioner for Voluntary Organisation (OCVO) is responsible for ensuring that funds generated by VOs are properly used and adequately protected. Moreover, as a Regulator, it has to ensure that such funds are not used for financial crime, tax evasion or other criminal purposes.

4.1.2 Due diligence undertaken by OCVO consists of a range of practical steps that need to be taken to be assured of the provenance of VOs' funds. Moreover, OCVO is to be confident that it knows the people and organisations that VOs work with and be able to identify and manage associated risks. Due diligence is an important part of the Regulator's duty as it entails carrying out proper checks on the individuals and organisations that either give money to or receive money and services from the VO. As part of the due diligence process, OCVO needs to adhere to '*Know Your Customer*' (KYC) processes as already outlined in the previous Chapter of this Report. The main principles of KYC processes refer to the steps taken by regulators to:

- a. validate VOs' administrators identity;
- b. understand the nature of the VOs' activities;
- c. being satisfied that the source of the VOs' funds is legitimate; and
- d. assess money laundering risks associated with VOs through the monitoring of their activities.

4.1.3 In view of the foregoing, this Chapter mainly discusses the following issues:

- a. A significant number of enrolled VOs are not complying with stipulated annual reporting requirements.
- b. OCVO's administrative capacity is not adequate to ensure an effective regulatory monitoring role.
- c. Ongoing monitoring undertaken by OCVO is not comprehensive to ascertain that information submitted by VOs present a true and fair view.

- d. Despite categorising VOs according to their risk status, no formal plan of action relating to the degree of vetting to be undertaken for each risk category is in place.
- e. Investigations are generally reactive to complaints received.
- f. Penalties referred to in the *Voluntary Organisations Act (VOA)* were never invoked by OCVO.

4.2 A significant number of enrolled VOs are not complying with stipulated annual reporting requirements

4.2.1 Subsidiary Legislation 492.01 *Voluntary Organisations (Annual Returns and Annual Accounts) Regulations, 2012*, stipulates that enrolled VOs shall prepare an Annual Return, which is to be submitted to OCVO. The Annual Return shall include a statement on the number of members as at the date of the Annual Return and the following documents as attachments to it:

- a. An organisational chart.
- b. A copy of the Annual Report which shall be authenticated by one administrator.
- c. A copy of the Annual Accounts.
- d. A statement of account relative to any event organised and/or activity performed to make public collections.

4.2.2 Prior to the November 2018 legislative changes, depending on the category assigned, Subsidiary Legislation 492.01 outlined how Annual Accounts were to be presented by VOs in their Annual Returns. Category 1 VOs, whose Annual Revenue did not exceed or was equal to €20,000, were to prepare their respective financial statements on cash basis and counter-signed by two administrators. On the other hand, Category 2 VOs, whose Annual Revenue exceeded €20,000 but was equal to or below €200,000 could opt between either cash basis or accrual accounting and signed-off by an accountant. In the case of Category 3 VOs, whose Annual Revenue exceeded €200,000, accounts were to be prepared on an accruals basis, complied to the International Financial Reporting Standards (IFRSs) and duly audited by an auditor.

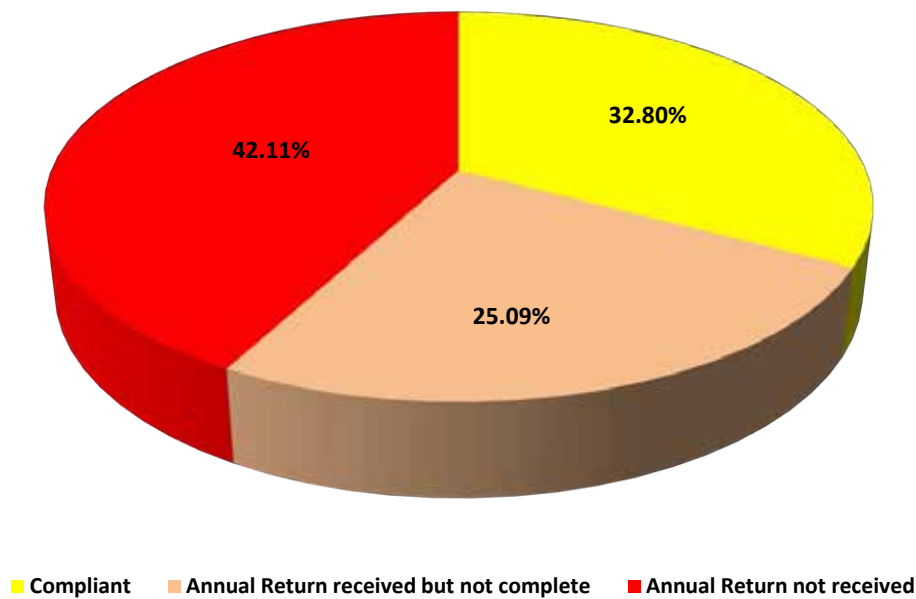
Recent developments:

4.2.3 The November 2018 legislative amendments increased the respective category financial thresholds as outlined in paragraph 1.1.11. Moreover, Category 2 VOs are now obliged to compile their financial statements on an accrual basis.

Only 33 per cent of enroled VOs were compliant with respect to the submission of the 2016 Annual Return

4.2.4 This performance audit, sought to analyse the status of Annual Returns submitted by VOs with OCVO as at August 2018. For the scope of this audit, 2016 Annual Returns, submitted by VOs to the Commissioner, were considered.¹¹ This exercise did not consider 2017 Annual Returns since as at August 2018, the deadline for Category 3 VOs had not yet elapsed and a number of Returns were, either in the process of being submitted by VOs, or were still being analysed by OCVO.

Figure 3 - Status of 2016 Annual Returns (as at August 2018)

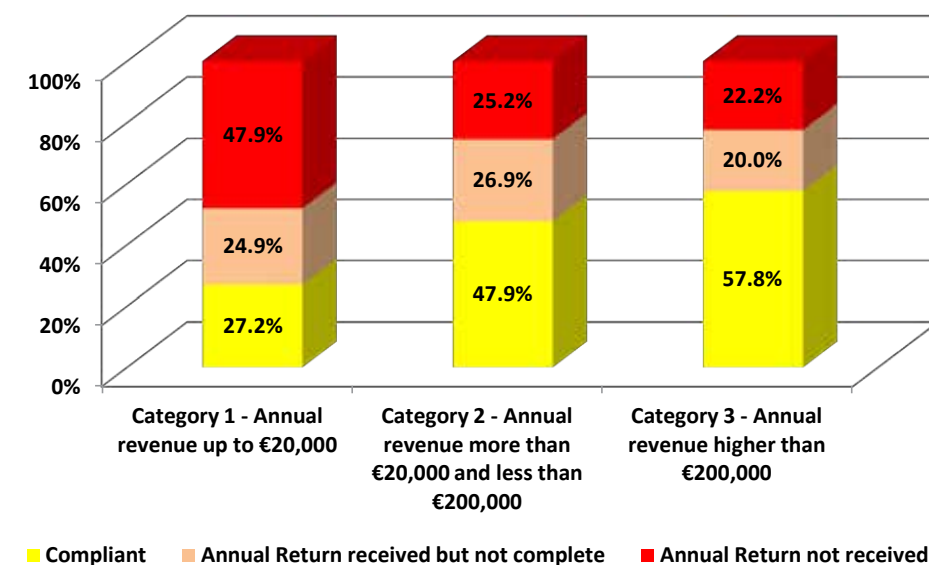


Source: OCVO.

4.2.5 As outlined in Figure 3, as at end of August 2018, only 33 per cent of the enroled VOs as at end 2016 were compliant with respect to the submission of the 2016 Annual Return with OCVO. As at this date, 42 per cent of VOs had still not submitted their Annual Return. A further 25 per cent of VOs submitted their Annual Return but were still not compliant in terms of documentation requirements as stipulated in Subsidiary Legislation 492.01. In most of these cases, the submitted documentation was either incomplete or the OCVO had further queries where additional information was requested from VOs.

¹¹ As at end 2016, there were 1,116 enroled VOs.

Figure 4 - Status of 2016 Annual Returns as per each VO's category (as at August 2018)



Source: OCVO.

4.2.6 Figure 4 outlines that the rate of non-compliance is significantly higher in Category 1 VOs. This implies that this category of VOs experiences difficulties, which render annual reporting a significant burden on their organisation. Discussions with stakeholders revealed that it is not uncommon for small-sized VOs to lack the technical and administrative competencies within the organisation, which ultimately impinges on their ability to adhere to the required annual reporting.

Only 16 per cent of VOs adhered to stipulated deadline for the submission of the 2016 Annual Return

4.2.7 Schedule 4 of Subsidiary Legislation 492.01 stipulates the deadlines for the submission of Annual Returns for each category of VOs. The Subsidiary Legislation states that Annual Accounts of all enrolled VOs shall be drawn up for a financial period commencing on 1 January and ending 31 December. However, VOs can request permission from the Commissioner in cases where these need to change their financial period. Table 2 evaluates the extent of VOs' compliance with 2016 submission deadlines.

Table 2 - VOs' compliance with 2016 annual reporting submission deadlines

Receipt of Annual Return	2016 Annual Returns			Total	Total Percentage
	Compliant	Received but not complete	Not received		
	(No.)	(No.)	(No.)	(No.)	(%)
Within deadline	103	71	0	174	15.6
Up to six months after deadline	179	103	0	282	25.3
Between six months and one year after deadline	70	59	0	129	11.6
Over one year after deadline	14	47	0	61	5.4
Outstanding as at end August 2018	0	0	470	470	42.1
Total	366	280	470	1,116	100.0

Source: OCVO.

4.2.8 Table 2 outlines that less than 16 per cent of VOs complied with 2016 Annual Report submission deadlines. Out of the 174 returns with timely submissions, only 103 were compliant. As at end August 2018, OCVO was still awaiting additional documentation regarding the remaining 71 returns since these submissions were incomplete.

4.2.9 The situation depicted in the preceding paragraph implies a general indifference in terms of statutory reporting within the Voluntary Sector. The wide-ranging non-adherence to legislative requirements implies that, for various reasons, VOs are not prioritising transparency and accountability.

4.2.10 Despite the high non-compliance rates, OCVO enforcement action was influenced by the Regulator's limited legal powers to deal with non-adhering VOs. While legislative provisions prior to November 2018 cater for the striking-off of non-compliant VOs, in practice this was a cumbersome and expensive process as such an initiative involved costly and lengthy legal action, which in cases took years to conclude. The Regulator was further inhibited from taking such action due to budgetary and human resource constraints.

4.2.11 During the ten-year period since the founding of OCVO, only six cases were referred to the Administrative Review Tribunal where five were concluded in favour of the Commissioner. Legal proceedings with respect to one out of these six cases is still ongoing after an average of eight months since the initiation of this case.

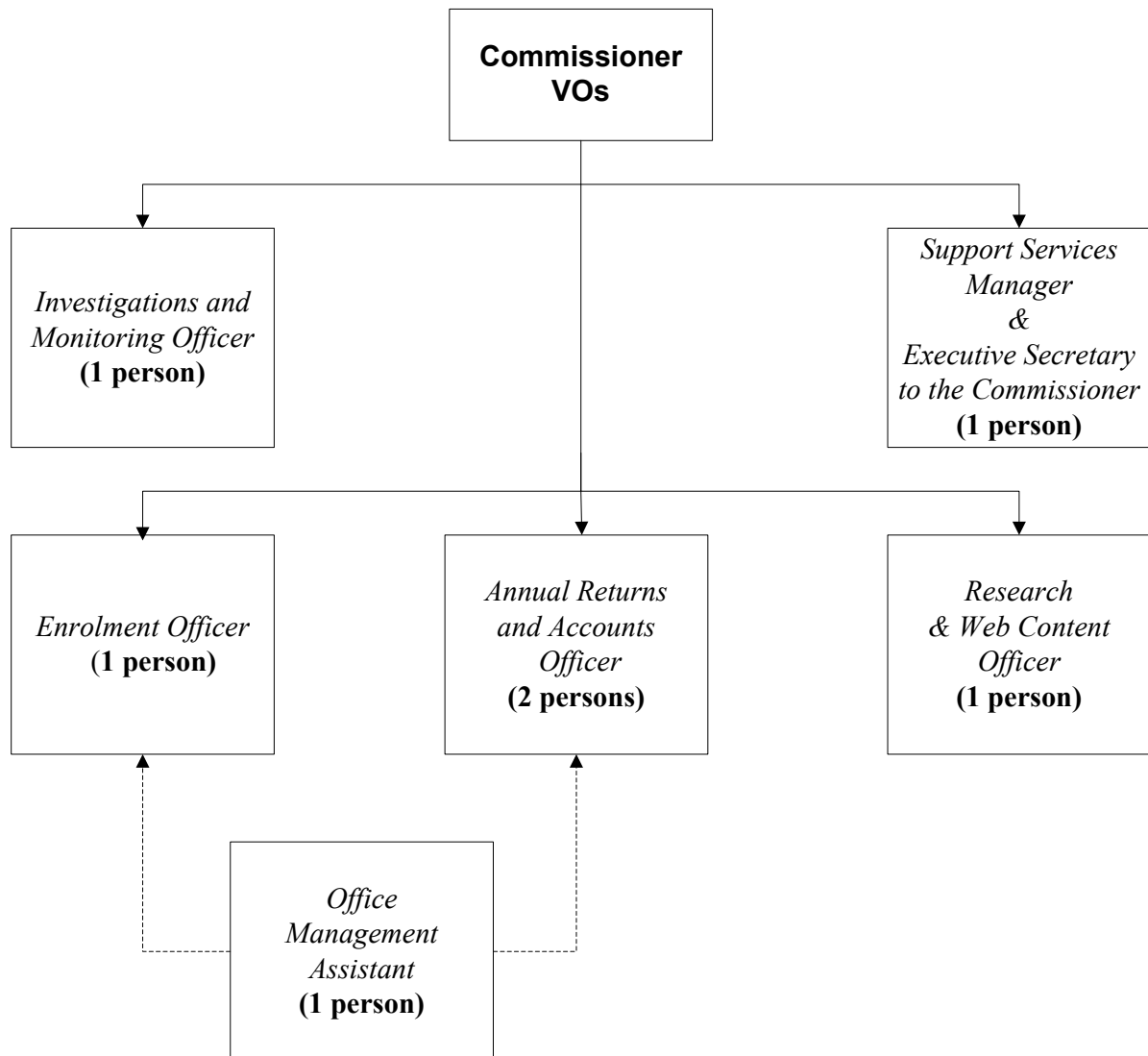
Recent developments:

4.2.12 November 2018 legislative amendments seek to rectify the situation discussed in the preceding two paragraphs. To this effect, the Commissioner for VOs now has automatic legal powers to strike-off from its register any non-adhering VO. The respective VO has the right to appeal this decision itself through the Tribunal.

4.3 OCVO's administrative capacity is not adequate to ensure an effective regulatory monitoring role

4.3.1 Administrative capacity limitations severely affect the regulatory role of the OCVO. A Commissioner for VOs leads OCVO and is assisted by seven full time officials. A Support Services Manager and Executive Secretary to the Commissioner is responsible for the general day-to-day administration of the Office. One Enrolment Officer is responsible for the vetting of enrolment applications whereas an additional two Annual Returns and Accounts Officer are responsible for the review of Annual Returns submitted by VOs on a yearly basis. During 2018, an Investigations and Monitoring Officer, who is responsible for carrying out relevant investigations on VOs, supported the Office. Two other officers, namely a Research and Web Content Officer and an Office Management Assistance provide administrative support to OCVO. Figure 5 portrays the OCVO's organisational structure as at August 2018.

Figure 5 - OCVO's organisational structure (August 2018)



Source: OCVO.

- 4.3.2** OCVO acknowledges that the current human resources level within the Office, to a large extent, dictates its current set-up and work practices. Through this structure, it is unlikely that the Office would be able to extend further its monitoring activities. OCVO recognises that the human resource input has to be substantially augmented to enable its coverage to result in a more effective monitoring of Annual Returns submitted by VOs.
- 4.3.3** Through various capacity building exercises undertaken in the past years, OCVO emphasised the need for more staff, particularly for the deployment of an accountant and a legal officer. These posts are prerequisites for a more effective regulatory function.
- 4.3.4** Despite the prevailing staffing situation, OCVO personnel attended a number of courses in various areas, including procurement, financial management and legal aspects. However, training provided with respect to money laundering, tax evasion and other illicit activities was limited. Recently the Investigation and Monitoring Officer, attended a one week job shadowing programme at the Charity Commission for England and Wales. Moreover, one of the Annual Accounts and Annual Returns Officer also undertook one-to-one customised training with an auditor to be trained on how to appropriately vet the VOs' Annual Accounts. This assisted the respective personnel in identifying any irregularities with respect to financial statements submitted by VOs. However, despite these short-term courses provided, OCVO's administrative capacity requirements in some sensitive areas remains in need of the support of professionally qualified personnel.

Recent developments:

- 4.3.5** In November 2018, OCVO engaged an experienced lawyer to strengthen its legal unit. Moreover, OCVO is also working to reengineer its current organisation structure.

4.4 OCVO monitoring does not always ensure that information submitted by VOs presents a true and fair view

- 4.4.1** Research undertaken for the purpose of this performance audit has shown that effective oversight of VOs includes on-going reviews of financial transactions and accounts based on thresholds developed as part of a VO's risk profile. Against such criteria, the National Audit Office (NAO) reviewed documentation maintained by OCVO with respect to 15 randomly selected VOs. Although not statistically representative of the total population of enrolled VOs, these case studies, pertaining to the three categories of VOs, enabled a better understanding of the monitoring procedures in place at OCVO.
- 4.4.2** The 15 case studies revealed the following:
- a. Monitoring procedures do not encompass the reconciliation of VOs' financial statements with Bank Statements. This state of affairs materialises regardless of OCVO's mandate that at the Commissioner's discretion, any documentation can be requested from VOs.

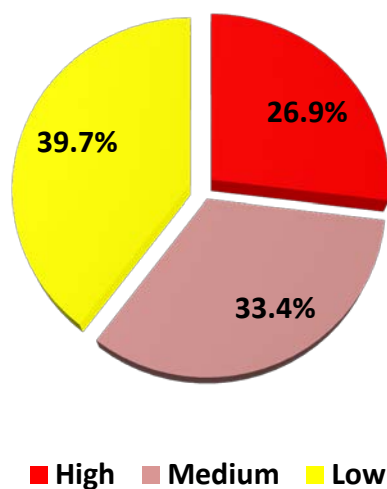
- b. Major line items of income and expenditure are not routinely included in OCVO's monitoring.
- c. OCVO is not in a position to ascertain that the total sources of income received by VOs are declared in their respective Annual Returns. In this regard, an appropriate system for recording large donations received by VOs, such as through a separate donation template, is not in place. Moreover, OCVO is not kept abreast of donations made to VOs through the Individual Investors Programme (IIP). In the latter case, funds made available to enrolled VOs through this Programme could not be determined since VOs are not obliged to give a breakdown of their income. OCVO contended that in June 2018, a meeting was held with officials from the National Development and Social Fund, which manages 70 per cent of contributions received by Identity Malta through this Programme, and it was agreed that the two parties will collaborate more with each other. However, discussions in this regard are still ongoing. Through a request for information by local media under the Freedom of Information Act, Government gave details of how €3.8 million were disbursed to VOs through the IIP.
- d. OCVO does not seek to reconcile major non-immovable assets with relevant purchase contracts. OCVO's position in this regard is hampered since some VOs have assets dating back significantly, for instance 1930s. OCVO contends that further difficulties arise since financial statements received do not comprehensively and accurately report on the value of such assets.
- e. Monitoring does not extend to the investigation of significant debts and liabilities incurred by VOs.
- f. OCVO does not reconcile the VOs' employment of staff with respective FS3s or has risk assessments addressing such issues.
- g. OCVO did not monitor changes in VOs bank signatories.

4.4.3 The foregoing shows that to date, monitoring of VOs reflects OCVO practices that additional information is not routinely requested from VOs but only in cases where the Commissioner deems that an investigation is warranted. This implies that monitoring is carried out strictly in terms of the documentation listed in legislation as the Commissioner's discretionary powers to seek further information from VOs was rarely invoked. This state of affairs weakens the regulatory function and does not ensure that the limited resources employed at OCVO are focusing on areas with heightened operational and financial risks. To this effect, the NAO's review of 15 files showed that the OCVO did not request further information or embarked on an in-depth investigation in cases where VOs declared substantial amounts of both income and expenditure line items.

4.5 OCVO is still to develop action plans to address the recently determined VOs' risk status

- 4.5.1 In June 2018, the role of an Investigations and Monitoring Officer was introduced within OCVO. The main responsibility of this officer is to identify risks associated with VOs and, if necessary, carry out investigations in case of suspicion that a VO is not adhering to the provisions of the *Voluntary Organisations Act*.
- 4.5.2 To this effect, OCVO embarked on an exercise whereby each VO was being categorised according to its risk level. This categorisation was based on a pre-established criteria developed by the Office. Amongst others, VOs whose Annual Revenue exceeds €100,000 or VOs who are involved in international sectors were categorised as 'High Risk' whereas organisations which have not submitted their Annual Returns for the past three years were considered as 'Medium Risk'. Figure 6 below indicate that 27 per cent of VOs were considered to possess a high level of risk. On the other hand, the risk status of the remaining 33 and 40 per cent of VOs was classified as medium and low risk respectively. Figure 6 refers.

Figure 6 - Risk Status of VOs as categorized by OCVO (2018)



Source: OCVO, 2018.

- 4.5.3 Despite the determination of risk status, OCVO is yet to compile formal plans of action for each risk category. It is augured that such an exercise is completed expediently as this would add further value to the risk assessment categorisation of VOs. To this effect, action plans would define the minimum degree of monitoring and the relative frequency for each category of risk. Such a plan would outline the extent of OCVO's documentation review, the additional documentation to be requested from VOs, the triggering of investigations as well as internal reporting requirements.

4.6 OCVO's investigations are generally reactive to complaints received

- 4.6.1 The Commissioner for Voluntary Organisations (CVO) has the legal power to, at any time, upon reasonable grounds, investigate VOs' operations and financial affairs. Through Article 34 of the *Voluntary Organisations Act*, the Commissioner may demand in writing, any relevant information relating to the operation of a VO or any person involved in the activities of the organisation. Throughout the period from 2016 to August 2018, OCVO carried out nine investigations.
- 4.6.2 This review noted that investigations undertaken were generally reactive to complaints received at OCVO, which were mostly initiated following internal disputes between administrators or members of VOs. The nature of these complaints mostly related to claims of either unfair dismissal or illicit activities within the respective VO.
- 4.6.3 Despite issuing legal and judicial letters regularly, OCVO rarely triggered investigations following concerns emanating from documentation submitted by VOs in their Annual Returns. Within this context, in 2018, in accordance with the Regulator's remit, OCVO exercised this mandate and initiated one of the nine investigations undertaken within the three-year period under review. This action related to the non-adherence to the VO Act. At the time of drafting this Report, this investigation was still on-going.
- 4.6.4 The minimal number of OCVO triggered investigations prevails despite instances where, for example, there are significant amounts of debts or liabilities noted in VOs' financial statements. Moreover, to date, OCVO did not initiate investigations with respect to around 400 VOs, which have not submitted their Annual Returns for 2015 and 2016¹². Through discussions with OCVO officials, it was contended that their work practices are highly dependent on the amount of human resources as well as the corresponding level of expertise available at the OCVO.

Recent developments:

- 4.6.5 OCVO stated that during the past three months it has stepped up the number of investigations. To this effect, the Regulator has referred information relating to VOs' administrators to the FIAU and has also opened lines of contact with the Tax Compliance Unit. Moreover, since the November 2018 amended legislation has streamlined the procedure to strike-off VOs, the OCVO maintained that it will be adopting a stricter stance with non-compliant VOs in terms of the recently enacted provisions within the next few weeks.

¹² In 2015 and 2016 there were 379 and 470 VOs respectively which did not submit their Annual Returns.

4.7 OCVO has not imposed penalties on non-compliant VOs in terms of the VO Act

- 4.7.1 Part VII of Chapter 492 *Voluntary Organisations Act* stipulates that following an investigation, the Commissioner for VOs may set a period for compliance with any of the provisions of this Act or any regulations made thereunder. In the case of non-adhering enrolled VOs, the Commissioner may impose penalties for non-compliance within such period. Article 34 (4) stipulates that these penalties can reach a maximum of €116.47 for each day of non-compliance up to a maximum of €2,329.37.
- 4.7.2 OCVO, however, has not imposed such penalties despite the high level of VOs' non-compliance rates. The Regulator's Office contended that such penalties would make the financial position of Voluntary Organisations worse and it would be best that money collected would be used to reach the aim of the respective VO. Moreover, it could also be difficult to collect the penalties from such organisations.

4.8 Conclusion

- 4.8.1 OCVO's monitoring function is to varying degrees weakened through legislative provisions, administrative capacity limitations and procedural practices. On the other hand, the smaller VOs, in particular, encounter severe constraints to satisfy the requirements of the VO Act. This situation has resulted in high levels of non-compliance within the Sector.
- 4.8.2 The recent legislative amendments are a step in the right direction as they broaden the OCVO's remit and streamline enforcement measures in cases of default. The extent to which legislative changes effectively improve the regulatory function and VOs' governance is greatly dependent on whether the OCVO's resources are augmented in line with the envisaged mandate. Another important element, which will enhance accountability and transparency within the VOs' Sector, depends on OCVO's ability to employ mechanisms, based on risk assessments and financial materiality, to monitor VOs' finances and operations.
- 4.8.3 On the other hand, both the OCVO and the Malta Council for the Voluntary Sector have already implemented measures, which seek to aid VOs comply with legislative requirements. These include web-based guidance to facilitate compliance – a prerequisite for good governance within the Sector. It is up to VOs to exploit these services so that a culture of accountability and transparency become more apparent and complement the social benefits emanating from VOs.

2017-2018 (to date) Reports issued by NAO

NAO Work and Activities Report

April 2018 Work and Activities of the National Audit Office 2017

NAO Audit Reports

December 2017 Annual Audit Report of the Auditor General - Local Government 2016

December 2017 An Analysis on Revenue Collection

January 2018 The use of IT systems to identify skills and professional development needs within the Public Service

February 2018 Performance Audit: The designation and effective management of protected areas with Maltese waters

March 2018 Performance Audit: Evaluation of Feed-In Tariff Schemes for Photovoltaics

May 2018 An Investigation of anonymous allegation on a Home Ownership Scheme property in Santa Luċija

May 2018 An Investigation of the Mater Dei Hospital Project

June 2018 An Investigation of allegations on Dingli Interpretation Centre

June 2018 An Investigation into the Findings of the Local Governance Board

June 2018 A Review of the Pension due to a former Member of Parliament

July 2018 Performance Audit: A Strategic Overview of Mount Carmel Hospital

October 2018 Performance Audit: An evaluation of Government's deal to design, build and operate the Malta National Aquarium

October 2018 Follow-up Reports by the National Audit Office 2018

November 2018 Performance Audit: A Strategic Overview on the Department of Fisheries and Aquaculture's Inspectorate Function

November 2018 Report by the Auditor General on the Workings of Local Government

November 2018 An investigation of matters relating to the contracts awarded to ElectroGas Malta Ltd by Enemalta Corporation

December 2018 Annual Audit Report of the Auditor General 2017

