

# **STATE AUDIT IN TIMES OF TRANSITION**

**Reflections on Change and Continuity,  
Challenge and Opportunity from  
Malta and Beyond**



**EDWARD WARRINGTON**  
General Editor

National Audit Office  
Malta

## IN THIS BOOK

### PART I – THE INSTITUTION IN COMPARATIVE PERSPECTIVE

1. **The Mission and Ethos of State Audit**  
*Einar Gorrissen*
2. **The Independence and Jurisdiction of Supreme Audit Institutions: Gains and Losses, Threats and Opportunities**  
*Noel Camilleri*
3. **One Report, Multiple Interpretations: A Constitutional Body Reporting in a Polarised Society**  
*William Peplow & Maria Azzopardi*
4. **The NAO and Other State Integrity Institutions: Contrast and Convergence**  
*Edward Warrington*

### PART II – AUDITING THE PUBLIC PURSE

5. **Leadership, Capacity-building and Innovation in Maltese State Audit, 1997 – 2022**  
*Brian Vella*
6. **Public Sector Perceptions of the NAO and Its Contribution to Public Governance**  
*Tony Sultana*
7. **Auditing Local Government**  
*Tanya Mercieca*
8. **Auditing European Union Funds: The European Court of Auditors' Perspective**  
*Leo Brincat*
9. **Shifting Perspective: From a Maltese Ministry to the European Court of Auditors**  
*Louis Galea*
10. **Appraising Performance, Assessing Risk, Crafting Remedies: Patterns Emerging from the NAO's Reports on Public Financial Management and Corporate Governance**  
*Keith Mercieca*
11. **Emerging Issues in State Audit and Reflections on the Future of State Audit in Malta**  
*Peter J. Baldacchino, Josette Caruana & Lauren Ellul*

# STATE AUDIT IN TIMES OF TRANSITION

Reflections on Change and Continuity, Challenge and Opportunity  
from Malta and Beyond

*Cover Illustration:*

Notre Dame Ravelin, Floriana, current seat of the National Audit Office

# **STATE AUDIT IN TIMES OF TRANSITION**

Reflections on Change and Continuity,  
Challenge and Opportunity  
from Malta and Beyond

*Edward Warrington*  
General Editor

National Audit Office  
Malta  
2022

ACKNOWLEDGEMENTS:

This book is the fruit of a collective effort,  
guided by the Editorial Committee established for the purpose,  
comprising  
Edward Warrington (General Editor)  
Keith Mercieca, Assistant Auditor General  
William Peplow, Senior Manager  
working in close collaboration with  
Charles Deguara, Auditor General and Noel Camilleri, Deputy Auditor General.

The Auditor General and the Editorial Committee wish to express  
their gratitude for assistance given in the course of completing this book by:  
Authors, the Office of the President, the Office of the Speaker  
and Mr Joseph Mizzi of Midsea Books

Published by the National Audit Office, Malta

Copyright © National Audit Office 2022

No part of this publication may be reproduced,  
stored in a retrieval system or transmitted  
in any form, by any means electronic, mechanical,  
photocopying, recording or otherwise,  
without the prior written permission  
of the copyright holder.

*Production and Design:*  
Midsea Books Ltd, Malta

*Printing:*  
Gutenberg Press

ISBN 978-9918-0-0437-9

This book commemorates the Twenty-Fifth Anniversary of the constitutional and legal enactments by means of which the Parliament of Malta established the National Audit Office in its present form, and secured the independence of the Auditor General, the Deputy Auditor General and the National Audit Office.

The book is dedicated to the serving and former members of staff of the National Audit Office and its predecessor, the Department of Audit, for their efforts to secure accountability and good governance in the management of the public purse.





## CONTENTS

Index of Tables and Abbreviations	ix
Notes on Contributing Authors	xi
Message, <i>H.E. Dr G. Vella, President of Malta</i>	xvii
Foreword, <i>The Hon. Angelo Farrugia, LL.D, M.Jur.</i> <i>Speaker of the House of Representatives</i>	xix
Message, <i>Einar Gørrissen, Director General, INTOSAI</i> <i>Development Initiative</i>	xxi
Introduction: Leading the NAO in a time of transition <i>Charles Deguara, Auditor General</i>	xxiii
PART I – THE INSTITUTION IN COMPARATIVE PERSPECTIVE	
1. The Mission and Ethos of State Audit <i>Einar Gørrissen</i>	3
2. The Independence and Jurisdiction of Supreme Audit Institutions: Gains and Losses, Threats and Opportunities <i>Noel Camilleri</i>	11
3. One Report, Multiple Interpretations: A Constitutional Body Reporting in a Polarised Society <i>William Peplow &amp; Maria Azzopardi</i>	31
4. The NAO and Other State Integrity Institutions: Contrast and Convergence <i>Edward Warrington</i>	55
PART II – AUDITING THE PUBLIC PURSE	
5. Leadership, Capacity-building and Innovation in Maltese State Audit, 1997 – 2022 <i>Brian Vella</i>	85

6.	Public Sector Perceptions of the NAO and Its Contribution to Public Governance <i>Tony Sultana</i>	121
7.	Auditing Local Government <i>Tanya Mercieca</i>	129
8.	Auditing European Union Funds: The European Court of Auditors' Perspective <i>Leo Brincat</i>	143
9.	Shifting Perspective: From a Maltese Ministry to the European Court of Auditors <i>Louis Galea</i>	157
10.	Appraising Performance, Assessing Risk, Crafting Remedies: Patterns Emerging from the NAO's Reports on Public Financial Management and Corporate Governance <i>Keith Mercieca</i>	173
11.	Emerging Issues in State Audit and Reflections on the Future of State Audit in Malta <i>Peter J. Baldacchino, Josette Caruana &amp; Lauren Ellul</i>	189
12.	Afterword <i>Edward Warrington</i>	205

## **Index of Tables**

- 2.1. World Bank InSAI Indicator Scores
- 3.1. Stakeholders’ interpretation of NAO’s report on the Free Childcare Scheme
- 3.2. Stakeholders’ interpretation of NAO’s investigation of the Electrogas contracts
- 3.3. Stakeholders’ interpretation of NAO’s report on smart and RF meters
- 5.1. Selected Performance Audits, 2000 - 2022
- 5.2. Selected audits of an investigative nature
- 9.1. Areas of responsibility and main tasks, 2010 - 2016
- 9.2. Contributions to ECA strategy and operating procedures

## **Abbreviations**

ADPD	Alternattiva Demokratika/Partit Demokratiku
AG	Auditor General
ARABOSAI	Arab Organisation of Supreme Audit Institutions
ARMS	Automated Revenue Management Services Ltd (Malta)
ASOSAI	Asian Organisation of Supreme Audit Institutions
CFMS	Corporate Financial Management Solution
CONT	Committee for Budgetary Control of the European Parliament
CREFIAF	African Organisation of French-Speaking SAIs
DAG	Deputy Auditor General
EC	European Commission
ECA	European Court of Auditors
EFSI	European Fund for Strategic Investments
EU	European Union
EP	European Parliament
EPPO	European Public Prosecutor’s Office
EUROSAI	European Organisation of Supreme Audit Institutions
FAI	Facilitating Audit-impact Initiative
GSR	Global SAI Stocktaking Report
IAID	Internal Audit and Investigations Department
IDI	INTOSAI Development Initiative
IFPP	INTOSAI Framework of Professional Pronouncements
IMF	International Monetary Fund

InSAI	Indepence of SAIs (World Bank tool)
INTOSAI	International Organisation of Supreme Audit Institutions
ISAI	International Standards of Auditing
ISSAI	International Standards of Supreme Audit Institutions
IT	Information Technology
LN	Legal Notice
LPG	Liquid Petroleum Gas
MFAC	Malta Fiscal Advisory Council
MFF	Multiannual Financial Framework
MP	Member of Parliament/Member of the House of Representatives
NAO	National Audit Office, Malta
NGEU	Next Generation EU
NSO	National Statistics Office, Malta
OBS	Open Budget Survey
OECD	Organisation for Economic Cooperation and Development
OLAF	European Anti-fraud Office
PAC	Public Accounts Committee
PEFA	Public Expenditure and Financial Accountability
PFM	Public Financial Management
RRF	Recovery and Resilience Facility
SAI	Supreme Audit Institution
SAI-PMF	SAI Performance Measurement Framework
SDG	Sustainable Development Goal
SIRAM	SAI Independence Rapid Advocacy Mechanism
StORy	Strategic and Operational Planning, Reporting
TfEU	Treaty on the Functioning of the European Union
UN	United Nations
VPN	Virtual Private Network
WB	World Bank

## NOTES ON CONTRIBUTING AUTHORS

**Maria Azzopardi** MA (Public Policy), B.Com (Hons) joined the National Audit Office in 2011 and currently holds the position of Principal Auditor within the Performance Audit Unit. She has participated in a number of cooperative audits and initiatives under the auspices of the EUROSAI Working Group on Environmental Audit. She also has work experience relating to EU-funded projects.

**Peter J. Baldacchino** FCCA, FIA, CPA, MPhil, Ph.D (L'boro) is Professor of Accountancy at the University of Malta. He specialises in internal, external and public sector auditing, corporate governance and financial strategy, with particular reference to the implications of state smallness. He has published in various refereed international journals. He is a Director at the Central Bank of Malta, a member of the Maltese Accountancy Board, and a Director of the University Group of Companies. He has extensive experience in the governance of large Maltese organisations, including listed groups and cooperatives, with past positions including chairmanships and memberships of various Board committees.

**Leo Brincat** was a member of the European Court of Auditors (2016-2022), where he served on the Chambers for External Action, Security and Justice, and Financing and Administering the Union, as well as on the Committees on Audit Quality Control, Digital Steering, an Alternate on Ethics, and Working Groups on the Conference for the Future of Europe and Future Foresight for ECA. Mr Brincat, a banker by profession and Fellow of the Chartered Institute of Financial Services, also had a long career in politics, as an MP (1982-2016), Chair of the Public Accounts Committee (1998-2003), Member of the Foreign & European Affairs Committee, Member of the pre-accession Malta-EU Joint Parliamentary

Committee (1992-2004), and a member of the Council of Europe Parliamentary Assembly (1982-86). He was Minister for Sustainable Development, the Environment and Climate Change (2013-2016) and Finance & Commerce (1996-1998).

**Noel Camilleri** MBA, BA (Hons) Business Management, was appointed Deputy Auditor General on 30 March 2016, having previously occupied the position of Accountant General for 14 years. He started his career in the Public Service in 1990 after graduating from the University of Malta. In 1998 he graduated MBA from the University of Bath. In recognition of his significant contribution to improving public financial management in Malta, in 2014, he was awarded honorary membership of CIPFA. He served on the European Investment Bank's Board of Directors (July 2013 - January 2016) and on the Board of Auditors of the European Stability Mechanism (October 2018 - October 2021).

**Josette Caruana** is a certified public accountant and Associate Professor at the Department of Accountancy, Faculty of Economics, Management and Accountancy of the University of Malta. She is a member of the CIGAR (Comparative International Governmental Accounting Research) Network Advisory Board; and co-chairs the Task Force on Public Sector Financial Management and Reporting, jointly established by the CIGAR Network, EGPA's PSG XII, and IRSPM PSAAG. She is a member of the Editorial Board of the *Journal of Public Budgeting, Accounting & Financial Management*, as well as an Associate Editor of the *Public Money & Management*-CIGAR annual issue.

**Charles Deguara**, BA (Hons) (Business Management), joined the Public Service in 1977. He served in the Water Works Department, the Budget Office within the Ministry of Finance, and in various divisions of the Ministry for Home Affairs. In May 2004, he was appointed Permanent Secretary at the Ministry for Justice and Home Affairs. As Chairperson of the Schengen Task Force, Mr Deguara played a key role in ensuring the coordination of Malta's timely and successful accession to the Schengen zone in December 2007. In November 2008, he was appointed Deputy Auditor General. On 30th March 2016, he was sworn in as Auditor General.

**Lauren Ellul** BAccty (Hons), MBA (Exec) (Edin & ENPC), FIA, CPA, PhD (Birm) is a Certified Public Accountant and holds a Practising Certificate in Auditing. Dr Ellul is the Head of Department of Accountancy in the Faculty of Economics, Management & Accountancy at the University of Malta. She is a Director of the Central Bank of Malta and a member of the Board of Governors of the Lands Authority. Dr Ellul has worked within the Advisory function of a Big-4 accounting firm for seventeen years.

**Louis Galea**, a lawyer by profession, was the Secretary General of the Partit Nazzjonalista between 1977 and 1987. He was first elected to Parliament in 1976. He served as Minister between 1987 and 1992, when he was responsible for health, social affairs, employment, housing, women's rights, family, children, persons with special needs and the elderly. Between 1992 and 1996 he was the Minister for Home Affairs and Social Development, as well as the Minister responsible for education, culture and employment between 1998 and 2008. Between 1998 and 2005 he was the Co-Chair of the Malta–EU Joint Parliamentary Committee. In 2008 he was elected Speaker of the House of Representatives, and in 2010 he was appointed Member of the European Court of Auditors until 2016. Louis Galea is a member of the Akkademja tal-Malti.

**Einar Gørrissen** is Director General of the INTOSAI Development Initiative (IDI). Educated at the University of London, UK, his long experience of working with SAIs began as an auditor in the Office of the Auditor General of Norway and subsequently with OAG Norway's INTOSAI involvement, especially the provision of capacity-building support to SAIs such as Nepal, Palestine, Serbia, Zambia and Malawi, where he was also Long-Term Advisor to the SAI. In 2010 he joined IDI, establishing the Secretariat for the INTOSAI-Donor Cooperation, before being appointed as IDI's Director General in 2014. He has published a number of articles on Supreme Audit Institutions, and is a member of INTOSAI's standard setting body, FIPP.

**Keith Mercieca** joined the National Audit Office in 2011. In his current role as Assistant Auditor General, he manages the audits commissioned to

the Office by Parliament. Prior to his engagement with the National Audit Office, Keith held directorships and managerial roles within the Maltese public service, namely, within the Office of the Prime Minister and the Ministry for Finance. He also has an active role within the international state audit community, contributing in various capacities on initiatives ranging from the development of professional capacities, methodology setting, and the audit of diverse substantive areas. He holds a Masters of Arts in Public Policy, a Masters in Business Administration and a Bachelor of Psychology degree.

**Tanya Mercieca** is a qualified accountant and auditor. She was appointed Assistant Auditor General in 2011, having responsibility for the Financial and Compliance Audit Section. She joined the NAO in September 2001, after nearly twenty five years working in the private sector. During 2003, she was seconded to the UK NAO six months. In November 2015, she was appointed Member of the College of Auditors for the European Institute for Security Studies for a three-year term, renewed in October 2018 for another three years during which she took the Chair. Since July 2019, she has been serving on the Audit Board of Eurocontrol.

**William Peplow** MA (Public Policy), MBA, DPA, has been employed at the National Audit Office since 1986 and is currently senior audit manager within the Performance Audit Unit. He has been managing performance audits since 1999. He has also participated in parallel audits with State Audit Institutions of other EU member States dealing with environmental themes and EU Structural Funds. Since 1994, he has been the NAO's representative on the INTOSAI and EUROSAT Working Groups on Environmental Audit. His main area of interest is oversight of public finance.

**Tony Sultana** was appointed Principal Permanent Secretary on 1 June 2022, following a long career in the Public Service in which he pioneered the use of information technology, playing key roles in implementing tax reform and other holistic systems. His career began in 1986 with the Government Computer Centre. He led the Euro-IT Taskforce, and was responsible for coordinating the euro changeover of IT systems. Having held several senior management posts within MITA, he was appointed Executive Chairman in April 2013. There, he focused on strengthening



and modernising the Government's digital ICT systems, with priority over security. Mr Sultana has a technical background in industrial electronics and government information systems through specialised programmes undertaken in Singapore and Japan. He holds a degree in Mathematics and Computing from the University of Malta and a Master of Science in Management from Anglia University.

**Brian Vella** BA (Hons) Accountancy, FIA, CPA, has over forty years of experience at the National Audit Office in various audit and management roles. He was appointed Assistant Auditor General in July 2006, heading the Performance Audit Section and is also responsible for international relations, including being the Office's liaison officer for the network of EU Member State Supreme Audit Institutions. He is a part-time visiting lecturer at the University of Malta, delivering lectures on public sector auditing to students reading for an Honours degree in Public Management.

**Edward Warrington** read public administration and politics at the Universities of Malta, Toronto and Oxford. He is Associate Professor in the Department of Public Policy at the University of Malta. His publications range over governance and institutional design in micro-states and islands, ethics in public life, administrative history, and the political insights of sacred scripture. He is a member of the Board of Directors of the diocesan research institute *Discern*.



Maria Azzopardi



Peter J. Baldacchino



Leo Brincat



Noel Camilleri



Josette Caruana



Charles Deguara



Lauren Ellul



Louis Galea



Einar Gørrissen



Keith Mercieca



Tania Mercieca



William Peplow



Tony Sultana



Brian Vella



Edward Warrington



Message  
H.E. Dr. George Vella  
President of Malta

I am pleased to contribute to this publication commemorating the 25<sup>th</sup> Anniversary of the founding of the National Audit Office of Malta.

My message is, first of all, intended as an expression of gratitude, on behalf of the Presidency as well as the People of Malta, for the vital work carried out by this irreplaceable institution along the years. The greatest reward that the Auditor General, the Deputy Auditor General, and all the members of staff of the Office have obtained, is that of being assured of the people's trust. Over these past twenty-five years, the independence, integrity, and objectivity of the institution, was manifested and defended at all times. This trust is fully warranted.

This publication on the 25<sup>th</sup> Anniversary is striking in that, through its expert and erudite contributions, it brings the institution closer to the general public. This inward-looking exercise, fully accessible to the public, is in itself an exercise in transparency and accountability.

One specific concept embraced by the publication, which is very much in tune with the times, is that of 'transition'. Surely, the lessons learned from the past will serve to guide and deliver upon present challenges, and also help to plan ahead for the future. As a primary and essential actor in democratisation and the rule of law, the National Audit Office is part of this very same transition. Along with other local and international stakeholders, the Office has to calibrate and adapt to emerging challenges posed by social

and economic inequalities, political tensions, the devastating consequences of a pandemic, an international order convulsed by war and conflict, as well as energy and food insecurities. The list of challenges is endless.

Against this backdrop of uncertainty and doubt, the citizen looks for a reference point of stability and permanence. I believe that the outstanding record left by the NAO transcends the mere delivery of its day-to-day business. It contributes to our collective sense of faith in our institutions.

Any entity's success or failure is very much determined by the way it decides to grow. A narrow vision of today's realities will only result in detachment and isolation, possibly also with important lessons being missed. In this regard, I see great value in the way that the NAO has broadened its network of stakeholders to include civil society representatives and non-governmental organisations. Two sectors that immediately spring to mind in this regard are that of the protection of the environment and that of migration.

The NAO would not have been able to deliver remarkable results without its well-trained and dedicated staff members, at all levels. Motivation is key to this equation, and I therefore encourage ongoing and enhanced investment in both physical and human resources. I emphasise the benefits that result from the continued professional development of employees, both here in Malta and abroad whenever the occasion arises.

One other aspect of the NAO's work I am particularly keen on is its international profile. Whenever present in the international arena, our NAO officials do Malta proud. In their work with foreign partners, they are formidable ambassadors of the professional and ethical standards that Malta highly deserves to enjoy. I know from my own experience in institutions such as the Commonwealth of Nations that the NAO's record in this domain, together with its disposition to share its best practices with other partners, are very highly regarded.

I also take this occasion to extend my appreciation to the NAO for the detailed and meticulous approach of the submissions it has made to the public consultation process launched by the Office of the President in 2020 on Constitutional reform.

In conclusion, on behalf of the People of Malta, I extend my thanks to all NAO officials for the sterling work they perform on a daily basis in a spirit of utmost diligence and discretion, always in the interest of the greater good.

San Anton Palace

Foreword  
Dr. Angelo Farrugia LLD  
Speaker of the House of Representatives

Barely a year has gone by since Malta commemorated the centenary of the establishment of parliamentary government in these islands. While Malta's state audit office preceded the establishment of democratic parliamentary institutions by more than a century, it was not until 1997 that constitutional provisions linked Parliament and state audit, at the same time raising the institutional profile and securing the independence of what became the National Audit Office. The constitutional offices of Auditor General and Deputy Auditor General were created. Though the Ombudsman was established as the first 'Officer of Parliament' in 1995, the Auditor General became the first constitutionally protected Officer of Parliament.

Constitutional amendments enacted in 2021 further enhanced the independence of the Auditor General and Deputy Auditor General, and secured the continuity of these vital offices.

Amendments to the Constitution signify the on-going development of Malta's governing institutions. For the past thirty years, under successive legislatures, Parliament has been both the driver and the focus of these developments. The Standing Committees of the House of Representatives, the gradual expansion in the size of the House, and greater gender balance have helped the legislature to handle more business, to pay closer attention to bills, to become more representative of

Maltese society, and to enhance the oversight of the ever more complex Executive government.

Nowhere is the oversight sharper or more extensive than in the sphere of public financial management. The separate missions and character of the Public Accounts Committee of the House and the National Audit Office complement each other: the NAO's technical scrutiny of the public accounts informs the political deliberations of the PAC; and all this is complemented by the numerous Speaker's rulings given over the last few years, regarding the procedure to be followed in the respective role of both institutions.

Institutional anniversaries constitute opportunities to reflect on the past with an eye to the future. They are also occasions to pay tribute to the dedication, expertise, and integrity of those who serve the community through public service. The studies embodied in this book document the depth and breadth of the NAO's activity, as well as steady advances in its professional capabilities and organisational capacity. They are a worthy, lasting tribute to the institution's past quarter century.

In the same spirit, I place on record my appreciation of successive Auditors General and Deputy Auditors General for their unfailing loyalty to the public interest, as well as the fine spirit of cooperation which consistently marks their relations with the House of Representatives and the Speaker. Their capable staff, working discreetly out of the public eye, scrutinises the management of public funds, pointing out shortcomings without promoting scandal. In their everyday work, as much as in their landmark reports, they set standards of economy, efficiency, value for money and integrity. Malta's Parliament owes them a debt of gratitude.

House of Representatives

Message  
Einar Gørrissen  
Director General  
INTOSAI Development Initiative

On the occasion of the 25<sup>th</sup> Anniversary of the formal inauguration of the Supreme Audit Institution (SAI) of Malta, it is a great honour to be asked to contribute the opening chapter of the Audit Office's commemorative publication, with a discussion on the mission and ethos of state audit.

However, I must admit that the request is also a little intimidating. How does one give sufficient focus to the vast and globally important topic of Supreme Audit Institutions and their mission in a rapidly changing world?

I am very pleased that the other chapters in this excellent book underline and investigate the many facets of this question. As we look at SAI Malta's history, we can also view the role and challenges of SAIs past, present and future.

For my part, and on behalf of the INTOSAI Development Initiative, I am delighted to offer an introduction that highlights the questions that all those in the SAI world meet on a very regular basis – and have for many centuries.

Oslo, Norway





# Introduction

## Leading the National Audit Office in a time of transition

Charles Deguara  
Auditor General

It is my pleasure to introduce this collection of studies marking the twenty-fifth anniversary of the founding of Malta's National Audit Office (NAO) and the creation of the constitutional offices of Auditor General and Deputy Auditor General. The constitutional and legal enactments undertaken in July 1997 stand as a defining event in the history of this institution, which originated as an auditing department in the public service. It is comparable to the founding of the former Department of Audit, established by the first British Governor of Malta, Sir Thomas Maitland, in 1814, and the grant of elementary constitutional protections to the Director of Audit when Malta became a sovereign state in September 1964.

It is difficult to overstate the importance of the legislation enacted in July 1997 with the unanimous approval of Government and Opposition MPs. Until then, the Department of Audit practically fell under the control of the Ministry for Finance. With the amendment of Article 108 of the Constitution and the enactment of the Auditor General and National Audit Office Act 1997, the NAO emerged as a fully autonomous oversight institution led by an Auditor General and Deputy Auditor General, who are appointed with the support of no less than two-thirds of the Members of Parliament. Other provisions in the legislation, such as those related to the staffing and financing of the NAO, reinforce the Office's independence from the Executive.

Thanks to the 1997 legislation, Malta's NAO complies with the Lima and Mexico Declarations on the functions, independence, and ethos of Supreme Audit Institutions, which feature prominently in the studies included in this book. Only a fully independent external audit function can guarantee a reliable, fair, and trustworthy reporting of audit findings and recommendations, while the rule of law and democratic governance are essential premises for really independent government auditing.

### **Heir to a solid legacy of integrity and accountability**

The world, as they say, was not created in a day. Notwithstanding the constraints on its independence and resources, the former Department of Audit consistently followed, as far as possible, a policy of fair and objective reporting. Moreover, the fundamental audit methodology and the experience of public sector auditing accumulated over one hundred and fifty years, constituted a very useful starting point for the newly set up NAO. The institutional knowledge and experience of certain members of management, some of whom are still in service at the NAO, have proven to be extremely useful. The NAO inherited the ethos and core values of its predecessor, and cherishes them to the present day.

### **A trusted guardian of the public purse**

The House of Representatives has consistently voted unanimously on the legislation governing the NAO and on the motions to appoint an Auditor General and Deputy Auditor General. The incumbents of both constitutional offices have been consistently and unanimously reconfirmed for second terms. My predecessors and I recognise in this a clear sign of trust both in the institution *per se* as well as in the way it is led and managed. That said, this places on whoever is leading the organisation a huge responsibility: essentially, we must 'repay' that trust, particularly by ensuring that all our reports invariably honour the fundamental values of truth, fairness, and objectivity, and are based solely

and exclusively on the evidence at our disposal, ‘without any fear or favour’ as my Oath of Office enjoins. It is only thus that we safeguard the trust that Parliament and our citizens have in our Office.

Among the responsibilities and powers vested in the office of Auditor General, I emphasise the duty to provide fair and objective assurance to Parliament, and ultimately to our citizens (our principal stakeholders), that public funds are being used for the purpose for which they were approved, in compliance with prevailing rules and regulations, and in the most economical, effective and efficient manner possible (the famous three e’s). Observers of contemporary governance are now mentioning two other important e’s: ‘environment’ and ‘ethics’, both of which are increasingly evident in the NAO’s work. We discharge this onerous duty essentially through a careful, independent selection of audit subjects which form our Audit Plan for a particular year. This calls for a careful discernment process which is guided by certain criteria, such as materiality and risk.

Another important duty, closely interrelated to the first one, is to provide a timely support service to the Public Accounts Committee (PAC), which is another key stakeholder of the NAO. Particularly through its deliberations on our Reports, the PAC provides considerable added value to our work. For this reason senior members of our staff attend every PAC meeting and are often asked to give their professional opinion on the particular NAO Report under scrutiny.

To do our work well, and consistent with international auditing standards, the enabling legislation confers authority on the Auditor General and the NAO’s staff to have:

free access at all reasonable times to such information from officers and other personnel of government departments or offices, or of bodies subject to his audit, that may be required by them for the proper execution of their functions according to law, and they shall be entitled to receive from such officers and other personnel such reports and explanations as they may deem necessary for such purposes.<sup>1</sup>

---

1 Auditor General and National Audit Office Act (Cap 396), Second Schedule, s.3.

Moreover, in terms of sub-article 108(12) of the Constitution, in the exercise of their functions under the Constitution the Auditor General and the Deputy Auditor General shall not be subject to the authority or control of any person.

### **Auditing the public purse in times of transition**

Politics, policy-making, and public administration are growing steadily more complex under the influence of the great challenges confronting the world today: climate change, growing inequality, a weakening of the rules-based international order, democratic distress and mass migration. While the immediate impact of this complexity falls on public officials, it also creates a range of challenges for the NAO, among them, questions about jurisdiction, audit methodologies, an ever-growing need for new sources of expertise and technological innovation.

I have always emphatically believed that our staff are undoubtedly the NAO's most valuable asset. Consequently, we need to continuously invest in our duly qualified employees, particularly through the provision of appropriately designed professional development programmes, to ensure that they possess the right tools to carry out audit work to the highest professional standards. The NAO needs the right tools, at all levels of the organisation, to ensure we are duly prepared for such new challenges brought about by these complex changes, especially those occurring within the public sector itself. This implies adaptations and innovations in the way the public sector conducts its business, particularly the use of more complex public procurement procedures, the way it communicates with its stakeholders (issues of advertising and information campaigns expenses are under discussion at the time of writing).

The NAO strives to keep abreast of such important developments, not shying away from conducting audits on the complicated issues facing Maltese society. Two such examples come to mind: the performance audit report on *Fulfilling Obligations to Asylum Seekers*, issued in July 2021, and the Joint report on the *Management of Plastic Waste in Europe*, issued in May 2022.

In times of complex social, economic, cultural and technological transition, an institution's external relationships assume even greater salience, perhaps none more so than the NAO's relationship with the leadership of the Public Service of Malta. While jealously guarding our constitutional and professional autonomy, the NAO strives assiduously to maintain a good working relationship with the leadership of the public service, as clearly stipulated in our Strategic Plan 2019-2023. For example, we hold periodical meetings with the Principal Permanent Secretary as well as with each and every Permanent Secretary since we are aware that audit assignments are more fruitful and productive if held in a spirit of mutual trust and understanding. Of course, occasional misunderstandings with particular ministries are to be expected but, by and large, the NAO enjoys a very good working relationship with the majority.

In this regard, as in the case of other national audit institutions abroad, we have recently started to enhance communication and consultation with other stakeholders, such as civil society, NGOs, and other organisations, so that we may learn from them and listen to their point of view when undertaking certain audits. Recent audit assignments regarding Sustainable Development Goal 1: Poverty (issued December 2020) and the performance audit entitled *A Strategic Overview on the Correctional Services Agency's operations at the Corradino Correctional Facility* are good examples of this outreach. Moreover, in the environmental field, the NAO also carries out audits with other Supreme Audit Institutions. Among the subjects audited jointly with other SAIs, I can point to reports on plastic waste and marine protected areas. In this way, the partner SAIs share audit findings and harmonise as much as possible environmental audit planning, and possibly methodology.

Over the years, the NAO has also become more visible in the international sphere. In fact, we are active in several international working groups, such as the EU Contact Committee (an active network of national audit institutions of the EU Member States), and in the EUROSAI Environmental Auditing, as well as the EUROSAI IT Auditing Working Groups. The Twenty-Second Conference of Commonwealth Auditors General, which the Office hosted between 24 and 27 March 2014, was undoubtedly one of the most important international events we have

ever organised. It focused on the theme *Securing Independence of SAIs to improve the Effectiveness of Reporting and Communication of Audit Findings* and convened 87 delegates, including 29 Auditors General, from 35 Commonwealth countries.

Times of profound transition such as the world is living through in the twenty-first century destabilise the established distribution of power. This in turn generally gives rise to greater risks of abuse or misuse of power, or simply induces serious errors of judgement in policy-making and administration. Politics and government become more prone to controversy; some countries experience outbreaks of conflict. This highly charged policy environment has led to the emergence of important oversight institutions such as the Ombudsman, the Financial Intelligence and Advisory Unit, the Commissioner for Standards in Public Life, and the Permanent Commission Against Corruption.

The NAO is one element of this developing framework of integrity institutions. It has working relationships, essentially based on mutual trust and understanding, with the Office of the Ombudsman and the Office for the Commissioner for Standards in Public Life. While being careful not to encroach on each other's jurisdiction or independence, we recognise a common mission, which is to contribute in our distinctive ways to the enhancement of governance standards across the public sector. In this spirit, the NAO has participated actively in a project focusing on Conflict of Interest and Asset Declaration undertaken by the Commissioner for Standards in Public Life in collaboration with the OECD. We have also sent our official feedback in connection with a public consultation exercise carried out by this same Office on the important subject of lobbying.

The foregoing discussion makes it clear that the NAO sits at the centre of a web of institutional relationships extending right across the State. In essence, I would define the ethos of these relationships as trust and objectivity. The values are interdependent. *Trust* ensures that the NAO's reports and assignments are duly accepted by Parliament, by the auditees and by the general public, whose interests we strive to safeguard, particularly since ultimately it is the tax-paying public that finances Government's operations. Of course, such trust needs to be continuously earned, and that in turn means that all our work must be based on the fundamental value of *objectivity* without any bias or favour.

**A personal reflection**

In appraising this quarter-century of profound transition, for Malta and Maltese public financial administration, as well as for the NAO, I find myself observing that my career reflects the transition. Moving from a career in line ministries to the NAO, first as Deputy Auditor General and subsequently as Auditor General, required some adjustments of perspective and mission, as well as a mastery of changing policy and operational environments.

In a line ministry, for the most part a head of department or permanent secretary focuses on those departments and non-departmental bodies falling under the responsibility of that particular ministry. Of course, involvement in inter-ministerial initiatives and projects is nowadays common, but the focus of attention and effort is the work, assignments, and commitments of one's ministry. One cannot ignore the continuous interaction with the minister, where the classical political-executive dynamic, sometimes with its fair share of tension and misunderstandings, comes into play.

The perspective in the NAO is very different. Although individual audits largely focus on separate departments or non-departmental bodies (corporate audits are not so frequent), in reality the Auditor General has to keep in perspective the entire public service. One has to take a holistic view, much more so than in a ministry. This is especially important when drawing up the annual NAO Audit Plan. The Auditor General must ensure a fair and objective planning of audits, taking in consideration certain criteria like audit risks, based on a methodology which is being introduced within our Office, materiality, particular risk factors, etc. It comes as no surprise that most audits focus on areas such as health, education and social benefits: these are considered as the big spenders within the government. Of course, other organisations, services, projects or programmes cannot be ignored, as they may well be high risk components of public revenue or expenditure. Another adjustment of perspective stems from the auditor's need to give even significant importance to compliance with rules and regulations. With the benefit of hindsight, I realise that this is further engrained in an auditor's mentality. Undoubtedly, achieving results is vitally important, but so is compliance to ensure good governance, transparency, and accountability.

## **Appraising the past quarter-century**

The NAO has evolved significantly throughout the past twenty-five years: in saying this, I warmly acknowledge the efforts undertaken by my predecessors and all the staff who have worked within the NAO. Suffice it to say that prior to the 1997 legislative amendments, only the Annual Report on Public Accounts was published (comprising the financial audit of the Government Financial Report and a number of Compliance Audits); very few stand-alone reports were issued. At present, apart from the two Annual Reports, one focusing on Public Accounts and the other on the Workings of Local Government, the NAO publishes several stand-alone reports, such as Performance Audit Reports, IT Audit Reports, and Special Audits and Investigations Reports. For the most part, the latter are undertaken at the behest of the PAC or the Minister responsible for Finance. Moreover, six years ago the NAO started issuing Follow-up Audit Reports, which focus on the extent of implementation of the NAO's main recommendations in reports issued between three and four years previously.

As can be seen, the number and variety of audit reports has increased very significantly, even though the staff complement is almost the same as it was before 1997. NAO reports definitely have a greater impact nowadays than they did twenty five years ago. This is shown by the fact that Follow-Up Reports record, on average, an implementation rate of between 75% and 80% in respect of our main recommendations. It is encouraging to note that these figures are generally consistent with the implementation rates reported by the Principal Permanent Secretary in his annual Governance Reports.

The main reason for this significant development is the rigorous, forward-looking staff selection process adopted since the inception of the NAO. Gradually, it led to the recruitment of professionally qualified and competent staff in accounting (for Financial and Compliance Auditors) and in other academic fields (for the other types of audits that are carried out). We also worked hard to raise the morale and motivation of our staff, particularly during a very challenging time for the NAO, when the conditions of engagement were not so attractive and we were losing very good people from our team. The extent of this problem is



shown by the fact that during the four year period from 2006 to 2009, the number of resignations amounted to 22 (practically one third of the staff complement). In marked contrast, during the seven years between 2015 and 2021 only five members of staff resigned. This turnaround in staff morale and motivation is the fruit of a collective team effort.

Other challenges have also occasionally been encountered. The most significant of these was the 2007/2008 leadership hiatus, when the Government and Opposition could not agree on the appointment of a new Auditor General and Deputy Auditor General. It was reassuring when the Leader of the Opposition at the time declared publicly that the failure to fill the vacancies was not due in any way to any doubts about the persons nominated. At the same time, it was disconcerting that the delay in filling the vacancies was caused by the politicians' reluctance to fill them in anticipation of the forthcoming parliamentary election of 2008. The result was an extended period during which the NAO was effectively barred from publishing its reports, and its leadership severely constrained. It was this unsettling experience which prompted the NAO to suggest amendments to the Constitution that would prevent a recurrence.

## Looking ahead

Indeed, in January 2020, the Office published the text of proposed Constitutional amendments which had first been submitted to the President of Malta in connection with the consultations regarding constitutional reforms then underway.<sup>2</sup> Our proposal spelled out several legislative changes with a view to better adapting the powers afforded to the Office through Article 108 of the Constitution of Malta to present challenges. Moreover, in November 2020 we presented to the Minister for Justice another extensive set of legislative proposals.<sup>3</sup> In a nutshell, our report sets out several amendments to the Auditor General and National Audit Office Act to complement those already submitted in relation to the Constitution. My colleagues and I consider that these

---

2 National Audit Office (2020a), *Proposed Amendments to the Constitution: Strengthening of the National Audit Office's Legal Framework*.

3 National Audit Office (2020b), *Proposed Amendments to the Auditor General and National Audit Act – Strengthening of the National Audit Office's Legal Framework*.

amendments, when they are enacted, should better equip the NAO to contribute towards the improvement of governance and performance of the public sector, keeping in view ongoing developments in this regard. The multiple responsibilities overseen by the public sector, coupled with its ever-growing complexity, renders State audit ever more challenging. Overcoming such challenges requires the enhancement of our methods of auditing (which are invariably based on international auditing standards), improved coordination with stakeholders, the refinement of existing practices, together with multiple other initiatives. These and other necessary adaptations are envisaged in our legislative proposals, which we are actively following up.

Externally, I would say that the biggest, and probably most difficult, challenge which the NAO faces in the foreseeable future is that of retaining public trust in an environment where the integrity of many institutions is called into question or challenged. Moreover, increasing complexities of public administration and ever-higher expectations of better governance by the general public constitute two other important challenges. Internally, the biggest problem is to retain our highly qualified and competent team, particularly in view of often cutthroat competition from both the private sector as well as certain organisations within the public sector.

### **The legacy of this twenty-fifth anniversary commemoration**

The National Audit Office is the heir to one of the oldest governing institutions in Malta: as heir, it has inherited the mission entrusted to the State Auditor, as well as the fine ethos of its predecessor, the Department of Audit. Yet it is not the passive custodian of a dead legacy. Quite the contrary: it cultivates that legacy, with a view to helping Malta's public financial administration to discharge faithfully its own distinctive mission towards the common good in the challenging circumstances of the twenty-first century.

The collection of studies incorporated in this book, to which several of my ablest colleagues have contributed generously, reflect on the past and present with an eye to the institution's future. Though they depart from

different standpoints, the authors of this book converge on some powerful insights. They affirm the vital importance of the audit work which Malta's SAI carries out. They acknowledge the critical importance of having a highly motivated, competent, and qualified team to enable the Office to continue carrying out its constitutional mandate in the best manner possible, as Parliament and Malta's citizens duly deserve. Obviously, carrying out such audit work in the smallest EU member state, where practically everyone knows each other, has its fair share of problems and constraints; however, at the same time our work leads to considerable job satisfaction, especially when certain shortcomings or issues identified in our Reports are duly addressed by the Administration. The studies point out the inestimable value of retaining political consensus around the institution's mission, its leadership, ethos, powers and resources. They underscore, too, the value of nurturing effective working relationships with the leadership of the public sector.

My last word is a heartfelt word of appreciation for each member of our highly motivated team, and for our predecessors, whose example continues to inspire us. May the memory of the NAO's past quarter-century, the collective efforts of each member of our staff, and the goodwill towards the NAO displayed by all our stakeholders sustain our ability to address existing and emerging challenges in the field of Maltese state audit. As the anniversary year draws to a close, I am confident that the Office will continue to provide the best possible auditing service to the country's governing institutions, and that this will nurture a fairer, more inclusive society having the incalculable benefit of an efficient and effective public service.

National Audit Office,  
Malta  
November 2022



PART I

THE INSTITUTION  
IN COMPARATIVE PERSPECTIVE



## CHAPTER 1

# The mission and ethos of state audit and Supreme Audit Institutions

*Einar Gørrissen*

### **Introduction**

Ask any citizen who their Attorney General is and what their job entails, and you might well receive a relatively accurate answer. They might not know the name of the Attorney General, or any personal details, and indeed, their State might not even have an Attorney General. In spite of this, there is still every likelihood that they would have a reasonable understanding that this person occupies a high-ranking position in government, and that the position has to do with the law of the land. They might even hazard a guess that the role focuses on checking on and safeguarding the way the law of the land is managed as an element of public governance, for the protection and common good of the people of that country.

Ask a citizen who their Auditor General is and what they do, however, and you might instead be met with confused or even blank expressions. While some may understand the concept of auditing, many will not be aware that the role of Auditor General exists for the very same reasons that the Attorney General exists – to provide checks, safeguards and transparency around the way public funds are managed, for the protection and common good of the nation.

Yet state auditors and audit offices have existed, not just for decades or centuries, but for millennia. Accounting practices and book-keeping

records and standards certainly flourished among Egyptians and Babylonians, but it is unclear how far they transferred to high office of the land. By contrast, there is ample evidence that the Roman Empire applied these practices and standards to public governance. The Empire employed auditors known as *quaestors* (which translates to ‘inquirers’) at a regional and national level, often attached to the magistrates’ court. Urban quaestors in Rome were responsible for the state treasury or *aerarium*’s jurisdiction over public monies or land and even war expenses.

Certain urban quaestors, notably Cato the Younger around 64 BCE, were reputed to carry out the role with stalwart honesty and transparency in the face of blatant corruption, such as emperors denying them access to private sections of the treasury, brimming with war spoils. Quaestors’ duties ranged from safe-keeping of the treasury keys and creating and archiving reports on expenditure, to checking and filing tax receipts – accounting practices for sure, but ones in which governing bodies could be questioned about how they were spending the nation’s taxes.

This is not so different from the present. Over two thousand years later and during a global health crisis, Kristalina Georgieva, managing director of the International Monetary Fund (IMF), warned that the \$8tn (€8.06tn; £6.4tn) mobilised for support in the COVID-19 pandemic should be accounted for properly. “Spend what you can but keep the receipts,” Georgieva said. “We don’t want accountability and transparency to take a back seat.”<sup>1</sup>

IDI’s joint research with IMF has shown that Georgieva’s call to action landed squarely, as it did with Cato the Younger, on the desks or working-from-home kitchen tables of state audit offices around the world.

---

<sup>1</sup> International Monetary Fund (2020), *Transcript of International Monetary Fund Managing Director Kristalina Georgieva’s Opening Press Conference, 2020 Spring Meetings*. April 15, 2020. <https://www.imf.org/en/News/Articles/2020/04/15/tr041520-transcript-of-imf-md-kristalina-georgieva-opening-press-conference-2020-spring-meetings> Accessed 7 September 2022.



## **The role of state audit**

As external auditors of their governments, the fundamental role of state audit offices is to provide public sector governance through oversight of how public money is spent, and to deliver value for money in that service delivery for the benefit of society. SAI Malta's own purpose is "To provide a multidisciplinary professional service to parliament, to government and the taxpayer, and to be an agent of change conducive to achieving excellence in the public sector".

State or supreme audit institutions are, by their very nature, national entities, and as such could find themselves working in isolation, sometimes in challenging circumstances which would mean they cannot fulfil that fundamental role.

In 1953, in recognition of the fact that 'Mutual experience benefits all', 34 SAIs from Africa, Europe and other nations of the world, including the Vatican City State, met with the UN in Havana, Cuba to hold their first Congress and create the International Organisation of Supreme Audit Institutions (INTOSAI). Under this non-governmental umbrella, INTOSAI has grown over the years into a global organisation having 195 members, regional offices and the ambition to share knowledge, build SAI capacity and prepare and promote professional standards for public auditors.

Being a professional SAI implies adopting professional standards, employing professional staff, carrying out audit work according to applicable standards, and operating an appropriate quality management framework. The INTOSAI Framework of Professional Pronouncements (IFPP) sets out the formal and authoritative announcements or declarations of the INTOSAI Community; it includes the International Standards of Supreme Audit Institutions (ISSAIs), which in turn are the authoritative international standards on public sector auditing.

INTOSAI's further aims to promote strong governance, enhance transparency and accountability, and fight corruption were underlined by the UN declarations of 2011 and 2014. Recognising that SAIs can only fulfil their mandates in an unbiased and credible manner if they are independent of the Executive, INTOSAI developed the Lima

Declaration back in 1977 and the Mexico Declaration in more recent times. Both noted how critically important it is for the Supreme Audit Institution to be independent, with the Mexico declaration containing eight core principles for SAI independence.

This INTOSAI goal has expanded, not just into a desire for SAIs to act as models of transparency and accountability in their own operations, but for SAIs to contribute to social, economic and environmental outcomes for the benefit of all. INTOSAI is committed to the UN's 2030 Agenda of achieving seventeen Sustainable Development Goals (SDGs) established in 2015, especially SDG 16 which calls for 'Peace, Justice and Strong Institutions'.

Through its Committees, Working Groups, INTOSAI Regional Organisations and the INTOSAI Development Initiative (IDI) formed in 1986, INTOSAI continues to lead the way in supporting SAIs across all that is entailed in the professional and effective delivery of their mandate.

## **SAIs in 2022**

It could be argued that when INTOSAI was formed in 1953, the world in general, still smarting from global war, provided a less complex, more conformist and compliant context in which to operate.

Fast forward to the current year of SAI Malta's 25<sup>th</sup> Anniversary, and the SAI community itself is very much more diverse. Some institutions work in receptive environments while others face more hostile environments. Some face explicit, obvious challenges to their independence in light of democratic backsliding, while others maintain established routes for communication with key stakeholders and enjoy a level of national recognition and respect. SAIs range in size from one or two people to many thousands of employees, and levels of knowledge and professionalisation vary just as widely.

Furthermore, the mandate of what SAIs can and will be involved in has become much bigger than simply 'Public Sector Audit'. SAIs hope to – and in some cases are expected to – contribute to positive change going forward. In recent years, in addition to the more usual financial

and compliance audits, SAIs have been looking at providing assurance on financial statements of the government and conducting performance audits. Cooperative performance audits, where SAIs collaborate, peer review and support each other across regions and functional areas or involve other stakeholders and partners, have provided comment and feedback on how governments are performing against SDGs or, recalling Kristalina Georgieva's injunction, how they are spending emergency funding. Some SAIs have even become coaches for less developed state audit offices or act as bilateral partners for capacity development and in-kind support.

There is also the global context within which SAIs – and their supporters and stakeholders – are operating. In a world struggling to react effectively to climate change, SAIs can provide significant impact by auditing a nation's adaptations for climate change at national, regional, and global levels. Where the pandemic has created what UN Women have named as the 'shadow pandemic' of worsening conditions for many women,<sup>2</sup> SAIs can demonstrate what the government is doing by auditing actions on gender-based violence or equality, inclusiveness and intersectionality.

Many of the audits in which IDI will support SAIs are focussed on real-world impact: the Equal Futures Audit initiative; the Global Cooperative Audit on Climate Adaptation Actions; audits on health service resilience, sustainable public procurement and intimate partner violence linked to SDGs. Far from the 'watchdog' role that many attribute to auditors, this is a work in which SAIs contribute to a vision of the world as a living organism, to a global team of people and a planet that can thrive into the future.

Stakeholders expect this too. The reach for SAIs extends beyond the usual connections of Public Accounts Committee, Ministry of Finance and audited entities, to multi-state and non-state actors like legislatures, civil society organisations, professional bodies, international bodies, academia and others who are often, similarly, driving towards 2030 and a sustainable, viable Earth. Even more important is the increasing expectation that SAIs will communicate as directly as possible with

---

<sup>2</sup> UN Women (2020), *UN Women raises awareness of the shadow pandemic of violence against women during Covid-19*. Press Release, 27 May 2020.

citizens, through civil society organisations, partner stakeholders, media, and other outreach channels that target citizens, or a combination of some or all of these.

Add to this the increasing digitisation of the workplace, and assisting SAIs to develop and sustain the strategic, human resources and governance capacity to fulfil these broader undertakings becomes another priority for IDI, INTOSAI and other SAI support bodies. IDI initiatives like SAI Performance Measurement Framework, SAI Performance Measurement and Reporting, Together (Human Resources, Ethics and Gender for SAIs) and StORY (Strategic and Operational Planning, Reporting) aim to build and expand these skills and competencies where needed,<sup>3</sup> while bilateral partnerships and brokerage or funding assistance provide on-the-spot support for SAIs with more fundamental requirements.

Of course, while there is great optimism and excitement about their potential, and genuine evidence of SAIs contributing on a wider playing field, it would be remiss to paint the picture for SAIs in a purely positive light. IDI's own Global SAI Stocktaking Report (GSR),<sup>4</sup> other surveys such as the Open Budget Survey from the International Budget Partnership, and metrics such as the number of SIRAM (SAI Independence Rapid Advocacy Mechanism) cases raised all indicate some deterioration in SAI status. As democracy slides backwards, so too does the independence of related SAIs. The transgressions range from reluctance or refusal to issue audit reports to the unjustified dismissal of auditors general. Gender equality is not always what we would wish for, or SAIs may simply be overwhelmed in the case of a coup or political disruption.

## **The future for SAIs**

What is heartening, however, is that increasing numbers of bigger players on a global stage are taking notice of the importance of SAIs

---

3 Additional information on these programmes and initiatives is available on the website of the International Development Initiative, [www.idi.no](http://www.idi.no).

4 Available online on the IDI website, <https://www.idi.no/our-resources/global-stocktaking-reports>.

in general, and especially taking an interest in their independence. INTOSAI, IDI, the INTOSAI Donor Cooperation Goodwill Ambassador for SAI Independence,<sup>5</sup> the GSR and donors – all are bringing to wider attention the vital role undertaken by Supreme Audit Institutions in strong public governance and democracies. Other stakeholders are highlighting the impact of SAIs in campaigns to fight corruption and promote transparency and accountability, while SAIs are also becoming responsible for auditing other trends less obviously connected with finance as they are mapped out around the world – such as adapting to climate change or equal futures, to name but a few.

This, then, is the future-forward challenge set out for SAIs. They will need to deliver to a mandate that is broader and yet simultaneously deeper. They must remain agile, able and willing to pivot, and up to date with the latest knowledge, information and tools. In all of this, they must respond to the environment and have the ability and capacity, wherever possible, to focus where they can have impact and a visible role in strong public financial management, governance and transparency, with an emphasis on audit impact.

Audit impact can be described as the contribution of the SAI's audit work to positive effects on people and planet (on a society/group/area), especially those left behind, or at risk of being left behind. Supreme Audit Institutions live by INTOSAI Principle 12, the principle of making a difference by contributing value and benefits, and IDI's Facilitating Audit Impact (FAI) initiative envisions impact-driven SAIs which are demonstrably making that difference. For IDI, for instance, SAIs demonstrate greater audit impact by conducting high quality and impact driven audits, having robust follow-up systems and fostering strong stakeholder coalitions that work together for greater audit impact.

In short, there is increased and ever-growing recognition of the fact that SAIs help to build and uphold strong public governance and contribute to a thriving planet and population. In a fearful world, the knowledge that a formally appointed office may have the power to openly demonstrate the government's strengths and weaknesses (even to the point of singling out corrupt practices or individuals)

---

<sup>5</sup> The Rt. Hon. Helen Clark, former Prime Minister of New Zealand, appointed Goodwill Ambassador on 1 January 2022 for an initial term of three years.

brings comfort. Speaking the truth, of course, is never without risk, but understanding that there is a mouthpiece for this particular truth can lead to an interconnected, impactful role that SAIs are uniquely positioned to play.

## **Conclusion**

So back to our question of the level of citizen knowledge about their Supreme Audit Institutions. Why, as such a notable role-player in the rich annals of recorded history, would the name, nature and necessity of the Offices of the Auditor General, National Audit Office, State Audit Office, Court of Accounts, Court of Audits and other SAI titles not come immediately to mind in a poll or survey?

Perhaps it's because our State Audit Institutions reflect the context in which they exist.

The context for Cato the Younger? Chancing execution by confronting the emperor about his ambiguously obtained personal treasury, and the battles upon which it was expended.

The context for auditors two centuries ago? The industrial and other revolutions taking place, that would have directed the need to monitor expansion, workforce mobilisation or shifting monetary foundations, and report to the governments financing change.

For today's public auditors? The context is one of global crises, national priorities, and watching how governments of all kinds are rising – or not - to the challenge of serving people and planet most effectively.

In the twenty-five years since the formal independence of the SAI of Malta, the rate of contextual change has become exponential. More and more is being demanded of our supreme audit institutions. As they continue to rise to the challenge of being as effective, accountable and inclusive as possible, so the lens through which they are seen shifts: from that antagonistic Quaestor-Emperor relationship to the SAI as a contemporary, fibre-glass bridge between governments and the people they represent and serve - strong, flexible, transparent.

## CHAPTER 2

# The independence and jurisdiction of supreme audit institutions: gains and losses, threats and opportunities

*Noel Camilleri*

### **The concept of independence**

Independence is a vital prerequisite for Supreme Audit Institutions (SAIs) to provide an effective oversight function on government activities. Without it, SAIs cannot promote accountability, transparency, and other elements of good governance. Independent and impartial SAIs are well positioned to support the rule of law, integrity, economic growth, social justice, the fight against fraud, corruption, inefficiencies and waste in the public sector. In so doing, SAIs contribute towards the strengthening of parliamentary scrutiny, the confidence of citizens in the public sector and, ultimately, a country's stability and prosperity.

The importance and relevance of SAI independence is widely recognised and highlighted in various documents issued by institutions such as the International Monetary Fund (IMF), the World Bank (WB), the Organisation for Economic Cooperation and Development (OECD) and the United Nations General Assembly.

There is consensus among academics and the audit profession on the broad meaning of independence. However, while academic literature defines independence in terms of the relative outcomes that a SAI creates, auditors define independence relative to the internal and external challenges that SAIs normally face. Academic literature

focuses more on SAI control over their budget and staffing decisions; practitioners focus on external elements that could potentially prevent SAIs from conducting audits and disseminating findings. Essentially, the divergence between the two is a matter of emphasis rather than different conceptualisations of independence (INTOSAI IDI 2021: 4 - 7).

### **The Lima and Mexico Declarations**

With the adoption of two key documents, namely, the INTOSAI Lima and Mexico Declarations, the International Organization of Supreme Audit Institutions (INTOSAI), has been instrumental in defining the concept of SAI independence.

The Lima Declaration (INTOSAI 1977), endorsed in 1977, sets out the principles of independence of public sector auditing. This was the first document to comprehensively argue the importance of independence of SAIs in fulfilling their mandate. It emphasised that SAIs can only be objective, credible, and effective if they are independent of the audited organisation and protected from external pressures and influences. The principles laid down in sections 5 to 7 of the Mexico Declaration on SAI independence, endorsed in 2007, talk about organisational, functional, and financial independence (INTOSAI-P 10 2019).<sup>1</sup>

*Organisational* independence ensures that SAIs act free from the instructions of any external body or authority, and that auditors conduct work without any external influence or interference. The Head of a SAI has supreme authority in all staff-related matters. *Functional* independence essentially means that the audit mandate of the SAI is enshrined in the Constitution, while the SAI is able to determine its own audit programme, draft reports, and publish them. *Financial* independence implies that SAIs can directly request funding from Parliament and can freely utilise the appropriated budget during the financial year.

In view of the growing challenges encountered by SAIs, in 2007 INTOSAI issued a second key document known as the Mexico

<sup>1</sup> INTOSAI-P – 10 (2019), *Mexico Declaration on SAI Independence*. Endorsed 2007, amended 2018, relabelled INTOSAI-P 10 with editorial changes in 2019.



Declaration. This Declaration presents eight (8) conditions, also known as pillars of independence, that constitute benchmarks against which the independence of SAIs can be compared.

### **The eight pillars of SAI independence**

The existence of an appropriate legal framework and the effective application of the provisions of the law is the first pillar of the Mexico Declaration. Legislation needs to be sufficiently detailed to spell out the extent of independence required by the SAI. Through its Code of Professional Conduct, the SAI adopts a corporate behaviour that enables it to keep at arm's length from the Executive. In practical terms, the SAI needs to distance itself from the Executive, except to the extent needed to accomplish its audit work.

The second pillar refers to the independence of the Heads of SAIs, including security of tenure and legal immunity in the normal discharge of their duties. This is safeguarded through legislation specifying the appointment, re-appointment, removal or retirement of the Head of the SAI through a process that is completely independent of the Executive. Appointments should be sufficiently long to enable Heads of SAIs to carry out their mandates without fear of retribution, while the official should be immune from any prosecution that could ensue from decisions or activities undertaken in discharging the SAI's audit mandate.

An SAI needs to have a sufficiently broad mandate and full discretion in the discharge of its functions. Thus, the third pillar of the Mexico Declaration empowers SAIs to audit the use of public monies, resources and assets within the context of regularity, financial management and reporting, as well as the economy, efficiency, and effectiveness of the operations of government departments and public bodies. This pillar safeguards SAIs from any influence in deciding on the selection, planning, execution, and reporting of their audit assignments. On the other hand, unless specifically prescribed by law, SAIs are not expected to audit policy but rather policy implementation. Moreover, they should not be involved or appear to be involved, in any manner whatsoever, in

the management of the organisations that they audit. Best practice holds that SAIs' work should be based on audit standards and a code of ethics issued by INTOSAI and other standard-setting bodies.

The fourth pillar suggests that SAIs should have adequate powers to obtain timely, unfettered, direct, and free access to all the necessary documents and information, for the proper discharge of their statutory obligations.

The fifth pillar of the Mexico Declaration articulates the right and obligation of SAIs to report on their work. SAIs should not be restricted from reporting the results of their audit work. On the other hand, it is their duty, and should indeed be required by law, to report at least once a year on the results of their audit work.

Pillar number six makes special reference to the freedom that SAIs must enjoy, to decide the content and timing of their reports as well as their publication and dissemination. With regard to the content, this implies that SAIs must be free to make observations and recommendations in their audit reports, of course taking into consideration the views of the audited organisation. Publication and dissemination would normally follow the tabling of reports in parliament or submission to other pertinent authorities as may be applicable in the country concerned.

An independent SAI should have an effective follow-up mechanism to ensure that the audited bodies properly address their observations and recommendations as well as those made by the legislature, or a committee of the legislature such as a Public Accounts Committee. As with all other reports, follow-up reports are usually presented to the legislature for consideration and action, and are duly published.

The eighth and last pillar of independence embodied in the Mexico Declaration revolves around the financial and managerial autonomy of SAIs as well as the availability of human, material, and financial resources. The Executive should play no role in the provision of, or access to, such resources. If the SAI is not provided with adequate resources required to fulfil its mandate, there should be adequate mechanisms for the institution to make an appeal to the legislature.

## **Challenges and threats to SAI independence**

Supreme Audit Institutions do not operate in a vacuum but in a highly complex social, economic, and political environment. Unfortunately, the evidence suggests that SAI independence is coming under threat in many countries across the globe. Indeed, the levels of financial and operational independence are on the decline (IDI 2020). This section discusses the most common risks and threats to SAI independence and the actions that are taken by SAIs to safeguard it.

It is unfortunate that sometimes SAI Heads come under fire to the extent of being threatened with removal. When the filling of a vacancy of Head of SAI is delayed or a nomination prolonged unduly, it is also construed as a direct challenge to the institution's independence. An SAI could also be faced with low funding or staffing capacity levels to a point that it becomes unable to fulfil its mandate. In such instances SAIs may resort to seeking support from parliamentary committees or engaging an external SAI to conduct a human resources and operations review. In exceptional cases where the legislature is unresponsive to the SAI's requests for funding, the institution could engage directly with the media or civil society and publicly raise issues caused by the lack of resources.

Another indirect threat to a SAI could come from the legislature itself when, for instance, it assigns work or imposes new tasks on the SAI without allocating additional resources, thereby effectively stifling the institution. This restricts the SAI's manoeuvrability, disrupts audit work plans and restricts the institution's discretion in selecting audit topics. To mitigate such risks, the SAI may seek to make clear the trade-offs, costs, and consequences of performing such unforeseen and unbudgeted additional work.

There could be instances where political interference is rife. It may be manifested in various ways, such as interference in the audit selection process, attempts to influence the results of audits or, worse still, engaging news and social media to attack the institution's credibility.

Besides invoking their governing legislation, very often SAIs tend to neutralise such threats by exercising increased transparency. For example, in terms of audit selection, an SAI could opt to publish a list of

proposed audits and work plan at the beginning of the year. It could also seek the input of the PAC or an equivalent parliamentary committee. By establishing a strong relationship with the legislature, SAIs ensure that there is clarity about the objectives of the work they conduct. Regarding unjust criticism levelled against the SAI by politically engaged media, many SAIs prefer to not react to such criticism but rather seek to act openly, transparently and ethically, and to continue to produce high quality audit reports that are widely accepted by society as a whole.

There could also be allegations that the SAI's work is biased. SAIs must therefore ensure that all their work is carried out in accordance with International Auditing Standards (ISSAIs), that their auditors exhibit high ethical standards, and that they are transparent and accountable during all the stages of the audit.

Some threats to independence may come about from internal sources. For example, poor quality audits may lead to reputational risks, with serious consequences for the credibility of an institution. Supreme Audit Institutions must continually strive to maintain effective audit processes and manuals that provide guidance to audit staff and promote consistency across the board. Having adequate quality control review arrangements ensures that the final product meets professional standards.

### **Reporting a threat to independence to INTOSAI**

Until very recently, when SAIs perceived a threat to their independence by either the legislature or the executive, they lacked proper mechanisms within the INTOSAI community to respond to such challenges effectively and swiftly. They frequently resorted to garnering support from the media or civil society, but with varying degrees of success.

In its strategic plan for 2019-2023, the INTOSAI Development Initiative (IDI) launched a workstream to fill this gap and enhance global support for SAI independence. Cognizant of the increasingly heightened risks, INTOSAI aimed at developing tools and approaches that would help SAIs respond to threats to their independence. The SAI Independence Rapid Advocacy Mechanism (SIRAM) was established

by IDI to support SAIs to sustain independence and to improve and expand coordinated responses from multiple stakeholders to threats to SAI independence. SIRAM consists of four steps: information gathering, assessment, response, and follow up. The SIRAM process is prompted when an SAI, a third party or a stakeholder identifies a threat to an institution's independence and informs INTOSAI. A report filed by an SAI moves directly to the assessment stage. On the other hand, reports made by other stakeholders are thoroughly analysed before proceeding further. Once a case is opened, INTOSAI communicates pertinent information to all its members.

The assessment stage normally consists of liaison with various stakeholders. Throughout the process, a communication line is maintained with the SAI concerned. During this assessment phase, the SIRAM team determines the exact nature of the threat. It also considers the potential reputational risks in the event of a decision not to do anything about the matter. Moreover, the team researches the context of the country concerned, including the identification of potential partnerships within and outside the INTOSAI community. This information helps in assessing the accountability framework within which the SAI operates, understanding the role of state and non-state actors in the accountability process, and identifying their potential interactions with the SAI. The assessment stage comes to a close when the target audiences for advocacy are identified along with the changes to be effected through such advocacy efforts. The ultimate goals would be to raise awareness of the problem and convince influential stakeholders that the issue is important enough to warrant action.

The response could take various forms. INTOSAI could conduct an in-country support mission to engage with segments of the target audience. This also necessitates working closely with the SAI to engage with key policy makers, as well as with civil society organisations and the media.

Another approach could be that of issuing a statement of concern which draws attention to realised or potential developments that threaten or represent breaches of the independence of the SAI.<sup>2</sup> Such a

---

2 Between 2018 and 2021, IDI issued SIRAM statements in respect of the following SAIs: SAI Chad (Oct 2018), SAI North Macedonia (Nov 2019), SAI Somalia (Nov 2019), SAI Ghana (Jul 2020), SAI Cyprus (Feb 2021), SAI Myanmar (Mar 2021), SAI Colombia (Nov 2021) and SAI Sierra Leone (Nov 2021).

**Box 1 – SIRAM: A recent case<sup>1</sup>**

In 2020, the Audit Office of Cyprus experienced significant difficulties in performing an audit of the Cyprus Investment Programme. These were mainly related to restrictions concerning direct and free access to all significant documents and information which the SAI considered essential for the purpose of the audit and external attempts to influence its decisions concerning the publication of the relevant report.

Within this context, in December 2020, the Auditor General of the Republic of Cyprus sought the intervention of INTOSAI through the SAI Independence Advocacy Mechanism (SIRAM) to “clarify to the Government, the Parliament and the Attorney General, the need to comply with [these] principles.”

In February 2021, the INTOSAI Development Initiative (IDI) issued a statement concerning the potential independence challenges faced by the Audit Office of the Republic of Cyprus, whereby it expressed concern about the inability of the Audit Office to obtain timely and free access to information; it further emphasised that such limitations could undermine the ability of the Audit Office to play its role in properly ensuring accountability for the benefit of citizens. IDI encouraged the parties concerned to establish constructive dialogue to solve the issue. Finally, it reaffirmed IDI’s commitment to initiate and support all possible actions aimed at advocating the independence of SAIs as enshrined in the principles embodied in the Lima and Mexico Declarations.

statement reaffirms the importance and value of having an independent SAI and raises awareness of the existing legal instruments supporting SAI independence. It highlights how prevailing developments put an audit institution’s independence at risk and provides corrective measures to address those risks. Finally, it offers support to the SAI and external stakeholders if and when there is a willingness to address the issue.

INTOSAI could also opt to make use of renowned, influential professionals to counter specific breaches to independence and meet with high level policy makers, Members of Parliament and the media. Finally, a more proactive and hands-on approach is evident when INTOSAI IDI provides support to legislative reforms, including legal options on incorporating the different pillars of independence into the legislative/constitutional provisions concerning a particular SAI.

<sup>3</sup> INTOSAI Development Initiative (February 2021), *Statement by the INTOSAI Development Initiative following the potential independence challenges faced by the Audit Office of the Republic of Cyprus*. <https://www.idi.no/elibrary/independent-sais/1182-idi-statement-cyprus-24-02-2021/file>. Accessed 8 September 2022.

While the foregoing measures address immediate threats to SAI independence, INTOSAI would also follow up and continue to support the institution concerned for an extended period of time after the first interventions. Further actions could be contemplated to ensure that challenges are mitigated in the longer term.

### **Assessing SAI independence**

Having a systematic process to assess independence reduces the risk of bias or misinterpretation which, in turn, plays against the SAI itself. Various international tools are available to assess SAI independence.

The INTOSAI SAI Performance Measurement Framework (SAI PMF) developed by IDI undertakes reviews of SAIs against the International Standards of Supreme Audit Institutions (ISSAI). Amongst others, the SAI PMF includes an indicator of SAI independence based on standards — INTOSAI-P 1: Lima Declaration and INTOSAI-P 10: Mexico Declaration on SAI Independence. The same INTOSAI Development Initiative conducts global surveys to assess SAI capacities and performance and issues public summaries. These are called Global SAI Stocktaking Reports.

Another tool that is often referred to when discussing SAI Independence is that developed by the World Bank (Independence of SAIs). The InSAI assessment consists of ten indicators that are considered the most critical for SAI independence. These include the legal/constitutional framework, transparency in the appointment of the Head of SAI, financial autonomy, types of audits and autonomy in staff recruitment.

The Public Expenditure and Financial Accountability (PEFA)<sup>3</sup> country assessment reports<sup>4</sup> present analysis and trends about the different pillars of public financial management (PFM), including performance in regard to SAI independence, which covers legislation,

4 The PEFA programme comprises nine international development partners namely, the European Commission, International Monetary Fund, World Bank, and the Governments of France, Norway, Switzerland, the United Kingdom and the Ministries of Finance of the Slovak Republic and the Grand Duchy of Luxembourg.

5 Available via <https://www.pefa.org/index.php/assessments>.

budget arrangements, mandate, and access to records. This tool identifies shortcomings in SAI independence which may in fact trigger the periodic assessment of the World Bank.

There are other tools targeting specific elements of SAI independence. For example, the Open Budget Survey (OBS) by the International Budget Partnership<sup>5</sup> is one such tool. The OBS is released bi-annually and examines mainly the role of the SAI in budget accountability.

**Box 2: The Maltese National Audit Office  
(PMF Self-assessment)**

An internal SAI PMF Self-Assessment report was commissioned by NAO senior management as part of the action point programme for implementation of the corporate strategy that was launched in October 2018 for the five-year period 2019-2023. The assessment was concluded in December 2021.

A PMF assesses various functional areas amongst which are audit work proper, internal governance and ethics, relationships with external stakeholders, as well as independence and legal framework.

The SAI PMF tool analyses SAI Independence under Domain A – SAI Independence and Legal Framework, which comprises two performance indicators namely, SAI Independence and Mandate of the SAI. In the assessment of this domain, carried out in May and June 2019, the NAO achieved an overall score of 3 (range is 0-4) meaning that the specific feature pertaining to each indicator was functioning broadly as expected under the ISSAIs (International Standards for Supreme Audit Institutions).

In essence the NAO was found to have a very strong legal framework that allows it to operate with the highest degree of autonomy from the Government. The report stated that ‘the NAO is sufficiently empowered to examine and inquire on any matter relating to government finance, property, assets, and funds, as well as access to the accounts and financial reports of all departments, offices and government owned entities. In this regard, the NAO enjoys an extensive mandate secured through robust and enabling legislation, in particular Section 108 of the Constitution of Malta and the Auditor General and National Audit Office Act.’ On the other hand, with regard to its mandate, clarity was further warranted since ‘The Auditor General and National Audit Office Act makes no mention of the concepts of financial and compliance auditing...’ while ‘the concept of investigations has been left to interpretation by the [Act].’

6 The International Budget Partnership is a global partnership of budget analysts and community organisers, and advocates working to advance public budget systems that work for people, not special interests. Together, they generate data, campaign for reform, and build the skills and knowledge of people so that everyone can have a voice in budget decisions that impact their lives.



## **A global perspective on SAI Independence**

A look at global trends relating to SAI independence indicates a recent decline across most of the eight principles of the Mexico Declaration. The latest survey carried out by INTOSAI IDI indicated that scores had fallen by as many as sixteen percentage points between 2017 and 2020 (Principle 7), fourteen percentage points (Principle 1) and ten percentage points (Principle 3). No decline was registered only on Principle 2 (INTOSAI IDI 2020). While in the regions covered by EUROSAI,<sup>6</sup> ASOSAI,<sup>7</sup> and North America, audit institutions enjoy an overall independence level which is above the global average, SAIs of ARABOSAI<sup>8</sup> and CREFIAF<sup>9</sup> have a much lower degree of independence. While the global average rated 75 percentage points, the average for North America was 91 points, for Europe 85 points, and for Asia 79 points. In the Arab region, by contrast, the average was 61 points (INTOSAI IDI 2020).

This study has shown that SAIs are increasingly faced with greater challenges in terms of their financial and administrative autonomy. In fact, half of all SAIs reported having insufficient financial resources to adequately fulfil their mandated responsibilities. This challenge also extended to human resources, with 70% of SAIs reporting lack of capacity, either in terms of staff competency or staffing levels.

The Report also showed that SAIs in low-income countries and in countries having a limited democratic environment were at greater risk of facing shortcomings in their legal frameworks and de facto independence.

There was also an extremely worrying deterioration, from 70% to 44%, of SAIs reporting that they had full access to information necessary to carry out their audit work. In the wake of the COVID-19 pandemic, during which many governments resorted to unconventional measures or emergency legislation that challenged the very systems of accountability, one would expect this downward trend to prevail.

---

7 European Organization of Supreme Audit Institutions.

8 Asian Organization of Supreme Audit Institutions.

9 Arab Organization of Supreme Audit Institutions.

10 African Organization of French-speaking Supreme Audit Institutions.

As has widely been discussed in this chapter, SAI independence depends on several factors and is not easily earned or achieved. The first World Bank InSAI assessment, carried out in 2021, reviewed the SAI Independence status of 118 countries across the globe. Only the SAIs of two countries were deemed to have very high independence, those in seventeen countries had high independence; thirty three countries had substantially independent SAIs; thirty seven countries had moderately independent state audit, and the SAIs of twenty nine countries enjoyed low independence (World Bank 2021).

As can be seen from Table 1 below, the overall scores for the technical aspects of independence, such as audit scope autonomy and audit mandate, were far better than others relating to financial and staffing autonomy. Middle tier indicators included Constitution and legal framework and transparency in the process of recruiting the Head of SAI, which go to show that there is much room for improvement in these areas of vital importance to SAIs. After all, a SAI's reputation relies on the perception of its impartiality.

**Table 2.1 – World Bank InSAI Indicator Scores**

<b>Indicator</b>	<b>InSAI Score</b>	<b>Scores&lt;1</b>
1. Constitutional and Legal Framework	.66	7
2. Transparency in the process for appointing the SAI Head	.58	8
3. Financial Autonomy	.49	10
4. Types of Audit	.73	6
5. Operational autonomy	.75	5
6. Staffing autonomy	.50	9
7. Audit mandate	.83	2
8. Audit scope autonomy	.86	1
9. Access to records and information	.82	3
10. Right and obligation on audit reporting	.80	4

*Source: World Bank 2021*

*Note: InSAI = Independence of Supreme Audit Institution.*

## **The evolving concept of SAI independence and other emerging developments**

Not only has the role of SAIs changed over time: it has also evolved. What follows essentially deals with this gradual evolution, citing examples of how, in the process, this has re-dimensioned the meaning of SAI independence.

### *SAIs as part of the accountability ecosystem*

Traditionally, a SAI has been viewed as that State body which confirms that the financial resources of an auditee are used properly, and that the financial statements produced by a State organisation give a true and fair view of the state of affairs. It was seen purely as a technical function. The emergence of international auditing standards or more specifically, ISSAIs, as well as the increased interest in efficiency, effectiveness, and compliance, changed all this. The SAI effectively became an essential stakeholder in a country's 'accountability ecosystem' holding the government to account and investigating whether it is achieving its policy objectives. Mandates were broadened, which inevitably led to a greater challenge for SAIs in keeping a healthy relationship with audited bodies, collaborating closely with them to understand their operations, while at the same time maintaining an impartial and independent position. In addition, since in some respects performance audits entailed the review of public policy, SAIs became more prone to criticism that they could potentially cross the fine line between an objective reviewer and a policy maker.

The marked shift from a purely technical institution to one that is a critical player within the network of accountability institutions, is indeed a significant evolution that impacts SAI independence. The accountability and oversight ecosystem includes core institutions such as parliament and the judiciary. It also includes independent institutions having specific accountability and oversight mandates, such as SAIs themselves, Ombudsman institutions, Offices for Standards in Public Life, and anti-corruption commissions. Finally, it may also include non-governmental oversight bodies, such as the media, civil society, and the private sector. The role of the SAI within the accountability and oversight ecosystem depends on a country's accountability infrastructure.

This evolving concept of the SAI as an element of an accountability and oversight ecosystem could indeed strengthen SAI independence by providing the institution with additional tools. For example, in the absence of enforcement powers, an SAI could provide an independent anti-corruption commission with information and findings for appropriate action on the latter's part. Through its findings, an SAI could help identify gaps and weaknesses in the internal control systems of government departments or the services delivered by such organisations, upon which, for example, internal audit or the ombudsman could seek to act. An SAI could also collaborate with the media, non-governmental organisations, or civil society to turn findings which may indeed be technical into a more readable, public-friendly format, and to disseminate them across targeted audiences.

Admittedly, it is challenging for an SAI to position itself within the accountability and oversight ecosystem discussed above. Indeed it may need to rethink its internal understanding of independence. This does not imply compromising on the elements contained in the Lima Declaration or the eight principles. On the contrary, it means that the SAI would consider how it could build and maintain productive relationships with other stakeholders within the accountability and oversight ecosystem, the judiciary, and the legislature, so that it could use the full array of options available to secure follow-up on its recommendations.

#### *'Audit and Advisory' and SAI independence*

In the last decade or so, a new trend has emerged within the SAI community. The trend suggests that the purely retrospective identification of shortcomings is no longer sufficient for SAIs to be seen as an effective element of control. In this regard, SAIs should not limit themselves to traditional auditing but rather unleash their full potential by taking an advisory approach on the basis of their audit work. Therefore, SAIs must make proposals and prepare solutions for more economic and efficient public financial governance, and should integrate the solutions as effectively as possible into the process of governmental reform. Through the provision of advice, SAIs would increase their impact and reach the audited bodies, decision-makers,

and the public at large more effectively. The SAI then truly becomes a catalyst for change.

This so-called advisory approach enhances the effectiveness of SAIs; it nurtures more efficient use of funds, better governance, development and greater visibility of the value and benefits of SAIs. However, in carrying out advisory activities, SAIs need to be aware of the risks involved. To mitigate such risks, advice should be based on previous audit work. Supreme audit institutions cannot become involved in the daily business of government; they should not criticise political objectives but focus solely on processes and the trail of decisions.

Those advocating an enhanced advisory role for SAIs suggest that through methodological consistency, auditors could acquire legitimacy for their advisory activities. They believe that this would be conducive to audit conclusions being more readily accepted by the auditee and for a relationship of trust to be established between the auditor and the audited entity. They regard SAIs as being bodies that are uniquely positioned to cooperate with various stakeholders in the interest of society and its citizens. This would not weaken SAI independence, but rather, strengthen it further.

*Citizen engagement: an opportunity to strengthen SAI independence?*  
Governments across the world have increasingly been regarding citizen engagement as a key mechanism to help them attain improved performance. Despite the growing recognition of the benefits to be derived, only a few SAIs have fully accepted and assimilated citizen engagement in their work practices. The seeming hesitation about citizen/SAI engagement could arise from a lack of understanding of the reasons why SAIs and civil society and citizens should engage with each other, the benefits of such a relationship, or whether such engagement is at all possible given SAIs' legal mandate and their ethos of independence. Many SAIs remain reluctant, as they believe that they are ill-equipped in terms of capacity and expertise to actively manage such relationships.

There is increasing evidence demonstrating the added-value of SAI-citizen engagement around the audit cycle and budget oversight at national level (Effective Institutions Platform 2014). SAI-citizen

engagement mechanisms allow both parties to leverage and amplify their capacity and voice respectively, which is often necessary to ensure an adequate response to the audit recommendations presented to the executive. This also leads to synergies that raise the impact of SAIs and citizens alike, and ultimately translates into improved service delivery and effective use of public resources. Finally, as SAIs make their work visible and engage with external stakeholders, they build trust and a strong reputation for the operations they perform, which ultimately reinforces their autonomy from government and, hence, their independence.

### **Box 3: Examples of citizen engagement**

The General Audit Office of Argentina (AGN), holds public meetings and informational gatherings with civil society organisations (CSOs) on an annual basis, so that they may make proposals on institutions and programmes to be audited for possible inclusion in the Audit Plan for the following year. The institution leverages on the experience and knowledge of the topics and issues in each organisation's area of expertise, which help identify areas for which oversight is critical. It is believed that both the institutional relevance and overall impact of the AGN's work increase significantly when the interests of the ultimate beneficiaries of the oversight function are actively considered in the design and execution of its work.

A similar case is that of the Office of the Comptroller General of Paraguay which, in 2014, embarked on an initiative aimed at advancing SAI openness to citizen engagement in order to generate demand and increase social ownership of instances of participation by CSOs specialising in sector issues, especially those relating to the environment. Through collaboration with a number of government departments, the SAI organised workshops with civil society organisations working in the sectorial agenda to receive citizen input which could enrich the SAI's audit planning process.

In November 2010, the Mexican Supreme Audit Institution, the Auditoría Superior de la Federación (ASF) established an Ethical Reporting Line (Línea Ética de Denuncia-LED) through which, it gathers citizens' complaints and comments in order to consider them as inputs for the Annual Audit Program. LED operates through a hotline (01 800 911-7373), where calls may be anonymous, and a website hosted in the ASF's portal, where any person who sees an inadequate use of public resources may file a report. This provides a mechanism through which the ASF seeks to reach out to citizens while at the same time establishing a communication channel for concerned citizens, thus strengthening transparency and participation in the ASF's work.

*(Source: World Bank Group: E-Guide on Engaging Citizens in the Audit Process)*

*SAI independence in emergency situations: the COVID-19 pandemic*

Over the past two years, the world has been through an unprecedented period which powerfully impacted the social and economic aspects of human life. Everyday life as we knew it came to an abrupt halt. The COVID-19 pandemic and the huge tranches of emergency funding brought to the fore the risks involved in the management and use of such funds, as well as the role of SAIs in ensuring oversight and accountability in times of crisis. Many SAIs saw their ability to operate heavily affected by the pandemic. More importantly, some institutions such as the World Bank, indicated that risks to independence could be higher in times of crisis, citing issues relating to reduced budget allocations for SAIs (World Bank 2021).

In June 2021, the INTOSAI Development Initiative (IDI) launched a survey seeking responses from SAIs worldwide on the impact of the COVID-19 pandemic on their independence in the period March 2020 to June 2021. Thus, SAIs were expected to answer questions relating to the status of the key principles of independence as established by INTOSAI in the Mexico Declaration 2007.

The study confirmed and to a great extent reinforced pre-pandemic SAI independence patterns across the globe. Those countries that had challenges with independence before the pandemic experienced a greater impact on different domains (or principles) of independence during the pandemic. SAIs in countries that were under-resourced before the pandemic went through budgetary cuts during the pandemic, and this did not necessarily come through legislative approval. On the other hand, while the pandemic impacted the scope and number of audits conducted, most SAIs reported that this did not impinge on their freedom and autonomy in the selection of topics, timing, and contents of audits, including those in connection with COVID-19 emergency spending. While, due to the prevailing circumstances, SAI engagement with external providers of emergency funding was limited, SAIs did not report serious risks to their independence in this regard.

In essence, the study conducted by INTOSAI IDI indicated that shocks to the external social and economic environment in which SAIs operated affected SAI independence to varying degrees. As the study rightly points out, one would have to see whether such effects are

temporary or will continue to have a long-lasting effect on the ability of SAIs to operate independently.

### **Concluding remark**

Supreme Audit Institutions can accomplish their mandated tasks objectively and effectively only if they are independent from the bodies they audit and protected against external influence. This chapter gave the reader an introduction into the concept of SAI independence; it examined the principles of SAI independence, making reference to the landmark INTOSAI Lima and Mexico Declarations. It discussed the threats and challenges to SAI independence and how the SAI community devised mechanisms to garner and provide support to SAIs whose independence is under duress. The chapter outlined the various instruments by means of which SAI independence could be assessed and measured and gave an overview of the prevailing situation across the globe. Finally, the evolution of the concept of SAI independence over time and some new emerging themes and trends relating to it were analysed, giving the reader an outlook on the future of this intriguing area of public audit.

Achieving and retaining *de jure* and *de facto* independence is a continuous challenge faced by all SAIs across the globe. While aspects of SAI independence may be easily attained, others need to be earned through hard work and perseverance. In this regard, the sound advice given by David Goldsworthy in his paper, *Making SAI 'independence a reality' – Some lessons from across the Commonwealth*, provides SAIs with the necessary impetus to do just that:

One of the best ways to obtain greater independence is to operate as though you already have greater independence. The more an SAI can demonstrate that it can produce high quality audit reports which are useful to public bodies and bring about beneficial change, are accessible to literate members of the public, and are delivered to time and budget, the more likely the SAI will gain the greater independence it is seeking. (Goldsworthy, 2014)



## Bibliography

- Effective Institutions Platform (2014), *Supreme Audit Institutions and Stakeholder Engagement Practices: A Stocktaking Report*. [www.intosaidonor.org](http://www.intosaidonor.org) (accessed 27 October 2022).
- Goldsworthy, David (2014), *Making SAI Independence a Reality*. London: National Audit Office.
- INTOSAI (1998), *The Lima Declaration* (ISSAI 1). Vienna: INTOSAI General Secretariat.
- INTOSAI (n.d), *INTOSAI Guidelines and Good Practices Related to SAI Independence* (ISSA 11). Vienna: INTOSAI General Secretariat.
- INTOSAI IDI (2014), *Global SAI Stocktaking Report 2014*. Oslo: INTOSAI Development Initiative.
- INTOSAI IDI (2017), *Global SAI Stocktaking Report 2017*. Oslo: INTOSAI Development Initiative.
- INTOSAI IDI (2020), *Global SAI Stocktaking Report 2020*. Oslo: INTOSAI Development Initiative .
- INTOSAI IDI (2021a), *SAI Independence: Literature Review on Supreme Audit Institution Independence*; Occasional Paper No.1. Oslo: INTOSAI Development Initiative.
- INTOSAI IDI (2021b), *SAI Independence: Impact of the COVID-19 Pandemic on the Independence of Supreme Audit Institutions*; Occasional Paper No. 2. Oslo: INTOSAI Development Initiative.
- INTOSAI IDI (n.d.), *Strategic Plan 2019-2023*. (Oslo: INTOSAI Development Initiative.
- INTOSAI SIRAM Statements on Independence, <https://www.idi.no/work-streams/independent-sais/siram/statements>.
- United Nations Department for Economic and Social Affairs/INTOSAI (2013), *Report on the 22nd UN/INTOSAI Symposium Audit and Advisory Activities by Supreme Audit Institutions (SAIs): Opportunities and Risks, as well as Possibilities for Engaging Citizens 5-7 March 2013, Vienna*. New York: United Nations.
- OECD (2011), *Good Practices in Supporting Supreme Audit Institutions*. Paris: OECD.
- PEFA Country Assessment Reports, <https://www.pefa.org/index.php/assessments>
- World Bank (2021), *Supreme Audit Institutions Independence Index, 2021 Global Synthesis Report*. Washington DC, World Bank Group.
- World Bank (n.d), E-guide on Engaging Citizens in the Audit Process, <https://www.e-participatoryaudit.org/index.html>.



## CHAPTER 3

### One report, multiple interpretations: A constitutional body reporting in a polarised society

*William Peplow and Maria Azzopardi*

#### **Introduction**

In 2018, the National Audit Office published a report entitled *An investigation of matters relating to the contracts awarded to ElectroGas Malta Ltd by Enemalta Corporation*. Maltese news and social media gave this report prominence, a reflection of the financial materiality, socio-economic implications and political sensitivity surrounding the conversion and extension of a liquefied petroleum gas (LPG) power station. The then Leader of the Opposition was quoted as saying, “it is now crystal clear the agreement had been tampered with from day one” (*Times of Malta* 2018a). On the other hand, the Government and governing party spokespersons rebutted these comments, declaring that the Auditor’s Report confirmed that the contract for the project was awarded to whoever truly deserved it (TVM 2018a). The report was also extensively discussed within the Public Accounts Committee (PAC), where, up to end May 2022, the PAC had allocated 34 sittings to the matter. Multiple interpretations of the National Audit Office’s Report also characterised the PAC. The heated discussions and argumentation within the Committee prompted the *MaltaToday* editorial titled: ‘The PAC: the playpen of democracy’ (*MaltaToday* 2021a).

Such diametrically conflicting reactions constitute the starting point for this study, which seeks to identify the circumstances which elicit various interpretations of reports by the National Audit Office. It is not the purpose of this chapter to analyse the merits or otherwise of the mega-project but rather to evaluate the phenomenon of stakeholders' multiple interpretations of the NAO's reports.

A critical function of State Audit Institutions, such as Malta's National Audit Office, is to publish independent, objective reports on any matter concerning public funds. Growing expectations of improved governance imply that SAIs' principal task is to examine whether public funds are spent economically, efficiently and effectively in compliance with existing rules and regulations and consistently with national priorities. Well-functioning SAIs can play an important role in confirming that controls are effective, identifying waste and suggesting ways in which government organisations can operate better. They do this by producing rigorous, objective audit reports aimed at bringing about beneficial change in the way governments manage public resources. Within this context SAIs face an important challenge to comply with the Mexico Declaration on SAI Independence (INTOSAI – P 10, 2019), which supports using audit reports more often and promoting transparency. Three principles are especially important:

- Principle 5: The right and obligation of SAIs to report on their work
- Principle 6: The freedom to decide the content and timing of audit reports and to publish and disseminate them
- Principle 7: The existence of effective follow-up mechanisms on SAI recommendations.

Moreover, International Standards of Supreme Audit Institutions (ISSAIs), regulate all aspects of SAI operations, including reporting. The NAO fulfils the INTOSAI established criteria related to its independence, operational and reporting functions, which assures that it is in a position to provide and report on its oversight function of public funds. The NAO's credibility is also widely recognised. In 2014, Marie Louise Coleiro Preca, then President of Malta, commented that:

Constitutional checks and balances on the power of public officials are necessary but not sufficient to restore the citizen's trust in those who hold public office. A profound commitment to the common good, a concern for the most vulnerable and unshakeable personal integrity are equally necessary.

In this matter too, I am glad to say that Malta's state audit has a praiseworthy record: generations of audit staff, ably led by their auditors general, maintained a fine tradition of ethical public service. Though wary of public controversy, they nonetheless 'speak truth to power' whenever the need arises... (Warrington & Pirotta 2014: x)

The civil society association *Repubblika* also lauded the NAO as one of the 'integrity institutions', expressing appreciation for institutions "that are still observing the oath of office that they undertook in favour of upholding standards of good governance and promoting the rule of law, namely the National Audit Office, the Commissioner for Standards, and the Ombudsman" (*The Malta Independent* 2021a).

The foregoing suggests that the NAO is contributing towards better public governance through its work, which tends to be epitomised by its reports. Terms such as credibility and integrity imply that the NAO's reports stand up to public scrutiny and conform to the principles of independence and objectivity. At this point the question therefore arises, why is NAO reporting subjected to multiple, contrasting interpretations by stakeholders?

## **Methodology**

In seeking to understand the circumstances which prompt various interpretations of NAO reviews, the authors examined the public response to three reports which were published during the period 2016 to 2021. The reports represent the work of the three major units within the NAO: Financial and Compliance, Performance Audit, and Special Audits and Investigations. They were subjectively sampled following discussions on the subject with NAO officials. While the reports selected

are not statistically representative, their analysis would, at the very least, provide anecdotal evidence of the ways in which NAO reports are interpreted by the media and other stakeholders. This study elicited the main NAO messages, in terms of audit findings and conclusions, through the reports themselves and the respective press releases.

Through content analysis of various sources, the second phase of the study entailed reviewing stakeholders' reactions to the three reports. Sources included media reports, PAC transcripts, as well as publicly available comments and documentation. Taken singly, none of these sources can be seen as providing conclusive evidence, since their selection is subject to various limitations: primarily that these sources were sought from data which was subjectively collated by the NAO for internal purposes. Nonetheless, triangulating the trends emerging from the content analysis provides robust indicators as to the potential reasons NAO reports are given various interpretations. Before proceeding to the content analysis, however, a word must be said about audit reports; the Maltese political context also calls for attention.

### **NAO reporting**

SAI reports are critical tools intended to contribute to good public governance. Such tools, however, must be used prudently, objectively and independently. NAO Malta compiles its reports following a complex, meticulous process involving audit planning, fieldwork and analysis. These functions are carried out in accordance with ISSAIs. ISSAI 300 and 400 relate to the reporting standard of government auditing (financial and compliance as well as performance auditing). To this end, ISSAI 400 outlines that the term reporting embraces both the auditor's opinion and other remarks on a set of financial statements as a result of a regularity (financial) audit. ISSAI 300 outlines that reporting includes the auditor's report on completion of a performance audit. Audit reports should state clearly the objectives and scope of the audit. They may include criticism (for example where, in the public interest or on grounds of public accountability, matters of serious waste, extravagance or inefficiency are drawn to attention) or may make no

significant criticism but give independent information, advice or assurance as to whether and to what extent economy, efficiency and effectiveness are being or have been achieved.

Similarly, the auditor's opinion on a set of financial statements is generally embodied in a concise, standardised format which reflects the results of a wide range of tests and other audit work. There is often a requirement to report on the compliance of transactions with laws and regulations, as well as matters such as inadequate systems of control, illegal acts and fraud. All NAO reports are to varying degrees subject to quality control, whereby all findings and conclusions are reviewed within the context of audit evidence elicited during the audit.

Another layer of complexity in SAI reporting emanates from the broad spectrum of stakeholders. Not only are stakeholders consulted during the audit: to optimise its benefits, auditors must consider that their reports address the specific interests of certain stakeholders. The NAO's stakeholders include members of the House of Representatives (to which the Auditor General is legally obliged to report), ministries and government organisations, political parties, the news media, supranational administration, non-governmental organisations, academics and the general public. ISSAI 300 reiterates this by prescribing that auditors should maintain effective and proper communication with the audited bodies and relevant stakeholders throughout the audit process, as well as defining the content, process and recipients of communication for each audit.

The NAO seeks to ensure that its reports offer all readers an opportunity to follow the findings noted therein. It does so by reporting technical matters in a format that permits the widest possible audience to grasp the subject matter. To this end, it employs infographics and produces abridged versions and short videos. On occasions the Auditor General complements these aids by giving interviews to local news media. All these elements are intended to attain the objectives advocated by ISSAI 300 which promotes SAI reports that are objective, complete, accurate, convincing, constructive, timely, and as clear and concise as the subject-matter permits (ISSAI 3100/31).

Moreover, ISSAI 300 notes that auditors should seek that their reports are widely accessible in accordance with a SAI's mandate.

Within this context, the NAO has an audit report distribution policy whereby each report is firstly presented to the Speaker of the House of Representatives, then forwarded to the Chairman of the Public Accounts Committee and to media houses and all stakeholders, as well as being published on the Office's social media portals. It is through this process of dissemination that the range of sometimes contrasting interpretations of a report arises. Does the country's political system affect the reception of an audit report and, if so, in what ways?

### **The Maltese political context**

It has long been assumed that smaller communities are more prone to particularistic politics. Veenendaal (2019: 1034) asserts that the Maltese social environment:

reveals not only that patron–client linkages are a ubiquitous feature of political life in Malta, but also that the smallness of Malta strongly affects the functioning of clientelism by eliminating the need for brokers and enhancing the power of clients versus patrons. In addition, clientelism is found to be related to several other characteristics of Maltese politics, among which the sharp polarisation between parties.

Pirotta et al (2020) and Vassallo (2022) also confirm this view. Pirotta et al (2020: 7-8) noted that, as in other countries in Southern Europe, the state in Malta has long been divided into two main groups. On the one side there is a conservative, traditional and religious elite, and on the other a nascent liberal, progressive and anti-clerical counter-elite. For example, although Malta's status as a neutral republic and member of the European Union has gradually garnered a consensus, the two main political parties continue to tap into previous divisions in order to further their own short-term interest, and to generate support based on party identification. This situation is further exacerbated by other political, institutional and socio-cultural variables:



- Many pressure groups are led by individuals who are also activists in a political party.
- The two main political parties own their own sound, print and visual media, which are used to fan controversies.
- The winner-takes-all political system generates a zero-sum game in which parties in opposition tend not simply to oppose governments, but to lay siege to them, often circulating false stories and spreading unsettling rumours.
- The introduction of multi-level government between 1993 and 2004 now means that these conflicts have been replicated at local and supranational/international levels, extending the battlefields ‘downwards’ to localities and ‘upwards’ beyond Maltese shores.
- As in other states, the need to bring perpetrators of political violence to justice has also continued to entrench polarisation.

These and other scholarly studies demonstrate that NAO Malta is operating in a complex external environment which is characterised by profound polarisation of public and media opinion; this in turn is generated by the contending political interests of two major political parties. We argue that such polarisation is leading to divergent interpretations of audit reports that affect the political interests of Government and Opposition in a two-party system that produces clear parliamentary majorities. The next sections analyses three NAO reports and the controversies associated with them, with a view to understanding the causes and pattern (if any) of contrasting reception of such reports.

### **Content analysis of three sampled reports**

For the purpose of this study, three reports published between 2016 and 2021 were selected for study. They represent the three main auditing sections within NAO, namely the Performance Audit, Financial and Compliance, and Special Audits and Investigations. Our analysis sought to determine the extent to which stakeholders interpreted faithfully the audit findings and conclusions therein. Within this context the term ‘faithfully’ has been defined as:

- i. the spirit of the NAO message was fully understood;
- ii. reporting or interpretation of the NAO's message was not selective or distorted;
- iii. there were no significant omissions from the NAO's message;
- iv. discussions relating to the NAO report were not only tangentially relevant to this Office's message.

The elements were analysed through content analysis of a several sources (cf. Methodology). Content analysis enables researchers to sift through large volumes of data with relative ease and in a systematic way. Making valid inferences from the text requires a reliable, consistent classification procedure. Nonetheless, this approach is subject to a limitation whereby the reliability coefficient of the findings may be artificially inflated (Krippendorff 1980: 51). The issues drawn from the contents analysis were then evaluated in terms of the NAO's stakeholders. To mitigate the potential limitations of content analysis, the researchers considered that a stakeholder's interpretation of an NAO report had to feature in at least two different sources.

We now proceed to analyse the three sampled reports. Each is treated separately and evaluated against the foregoing criteria. An outline of the main findings of each report precedes each analysis.

### **Report 1: The Free Childcare Scheme (2016)<sup>1</sup>**

A scheme introduced by the Ministry for Education and Employment in 2014 sought to increase the participation of women in the labour market through the provision of free childcare. Under the scheme the Ministry procures a predetermined number of childcare hours from centres licensed to provide such services and parents/guardians enrol their children aged between three months and three years at these facilities. The NAO's financial and compliance audit mainly revealed that:

- The Ministry lacked control over the service providers. The implementation of a fully automated attendance recording system

---

<sup>1</sup> Published in the Annual Audit Report on the Public Accounts for 2015.

introduced in early 2016 did not adequately mitigate the risks relating to a significant volume of undue payments to childcare centres.

- Childcare attendance records maintained by the Foundation for Educational Services were considered unreliable. The NAO could not confirm that the Foundation was adequately verifying childcare centres suppliers' payroll for correct processing and prior approval of overtime for longer hours of operation.

The extent to which stakeholders faithfully interpreted the aforementioned findings are set out in Table 3.1 below.

Table 3.1 records the stakeholders' interpretation of the Free Childcare Scheme Report against the evaluation criteria established for the purposes of this study. This analysis showed the following:

- i. None of the political parties made specific reference to the NAO report.
- ii. Through their management comments and the ensuing governance report issued by OPM, auditees registered their agreement with the NAO's findings and conclusions.
- iii. Similarly, independent media houses reported faithfully the NAO's message transmitted through this Report. Nonetheless, some media houses were selective in their reporting of issues raised by the NAO.
- iv. The three PAC meetings on this topic, which was proposed for discussion by the governing party, ensued after the NAO published a follow-up report in 2020. It is to be noted that generally the NAO reported positively on the action taken by the Ministry of Education and Employment to rectify matters raised in the original report of 2016. The PAC discussions focused on the extent to which the Government's objectives of the scheme were achieved.
- v. The only source of disagreement with the NAO findings and conclusions emanated from The Childcare Centres Providers Association. This business organisation refuted claims of

**Table 3.1: Stakeholders' interpretation of NAO's report on the Free Childcare Scheme**

	NAO stakeholders							Supplier
	Political Parties		Auditees	NGOs	Public	PAC	Independent media houses	
	A	B						
The spirit of the NAO message was fully understood	No comments	No comments	Yes	No comments	No comments	No comments	Yes	No
Reporting or interpretations of the NAO's message was selective or distorted	No comments	No comments	No	No comments	No comments	No comments	Yes	Yes
There were significant omissions from the NAO's message	No comments	No comments	No	No comments	No comments	No comments	Yes	N/a
Discussions relating to the NAO report were only tangentially relevant to this Office's message	N/a	N/a	No	N/a	N/a	N/a	No	No

rampant abuse and misconduct by operators, following the publication of the Auditor General's report on the Free Childcare Scheme: "It is true that some of them may have indeed abused the system, but those identified were immediately investigated by the ministry, which stopped all payments to those centres" (*MaltaToday* 2016).

The Free Childcare Scheme Report could not be considered as addressing a politically sensitive issue. In this regard, a politically sensitive issue is understood to mean a matter that has dominated the local news and social media for a considerable period and that there was major disagreement among the political parties and other stakeholders. Furthermore, the publication and ensuing discussions of this Report did not occur in a political environment fired by partisan sentiment, such as that typifying an electoral campaign. Nonetheless, the rebuttal by the Childcare Centres Providers Association of the NAO's findings and conclusions imply that the former may have potentially viewed the fall-out of the NAO report in terms of financial losses and a decline in the credibility of the members. Consequently, the unintentional or otherwise misinterpretation of the NAO's message came about from a stakeholder which had a direct, economic stake in the matter.

## **Report 2: An investigation of matters relating to the contracts awarded to ElectroGas Malta Ltd by Enemalta Corporation (2018)**

The National Audit Office undertook this investigation following a PAC request in 2015. The audit analysed the process leading to the award and the contracts entered into for the supply and delivery of natural gas and electricity. The venture was clouded by allegations of corruption, specifically with regard to the tender awarded to the private ElectroGas Consortium.

The NAO's audit addressed all aspects of the ElectroGas project, from concept to execution, financing, state aid implications and value for money. The latter entailed comparative analysis of electricity rates sourced through the Malta-Sicily interconnector versus the ElectroGas

plant. The NAO report noted various shortcomings but could not conclusively determine whether the ElectroGas tender award process was vitiated. Nonetheless, the NAO reported numerous shortcomings that raised serious concerns relating to the tender award and project outcomes. To this end, the press release accompanying the publication of the Report noted the following main findings:

- i. At times, the Expression of Interest and Capability evaluation process was inconsistent with respect to the assessment of submissions by interested parties.
- ii. Notwithstanding the positive aspects noted with respect to the Request for Proposals, the NAO observed major changes effected during the bidding process, such as revisions to take or pay obligations and the concept of security of supply, which shifted risk from the bidders to Enemalta and Government.
- iii. Shortcomings were noted in regard to due diligence exercises on tender bidders.
- iv. Evidence of Enemalta's consideration of alternative procurement models was missing, which led to reservations regarding the design of the project.
- v. Although the project was to be completed by 14 April 2017, this target was not achieved until 28 September 2017.
- vi. Shortly after the signing of the supply agreements, a change in shareholding was authorised by the Ministry for Energy and Health, and Enemalta. However, this was not consistent with the contracts in force at the time and specifically breached provisions stipulated in the Implementation Agreement.
- vii. The NAO identified ample scope for improvement in purchasing decisions when sourcing energy through the interconnector.

Table 3.2 analyses the extent to which stakeholders faithfully interpreted the aforementioned findings.

Stakeholders' reactions to this NAO's report were not consistent. The independent media houses tended to faithfully report and interpret the issues raised by the NAO. On the other hand, other stakeholders

used the report to further their particularistic interests. This was mostly evident through the partisan approach adopted by political parties in their discussion of the report.

Our research found ample evidence that the main political parties were deviating from the NAO's message as conveyed in its report. In the immediate aftermath, the then Minister for Tourism, noted that the NAO's report showed that the ElectroGas project was "a model of best practice" (*Times of Malta* 2018b). On the other hand, reacting in Parliament, the then Leader of the Opposition said that the NAO report was proof that the whole deal had been "tampered with from day one" (*Times of Malta* 2018b).

In Parliament, the Prime Minister said that the NAO report proved there had been transparency throughout, and that despite some shortcomings, the process was correct (*Times of Malta* 2018a). Conversely, the Leader of the Opposition said the "Auditor's report confirms that the people are paying €200 million more per annum for the generation of electricity" (TVM 2018b). It is to be noted that neither comment reflects the NAO report faithfully and contextually.

The small political parties also contributed to the ongoing discussion on the ElectroGas project. However, they did not focus on any aspect of the report but rather reacted to the ongoing accusations and counter-accusations between the main political parties. A case in point relates to ADPD's remarks whereby the ElectroGas saga was intertwined with the assassination of Daphne Caruana Galizia and the Panama Paper concerns (Cacopardo 2022).

In a joint press conference with the former Minister for Tourism, an Enemalta technical expert did not attempt to distort the main message of the NAO's report. Instead, he criticised the NAO's findings in the Report on the pricing structure relating to the procurement of energy (*The Malta Independent* 2018). In itself such criticism does not imply that the auditee was not being faithful to the NAO's message as it is perfectly within auditees' rights to disagree with the Office.

Generally, NGOs did not attempt to contribute to the ElectroGas discussion through the NAO's Report. However, the NGOs' contributions were generally consistent with the position taken by the Opposition Party. NGO Repubblica commented that:

Table 3.2: Stakeholders' interpretation of NAO's investigation of the Electrogas contracts

	Stakeholders							
	Political Parties		Auditees	NGOs	Public	PAC	Independent media houses	Supplier
	A	B Others						
The spirit of the NAO message was fully understood	No	No	No	No	No	No	Yes	No
Reporting or interpretations of the NAO's message was selective or distorted	Yes	Yes	Yes	Yes	Yes	Yes	No	Yes
There were significant omissions from the NAO's message	Yes	Yes	Yes	Yes	Yes	Yes	No	Yes
Discussions relating to the NAO report were only tangentially relevant to this Office's message	Yes	Yes	Yes	Yes	Yes	Yes	No	N/a



The government has already allowed the purchase of the shares owned by the principal shareholder in ElectroGas as originally set up by the other shareholders, when Gasol went bankrupt.... This was an act of corruption that must not be allowed to happen again (Repubblica 2020).

In a similar vein, the NGO *Graffiti* claimed that the ElectroGas deal was one of the most corrupt in Malta's history and that journalist Daphne Caruana Galizia was murdered for exposing corruption linked to the project (*Newsbook* 2021).

Up to the end of the Thirteenth Legislature the Auditor General's Report on the ElectroGas project was the agenda of thirty-four PAC sittings. They were characterised by argumentative deliberations between the representatives of the two parliamentary parties. On many occasions, the proceedings were only tangentially relevant to the NAO's report. Examples in this regard relate to instances where the Committee sought explanations from witnesses about their involvement in the ownership or opening of offshore accounts (PAC 2021b). Towards the end of the legislature, when the political environment was charged with external tensions arising from the looming general election, the PAC's discussion on the NAO's report descended into partisan arguments, which at times necessitated the intervention of the Speaker of the House of Representatives. The Speaker's advice to the Committee was generally along the lines that common sense and prudence must prevail within the PAC (Speaker of the House of Representatives 2022).

The public reaction to the NAO report to a great extent mirrored that of the political parties and the discussions/arguments within the PAC. Blogs following media articles on the ElectroGas saga tended to take a partisan view, with little or no reference to the NAO's report (*MaltaToday* 2018).

The supplier was generally selective when discussing the NAO's report. Their public statements tended to convey the view that the NAO's scrutiny confirmed that the contract award was just and fair, a conclusion reiterated at European Commission level (ElectroGas Malta Limited 2020). Nonetheless, the supplier's press release did not address any other issues raised in the NAO Report.

Stakeholders' reactions to the NAO report on the ElectroGas project were generally dominated by the political debate which on many occasions entered the realms of partisanship. Similarly, the discussions at the PAC deflected the Committee from operating as a technical arena discussing issues of significant financial materiality as documented in the NAO's report. The political debate influenced the public discussion which degenerated into partisan politicking and at times personal insults. It is abundantly clear that the political climate conditioning the ElectroGas debate prevented the NAO's message from being disseminated faithfully and fully understood.

### **Report 3: Smart and RF meters' contribution to more accurate and timely utilities billing (2021)**

This performance audit reported that the electricity smart and water radiofrequency (RF) meters project generally yielded positive results. Despite various comments in the NAO's report regarding the cost effectiveness of the smart and RF meter project, the public discussions surrounding this publication tended to focus on the NAO comments on the billing methodology adopted by Automated Revenue Management Services (ARMS) Limited and the utility companies concerning water and electricity consumption billing.

The NAO's press release published on the presentation of this report to Parliament highlighted these findings:

- i. SMART and RF Meters enabled Enemalta plc and the Water Services Corporation (WSC) to reduce unbilled electricity and water consumption, identify losses (including through theft) and improve operational practices.
- ii. Various technical issues hindered the WSC from reaching the 90 per cent target for billing based on actual consumption through RF meter technologies.
- iii. In recent years, the number of staff employed by ARMS has increased significantly even though both the billing and the administrative functions were generally automated.

- iv. Billing calculations based on a pro rata methodology, where units in specific tariff bands are apportioned on a monthly or bi-monthly billing basis, were generally found to be correct. However, this methodology relating to electricity consumption is the subject of court litigation as it is being contended that the pertinent legislation obliges billing to consider tariff bands and eco-reductions on a yearly basis.
- v. On the basis of a randomly selected sample of 100 accounts held by ARMS during a period of one year ending in January 2021, the NAO compared the outcomes of the pro rata and annualised billing methodologies. It transpired that 46 and 63 per cent of the total analysed electricity and water accounts respectively did not reveal any significant variance, essentially amounting to less than €2 annually. The more substantive variances noted through this exercise are attributable mostly to the heavy consumer class when billed through the pro rata method.

Table 3.3 analyses the extent to which stakeholders faithfully interpreted the aforementioned findings.

Although the Prime Minister had yet to announce the General Election date, it was clear that the country was being prepared for the polls. The water and electricity billing had already featured as an electoral issue in the 2013 campaign (Partit Laburista 2013: 50; Partit Nazzjonalista 2013: 12) and the 2022 election (Partit Laburista 2022: 108; Partit Nazzjonalista 2022: 6) did not prove to be very different. The main political parties both had pledged to address utility billing anomalies. The political discussion came to a head prior to the publication of the NAO report as an early draft was leaked to the Press by an unknown stakeholder (*LovinMalta* 2021). From that point onwards, the Opposition leveraged its position through the NAO report, namely regarding issues concerning utilities billing methodology. On the other hand, the Government contended that utilities billing has since 2009 followed a pro rata methodology, as interpreted by the provisions of LN 330 of 2008 and LN 331 of 2008. The foregoing clearly illustrates that stakeholders focused only on one aspect of the various issues raised by the NAO's report.

Table 3.3: Stakeholders' interpretation of NAO's report on smart and RF meters

	Stakeholders								
	Political Parties			Auditees	NGOs	Public	PAC	Independent media houses	Supplier
	A	B	Others						
The spirit of the NAO message was fully understood	Yes	No	N/a	Yes	N/a	No	N/a	Yes	N/a
Reporting or interpretations of the NAO's message was selective or distorted	Yes	Yes	N/a	Yes	N/a	Yes	N/a	No	N/a
There were significant omissions from the NAO's message	Yes	Yes	N/a	No	N/a	Yes	N/a	No	N/a
Discussions relating to the NAO report were only tangentially relevant to this Office's message	Yes	Yes	N/a	N/a	N/a	Yes	N/a	No	N/a

Table 3.3 demonstrates that, following the declaration by the main parties that utilities billing was to be one of the major electoral issues, the message disseminated by politicians of both sides tended to deviate from the key findings elicited by the NAO. Reacting to the NAO Report, the Opposition Nationalist Party said:

... the NAO confirmed that the government had robbed Maltese families of some €6.5 million a year in overcharged utility bills. It pledged that it would give back over €50 million in overcharged payments, if elected to government (*The Malta Independent* 2021b).

On the other hand, the governing Labour Party maintained that “Whilst the Opposition does not offer studied solutions, during the international crisis [socio-economic impact of the pandemic], the Maltese government continues to ensure the lowest bills for consumers” (*The Malta Independent* 2021b).

The auditees challenged the methodology employed to analyse the billing process. Such criticism does not imply that the auditee distorted or omitted parts of the NAO’s message. Feedback from auditees regarding the analyses carried out is part of the auditing cycle, whereby the draft report is forwarded to the auditees to review for any potential misinterpretation.

The independent media houses were faithful to NAO’s message. In many instances, they quoted extracts from the Press Release issued by this Office on the publication of this Report.

The public interpretation of the NAO Report mirrored the position of the main political parties. The discussion was characterised by other political issues that are synonymous with the provision of water and electricity (*MaltaToday* 2021b; *Times of Malta* 2021).

The PAC did not discuss the Report, though it covers a very topical issue, because all the remaining PAC sittings of the Thirteenth Legislature were dedicated to the Electrogas investigation. Similarly, three of the first four PAC sittings during the 14<sup>th</sup> Legislature discussed the Electrogas investigation.

NGOs and the other political parties did not comment on this Report.

The stakeholders' reactions to the NAO report were primarily influenced by partisan politics as it was published close to the commencement of an election campaign. The report was used by the two main political parties to gain political mileage. The situation influenced the public discussion of this Report as the findings were obscured by partisan commentary rather than interpreted faithfully.

## **Conclusions**

The NAO's reports are read by a range of stakeholders – all of which have their particularistic interests. Independent media houses, generally, transmitted the NAO's message and stakeholders' reactions to this SAI's reports faithfully, often quoting verbatim from the NAO's official sources. The main auditees, generally, also reacted genuinely to the three NAO reports analysed for the purpose of this Paper. While not always in agreement, there was no *prima facie* attempt to distort the NAO's messages. However, the evidence indicates that other stakeholders knowingly or unintentionally distorted the NAO's messages.

On analysis, these cases are symptomatic of at least two causes. Firstly, key stakeholders, such as suppliers, tended to be selective when reacting to the NAO reports. Their main comments related to good practices identified in the report. However, these stakeholders opted to omit any references to maladministration or other shortcomings, with the result being the distortion of the context of the NAO's message. Secondly, as widely noted by scholarly studies, the polarised environment which characterises Maltese politics gives rise to situations where the main political parties, including their respective media, use the NAO reports selectively to promote their agenda. In turn, the momentum created by the main political parties influences the various organs of Parliament, such as the PAC, and polarises public opinion over the issues raised by the NAO. As anticipated, these situations become more apparent during election campaigns.

The foregoing shows that the particularistic interests of stakeholders, particularly those embraced by the main political parties, diminish

citizen access to informed assessments regarding the decisions and performance of their representatives and governments. Moreover, the wider public administration is, to varying degrees, also hindered from engaging more robustly to address NAO findings and conclusions in its quest to ascertain that its initiatives conform to the principles of good public governance.

## Bibliography

- Cacopardo, C. (2022), *Abusive Continuity*. [Blog] *ADPD.mt*. Available at: <https://adpd.mt/abusive-continuity/> (Accessed 21 June 2022).
- ElectroGas Malta Limited (2020), *PUBLIC STATEMENT – 11 September 2020*. [online] Available at: <https://www.electrogas.com.mt/wp-content/uploads/2020/09/publicstatement0004-110920.pdf> (Accessed 23 June 2022).
- INTOSAI (n.d) *ISSAI 300, Fundamental Principles of Performance Auditing*. Available at: [https://www.intosai.org/fileadmin/downloads/documents/open\\_access/ISSAI\\_100\\_to\\_400/issai\\_300/issai\\_300\\_en.pdf](https://www.intosai.org/fileadmin/downloads/documents/open_access/ISSAI_100_to_400/issai_300/issai_300_en.pdf) (Accessed 24 June 2022).
- INTOSAI (n.d) *ISSAI 3000, Performance Audit Standard*. Available at: <https://www.issai.org/wp-content/uploads/2019/08/ISSAI-3000-Performance-Audit-Standard.pdf> (Accessed 24 June 2022).
- INTOSAI (n.d.) *ISSAI 400, Compliance Audit Principles*. Available at: <https://www.issai.org/wp-content/uploads/2019/08/ISSAI-400-Compliance-Audit-Principles-1.pdf> (Accessed 24 June 2022).
- INTOSAI, *INTOSAI P-10 Mexico Declaration on SAI Independence*. Available at <https://sirc.idi.no/document-database/documents/intosai-publications/2-intosai-p-10-mexico-declaration-on-sai-independence> (Accessed 27 June 2022).
- Krippendorff, K. (1980), *Content Analysis: An introduction to its methodology*. Sage Publications, Inc, 2004.
- LovinMalta* (2021), ‘Draft Report is Not Official Position, NAO Says Following Leak of Electricity Tariff Investigation’. Available at: <https://lovinmalta.com/news/draft-report-is-not-official-position-nao-says-following-leak-of-electricity-tariff-investigation/> (Accessed: 23 June 2022).
- MaltaToday* (2016), ‘Operators deny claims of abuse across free childcare scheme’. Available at: [https://www.maltatoday.com.mt/news/national/72273/operators\\_deny\\_claims\\_of\\_abuse\\_across\\_free\\_childcare\\_scheme#.YrWOT3ZByiN](https://www.maltatoday.com.mt/news/national/72273/operators_deny_claims_of_abuse_across_free_childcare_scheme#.YrWOT3ZByiN) (Accessed: 23 June 2022).
- MaltaToday* (2018), ‘Significant concern’ over due diligence in Electrogas tender – Auditor General’. Available at: [https://www.maltatoday.com.mt/news/national/91275/significant\\_concern\\_over\\_due\\_diligence\\_in\\_electrogas\\_tender\\_auditor\\_general#.YrGLDn%E2%80%A6](https://www.maltatoday.com.mt/news/national/91275/significant_concern_over_due_diligence_in_electrogas_tender_auditor_general#.YrGLDn%E2%80%A6) (Accessed: 23 June 2022).
- MaltaToday* (2021a), ‘PAC: playpen of democracy’. Available at: [https://www.maltatoday.com.mt/comment/editorial/113131/pac\\_playpen\\_of\\_democracy#.YrRD43ZBzIU](https://www.maltatoday.com.mt/comment/editorial/113131/pac_playpen_of_democracy#.YrRD43ZBzIU) (Accessed: 23 June 2022).

- MaltaToday* (2021b), ‘NAO report confirms families are being robbed through utility bills – PN’. Available at: [https://www.maltatoday.com.mt/news/national/113100/nao\\_report\\_confirms\\_families\\_are\\_being\\_robbed\\_through\\_utility\\_bills\\_pn#](https://www.maltatoday.com.mt/news/national/113100/nao_report_confirms_families_are_being_robbed_through_utility_bills_pn#). YrWgFXZByiN (Accessed: 22 June 2022).
- Newsbook (2021), ‘Electrogas deal ‘soaked in blood – Graffiti’. Available at: <https://newsbook.com.mt/en/ElectroGas-deal-soaked-in-blood-graffitti/> (Accessed: 21 June 2022).
- Partit Laburista (2013), *Malta Tagħna Lkoll, Manifest Elettorali 2013*. Malta: Partit Laburista, p.50.
- Partit Laburista (2022), *Malta Flimkien*. Manifest Elettorali 2022. Malta: Partit Laburista, p.108.
- Partit Nazzjonalista (2013), *Electoral Manifesto*. Malta: Partit Nazzjonalista, p.12.
- Partit Nazzjonalista (2022), *Viżjoni Għal Malta 2030*. Malta: Partit Nazzjonalista, p.6.
- Pirotta G., I. Calleja and C. Colino (2020), *Sustainable Governance Indicators 2020*, BertelsmannStiftung, pp. 7-8.
- Public Accounts Committee (2021a), PAC, Thirteenth Legislature, Meeting Numbers 68 – 71.
- Public Accounts Committee (2021b), PAC, Thirteenth Legislature, Meeting Numbers 85, 87.
- Repubblika (2020), *Repubblika is particularly disgusted with reports that one of the shareholders of Electrogas is allegedly expecting the Maltese people to buy out his shareholding in the company that acquired this contract through corruption*. [online] Available at: <https://repubblika.org/press-release/press-release-pr-108-2020/> (Accessed 21 June 2022).
- Speaker of the House of Representatives (2022), *Ruling Delivered by the Speaker concerning unparliamentary behaviour and language in the Public Accounts Committee*. Rulings Thirteenth Legislature (2017 - 2022). Malta: Parliament.
- The Malta Independent* (2018), ‘Updated: Konrad Mizzi dismisses NAO red flags, says power station ‘an example of best practice’. Available at: <https://www.independent.com.mt/articles/2018-11-28/local-news/Konrad-Mizzi-dismisses-NAO-red-flags-says-power-station-project-an-example-of-best-practice-6736200043> (Accessed: 21 June 2022).
- The Malta Independent* (2021a), ‘Repubblika thanks short list of institutions ‘that are upholding standards of good governance’. Available at: <https://www.independent.com.mt/articles/2021-12-31/local-news/Repubblika-thanks-short-list-of-institutions-that-are-upholding-standards-of-good-governance-6736239450> (Accessed: 23 June 2022).
- The Malta Independent* (2021b), ‘Updated (2): Smart meters led to drastic drop in energy loss, but water meters less reliable – NAO’. Available at: <https://www.independent.com.mt/articles/2021-11-03/local-news/Smart-meters-led-to-dramatic-drop-in-energy-loss-but-water-meters-less-reliable-NAO-6736238021> (Accessed: 22 June 2022).
- Times of Malta* (2018a), ‘200 million reasons for Konrad Mizzi to go – Delia’. Available at: <https://timesofmalta.com/articles/view/electrogas-deal-was-tampered-with-from-day-one-delia.695385> (Accessed: 31 May 2022).
- Times of Malta* (2018b), ‘Watch: ‘Multiple instances of non-compliance’ in winning Electrogas bid’. Available at: <https://timesofmalta.com/articles/view/multiple-instances-of-non-compliance-in-winning-ElectroGas-bid.695383> (Accessed: 23 June 2022)



- Times of Malta* (2021), 'Smart meters helped Enemalta save €45m in 12 years: NAO'. Available at: <https://timesofmalta.com/articles/view/smart-meters-helped-enemalta-save-45m-in-12-years-nao.912396> (Accessed: 22 June 2022).
- TVM (2018a), 'Auditor General did not find corruption and bribery' – PL'. Available at: <https://tvmnews.mt/en/news/auditor-general-did-not-find-corruption-and-bribery-pl/> (Accessed: 23 June 2022).
- TVM (2018b), 'The PM and the Leader of the Opposition react to the Auditor General's Report'. Available at <https://tvmnews.mt/en/news/il-pm-u-l-kap-tal-the-pm-and-the-leader-of-the-opposition-react-to-the-auditor-generals-report-jirreaggixxu-ghar-rapport-tal-awditur-general/> (Accessed: 23 June 2022).
- Vassallo, M. (2022), 'Kollox Politika?' [Interview], *Flimkien*, May 2022. Available at: <https://flimkien.mt/ilhna-u-fehmiet/kollox-politika/> (Accessed: 23 June 2022).
- Veenendaal, W. (2019), 'How Smallness Fosters Clientelism: A Case Study of Malta', *Political Studies* (67), pp. 1034 – 1052. Doi:10.1177/0032321719828275.
- Warrington, E. & G.A. Pirotta (2014), *Guardian of the Public Purse – A History of State Audit in Malta, 1814 – 2014*. Malta: National Audit Office.



## CHAPTER 4

### The NAO and other State integrity institutions: Contrasts and convergence

*Edward Warrington*

Some of Malta's best known integrity institutions have been the subject of in-depth studies, none more so than the National Audit Office. The Broadcasting Authority, the Ombudsman, and the National Audit Office have all commissioned research into their history and jurisdiction (Fsadni 2003, Warrington (ed) 2020, Warrington & Pirotta 2014). Several dissertations from the Faculty of Law and the Faculty of Economics, Management and Accountancy at the University of Malta examine institutions such as the Permanent Commission Against Corruption (e.g., Vella 2018). However, it does not appear as though there are comparative studies that take into account the range of integrity institutions established in Malta.

This chapter constitutes a preliminary survey of the institutional landscape. It begins by explaining the concept of 'integrity institution' with a view to identifying those bodies within the Maltese State apparatus that can reasonably be designated thus. It then explores the circumstances in which they were established, locating them within the trajectory of Malta's constitutional history immediately prior to and following independence in 1964, as well as shifts in the country's political economy. The account sketches their jurisdiction, legal or constitutional status, as well as the methods by which the principal office holders are appointed. Reference is made to questions that have

arisen about their powers and effectiveness. The chapter ends with some thoughts about developing what might be called an ‘integrity ecosystem’ out of these separate institutions.

The chapter was inspired by a confidential memorandum submitted by the author in November 2021 to the OECD mission reviewing the office of the Commissioner for Standards in Public Life. The concluding section of the chapter draws upon some of the ideas raised in that memorandum.

### **What is an integrity institution?**

The term ‘integrity institution’ is one of several describing a particular category of State institution that rose to prominence in the second half of the twentieth century: other terms, such as ‘scrutineers’, ‘oversight bodies’, ‘guardians’, ‘institution of integrity’ or, more popularly, ‘watchdog’ are also encountered. In a landmark study, Grebe et al (2011) define the term ‘institution of integrity’ as follows:

The institutions of integrity ... refer to the institutionalised norms and codes of behaviour (both formal and informal) that ‘bind’ individual behaviour, and shape the context of individual integrity, including that of leaders. Such institutions define the moral boundaries that affect individual behaviour. Policing or auditing agencies and oversight mechanisms are merely one manifestation of the institutions of integrity and do not by themselves produce developmental integrity or ethical leadership.

Grebe et al’s definition focuses attention on the moral code and only incidentally on the agencies that oversee behaviour and, possibly, define the code.

Integrity institutions are a comparatively recent sub-field in the study of politics and government. The international non-governmental organisation Transparency International is credited with stimulating the interest of governance specialists in a phenomenon christened ‘National Integrity Systems’ (Doig & McIvor 2003). Unsurprisingly, at the outset,

governance specialists associated institutions of integrity with attempts to control or eradicate corruption in public life; that appears still to be the dominant trend. Studies in this field include as many as eight ‘pillars’ of the integrity system, ranging from the judiciary to investigative news media and, beyond, to public awareness (Langseth et al 1997: 508). ‘Watchdog agencies’ such as Supreme Audit Institutions and Ombudsman institutions constitute only one such pillar.

A broad understanding of national integrity systems is unsatisfactory in so far as it fails to acknowledge that some pillars, such as legislatures, police forces or courts, may themselves be prone to corruption, while public awareness or civic organisation may be too limited to secure change; indeed, some pillars may facilitate corruption. Consequently, one or more pillars of the ‘system’ may be in conflict with other pillars as well as with the collective goal of the system. Furthermore, while ‘system’ implies interdependencies and ongoing interactions, fragmentation of mission and effort appears to be a significant risk, as integrity institutions tend to be established piecemeal, one at a time in response to new threats to integrity in public life.

There are other reasons why the ‘pillar model’ is unsatisfactory. It implies, incorrectly, that maintaining integrity in public life belongs to the core mission of the institutions included in every pillar of the system: for example, integrity in public life is never more than a limited subset of the mission of police forces. Moreover, it seems necessary to distinguish between two distinct though complementary missions: on one hand, the maintenance of law and order, and the dispensation of justice, which are the missions, respectively, of the police and the judicial system; on the other hand, the scrutiny of public administration with a view to securing accountability and improving performance, which is a mission belonging to other institutions, such as the National Audit Office and the Ombudsman.

Constitutional experts bring a different perspective to the field, one that is both better focused on the core mission of integrity institutions and more appreciative of their political and constitutional role. Klug (2019) and other scholars describe integrity institutions as ‘state institutions supporting constitutional democracy’, taking their cue from the title of Chapter 9 of the South African Constitution, which established six

such institutions, one of the rare instances in which a complete integrity ‘system’ was devised. Klug envisages the constitutions of post-colonial states as ‘transformative constitutions’ which guide and facilitate the transition from the authoritarian regime characterising the colonial state to the democratic constitutionalism to which most newly-sovereign states aspire (Klug 2019: 701). He argues that, in a post-colonial polity, the traditional separation of powers (legislative, executive, judicial) is unable to effect this transition without the aid of a ‘fourth branch’ comprising independent, non-political integrity institutions. ‘Increasingly,’ he argues, ‘constitutional designers have created additional mechanisms and institutions in their effort to ensure the desired goals of accountability, responsiveness and openness in the exercise of governmental authority’ (Klug 2019: 704). In Malta, this ‘fourth branch’ was already evident in the Independence Constitution in September 1964, for reasons that are explained later and that are very similar to the arguments Klug adduces in relation to South Africa’s post-apartheid constitution.

Finally, while Klug (2019: 704) underscores the importance of the existence of Constitutional Courts in giving leverage to the integrity institutions, Wettenhall (2012) draws attention to the leverage offered by the parliamentary connection. Beyond the institutional framework, in a study of South Korea, Turner et al (2018) draw attention to the role played by popular protest in mobilising the integrity institutions to hold the President and her circle to account. Once again, Maltese experience resonates with the conclusions of these three studies, as the evidence presented here indicates.

In light of the foregoing, this chapter proposes the following working definition of the term ‘integrity institution’, drawing on and adapting Grebe et al’s definition quoted earlier:

An integrity institution is a formally constituted, autonomous State body established for the purpose of scrutinising the behaviour, interests, decisions, and transactions undertaken by public officials, governing institutions, private individuals, private enterprises, and community or voluntary associations in the course of transacting the business of the State. Such behaviours, interests and transactions are appraised against the

legal and moral boundaries that define individual behaviour, with a view to securing accountability, providing remedies, and promoting democratic constitutionalism. The core mission, composition, legal status, and operating procedures of integrity institutions are distinct from those attributable to judicial and policing authorities, especially in regard to their authority to offer remedies, rather than to impose sanctions.

The definition offers multiple but converging criteria with which to assess a State body's claim to being an integrity institution, namely:

- i. autonomous legal status;
- ii. oversight or scrutiny as the core mission;
- iii. a focus on ethical standards in public life, which includes economic transactions with which the State is associated;
- iv. investigation and reporting as its default *modus operandi*;
- v. remedies offered in place of sanctions;
- vi. contribution to constitutionalism and good governance.

### **Malta's integrity institutions: a shortlist and timeline**

At present, the Maltese institutions that could be considered 'integrity institutions' according to the foregoing definition comprise:

- i. the Public Service Commission (est. 1960);
- ii. the Broadcasting Authority (est. 1961);
- iii. the Electoral Commission (est. 1962);
- iv. the Employment Commission (est. 1974)
- v. the Permanent Commission Against Corruption (est. 1988)
- vi. the Commission for the Administration of Justice (est. 1994)
- vii. the Financial Investigations Analysis Unit (est. 1994)
- viii. the Parliamentary Ombudsman (est. 1995)
- ix. the National Audit Office (est. 1997 in succession to the Department of Audit, established in 1814)
- x. the Commissioner for Standards in Public Life (est. 2018).

This simple timeline indicates three phases of development of Malta's national integrity institutions, specifically:

- i. the years 1959 – 1974, when the constitutional architecture of the sovereign Maltese State was under construction in a political climate charged with uncertainty and bitter controversy over the Constitution and the character of the newly-independent State;
- ii. the decade 1988 to 1998, a period of reform and reconfiguration of public administration, the constitutional architecture, and the economic model, following a prolonged political and constitutional crisis;
- iii. the stage beginning in 2018, in the course of which the integrity institutions are being revised and consolidated; this process too is a response to a crisis in the integrity of both the State and of politics; it is work in progress that may lead to the emergence of a 'fourth branch' of government.

The following sections review each period and each institution in turn.

### **Stage I – Crafting the constitutional architecture for a sovereign state 1959 - 1974**

Four integrity institutions were established between 1959 and 1974. During that period, no less than three constitutions took effect in quick succession: 1959, when a gubernatorial autocracy was reinstated; 1962, when a semi-autonomous, parliamentary State of Malta came into being; and 1964, when independence was secured. Significant amendments were made to the third or 'Independence' constitution in 1974. The integrity institutions created before independence were incorporated into the constitutional architecture of the sovereign state: the Public Service Commission, Broadcasting Authority, Electoral Commission, and the Director of Audit, an office dating back to 1814, at the inception of Crown Colony government. The Employment Commission was one element among the constitutional



amendments enacted in December 1974, when the country was declared a Republic.

The four integrity institutions created between 1960 and 1974 shared a common function, namely, to constrain ministerial authority over elements of public administration and public life that were vital to the survival of the fledgling democracy, as well as to temper the effects of its intensely partisan political culture on governance. Malta's decolonisation did not entail a prolonged armed struggle against the colonial power. However, the option of detaching the small, resource poor, vulnerable islands from British succour aroused widespread doubt and bitter controversy. Moreover, two previous experiments with self-government had instilled grave misgivings about sharing power with elected Maltese politicians within the Catholic hierarchy and the civil service, both of which had prospered in the colonial State, becoming, respectively, the paramount social and political powers in the islands. The intense political rivalry and crisis-ridden decades of self-government (1921 – 1933; 1947 – 1958) had also engendered a partisan, clientelistic political culture, and a politics dominated by 'big men': Archbishop Michael Gonzi, Administrative Secretary<sup>1</sup> Edgar Cuschieri, Nationalist Party leader George Borg Olivier, and Labour Party leader Dom Mintoff presided over Maltese life in the quarter century following the Second World War. In short, the newly-independent state was born following a contest in which different Maltese socio-political forces were at least as intensely pitted against one another as the pro-independence forces were against the British government.

The Public Service Commission was created following a determined campaign by the Society of Administrative and Executive Civil Servants,<sup>2</sup> with a view to protecting the careers of civil servants from undue political influence (Warrington 1997). The colonial government created the Broadcasting Authority on the eve of the resumption of responsible government:

to ensure that, so far as possible, in such sound and television broadcasting services as may be provided in Malta, due

---

1 The official title of the Head of the Civil Service until the early nineteen nineties.

2 The Society was in part a trade union and in part a professional association, representing what was then the Higher Division of the civil service.

impartiality is preserved in respect of matters of political or industrial controversy or relating to current public policy, and that broadcasting facilities and time are fairly apportioned between persons belonging to different political parties (Constitution Art.119).

Similarly, the Electoral Commission was intended to place the management of elections to the House of Representatives beyond the reach of incumbent governments: the delineation of electoral boundaries, voter registration, and vote counting were subjected to its jurisdiction. In 1974, the concept of ‘corrupt electoral practices’ was enshrined in constitutional law; in 1987, ‘foreign interference’ was also constitutionally proscribed. Consequently, the Commission acquired:

the duty ... to suspend the election, either in all electoral divisions or in any one or more of such divisions, if it has reasonable ground to believe that illegal or corrupt practices or other offences connected with the elections have been committed [1974 amendment] or there has been foreign interference [1987 amendment] and such practices, offences or interference have so extensively prevailed or have been of such nature that they may reasonably be expected to affect the result of the election, in all or in any one or more of the electoral divisions (Constitution, Art. 56(3))

In a similar vein, the Constitution confers on the Employment Commission the function:

to ensure that, in respect of employment, no distinction, exclusion or preference that is not justifiable in a democratic society is made or given in favour or against any person by reason of his political opinions (Constitution, Art. 120(8)).

The aura of autonomy proved false from the outset, chiefly because of the Prime Minister’s virtually unfettered authority to appoint the members of these constitutional bodies and to determine the term of

their appointment. Although the Constitution provided terms of office ranging between three and five years for their members, a loophole that has been systematically exploited since the early nineteen seventies allows shorter, renewable terms of office. The constitutional provisions requiring ‘consultations’ with the Leader of the Opposition have in practice been reduced to a mere notification. Consequently, for many years the Opposition almost routinely declared that it had no confidence in the appointees, thereby eroding the institution’s legitimacy in the eyes of Party supporters.

The creation of the Employment Commission introduced another practice, under which the Chair is appointed on the Prime Minister’s recommendation, while the remaining members are apportioned among the Prime Minister and the Leader of the Opposition (Constitution, Art. 120(2)). This became standard practice for the other constitutional authorities from the late nineteen eighties and continues to afflict the Public Service Commission, the Employment Commission, the Electoral Commission, and the Broadcasting Authority. Consequently, the two leading political parties, which have enjoyed almost exclusive representation in parliament since 1971, have also, in effect, ‘colonised’ the oversight bodies. The practice diminishes the integrity institutions’ credibility, especially among assertive civil society associations which challenge the overweening ‘masters of the Constitution’, i.e., the Labour and Nationalist parties.

The Chief Electoral Officer and the Director of Audit were public officers as were their staff; both the Department of Audit and the Electoral Office remained departments of the public service. Although the Constitution declared that, in the exercise of their constitutionally mandated functions, the Electoral Commission, the Director of Audit, and the Broadcasting Authority were not subject to the direction or control of any other person or authority (Constitution, Art. 60(9), 108, 118(8)), the executive government could easily influence their operations through its unfettered control of their funding, staffing, and other resources.

The internal autonomy and judicial standing of the oversight bodies varied widely. Article 121(1) enshrines the general principle that:

Any Commission established by this Constitution may, with the consent of the Prime Minister or such other Minister as may be authorised in that behalf by the Prime Minister by regulation or otherwise, regulate its own procedure and confer powers and impose duties on any public officer or authority of the Government of Malta for the purpose of the discharge of its functions.

Article 115 of the Constitution protects the Public Service Commission from judicial scrutiny. Successive ‘instruments of delegation’ narrowed the scope of its jurisdiction, especially on account of the fact that delegated authority could not be revoked without the Prime Minister’s consent. At independence, the Commission’s jurisdiction over the appointment of permanent secretaries and heads of departments of the public service was severely curtailed (Warrington 2015). Jurisdiction over the appointment of permanent secretaries was not restored until further constitutional amendments were enacted in 2021, but the Commission is obliged to receive and evaluate the recommendation of the Principal Permanent Secretary (Constitution, Art. 92(3)). Furthermore, the unremitting accretion of non-departmental bodies exempted from its jurisdiction effectively restricts its oversight to a diminishing proportion of the public sector. The Broadcasting Authority and the Employment Commission are not exempt from judicial oversight: in fact, judicial remedies are sought by political parties and others who are aggrieved by the Authority’s decisions on the political content of broadcasting.

The Constitution links specific powers of the Electoral Commission with either the Constitutional Court or with Parliament. The Commission must refer alterations of the electoral boundaries to the Prime Minister and the Leader of the Opposition (Constitution, Art.61(3)(a)); the Prime Minister is in turn obliged to seek a resolution of the House of Representatives, either approving the alterations or referring them back to the Commission for reconsideration (Art. 61(3)(c)). Any decision by the Commission to suspend elections on the grounds of corrupt practices or foreign interference may be challenged by ‘any person entitled to vote at that election [who] may, not later than three days after the publication of the official result of the election, refer the matter to

the Constitutional Court for its decision (Art. 56(5)). The same clause severely restricts the content of the category ‘any person’.

In summary, while the constitutional architecture of the newly sovereign State acknowledged the importance of integrity institutions, both their autonomy and their jurisdiction were narrowly circumscribed, and they were scarcely distinguishable from the Executive branch. In addition to their oversight roles, the Public Service Commission, Broadcasting Authority, and Electoral Commission were vested with executive duties: the Commissions as components of the public service; the Authority as a regulator of the broadcasting services, which remained a State monopoly until 1991. The dispiriting experience of the first stage of development of Malta’s integrity institutions began changing during the nineteen nineties, to which we now turn.

## **Stage II – Reforming and reconfiguring the State 1988 - 1998**

Between 1981 and 1987 a constitutional and political crisis gripped the State, and corruption was becoming endemic: petty corruption in the delivery of public services to ordinary folk; grand corruption in connection with building permits and transactions involving the country’s scarcest resource - land. The Labour and Nationalist parties agreed on wide-ranging constitutional amendments towards the end of 1986, in anticipation of parliamentary elections in May 1987. The Nationalist Party was elected to office with a wafer-thin parliamentary majority, on a ticket promising ‘work, justice, liberty’. Major reforms of the governing institutions were planned, as was economic liberalisation and the transformation of Malta’s economic model from manufacturing to services.

While a Public Service Reform Commission and an Operations Review were preparing details of governmental and administrative reform between 1988 and 1990, the Government piloted legislation targeting corruption. The Permanent Commission Against Corruption Act 1988 (Cap. 326) created a standing anti-corruption commission to investigate alleged or suspected corrupt practices across the entire public sector: its jurisdiction covers ministers and parliamentary secretaries,

public officers, and other officials employed by non-departmental bodies, state enterprises, and local government (Cap. 326: s.4). With a view to identifying and reducing the risk of corruption, the Commission was also empowered to examine the practices or procedures employed by governmental organisations, as well as to ‘instruct, advise and assist’ senior officials, on their request, ‘on ways in which corrupt practices may be eliminated’ (Cap. 326: s.4(d) and (e)). It is primarily an investigative body that has some advisory function. Its investigations are conducted in private (Cap. 326: s.9(2)), and it may call upon the assistance of the Police (Cap. 326: s.8).

A report on every investigation is addressed to the minister of justice. However, since 2020, where the Commission finds that ‘the conduct investigated is corrupt, or is conducive to corrupt practices,’ the report on its investigation is transmitted to the Attorney General, as the prosecuting authority (Cap. 326: s.11(a)). These amendments followed long-standing criticism about the Commission’s vulnerability to ministerial inaction on its findings.

The original legislation replicated the formula for appointing the Commission’s three members that was originally pioneered in connection with the Employment Commission. It was not until 2020 that the Chair came to be appointed by the President, acting on a resolution supported by no less than two-thirds of the members of the House of Representatives. However, the party nominees were retained (Cap. 326: s.3(1), and the Cabinet (rather than the House) could advise the President to remove a member on the grounds of inability to perform the functions of his office, or for misbehaviour (Cap. 326: s.3(5)). Furthermore, the Commission depends entirely on the Prime Minister for its staff and on the government for funding.

In summary, the Permanent Commission Against Corruption carried over to this second phase in the development of Maltese integrity institutions, several of the practices which constrained the autonomy and jurisdiction of the earlier institutions. However, innovations are also evident, among them the focus on investigative rather than executive functions, the reporting requirements, and elaborate procedural rules intended to safeguard the rights of those subject to its jurisdiction. The Commission’s existence also subjected the rapidly

growing interaction between public administration and economic actors to scrutiny.

Malta's venture into the global financial services industry exposed it to greatly enhanced risks of economic crime, notably money laundering and, following the global escalation of terrorism in the nineteen nineties, the financing of terrorism. The Prevention of Money Laundering Act was enacted in 1994 (Cap. 373) in response to the risks: *inter alia*, the law established a Financial Intelligence Analysis Unit as 'a government agency ... [which] shall enter into an agency performance agreement with the Minister [of Finance]' to determine the funding arrangements and 'any specific tasks within the scope of the functions of the Unit which are to be addressed and achieved by the Unit. (Cap 373: s.15(1), (3)).

The functions and powers assigned to the Unit characterise it as a 'hybrid financial intelligence unit', one of four institutional models identified by Bartolozzi et al (2022: 1094), in which features of the 'police' and 'administrative' models are combined. In the police model, a unit 'typically has strong investigative skills and executive powers, such as the power to seize assets'; in the administrative model, the unit is 'established within the realm of public administration, typically under the Ministry of Finance ... as an autonomous authority endowed with highly specialised financial skills. (Bartolozzi et al 2022: 1094). Malta's hybrid unit is vested with wide-ranging investigative, executive, and supervisory functions (Cap. 373: s.16), together with concomitant powers which it may exercise over other public authorities, corporations, public officials, and private persons. However, prosecuting authority remains vested in the Police and the Attorney General.

As presently constituted, the Financial Intelligence Analysis Unit is governed by a Board consisting of five members appointed for three-year terms by the Minister of Finance from among five panels submitted respectively by the Governor of the Central Bank, the Chairmen of the Financial Services Authority and the Gaming Authority, the Commissioner of Police, and the Commissioner for Revenue (Cap 373: s.19(1)(a)). Although the arrangement may convey an impression of autonomy, the five officials concerned are themselves political appointees; parliamentary or independent scrutiny of the appointing

minister's choice is scarcely tempered by the Standing Committee on Public Appointments of the House of Representatives.<sup>3</sup> The Board may also advise the Minister to appoint two additional members from two panels which it compiles (Cap 373: s.19(1)(b) and (3)). The Prime Minister appoints the Chairman and Deputy Chairman from among the Board members following consultation with the Minister (Cap.373: s.20).

The Unit's enabling legislation has been several times amended during the past decade in response to criticism about its autonomy and effectiveness in the face of mounting evidence of financial crime. The interface between the Unit and the prosecuting authorities appears to be the principal limitation on its effectiveness: investigative journalists and a whistleblower have brought to light considerable evidence of inexplicable failures, by the prosecuting authorities, to act on the Unit's reports. Matters came to a head in 2021, when the Financial Action Task Force, an international body that appraises financial centres, briefly grey-listed Malta, citing the weakness of its anti-money laundering regime.

In the same year that the Financial Investigation Analysis Unit was established, a constitutional amendment provided for another integrity institution: the Commission for the Administration of Justice. The Commission was intended to regulate the judiciary in matters concerning appointments, standards of conduct and discipline, to supervise the administration of the Courts, to advise the Minister for Justice on matters pertaining to the organisation of the administration of justice, and to exercise disciplinary authority over the legal profession (Constitution, Art.101A(11)). The Commission's existence began a gradual progress of separating the judicial system from its dependence on the Executive in so far as judicial appointments and the administration of the Courts is concerned, a process that has recently advanced considerably following constitutional amendments in 2016 and 2020. Financial appropriations

---

3 The Standing Committee on Public Appointments, which was established by Act II of 2018 - Article 48A of the Public Administration Act, has the power to conduct pre-appointment hearings of persons nominated for public appointments specified in the Second Part of the Fifth Schedule of the same Act. The Standing Committee on Public Appointments was set up by way of Motion No. 103 approved in the House on 5 March 2018. (Source: Website of the Parliament of Malta <https://parliament.mt/en/13th-leg/public-appointments-committee/> accessed 24 November 2022.)



for the judicial branch continue to depend on Executive initiative and discretion.

The Commission's composition departed markedly from the standard pattern (Art. 101A(1)), a practice replicated in its three standing committees for judicial appointments (Art.101A(6)(a)), advocates and legal procurators (Cap.369 s.3(2)), and judges and magistrates (Art. 101B(1)). The Constitution and the Commission for the Administration of Justice Act 1994 (Cap.369) introduced representative, elected office holders in the membership of both the Commission and its standing committees. As the law stands at present, the Commission is chaired by the President of Malta, who has an original vote, and comprises the Chief Justice, two judges and two magistrates elected for four year terms by their respective peers, two members appointed (inevitably) by the Prime Minister and the Leader of the Opposition, and the President of the Chamber of Advocates *ex officio*. This intricate composition was perhaps intended to represent all those engaged in the administration of justice, though not ordinary citizens, as well as to include an element of political oversight.

The Ombudsman and the Auditor General are *ex officio* members of the Judicial Appointments Committee (Art. 96A(1)(d) and (e)); their presence brings a novel element to the checks and balances, namely, peer-to-peer participation in the work of an integrity institution.

The President's position is somewhat anomalous: as the Commission's Chair he presides over deliberations concerning the removal of judges and magistrates (Art. 101B(10)); as Head of State, he is required to act on the Commission's advice in matters relating to the removal of members of the judiciary, and on the advice of the Judicial Appointments Committee in matters relating to judicial appointments. (Art. 96(1)); on matters concerning the subrogation and the allocation of duties to judges and magistrates, the President acts on the recommendation of the Chief Justice (Art.101A(13)).

Since 2020, the House of Representatives has been excluded from the process of removing members of the judiciary from office; instead, an avenue of appeal to the Constitutional Court was simultaneously created. Thereafter, the House acquired authority to advise the President to appoint the Chief Justice, subject to an affirmative resolution

approved by no less than two-thirds of its membership (Art. 96(3)). The initiative for the filling of vacancies in the judicial bench remains with the Minister of Justice (Art 96B(1)), who issues a public call for applications.

In summary, since the inception of the Commission for the Administration of Justice, the mechanisms overseeing the judicial system and the legal profession have become intricate and elaborate. They have enhanced judicial independence from both the executive and the legislative branches, and established an oversight framework intended to promote high standards of integrity throughout the judicial and legal professions. However, the effectiveness of the framework is not unambiguously clear; additional research is required into its role in disciplining members of the judiciary and the legal profession in those instances of corruption, malfeasance, and neglect that have come to public attention. The integrity framework makes the judiciary to some extent self-regulating, while anomalies may lurk within its very intricacy. The interests and concerns of ordinary people in regard to both civil and criminal proceedings are not represented.

In marked contrast to judicial oversight, the Ombudsman and the Supreme Audit Institution are paragons of clarity and directness. The Parliamentary Commissioner for Administration, the Ombudsman's official title, was created by ordinary legislation in 1995. It was the first integrity institution to address the needs and grievances of ordinary folk in regard to public administration, rather than the concerns of officials and political parties. It was also the first to be designated an 'Officer of Parliament', and to be appointed by the President acting on a resolution supported by not less than two-thirds of the members of the House of Representatives. The Ombudsman became a constitutional office by virtue of a constitutional amendment in 2007, when its jurisdiction was also extended to organisations which, though not government-owned or controlled, provide a public service (Warrington (ed.) 2020: 137).

There is an as yet unresolved debate as to the desirability of appointing a retired civil servant or a retired judge to the office; so far, the chosen candidates have been alternately civil servants and justices. The Ombudsman is independent of the Executive in regard to funding and staffing. The institution has enjoyed consistently strong

parliamentary support in so far as concerns the unanimous vote on resolutions appointing a new Ombudsman, as well as the enabling legislation, and the annual estimates of revenue and expenditure. The estimates are scrutinised by an *ad hoc* parliamentary standing committee before going before the House.

Against that, ‘the institution’s *functional* link with parliament is rudimentary’ (Warrington, 2020: 134). There is no debate on the annual report that is transmitted to the Speaker; ‘unfortunately, there hardly exists any scrutiny, follow-up, or discussion by the House of Representatives of the various documents presented ...’ (Ombudsman 2003: 18).

The institution is vested with significant investigative authority, but the remedies it offers are not binding on the governmental organisations that are subject to its jurisdiction. Instead, it works through conciliation and persuasion. There have been occasional outbreaks of friction with the Executive, especially over promotions in the Armed Forces. The Ombudsman’s recent annual reports lament the lack of responsiveness to investigations and recommendations by the House and the public administration. The Annual Report for 2021 had this to say about the bodies subject to the Ombudsman’s jurisdiction:

Public authorities and entities on the whole are less willing to accept final opinions of the Office and it is not uncommon that they refuse to implement its recommendations. Some are badly advised by lawyers who adopt a legalistic approach, wrongly insisting that in case of disagreement with the Ombudsman the matter should be resolved by a court of law. An approach that manifests a deplorable lack of appreciation of the fundamentals that characterise the Ombudsman institution as a mediator between the aggrieved citizen and the public administration. An approach that fails to recognise the basic concept that the Ombudsman is empowered to determine complaints not only according to applicable laws and regulations but also on the grounds that the administrative act complained of was unreasonable, unjust, oppressive, improperly discriminatory, based on a mistake of law or fact or simply wrong. Public administrators need to

understand and accept that in a democracy based on the rule of law they had to be held accountable for their actions or inactions to autonomous and independent institutions and ultimately to Parliament... (Ombudsman 2021: 18).

In a similar vein, the report criticises inaction by both the Prime Minister and Parliament using language that is uncommonly robust:

The law empowers the Ombudsman and his Commissioners to refer their final opinions that have been rejected by the public administration to the Prime Minister for his final consideration. If that referral is unsuccessful, the Ombudsman can forward those complaints and final opinions that in his view so merit, to the House of Representatives for its consideration. In 2021, following the Rule of Law Report, the Office has made greater use of this power in an attempt to secure implementation of its recommendations through a decision at the highest political level. However, as was the case in previous years, this initiative proved unsuccessful.

In fact, during the year no less than 16 reports by the Ombudsman and his Commissioners were sent to the House of Representatives and laid on the Table of the House by the Speaker. There has been absolutely no reaction from Members on either side. After more than 25 years these provisions of the Ombudsman Act remain a dead letter. There has never been the political will to implement them. This is regrettable. It not only shows a lack of respect to the institution and indeed to the very law that the elected representatives of the people unanimously approved, but it also reveals a failure to correctly appreciate the statutory status of the Ombudsman as a Parliamentary institution. It also manifests Parliament's inability to grasp the reality that through its persistent inaction aggrieved citizens are being deprived of their right to effective access to Parliament that ultimately has the statutory duty implicitly if not explicitly, to consider their complaint referred to them once the public administration and the Prime Minister himself failed to accept

the final opinion of the Ombudsman or his Commissioners and implement their recommendations.

It is now clear that unless there is a statutory obligation that requires Select Committees of the House to consider these final opinions, no progress will be made (Ombudsman 2021: 18-19).

The public enthusiasm and trust which characterised the Ombudsman's early years led to the creation of several similar bodies: the trend threatened to devalue the concept and to fragment the effort to provide remedies for maladministration. In 2010, following lobbying by the Ombudsman, a measure of consolidation was achieved. Three Commissioners for Administrative Investigations were appointed, one each for education, environment, and land use planning. 'The Commissioners, functioning autonomously in an integrated office in unison with the Parliamentary Ombudsman, provide the Office with specialised and authoritative expertise in vital areas of economic and social development' (Said Pullicino 2020: 59).

In October 2013, the Ombudsman proposed that the Office should take on the functions of a national human rights institution (Ombudsman 2013). Although nothing came of it, the proposal signalled the institution's growing interest in the rule of law as a foundation of good governance. Grievances about maladministration still constitute the daily caseload: nonetheless judging by the themes dealt with in its publications, and particularly the commentary in annual reports to the House, the Ombudsman appears to have emerged as the principal observer of the broad state of the rule of law in Malta. It is one of the leading interlocutors with international institutions assessing the quality of governance and the rule of law in Malta, and proposing governance reforms.

Critical elements of institutional design first applied to the Ombudsman were re-applied and refined in 1997, when the National Audit Office was established. These included the method of appointing the Auditor General and the Deputy Auditor General, as well as their designation as constitutional offices and Officers of Parliament. The NAO itself was given constitutional recognition and autonomy: it was detached from the public service and the funding mechanism employed

there, in marked contrast to the Electoral Office, which remains a department of the public service (Constitution Art. 108(10)).

In its final years, the former Department of Audit acquired a parliamentary counterpart in the shape of the Public Accounts Committee (PAC), established in 1995. The PAC was among the first of several parliamentary standing committees established that year with a view to enhancing parliamentary oversight of policy and public administration. It is undoubtedly the best known parliamentary committee in Malta, and some of its recent hearings have provided considerable political theatre, by turns entertaining and dispiriting. Peplow's (2012) pioneering study of the PAC singles out the Committee's composition for criticism: the inclusion of ministers as Government members of the Committee is not conducive to serene deliberation of the reports submitted by the NAO. Recent PAC hearings on intensely controversial matters, such as the Vitals hospital concession, have tended to assume the character of inquiries rather than deliberative, joint reflection; at times, the hearings provide opportunities for grandstanding. It could even be said that the drama which once characterised proceedings in the full House has been transferred to the PAC's committee room.

The partisanship displayed in the PAC has consequences for the NAO. Firstly, it risks drawing the Office into the political fray, though the Auditor General and his staff have scrupulously avoided that hazard. Secondly, the bitter, reciprocal recriminations deflect attention from the substantive issues raised by the NAO's reports. Finally, the opportunity to flesh out bi-partisan initiatives that could improve the tenor of public life and the quality of governance is lost.

In summary, the creation of the National Audit Office brought to a close a brief period of broadly consensual institution-building. That period reconfigured the State by redistributing some authority within and outside the highly centralised executive government, as well as enhancing parliamentary scrutiny of legislation and public administration. While the first stage of development of integrity institutions focused on tempering the effects of intense political partisanship on public administration and democratic constitutionalism, the second stage introduced the concepts of scrutiny and accountability, extending them to the judicial and executive branches of the State and,

indeed, to the economy. A first line of defence against corruption and money-laundering was also established. Just as significantly from the point of view of democratic participation, the Ombudsman and the NAO operate with a transparency which the other integrity institutions conspicuously lack, a transparency which has undoubtedly enhanced their legitimacy and offers citizens reliable, impartial, and otherwise unavailable information about broad fields of public life. From the point of view of institutional design, the decade 1988 - 1998 was a time of relatively bold experimentation that sought to take account of the citizenry's heightened democratic awareness, rising expectations of institutional responsiveness, as well as the risks to the integrity of public life arising from a combination of economic restructuring and growing affluence.

It is noteworthy that, while parliamentary oversight of public administration was greatly enhanced, MPs themselves were not subject to independent scrutiny. Furthermore, despite according considerable autonomy to several of the new integrity institutions, the parliamentary connection has added little leverage to their scrutiny. Partisan sentiment and a pronounced sensitivity to criticism continued to bedevil political attitudes towards the institutions.

Over the course of the next decade, nothing more than incremental improvements were made to the integrity institutions. In 2017, however, the killing of a pioneering investigative journalist, Mrs. Daphne Caruana Galizia, set in motion a civil society movement which, together with international pressure, induced a third stage in the development of Malta's integrity institutions.

### **Stage III - Revising and consolidating the integrity institutions**

The work carried out by investigative journalists during the past decade or so cumulatively disclosed the existence of networks comprising politicians, politically appointed government officials, business interests and, not infrequently, organised crime. Both the press and integrity institutions in Malta and abroad also steadily exposed the weakness of regulatory regimes in booming economic fields, including

construction, financial services, and gaming. A combination of weak regulation, occult networks of power, and the vast patronage in the State's gift critically weakened integrity in public life. Malta lost ground in numerous governance league tables, chiefly on account of the growing prevalence of corruption. Matters came to a head with the killing of Mrs Caruana Galizia.

The government's first response was to bring legislation establishing an integrity institution to regulate the conduct of members of parliament and officials holding so-called 'positions of trust'. The Standards in Public Life Act 2018 (Cap. 570) established the office of Commissioner for Standards in Public Life as well as a corresponding parliamentary Standing Committee on Standards in Public Life. As with the Ombudsman and the Auditor General, the Commissioner is appointed and removable by the President acting on a resolution supported by not less than two-thirds of the members of the House of Representatives (Cap.570 ss.4, 7). The composition of the Standing Committee is governed by the time-worn formula first applied in the Employment Commission: the Speaker chairs, and is vested with a casting vote; the Government and Opposition each appoint two members.

Section 13(1) of the Standards in Public Life Act confers supervisory, investigative, and advisory functions on the Commissioner, including:

- (a) examination and verification of declarations relating to income, assets and other interests by MPs;
- (b) investigation of alleged breaches of statutory or ethical duties by the MPs and persons of trust subject to jurisdiction;
- (c) 'negative clearance' as to the legality or morality of a planned action or conduct, at the request of an official subject to jurisdiction;
- (d) scrutiny of the register with all details of absentee members of parliament held by the Speaker of the House;
- (e) ensuring the collection of penalties due from absentee MPs;
- (f) identification of lobbying activities, issuance of guidelines and recommendations in respect of the regulation of such activities;
- (g) recommending improvements to the codes of ethics applicable to the persons under jurisdiction, 'and in particular but



without prejudice to the generality of the foregoing, to make recommendations on the acceptance of gifts, the misuse of public resources, the misuse of confidential information, and on limitations on employment or other activities after a person ceases to hold office as a Minister, a Parliamentary Secretary or a member of the House of Representatives’.

In the short period since its inception, the Office of the Commissioner has been remarkably active. Not only has it handled complaints: it has also taken the initiative to develop a full set of constitutional proposals intended to improve the integrity of Malta’s governing institutions (Commissioner for Standards 2019a); it has addressed the perennially thorny question of the constitutionality of so-called ‘positions of trust’ (Commissioner for Standards 2019b, revised 2021); it has devised improvements to the Codes of Ethics for Ministers and MPs (Commissioner for Standards 2020a); it has broached the subject of the regulation of lobbying (Commissioner for Standards 2020b); it has carried out a review of campaign spending by election candidates (Commissioner for Standards 2022), as well as issuing guidelines on government advertising and promotional material (Commissioner for Standards 2021a).

The Standards Committee of the House has a less consistent record. As with the PAC, what ought to be a non-partisan forum for deliberation on a matter of increasingly urgent public interest is liable to be transformed into an arena for the defence of partisan interests.

It was not long before the Commissioner for Standards and members of his staff came in for intimidating criticism, within and outside the House; criticism which is intended to discredit the integrity and impartiality of the Office (Commissioner for Standards 2021b: 29). Furthermore, on several occasions, either the Executive or the Speaker of the House have formally rebutted the findings or the recommendations of the Commissioner.

Towards the end of 2019, a wave of protests organised by newly established civil society associations and the criticism levelled at Malta by international organisations such as the Council of Europe, the Venice Commission, and the European Parliament led to a political and institutional crisis. This had two consequences:

- firstly, between 2019 and 2020, the Prime Minister, several ministers and parliamentary secretaries, the Commissioner of Police and the Attorney General were forced to resign;
- secondly, between 2020 and 2021, a raft of constitutional and legal amendments enhanced the independence of most of the integrity institutions, chiefly by expanding the role of the President of Malta and the House of Representatives in selecting their members and/or principal officers, while concomitantly curtailing the patronage and the discretion of the Prime Minister in making these appointments; Parliament also moderately expanded the jurisdiction of anti-corruption institutions.

### **Towards an integrity ecosystem?**

The process of consolidating the integrity institutions is a work in progress. The evidence presented here contradicts some of the conventional wisdom on the subject. It demonstrates the incremental nature of the effort to raise standards of integrity in public life. Malta's experience suggests that integrity institutions are designed and established piecemeal, in response to crises, and in an effort to adapt the constitutional order and governance to tectonic shifts in a country's political economy.

Maltese experience also demonstrates the limitations imposed by a country's political culture on the design and functioning of integrity institutions. Maltese political culture is both intensely partisan and personalised: any criticism of a member of the Government or Opposition is received defensively as an attempt to discredit the Government and its record, or the reputation of the members of the Government and of the House. The political culture is a product of historical forces impinging on it through the four and a half centuries in which a state has been established in these islands.<sup>4</sup> It is an expression of the politics that historically characterise a fortress territory, in which opposition and dissent are regarded as inherently subversive.<sup>5</sup>

4 The Hospitaller State, 1566 – 1798; the British Colonial State, 1814-1964; the sovereign parliamentary democracy, 1964 to the present.

5 Cf. Warrington, E. & D. Milne (2007), 'Governance' in Baldacchino, G. (ed). *A World of*

This element of political culture is exacerbated by the small scale and intimate social relations of Maltese society. One consequence is that, while Government and Opposition have cooperated to establish the oversight bodies and integrity institutions characterising parliamentary democracies, the illiberal political culture subsequently induces behaviours that diminish the effectiveness of those very institutions – obstruction, neglect of recommendations, over-reaction to public statements by the institutions, and a public discourse intended to discredit the office holders.

This leads me to suggest that capacity-building and institutional design are necessary but not sufficient to establish effective integrity institutions. In a study of Australia's National Integrity System Sampford et al (2005: 104 - 105) propose an alternative to the 'Greek Temple' metaphor that has conventionally been employed to describe the assembled pillars of a national integrity system: the bird's nest:

[Our] depiction of an integrity system as a network ... contrasts strongly with the temple metaphor. There is no reason for the temple metaphor to be entirely abandoned, since all metaphors convey only a part of that which they represent... [V]arious reforms were understood to be related and potentially mutually supportive, but the reality was still that the institutional or legislative 'pillars' were usually re-examined and redeveloped one-by-one, rather than to an overall redesign. By contrast, [the bird's nest] shows a loose or 'open' system in which the number and nature of institutions is not prescribed, but will be determined in any context by the combination of what already exists and what might be desired. It is significantly messier than the neo-classical architecture of the temple, which has connotations of a single architect, and a pure design that will not work unless constructed perfectly... Whereas the temple's institutional 'pillars' are preferably rigid and independently strong, the network approach also suggests these are usually flexible and, individually, may be destined to remain relatively weak.

An ‘integrity ecosystem’ is another metaphor, emphasising the dynamic nature of the inter-institutional relationships, both among the integrity institutions themselves, as well as between them and the political, economic and socio-cultural institutions with which they interact.

Taken together, the ten institutions surveyed in this chapter constitute the elements of an ‘integrity framework’ covering every aspect of Malta’s public life and economic activity: public administration, policy-making, politics, and enterprise. Their collective remit extends to virtually every dimension of public life. They address relations involving private citizens, business enterprise, political organisations, governing institutions, and regulatory authorities. However, the institutions concerned are fragmented and isolated; crucially, they lack the authority to impose sanctions; for that, they rely on an external, **political** authority – the Prime Minister, the PAC or the Standards Committee – or the Police and Attorney General, two institutions whose effectiveness in matters involving politicians has long been dubious. Furthermore, although they address similar concerns, they do not act in concert on issues of common concern, such as persons of trust, or conflict of interest, or standards of conduct and governance. Their isolation makes it easier for politicians to subvert them in the ways described earlier, whenever the political situation so requires.

The gradual development of an ‘integrity ecosystem’ requires the integrity institutions themselves to take the initiative, aided by the pressure exerted by civil society and by international oversight bodies, and comforted by both their vocal support and their proposals for change. That said, it is vitally necessary to avoid creating the impression that the integrity institutions are ‘conspiring’ against the Government or the House; their legitimacy would be destroyed. Quite the contrary, the integrity institutions could jointly invite MPs or the PAC, the House Business Committee and the Standards Committee to informal exchanges of views on matters of common interest, such as follow-through on their recommendations. Such exchanges, removed from the partisan atmosphere of the House and the committee room, could quietly instil among MPs a greater appreciation of both the concerns and the impartiality of the integrity institutions.

The ecosystem can and should develop informally, through joint reflection and inter-institutional consultation. In time, as inter-institutional relationships are consolidated, joint action may be undertaken, such as the preparation of joint memoranda to the House of Representatives on matters of pressing common interest. Integrity ecosystems cannot be built overnight: they are delicate creations that require patient, sustained confidence-building as a counterweight to a political culture that is both adversarial and incestuous.

## Bibliography

### *Scholarly works, reports, official publications*

- Bartolozzi, D., M. Gara, D.J. Marchetti & D. Masciandaro (2022), ‘Designing the anti-money laundering supervisor: The governance of the financial intelligence Units’, *International Review of Economics & Finance*, 80, 1093 – 1109.
- Commissioner for Standards in Public Life (2019a), *Towards Higher Standards in Public Life*, Malta: Office of the Commissioner for Standards in Public Life, October 2019.
- Commissioner for Standards in Public Life (2019b), *Who are Persons of Trust? A Guidance Note*. Malta: Office of the Commissioner for Standards in Public Life, first issued 17 October 2019, revised 28 April 2021.
- Commissioner for Standards in Public Life (2020a), *Revising the Code of Ethics for Members of the House of Representatives and for Ministers and Parliamentary Secretaries*. Malta: Office of the Commissioner for Standards in Public Life, July 2020.
- Commissioner for Standards in Public Life (2020b), *Towards the Regulation of Lobbying: A Consultation Document*. Malta: Office of the Commissioner for Standards in Public Life, February 2020.
- Commissioner for Standards in Public Life (2021a), *Guidelines on Government Advertising and Promotional Material*. Malta: Office of the Commissioner for Standards in Public Life, August 2021.
- Commissioner for Standards in Public Life (2021b), *Annual Report for 2020*. Malta: Office of the Commissioner for Standards in Public Life, May 2021.
- Commissioner for Standards in Public Life (2022), *Spending by Candidates in General Election Campaigns: A Landscape Review*. Malta: Office of the Commissioner for Standards in Public Life, September 2022.
- Doug, A. & S. McIvor (2003), ‘The National Integrity System: Assessing Corruption and Reform’, *Public Administration and Development*, 23(4), 317-332.
- Fsadni, M. (2003), *Broadcasting Pluralism in Malta: Ten Years Later*. Malta: Broadcasting Authority.
- Grebe, E. & M. Woermann (2011), *Institutions of Integrity and the Integrity of Institutions*, Research Paper 15, Developmental Leadership Programme, Australia.

- Kirby, N. (2021), 'An 'Institution-first' Conception of Public Integrity', *British Journal of Political Science*, 51, 1620 - 1635.
- Klug, H. (2019), 'Transformative Constitutions and the Role of Integrity Institutions in Transforming State Power', *Buffalo Law Journal*, 67(3), 701-742.
- Ombudsman (2013), *The Setting Up of a National Human Rights Institution: A Proposal by the Parliamentary Ombudsman*. Malta: Office of the Ombudsman, October 2013.
- Langseth, P. (1997), 'The role of a national integrity system in fighting corruption', *Commonwealth Law Bulletin*, 23(1), 499-528.
- Ombudsman (2014), *On the Strengthening of the Ombudsman Institution*. Malta: Office of the Ombudsman, January 2014.
- Ombudsman (ed) (2015), *The State's Duty to Inform: Truth, Transparency and Accountability*. Malta: Office of the Ombudsman, December 2015.
- Peplow, W. (2012). 'The Public Accounts Committee and administrative improvement' in Vassallo, M.T. (ed.), *Public life in Malta: Essays on Governance, Politics and Public Affairs in the EU's Smallest Member State*, Vol. 1/2 (pp. 81-106). Msida: University of Malta.
- Sampford, C., R. Smith, A.J. Brown (2005), 'From Greek Temple to Bird's Nest: Towards a Theory of Coherence and Mutual Accountability for National Integrity Systems', *Australian Journal of Public Administration*, 64(2), 96-108.
- Turner, M., Seung-Ho Kwon & M. O'Donnell (2018), 'Making Integrity Institutions Work in South Korea' *Asian Survey*, 58(5), 898 - 919.
- Tushnet, M. (2020), 'Institutions Protecting Constitutional Democracy: Some Conceptual and Methodological Preliminaries', *University of Toronto Law Journal*, Spring 2020, 95 - 106.
- Vella, T. M. (2018), *The Permanent Commission Against Corruption: An Effective Constitutional Tool?*, Malta: University of Malta thesis.
- Warrington, E., (2015), 'The Fall from Grace of an Administrative Elite: The Administrative Class of the Malta Civil Service and the Transfer of Power - April 1958 – September 1964', in Chircop, J. (ed), *Colonial Encounters: Maltese Experiences of British Rule 1800 – 1970s*. Malta: Horizons, 369 – 391.
- Warrington, E. (ed) (2020), *Serving People and Parliament: The Ombudsman Institution in Malta, 1995 – 2020*. Malta: Office of the Ombudsman.
- Warrington, E. & G.A. Pirota (2014), *Guardian of the Public Purse: A History of State Audit in Malta, 1814 – 2014*. Malta: National Audit Office.
- Wettenhall, R. (2012), 'Integrity Agencies: The Significance of the Parliamentary Relationship', *Policy Studies*, 33(1), 65-78.

### **Legislation**

Constitution of Malta

Employment Commission Act 1976, Laws of Malta Cap. 267.

Permanent Commission Against Corruption Act 1988, Laws of Malta Cap. 326.

Commission for the Administration of Justice Act 1994, Laws of Malta Cap. 369.

Prevention of Money Laundering Act 1994, Laws of Malta Cap. 373.

Standards in Public Life Act 2018, Laws of Malta Cap. 570.

PART II

AUDITING THE PUBLIC PURSE





## CHAPTER 5

### Leadership, capacity-building and innovation in Maltese state audit, 1997 – 2022

*Brian Vella*

#### **Introduction**

Chapter 5 constitutes, in effect, a case study of change management. It examines the history of the NAO since its establishment in 1997 from inter-related leadership, organisational and technical perspectives. It draws attention to significant changes in the organisation, technical abilities, strategy, and modus operandi of the Office during a quarter-century that witnessed profound changes in Maltese public administration.

The chapter begins with the genesis of the changes in public sector external auditing then recounts the legislative changes that were undertaken, as well as the organisational changes carried out to put into effect these legal provisions. The on-going changes being undertaken at the Office over the period 1997 – 2022 are examined next.

The account then reviews the impact on the Office of EU membership, the NAO Strategy for 2019-2023, cooperation with civil society, the Office's enhanced visibility in the international sphere, as well as proposed legislative changes to further strengthen NAO's role and functions and address challenges into the future. The chapter also recounts how certain challenges throughout the years were addressed by the Office.

## Methodology

In preparing this chapter, numerous publications and papers were reviewed, particularly the 1993 White Paper *The Change Continues....* (Government of Malta 1993), *Guardian of the Public Purse - A History of State Audit in Malta 1814 – 2014* (Warrington and Pirotta 2014) as well as papers and reports prepared by NAO staff and presented during local and international conferences. Also referred to were the repealed Financial Administration and Audit Act, Section 108 of the Constitution of Malta (the pre-1997 version and that following the 1997 legislative changes), and the Auditor General and National Audit Office Act, 1997. NAO Annual Audit Reports, Performance Audit Reports, Special Audits and Investigations, IT Audits, other NAO assignments published over the past twenty-five years, NAO Work and Activity Reports for the period 2003 up to 2017, as well as NAO Annual Reports and Financial Statements for the period 2018-2021 also yielded much useful data.

Interviews were held with former Auditors General, Joseph G. Galea on 11 July 2022, Anthony C. Mifsud on 1 July 22, and the current Auditor General, Charles Deguara on 5 July 2022.

Finally, the writer's own experience at the Office since its inception in 1997 also proved useful when preparing this chapter.

## Change: an ongoing process

Change is an ongoing process that depends on the unfolding developments of society: changes in government policies; cultural, socio-economic and other local and overseas developments and trends, as well as changes in people's attitudes towards, for instance, the environment, safety and health standards, and good public governance brought about by the increased awareness of a more educated population.

The constitutional and legislative provisions established at Independence in 1964 became somewhat outdated as Malta transformed itself from a colony to a modern nation state. Economic growth translated into ever-increasing public expenditure and revenue as economic development and diversification proceeded apace. Subsequent administrative developments

led to increased decentralisation and autonomy of line function departments, which had to be counterbalanced by enhanced accountability. The need for more stringent controls relating to the management of public funds and a more effective and visible state audit function became indispensable.

Although State institutions had been undergoing changes to a greater or lesser degree for years, the genesis of major changes can be traced back partly to a White Paper entitled *The Change continues....* (Government of Malta 1993). The document proposed measures to secure a broader spread of power through less government intervention; greater involvement of citizens by creating autonomous bodies that could examine and contest decisions; and more transparent and accountable administration by giving greater publicity to the decision-making process.

It proposed *inter alia* the modernisation of the legislation regulating the powers and functions of the Government Auditor with the aim not only of increasing the powers of review vested in the Office, but also of enhancing its independence. The White Paper proposed revising the method by which the Government's Auditor was appointed. The functions assigned to the Office, as well as its relationship with Government, Parliament and the people, also needed to be revised in accordance with the country's current needs. The Government Auditor was to act as the citizen's trustee, by being able to examine and control government administration and finances effectively, transparently and without any pressure or influence from any person, body or authority.

Although the Auditor's independence was already partly secured by the enactment of the Financial Administration and Audit Act 1962 and by Article 108 of the Constitution of Malta, it was felt that the independence and functions of the Office needed to be enhanced, legislatively as well as functionally. The document therefore proposed:

- i. the creation of the Office of Auditor General vested with autonomous functions and powers;
- ii. that the Auditor General would have full control of the recruitment or dismissal of Office personnel; and
- iii. that the Auditor General would also report to the Public Accounts Committee, which is a Standing Committee of the House of Representatives, established in 1995.

Concurrently, the working methods and the aim of audit work needed to be reviewed. While the Auditor's principal function at the time (to ascertain that financial regulations were complied with) should be retained, it was equally important that state audit should comment critically upon the effectiveness, efficiency, and economy of government operations, programmes and activities.

The state audit institution, together with the Public Accounts Committee, the Ombudsman's Office, the Internal Audit Directorate (as it then was) and other bodies that have been set up or evolved since 1993, were considered to be important tools for the development of accountability, transparency and value for money in public administration (Ferry 2002).

The proposals culminated in the 1997 reform of the legislative framework regulating state audit. The legislation set in motion far-reaching changes in the work of this scrutinising body, including its reporting function, with the aim of positively impacting the quality of governance.

Warrington and Pirotta (2014: 105) explain the dire need of reform of the state audit institution:

The legislation establishing the office of the Auditor General and the National Audit Office in 1997 brought to a conclusion a period of state-building which began in 1962 and continued uninterrupted even during periods of political or constitutional crisis. Nevertheless, in 1997, despite thirty-five years of development, adaptation and occasional crisis, the Maltese state was still recognizably that which acquired sovereignty in 1964, though its governing institutions had been refurbished, its citizens were more affluent, its economy was more service-oriented, its municipal and administrative infrastructure more robust.

The revised legislative framework and organisational changes of 1997 were closely modelled on the White Paper's proposals in 1993. In essence:

- i. they transformed the then-existing Department of Audit into an autonomous National Audit Office;
- ii. the independence of the newly-created Offices of Auditor General and Deputy Auditor General was assured by insulating them from the patronage of the Executive Government and designating them ‘Officers of Parliament’ on the pattern of the Ombudsman;
- iii. the Auditor General was vested with authority over the staff of the NAO, while the House of Representatives directly appropriated funds for the Office, without the intermediation of the Minister of Finance;
- iv. the functions and powers vested in the NAO were expanded.

As a result of the unanimous agreement between Government and Opposition, the National Audit Office was set up in its present form by virtue of both the newly enacted Auditor General and National Audit Office Act, 1997, as well as important amendments to Article 108 of the Constitution of Malta.

Independence was primarily achieved by establishing that the Auditor General and the Deputy Auditor General be Officers of Parliament. The revised constitutional provision recognized that the independence and status of the state audit function would be more credible by having the Auditor General and the Deputy Auditor General appointed by the President acting in accordance with a resolution of the House of Representatives that is supported by the votes of not less than two-thirds of all the members of the House. The procedure ensures that the Auditor General and his Deputy are accepted as politically unbiased figures. In fact, the appointments of every Auditor General and Deputy Auditor General have won the unanimous support of the House of Representatives. Both officers are appointed for five-year terms renewable once for a further five years. Since 1997, the NAO has had three Auditors General, namely Joseph G. Galea (July 1997 - July 2007), Anthony C. Mifsud (August 2008 – April 2016) and Charles Deguara (April 2016 to date) and three Deputy Auditors General, namely John A. Bonnici (April 1998 – May 2001), Charles Deguara (August 2008 – April 2016) and Noel Camilleri (April 2016 to date).

Between July 2007 and August 2008, however, both Offices were vacant because of disagreement between Government and Opposition over whom to appoint. As appointment needed a two-thirds parliamentary majority, a stalemate occurred. For one year, the outgoing Auditor General retained the office, albeit in a caretaker capacity. This was damaging to the Office and for democracy, as legal counsel advised that no audit reports could be issued during this period, though work at the Office continued at a normal pace. The stalemate was finally broken in August 2008 when, following the parliamentary elections earlier that year, Government and Opposition agreed upon the nominations of Anthony C. Mifsud as Auditor General and Charles Deguara as Deputy Auditor General, who were both subsequently appointed with unanimous support from the members of the House of Representatives.

Nonetheless, this situation revealed the risk resulting from the requirement of a two-thirds majority for appointing an Auditor General and his Deputy in a polarised political environment. In proposed legislative changes submitted to the President in February 2020, the NAO made recommendations to address the risk. The proposal is as follows:

If at the end of tenure of the office of the Auditor General or the Deputy Auditor General both offices are vacant, the incumbent officers shall hold office until the successor is appointed or for not longer than one year, whichever occurs first.

Provided there is no incumbent officer as provided above, the most senior officer shall become chief executive officer and shall only be responsible for the administration of the Office until the appointment of an Auditor General. (NAO 2020a: par.15)

The Auditor General and Deputy Auditor General can only be removed by a resolution supported by a majority of two-thirds of the members of the House. The provision followed the pattern previously applied to the Director of Audit. It ensures that these important authorities may only be removed for some profoundly serious reason (such as proven misbehaviour or inability to perform functions) and with the consent of the main parliamentary parties and not simply at

the whim of any government. Such a situation has never occurred. The NAO is in fact one of the few institutions in Malta which are respected by both Government and Opposition. There has, to date, never been any risk of Parliament voting for the removal of either the Auditor General or his Deputy.

Former Auditor General Joseph G. Galea, who played a leading role in the transition in 1997, states that two recommendations for constitutional amendment were favourably considered and accepted, namely (i) that the pension and emoluments of future Auditors General and Deputy Auditors General were to be those applicable to Judges and Magistrates, and that (ii) if, on attaining retiring age, these officers are still below the retiring age in the public service at the end of their appointment, they may revert to the Government General Service and continue to enjoy the emoluments payable by the NAO (Interview, 11 July 2022).

Since 1997, the Auditor General has referred reports directly to the Speaker of the House of Representatives, who lays them on the Table of the House. Previously, audit reports were transmitted to the Minister responsible for finance who then referred them to the Speaker of the House - although the Director of Audit could refer an audit report to the Speaker of the House should a month elapse without referral by the Minister for Finance.

Towards the end of his tenure as Auditor General in 2007, Mr Joseph G. Galea had stated that ‘... independence made it possible for the former Department of Audit to be developed into an organisation that manages to assist the Auditor General in discharging the Constitutional mandate effectively and efficiently’ (NAO 2007: 26). None of the past and current Auditors General ever encountered any political interference in the conduct of their duties (Interviews, 1, 5, 11 July 2022). Both Mr Mifsud and Mr Deguara affirmed that no one ever put any pressure on which areas the Office was to audit or the way the Office was to write its reports. This does not mean that the government of the day was always in agreement with all the findings and recommendations of the reports we issued. Nonetheless, it is noteworthy that well over 90% of the Office’s recommendations are accepted by the Government.

## **The Auditor General's jurisdiction, mission and powers**

In 1997, the powers vested in the Office were extended to all public authorities, companies in which the government owned over 50% of the shares, corporations or bodies that were required to present their accounts to parliament and to other institutions that made direct or indirect use of public funds. The philosophy behind the extension is that in a democracy citizens are entitled to have a fair and independent appraisal as to whether all public funds are being expended appropriately and judiciously. Throughout the past twenty-five years, all the sections within the NAO have undertaken various audits of non-departmental bodies. Although public sector organisations outside the central government sphere are audited by private sector auditors in terms of the Companies Act and/or legislation setting up such bodies, the NAO is still entitled to carry out audits on such bodies, usually audits of a performance, compliance or financial nature.

Pre-1997 state audit legislation granted access to all books, records, returns and other documents necessary for the conduct of the Auditor's duties. These important provisions were retained in the 1997 constitutional amendments and NAO legislation. Furthermore, the 1997 legislation retained the provisions whereby the Auditor General was protected from being subject to the authority or control of any person. The Office was free to undertake audits of its own choosing, in addition to those requested by the Minister of Finance or the PAC. The NAO was authorised to make use of private auditing firms where necessary to support operations.

Although the Office has extensive powers, there is still room for improvement in the enabling legislation so that NAO staff may carry out their audits to full effect without any obstacles or interference. For instance, current legislation is not clear in so far as concerns requests for information from private persons or former civil service employees, though in practice, this has never caused a real problem for the Office. Accordingly, in its submissions to the President and to the then Minister for Justice, Equality and Governance on constitutional and legislative reform, the NAO outlined proposals intended to clarify and enhance its powers. (NAO 2020a, NAO 2020b).



## **Financial and Compliance Audits**

Warrington and Pirotta (2014: 106-107) underscore the perennial importance of financial and compliance audits:

...the coexistence of several tiers of government (sub-national, national, supra-national and inter-governmental) has created new sources of financial decision-making, new revenue and expenditure streams as well as more elaborate rules of financial administration and public procurement. In turn, these have expanded the jurisdiction and modus operandi of state audit.

In 1997, the amended Constitution and new NAO Act obliged the Auditor General to submit an annual report on public accounts to the Speaker of the House not later than a year after the closing of the financial year under review, to be laid before the House of Representatives at its next sitting. Annual Audit Reports on Public Accounts for a financial year are now typically presented to the Speaker in December following the end of the financial year being reported upon.

Prior to 1997, the Financial and Compliance Audits Section issued only the Annual Audit Report on Public Accounts. Over these past twenty-five years, several changes have extended the work of this Section and enhanced the transparency and user-friendliness of its reports. For instance, during Anthony Mifsud's tenure, full Management comments started being included in compliance audit reports.

The number of audits included in the Annual Audit Report has increased substantially over the past few years. For financial years 2004 and 2005, Mid-year and Annual Audit Reports on Public Accounts were issued, though the practice was discontinued in 2006. Since 2014, the report by the Auditor General on the workings of local government was separated from the Annual Audit Report and published separately. These reports are typically published in November or December following the end of the financial year being reported upon.

## **Accrual accounting and financial and compliance audits**

It is interesting to note that the Report of the Director of Audit on Public Accounts for 1994 had referred to accruals-based accounting in central Government. The Director stated that ‘This Office feels that the Government should consider the possibility of introducing an accruals based public sector accounting system...’ (Department of Audit 1995: 7). The Report for 1998, declared that:

It is encouraging to note that a Committee has been set up by the Government to explore the means of introducing accruals-based accounting. The Deputy Auditor General is a member of the Committee on an observer basis (NAO 1999: 179).

The preparatory process began in 1998, though it has taken a long time to take off. Currently, accrual accounting is in the process of full implementation in central government, involving the change-over from the cash-based Departmental Accounting System to fully-fledged accrual accounting through the Corporate Financial Management Solution (CFMS). In the last quarter of 2020, the CFMS system went live in 15 pre-agreed sites. In these pilot sites, the organisations operated exclusively through CFMS. On 1 April 2021, the core CFMS went live in all ministries and departments. The implementation of CFMS necessitated continuous support by an ad hoc CFMS Implementation Team, who addressed several queries and teething problems. In view of issues that took priority over other matters, the opening balances could not be uploaded into the system and, thus, a first set of full accruals-based financial statements for central government for 2021 were not made available for audit. Preparations are also under way for the (final) Phase III of the CFMS project. This includes other systems and modules directly integrated with CFMS, among which are budget and forecasting, cost management, as well as the management of financial assets and liabilities.

The introduction of accrual accounting is a challenge for the NAO, especially for the Financial and Compliance Audits Section as it will

entail an overhaul of its audit scope and approach. Currently, most audits by this Section are of a compliance nature, i.e., ensuring that public funds are expended and received in accordance with financial rules and regulations. The Government Financial Report is also reviewed. However, financial audits are limited on account of the cash-based accounting system. Once accrual accounting is fully introduced, audits will become largely financial, i.e., ensuring that public funds are properly reported upon in terms of International Public Sector Accounting Standards. As the large majority of auditors within the Section are accountants having an audit practising certificate, the staff are well qualified to conduct such audits, and have also benefited from further training.

### **Performance audits**

“...the ever-greater complexity of policy problems raises questions about a state’s capacity to govern, the judgement of its policy-makers and the performance of its administrators. These issues serve to raise the profile of scrutineers and greatly enlarge the field of performance audit” (Warrington & Pirotta 2014: 106). The Report of the Director of Audit on Public Accounts for 1994 forecast that ‘The Public Accounts Committee set up by the House of Representatives, as well as a new Audit Act to be promulgated in the near future, will enforce this Office to significantly increase the emphasis on value for money audit, apart from the usual certification (financial) audit...’ (Dept of Audit 1996: 4)

Pre-1997 legislation only mentions performance audit in a subtle, indirect manner. Consequently, although such audits were carried out to a limited extent up to 1997, they were not given their due importance and were generally only undertaken as an additional element of financial and compliance audits. They are now referred to directly in current legislation, are given greater prominence, and are a natural consequence of the heightened expectation of more efficient and effective public service operations:

The Auditor General may examine whether the department, office or other body whose accounts are being audited by him has used the funds and resources available to it effectively, efficiently and economically, without incurring expenditure which is unnecessary (Cap.396: s.3 of First Schedule). Furthermore, the legislation authorises the Auditor General to make special reports to the House of Representatives -

- i. on any matter of pressing importance or urgency; or
- ii. dealing with value for money relating to efficiency and effectiveness of any department, office, or body (Cap.396: s.8 of First Schedule).

Since the legislation was enacted, the NAO has greatly expanded the range and frequency of its performance audits and audits of an investigative nature. They are carried out as stand-alone audits, and not within the framework of the Annual Audit Report (as was the case prior to 1997). The number of yearly performance audits now averages six, apart from follow-up audits. A large proportion of the performance audits undertaken since 2000 focuses precisely on those policy sectors which are characterised by complex, intractable problems and public controversy, namely environment, health, energy/water, asylum seekers, national security and social policy. Although audits generally focus on financial aspects, several performance audits now also focus on social aspects (such as on child obesity, physical education, drug use, dementia, child abuse and correctional services). Furthermore, environmental audits, which focus on the environment and sustainability, are also conducted as part of the performance audits. (Warrington and Pirotta 2014: 109-114)

Table 5.1 lists examples of audits carried out by the Performance Audit Section and demonstrates the range of policies and programmes covered.

**Table 5.1: Selected Performance Audits, 2000 – 2022<sup>1</sup>**

- Assisting Individuals with Dementia and their Caregivers (2022)
- A Strategic Overview on the Correctional Services Agency's Operations at the Corradino Correctional Facility (2021)
- Fulfilling Obligations in Relation to Asylum Seekers (2021)
- Smart and RF meters' contribution to more accurate and timely utilities billing (2021)
- Preliminary review: NAO's role in reviewing Government's measures relating to the COVID-19 pandemic (2021)
- The effectiveness of plastic waste management in Malta (2021)
- A Strategic Overview of Mt. Carmel Hospital (NAO Malta 2018)
- Evaluation of Feed-In Tariff Schemes for Photovoltaics (2018)
- The General Practitioner Function - The core of primary health care (2016)
- Addressing Social Benefit Fraud (2014)
- The Management of Elective Surgery Waiting Lists (2013)
- Enforcement Action by MEPA within the ODZ (2013)
- Contract Management Capabilities across Local Councils (2012)
- Physical Education and Sport in State Primary and Secondary Schools (2010)
- Water Loss Control Management by the Water Services Corporation (2009)
- Reviewing VAT Liability: VAT Investigations and Credit Control Exercises (2007)
- Internal Audit Function within Government Ministries (NAO Malta 2000)

<sup>1</sup> All the reports listed in this and other tables in this chapter are available for download via the NAO's website [www.nao.gov.mt](http://www.nao.gov.mt).

## Special audits and investigations

Warrington and Pirotta (2014: 106) argue that:

...the intense interaction of public administration, private enterprise and non-governmental organisations in policy-making and service delivery, and the still-growing public purse multiply the risk of conflicts of interest, opportunities for clientelism, fraud, misappropriation, waste and corruption. In turn, these challenges ... require innovative audit methodologies or special investigation.

Although the Office conducted audits of an investigative nature before the 1997 legislation, they have become increasingly common. To cope with the growing number of this type of audits., in 2007 a new unit, the Special Audits and Investigations Section, was formed, primarily to deal with requests for such audits made by the Public Accounts Committee or the minister responsible for finance. The legislation permits the PAC to request the Auditor General to carry out these audits and other reviews on its behalf, provided that at least three members of the Committee support the request. The provision whereby the Minister of Finance may also request the Auditor General to carry out a review was retained from the pre-1997 legislation. The Section also embarked on so-called 'special audits' which are initiated by the Auditor General.

Several audits of an investigative nature have been carried out, particularly over the past decade. Table 5.2 lists some of the most significant ones completed over the past five years.

The Auditor General may also carry out audits of an investigative nature and examine persons under oath through a Board of Enquiry (with authority to summon private individuals). Several such audits have been carried out since 1997. One such audit was related to the PAC's request to conduct an enquiry on the National Aquaculture Centre, the report on which was published in May 2001. Another example concerned the *Investigation of Government's Expropriation of Two One-Fourth Undivided Shares of the Property at 36 Old Mint Street, Valletta* (NAO 2016).

**Table 5.2: Selected audits of an investigative nature, 2018 - 2021**

<ul style="list-style-type: none"> <li>• An Investigation of the Mater Dei Hospital Project (2018)</li> <li>• An investigation of matters relating to the contracts awarded to ElectroGas Malta Ltd by Enemalta Corporation (2018)</li> <li>• The disposal of the site formerly occupied by the Institute of Tourism Studies (2020)</li> <li>• An audit of matters relating to the concession awarded to Vitals Global Healthcare by Government (Part 1, 2020; Part 2, 2021)</li> <li>• The contract awarded to the JCL and MHC Consortium by the St Vincent de Paul Residence for the management of four residential blocks through a negotiated procedure (2021)</li> </ul>
---

Regardless of the commissioning authority, all the Auditor General's reports are laid on the Table of the House and eventually submitted to the Public Accounts Committee for scrutiny. Audits requested by the Committee tend to attract considerable controversy. They often concern procurement processes of very large projects. Most are discussed during PAC sittings and members from both the Government and Opposition side often take partisan positions in discussing the reports. On several occasions over forty sittings were held to discuss individual reports. In the recent *Audit of matters relating to the concession awarded to Vitals Global Healthcare by Government Part 2 | A review of the contractual framework* (NAO 2021) over one hundred sittings have been held at the time of writing.

### **IT audits**

The transformation of public administration through the application of information technology has created the need for IT audits. The IT Audit Section conducts three main types of IT audits:

- Type 1: Horizontal IT audits across a selection of auditee sites
- Type 2: IT component of financial and performance audits
- Type 3: Standalone IT audits of a selected auditee site.

Five horizontal audits were conducted between 2017 and 2021 in the following sectors: asset management, local government, education, human resources, and cyber security. The main aim of each was to review particular aspects of ICT operations across a number of selected sites and to make recommendations focusing on integration between systems and data, economies of scale, efficiency and governance.

Between 2017 and 2021, the Section was responsible for the execution of the IT component of non-IT audits dealing with subjects as diverse as the Pharmacy of Your Choice scheme, enforcement of traffic fines, Covid-related economic measures voucher scheme; and business continuity during the Covid pandemic.

Finally, over the ten-year period 2011-2021, the NAO conducted thirteen standalone audits reviewing the information technology setup of selected organisations covering eight policy areas, namely, education, environment, health, commerce, employment, defence, culture and taxation. The organisations audited ranged from the Department of Examinations to the Planning Authority, Malta Industrial Parks Ltd to Heritage Malta, Mater Dei Hospital to the Armed Forces of Malta. When conducting a standalone IT audit within an organisation, the NAO typically reviews IT management, IT infrastructure, software applications, social media, data management, IT security and business continuity

The NAO has been a highly active member of the EUROSAT IT Working Group. Apart from regular participation in the annual working group meetings, the NAO underwent two IT self-assessments (in 2007 and 2013) and an IT audit self-assessment (in 2017). In 2018, the Office went a step further by providing a co-moderator for an IT audit self-assessment, while in 2019, it hosted the 13<sup>th</sup> Meeting of the EUROSAT IT Working Group.



## **Follow-up audits**

Follow-up audits are carried out by the Office to comply with Principle 3 of INTOSAI-P 12 – *The Value and Benefits of Supreme Audit Institutions: Making a difference to the lives of citizens*, published by the International Organisation of Supreme Audit Institutions (INTOSAI 2013), which commits SAIs to “[enable] those charged with public sector governance to discharge their responsibilities in responding to audit findings and recommendations and taking appropriate corrective action”. Through follow-up audits, auditees are encouraged to discharge such responsibilities.

Before 2016 follow-up audits were usually not undertaken consistently. In that year management discussed the matter as it considered that there was a missing link in the audit process chain. In 2017, therefore, a standard follow-up process was established for the Financial and Compliance, Performance and IT Audit Sections. Although detailed follow-up audits are still carried out when deemed necessary, a number of past audits started being singled out every year by these Audit Sections, and a follow-up on the implementation of recommendations started to be made. A substantial number of audits is now followed up after the lapse of two to five years.

## **Non-audit assignments**

As the foregoing account reveals, the NAO’s role has evolved with the passage of time. However, it was not until 2013 that assignments which are not strictly of an audit nature started being reported. A notable exception to these was the NAO report titled *Risk Management in Government Departments – An Audit Approach* (NAO 2004).

Several non-audit assignments were undertaken as an initial response to measures devised by the EU in connection with the worldwide banking crisis, which began in 2007, to stabilise and coordinate fiscal policy in the member states.

Consequently, in 2013 and 2014, the Ministry responsible for Finance requested the NAO ‘to provide a public evaluation of the Update of Stability Programme 2014-2017 and to express or endorse an opinion on the same’ (Warrington and Pirota 2014: 127-128).

The NAO prepared four reports:

- *An assessment of the macroeconomic forecasts for the Maltese economy performed by the Ministry of Finance* (April 2014)
- *An assessment of the main fiscal forecasts prepared by the Ministry of Finance and presented in the Update of the Stability Programme for Malta 2014-2017* (May 2014)
- *An assessment of the macroeconomic forecasts for the Maltese economy prepared by the Ministry for Finance* (October 2014)
- *An assessment of the main fiscal forecasts prepared by the Ministry for Finance and presented in the Draft Budgetary Plan 2015* (November 2014)

This temporary task was subsequently transferred to The Malta Fiscal Advisory Council (MFAC), established in January 2015 under the Fiscal Responsibility Act, 2014 (Cap 534).

More recently, the NAO has experimented with other types of non-audit assignments which it considers as adding value to government administration, over and above regular audit work. The following published assignments are good examples:

- *An Analysis of Revenue Collection* (December 2017, June 2022);
- *A Review of the Ethical Framework Guiding Public Employees* (April 2020);
- *A Review of Implementation of Sustainable Development Goal 1 - Malta's efforts at alleviating poverty* (December 2020);
- *An Evaluation of Performance Audits in the Public Sector: Common audit findings (2017 – 2020)* (June 2022).

Up to 1997, little use was made of external consultants. Since then, however, audits have tended to become more complex. The NAO

therefore increasingly makes use of external consultants, particularly in performance audits and audits of an investigative nature. At times, the Office does not have expertise in certain technical areas undergoing an audit. For instance, this occurs especially (though not exclusively) when auditing issues of a civil engineering nature: the civil engineering component of such audits is therefore contracted out, as necessary. The Office also retains a legal consultant to provide legal advice, as may be necessary.

### **Building capacity and promoting excellence within the NAO**

It would not be possible for the NAO to discharge its constitutional mandate without considerable investment in capacity: its operating procedures, organisation, long-term strategy, audit technologies and, above all, the professionalism and technical proficiency of its staff. This section examines the most important initiatives: audit manuals, professional conduct, strategic planning, human resource development and technology investments.

Prior to 1997, the NAO used a handbook entitled *Please Explain ...* (1961) which described basic duties in the audit of revenue, expenditure, stores and inventory. However, this no longer met the requirements of a modern SAI. To upgrade, codify and harmonise audit policies, practices and procedures, and in accordance with a Commission request in preparation for Malta's accession to the EU, the NAO compiled a comprehensive audit manual in 2014. Subsequently, two separate manuals were compiled, one for Financial and Compliance Auditing, another to regulate the methodology of Performance Auditing. At the time of writing, the preparation of a manual on Special Audits and Investigations is at an advanced stage. The manuals set out the standards and policies that govern the conduct of audit work, specify the procedures to be carried out at the planning, implementation and reporting phases of audits, and provide guidance to auditors in complying with these standards and policies.

The NAO also prepared a Code of Professional Conduct (last updated in 2008) which governs professional conduct during the daily work of

auditors and other employees within a framework of the philosophy, principles and rules regarding ethical and professional conduct embraced by the Office.

The need for a formal strategic plan was felt for some time. In 2019, the NAO's first formal strategic plan came into effect. It was crafted following extensive consultation with both NAO staff as well as the Office's main stakeholders. The Plan identified six strategic goals (NAO 2018):

- i. to contribute towards ensuring accountability in the use of public resources;
- ii. to encourage and facilitate improvements in the quality of governance by advocating transparency in decision-making, contributing well-informed reports to parliamentary and public debate, disseminating good practice, promoting value for money, and catalysing changes in administrative practice and procedure;
- iii. to become a leader in selected fields of public sector audit and to be acknowledged as a centre of excellence and expertise within Maltese public administration;
- iv. to cultivate mutually beneficial working relationships with auditees, scrutineers and peers, within the constraints set by ethical standards requiring the professional independence of external state auditors;
- v. to increase the value for money yielded by state audit; and
- vi. to formulate audit plans on established criteria, with particular focus on materiality and risk.

Strategic Plan Action Groups were established to address each goal. A two-year action plan was formulated. Then, the Covid-19 pandemic struck: the Office carried on and, despite the challenges brought about by the pandemic, most of the planned action points have been completed or are at an advanced stage.

From time to time, the NAO has found it difficult to maintain the staff complement at a level that would permit it to meet its commitments. By 1999, two years after the Office was established in its present form, the complement had fallen to under thirty officers, less than half the present

complement. Engaging new professional staff was initially very difficult. The accountancy and audit professions were enjoying an exceptional period of expanding numbers and rapidly rising remuneration as a result of economic growth and legislation requiring firms to employ qualified accountants and auditors. The NAO was initially constrained to offer lower rates applying within the General Government Service. (Joseph G. Galea, interview, 11 July 2022)

However, the NAO Act 1997 empowered the Auditor General to recruit and remove employees, and to set working conditions without interference from the government. Leveraging this autonomy, the NAO and the staff union negotiated a series of collective agreements that steadily improved the competitiveness of salaries and conditions of work at the Office. Certified accountants started being recruited. Today, the Office recruits employees on the labour market and offers appropriate, attractive pay packets and conditions. These factors help ensure that employees having the right qualifications and aptitude are recruited.

Staffing became a challenge again in 2008, during an uncertain period when the Office was left without an Auditor General for a year until Government and Opposition agreed on the candidates for the offices of Auditor General and Deputy Auditor General. A considerable number of employees resigned, citing various reasons, without being adequately replaced. In fact, during a four-year period from 2006 to 2009, the number of resignations amounted to twenty-two, practically one third of the staff complement. Following an appeal by the then PAC Chairman, Dr. Charles Mangion, to the Auditor General, the then Deputy Auditor General, Charles Deguara, was tasked with reversing the trend which was impeding the Office's operations. The staffing position was rectified through various measures, the most important being raising staff morale and motivation through enhancing considerably the total remuneration package; introducing sustainable family friendly measures, such as considerable flexibility in the hours of work; and the provision of substantially enhanced professional development opportunities. It is satisfying to note that between 2015 and 2021, only five members of staff resigned, a sign that staff morale and motivation have been significantly enhanced over the years (Charles Deguara, interview, 5 July 2022).

## **Funding, monitoring performance and communicating**

As a result of the 1997 legislation, the funding of state audit no longer fell directly under the authority of the Ministry of Finance. The NAO itself draws up estimates of the funds required to discharge its mandate. The National Audit Office Accounts Committee of the House of Representatives reviews the estimates prior to their being submitted to the full House for approval. It is noteworthy that the House has always approved the funding requested. The NAO's accountability for its use of those funds is secured through the appointment, by the Committee, of private sector auditors to audit the Office's accounts. The auditors have invariably issued a 'clean' opinion on the NAO's financial statements

The NAO strives to utilise its resources economically, efficiently and effectively, with a concern for environmental sustainability. For example, during Anthony Mifsud's tenure as Auditor General, measures were taken to drastically reduce printing costs. Whereas hundreds of copies of each report used to be printed, the number was reduced to fewer than one hundred copies. Instead, most stakeholders now receive electronic copies, resulting in substantial cost savings and a lower environmental burden.

When the strategic plan was launched, the Office focused on several business process improvements which impact IT audit work such as audit planning, reporting, budgeting, resource allocation and communications. In this regard, the NAO initiated measures such as:

- the use of audit staff with mixed expertise for specific audits;
- greater use of infographics in reports;
- participation in an International Development Institute data analytics project;
- implementation of a centralised audit planning process together with the introduction of a new timesheets software application and a Business Intelligence tool with reporting functionality for resource allocation, budgeted hours, audit progress;
- greater presence on selected social media platforms (LinkedIn and Facebook);
- installation of new server infrastructure which can handle higher workloads and the capacity required in today's audit universe.

The NAO website was launched in July 2001. In 2009, an external development services provider was engaged to redevelop it. The team assisted the Office to build and implement a new website with up-to-date, secure technology consistent with contemporary standards. The revamped website was launched on the occasion of the visit to the Office of His Excellency the President of Malta in July 2009.

In keeping abreast of developments in other EU Member State SAIs and the European Court of Auditors, NAO has also improved its reporting of audit findings to key audiences. Reports are more attractively designed and styled; audit findings, conclusions and recommendations are reported succinctly. Reports aim to meet the needs and interests of diverse key readerships such as Parliament, auditees, anti-corruption agencies, and the general public. As a novelty, the Office also prepares video clips to accompany some reports. Face-to-face meetings with permanent secretaries resumed following their suspension during the pandemic. The Office is also working to become more receptive to stakeholders by opening communication channels through which they can suggest areas of concern to be considered by the NAO. This is consistent with the NAO Strategic Goal ‘to cultivate mutually beneficial working relationships with auditees, scrutineers and peers, within the constraints set by ethical standards requiring the professional independence of external state auditors.’

A database has been created in which the Office records sources of information to assist in research that is relevant to our audits. The work stream on risk is also ongoing and close to being finalised. The PMF (Performance Measurement Framework) workstream was one of the most onerous: it is a framework that SAIs apply to assess their performance on various aspects and criteria. The PMF will be a major input for the forthcoming NAO Strategy for 2024 – 2028. The consultation in preparation for this strategic plan will be broadened to include NAO staff, permanent secretaries, auditees, civil society and NGOs, Members of Parliament and possibly the media. “Of course, this needs to be well managed, but it could be that we will come out with something that will be better as a result... Where we could also improve when we define the Action Plan [for carrying out the Strategic Plan] is to specify concrete time frames and more specific outcomes...” (Camilleri 2022: 14)

## **Operating in a pandemic**

The onset of the Covid-19 pandemic instigated or rather accelerated changes relating to IT infrastructure and work practices at the NAO, particularly during the years 2020 and 2021. Before the pandemic struck in March 2020, remote working was granted to NAO employees exceptionally, for specific tasks and in restricted circumstances. With the onset of the pandemic, most members of staff made an overnight shift to remote working. Eventually, a hybrid system of ‘remote working/working from office’ was adopted: it is still in effect and is planned to continue in the foreseeable future.

Although staff had the necessary basic facilities to work from home, the Office took the opportunity to improve them so that auditors could carry out their work seamlessly from home or from other remote areas. The measures included secure remote working while maintaining e-filing procedures wherever the work location; continuity of intra-office communications while remote working; teleconferencing facilities for online meetings at the NAO offices; and widespread use of collaborative tools to conduct online meetings.

The shift necessitated the purchase of an additional server, to allow Virtual Private Network (VPN) access to staff and upgrading the Human Resources Management System to transmit to a Cloud platform.

The medical restrictions applied during the pandemic meant that on-site visits at auditees, on-site inspections and other work requiring direct contact with auditees had to be done away with during the worst of the pandemic. These conventional practices were replaced by much more frequent online meetings between audit examiners and auditees. (NAO 2021b: 21, 74)

The changes relating to remote working were deemed successful as audit work continued uninterrupted, albeit with certain limitations. In fact, in 2020 and 2021, an average of 17 reports per year were issued, which is 2.5 more than the average annual output over the previous five years.

While the pandemic’s impact on the NAO was sudden and dramatic, other external developments have affected the institution, its mandate, operating procedures, and public visibility, none more so than accession



to the European Union (EU). The appraisal that follows draws heavily on the author's research at the time that the Office commemorated the bicentenary of the inception of state audit in Malta.

### **The European dimension of state audit**

Malta's accession to the European Union, with its resulting access to EU funds, the implementation of EU rules and regulations, the transposition of EU directives into Maltese legislation, and the setting of financial, environmental and social targets, has brought about significant progress in consolidating the country's institutions and infrastructure, as well as regulating the economy and raising living standards. In particular, the EU has reinforced the Maltese public sector auditor's role in promoting key values, such as value for money, quality of service, transparency, accountability and good governance.

However, EU membership has also presented challenges. Maltese public administration and public financial management have become more complex. In addition, core areas such as public procurement, budgetary policy and public debt are now not simply matters of concern to the national government; they are subject to strict European legislation and oversight. Regulatory frameworks (health and safety, environmental stewardship, consumer rights, fair competition, gender rights, non-discrimination, subsidies) have also been strengthened as a consequence of membership. Numerous laws have been modernised, the availability of statistics improved, and public administration modified in many ways. Civil society organisations that belong to European networks enjoy greater leverage over policy. The challenges and developments affected Malta's state audit.

The demand for improved accountability and greater transparency within Member States calls forth more information about government programmes and services, as well as enhanced financial and performance reporting. Thus, the existence in Malta of two independent audit bodies to audit EU funds helps strengthen citizens' trust in effective public management and reporting by EU Member States. Although the NAO is not the Audit Authority for EU Funds (this being the Internal Audit

and Investigations Department within the Office of the Prime Minister), as the state's independent auditor, it may conduct EU-related audits (whether of a financial, compliance or performance audit nature), and takes into account the EU component in audits it carries out, where applicable. During such audits, EU rules, regulations, directives and established targets serve as audit criteria (Vella 2014).

Prior to EU membership, from 1999-2004, NAO participated in the network of EU candidate countries of Central and Eastern Europe, Cyprus, Turkey and Malta. During this period, the NAO improved its audit methodologies and approach in preparation for accession. It did this through discussions on different audit issues within the network, and by actively participating in several network working groups. The Office was actively involved in the preparation of two papers, one titled *Relations between SAIs and Parliamentary Committees* prepared in 2001 by an Expert Group on behalf of the Network of Presidents of SAIs of Central and Eastern and European Countries, Cyprus, Malta and the ECA), and another titled *Quality in the Audit Process* prepared in 2002 by an Expert Group on behalf of the Same Network.

Upon accession, the NAO became a member of the so-called EU Contact Committee, which is the network of SAIs within the EU. Membership permits senior staff to participate in Contact Committee meetings, Liaison Officers' Meetings and Working Group Meetings. It also enables the NAO to participate in coordinated audits that are conducted jointly by the SAIs of member states. Through its membership of the Committee, the Office keeps abreast of EU developments affecting public sector auditing and encourages networking, cooperation and the sharing of experiences in the auditing field. Within the framework of the Maltese Presidency of the Council of the European Union, the NAO hosted the 2017 EU Contact Committee joint seminars of the Fiscal Policy Audit Network and Europe 2020 Strategy Audit Network.

The Liaison Officers' Meetings prepare agendas and groundwork for the annual meetings of Heads of SAIs. The NAO hosted the Liaison Officers' Meeting on 10 and 11 May 2018. Sixty-six participants from the 28 member state SAIs, the European Court of Auditors (ECA), EU Candidate and Potential Candidate Country SAIs attended the meeting which was chaired by the author.

The NAO also cooperates regularly with the European Court of Auditors (ECA). One significant vehicle for cooperation is the joint NAO/ECA seminar organised annually by the Maltese member of the ECA and the Auditor General. The seminars deliberate topics of mutual, topical interest. The themes of the past four seminars were: *Public Audit in the Digital Age* (2018); *SAIs: How can they influence governments to address citizens' concerns?* (2019); *Responding to the COVID-19 Pandemic: The Audit Perspective* (2020); and *Addressing Key Emerging Issues through Public Audit* (2021).

The ECA regularly conducts audit missions in member states, including Malta. They are associated with the audit that the ECA carries out on the EU Commission, in view of the fact that the Commission and the member states are jointly responsible for disbursing EU funds. The NAO supports the ECA in these audit assignments, for example acting as liaison between the Court of Auditors and the local organisation to be audited. The 'liaison' obligations arise from Art 248(3) of the Treaty establishing the European Community, which states that:

In the Member States the audit shall be carried out in liaison with national audit bodies, or, if these do not have the necessary powers, with the competent national departments. The Court of Auditors and the national audit bodies of the Member States shall cooperate in a spirit of trust while maintaining their independence.

### **International visibility**

The Office is highly active in working groups of other international organisations, its international visibility having markedly increased since 1997. It participates in numerous events organised mainly by the International Organisation of Supreme Audit Institutions (INTOSAI) and the European Organisation of Supreme Audit Institutions (EUROSAI), which is the European arm of INTOSAI. Over the past twenty-five years, the NAO has participated in working groups, task forces and other groups, among them the EUROSAI Environmental Audit, the EUROSAI IT Audit and the EUROSAI Task Force on Audit and Ethics.

The NAO has also participated in several cooperative audits, particularly those relating to the environment. They are conducted in concert with other European SAIs. Audit planning and the format of reports are identical for all participating SAIs; however, each SAI conducts an audit in its home country. The audit findings from each participating country are subsequently consolidated in one report which also embodies findings of a common nature. Recent examples of such reports include the following:

- *Cooperative audit: Are adequate mechanisms in place for the designation and effective management of Marine Protected Areas (MPAs) within the Mediterranean Sea?* (EUROSAI Working Group on Environmental Audit 2019)
- *Joint Report on Management of Plastic Waste in Europe* (EUROSAI Working Group on Environmental Audit 2022).<sup>2</sup>

With growing momentum since 2001, the NAO has hosted several international conferences and other meetings.

In April 2002, the Office hosted a Liaison Officers' Meeting for SAIs of Central and Eastern European Countries, Cyprus, Malta, Turkey and the ECA. The meeting, which the author chaired, focused on the work and activities carried out by the Working Groups on 'Audit Manuals' and 'Audit Activities' in an effort to raise the organisation and methodologies of SAIs of the countries to the level of best European practice, in preparation for accession.

In February 2003, the NAO hosted and jointly organised a Regional Workshop on the Programme for the Promotion of the Instrument and Mechanisms of the EURO-Mediterranean Market (EuroMed Market), addressed to countries in the Mediterranean region. Representatives of several Mediterranean countries and EU member states attended the event. The themes of the workshop were proposals on harmonisation and cooperation in accounting; proposals on harmonisation and cooperation in the field of public sector auditing; and audit in the private sector: access to and regulation of this profession and ethical control rules.

---

<sup>2</sup> These reports are available for download on the website of the NAO.

The 13<sup>th</sup> Annual Meeting of the EUROSAI Working Group on Environmental Auditing was held in Malta in October 2015 together with a training seminar on *Auditing Environmental Impacts of Agriculture*. The meeting discussed auditing issues relating to industrial waste and chemicals; reaching the stakeholders of SAIs with the results of environmental audits; reporting on cooperative activities such as joint and coordinated audits on environmental issues; and discussion on possible cooperative audit topics.

One of the landmark meetings the Office organised was the 22<sup>nd</sup> Conference of Commonwealth Auditors in March 2014, one of the events marking the bicentenary of state audit in Malta. The conference, entitled *Securing Independence of SAIs to Improve the Effectiveness of Reporting and Communication of Audit Findings*, was attended by 87 delegates from 35 Commonwealth countries. The principal theme was resolved into two sub-themes, namely *Ensuring Independence of SAIs for Effective Reporting*, and *Effective Communication of Audit Findings to Key Audiences*.

Another recent notable initiative is the support provided by members of the Special Audits and Investigations Section as mentors to a number of non-European SAIs in the course of the cooperative audit focusing on Sustainable Development Goal 3.d. relating to poverty. The Section also played a notable role in relation to the Task Force on Audit and Ethics as well as the facilitation of several conferences, including the Asian Organisation of Supreme Audit Institutions (ASOSAI) Leadership and Stakeholder Meeting held in April 2021 and the INTOSAI Development Initiative Sustainable Development Goals Audit Model (ISAM) Webinar held in November 2021.

Finally, since 2000, and particularly over recent years, the Office has participated in several international committees and boards. For instance, in 2004, a senior staff member was appointed to the Eurocontrol Board for the audit of Eurocontrol budgets and accounts.<sup>3</sup> At the time of writing, an Assistant Auditor General is a member of Eurocontrol. She is also a member of the College of Auditors of the EU Institute for Security Studies, an agency dealing with the analysis of

<sup>3</sup> Eurocontrol is a European-wide civil-military organisation that supports member states and other stakeholders involved in air navigation, in a joint effort to make aviation in Europe safer, more efficient, cost-effective and with a minimal environmental impact.

foreign security and defence policy. Similarly, in 2020/2021, the Deputy Auditor General was a member of the European Stability Mechanism (ESM) Board of Auditors.

### **Relations with other institutions and stakeholders**

Up to 1997, the Office was somewhat inward-looking, having few relations with its overseas counterparts and domestic stakeholders besides its auditees. However, interaction with other institutions and stakeholders has increased exponentially since then; it is consistent with the range of the NAO's international commitments and relationships. For instance, over the past two decades, the NAO has been cooperating with the University of Malta by providing staff members to mentor dissertations, particularly in the area of public policy. Several senior officials deliver lectures at the University relating to, inter alia, public sector auditing and performance auditing. Since 2008, the Auditor General has presented an annual award for the best dissertation in Public Sector Accounting/Auditing submitted in partial fulfilment of the requirement of the accounting degree run by the Department of Accountancy. The NAO also receives requests from students to assist in the research that constitutes the base of their dissertations. Students are given the opportunity to interview senior members of staff.

Contact with and presence in the news and social media has also increased substantially. The number of audit reports released each year now averages sixteen. A press release accompanies each report, while a copy of each report is also forwarded to all the main Press houses and uploaded onto the NAO website. The Office's Facebook page notifies followers about newly released reports. Furthermore, as already mentioned, video clips are made for selected audit reports for distribution to the news media.

Relations with auditees now extend beyond normal audit assignments. For example, through follow-up audits, the Office seeks to assess progress on its recommendations, usually after the lapse of two or more years. Furthermore, on occasion, the auditors responsible for a specific audit (particularly performance audits) are requested to deliver

presentations on their findings to key stakeholders associated with the audit. Examples include the audits on the effectiveness of plastic waste management (NAO 2021c) and outpatient waiting at Mater Dei Hospital (NAO 2017).

Some ministries establish boards to address certain serious shortcomings identified in our audits. One example followed the performance audit *Addressing Social Benefit Fraud* published in 2014. The Minister in question appointed a board to identify and address shortcomings that were identified in the audit, leading to a much improved process of dealing with social benefit fraud.

The Office has also stepped up cooperation with local government. In fact, the Office periodically communicates with the Department of Local Government, Local Councils and Regional Councils about legislative and other issues relating to the audit of these bodies.

The NAO maintains a close relationship with the National Statistics Office (NSO) and the Internal Audit and Investigations Department (IAID), with whom it increasingly cooperates. In fact, a memorandum of understanding was signed with the NSO in order to regulate cooperation between the two bodies. The relationship with the IAID contributes to the exchange of ideas and knowledge. In addition, the likelihood of unnecessary duplication of work is reduced, thereby minimising disruption to the audited organisations and allowing for broader audit coverage.

It goes without saying that the NAO has the strongest, most intense working relationships with the parliamentary Public Accounts Committee and the NAO Accounts Committee. Relations between the NAO and the PAC are referred to in several chapters of this book and have been the subject of considerable research: for this reason, they are not dwelt upon here.

Civil society and the general public are critically important stakeholders in the democratic process and consequently are considered key audiences of the NAO's reports. In the case of civil society, the Office actively seeks to communicate its audit findings through the report distribution policy. However, in recent years, cooperation with civil society has been extended. The Office now involves civil society in different stages of its audits: in planning,

execution and reporting, whenever audits are undertaken on themes that concern non-governmental organisations. One such example was a performance audit titled *Enforcement Action by MEPA within the Outside Development Zone* (NAO 2013), when the NAO sought the opinion of several NGOs which were directly concerned with the environment. In more recent audits, such as *Fulfilling Obligations in relation to Asylum Seekers* (NAO 2021d), and *A Strategic Overview on the Correctional Services Agency's operations at the Corradino Correctional Facility* (NAO 2021e), relevant NGOs were also extensively consulted and interviewed to obtain their opinion on certain matters. Extensive consultations were also conducted by the NAO with NGOs and academics in an NAO assignment titled *A Review of the Implementation of Sustainable Development Goal 1 - Malta's efforts at alleviating poverty* (NAO 2020c). Focus groups were conducted in this audit in order to gather knowledge and opinions of different experts in the area of this Goal.

Senior audit officials participate in various government committees, usually in an 'active observer' role, as the NAO's independence prevents it from taking decision-making roles within Government. This means that whereas NAO representatives on such committees do not sign off on decisions, they do provide their knowledge and advice on the issues under discussion, consistent with the Office's mission statement which is 'to help promote accountability, propriety and best practices in Government operations.' So, for example, senior audit staff were members of teams set up to introduce accrual accounting within the central Government. The present Deputy Auditor General attends the Corporate Financial Management Solution Implementation Board as an observer. That board's mandate is to oversee the implementation of new accrual accounting software across government departments. Similarly, the Auditor General and an Assistant Auditor General are members of the Local Government Good Governance Working Group established to address the main issues identified in the annual report on the workings of local government.



## **Looking toward the future**

Although much progress had been made as a result of the reforms initiated by the 1997 legislation, change is always ongoing. Following more than twenty years' experience with that legislation, and in an effort to respond to developments in the state audit field, the present Auditor General decided that the time was ripe to revisit the legislation and improve it as necessary, so that the Office may have the best tools to carry out its constitutional mandate. In January 2020, the NAO published *Proposed Amendments to the Constitution: Strengthening of the NAO's Legal Framework* (NAO 2020a) which was earlier referred to the President of Malta in connection with the consultation on constitutional reform then under way. The NAO's proposals outlined several changes in legislation intended to better adapt the powers afforded to the Office through Article 108 of the Constitution to contemporary realities. The amendments should better equip the NAO to contribute towards the improvement of governance and performance of the public sector. Proposed changes include, inter alia, enhanced power to summon witnesses in order to ensure that the Office obtains all the evidence that it may require; the introduction of new methods of auditing; improved coordination with stakeholders; and refinement of existing practices.

## **Conclusion**

This chapter reviewed and analysed a quarter-century of change and development in Malta's Supreme Audit Institution. It demonstrates that, with effective, well-crafted legislation and the right leadership, capacity building and engagement of professional staff, the Office made great strides forward. This does not mean that the Office has not faced challenges of the kind confronting other national audit institutions abroad. Retaining a highly professional, qualified and competent staff, and making the best use of the voluminous and often complex data at our disposal are among the most important challenges. It is also a considerable challenge to keep abreast of ongoing developments within Maltese public administration, especially as regards the use of more

complex methods of public procurement. Finally, the Office confronts the rapidly looming challenge of adapting its financial audits to the adoption of accrual accounting across the public sector.

In confronting these challenges, the NAO takes account of developments in state audit abroad, particularly through its ongoing interaction with the SAIs of the EU's member states. In fact, the NAO's current strategic plan and the proposed legislative changes reveal that the institution's adaptation to current and emerging challenges is an ongoing process having a single purpose: that of always strengthening the external state audit function in Malta, to the ultimate benefit of every citizen. As the Auditor General affirms in the Foreword of the *Annual Report and Financial Statements 2021* (NAO 2022), '... through continuous improvements in our operations and methodologies, we will continue to ensure the provision of an excellent public sector external audit service, as our Parliament and citizens rightly expect and deserve.'

## Bibliography

### *Books, articles and grey literature*

- Auditor General (2019), 'Address at the opening of the Thirteenth Meeting of the IT Working Group.'
- Camilleri, N. (2022), 'A Common Language for the NAO' in National Audit Office, *Annual Report and Financial Statements 2021*. Malta: National Audit Office, July 2022, 12 – 14.
- Camilleri S. (2022), 'Overview of the IT Auditing function of the National Audit Office.'
- Network of Presidents of SAIs of Central and Eastern and European Countries, Cyprus, Malta and the ECA (2001), *Relations between SAIs and Parliamentary Committees*.
- Network of Presidents of SAIs of Central and Eastern and European Countries, Cyprus, Malta, Turkey and the ECA (2002), *Quality in the Audit Process*.
- Vella B. (2014), 'NAO's Experience on ten years of EU Enlargement.'
- Ferry P. (2002), 'Legislative Changes in State Audit Functions.'
- INTOSAI-P 1 (1977), *The Lima Declaration* <https://www.issai.org/professional-pronouncements/?n=1-9> accessed on 5 August 2022.
- INTOSAI-P 12 (2013), *The Value and Benefits of Supreme Audit Institutions – making a difference to the lives of citizens*.
- Pirotta, G. A. (2021), 'The Making of an Independent Audit Office' in National Audit Office, *Annual Report and Financial Statements 2020*. Malta: NAO, 16 – 19.
- Vella B. (2014), '20<sup>th</sup> Anniversary since setup of SAI in Malta.'
- Warrington E. & G.A. Pirotta (2014), *Guardian of the Public Purse – A History of*

*State Audit in Malta 1814 – 2014*. (Second Edition) Malta: National Audit Office & Midsea Books.

***Legislation, White Papers and constitutional proposals***

Auditor General and National Audit Office Act 1997 (Laws of Malta, Cap. 396)

Constitution of Malta

Financial Administration and Audit Act 1962 (Laws of Malta, Cap. 174 Repealed 2019)

Fiscal Responsibility Act 2014 (Laws of Malta, Cap. 534)

Government of Malta (1993), *White Paper - The Change Continues ...* Malta: Department of Information.

NAO (2018), *National Audit Office Strategy: Improving Governance and Performance across the Public Sector 2019 - 2023*. Malta: National Audit Office.

NAO (2020a), *Proposed amendments to the Constitution: Strengthening of the NAO's Legal Framework*, January 2020.

NAO (2020b), *Proposed amendments to the Auditor General and National Audit Office Act: Strengthening of the National Audit Office's Legal Framework*, November 2020.

***Reports published by the Department of Audit and the National Audit Office Malta (NAO)***

Department of Audit (1995), *Report of the Director of Audit on Public Accounts for 1994*. Malta: Department of Audit.

NAO (1999), *Annual Report on Public Accounts*. Malta: National Audit Office.

NAO (2004), *Risk Management in Government Departments – An Audit Approach*. National Audit Office, November 2004.

NAO (2013), *Performance Audit: Enforcement Action by MEPA within the Outside Development Zone*. Malta: National Audit Office, September 2013.

NAO (2014a), *An assessment of the macroeconomic forecasts for the Maltese economy performed by the Ministry of Finance* (April 2014).

NAO (2014b), *An assessment of the main fiscal forecasts prepared by the Ministry of Finance and presented in the Update of the Stability Programme for Malta 2014-2017*. Malta: National Audit Office, May 2014.

NAO (2014c), *An assessment of the macroeconomic forecasts for the Maltese economy prepared by the Ministry for Finance*. Malta: National Audit Office, October 2014.

NAO (2014d), *An assessment of the main fiscal forecasts prepared by the Ministry for Finance and presented in the Draft Budgetary Plan 2015*. Malta: National Audit Office, November 2014.

NAO (2016), *An Investigation of Government's Expropriation of Two One-Fourth Undivided Shares of the Property at 36 Old Mint Street, Valletta*. Malta: National Audit Office, January 2016.

NAO (2017), *Performance Audit: Outpatient Waiting at Mater Dei Hospital*. Malta: National Audit Office, November 2017.

NAO (2020c), *A Review of the Implementation of Sustainable Development Goal 1 - Malta's efforts at alleviating poverty*. Malta: National Audit Office, December 2020.

NAO (2021a), *An Audit of Matters Relating to the Concession Awarded to Vitals Global Healthcare by Government Part 2 – A Review of the Contractual Framework*. Malta: National Audit Office, December 2021.

NAO (2021b), *Annual Report and Financial Statements 2020*. Malta: National Audit Office.

- NAO (2021c), *Performance Audit: The Effectiveness of Plastic Waste Management in Malta*. Malta: National Audit Office, February 2021.
- NAO (2021d), *Performance Audit: Fulfilling Obligations Towards Asylum Seekers*. Malta: National Audit Office, July 2021.
- NAO (2021e), *Performance Audit: A Strategic Overview on the Correctional Services Agency's operations at the Corradino Correctional Facility*. Malta: National Audit Office, December 2021.
- NAO (2022), *Annual Report and Financial Statements 2021*. Malta: National Audit Office.

**Miscellaneous reference works**

- Department of Audit (1961), *Please Explain....* (Audit Handbook)
- Department of Audit, *Report of the Director of Audit on Public Accounts* (for years 1994 to 1996), Malta: Department of Audit.
- EUROSAI Working Group on Environmental Audit (2019), *Cooperative Audit – Are adequate mechanisms in place for the designation and effective management of MPAs within the Mediterranean Sea*. Malta: National Audit Office, July 2019.
- EUROSAI Working Group on Environmental Audit (2022), *Joint Report on Management of Plastic Waste*, Prepared by the Supreme Audit Institution of Poland, April 2022.
- National Audit Office (2001), *Comprehensive Audit Manual*.
- National Audit Office (2008), *Code of Professional Conduct of the National Audit Office*.
- National Audit Office (2010a), *Financial and Compliance Audit Manual*.
- National Audit Office (2010b), *Performance Audit Manual*.
- NAO, *Annual Report and Financial Statements* (for years 2018 – 2021), Malta: National Audit Office.
- NAO, *Annual Report by the Auditor General on Public Accounts* (for years 1997 to 2020). Malta: National Audit Office.
- NAO/Department of Audit, *Work and Activities Report* (for years 1995 – 2017). Malta: National Audit Office/Government Printing Press.
- Website of the National Audit Office, Malta, <https://nao.gov.mt>.

## CHAPTER 6

### Public sector perceptions of the NAO and its contribution to public governance

*Tony Sultana*

Accountability is the key concept that is common to both the operations of the National Audit Office and the workings of the Public Administration. For the former, it is its primary function to ensure accountability in the Public Administration and to improve the management and proper use of public funds by making recommendations. For the Public Service, accountability is at the forefront of its work; it is one of the eight shared values established by the Public Administration Act [Cap 595, ss. 3, 4(1)(f)], and one of the three main themes of the new holistic five-year strategy for the Public Service (Office of the Principal Permanent Secretary, 2021). This showcases to what extent we value this key aspect for good governance and our close collaboration with the NAO to achieve this.

It is no secret that public sector perceptions of the NAO were not always consistent with the current close collaboration and mutual respect. There was a time when institutions of oversight, such as the NAO, were not always given the importance that their role entails. This was recorded on various occasions. It was a time when official publications by these institutions were seldom given the same consideration as nowadays. Inevitably, this attitude also impinged on the implementation of the recommendations made.

The culture that existed in Maltese public administration was that ‘it was always done this way’ without questioning why. At that time, one may also say that recommendations from institutions of oversight were perceived as negative and unnecessary attacks to the Public Service, rather than an excellent opportunity to bring the much-needed change and improvement.

This may have been due to the well-intended instinct to protect one’s institution from external condemnations. But it was also a sign of the change that the Public Service necessitated, and which a new administration in 2013 immediately implemented through a well-thought renewal process. During the past years, the Public Service worked tirelessly to instil a client-centred approach in everything we do, including the way we handle recommendations from institutions of oversight related to public governance.

Changing this *modus operandi* was one of the first decisions taken, and from there matured a continuous drive to develop a higher level of public accountability. Looking back, it is worth noting that the renewal process implemented by the Public Service also exhibits the gradual change in the public administration’s perception of institutions such as the NAO, and their recommendations for good governance. We did not renew and instil change just for the sake of it.

The leadership of the Public Service revamped the process by investing in new permanent structures, tasked with implementation, compliance, and immediate action on governance issues. To further strengthen these structures and enhance cooperation with NAO, liaison officers were appointed in each Ministry. They are now involved in each audit carried out by the NAO in that Ministry and ensure that documentation requested by the NAO is submitted fully and without delay.

Through these permanent structures, government organisations and departments became increasingly aware that the NAO conducts a most thorough audit and that this awareness alone constitutes a safeguard in terms of operating according to the principles of good governance. Where shortcomings were identified by the institution of oversight, the organisations and departments were bound to implement the recommendations made unless there was a valid justification which

inhibited implementation. This was a strong investment to centrally oversee and ensure that opportunities for improvement are not left by the wayside but are fully seized. Through this culture shift towards accountability, transparency, and a commitment to excellence, today it is evident to all that the Public Administration is proactive on good governance.

Another step which contributed to the strengthening of public sector perceptions of the NAO was the publication of the annual governance action report, in which all the actions taken to implement the NAO's recommendations were reported in detail.<sup>1</sup> This is compiled after exhaustive meetings are held between the Internal Audit & Investigations Department, the Governance Action Directorate of the Public Service, and the respective ministries and organisations. These meetings resolve the issue and agree upon implementation commitments, underlining the notion that the annual publication goes beyond a mere reporting exercise: the governance action reports emphasise the Public Administration's determined commitment to ensure that its internal governance framework and operations meet the high standards expected of them.

There are instances where the Public Administration disagreed with the observations or recommendations made by the NAO. This must not be viewed as a criticism of the Auditor's sterling work. It is frequently the result of a divergent perspective. Attesting to the commitment to transparency and accountability, the Public Administration does not shy away from reporting on these elements. On the contrary, the annual publications underline the existing divergence in opinion but also state the justification for not accepting a recommendation and, if the recommendation is partially accepted, what course of alternative corrective action we have taken or plan to take. In this way, too, the Public Administration honours the principles of transparency and accountability.

Nowadays, the vast majority of the NAO recommendations are accepted by the administration. The first Governance Action report on NAO recommendations was published in 2016 in reply to the

<sup>1</sup> See, for example, *Governance Action on the NAO's Annual Report on Public Accounts, 2019 and Other NAO Reports, 2020*. (Valletta: Office of the Principal Permanent Secretary, October 2021). Similar reports are published in respect of other oversight bodies: see, for example, *Governance Action on the Parliamentary Ombudsman's Annual Report, 2020* (Valletta: Office of the Principal Permanent Secretary, December 2021).

NAO's 2014 annual findings – on that occasion, around 78% of the recommendations made were implemented (Office of the Principal Permanent Secretary, 2016). The last public figure, published in 2021, brought the total of implemented recommendations to an exceptional 90% rate (Office of the Principal Permanent Secretary, 2021). Here, it is noteworthy to underline with great satisfaction that the implementation rates reported in the Governance Action report correspond with the findings of the NAO in follow-up audits.

While the implementation rate can be considered a showcase of what the Public Service managed to achieve in just a brief period of time, it also serves as an ambitious benchmark for future results. Indeed, the permanent structures introduced in recent years ensure that where implementation was pending, this was followed-up and the necessary action taken, while actions reported as implemented in the annual report have truly been executed and are consistently applied. The aim is to instil a culture where every decision and action taken by public employees is guided solely by the principles of good governance and accountability.

This is testament to how far Maltese public administration has progressed in regarding the Auditor General's recommendations as an opportunity to improve the operations of an organisation, and thereby to be in a better position to uphold the principles of transparency and good governance in general. Recommendations are mostly targeted to ensure the optimal use of public funds by applying best practices. Over the past several years implementation of NAO recommendations has led to employing better practices in public procurement, contract management, asset recording and remuneration processes among others. This is certainly one of the NAO's contributions to public governance.

As the foregoing account makes clear, the Public Service values the NAO as an essential stakeholder. Throughout the years, the collaboration between the two institutions continued to grow and nowadays, the institution of oversight even gives a clean bill of health to various departments and organisations. Upon this input from NAO, the Public Service then honours the relevant department during its annual awards ceremony.



This strong working relationship between the Public Administration and the Auditor's Office did not falter even in the face of the great challenges posed by the global pandemic of covid-19. While the constraints brought on by the pandemic necessitated a shift from onsite verification visits to a sample of desk-based consulting activity by IAID, the end result of such exercise was fulfilled. This was done through the evaluation and reporting of management replies regarding actions intended to address recommendations by the NAO, noting which of these actions added value, improved an organisation's operations, and nurtured good governance.

### **Looking ahead**

What the Public Service achieved so far is the result of a well-thought out renewal process implemented since 2013. Established local academics already pointed out that never had the Public Service implemented so much, in such a brief time. All this has now been documented through an international bestselling publisher, in which the Maltese Public Service is portrayed as a case-study on public service reforms (Bezzina, Camilleri, Marmarà 2021) .

While it is certainly an important milestone, it is the prelude to greater results: pursuing an ambitious yet doable five-year strategy for the Public Service (Office of the Principal Permanent Secretary, 2021). It is the first time that the Public Service itself devised a holistic strategy to address issues on various fronts, while paving the way for a brighter future. It has forty-five concrete initiatives and additional strategic aims, each accompanied by realistic timeframes and owners responsible for their implementation. All this will lead to one key objective: achieving a service of excellence.

The strategy will focus on three important elements: Technology, People and Service. It will build on our strengths, particularly resilience and adaptability. It will promote innovative solutions to the challenges we face, both through emerging technologies as well as through collaborative working. It will support development of new capabilities and the application of strategic foresight throughout the entire

governance infrastructure, leading to better policy development and decision making. In this way, the Public Service will be transformed into an organisation well equipped to meet the expectations of Malta and its citizens.

Accountability is one of the three key principles underpinning the strategy, together with Quality and Sustainability. The concept of good governance requires us to be transparent in the way we take decisions, whether these relate to our services, our employees, or the technology supporting our operations.

To this end, the new Public Service Strategy incorporates various measures. Continuing to build on recent achievements, one strategic aim seeks to bind all departments and organisations to implement recommendations within 90 days, whenever possible. Another seeks to reduce further non-conformity identified by the NAO. This will be done through a proactive approach, in which good practices addressing shortcomings identified by the Auditor General will be implemented across the board, in all entities, and not just those which were audited. Non-compliance with the relevant processes and procedures will be monitored through the permanent structures introduced in the past years.

There are other ways in which the Public Service will be accountable to its clients and society at large. For instance, one can mention other measures which will ensure that the Public Administration is accountable and transparent in the way data and information is collected, stored, processed and managed. All in all, these measures of the new public service strategy will not only achieve high standards of accountability, but also contribute to creating and maintaining a strong relationship with our clients based on trust.

Through the implementation of such measures, we are assuring a brighter future to the Public Service, where accountability remains at the core of all our processes and operations. This will also go hand in hand with the digitalisation processes currently underway so that the Public Service is modernised further. With the aid of the right technology, we can make the next great leap and offer our clients a much improved experience when accessing public services.

Even institutions of oversight must be forward-looking. Let us explore ways of working more closely together. If there are processes that can

be modernised, let us expedite. If there are aspects to be improved, let us facilitate and implement. For instance, shall we introduce deadlines for case responses? I believe that greater collaboration will yield better results and more importantly, foster greater trust in our common client: the general public.

Ultimately, throughout the years, the National Audit Office served as a role-model institution of high standards in both oversight operations and organisational ethics. May this culture of continuous improvement continue in the near future. Let us never cease to invest in democratic institutions and the consolidation of their structures.

### **Bibliography**

- Bezzina, F., E. Camilleri & V. Marmarà (2021), *Public Service Reforms in a Small Island State: The Case of Malta*. Cham, Switzerland: Springer Nature.
- Office of the Principal Permanent Secretary (2016), *Governance – Action on the NAO’s Report 2014 – Public Accounts*. Valletta: Office of the Principal Permanent Secretary.
- Office of the Principal Permanent Secretary (2021), *Governance Action on the NAO’s Annual Report on Public Accounts 2019 and Other NAO Reports 2020*. Valletta: Office of the Principal Permanent Secretary.
- Office of the Principal Permanent Secretary (2021), *Achieving a Service of Excellence: A Five-Year Strategy for the Public Service – Quality, Accountability and Sustainability*. Valletta: Government of Malta, Office of the Principal Permanent Secretary, November 2021.
- Public Administration Act*, Act III of 2019, Cap. 595 of the Laws of Malta.



## CHAPTER 7

# Auditing Local Government

*Tanya Mercieca*

This chapter documents and appraises the oversight role exercised by the National Audit Office in regard to local government. It begins by outlining the legal basis for local government, at the same time tracing the institutional history of this comparatively recent sphere of governance in Malta.

### **Legal basis for local government**

In Malta, local government was established in 1993 following the Maltese Parliament's enactment of the Local Councils Act, 1993 (Act No. XV of 1993).<sup>1</sup> Besides making it possible for Local Councils to be set up, this law also serves as a regulatory mechanism for the Councils' operation.

The Local Councils Act was modelled on the European Charter of Local Self-Government, which the Maltese Government had signed and ratified. According to Art. 3(2) of this Act,

---

<sup>1</sup> Cap. 363 of the Laws of Malta. The Act was renamed 'Local Government Act' by Act XIV of 2019.

The Council shall be a statutory local government authority having a distinct legal personality and capable of entering into contracts, of suing and being sued, and of doing all such things and entering into such transactions as are incidental or conducive to the exercise and performance of its functions as are allowed under the Act.

On 21 December 1999, the Local Councils Act was revised considerably and Act No. XXI (1999), the Local Councils (Amendment) Act 1999, was published.

Another important step to consolidate local government was taken when the system of local government was entrenched in the Constitution of Malta. In fact, on 24 April 2001, Act No. XIII of 2001, amending the Constitution, established that:

The State shall adopt a system of local government whereby the territory of Malta shall be divided into such number of localities, as may by law be from time to time determined, each locality to be administered by a Local Council elected by the residents of the locality and established and operating in terms of such law as may from time to time be in force. (Constitution of Malta, Art. 115A)

After a process of consultation with internal stakeholders, a *White Paper on the Local Government Reform* was published in October 2018, proposing extensive changes in this area (Parliamentary Secretariat for Local Government and Communities, 2018). Public consultation on the proposed reforms took place immediately afterwards. Subsequently, in April 2019, the Local Councils Act was amended by virtue of Act No. XIV of 2019, and renamed Local Government Act.

To date, Maltese local government comprises 68 elected Local Councils, responsible for managing and delivering services to their communities. Five Regional Committees, later re-designated as Regional Councils, were established as an intermediate tier of government in 2011; in January 2022, the number of Regional Councils became six. They assist Local Councils in addressing the challenges

they face. The Local Councils Association was established to protect and promote the common interest of all Local Councils. The sub-national sector embraces a dual system of governance, comprising democratically elected appointees, namely Mayors and Councillors, and the executive authority, that is, the Executive Secretary, with the latter being the administrative head of the Council who is responsible for day-to-day operations, assisted by other staff.

The functions, organisation, operations and legal powers of Local Government emanate from the Local Government Act, with Central Government directly financing the operations of local government bodies, through an annual budgetary allocation.

### **Responsibility at local level**

Local Councils have the following responsibilities as per Article 33 of the Local Government Act:

- Establishment, upkeep and maintenance of children's playgrounds, public gardens, sport, culture and other leisure centres, and as part of a national scheme to administer local libraries and to ensure that these are, as far as possible, accessible to all persons;
- Upkeep and maintenance of public roads, including proper road signs and road marking;
- Urban planning and building schemes;
- Issuing guidelines to be followed in the upkeep, restoration, design or alteration of the facade of buildings, including the type of lighting and materials used, advertisements and shop fronts, and ensuring that premises open to the public are accessible to all persons;
- Maintenance and cleanliness of road signs and road lights, the collection and removal of all refuse, maintenance and upkeep of all public conveniences, dustbins and collection of waste and to ensure that these are accessible to all persons;
- Maintenance and repair of roads, pedestrian areas, parking areas, road signs and road markings within the locality, installation

- and maintenance of bus shelters, pedestrian and parking areas and provide for the protection of schoolchildren in the vicinity of schools;
- Providing information relating to the rights of citizens, including information on consumers' rights, transport, communications, tourist facilities, taxation, social security, public health and other matters of public utility and interest;
  - Proposing and being consulted regarding any changes in traffic schemes directly affecting the locality;
  - Establishment, upkeep and maintenance of childcare centres, kindergartens and other educational services or buildings;
  - Establishment, upkeep and maintenance of health and rehabilitation centres, government dispensaries, health district offices and homes for senior citizens, day centres for senior citizens and night care centres;
  - Functions delegated by Central Government;
  - Maintaining local public libraries;
  - Proposing appointees for presidents of primary schools;
  - Making the best use of facilities already existing in schools in the locality after normal school hours;
  - Ensuring the effective concept of lifelong learning with all residents, particularly adults and the elderly, by providing such service within the same locality;
  - Promoting social policy initiatives;
  - Safeguarding local identity;
  - Assisting artists, musicians and sports persons from the locality;
  - Organisation of cultural activities;
  - Protecting the natural and urban environment of the locality; Organisation of sports or physical activities;
  - Promoting entrepreneurship;
  - Providing for all other work not excluded from a Council's competence by law or assigned to another authority; advising, and being consulted by, any authority empowered to take any decisions directly or indirectly affecting the Council and the residents it is responsible for;
  - Entering into agreements with any agency or public body or Government department for the delegation to the local council of any of their respective functions.



## **Responsibility at regional level**

According to Article 37b of the Local Government Act, last amended in 2019, Regional Councils have the following competences:

- The issue of calls for tenders for waste management, which came into effect from the year 2022;
- The social aspect, which includes research and reports on social impact evaluations;
- Assistance to local councils within the region, including professional services in the environmental sector, social, cultural, touristic and information technology;
- Assistance to local councils within the region to benefit and successfully manage programmes which are funded by the European Union;
- Provision of subsidy to students for research on aspects relating to the region;
- Coordination with local councils of sports and physical activities and initiatives, including those relating to welfare;
- Coordination with ministries, departments and Government entities to facilitate the work of local councils;
- To give an opinion on the Local Plan, which will be attached to the report submitted to the House of Representatives;
- The preparation, on an annual basis, of a Work Plan which includes the Region's financial needs and human resources.

The legislation governing both Regional and Local Councils obliges them to work within the parameters of national plans and policies. This entails significant consultation and collaboration among Local Councils, between Regional and Local Councils, as well as with the central government's numerous ministries, departments, regulatory authorities and agencies.

Local Councils are democratically elected bodies, while Regional Councils are representative bodies. Their composition, in itself, embodies a strong element of democratic accountability. Furthermore, the legislation creates an oversight framework which draws on elements

within the central government as well as independent institutions such as the NAO.

### **The sector's oversight function**

The sector's oversight function comprises a three-tier system: those units charged with governance, establishing operational mechanisms and controls; the Monitoring and Support Unit within the Local Government Division of the ministry concerned,<sup>2</sup> supervising the functions of each Council and evaluating the effectiveness of their internal controls; and the National Audit Office, which independently audits the accounting records and reports on areas for improvement.

### **The role of the National Audit Office**

Having an autonomous public sector oversight function, the National Audit Office is responsible for the conduct of the financial audits of all bodies forming the local government sector in Malta, thus playing a vital role in ensuring that those entrusted with public money are held accountable for its proper utilisation.

The Local Government Act and subsidiary legislation places a legal requirement on each Local and Regional Council, as well as the Local Councils Association, to prepare and approve, in a timely manner, a set of financial statements, to be submitted to the Auditor General to be independently audited. In turn, the Auditor General may appoint duly qualified auditing firms, referred to as Local Government Auditors, to audit the accounts of all local authorities on behalf of the Office, subject to any conditions he may deem fit. The powers and procedures associated with local government auditing are embodied in the Local Government (Audit) Regulations (S.L.363.02), first made in 1993.

The results of local government audits are then extensively reviewed by an audit team assigned to local government within the National Audit Office, scrutinising each set of audited financial statements and

---

<sup>2</sup> Presently the Ministry for the National Heritage, the Arts and Local Government.

opinions issued thereon. This process usually starts in May of each year. Accompanying the process is also a review of the respective management letters, highlighting any shortcomings encountered during the audit process, as well as the related responses as submitted by each audited body. The National Audit Office also lends its support to the Local Government Auditors, as deemed necessary, and ensures that their observations and recommendations are given due consideration.

The results of these extensive reviews, together with the various recommendations that are intended to improve on the sector's internal control systems and to minimise risks to acceptably low levels, are presented in a report, titled *Report by the Auditor General on the Workings of Local Government*, issued annually by the NAO.

The local government auditors are remunerated from the funds allocated to the National Audit Office, specifically for such purpose, on an annual basis.

### **Selecting Local Government Auditors**

Periodically, the National Audit Office issues a tender inviting interested eligible persons to submit a quote for audit services of the local and regional councils, as well as the Local Councils Association. The last call was published in August 2021 and covered financial audits for the financial year 2021. The submitted bids were evaluated by an external board appointed by the Auditor General. Upon completion of the evaluation, the board forwarded its recommendation to the Auditor General who in turn approved accordingly and issued the engagement letters to the successful bidders. The respective contracts are for a period of one year, renewable twice at the discretion of the Auditor General; thus, a maximum of three years.

### **Statutory audit of the financial statements of Local Councils**

The financial statements, signed by both the Mayor and the Executive Secretary, are to consist of Local Council Members' and Executive

Secretary's responsibilities, Statement of Comprehensive Income, Statement of Financial Position, Statement of Changes in Equity, Cash Flow Statement and the Notes to the Financial Statements.

The responsibility of the Local Government Auditors is to audit the financial statements on an annual basis and to give an opinion on whether or not a Council's financial statements give a true and fair view, are prepared in accordance with the applicable financial reporting framework, namely, International Financial Reporting Standards (IFRSs) and comply with the Local Councils Act (Cap 363) and the Financial Regulations.

In their audit report, auditors also provide reasonable assurance on whether the financial statements are free from material misstatement, caused by fraud or other irregularity or error, comply with statutory and other applicable requirements, as well as with all relevant requirements for accounting presentation and disclosure.

Key issues and concerns arising from the annual audit are also reported upon by the auditors in the management letter, addressed to the Mayor of the Council. While there is no prescribed format, the management letter states, amongst other things, whether the Council has reviewed the weaknesses reported upon in the previous year's management letter and whether the corrections that had to be carried out by the Council to control such weaknesses were actually effected satisfactorily.

Until the audit process of all Local Authorities is finalised, Local Government Auditors are required to submit regular status reports, enabling the NAO to monitor the audits as they progress and identify any difficulties encountered by the auditors for these to be dealt with in a timely manner. During this period, the National Audit Office is also in constant liaison with the Local Government Division, since the latter acts as a focal point between the Local Councils and the Ministry responsible for Local Government, and is the main channel used by the NAO to communicate to the respective Councils.

The final approved Financial Statements, duly signed by the Mayor and Executive Secretary, are returned by the Local Council to the Local Government Auditors who will append the Audit Report on the Financial Statements, together with the Management Letter to the Auditor General. The Council has six weeks from receipt of the

Management Letter to submit its feedback to the Auditor General, the Local Government Auditors and the Director of the Local Government Division.

### **Other types of audit of Local Councils**

Apart from the annual statutory audit on the financial statements of the Local Council, three other types of audits can be carried out by the National Audit Office or the Local Government Auditors on its behalf. These comprise mid-term audits, interim audits, and audits on the economy, efficiency and effectiveness of local authorities, known as performance audits.

A Local Council may request a **mid-term audit**, to serve as an independent hand-over exercise whenever an Executive Secretary leaves the Council's employment and another is appointed. This takes the same form as the financial year-end audit but will cover the period up to the last day of employment of the outgoing secretary. A Local Government Auditor undertaking a mid-term audit is to present to the Auditor General the audited financial statements covering the respective period and the audit report thereon at the close of the audit. A management letter is also presented, pointing out any weaknesses encountered.

**Interim audits** can be carried out at the specific request of the Auditor General, covering a particular area. Even though such an audit is not very common, the Auditor General can resort to an interim audit when made aware of particular circumstances, such as suspected fraud, or other matters of grave concern.

On the other hand, in a **value for money** audit, auditors conduct an analysis and comparison of a Local Council's indicators to measure performance on whether the Council has made proper arrangements for securing economy, efficiency and effectiveness for a given period.

Upon completion of each audit, the respective audit reports are forwarded to the Speaker of the House of Representatives and tabled at the next sitting of the House.

## **Recurring audit concerns in Maltese local government**

In a number of instances, the detailed audit work undertaken at each individual Local Council raises significant shortcomings which are repeatedly flagged by the National Audit Office in its yearly report on local government. Recurring concerns mostly revolve around the issues of poor governance and internal control arrangements, with too many councils unfortunately not meeting the minimum expected standards. This in turn results in a number of audit opinions being qualified time and time again. Although minor improvements are recorded from year to year, narrow corrective action is taken by a number of Local Councils to address the repetitive shortcomings, leaving ample room for improvement.

Of fundamental concern is the subject of financial sustainability, with a number of Local Councils facing financial distress, severely relying on Government grants to nurture their operations. Inappropriate financial planning and management is very often the underlying cause behind such distress, resulting in funds not being spent economically or for their intended purpose. In turn, this will have an impact on the financial position and performance of those Councils consistently reporting negative financial results at the close of each accounting year, and thus facing going-concern issues.

The quality of financial reporting is yet another main recurring weakness identified through the annual audit exercises. The errors and incompleteness of accounting records, leading to financial statements not prepared to an acceptable standard, gives rise to a significant number of audit adjustments. While this very often shows the dependence of Local Councils on the year-end audit to identify errors in the accounts, it also denotes a lack of commitment on the part of defaulting Councils.

Departures from standing rules and regulations, with statutory reporting procedures and publication requirements not being complied with, also constitute a predominant weakness across the local government sector. Other common long standing issues relate, but are not limited, to poor fixed asset management entailing, amongst others, the improper maintenance of fixed assets records, as well as inappropriate procurement procedures, when goods and services are

procured directly from the open market, thus failing to ensure proper arrangements to secure value for money.

### **International comparisons**

It comes as no surprise that it is not only the Maltese National Audit Office that considers the repetitive deficiencies identified across the local government sector as a cause for serious concern. In fact, issues of a recurring nature, as well as shortcomings encountered by the local government auditors in Malta are also flagged by various Supreme Audit Institutions (SAIs) in their reports on local governments. Following are a few examples from recent reports issued by SAIs on the local government affairs of their respective country or region. These clearly illustrate that, in various times and places, national and local government entities tend to stand on an equal footing.

For example, the Auditor General for Wales, in the *Report on Financial Sustainability of Local Government*, expressed a sentiment of uncertainty following the significant extra funding provided to Councils to deal with the COVID-19 pandemic, noting that the “future sustainability of the sector remains challenging against a backdrop of other financial pressures” (Audit Wales, 2021: 9). Moreover, in a report on *Future Audit Arrangements for Community and Town Councils in Wales*, the same Auditor General declared that:

Since 2008, I have published a series of national reports highlighting common governance failures identified during the audit of community and town councils. These reports highlighted systemic weaknesses across the sector and that too many councils are failing to meet the minimum standards expected of them. Although there has been improvement in some areas, there remains significant scope for improvement across the sector. (Audit Wales, 2020: 5)

Issues common to the local context identified in the report include the following statements:

- Inaccurate/incomplete accounting records and improperly prepared accounts;
- Poor internal control and financial management including failure to follow councils' proper expenditure authorisation process;
- Poor budget setting and inadequate financial monitoring; and
- Failure to comply with councils' own Standing Orders, leading to defective procurement of services (Audit Wales, 2020: 5).

Far to the south, in Australia, the *Results of the 2020-2021 Local Government Audits*, issued by the Office of the Victorian Auditor General revealed that “The number of ... unresolved issues has remained relatively constant over the last five years.” Councils were encouraged to:

strengthen the effectiveness of their internal control environment and reporting by responding more promptly to the issues we raise with them. While all weaknesses need to be addressed, councils should prioritise resolving higher risk and older issues promptly”. In particular by resolving higher risk and older issues promptly. (Victorian Auditor General's Office, 2021: 16)

The report also raised concerns regarding asset management with continuing errors related to “recognising and measuring physical assets” (ibid: 17).

The Report on the audit results of Queensland's 77 Local Government bodies in Australia for 2020 noted that “Councils' financial performance continued to deteriorate” as expected, and “Most councils with a high reliance on grants from state and federal governments have consistently incurred operating losses each year for the last five years”. It was in fact found that, as is the case with Maltese local authorities, “Councils that regularly incur operating losses often have weak strategic planning, asset management and financial management practices”. The report also highlighted that “more than one-third of councils do not have appropriate processes in place to identify and manage their strategic and operational risk” and that “some councils are not following established procurement processes to demonstrate that they have obtained value for



money or prove they had the appropriate approvals to obtain goods and services.” (Queensland Audit Office, 2021: 1)

Finally, in its report on *Local Authority Governance*, the Comptroller and Auditor General of the UK National Audit Office raised concerns regarding “the effectiveness of a range of internal checks and balances” with a “sizeable group of local authorities” having “multiple issues with these checks and balances” and concluded that “Local government has faced considerable funding and demand challenges since 2010-11. This raises questions as to whether the local government governance system remains effective.” (Comptroller and Auditor General, 2019: 2 – 10)

### **Concluding remarks**

Despite the efforts of the National Audit Office in conveying its message about the importance of local government bodies in Malta having robust internal control systems, regrettably, as evidenced in this chapter, poor systems of internal control are still encountered during our analysis. This is further supplemented by the fact that, sometimes, in their replies to the concerns raised in the management letters, Local Councils fail to indicate solid measures they intend to take to address the root cause of the identified shortcomings, signifying a somewhat weak sense of accountability.

This being the case, in its continuous efforts aimed at improving operations across the Local Government sector, the National Audit Office, in its yearly report on local government, as well as through continuous liaison with the Local Government Division, reiterates the importance of sound governance and financial management across the whole sector. The various recommendations proposed by the National Audit Office as a result of these audits, coupled with an enhanced monitoring function within the Local Government Division, are meant to ensure that the local government sector improves its state of affairs. In the final analysis, this is in the best interest of Malta’s citizens whom the Councils aspire to serve.

**Bibliography**

- Audit Wales (2020), *Future Audit Arrangements for Town and Community Councils in Wales*. Cardiff, December 2020.
- Audit Wales (2021), *Financial Sustainability of Local Government: COVID-19 Impact, Recovery and Future Challenges*. Cardiff, September 2021.
- Comptroller and Auditor General (2019), *Local Authority Governance*. London: National Audit Office, HC 1865 Session 2017–2019 15 January 2019.
- Local Government Act, 1993, Cap.363 Laws of Malta.
- Parliamentary Secretariat for Local Government and Communities (2018), *White Paper: Local Government Reform*. Valletta, October 2018.
- Queensland Audit Office (2021), *Local Government 2020 – Report 17: 2020-21*. Brisbane, Queensland.
- Victorian Auditor General’s Office (2021). *Results of 2020-21 Audits: Local Government*. Melbourne: Victorian Government Printer.

## CHAPTER 8

# Auditing EU funds: The European Court of Auditors' perspective

*Leo Brincat*

### **Introduction**

The European project resonates with citizens, as a means of achieving more, together. National and regional strategies are often complemented or realised with the assistance of European Union funding. The European Commission (EC) works together with the Member States to design EU programmes and projects, with the aim of addressing the most pressing needs and priorities across Europe, in accordance with the principles of sound financial management.

As the EU's financial watchdog, the European Court of Auditors (ECA) has an important contribution to make in the accountability chain: that of ensuring that EU taxpayers' money is well spent. This chapter presents an overview of the ECA's role, jurisdiction, and experience in auditing EU funding, as well as its relationship with Malta's National Audit Office (NAO).

### **The ECA's role and jurisdiction**

The European Court of Auditors is the EU's external auditor. It is one of the EU's seven institutions. Established in 1975 by the Treaty

of Brussels, it started its work in 1977, and has been a fully-fledged European Institution since the 1993 Maastricht Treaty. Its 27 Members are nominated from each Member State, working with around 900 employees.

The ECA is tasked by the Treaty on the Functioning of the European Union, to:

- i. Examine whether EU policies and programmes reach their objectives,
- ii. Examine all revenue and expenditure in the accounts of the EU and its agencies and decentralised bodies;
- iii. Deliver opinions at the request of one of the EU institutions and reviews on its own initiative
- iv. Assess whether financial management has been sound;
- v. Assist the European Parliament and the Council by providing the audit reports used in the discharge procedure;<sup>1</sup>
- vi. Provide a Statement of Assurance on the reliability of the accounts and the legality and regularity of the transactions underlying them.

Historically, the ECA's work was limited to compliance audits and financial audits to deliver the Statement of Assurance. Today, the ECA comprises five audit Chambers, each addressing a distinct policy area, within which auditors carry out financial, compliance and performance auditing. Additional information about the Chambers is provided below. Ultimately, audit observations and recommendations are published and presented to the European Parliament, the Council, national governments and parliaments, and to the general public. The impact of

---

<sup>1</sup> The discharge is a Parliament decision that reflects its conclusions at the end of a process, the discharge procedure, on the way the Commission (and other institutions and bodies) has carried out its task of implementation of the EU budget. This process of parliamentary scrutiny of the Commission's implementation of the budget is aimed at ensuring compliance with the relevant legal and regulatory framework requirements, and use in accordance with the principle of sound financial management, namely in accordance with the principles of "economy", "efficiency" and "effectiveness". When taking its decision on discharge, Parliament also adopts a resolution, which contains its comments in respect of the implementation of the budget. These comments may require changes to the procedures and practice of the Commission or seek improvements in the way it administers Union policies. (Practical Information | Discharge procedure | CONT | Committees | European Parliament (europa.eu) accessed 7 November 2022)

ECA's work depends largely on how these stakeholders, and auditees, draw lessons from and take corrective action upon audit observations and recommendations.

### **ECA's mission, strategy and work programming**

The ECA updated its mission statement to better reflect what is required of the institution by the Treaty of the Functioning of the EU, adding a citizen focus to its work, as the ultimate stakeholder:

Through our independent, professional and impactful audit work, assess the economy, effectiveness, efficiency, legality and regularity of EU action to improve accountability, transparency and financial management, thereby enhancing citizens' trust and respond effectively to current and future challenges facing the EU.

In accordance with its mission statement, the ECA develops and adopts a multi-annual strategy, based on a participative process that includes all levels of the organisation. The current five-year strategy guides the Court's work and presents three strategic goals:

- Goal 1: Improving accountability, transparency and audit arrangements across all types of EU action;
- Goal 2: Targeting audits on the areas and topics where ECA can add most value; and
- Goal 3: Providing strong audit assurance, in a challenging and changing environment.<sup>2</sup>

As a result, the ECA's work is planned on a multiannual basis, focused around defining and updating the ECA's strategy. On an annual basis then, it determines the specific tasks to be undertaken during a given year.

---

<sup>2</sup> European Court of Auditors (2021), *The 2021- 2025 Strategy of the European Court of Auditors*, Luxembourg: European Court of Auditors.

The priorities are discussed and established by the College of Members. During this exercise, the ECA also considers input from the European Parliament's Conference of Committee Chairs. Sectoral committees within the European Parliament provide their suggestions of audit topics, outlining potential policy areas that require scrutiny.

The resulting work programme lists the priority audit tasks and allocates the resources needed for implementing them. The annual work programme is then published and presented to the Committee on Budgetary Control of the European Parliament (CONT), by the ECA's President.

The ECA's final reports come in different shapes and sizes. The Court produces:

- an annual report on the EU budget, including a statement of assurance;
- specific annual reports setting out the financial audit opinions on each of the EU's agencies and bodies;
- an annual report on performance in the implementation of the EU budget;
- special reports on selected audit topics, published throughout the year, mainly as a result of performance audits;
- reviews, being descriptive and informative analyses of areas of EU policy or management;
- opinions, which are used by the European Parliament and the European Council when approving EU laws and other decisions.<sup>3</sup>

The pandemic has brought with it many significant challenges. The Annual Work Programme for 2022 was prepared with these particular challenges in mind, and having a specific theme: 'EU response to COVID-19 and post-crisis recovery'. The ECA plans to publish 16 reports on issues such as the procurement of COVID-19 vaccines, and a series of audits on the Recovery and Resilience Facility.

The Russian invasion in Ukraine has also brought about significant challenges. The ECA continuously monitors developments and updates

---

<sup>3</sup> For additional information about the types and number of reports published, cf. European Court of Auditors (2022), *Our Activities in 2021: Annual Activity Report of the European Court of Auditors*, Luxembourg: Publications Office of the European Union, p.72.

the Annual Work Programme as necessary to reflect the European Commission's actions and channelling of EU funding.

### **The ECA's audit work**

With a budget of around 160 billion euros, the Multiannual Financial Framework (MFF) of the EU budget sets out the annual spend per policy area, referred to as 'MFF headings', over a seven-year period. The Court's audit chambers are organised around a matching structure, mirroring the EU budget's broad policy areas:

- Chamber I: Sustainable use of natural resources
- Chamber II: Investment for cohesion, growth and inclusion
- Chamber III: External action, security and justice
- Chamber IV: Regulation of markets and competitive economy
- Chamber V: Financing and administering the Union.

The Court has its own financial, compliance and performance audit methodology setting out guiding principles in accordance with the International Standards for Auditing (ISAs) and International Standards for Supreme Audit Institutions (ISSAIs). The ECA's methodology is administered by the ECA's Directorate for Quality Control. An abridged version of the ECA's methodology is made available online for the benefit of the ECA's stakeholders.<sup>4</sup>

The ECA's financial audit covers the reliability of the EU's consolidated accounts, resulting in an audit opinion included in the Statement of Assurance in the Annual Report, on whether the accounts present fairly, in all material respects, the EU's financial position, results of operations, cash flows and changes in net assets for a given year. The compliance audits also produce an audit opinion included in the Statement of Assurance, on the legality and regularity of transactions, as required by Article 287 of the Treaty of the Functioning of the EU. Aside from financial and compliance auditing, the ECA publishes a number of performance audits in the form of Special Reports, examining

---

<sup>4</sup> Available at [Our methodology](https://www.eurostat.ec.europa.eu/our-methodology) | EUROPEAN COURT OF AUDITORS (europa.eu).

the economy, efficiency and effectiveness of EU policies. For example, in the second half of 2022, the Court of Auditors published special reports on matters as diverse as EU action to combat illegal fishing, EU Covid-19 vaccine procurement, the Commission's assessment of national recovery and resilience plans, and external consultants at the European Commission. All the ECA's reports are available online.

In carrying out compliance and performance audits, the ECA selects a sample of transactions or Member States, based on a materiality threshold and a risk analysis, where auditors visit and carry out on the spot detailed checks. Additionally, ECA also draws up and performs analytical assessments on data collected from the EU-27 Member States.

As the guardian of the EU finances, the ECA's mandate is to audit all EU revenue and expenditure and, in this respect, it reserves the right to access all documentation. In cases where data is unavailable, or lacking in some way, the ECA draws attention to the authorities, within its observations and recommendations. In cases where auditees fail to provide information that could potentially result in a limitation of scope, the ECA also states so in its published reports.

As regards fraud considerations, the ECA does assess the risk of fraud in the transactions audited during the course of its audit work. Through its audits, the Court of Auditors can help prevent fraud by examining whether EU-financed programmes are affected by weaknesses, making them susceptible to fraud. On an annual basis then, it reports any cases of suspected fraud to the EU's Anti-fraud office, OLAF, as well as the European Prosecutor's office (EPPO), that are specifically mandated to investigate and prosecute fraud cases. Such cases are identified both from the ECA's own audit work as well as from third party denunciations.

Moving forward, the ECA is also exploring ways of harnessing the opportunities of digitalisation. The ECA finds increasing amounts of digital data in the areas audited. This gives it the opportunity to take advantage of new IT tools and techniques to enhance its work. To achieve this, it not only fosters a digital audit culture, but also invests in the requisite skills and knowledge of the staff as well as implementing new digital audit tools suitable for the audit area, which is not always very straightforward.



## **Key steps in the ECA's audit process**

A typical audit at the Court of Auditors comprises several key steps. After the finalisation of the Court's annual work programme, the auditors assigned to each audit Chamber start working on the planning phase of a given audit, to deliver a task plan. This is then approved in the respective Chamber dealing with the policy area in question. At the final stage of the audit work, auditors report their 'Preliminary Observations'. The ECA adopts a 'no surprises' approach with its auditee(s), whereby an open dialogue is encouraged with the auditee(s), to keep them informed about the progress and results of the audit. According to the European Union's financial regulations, the ECA is required to communicate the Preliminary Observations to the auditee(s) concerned, as part of an adversarial procedure. This gives them a right to reply within a given timeline. The official replies of the ECA's auditee(s) are published alongside its reports, noting whether they agree or disagree with the conclusions and whether they accept or reject its recommendations.

After the audit and reporting phase ends, the ECA publishes its reports. The Reporting Member of a given task is responsible for presenting the report's observations and recommendations to the European Parliament's Budgetary Control Committee (CONT), as well as other sector-specific committees. Here, the report is debated with Members of the European Parliament and notes for corrective action are taken by the respective committees, in the context of the Parliament's budgetary discharge procedure. At a working level, reports are also presented by the auditors to the respective Council working parties, where the Council takes note of the ECA's conclusions and recommendations.

Additionally, Members of the Court may extend their outreach to their national counterparts. They can present their own or other reports to their national Supreme Audit Institutions, as well as to national parliaments and other stakeholders, thereby enhancing the visibility of the ECA's audit work.

## **How the pandemic has affected ECA's work**

The Covid-19 pandemic has resulted in unprecedented challenges for the EU and its Member States across a broad range of policy areas. In March 2020, as many other organisations, the ECA shifted to full teleworking. With the aim of working more flexibly, the ECA adopted what was called the 'exceptional written procedure', whereby documents were shared and adopted electronically. This enabled the continuity of decision-making, when Members could not be physically present.

From an audit point of view, the staff have shown themselves to be very resilient, quickly adapting to new working methods. The ECA studied the timelines of internal audit processes (from planning to completion) and saw that remote working did not have a major impact on audit duration. In some instances, subject to certain conditions, it managed to replace on-the-spot visits and was still able to produce relevant reports. However, one can acknowledge the fact that relying exclusively on remote working might not always be the best approach for all audits. Large online video conference meetings have facilitated the audit work. The ECA has seen how they can be more inclusive at times, enabling the presence of a large number of participants. In some instances, some participants can be evasive when only dealing with them remotely, not to mention that some still face technical hurdles. Lack of on-the-spot visits could also reduce the potential of incidental discoveries which cannot be quantified or known in advance, thereby increasing the audit risk, particularly detection risk. Therefore, experience has shown that, where possible, personal interaction remains important, even between audit teams. Additionally, media outreach work has increased, from previous experience in dealing with only Brussels-based journalists to connecting virtually with a varied number of journalists across different countries.

The ECA is now working in a hybrid format, where presence at the office is required, whilst ensuring a minimum level of teleworking.

## **The EU's recovery instrument and its impact on the ECA**

The pandemic has not only shifted the way the ECA works, but also brought about a Copernican Revolution to EU funds, with the Next Generation EU (NGEU), and particularly the Recovery and Resilience Facility (RRF), bringing an additional 750 billion euro on top of the MFF for 2021-2027.<sup>5</sup> This sees an expansion in the European Commission's role to debt management for raising additional finance over the capital markets.

Amongst our deliberations, the Court gauged how the new Commission's proposal for a Recovery Instrument and the new MFF 2021-2027 would impact us and the European Commission's work. The Court recognised that the initiative significantly alters the proportions in EU revenue and expenditure audited by the ECA, and will thus involve important changes and challenges for the ECA.

As the EU's external auditor, the ECA has a full mandate to audit the NGEU. It has analysed the proposal in much depth and will continue to do so as it monitors developments, and reflects internally on how to coordinate its work. Auditing NGEU remains a moving target for the ECA. It will continue developing its audit approach accordingly and will use available data and information, to continue providing strong assurance and timely reports, based on the Treaty mandate and in accordance with international public-sector audit standards.

The Court of Auditors needs to answer to high stakeholder expectations in this regard. The European Parliament and nine Council delegations have suggested that the Court focus on the implementation of the RRF, the borrowing and lending operations under NGEU, as well as more detailed issues such as NGEU investment in the green transition, and smart, sustainable transport actions. They also suggested auditing the performance of the Commission as the leading bond issuer in Europe, as a direct consequence on the Own Resources Decision.

Approval of the Recovery and Resilience Facility (RRF) funding is based on implementation of comprehensive national recovery and resilience plans (RRPs) by the Member States. The payment requests

---

<sup>5</sup> Additional information on these ground-breaking policy initiatives is available at [NextGenerationEU \(europa.eu\)](https://nextgenerationeu.europa.eu) and [Recovery and Resilience Facility | European Commission \(europa.eu\)](https://recoveryandresiliencefacility.europa.eu).

will be approved by the Commission on the basis of an assessment of targets and milestones to which the Member States have committed in the recovery and resilience plan. This sees a shift in eligibility rules to performance-based aspects. The RRF is destined to be a performance-based instrument, with a significant component of front-loading in a short period of time. This is very different from the Multiannual Financial Framework, which intervenes over the whole 7-year period and, in practice, payments are shifted towards the second half of the period and beyond it. For a comprehensive assessment of the RRF's implementation, the ECA needs to extend its audit scrutiny beyond the European Commission, namely to the Member States and the Council, which play a stronger role in the RRF compared to the core MFF. This could also imply providing more country-specific information.

### **The ECA's liaison with Supreme Audit Institutions**

The ECA is actively involved in the activities of EUROSAI, the European regional group of INTOSAI, in particular its working groups on environmental auditing, information technologies, and the audit of funds allocated to disasters and catastrophes. The ECA's cooperation with specifically EU Supreme Audit Institutions (SAIs), takes place mainly through the Contact Committee of the heads of SAIs. It is a forum for discussion where SAIs share ideas and actions, and promote the work of independent external audit in the EU and its Member States. In response to the pandemic, the Court set up what is known as a Covid-19 Knowledge node. This served as a live platform of informative updates to create a knowledge database on the developments of the pandemic. As the Reporting Member of this Knowledge Node, I have represented the ECA in several EUROSAI/INTOSAI meetings for sharing lessons learned. Furthermore, the ECA initiated a new type of audit cooperation - the EU Network Audit. The aim is to increase the visibility and impact of the SAIs' relevant audit work by sharing knowledge and experience, such as common challenges and lessons learned. The shared management aspect of EU funding makes co-operation with SAIs fundamental for addressing the most vulnerable sectors, such as

Cohesion spending, and Research. The introduction of the RRF, and increased involvement of Member States to implement it, has initiated and will continue to foster increased cooperation among EU SAIs.

### **My experience as a Member at the ECA**

My first experience as an ECA Member in 2016 was the compliance auditing of the Union's Revenue, also referred to as the EU's 'own resources', under the responsibility of Chamber V – Financing and Administering the Union. Periodically, on the basis of national GNI calculations, Member States make contributions to the EU to finance its budgeted expenditure. The Court has in the past years given a clean opinion on the Revenue's legality and regularity. This meant that no significant level of error was present. The system used for financing the European Union's budget had not been significantly reformed since 1988. A proposed revision of the EU's revenue-collection procedures was made only recently, with the ECA concurring that although it is a step forward, room for improvement in the area remains. A number of performance audits, known as Special Reports, have been performed over the past years, including one on Customs Controls as well as one on intra-Community VAT fraud.

My Chamber V experience went on to carry out a performance audit on the European Fund for Strategic Investments (EFSI), the flagship initiative under the Juncker Commission, as well as a Landscape Review on putting EU law into practice. The latter audit covered the European Commission's oversight responsibilities, essentially managing the risk of potential breaches of EU law by Member States, which may lead to formal infringement proceedings under Article 258 of the Treaty of the Functioning of the EU. This is not the typical traditional ECA 'product', as it is not an audit. A landscape review aims to provide a descriptive analysis expressing a balanced range of viewpoints, based on publicly available information. It does not present new recommendations but, in some cases, can be followed by a separate performance audit.

In 2018, I was assigned to Chamber III, which is responsible for the External Action, Security and Justice of the EU. I have worked primarily

on migration-related performance audits, including *Asylum, Return and Relocation of Migrants, Frontex*, and a report on cooperation with third countries on migrant returns. I was also the Reporting Member for an opinion on a revised proposal on the Union Civil Protection Mechanism which saw an increase in its budget in response to the pandemic, as well as an ongoing task on Territorial Co-operation in the Neighbourhood.

For most of the above-mentioned tasks, as a Reporting Member, I have always worked in cooperation with the audit team. In seeking to gather different perspectives, apart from on-the-spot visits, I also held several meetings with the Commissioners responsible for the area being audited, as well as the respective national authorities and other stakeholders involved in implementation of projects or use of EU funding.

Aside from serving as a Reporting Member for several audits, over the past years, I was also assigned as a Member of the Audit Quality Control Committee as well as an alternate Member of the Ethics Committee within the ECA. In working towards its objectives, the ECA also sets up ad hoc working groups or committees for a fixed time period, with the aim of focussing on a specific mission. I had the pleasure to participate in the ECA's Foresight working group, the Digital Steering Committee and more recently in the Conference on the Future of Europe Working Group.

### **Co-operation between the ECA and the NAO**

In 1997, Malta's Constitution was amended to establish the independent offices of the Auditor General and Deputy Auditor General, and the establishment of the National Audit Office in Malta. Undoubtedly, the NAO plays a very important role in promoting accountability, transparency and sound financial management. During my term in office, I established a close contact with the Maltese National Audit Office, by organising joint seminars and conferences to discuss topics of mutual interest related to public audit. This included the importance of audit follow-up, challenges in the digital era, influencing governments to address citizen concerns, responding to the Covid-19 pandemic

and key emerging issues. We also ensured that our jointly organised conferences in Malta became an annual event, adding much value to our strong relations.

Malta, given its size, is a country with a relatively smaller financial envelope for spending. As such, it does not feature very frequently in the ECA's sampled transactions for compliance auditing. It has featured more often within performance auditing. In such cases, the ECA is directly in contact with the NAO and the respective national authorities to obtain the necessary audit evidence. Nonetheless, benchmarking across the EU-27 Member States still requires a level of reporting on each Member State, such as, in the ECA's Annual Report, on the absorption of European Structural and Investment funds, or in the case of a performance audit, how Member States tackle, for example, the issue of plastic waste.

In my view, even if an ECA audit report's observations are not specifically linked to a Member State, they can still be useful as a reference or benchmarking exercise, to influence, or rather inspire action at a national level. In my visits to Malta as a Member of ECA, I have brought forward multiple interesting and relevant reports to the attention of the National Audit Office as well as to national Parliamentary Standing Committees, notably the Public Accounts Committee, the Foreign and European Affairs Committee, and the Economic and Financial affairs Committee. I have presented audit reports for which I was Reporting Member, including the performance audits on Migration as well as other reports with a reference to Malta. Beyond that, I also tabled reports that would be relevant to the local scenario, including a review on the EU's initial response to Covid-19, and another review report on the risks, challenges and opportunities in the EU's economic policy response to the COVID-19 crisis. I believe that raising stakeholder's awareness in this respect can only improve governance at local or national level, allowing a comparison of what is happening in the rest of the EU.

I am honoured that my personal relations with the Maltese NAO go back many years, having worked closely with all the Auditors General since the early 90s, in my former capacity as a long-standing and founding member of the Public Accounts Committee. I was also

the Minister responsible for piloting the legislation that established the Maltese Supreme Audit Institution as an independent body and no longer under the aegis of the Ministry of Finance, by securing bipartisan support for these institutional changes. As a result of this historic decision by the House of Representatives, the functions and powers of the Auditor General and the role of the NAO are now defined by section 108 of the Constitution of Malta and the Auditor General and National Audit Office Act of 1997.

Since becoming a Member of the European Court of Auditors, I have always striven hard to foster the closest possible cooperation with the NAO, in full respect for our respective independence. This we have done through regular formal and informal exchanges, the sharing of Special Reports and other audits, discussions on the latest best practices, as well as informative activities about our latest initiatives and endeavours. It gives me much satisfaction that the ECA's robust relations with the Malta NAO continued to strengthen, even during the testing times of the pandemic, as well as when faced with new and challenging areas of activity, such as the NGEU stimulus package, in support of Member States' economic recovery. I believe mutual respect and co-operation should remain the basis for a long-lasting and fruitful relationship between the two organisations.



## CHAPTER 9

### Shifting perspectives: From a Maltese ministry to the ECA

*Louis Galea*

In 2010, I was nominated as Malta's Member on the European Court of Auditors (ECA). I was then the Speaker of the House of Representatives, after an almost uninterrupted twenty-year spell leading a number of key ministries. My initial reaction was one of perplexity; it brought to mind the Greek mythological story of Actaeon the hunter, who was transformed by Artemis into a hunted deer, to be torn apart by his own dogs. Ironically, Artemis accidentally turned Actaeon into a deer because of her love for him.<sup>1</sup> In my case, however, the converse occurred: the hunted became a hunter.

Whenever my ministry or any of its departments or agencies were being audited, however regular and proper I might have thought things were, I could not escape the uncanny feeling of being 'hunted' by the 'auditor'. So, when I took the Oath of Office as a Member of the European Court of Auditors, the irony did not escape me that I was now transforming myself into the role of a 'hunter'.

In this latter role, it seemed that I could not avoid having European Parliament, Commission or Agencies' auditees protesting that they should not be so mercilessly 'hunted' by the ECA auditors. Beyond

---

1 The story goes back to Greek mythological times and provided the inspiration for many literary drama plots (Euripides's *The Bacchae*) and, in our days, also for cartoons (*Tom and Jerry*), films (*The Hunted* 2003, *Star Trek*) and video games (*The Hunter Becomes Hunted*).

these primaevial instincts, through both experiences however, whether as auditee and auditor, I developed a firm appreciation of the two roles as the sides of the same coin, both committed to ensuring genuine service to the people, by securing value for their money, and within a robust framework for sound financial management and accountability.

### **A learning curve**

Transitioning from Minister to ECA Member implied a learning curve in itself. I was already very literate regarding the rules and standards applicable in the public auditing field as applied in Malta's public sector. However, joining the ECA required a more intense uptake of its own rules and standards within the European Union treaty framework and directives, as well as a sound grasp of European and international audit standards.

### **Times of disrupting forces**

As I write this memoir, I am conscious of the context. On one hand, we are commemorating the twenty-fifth anniversary of the legislation which enshrined the constitutional autonomy of Malta's National Audit Office (NAO). On the other hand, this commemoration is happening at a time of worrying world-wide disruptive forces impacting negatively on peace, democracy, liberty, the rule of law, and good governance. An obvious first consequence of such a political and cultural upheaval is the declining level of popular trust which is so necessary to sustain the legitimacy of parliaments and their members, governments and their leaders, and national institutions and their directors. In short, there are signs of popular fatigue and scepticism in the whole process that is required to keep people and nations bonded together by a commitment to realise the common good.

Notwithstanding the size of our country, we cannot escape the reality that during these twenty five years, Malta has inexorably moved to become one member of a global village. Nothing that

happens beyond our borders fails to impact Malta. And nothing that we do goes unnoticed anywhere away from our shores. The dire consequences of any lack of trust in the way we govern ourselves can become disastrous if aggravated by any creeping lack of trust in us from abroad.

The healthy status of our nation – the *sine qua non* environment for the flourishing of our people, our families, the younger and future generations – requires the nourishment of public trust across all aspects of public and political life. Trust and trustworthiness are the essential foundations on which democracy, liberty, the rule of law, economic enterprise, and social cohesion can thrive and prosper. To realise this to the maximum extent possible, a constant effort and struggle are required to infuse our service to the people with the virtues of good governance - fairness, honesty, impartiality, competence - all aimed at guaranteeing long term peace, prosperity and quality of life.

### **As Minister in a developing institutional framework**

The Fenech Adami and Gonzi administrations in which I served as Minister were not the perfect system we had aspired to create and nurture. But I believe that we strove earnestly and effectively to be guided by, and to practise, the values that constitute the commonly accepted notion of good governance. We fostered public trust in government and public administration as the basis of a social pact between our people, their elected representatives, and the appointed authorities. Both administrations avoided arbitrariness. Laws were enacted and institutions were established to keep the executive government in check and to distance it as much as possible from decisions which required an independent and impartial approach in the observance of the rules of natural justice. As a Minister and Member of the House of Representatives, I participated in the legislative initiatives which led to the steady development of autonomous oversight institutions that could exercise a check on the Executive and provide effective remedies to aggrieved citizens.

Thus, for example, on the 19<sup>th</sup> August 1987, within the first hundred days of the first Fenech Adami administration, the European Convention

for the Protection of Human Rights and Fundamental Freedoms was enacted as Chapter 319, to become and be enforceable as part of the Laws of Malta. This, with full access for each and every person to the Strasbourg European Court of Human Rights, was to serve as an effective bulwark, holding all authorities in Malta to account in the fundamental field of human rights.

The Commission for Injustices and the Permanent Commission Against Corruption were among the first instruments to be set up soon after, followed by the creation of the office of the Ombudsman and the Employment Commission. Local Government was established in 1993 in every town and village to implement the principle of subsidiarity by moving the governance of local affairs to the communities they concern. A Department for Internal Audit and Investigations was also established within the Office of the Prime Minister. In 1995 Parliament adopted Resolution 198 of 1995 to set up, among others, a Standing Committee on Public Accounts chaired by a member of the Opposition.

Under Prime Minister Alfred Sant's administration, in July 1997, the Government Department of Audit was transformed into a fully-fledged National Audit Office. Its autonomy and independence as Malta's supreme audit institution is guaranteed by the law and enhanced by means of entrenchment in the Constitution.<sup>2</sup> More recently, in October 2018, Parliament enacted the Standards in Public Life Act<sup>3</sup> which created the autonomous and independent office of the Commissioner for Standards in Public Life.

The Ombudsman, the Auditor General and the Commissioner for Standards in Public Life are all now appointed by the President of Malta on the strength of a parliamentary resolution that must be supported by at least two thirds of all members of Parliament; these high officials of the State all report to Parliament and to the relative Standing Committees. The law expressly provides that, in exercising their statutory functions, the three institutions shall not be subject to the authority or control of any person.

---

2 Chapter 396 of the Laws of Malta.

3 Chapter 570 of the Laws of Malta.

## **Transitioning to the field of public audit at the European plane**

Being a Member of Parliament and eventually a government Minister involved an arduous, continuous process of scrutiny by the electorate and ongoing involvement in the political party of one's choice. Transitioning from the political governmental field to public audit was a taxing and interesting experience.

Appointment to the European Court of Auditors required a 'grilling' process of scrutiny by the European Parliament's (EP) Budget Committee and eventual approval by a secret vote of the whole EP assembly. It is not a process to be taken lightly, and though the appointment is, in the final analysis, the European Council's call, national governments tend to heed the opinion of the European Parliament. In my case the Budget Committee approved my nomination with a vote taken on the 16 March 2010, while the EP plenary session of 25 March 25, meeting in Brussels, overwhelmingly approved the resolution.<sup>4</sup>

Moving permanently to Luxembourg and working in a European institution environment after almost two decades serving as minister in Malta, an EU member state since 2004, entailed shifts of perspective and mindset, and a different *modus operandi*. The European Court of Auditors is served by a multi-national cadre of professional auditors led by a Court composed of Members coming from the different EU member States. The Court operates both at a plenary level as well as at Chamber level, with each Member supported by a small office.

Moving into Prof Josef Bonnici's eminent footsteps, Malta's first and much respected Member of the ECA, was not an easy task. I retained most of his staff and chose Jacques Sciberras as my Head of Office and Ray Cachia Zammit as his assistant. I give credit to all the auditors I worked with, to my office staff and especially to Jacques and Ray for the excellent work they performed, which was appreciated not only within the Court's circles but also by our auditees in the EP, Commission, Council, and agencies.

Tables 9.1 and 9.2 overleaf list the main tasks for which I was responsible during my tenure as Member of the ECA. Together, they give readers a fair idea of the scope of the ECA's work. Table 9.1 consists

---

<sup>4</sup> EP Budget Committee vote – 21 MEPs in favour, 2 against, 1 abstention; EP plenary session vote 553 MEPs in favor, 17 against, 52 abstentions.

**Table 9.1: Areas of responsibility and main tasks, 2010-2016**

<b>Phase 1</b> 2010-2012	<b>Area of responsibility</b> Administrative expenditure for all EU institutions within Chamber 4
<p><b>Annual Reports:</b></p> <ul style="list-style-type: none"> <li>• Chapter for administrative expenditure of the 9 EU Institutions</li> <li>• European Schools annual report</li> </ul> <p><b>Special Reports (SR):</b></p> <ul style="list-style-type: none"> <li>• SR 2/2011: OLAF audit and a series of opinions on OLAF reforms</li> <li>• SR 10/2012: The effectiveness of staff development in the European Commission</li> <li>• SR 12/2012: Did the Commission and Eurostat improve the process for producing reliable and credible European statistics?</li> </ul> <p><b>Malta visit organisation:</b></p> <ul style="list-style-type: none"> <li>• Presentations to Public Accounts Committee (2011,2012)</li> <li>• Malta NAO/ECA joint conference: Implications of EU response to financial and economic crisis for public accountability (2012)</li> </ul>	
<b>Phase 2</b> 2013 – 2014	<b>Area of Responsibility</b> Dean of Chamber IV, Member of the Strategy Reflection Group
<p><b>Chamber coordination:</b></p> <ul style="list-style-type: none"> <li>• Chamber planning reports (Annual Work Programme)</li> <li>• Audit and work plan proposals (List of potential tasks)</li> <li>• Proposal related to creation of the Financial and Economic Governance (FEG) unit within Chamber IV</li> </ul> <p><b>Court coordination:</b></p> <ul style="list-style-type: none"> <li>• Strategy documents linked to work of strategy reflection group</li> </ul> <p><b>Special Reports:</b></p> <ul style="list-style-type: none"> <li>• SR 15/2014: EU External Border's Fund</li> <li>• 2014 Analysis of potential savings to the EU budget if the European Parliament centralised its operations</li> </ul> <p><b>Malta visit organisation:</b></p> <ul style="list-style-type: none"> <li>• Presentations to Public Accounts Committee (2013,2014)</li> <li>• EU accountability and audit gaps presentation in NAO seminar</li> </ul>	
<b>Phase 3</b> 2015 – 2016	<b>Area of responsibility</b> Member responsible for coordination of over 40 EU Agencies and Joint Undertakings annual reports. Head of Office, Jacques Sciberras, was also Head of Task Force for Landscape Review
<p><b>Agencies and Joint Undertakings:</b></p> <ul style="list-style-type: none"> <li>• Annual audit reports for 40 agencies</li> <li>• Annual audit reports for 9 joint undertakings</li> <li>• Co-ordination and roll out of working with other external auditors</li> </ul> <p><b>Financial and Economic Governance (FEG) Special Reports review and feedback:</b></p> <p>A particular focus was that of reviewing various FEG related reports related to banking supervisory bodies (ESMA, EBA and EIOPA), the ECB, the opinions on the Single Resolution Mechanism (SRM), the audit role of ECA over the newly established ESM, financial support mechanisms such as Balance of Payments, amongst others.</p>	

of three divisions, each of which records the area of responsibility assigned and the principal tasks undertaken by myself and my staff in each of three consecutive two-year periods. Table 9.2, on the other hand, outlines the contribution my Office made to the development of the Court’s strategy and its operating procedures.

**Table 9.2: Contributions to ECA strategy and operating procedures**

<p><b>Strategy reflection papers</b></p> <ul style="list-style-type: none"> <li>• Prepared background paper which advocated horizon scanning, landscape reviews, work related to financial and economic governance within the Court, top down task planning and a knowledge network for policy scanning (paper presented in Member’s seminar and subsequently taken up in the Strategy);</li> <li>• Policy radar idea and policy papers led to policy scans and landscape reviews; responsiveness and top down prioritisation led to new thinking on chamber reform to balance out resources, load and domains; responsiveness to external developments led to making a case for the setup of FEG unit and knowledge nodes.</li> </ul>
<p><b>Agencies and JU transition for use of external audits</b></p> <ul style="list-style-type: none"> <li>• Contributed to Court opinions and various interventions (letters to Commissioners, meetings with heads of agencies, meetings with Commission during preparation of tenders, and first meetings with external auditors), as well as preparation of internal Court position on the issue.</li> </ul>
<p><b>Landscape Review on accountability and audit gaps</b></p> <ul style="list-style-type: none"> <li>• Promoted the creation of the first Landscape Reviews of the ECA</li> <li>• Presentation on Landscape Review in high level conference in Brussels</li> <li>• Presentation to CONT Committee in European Parliament</li> </ul>

## Mindset

Immersing myself in my new role did not really require any mindset shift regarding the fundamentals of my vocation and mission. From the very first days when, more than fifty years ago as a University student, I became enamoured of politics, I never veered from a heartfelt calling – to serve the people to the best of my ability, prompting and nudging the changes I felt necessary in the prevailing socio-economic contexts of the times we were living.

As soon as I began immersing myself in the public audit jargon and literature I realised that this clearly was also the vocation and mission of the public auditor. The preamble to the International Standards for Supreme Audit Institutions gives an excellent working definition and enlightens the path of those who are entrusted with public audit tasks:

In a democracy, structures are created and elected representatives are empowered to implement the will of the people and act on their behalf through legislative and executive bodies. A risk to be considered with public sector institutions in a democracy is that power and resources can be mismanaged or misused, leading to an erosion of trust that can undermine the essence of the democratic system. It is therefore critical that the citizens of a country are able to hold their representatives accountable. Democratically elected representatives can only be held accountable if they, in turn, can hold accountable those who implement their decisions.<sup>5</sup>

The international standards also define the role of public audit institutions and the public audit process they carry out. The Lima Declaration,<sup>6</sup> describes public audit institutions as an important component of accountability, whose main objective is to provide independent, effective and credible scrutiny of the use of public resources. ISSAI 12 explains the role of public audit in terms of accountability as follows:

Public sector auditing, as championed by the supreme audit institutions (SAIs), is an important factor in making a difference to the lives of citizens. The auditing of government and public sector entities by SAIs has a positive impact on trust in society because it focuses the minds of the custodians of public resources on how well they use those resources. Such awareness supports desirable values and underpins accountability mechanisms, which in turn leads to improved decisions. Once SAIs' audit results have been

---

5 ISSAI 12: *The value and benefits of supreme audit institutions — making a difference to the lives of citizens*, INTOSAI, March 2013, Preamble, paragraph 2.

6 Adopted by the IX Congress of the International Organization of Supreme Audit Institutions (INTOSAI) in Lima in 1977.



made public, citizens are able to hold the custodians of public resources accountable. In this way SAIs promote the efficiency, accountability, effectiveness and transparency of public administration. An independent, effective, and credible SAI is therefore an essential component in a democratic system where accountability, transparency, and integrity are indispensable parts of a stable democracy.<sup>7</sup>

These definitions place accountability as a foundation, a prerequisite, for a functioning democracy, not only as a preventive measure to deter mismanagement or misuse of funds and resources, but also as a corrective measure when things move astray. What the quotation also highlights is that accountability is required at all operational levels, from the frontline operators right up the hierarchical chain of responsibilities to those who govern public institutions, parliaments charged with scrutiny over governments, and ultimately citizens who elect their parliamentarians. The accountability chain is as weak as its weakest link.

### **Democratic cornerstone**

Independent external auditors – supreme audit institutions like the NAO – are a cornerstone in the whole democratic process. These would have the powers to carry out a wide range of public audits (financial, compliance, and performance audits), with full rights of access to necessary information and the duty to report to parliaments and the public.

It would be a fallacy to believe that public accountability can be guaranteed solely by supreme audit institutions. Interpreting the EU Treaty mandate, the ECA focuses on six key elements to assess whether or not existing and new policies and regulations are being set up with accountability in mind. To start with, all EU and other bodies involved in implementing policies and managing funds must shoulder

---

<sup>7</sup> ISSAI 12: The value and benefits of supreme audit institutions — making a difference to the lives of citizens; Preamble, paragraph 1; adopted by XXI INCOSAI 2013.

their responsibilities. This implies that public managers are required to provide sufficient, relevant, accurate, and timely information and reporting on implementation and results for accountability purposes. This is the basis for the necessary democratic scrutiny and audit of public managers by parliaments, which must also ensure that the results of public oversight and scrutiny are followed up and taken into account in the legislative and budget-setting procedures.

The ECA audit is one part of a longer chain of financial accountability arrangements in the area of shared management within the EU. The EU-level audits verify the Commission's account to the European Parliament. The Commission in turn depends on a system of Member State-level management and audit representations. The use of EU funds by Member States is also subject to scrutiny by their respective parliaments.

The Treaty on the Functioning of the European Union provides for a specific accountability mechanism in respect of the EU budget that is known as the 'discharge procedure'. It involves four main EU institutions: the European Parliament, the Council, the Commission, and the ECA.

An ECA review of gaps, overlaps and challenges underlined that there are a number of channels through which accountability in a broad sense may be achieved. One channel is democratic accountability — accountability of the European Commission to the Council, consisting of representatives of Member States at ministerial level who are accountable to their national parliaments and to the European Parliament. A second channel is accountability to EU citizens. For those elected, this means accepting the verdict of voters through elections and various other ways of democratic participation in public choices. However, not all public bodies are elected, and even those that are, remain accountable between elections. A third form of accountability is the respect for the rule of law — legal accountability, which is established by the courts of justice. A fourth form of accountability is administrative and financial accountability — the main focus of public auditors, including the ECA.<sup>8</sup>

---

8 European Court of Auditors Landscape Review (2014), *Gaps, overlaps and challenges: a landscape review of EU accountability and public audit arrangements*, p.16.

## Questions

The foregoing statement begs several questions which ought to elicit reflection, answers, and action: for example:

- To what extent are new regulations and newly established governmental organisations designed with a sound public accountability framework in mind, one which ensures transparency, public audit, parliamentary scrutiny, and powers to address serious deficiencies or deviations once detected?
- To what extent are citizens aware of their role in the accountability process?
- To what extent do they have the information, the knowledge, the will, to hold their representatives accountable as envisaged in ISSAI 12?
- To what extent do the public media services (in Malta's case, the Public Broadcasting Services, Department of Information, etc.) and the news media in general assist citizens to come to an informed assessment regarding the decisions and performance of their representatives and governments?
- What tools and support are available to the people's representatives in Parliament, to enable them to hold the government and all the public sector administration to account and under their scrutiny?
- To what extent are the individual officials entrusted with the governance of the country truly committed to the values of accountability and transparency and to the respect they owe their parliaments by giving the information requested?
- Could MPs who are also in the pay of the government of the day be credible in their duty to hold the administration accountable?
- What is the use of a Freedom of Information law, if requests for public information and data by citizens and journalists are regularly met by refusals, obstacles, and barriers, with many government bodies regularly appealing decisions for the release of the requested information handed down by the Information and Data Protection Commissioner?

- Can journalists fulfil their role without the necessary access to verifiable information?
- How can a culture of accountability and transparency develop, given the way political parties are funded via opaque donations?
- How could our NAO realise its lauded objective of being 'An agent of change, achieving excellence if Parliament, the forum it reports to, remains weak and lacking in resources and powers to effectively carry out its oversight function?

These questions, and many others that could be raised, indicate that there is still a long way to go to promote accountability, transparency, integrity, and good governance so essential to realise proper value for the people's money and to nurture good financial management both locally and across the EU.

## **Challenges**

There are also new developments which need some serious reflection on the technical front for public auditors and capacity building for the future. The following paragraphs offer some examples.

*Big data* - Operators, beneficiaries of public funds and governments alike are producing larger datasets as technology and digitisation continue to increase in almost every dimension of life. This will require larger technical capacity for auditors to wade through ever increasing datasets, and for them to engage early enough to ensure that data structures and access rights are conceived from the start of any new process.

*Performance based accountability* - There is a shift from a focus on accountability for inputs and costs, to accountability for outputs and impacts. This invariably requires new analytical approaches, new audit skill sets, and new ways of reporting the performance of different projects and programmes. The recent Recovery and Resilience Facility, the EU's response to the COVID-19 crisis, is completely based on specific achievements and targets, clearly shifting accountability from inputs to outputs.

*Multi-layered governance* - There is increasing cooperation and interdependence requiring collaboration by Maltese authorities with their foreign counterparts. Auditors therefore must be able to give a comprehensive opinion of such collaborative systems, programmes, or spending, by broadening their reach and collaborating with other auditors.

*Environmental transitions* - The environment and the pressing urgency of addressing global climate change will bring a cascade of transitions across all policy domains, ranging from energy, transport and technology, right through to education and social schemes so as to deal with critical scenarios that humanity will face in the near future. So far most decisions have been fast evolving reactions to different crises, giving no time for slow and gradual preparation. Auditors will have to be agile in adapting to such changes which will go well beyond issues of costs.

*Tensions and barriers* - Finally, the recent COVID pandemic and the war in Ukraine have revealed several critical dependencies in key supply chains, and the limitations of open global trade in ensuring secure livelihoods when some global players do not abide by the rules which ensure a sound globalised economy. Walls (physical or through policy restrictions) are being set up or planned. The effects of rethinking a new global economic order, possibly more insular than the one witnessed so far, is another backdrop which will have an impact across all policy domains, further testing and straining existing governance structures.

### **Qualities for success**

My experience at the ECA brought me closer to a variety of national audit models and systems yielding different results, with much depending on the culture of the people concerned. In general, however, I would say that, everywhere, a continuous endeavour is needed to assure the effective vigilance required to veritably secure accountability and transparency in the management of public goods, services and finance. EU Member States may perhaps consider re-visiting the method of appointment of ECA Members by introducing, as Malta did with regards to the judiciary, a two-tier process allowing first a public call to test competences, experiences, qualifications, and then presenting

the national nominating authority, the first placed two candidates, for example, for a final nomination to the EU institutions.

Another lesson I derived from my experience refers to the importance for both public administrators as well as politicians, especially Ministers and Members of Parliament, to be well informed and trained in the important function of audit and its standards. Ministers will do their job better, with better results for the common good, achieving greater value for money, shielding themselves and their departments and agencies in a more effective way from the pitfalls of abuse and corruption, were they to spend some quality time in an appraisal of the positive aspects of public auditing, before they are engulfed by the day to day chores of their ministry.

The particular nature of government tasks, such as the expenditure of public funds and the government's monopoly in many areas, calls for exceedingly high standards of integrity from the government. It is duty bound to play an exemplary role, setting the frameworks within which ministries, departments, all other public entities and authorities can achieve the objectives of a strong policy of integrity in their own organisations. People have a right to expect more from us and we ought to respect that right through appropriate deeds.

Malta's political class must bolster public trust in its commitment and ability to lead by example from a high moral ground emanating from genuine conviction and sound leadership. We are not in an earthly paradise. Nor can we live under the illusion that the effects of good governance can only be guaranteed by multiple webs of rules and regulations to cater for all imaginable nooks and crannies where human or political bad intentions or practices might dare to lurk.

There is no doubt that there is much still to be done to instil a culture of good governance, among other things by improving systems and laws in Malta and, indeed, across the European Union. Focusing more closely on the notion of accountability, and how the role of public audit supports this process, transcends the auditee-auditor ('hunted-hunter') tension, enabling both to behave differently to improve the effectiveness and satisfaction of their respective calling. The ECA often refers to this as the 'Bovens observer model'. Professor Bovens argues that the accountability mechanism creates a new social reality:

When focus is applied to accountability, the chains of responsibility become real and relevant. Insight emerges through this exercise and is documented, discussed and reflected upon. Such a mechanism leads to important renewal, change and development in the field of action in question. Our work as the EU's independent external auditor helps to create and support this positive observer effect within the EU.<sup>9</sup>

Essentially it will always be a question of culture, which needs to be shaped by real life examples, consistently; including by the way society behaves and acts in cases of bad governance.

---

9 ECA Journal No. 1 of 2021, page 97.





## CHAPTER 10

### Appraising performance, assessing risk, crafting remedies: patterns emerging from the NAO's reports on public financial administration and corporate governance

*Keith Mercieca*

The Auditor General's reports comment on the recurrence of particular shortcomings in public financial administration and corporate governance in the public sector. This chapter identifies and analyses these recurring themes and issues. It begins by drawing on an in-depth review of common audit findings in nineteen performance audits that were carried out between 2017 and 2020.<sup>1</sup>

The performance audits included in the review covered a broad spectrum of government functions which were classified in accordance with a typology developed by the OECD, specifically, education, health, social protection, environmental protection and economic affairs. The shortcomings identified in the audits were subsequently classified according to fourteen principles and elements of governance enshrined in the Strategy on Innovation and Good Governance adopted by the Council of Europe in 2008.

Several of these principles concern the *ultimate goals of government*, namely, social cohesion, sustainability and long-term orientation. Another set of principles deals with the *results of policy-making, project management, and service delivery*: these are efficiency, effectiveness, and responsiveness. The third set of principles is concerned with

---

<sup>1</sup> National Audit Office (2022), *An evaluation of performance audits in the public sector: Common audit findings (2017 – 2020)*. Malta: NAO, June.

the *soundness of governmental processes*: compliance to regulatory frameworks, sound financial management, contract management, competence, capacity and technology. The final set of principles concerns the *ethos of governance*, namely, accountability, openness and transparency, and ethical conduct.<sup>2</sup> The sections that follows summarise the NAO's findings.

### **The results of policy-making, project management, service delivery**

Failures in *efficiency* arise in the first instance from input variables, chiefly inappropriate planning or poor resource allocation, or a combination of both. Output variables also come into play, either as causes or expressions of inefficiency. Weak, absent or misdirected monitoring of a project or programme is a leading cause of inefficiency. So is an inappropriate balancing of the financial outlays on a project or programme against the desired social or economic objectives set for it. Delays, especially endemic delays that are not caused by contingencies such as the inception of a pandemic, are an expression of inefficiency. Inefficiency leads to sub-optimal performance, inflated cost structures, and diminishes the anticipated social or economic benefit.

Similar factors compromise *effectiveness*, that is, they prevent a policy, programme or project from attaining the final goals set for it, for example, eliminating homelessness, or permanently reducing administrative expenditure without affecting service quality and volume. Management failures, such as poor planning, leadership, control and monitoring, affect effectiveness as well as efficiency. In other instances, the policy concerns are poorly understood or articulated: needs are not thoroughly assessed; policy or programme objectives are ill-defined; a policy or programme may be well designed, but implementation is defective, or disrupted by factors within and outside the organisation. Unresolved tensions and differences of opinion over the appropriate time horizon of a policy also diminish effectiveness, as does tension between the political and administrative leadership, or between those framing a policy and those who are assigned operational responsibility.

---

<sup>2</sup> National Audit Office (2022), op. cit., pp. 22 – 23.

*Responsiveness* denotes the ability of a government, or a government organisation to orient and re-orient its focus to emerging situations, especially those situations that are rapidly evolving, as happened with the onset of the pandemic. It assumes relevance when one considers that complex societal problems often require coordination among several arms of government. While coordination within ministries is generally better than it is across ministries, even so, there may be failures of communication, or weaknesses in mobilising information for evidence-based decision-making, as well as other resources.

### **Soundness of governmental processes**

The soundness of governmental processes of decision-making, administration and financial management is what most immediately attracts an auditor's attention. Is business planning undertaken? What about feasibility studies? Does public procurement comply with the regulatory framework? Does it balance the risk and reward of a particular project between the government and the contractor? How are contracts drafted, awarded, and managed? Which challenges habitually hinder implementation? Are up-to-date financial records maintained, and are they reliable? It is pertinent to point out that the Government's reliance on a cash-based system of accounting limited its visibility and therefore impacted on the qualitative element of its decision-making processes. Are deficiencies in decision-making, administrative and financial management processes monitored and analysed, with a view to remedying them? Is there sufficient in-house competence or expertise to support policy-making, procurement, contract management, and the management of the government organisation concerned? How effectively is technology deployed to support planning, decision-making, management and monitoring?

Over the past three decades, as a consequence of the privatisation of most state enterprises and the reduction of in-house services, procurement has come to feature prominently in the activity undertaken by Maltese public administration. Consequently, the NAO devotes much attention to procurement activities.

*Endemic shortcomings in public procurement*

Three types of deficiency stand out: first, clear breaches of the procurement regulations and procedures; second, poor contract management practices; third, deficient corporate governance.

*Breaches of the procurement regulations* constitute the most obvious shortcomings: one example would be a decision to extend, without authorisation, the term of a contract, or payments exceeding the contracted amounts. At times, an organisation will not bind suppliers of goods and services to meet specific targets or performance standards. Contracts that have been awarded may not be published, as required, in the Government Gazette. Direct contracts, more commonly referred to as 'direct orders' are frequently resorted to, without the necessary authorisation and without clear justification save the plea of urgency. There are also instances in which large-scale direct procurement is undertaken through what is known as a 'negotiated procedure', though without clear justification. Resort to non-competitive procurement procedures eliminates any form of competitive tension that is often critical for the organisation's optimisation of the costs. Such breaches of the regulations stem from a failure to consider alternative, more economically advantageous solutions, either because of negligence or under the undue influence of clientelism or corruption.

Breaches of the regulations are generally associated with *poor contract management* practices, as evidenced by recurring instances when actual capacity and time utilised, or cost incurred, exceeded contractual provisions. Other failings include procurement transactions that are based on expired contracts; or the extension of the duration of a contract on account of delays in the issue of a fresh call for tenders or the award of a new contract. Retrospective approval for variations to the terms of a contract may be sought, thereby presenting the Department of Contracts with a *fait accompli* that is difficult to reverse or remedy. The extent of these variations may be such as to alter the scope of an approved project. Sometimes, an organisation may undertake a 'cascading' series of related contracts that effectively widen the provisions of the original award and erode the balance of risk and reward between the government and the contracted party. In many instances, auditors find little or no

evidence of rigorous needs identification at the time that a project or programme has been conceived, as well as limited development of implementation plans.

One comparatively simple example of poor contract management emerges from the NAO's audit of allegations concerning the Dingli Interpretation Centre. While the Office found no evidence in support of allegations of misuse of EU funds and collusion between the Mayor and private individuals, it did remark on serious administrative shortcomings:

On a general level, this Investigation revealed a number of administrative weaknesses. These included policy gaps, which prevailed at the former Government Property Division in the processes adopted to devolve public land. These circumstances mainly related to the absence of provisions concerning sites' use and sub-letting.

This Investigation also noted case-specific administrative shortcomings. These included an absence of information by the Dingli Local Council on the commercial element related to the project at the tendering stage, post facto authorisations, inadequate clauses within the sub-lease Agreement and value for money concerns. The latter particularly related to the annual sub-lease and the devolution fee of Lm20 (€46.60) and Lm100 (€233), which are not reflective of market prices.

This Investigation could not comprehend the variance between the former Malta Environment and Planning Authority's (MEPA) Development Control Commission (DCC), intention to restrict the provision of food and drink on site to the use of vending machines, and the planning permit issued, which allowed the site to operate a fully-fledged restaurant as an ancillary facility to the Interpretation Centre. Chair DCC termed these circumstances as an oversight. The NAO contends that such a state of affairs reflects weak work practices, including a broad lack of clarity as well as poor internal communication.<sup>3</sup>

---

<sup>3</sup> National Audit Office (2018), Press release, *An Investigation of allegations concerning Dingli Interpretation Centre*, 11 June.

More serious instances of poor contract management were identified in the audit of the contracts awarded to ElectroGas Malta Limited by Enemalta Corporation, especially in regard to the guarantees provided by the Government;<sup>4</sup> as well as the contract for the management of residential blocks through a negotiated procedure, awarded by St Vincent De Paul Residence for the Elderly to a consortium.<sup>5</sup> The alteration in the balance of risk and reward between the Government and contractor is clearly evident in the VGH concession, where substantial financial risks were to be borne by the Government.<sup>6</sup>

Poor contract management results in potentially long-term inefficiencies in services contracted. They are characterised by delays in the achievement of key contractual milestones (as was the case with the VGH concession); commencement, progress, or completion of contracted works; the provision of services to users; and the settlement and collection of financial dues. Sites belonging to or administered by the Government may be inadequately maintained or protected.

*Deficient corporate governance* is evident when internal controls on procurement, expenditure or revenue are weak. It finds expression in practices such as repeated renewals of contracts of service, payments exceeding the contracted amounts, delays in service provision or project completion, and sub-standard works or services. Payroll and other payments may be effected without adequate verification, while the certification of payments may be inadequate. Overtime may be resorted to without authorisation.

Inadequate records detract from the expected standard of accountability and transparency warranted in critical decisions, as does the failure to publish procurement-related information in the Government Gazette. A public sector organisation may fail to comply with relevant legislation, such as reporting VAT defaulters, or inconsistently and selectively apply rules relating to salaries, schemes, and allocation of funds. Nebulous

4 National Audit Office (2018), *An investigation of matters relating to the contracts awarded to ElectroGas Malta Limited by Enemalta Corporation*. Malta: NAO, November, pp. 468 – 470, 476 – 479, 482 – 485.

5 National Audit Office (2021), *The contract awarded to the JCL and MHC Consortium by the St Vincent de Paul Resident for the management of four residential blocks through a negotiated procedure*. Malta: NAO, April.

6 National Audit Office (2021), *An audit of matters relating to the concession awarded to Vitals Global Healthcare by Government Part 2 | A review of the contractual framework*. Malta: NAO, December.

project ownership is an important cause of poor corporate governance, especially when a cross-ministerial structure is utilised, or when particular agencies that have a cross-cutting function are deployed as project managers.

Poor corporate governance weakens an organisation's financial management. The NAO encounters numerous instances of error or non-compliance with financial management regulations, including:

- inappropriate accounting of transactions (erroneous classification, repeat transactions);
- application of erroneous tax provisions;
- asset valuations not available;
- statutory audits not carried out in a timely manner, or information required for such audits not submitted;
- failure to prepare and submit audited financial statements (prevalent in local councils);
- budgetary allocations exceeded;
- cash management concerns (failures to deposit and account, limits exceeded);
- revenue inaccuracies;
- cost overruns and other instances of poor financial planning;
- delays in raising invoices and receiving deposits, in the submission of financial statements, management accounts, annual audits and payments;
- incomplete records;
- failure to obtain Ministry of Finance authorisation regarding the availability of funds;
- failure to appropriately balance risk and rewards, resulting in private debt being registered on the government balance sheet (VGH is an example);
- inaccurate costings as a consequence of unrealistic budgetary plans, shortcomings in project management, the extension of contracts not in accordance with regulations, or understated estimated value of works;
- poorly maintained inventory records;
- long-standing debt that is not appropriately managed;

- no independent determination of the value of works, such as occurred when rates charged to Government by the contractor involved in the St Vincent de Paul project were considered as actual costs; the private operator does not account for inefficiencies and charges Government this rate;<sup>7</sup>
- advance payments made without any basis.

When breaches of the procurement regulations, poor contract management, and deficient corporate governance coincide, an audit is likely to disclose a pattern of shortcomings that typically includes:

- unclear tender/expression of interest specifications and poor planning resulting in substantial variations from budget;
- no evidence of proper needs identification;
- bypassing of public procurement regulations;
- differing bills of quantity;
- extension of contracted works/services not in accordance with regulations;
- omission or limited exposure of key commercial elements in the tender document to the advantage of the selected bidder;
- major changes to contract terms effected after the short-listing of bidders;
- innovative procurement concepts that fall short of the expected standards of openness and transparency;
- failure to include draft contractual agreements with the tender document.

The NAO also encounters other shortcomings. One category could be described as imprudent use of public funds: for example, donations by public sector organisations to private causes or individuals, or expenses that violate government regulations and policies. Hospitality expenses constitute a perennial high-risk area of disbursement and an unfortunate opportunity for extravagance through the misuse of public funds.

Inadequate human resource management also leads to the wastage

---

<sup>7</sup> National Audit Office (2021), *The contract awarded to the JCL and MCH Consortium by the St Vincent de Paul Residence for the management of four residential blocks through a negotiated procedure*. Malta: National Audit Office, April, par. 4.3.16.



of public funds as well as costly shortcomings in service delivery. One chronic inadequacy is excessive resort to overtime, which is facilitated by informal procedures for approving overtime as well as by lack of control over payments.<sup>8</sup> An organisation will resort to overtime work either in an effort to cope with what it believes to be a temporary surge in workload, or to circumvent the scrutiny of proposals to recruit additional staff. In doing so, however, its management fails to take account of the long-term effects of chronic staff shortages on the distribution of roles and duties within the organisation, on productivity, and on the organisation's ability to discharge the full range of duties assigned to it. The NAO also encounters instances of irregular recruitment practices, such as the appointment of persons of trust instead of suitably qualified regular staffers, appointments made by various agencies to bypass service-wide salary caps, recruitment exercises that are not consistent with human resource plans, and the setting of inadequate qualification standards for senior positions.

### **The ethos of governance and administration**

Regularly recurring deficiencies and failures signal the absence or weakness of an appropriate ethos of governance and administration. This may seem surprising, as the Constitution establishes a Public Service Commission as the guardian of administrative probity,<sup>9</sup> while the Commissioner for Standards in Public Life has recently been established to oversee the conduct of Members of Parliament and officials appointed as 'persons of trust'.<sup>10</sup> The Public Administration Act includes a comprehensive code of conduct for all public officers and employees,<sup>11</sup> and there are codes of conduct for ministers and parliamentary secretaries.

Nonetheless, deeply ingrained attitudes towards office-holding and public authority, habits of secrecy, an intensely partisan form of politics,

8 See, for example, National Audit Office (2015), *Audit of Gozo Channel Company Limited: Public Service Obligation Bid Feasibility and Operational Considerations*. Malta: National Audit Office, May, pp. 72 – 88.

9 Constitution of Malta, Articles 109, 110.

10 Standards in Public Life Act, 2018, Laws of Malta, Cap 570.

11 Public Administration Act, 2019, Laws of Malta, Cap 595, Schedule 1.

and clientelistic networks persist. These socio-cultural phenomena work against accountability, openness and transparency. Cumulatively, they distort the value frameworks within which government officials work, and in certain circumstances prevent them from honouring the principle of accountability and the values enshrined in sections 3 and 4 of the Public Administration Act.

Auditors find evidence of this in phenomena such as:

- i. lack of audit trails, which diminishes accountability, impinges on the fairness of services provided, or obscures key processes and thereby indirectly flags greater concerns;
- ii. shrouded lines of accountability as the allocation of responsibilities for certain key functions are not defined;
- iii. absence of key performance indicators: a failure to establish an objective benchmark renders the measurement of performance and the contextualisation of decisions problematic;
- iv. lack of management accounts: the absence of key financial records renders ambiguous the basis of key decisions that ought to be grounded in business process-related information;
- v. organisations fail to submit accurate, timely information;
- vi. limited or missing audit trails;
- vii. failure to honour reporting obligations;
- viii. limited use of a management information system: an organisation's resistance to implement management information systems may at times be traced to struggles for power and vested economic interests; and
- ix. attempts to cover up misconduct and error.

### **The ultimate goals of government**

The NAO also finds evidence of failings that compromise the sustainability and long-term orientation of policies, programmes and projects, and that may also adversely affect social cohesion. Such deficiencies include:

- i. failure to conduct timely baseline assessments;
- ii. failure to operationalise long-term strategies into specific time-bound milestones: this may be the result of a disconnection between the short-term and long-term timeframes within which the political and administrative arms of Government operate;
- iii. failure to estimate the long-term cost-efficiency of the selected policy or programme; and
- iv. the absence of long-term maintenance plans, especially for critical infrastructure such as transport nodes, waste disposal facilities, hospitals and schools.

### **Enablers of waste, inefficiency, misconduct and policy failure**

It would be facile to attribute all the shortcomings discovered by the NAO to human error, negligence or malfeasance. The evidence clearly points towards systemic factors that enable waste, inefficiency, misconduct, and policy failure, especially when successive audits disclose recurring or apparently intractable problems. When that happens, auditors analyse organisational design, decision-making, and operations management, which are either causes or enablers of endemic shortcomings and, occasionally, of isolated failings. The nature of the State itself, political processes, and the problems that the State grapples with also play their part.

The State apparatus is the most extensive organisational conglomerate in most countries: Malta is no exception. The public sector is the country's largest employer; it provides a vast range of services and undertakes many of the largest projects, especially in the sphere of infrastructure and social provision. As with commercial organisations, public sector bodies manage numerous relationships with suppliers of goods and services. The variety of suppliers is extraordinary: a government organisation providing a public service may at any one time require the contractual services of a management consulting firm, a building contractor, a catering contractor, one or more scientific teams, a marketing, communications or public relations firm, and so on. Substantial public projects are generally undertaken in partnership

with private enterprises and, occasionally, with non-governmental organisations. Managing these contracts and the contractual relationships is an extraordinarily complex task, calling for clear objectives, stable plans, skilful negotiations, reliable communications, close, effective monitoring and evaluation, as well as clear expectations regarding accountability.

Furthermore, public procurement is regulated by an elaborate framework of rules and procedures that is itself based on a European Union directive.<sup>12</sup> The framework is intended to secure value for money for the public sector organisations procuring goods and services, equity for contractors, and integrity at every stage of the procurement cycle. While the regulations provide for a measure of delegated authority to ministries and non-departmental bodies, above a certain threshold, the Department of Contracts plays a decisive role in procurement.

This complexity is a tall order for any organisation, let alone a public sector organisation that has perhaps limited administrative capacity and operates in a fluid, politicised environment in which political considerations vie with legal, managerial, and technical considerations, and may well override them. Complex, large scale projects present risks and challenges that most government organisations are ill-prepared for. One of their most serious deficiencies is the mismatch in the competence and skills available to Government and those at the disposal of its counterparty. The mismatch is especially acute in respect of cost-benefit analysis, forward planning, business negotiations, and expertise on contract law.

Although, taken as a whole, the public sector is large and musters an overwhelming array of human and financial resources, it is also fragmented. Critical specialist expertise is thinly spread among organisations that have little or no interaction. The central authorities in the Office of the Prime Minister and the Ministry of Finance are therefore unable to mobilise such expertise to undertake a ‘whole-of-government’ effort to plan, implement, and service major projects. The proliferation of myriad authorities, agencies, and government-owned limited liability companies that exist far from the sphere of control

---

12 Public Procurement Regulations 2016; Directive 2014/24/EU of the European Parliament and of the Council. Other Maltese statutory instruments regulate procurement in certain specialised economic sectors as well as in extraordinary circumstances such as the pandemic.

exercised by central government often imparts a sense of false immunity from scrutiny. The NAO confronts challenges in auditing organisations that form part of Government but cannot be classified as departments, ministries, agencies, or regulatory authorities. These entities, which are often obscure companies or foundations entirely owned by the Government, are not regulated by relevant legislation and public sector management codes, and it is here that the greatest risks in terms of governance are detected. Deciphering the lines of accountability and detecting what framework of rules and regulations applies in such circumstances has often proved problematic.

The situation is aggravated by the absence of a clear and uniformly enforced policy about the essential capabilities that the public sector ought to retain. Consequently, over the past three decades, in the course of transferring to the private sector services that ought to remain public, the public sector has lost valuable core knowledge for services that Government ought to have in-house, such as health, Treasury function, support services, while retaining public services that ought to be rendered by private operators, such as transport and luggage handling.

The investigations undertaken by other integrity institutions also disclose political and socio-cultural enablers of waste, inefficiency and policy failure. Given the extent of the patronage in the State's gift, the dependence of numerous private enterprises on government contracts, and the security of employment with government bodies, it is not surprising that private individuals, entrepreneurs, and firms are tempted to suborn procurement, recruitment and enforcement procedures. Numerous political figures and persons of trust hold public offices while retaining private business interests or links to private enterprise: this multiplies the potential for conflicts of interest, which is already inherent in the comparatively small scale of the population and the dense socio-political networks embodied in the main political parties. The prospect of political gain and tacit or explicit commitments between holders of public office and private interests not infrequently trumps good practice and legality. The absence of an unambiguous commitment to transparency and accountability at all levels of the State apparatus enables waste, negligence and malfeasance.

**The NAO's role in improving performance, securing value for money, promoting integrity**

In light of this complex and still-evolving picture, what role does the NAO play in improving performance, securing value for money, and promoting integrity across government?

One answer is that the NAO's oversight extends across the whole of government. Compliance auditing and performance audits have sharpened our understanding of the risks and vulnerabilities associated with public financial management in Malta. The NAO's public reporting secures a good measure of transparency, while the importance that it gives to post-audit follow-up improves the likelihood that its recommendations will be acted on. The NAO contributes directly to the verification of measures implemented by Government through its own follow-up reports. These reports often result in elements of progress being recognised, though it must be acknowledged that this general sense of progress is sometimes at odds with the recurring nature of shortcomings identified from year to year.

Corporate governance arrangements are nowadays regarded as the first line of defence against financial malfeasance. However, notwithstanding the prominence now given to corporate governance in the business world, the public sector still seems to have a limited appreciation of the direct link between corporate governance and performance. For example, retaining records is often understood as a necessary evil, a burden to comply with some nosy auditor that might come calling. This is a very limited and narrow-minded perspective on the importance of retaining records, for having a reliable source of information to fall back on may serve as guidance in future decisions; it helps to secure accountability and allows an organisation to reflect on what worked and what could be improved.

It is encouraging that successive governments have from time to time undertaken systematic measures intended to rectify shortcomings. During the past few years, one of the most notable is the governance report issued by the Office of the Principal Permanent Secretary: it is an important cog that contributes to completing the feedback loop between the detection of risks/vulnerabilities and the implementation

of corrective action to address such weaknesses. The NAO's audits recognise and acknowledge the efforts taken by public sector bodies to increase efficiency and effectiveness, guided no doubt by regulations set at EU-level and transposed into national legislation, as well as by home-grown initiatives developed by the leadership of the public service. The introduction of key performance indicators and 'mystery shoppers' number among the concepts recently introduced to improve the efficiency and effectiveness of key government services. Above all, the NAO's work reveals consistent evidence of the fundamental orientation of Maltese public administration towards welfare.





## CHAPTER 11

### Emerging issues in state auditing and reflections on the future of state audit in Malta

*Peter J. Baldacchino, Josette Caruana and Lauren Ellul*

#### **Introduction**

The Covid-19 pandemic hit the world like a storm in 2020. Two years later, the after effects linger, and are expected to remain, as all organisations adapt to the ‘new normal’. Particularly for the public sector, it is noted that it will be dealing with the effects of the pandemic for many years (INTOSAI n.d.; World Bank 2020; IFAC 2021).

Governments across the globe stuck out their necks to assist industries in distress and sustain the economy. Government expenditures skyrocketed, as reflected in higher debt levels. The focus on Supreme Audit Organizations (SAIs) intensified, being exemplar organisations expected to provide assurance to the general public that the actions of their governments are justified, reasonable and sustainable. The audit of government policies and spending during the pandemic is not a one-off affair, but a rather long-lasting ‘relationship’ that would need to feature in audits in the future (Barrett 2022).

Covid-19 issues have exacerbated existing organisational challenges for SAIs (Ansell et al 2021; Dodaro 2020). These challenges include rapidly evolving technology, climate change, societal violence, terrorism, human trafficking, money laundering, bribery and corruption, and internal and external tensions and trade disputes (Barrett 2022).

The Maltese SAI, that is, the National Audit Office (NAO) is also faced with these challenges; and on top of all, it has the additional hurdle to audit the new accounting system being implemented by the Central Government. When the NAO prepared its strategy for 2019-2023, it had anticipated the challenges entailed in the implementation of accrual accounting in Central Government, highlighting the persisting problem of recruiting and retaining suitably-qualified staff (NAO 2018). What the strategic plan did not anticipate is the unexpected influence of a global pandemic, a pervasive force that increased the burden of all existing problematic issues. How would the strategic plan have been any different, had the NAO known what it knows now about the pandemic and its effects?

This chapter explores the challenges that the NAO faces with regards to digitisation and data analytics; the strengthening of the NAO's relationships with related public sector institutions and stakeholders such as the Internal Audit and Investigations Department (IAID) and the Public Accounts Committee (PAC); and the implementation of accrual accounting across Central Government. The study is qualitative in nature: referring to guidance documents issued by INTOSAI, IFAC and the World Bank, and comparing the NAO's strategy with those of other SAIs. Overall, it is observed that, as with its international counterparts, the NAO's strategy has to focus on staff development and retention in order to remain an exemplar organisation.

### **How data analytics can help government auditing**

For decades, data analytics (DA) has held a prominent role in auditing and risk management. Gathering and storing large amounts of data can be challenging for organisations, but with the help of DA, this challenge can be converted into an opportunity (Russom, 2011). The use of specialised audit software, such as ACL, Tableau, and IDEA, can facilitate this process. Nevertheless, audit functions have yet to completely benefit from the transformative potential of DA, since auditors are still repeatedly resorting to manual procedures and traditional sampling techniques.

DA has been defined by the International Auditing and Assurance Standards Board Data Analytics Working Group (IAASB DAWG) (2016, p. 7) as:

...the science and art of discovering and analysing patterns, deviations and inconsistencies, and extracting other useful information in the data underlying or related to the subject matter of an audit through analysis, modelling and visualisation for the purpose of planning or performing the audit.

Bekker (2019) mentions four categories of DA which differ in their complexity and contribution value. Tschakert et al. (2016) explain how descriptive analytics utilises raw data from a variety of sources to draw conclusions on past results. Such DA, however, highlights an issue without identifying the fundamental cause. Diagnostic analytics seek to identify irregularities in the data and to explain such irregularities (Tschakert et al. 2016). The goal of predictive DA is then to create forecasts based on historical data and analytical methodologies (Edwards 2019). One type of such DA is advanced statistical analysis, with regression and correlation statistics being especially valuable when conducting performance audits (Comptroller and Auditor General of India [C&AG India] 2017). Prescriptive DA, which is the most complicated but the most value-adding, enables the auditor to visualise a wide variety of possible outcomes based on the data presented, guiding the auditors in their decision-making (Tschakert et al. 2016). This level of complexity necessitates sophisticated tools, which could make deployment and management difficult (Bekker 2019).

Adopting DA is a critical step toward modernising public sector auditing (Lewis et al. 2014). According to VAGO (2018) and INTOSAI (2018), in some SAIs, including those of Australia and the United Kingdom (UK), DA has served as a catalyst for revolutionizing auditing in the public sector. Recognizing the need for a roadmap to embrace automation, in its strategic plan for 2019-2023, Malta's NAO highlighted the benefits that could be reaped by developing a DA function (NAO 2019). The strategy encourages data-driven decision-making and underlines the critical role of technical advancements in enabling faster, more extensive and more trustworthy data analysis.

The UK NAO's Chief Analyst mentions three ways in which DA helps auditors:

- i. enhancing productivity by increasing *efficiency* through automation, particularly when handling voluminous data;
- ii. boosting *quality* by carrying out tests on large data sets which would otherwise be impractical with a manual system; and
- iii. providing *insight* by connecting data and identifying trends and anomalies (Kelly 2020).

In terms of efficiency, Manson, McCartney and Sherer (2001: 120) remark that DA can help auditors concentrate their attention on audit areas where judgement is required, by freeing up time from “mundane tasks”. Furthermore, DA enables the testing of whole data populations rather than just a chosen sample, producing audit evidence of superior quality (Sirois and Shukarova Savovska 2017). By identifying groups of numbers across data sets which vary from expectations, DA makes it easier to spot anomalies during audits and to detect illicit transactions, fraud and corruption, providing auditors with insight on risk exposure and on areas which require further investigation (AICPA 2014; Fay and Negangard 2017). For instance, the use of e-procurement platforms has led to the widespread availability of administrative records in structured databases and to a wealth of data on government spending. DA can be utilised by auditors to prevent and detect corruption and fraud in public procurement (Adam 2019). This is because DA makes it easier to monitor individual transactions and entities, and therefore, it facilitates the identification of unusual transactions or suspicious contracts which require further investigation or more detailed reporting (Adam 2019).

DA can bring value at any point in the audit life cycle and can influence how assurance is provided. In the planning stage of an audit, DA enables the identification of high-risk areas (Cangemi 2014). This initial analysis allows the auditor to modify the audit's focus prior to the subsequent audit phases, and to request the right records and documents from the auditee. During the fieldwork stage, DA assists in the gathering of evidence by facilitating the detection of anomalies and exceptions. Finally, when reporting the audit findings, presentation is

enhanced through the use of DA, allowing for better communication with the users (C&AG India 2017).

Notwithstanding the many benefits of DA, there are also challenges in its implementation including training requirements for the auditors to acquire the necessary skills and competencies, especially IT knowledge; the level of data access granted by the auditee and the timeliness of data availability (Earley 2015); the cost of the investment required to mobilise the tools and technologies for the application of DA; and resistance from the auditees to provide large amounts of confidential data to the auditors (Joshi and Marthandan 2018).

Within the local scenario, a study by Ellul and Buttigieg (2021) indicated that although the NAO has begun to incorporate DA into its audit procedures, the Office's use of DA is still restricted. According to this research, the deployment of DA will help all units across the NAO (performance auditing, financial & compliance, and special audits & investigations). The participants in this study claimed that DA would aid in gathering and analysing large volumes of data, enhancing understanding of organisations, ministries and departments being audited and widening audit coverage, thus providing better assurance (Ellul and Buttigieg 2021).

To take full advantage of the benefits of DA and to plan for the future of modern auditing, the required capital and human resource investment must be committed by the NAO. In addition, a strategy focusing specifically on DA should be developed that tackles the short, medium, and long-term milestones desired by the NAO, addressing the required IT investment for handling voluminous data levels and ensuring the integrity and security of such data. NAO auditors should be exposed to training and competence-building exercises in order to resolve any gaps in knowledge and skills.

### **Improved NAO relationships with other public sector institutions**

Among the challenges faced by the NAO, there is that of strengthening its relations with other public institutions, particularly those with other auditing-related entities such as the Public Accounts Committee

(PAC) set up by Parliament and the Internal Audit and Investigations Department (IAID).

The PAC's role is to guarantee the effective employment of public money, with such an obligation being directed towards both Parliament and electorate. Therefore, its role largely coincides with the NAO's, which is tasked *inter alia* with delving into and reporting impartially and autonomously about the use of Government funds. The NAO lays out its output at the disposition not only of the PAC but also of Parliament and the public. In this context, while a working relationship already exists between the two institutions, it is clear from recent literature (Baldacchino *et al.* 2017) that as yet there is room for improvement.

For example, while the NAO is legally bound to attend to the PAC's needs and to supply it with the necessary information, advice and expertise, the Committee's expectations of the NAO may sometimes be too taxing, with the PAC tending to over-utilise its power in requesting the Auditor General to undertake *ad hoc* exercises such as investigations. As aptly stated some years ago by Peplow (2011, p.24), NAO resources may thus be needlessly stretched, with the NAO possibly being impeded from fulfilling its day-to-day obligations. Therefore, for the NAO/PAC relationship to develop further, there needs to be increased emphasis on mutual trust and commitment: on the one hand, the PAC is to ensure that it makes optimal use of the NAO's work without asking too much; on the other hand, the NAO is to bring to the attention of the PAC any major difficulties encountered in the course of its operations. The relationship will thus be analogous to that of private sector audit committees overseeing their auditors so as to ensure that proper internal controls, governance, and risk management are being exercised by management and staff.

There are other ways to strengthen the NAO/PAC relationship. One is for the NAO to take full responsibility for ensuring that the appropriate specialists, whenever needed by the topic in hand, are available during the PAC sittings. Such experts may be engaged by the NAO regardless of whether they are officials of the NAO itself or specially engaged by the NAO from external sources. Consequently, PAC members would probably be more strongly supported than at present in their deliberations, thereby rendering the Committee's oversight more

effective, to the benefit of both institutions and stakeholders. After all, for politicians on opposite sides of the political spectrum, having to carry out such expert selection themselves is typically more difficult and, as a Committee, they may tend to fail to reach consensus or even compromise. Another way to strengthen the relationship between the two institutions is for the NAO to draw up and send to Parliament the concluding PAC reports after seeking the approval of PAC members. The NAO would thus ensure that, unlike at present, such reports are indeed communicated to Parliament on each material issue under consideration. Finally, the NAO could also recommend annually to the PAC a priority list of the items planned to be set on the PAC Agenda.

As for the NAO/IAID relationship, Zammit and Baldacchino (2012) analysed the communication barriers between the two types of auditors serving a common public client. The main barriers referred to in that study have since been only partly, if in any way, mitigated.

In the first instance, while the NAO needs not only to be independent but also to be seen to be so, the Auditor General has to ensure that such overriding requirement does not hinder NAO staff from carrying out frequent and honest communications with IAID staff on matters of common interest, such links not being limited only to matters which are directly related to the audits which they are undertaking. Increased consultation on the work of internal auditors should generally be beneficial to both parties, leading to assurance synergies and added value. In particular, with the exercise of due care, it is beneficial if such increased consultation is carried out even in sensitive areas such as those related to fraud risks, so that each institution would not necessarily take responsibility solely for its own findings and take its separate course of action. Unfortunately, in this connection, doubts as yet remain about the use which the NAO staff themselves may make of the internal auditor's work in view of confidentiality restrictions in the Internal Audit and Investigations Act (IAIA). Indeed, such Act provides that internal auditors should not disclose any information acquired during their work, as their reports are strictly for the use of the permanent secretary and a few other specified persons including the Auditor General "*if necessary*" *{(S22 (2), IAIA Ch 461)}*. Understandably, the Auditor General should in any case in effect be an exception to such restrictions

because, being the head of the supreme audit institution, s/he is meant to be protected constitutionally. However, probably the Act needs to be revised to clarify for practical purposes that such exception applies also to any member of NAO staff so designated by the Auditor General.

Secondly, although an open-door policy exists between the two institutions, communication between them may as yet not be sufficiently formalized. For example, while audit planning is an area in which each side already consults the other, yet the level of informal communication may still be influencing coordination on auditee internal control deficiencies and thus limiting the extent of such cooperation, this also possibly resulting in the NAO not using, or not using fully, the data collected by the IAID. Therefore, more formal arrangements about sharing information are called for wherever possible.

A final issue about the NAO/IAID relationship is the evident need to augment the resources of the IAID. As yet, internal audit Units (IAUs) are not established in a number of ministries and consequently the IAID probably contributes only to a limited extent there. Clearly, one way to proceed is for IAUs to be set up in all ministries under the direct technical responsibility of the IAID. In parallel with this, independently-composed audit committees should be established in each ministry, and be tasked with overseeing all auditing exercises within that ministry. Such committees would also exact the participation as required of ministry management as well as the internal and external auditors, thus being in a better position to strengthen appropriately the public accountability of each ministry.

### **Auditing the new accrual accounting system**

The Government Financial Report for the year 2021 is cash-based and budget-oriented. However, the financial data of the ministries and departments<sup>1</sup> is being captured in a new accounting system, namely, the Corporate Financial Management System (CFMS). Implementation started in 2017, and the core CFMS has been live across the Central

---

<sup>1</sup> Government ministries and departments are referred to as the central government throughout this chapter.



Government since April 2021. The CFMS enables reporting on both cash and accrual basis, with the latter being designed to be compliant with International Public Sector Accounting Standards (IPSASs) as adopted by the Maltese Government. The Public Finance Management Act 2019 contains provisions for the Central Government to publish accrual financial statements compliant with IPSAS, but such provisions have not been activated at the time of writing.

In the meantime, the NAO is in the process of auditing the Government Financial Report for 2021, and can thus become better acquainted with the new accounting system. This initial stage should prove useful for the NAO to iron out issues in the system, before moving on to the next stage of auditing a full-blown accrual-based set of financial statements. Having said this, it is noteworthy to point out that the NAO has been involved in the accounting reform of the Central Government from its inception. A vociferous advocate of accrual accounting, the NAO was one of the proponents for the introduction of such a system, and has continually supported its introduction over time. However, the level of involvement in the various phases of implementation presented challenges for the NAO to maintain a balance that does not detract from its independence.

According to the literature, SAIs are important stakeholders in government accounting reforms because improvement in the underlying government accounting system is also an objective of the audit process (Azuma 2003, 2005; FEE 2003; IFAC 2011). SAIs could also be effective reform drivers. Reform drivers provide conceptual ideas for solutions to problems, be they actual problems or perceived ones (Lüder 2002). They provide motives for the political actors to engage in the reform. In the Maltese context, since 1980, the annual NAO audit reports consistently refer to international developments and standards, with the Audit Report of 1994 (par.1.10.6-10) specifically recommending the adoption of an accrual accounting system by the public sector. However, the Office maintained an ‘armchair’ position, avoiding direct involvement, so as not to endanger its independence.

The role of the NAO could be described as that of an ‘active observer’. The involvement of the NAO in government accounting reform was deemed important mainly for two reasons. First, so that

the Office is aware of what has happened when it comes to eventually audit. Second, the Office is in a position to provide valuable guidance based on its experience in the functioning of the departments. At the same time, the NAO felt that it had to distance itself sufficiently to avoid conflict of interest in the future. This was achieved by reviewing all circulars and guidelines issued by the various Accrual Accounting Committees set up by the Ministry for Finance over time; and by stating opinions without endorsing decisions or instigating changes. It can be noted, however, that the NAO was quite adamant when proposed new finance legislation threatened the audit domain of the government's external auditor. The Office put its foot down and opposed suggestions for financial statements of individual government ministries to be audited by private audit firms. The NAO maintains its responsibility for the audit of the whole of government apparatus, even though this means increasing pressure over its already over-extended resources.

The Office represented (and still does) a source of expertise that was being continually tapped into, but not being directly involved in the decisions required. As subsequently suggested by IFAC (2011), the NAO established a cooperative working relationship with the central government from the start of the transition phase. It also participated in working groups related to the implementation, as a sort of 'overseer'. However, IFAC (2011) proposes that the NAO should go further and issue general guidance material about the parameters of the audit processes of the new accounting system. For example, in the UK, the audit office was actively involved in making sure that accounting policies were understood and provided assurance about the opening balances (Carruthers and Sinclair 2017). In New Zealand, the audit office examined a draft of the accrual-based public accounts (Azuma 2005).

Perhaps the Maltese scenario as to accrual accounting implementation and the audit implications is still unfolding. But these foreign examples are indicative of possible actions by the NAO that may lead to a more effective involvement in the process, without impinging on its independence. Learning from the experiences of our peers is an important process, especially in a small island state such as Malta.

In its audit report on the Government Financial Report of 2020, the NAO satisfactorily reports on the process of the new accounting system, noting that training is being provided to government officials in the department to develop the necessary IPSAS skills and expertise (NAO 2021). Needless to say, such training is also crucial for the NAO's human resources as well, as noted in the Strategy document (NAO 2018). The majority of the NAO officials are professional accountants who are well versed in accrual accounting methodology. Combined with existing knowledge of government operations, the implications of applying basic accounting concepts to the context would be appreciated. Furthermore, the audit staff should be prepared by intensive hands-on training on the new accounting system in order to appreciate its functions, perhaps by also carrying out an IT system audit.

The modernization of the government accounting system obviously affects the role of the NAO, and widens the scope of the audit from a straightforward compliance audit to a rather more complex financial audit. A financial audit requires the audit of judgements such as asset value, estimated lives, matching and prudence (FEE 2003). Besides determining the legality of transactions, the audit would need to establish whether the financial statements give a true and fair view of the financial performance and financial position, in accordance with the applicable financial reporting framework (Cavanagh et al. 2016).

However, the study carried out by Accountancy Europe (the then FEE 2008) found that the implementation of accrual accounting did not create a major auditing reform for most SAIs, especially when the SAI already employed accountants and was conversant with international auditing standards – as in the case of Malta's NAO. What would be needed are stronger quality control processes due to the more significant audit judgments required. The FEE (2008) actually suggested that subcontracting audit work to private audit firms would be one way of mitigating the initial challenges of auditing accrual accounts because this would enable NAO staff to learn specialist skills and would be more likely to maintain audit methodologies in line with best practice. Within acceptable parameters, subcontracting audit work would not impinge on the audit perimeter that the NAO wants to maintain in order to retain control over government audit. It could also provide an ideal

training source for NAO staff. Of course, there is always the risk of increasing the haemorrhage of professional finance expertise from the public sector. This challenge is not being faced only by the NAO and the public sector.

## **Conclusion**

The discourse on the impact of the pandemic on public sector audit is relevant in that it has highlighted the importance of ‘shared learning’ (Barrett 2022). INTOSAI, IFAC, and the World Bank have set up dedicated websites for the purpose. With hindsight, it can be deduced that the NAO’s Strategic plan (published in 2018) would not have been any different, and it would still have attempted to deal with the same problems. Human resources would still be the focus of the strategic plan. The need for training to develop digital and technical audit skills would still be predominant in the plan for the way forward of public sector audit. The challenge of harnessing the rapidly evolving technology, so as to reduce the risk of its abuse, while making best use of it in the audit process, did not go away with the pandemic. On the contrary, carrying out audit processes remotely may have highlighted its importance, especially now that the audit process involves a new accounting system.

This chapter has also highlighted the importance of sharing information between the various government institutions – better planning and coordination of the use of the available limited resources. After all, there is a common goal to be achieved, that of guarding the public purse (Pirotta and Warrington 2001), and it would be counterproductive to work in silos. The NAO should also consider sharing approaches and experiences with private sector firms. While maintaining its independent status, it can wield its influential position to tap the power of communication, collaboration, and innovation in order to make the best use of the country’s resources, especially human resources.

## References

- Adam, I. (2019), 'Big data analytics as a tool for auditors to identify and prevent fraud and corruption in public procurement' *ECA Journal* No. 2/2019. [Online] Available at: [http://www.govtransparency.eu/wp-content/uploads/2019/05/ECA-JOURNAL19\\_02.pdf](http://www.govtransparency.eu/wp-content/uploads/2019/05/ECA-JOURNAL19_02.pdf) [Accessed 18 May 2022].
- American Institute of Certified Public Accountants (AICPA) (2014), *Reimagining Auditing in a Wired World* (White Paper). New York: American Institute of Certified Public Accountants. [Online] Available at: <https://us.aicpa.org/content/dam/aicpa/interestareas/frc/assuranceadvisoryservices/downloadabledocuments/whitepaper-blue-sky-scenario-pinkbook.pdf> [Accessed 18 May 2022].
- Ansell, C., Sorensen, E., & Torfing, J. (2021), 'The COVID-19 pandemic as a game changer for public administration and leadership? The need for robust governance responses to turbulent problems', *Public Management Review*, 23(7).
- Azuma, N. (2003), 'The Role of the Supreme Audit Institution in NPM: International Trend', *Government Auditing Review*, (10), pp. 85-106.
- Azuma, N. (2005), 'The Role of the Supreme Audit Institutions in New Public Management (NPM): the Trend of Continental Countries', *Government Auditing Review*, (12), pp. 69-84.
- Baldacchino, P.J., Bartolo, C. and Grima, S., (2017), 'The role of the Maltese public accounts committee in public finance', *Journal of Accounting, Finance and Auditing Studies*, Oct 3(4):53-91: [https://jafas.org/articles/2017-3-4/3\\_Malta\\_FULL\\_TEXT.pdf](https://jafas.org/articles/2017-3-4/3_Malta_FULL_TEXT.pdf)
- Barrett, P. (2022), 'New development: Whither the strategic direction of public audit in an era of the 'new normal'?' *Public Money & Management*, 42(2), 124-128.
- Bekker, A. (2019), '4 Types of Data Analytics to improve Decision-Making' [Online] Available at: <https://www.scnsoft.com/blog/4-types-of-data-analytics> [Accessed 23 May 2022].
- Cangemi, M.P. (2014), 'Performing a Strategic Risk-Based Assessment: Integrating Data Analytics into the Audit Universe', *EDPACS*, Vol. 49, No. 5, pp. 1-6.
- Carruthers, I. and Sinclair, M. (2017), *Implementing accrual accounting in individual departments: UK experiences*. CIPFA publication. Available at: [www.cipfa.org](http://www.cipfa.org).
- Cavanagh, J., Flynn, S. and Moretti., D. (2016), *Implementing Accrual Accounting in the Public Sector*. IMF Technical Notes and Manuals. Available at: [www.imf.org](http://www.imf.org).
- Comptroller and Auditor General of India (C&AG India) (2017), *Guidelines on Data Analytics*. [Online] Available at: <https://cag.gov.in/uploads/guidelines/Guidelines-on-Data-Analytics-book-05de4f7fd52e565-67820093.pdf> [Accessed 20 May 2022].
- Dodaro, G. L. (2020), 'Addressing Covid-19 implications nationally and globally', *International Journal of Government Auditing*. <http://intosajournal.org/addressing-covid-19-implications-nationallyglobally/>
- Earley, C.E. (2015), 'Data analytics in auditing: Opportunities and challenges', *Business horizons*, 58(5), pp. 493-500.
- Edwards, J. (2019), 'What is predictive analytics? Transforming data into future insights', CIO. [Online] Available at: <https://www.cio.com/article/3273114/what-is-predictive-analytics-transforming-data-into-future-insights.html> [Accessed 18 May 2022].
- Ellul, L. and Buttigieg, R. (2021), 'Benefits and Challenges of Applying Data Analytics in Government Auditing', *Journal of Accounting, Finance and Auditing Studies*, 7(3), pp. 1-33.

- Fay, R. and Negangard, E.M. (2017), 'Manual journal entry testing: Data analytics and the risk of fraud', *Journal of Accounting Education*, Vol. 38, pp. 37-49.
- FEE (2003), 'The adoption of accrual accounting and budgeting by governments (Central, Federal, Regional and Local)', Accountancy Europe. Available at: <https://www.accountancyeurope.eu>
- FEE (2008), 'Implementation of accrual accounting: The impact on public sector audit', Accountancy Europe. Available at: <https://www.accountancyeurope.eu>
- IFAC (2011), *Transition to the Accrual Basis of Accounting: Guidance for Public Sector Entities*. 3rd ed. Available at: <https://www.ipsasb.org>
- IFAC (2021), <https://www.ifac.org/knowledge-gateway/discussion/covid-19-response-recovery>.
- International Auditing and Assurance Standards Board Data Analytics Working Group (IAASB DAWG) (2016), *Exploring the Growing Use of Technology in the Audit, with a Focus on Data Analytics*. New York: International Auditing and Assurance Standards Board. [Online] Available at: <https://www.ifac.org/system/files/publications/files/IAASB-Data-Analytics-WG-Publication-Aug-25-2016-for-comms-9.1.16.pdf> [Accessed 23 May 2022].
- International Organisation of Supreme Audit Institutions (INTOSAI) (2018), 'Data Analytics at the National Audit Office (UK)', [Online Presentation] Available at: [https://www.intosaipas.org/wp-content/uploads/2020/02/Agenda-item\\_2A\\_Any-Fisher\\_Data-Analytics-at-the-UK-NAO.pdf](https://www.intosaipas.org/wp-content/uploads/2020/02/Agenda-item_2A_Any-Fisher_Data-Analytics-at-the-UK-NAO.pdf) [Accessed 23 May 2022].
- INTOSAI (n.d.), [www.intosaicovid19.org](http://www.intosaicovid19.org).
- Joshi, P.L. and Marthandan, G. (2018), 'The Hype of Big Data Analytics and Auditors', *Emerging Markets Journal*, 8(2), pp. 1-4.
- Kelly, R. (2020), *How data analytics can help with audits*. UK: National Audit Office. [Online] Available at: <https://www.nao.org.uk/naoblog/how-data-analytics-can-help-with-audits/> [Accessed 18 May 2022].
- Lüder, K. (2002), 'Research in Comparative Governmental Accounting over the last decade: Achievements and Problems', In Montesinos, V. and Vela J.M. (eds.), *Innovations in Governmental Accounting*. The Netherlands: Kluwer Academic Publishers. pp 1-21.
- Manson, S., McCartney, S. and Sherer, M. (2001), 'Audit automation as control within audit firms', *Accounting, Auditing & Accountability Journal*, 14(1), pp. 109-130.
- National Audit Office (2018), *National Audit Office Strategy, Improving governance and performance across the public sector (2019-2023)*. <http://www.nao.gov.mt>.
- National Audit Office (2019), *Supreme Audit Institutions & Data Analytics – A Green Hat*: IDI Exchange Series event hosted by the National Audit Office. Malta: National Audit Office. [Online] Available at: <https://nao.gov.mt/en/press-releases/4/222/supreme-audit-institutions-data-analytics---a> [Accessed 20 May 2022].
- National Audit Office (2021), *Annual Audit Report Public Accounts 2020*. National Audit Office. Available at: <https://nao.gov.mt/en/recent-publications>
- Peplow, W. (2011), *Does the Public Accounts Committee in Malta contribute to Administrative Efficiency?* Unpublished Master of Arts in Public Policy Dissertation, University of Malta.
- Pirotta, G.A. and Warrington, E. (2001), *Guardian of the Public Purse - A history of State Audit in Malta 1800 – 2000*. Malta: National Audit Office.
- Russom, P. (2011), 'Big data analytics', TDWI Best Practices Report, Fourth Quarter, Vol. 19, No. 4, pp. 1-34. [Online] Available at: [https://tdwi.org/research/2011/09/~media/TDWI/TDWI/Research/BPR/2011/TDWI\\_BPReport\\_Q411\\_Big\\_Data\\_](https://tdwi.org/research/2011/09/~media/TDWI/TDWI/Research/BPR/2011/TDWI_BPReport_Q411_Big_Data_)

- Analytics\_Web/TDWI\_BPReport\_Q411\_Big%20Data\_ExecSummary.ashx [Accessed 20 May 2022].
- Sirois, B. and Shukarova Savovska, K. (2017), *Audit Data Analytics: Opportunities and Tips*. International Federation of Accountants. [Online] Available at: <https://www.ifac.org/knowledge-gateway/audit-assurance/discussion/audit-data-analytics-opportunities-and-tips> [Accessed 18 May 2022].
- Tschakert, N., Kokina, J., Kozlowski, S. and Vasarhelyi, M. (2016), 'The next frontier in data analytics: why CPAs and organisations need to learn to use advanced technology to predict and achieve outcomes', *Journal of Accountancy*, 222(2), p. 58.
- Victorian Auditor-General's Office (VAGO) (2018), *Annual Report 2017-2018*. Melbourne: Victorian Auditor-General's Office. [Online] Available at: <https://www.audit.vic.gov.au/report/annual-report-2017-18> [Accessed 18 May 2022].
- World Bank (2020), *Role of supreme audit institutions (SAIs) in governments' response to Covid-19: Emergency and post emergency phases*. <https://openknowledge.worldbank.org/handle/10986/33901>.
- Zammit, S. and Baldacchino, P.J. (2012), 'Two auditors: One public client', *International Journal of Government Auditing*, International Organization for Supreme Audit Institutions (INTOSAI), April 39(2) 14-18: [https://www.intosai.org/fileadmin/downloads/about\\_us/IJGA\\_Issues/former\\_years/2012/EN\\_2012\\_april.pdf](https://www.intosai.org/fileadmin/downloads/about_us/IJGA_Issues/former_years/2012/EN_2012_april.pdf)





## Afterword

*Edward Warrington*

### **The twenty-first century: optimism to crisis**

The National Audit Office was established at the close of a brief period of optimism in human history: the end of the twentieth century witnessed the apparent consolidation of neo-liberal economics, the information technology revolution, the spread of democracy, the acceleration of European unification, the end of superpower confrontation, and the rise of a coherent global order underpinned by international law and multilateral institutions. As the new millennium drew near, however, a frisson of panic sounded a warning of what the future might hold: readers will remember the infamous ‘Millennium Bug’ which threatened to bring computer-based operating systems to a grinding halt. In keeping with the spirit of the times, the panic spawned a booming business in IT consultancy.

Malta benefited from all these global developments. In so far as its governing institutions were concerned, the nineteen nineties witnessed far-reaching reforms and new developments which, for the most part, enjoyed bi-partisan political support. Surging with confidence, the country deftly side-stepped the Millennium Bug and forged ahead with preparations for accession to the European Union.

Global optimism proved to be short-lived. The 11<sup>th</sup> September 2001 terrorist attacks on the United States alerted the world to the emergence of new threats to peace, economic stability, and social harmony. For a while it seemed as though Islamic extremism presented the worst threat, until the great financial crash in 2007 and 2008 revealed profound flaws in the regulation of global banking as well as raising the spectre of State bankruptcy for some of the world's biggest economies. Before the end of the decade, global warming had impinged on the consciousness of ordinary people, and there was growing awareness of the frequently corrupt networks comprising big business, politicians, regulatory authorities, and organised crime manipulating public policy and governing institutions. The second and third decades of the twenty-first century brought no relief. Quite the contrary: the pace of crises quickened, culminating in the Covid-19 pandemic and the Russian invasion of Ukraine.

The successive crises revealed serious weaknesses in the neo-liberal model of the State which took hold in the nineteen eighties: a model which programmed the privatisation of state enterprises, balanced budgets, cutbacks in expenditure on both infrastructure and social programmes, loose regulation of markets, and the movement of millions of migrants towards booming economic zones. The banking crisis revealed the hollowness of much economic regulation. The pandemic disclosed serious weaknesses in emergency preparedness, decision-making, global supply chains, and health care provision; it disclosed, too, the vulnerability of migrant workers and others to economic contraction. The war in Ukraine laid bare the weakness and instability of the international order, notwithstanding its law and institutions. The climate crisis betrays the deficiencies in global and inter-generational solidarity and the limited influence of evidence-based policy on policy-makers. The crises also prompted democratic discontent, expressed in violent protest, a drift towards authoritarianism, populism, and nationalism, and the displacement of fundamental human rights by security concerns.

While Malta demonstrated a reassuring resilience in these crises, both external and domestic developments affected its governing institutions. Systemic weaknesses in the regulation of leading

economic sectors and critical resources became apparent, attracting criticism at home and abroad, as well as sanctions by international or European Union institutions. Mass migration is altering the country's demographic, ethnic, and socio-cultural profile, while the urban and natural environments are subjected to unsustainable stresses.

One consequence of the cumulative crises is a profound loss of trust in the integrity of politics, public officials and governing institutions: this is, perhaps the greatest threat to human flourishing in the twenty-first century, because it subverts the only mechanisms that human societies have to provide leadership and undertake collective action on a large scale. It is not surprising that the range of integrity institutions is growing. One could add that their performance offers lessons in institutional design and operations. What lessons does the NAO's twenty-five year history hold?

### **Lessons from the NAO's past quarter-century**

The National Audit Office, conceived in optimistic times, quickly found itself navigating the turbulent first decades of the twenty-first century. The studies incorporated in this book offer important insights into the way that it adapted to the country's rapidly changing environment. This section identifies and comments on them.

*Legality without legalism.* Malta's House of Representatives conceived the NAO as an independent constitutional authority having the status of a Parliamentary Office. The unanimity with which its constitutional and legal framework was approved has been preserved. Relations between the Speaker and the Auditor General are invariably correct; the Public Accounts Committee and the National Audit Office Accounts Committee of the House both emphatically respect the NAO's autonomy. For its part, the NAO reciprocates this legislative and political respect, and applies it in its relations with auditees. With few exceptions, the public administration reciprocates the NAO's regard for legality. This is not to say that tensions and uncertainties do not arise from time to time: that is inevitable in the complex, fluid world of State governance. What is more important is the scrupulous concern for

legality with which these tensions are resolved. This in itself generates a spirit of goodwill which facilitates the NAO's daily interactions with both the legislature and the executive government.

*Cooperation without collusion.* The spirit of goodwill is a theme running through most of the chapters of this book. Not only does it facilitate cooperation between auditors and auditees: a spirit of goodwill permits deeper reflection on the lessons emerging from an audit and encourages post-audit follow-up by the auditee itself and its supervising ministry, by the Office of the Principal Permanent Secretary, and by the NAO. Some of that follow-up is necessarily investigative: it asks 'have the NAO's recommendations been implemented'? However, there is also evidently effective cooperation in the follow-up loops involving the leadership of the public service and the NAO, though without drawing the NAO into a consulting role, and thereby compromising its independent scrutiny. Nor is there any evidence that the NAO closes its eyes to any shortcomings in the interests of maintaining a good working relationship with auditees and with the government.

*State-wide oversight, local focus.* Performance audits and IT audits were among the most important substantive innovations in the transition from the former Department of Audit to the National Audit Office. These in-depth audits shed light far beyond the minutiae of financial administration: without in any way trespassing on policy, they draw attention to the full range of administrative, technological, institutional, and human factors that affect the viability, sustainability, and effectiveness of policy. Just as importantly, the performance audits are steadily building a coherent picture of core policy sectors, such as social provision, one which offers insights into the coherence, consistency, and sustainability of strategic policy frameworks. Both the performance and the IT audits are also piecing together an overview of Malta's regulatory institutions, their performance, capacity to adapt, security, and integrity.

*International presence, domestic outreach.* The NAO has reached out well beyond the formal circle of Parliament and auditees envisaged in its enabling legislation. From its inception it has actively engaged with the international State audit fraternity, with a view to raising its technical standards and participating in the kind of joint audits that

cross-border policy concerns now require. Its international standing raises its domestic institutional profile. At the same time, the Office is also starting to establish links with domestic oversight institutions and with voluntary organisations. Links between local oversight bodies such as the Ombudsman lend weight to their presence in the apparatus of the State, while conversations with voluntary organisations draw fresh perspectives into performance audits.

*Soaring vision, prudent progress.* The past quarter-century offers a thought-provoking case study of a successful trajectory of institution-building. It is interesting to observe that the NAO's first formal strategic plan was formulated fully twenty years after its founding. It was the Constitution and the enabling legislation which initially embodied a vision for the NAO. They also marked the first stage of institution-building, namely, the creation of a robust legal framework underpinned by a carefully nurtured political consensus on fundamentals. The Office then addressed the most immediate challenge: creating a stable, technically competent, and multi-faceted human resource base. That effort took over a decade; it was not without setbacks, but Parliament's commitment to the NAO proved decisive in overcoming the challenges. A similarly prudent, incremental approach is evident in the way the NAO built its external relationships: giving priority to relations with the leadership of the public service and the international State auditing fraternity, then moving on to establish non-governmental relationships. Once the legal, resource, and relational dimensions were secured, the NAO could then confidently and realistically undertake formal strategic planning. Therein lies an important lesson for other oversight institutions.

*Public visibility, private discretion.* The NAO adapted quickly to the age of pervasive social communication. Its website, press releases, Facebook account, and the media interviews given from time to time by successive Auditors General publicise its findings and recommendations, and have given the Auditor General a recognisable public face. This visibility helps to nurture public and news media interest in the NAO's work. At the same time, the Office has scrupulously avoided public or partisan controversy; it is also profoundly respectful of the dignity of the public officials whose decisions and actions it audits: its criticism,

however robust, is never personal or pungent. This delicate balance between public visibility and private discretion is not easy to maintain, but is invaluable for nurturing the institution's legitimacy in the eyes of politicians, public officials, voters, and citizens.

### **Envoi: traditional ethos, professional adaptability**

Successive Auditors General have graciously invited me to mark the milestones along the history of State audit in Malta. Several of the contributors to this book observe that the NAO is a relatively young institution succeeding one of the oldest Maltese governing institutions. This seems to be one element of the NAO's success: for while it conserved the ethos of rigorous scrutiny, discretion, and professional independence inherited from the Department of Audit, it has also boldly adapted to the challenges, standards, and technical proficiency that characterises contemporary state audit.

This afterword also observes that the NAO was conceived at a time of optimism, and that the 'optimistic' principles built into its constitutional and legal charter have served it very well in the turbulent first decades of the twenty-first century. There is a lesson in institutional design here: periods of comparative tranquillity facilitate good institutional design that is rooted in sound principles of governance, rather than knee-jerk responses to crises. This enhances the prospects of the newly-conceived institution.

The final element in the formula for success is, undoubtedly, leadership. The political consensus around the NAO has permitted the selection of appropriate leaders, who are capable of animating the organisation, projecting a reassuring institutional presence within the State and society, and nourishing a tissue of relationships that transmits the institution's influence into every dimension of policy-making and administration.

**THE AUTHORS**

*(in alphabetical order)*

**Maria Azzopardi**  
**Peter J. Baldacchino**  
**Leo Brincat**  
**Noel Camilleri**  
**Josette Caruana**  
**Charles Deguara**  
**Lauren Ellul**  
**Louis Galea**  
**Einar Gørrissen**  
**Keith Mercieca**  
**Tanya Mercieca**  
**William Peplow**  
**Tony Sultana**  
**Brian Vella**  
**Edward Warrington** (editor)

**Cover image**

*Notre Dame Ravelin, Floriana, current seat of the National Audit Office (photo by Edward Degabriele)*

**The National Audit Office is the heir to one of the oldest governing institutions in Malta: as heir, it has inherited the mission entrusted to the State Auditor, as well as the fine ethos of its predecessor, the Department of Audit. Yet it is not the passive custodian of a dead legacy. Quite the contrary: it cultivates that legacy, with a view to helping Malta’s public financial administration to discharge faithfully its own distinctive mission towards the common good in the challenging circumstances of the twenty-first century.**

**The collection of studies incorporated in this book, to which several of my ablest colleagues have contributed generously, reflect on the past and present with an eye to the institution’s future. Though they depart from different standpoints, the authors of this book converge on some powerful insights. They affirm the vital importance of the audit work which Malta’s SAI carries out. They acknowledge the critical importance of having a highly motivated, competent, and qualified team to enable the Office to continue carrying out its constitutional mandate in the best manner possible, as Parliament and Malta’s citizens duly deserve. Obviously, carrying out such audit work in the smallest EU member state, where practically everyone knows each other, has its fair share of problems and constraints; however, at the same time our work leads to considerable job satisfaction, especially when certain shortcomings or issues identified in our Reports are duly addressed by the Administration. The studies point out the inestimable value of retaining political consensus around the institution’s mission, its leadership, ethos, powers and resources. They underscore, too, the value of nurturing effective working relationships with the leadership of the public sector.**

