

Social Enterprise Sector

2011

Report of a study commissioned by the Ministry of Finance, the Economy and Investment

Executive Summary

1. What is the Social Economy?

Social economy aims to find solutions to social needs that are not adequately addressed neither by market systems nor the welfare state. The main function of social enterprises in society is to contribute within society at grass roots by taking enterprising initiatives to address the needs at community level for populations that hail from vulnerable sectors in society.

Social enterprises trace their roots to the formation of popular associations, guilds and co-operative societies, based on a 'self-help' structure where these entities operate independent of the public sector, embrace democratic rights for members, operate within set rules of ownership and utilise surpluses to further develop their entity and their services for the benefit of its members and society at large. (Économie Sociale, 1981; Monzón, 1987).

The European Commission's opinion is that social enterprises have a key role to play in the economic recovery. Commitment is evident in the European Recovery Plan and Vision 2020, with the Special Investment Fund intended to provide tangible development of the social economy.

2. What is the potential of the Social Economy in Malta?

Primary research has shown that Malta has a vibrant voluntary sector that today employs approximately 4,387 annual working units and generates circa €68 million annually. It has also been established that this sector locally is an active promoter of gender mainstreaming with significant involvement of women at all levels of the organizations. It also attracts a strong volunteer base of approximately 24,000 persons. The main issues that impact the sector are the protection of capital

resources, economies of scale and the availability of specialist human resources owing to competitive forces in the market.

This research was carried out amongst organizations in Malta that have the potential to become social enterprises or are already social organizations. Mainly these organizations currently operate under the following legal forms: Voluntary Organizations; Sport Organizations; Band Clubs; Church Entities; Independent Schools; Co-operatives.

The sector locally is regulated, albeit in a somewhat fragmented form. The Regulators and main stakeholders of the social sector in Malta are namely: Commission for Voluntary Organisations; Co-operatives Board; Education Department; Department for Social Welfare Standards; Kunsill Malti għall- iSport; Department for Health and Community Care; Employment and Training Corporation; National Commission Persons with Disability (Kummissjoni Nazzjonali Persuni b' Dizabilita').

The research revealed that there are around 750 organisations that potentially fulfil the function of a social enterprise. These organisations constituted of: 394 voluntary organisations, 236 sports clubs, 63 band clubs and 57 co-operatives.

The potential of social economy in Malta is relevant and significant. Statistics show that the social sector in Malta employs 2.85% of the local labour supply, with a bias towards women (average Annual Working Units of 2.96 males and 3.37 females: whole sector).

The overall majority (85.37%) of the organisations have service provision as their main 'economic' activity, but most do not charge a fee for their services (62.5%) and rely on donations for their survival.

From the administrative side, the overwhelming majority (83.92%) maintain accounts. Nearly all of these organizations (99.15%) re-invest their profits in the organization. None fully distribute their profits.

The statistics reveal that in Malta, existing organisations have the necessary characteristics that are typical of social enterprises, operating under different regulation regimes. Notwithstanding the various limiting factors that these entities encounter in their operations, the common elements are in

place and the initiative exists, thus furthering the scope for implementing a regulatory framework that is more attuned to the needs of social enterprises.

3. Legal Nature of Social Enterprises

To-date, a social enterprise operating within EU is regulated by the member state where it operates, as there is no EU harmonized definition or policy regarding social enterprises. Regulation is carried out within the wider binding obligations of the EU's Internal Market regulatory framework.

In Malta, the concept of social enterprises evolved under different forms, where the legal personality is recognised under various laws and acts. Presently a number of local co-operatives, foundations, associations, non-government organisations, church organisations/entities and voluntary organisations fulfil functions that are compatible with those of a social economy.

By effect of the Civil Code (Chapter 16 of the Laws of Malta) the legal entities that have the potential of forming part of the social economy are Civil Partnerships, Foundations and Associations. Likewise, The Trusts and Trustees Act (Chapter 331 of the Laws of Malta) and the Co-operative Societies Act (Chapter 442 of the Laws of Malta) place Trusts and Cooperatives on a similar standing.

The trend in the European Union is to strengthen the legal personality of these organisations, effectively strengthening their 'bankable' status, and thus encouraging social enterprise equity to augment participation in the social economy and provide sustainability to such entities.

4. Social Enterprise Process

The development of a Social Enterprise Policy in Malta may be formulated following two options:

1. Acknowledge the multifarious nature of social enterprise by establishing a Social Enterprise Label and accept all different legal forms respecting this label as operating in the social economy;
or
2. Rationalise all regulatory requirements under one Regulatory Framework accepting only this legal setup as an enterprise operating in the social economy.

Both approaches are valid. It is a policy and administrative decision whether to choose one or the other. Both options require the promulgation of legislation, either to establish the necessary parameters for existing operators to qualify as social enterprises, or to establish the structure which a social enterprise would have to assume. In both cases, establishing a definition of what constitutes a social enterprise is seen to be a fundamental step towards achieving a workable framework for this sector. The definition shall comprise a set of core conditions that are pre-requisites for organizations to be recognized as social enterprises:

- o A clear description of the social aim established in the statute or memorandum and articles of association;
- o A annual report annexed with the annual report and/or financial statements, describing how the social aim identified in the statute has been realized;
- o The allocation of profits should be organized in accordance with the social purpose of the entity;
- o No or very limited distribution of profits to members. Generally, legislation establish a maximum limit of 6-10%;

- o The statutes/ Memorandum & Articles of Association must describe the democratic structures adopted by the entity and/or procedure for workers to become partners;
- o In the case of the liquidation of the surpluses must be allocated to a goal that resembles the original social goal set forward by the entity.

The Social Enterprise Label approach will enable the identification of organizations that are operating within the parameters established by the law and are eligible to benefit from policies intended to promote, encourage and stimulate the social economy and the setting up of social enterprises in co- operation with the private sector. This is being seen to be implemented in tandem with the enactment of an omnibus legislation that would cater for a designated Government Entity acting as a custodian and promoter of social enterprise, while managing the rights and obligations under the social enterprise label. Within this approach, entities retain their legal personality and obligations towards their prevailing Regulator.

The one-Regulatory Framework approach establishes a well-defined organisational, statutory and regulatory framework for organizations that seek to be social enterprises.

The attached chart outlines the 'Social Enterprise Process Map', defining the ingredients required for the establishment of Social Enterprise Policy. It depicts the strategic decisions that need to be taken to ensure that the framework is in place, following European best-practice.

The elements of an omnibus legislation on Social Enterprise Policy in Malta can include all or some of the following:

- o a definition of the 'social economy' and 'social enterprise' under Maltese law defining the parameters of intervention and implementation;
- o a social enterprise label that will define the legal rights and obligations of organizations operating as social enterprises;
- o the assignment of responsibilities to a Government entity for the promotion of social enterprise with the role of providing business incubator services to the sector and the coordination of the Malta Council for Social Enterprise;

- o the creation of a Social Purpose Company category so as to establish a purpose made legal vehicle within Maltese legislation to facilitate and offer the necessary flexibility for a social enterprise to operate in the sector (this would exist alongside other forms of enterprises fitting under the 'social enterprise' label);

- o a governance and regulatory framework to establish benchmarks and standards for the 'Social Purpose' and 'Not-for-Profit' nature of social enterprises;

- o an incentives framework to sustain best practice and create a new market for social enterprise equity.

By addressing these key areas of intervention, Malta has the opportunity to develop its own model of social enterprise while respecting the local, unique characteristics of a small market economy and its long tradition in the social volunteering sector.

The success and development of the social economy sector is also dependent on the ability of the social enterprises to accede to all incentives available to commercial enterprises under Maltese law. The nature of social enterprise activity is commercial and therefore should be placed at par with other players in the market. The Social Purpose and Not-for-Profit nature of their activity should place them at the forefront for consideration by institutions for support. More specifically, it is proposed that social enterprises will have access to a number of incentives and opportunities, where the sector's regulatory body can actively intervene to promote and facilitate growth through:

- Grants and Subsidies: Government institutions to review their incentives to giving prime consideration to social enterprises because of their contemplated governance and regulatory framework;

- Social Enterprise Equity: Intervention with the Malta Financial Services Authority and the Malta Stock Exchange to create a regulated market/secondary listing for Social Enterprise Equity and create Tax Relief in support of the purchase of such equity, Social Venture Capital and Social Corporate Venturing;

- Tax Relief: Providing advocacy with tax authorities to provide incentives for donors, operators and customers of social enterprises to promote and nurture their growth as institutions;

- Financial Assistance: Establishing a forum between the Banking Community and Government to establish a framework through which social enterprises can accede to financial instruments and mitigate financial risk. This will aim to facilitate access and minimise the cost of finance for these organisations;
- Technical Assistance: Acting as a Social Enterprise Incubator by providing 'hand-holding' services start-up Social Enterprises in terms of business planning, marketing, human resources management and technical expertise.

5. Conclusion

The implementation of Social Enterprise Policy offers the possibility to develop a new form of organisational entity that can provide a suite of community services to vulnerable categories in society on a commercial basis alongside Government institutions and the private sector. Given the social purpose and not-for-profit nature, these entities require robust legislation and a solid framework to enable them to develop within a commercial environment. Furthermore, appropriate regulatory and incentives framework can help create a new market for 'social risk capital' assuring that these organisations can operate with a strong financial infrastructure without the dependency on Government or donations.

The European Commission has put the social economy at the forefront of its 2020 Agenda and most of the Member States have already enacted legislation to sustain the sector's development. Consistent with these initiatives, Malta has the opportunity to develop its own model of social enterprise respecting its unique characteristics of a small market economy and its long tradition in the social volunteering sector.

One augurs that with the necessary legislation in place Malta can see the development of a sector that has the potential to contribute highly within society for benefit of the community.