1. **BASIC INFORMATION**

1.1. CRIS Nber: 4573/08

1.2. Twinning Number: MT/2003/IB/OT-01

1.3. Title: Implementation of the Data Protection Acquis

1.4. Sector: Internal Market

1.5. Location: Malta

2. **Objectives**

2.1. **Wider Objective**

To implement the data protection obligations under the Acquis.

2.2. **Immediate Objectives**

To support the capacity building of the Office of the Commissioner for Data Protection so as to be fully operational to be able to implement the Data Protection Act. This entails having suitably trained staff in place, together with enhancing monitoring systems and procedures, to be capable of ensuring effective implementation of data protection at national level.

To build and enhance data protection skills in the Public Service.

2.3. **Accession Partnership and NPAA priority**

**Accession Partnership**

The full alignment of the regulatory framework with the data protection acquis is a priority identified in the Accession Partnership.

**NPAA**

(a) It is required that the necessary legislation as well as any policy and administrative procedures required to achieve compliance with the information society services Directives will be enacted.

(b) Government is directed towards keeping the following at the fore of its IT Strategy:

- attain Government On Line to allow for more effective delivery of services;
- establish a regulatory framework that allows for technology neutrality and technology evolution thereby ensuring that the private sector in Malta will optimise technology as a prime contributor to Malta’s economy - particularly vis-à-vis electronic commerce and trading.
In the course of achieving the priorities mentioned above it is of utmost importance to maintain the necessary balance by protecting the privacy of the data subject.

3. DESCRIPTION

3.1. Background and Justification

Current Situation in Malta

General

The Data Protection Act has been enacted on the 14th December 2001 and the sections necessary to appoint the Commissioner for Data Protection, and the Data Protection Appeals Tribunal have been brought into force on the 22nd March 2002. The Government of Malta is committed to implement compliance with the Act throughout the Public and Private Sectors and appointed the Commissioner for Data Protection for a period of five years with effect from the 22nd March 2002, to act independently in accordance with the Act.

The Government of Malta is aiming to constitute the Supervisory Authority and provide it with all the necessary assistance to ensure that it will have the means to act independently, as provided in the Data Protection Act. This entails providing the necessary funds, resources and infrastructure so that the Office of the Commissioner will have the knowledge base and the means to administer the Act. There is also a need to ensure a cohesive approach towards the smooth implementation of the Act, assuring the least possible disruptions in the economic sectors.

Data Protection in the field of Telecommunications

The Data Protection Act provides in general terms for data protection regulation. However, the need has been identified to provide specific legislation for data protection in the field of telecommunications. Rules and regulations for data protection in this field can be prescribed as subsidiary legislation either under the Data Protection Act or under the Telecommunications (Regulation) Act Chapter 399 of the laws of Malta. Until now, the principles of the Directive 95/46 have been transposed in the Data Protection Act, and the principles of Directive 2002/58/EC in the field of electronic communications, which has repealed Directive 97/66, are yet to be transposed in subsidiary legislation. The fact that the Communications Authority may be in a better position to apply the necessary pressure by virtue of the Telecommunications (Regulation) Act, forms the main reason why it is being considered whether to issue such regulations under the Telecommunications (Regulation) Act. However, in any case, it will always be the Commissioner for Data Protection who will decide whether data protection rules have been violated or not and the remedies to be applied. A procedure will eventually be created whereby the Malta Communications Authority will be officially informed of the ruling delivered by the Commissioner for Data Protection, so that the appropriate measures will be taken also in accordance with the relevant laws. Another consideration is to issue subsidiary legislation under both the Data Protection Act and also the Telecommunications (Regulation) Act, whereby both supervisory authorities will be responsible for their respective activities in this sector in accordance with the requirements of the respective laws.
Police Regulations

The Data Protection Act does not as yet apply to activities of the state in the areas of criminal law. However there is stipulated that the Minister may prescribe regulations after consultation with the Commissioner for Data Protection and in concurrence with the Minister responsible for the Police. Data Protection Regulations for the Police Sector have been drafted based on Recommendation R(87) of the Council of Europe regulating the use of personal data in the Police Sector. The Commissioner for Data Protection has been consulted and he has concurred with these draft regulations.

Office of the Commissioner for Data Protection

The Office of the Commissioner for Data Protection is currently made up of three persons, mainly the Commissioner, a Chief Executive Officer and an advisor. They are currently in the process of determining and building a structure to sustain the daily operations of the Supervisory Authority. A program has been initiated to build the capacity necessary to administer the Act. The Commissioner has still to establish a framework on how to implement data protection. Once this framework is established, procedures can be introduced to ensure the sound implementation of the Data Protection Act.

Personnel have still to be recruited with the Commissioner for Data Protection. As data protection is a relative new subject for the island, it is quite evident that there are limited skills available in this field. It is therefore considered to be very difficult to recruit the necessary personnel with the right skills on data protection. This lack of resources issue need to be addressed as early as possible in order to prepare for effective implementation of the Act.

The premises of the Office of the Commissioner for Data Protection have already been identified, and action is being taken to refurbish and carry out the necessary installations to facilitate the daily operations of the Commissioner's Office. Procedures have been initiated to purchase the furniture and fittings. Data networks have still to be installed so as to facilitate the efficient running of the office.

Public Service

The Ministry for Justice and Local Government has been assigned the responsibility for Data Protection. However, the responsibility of implementation of the Data Protection Act in the Public Service rests with the Office of the Prime Minister. The implementation of the Data Protection Act across Government Departments is being treated as a corporate project.

However, there are certain categories of specialised processing which need to be tackled separately. Examples of these are the Police and Health sectors. It is also acknowledged that data protection skills in the Public Service are very limited. Public servants have never been exposed to data protection issues before, and the need to meet the obligations under the Act presents the Public Service with a challenge to change the culture related to processing of personal data.

Private Sector
There is a general lack of awareness in data protection in the private sector. The Private Sector look forward and expect the Office of the Commissioner to organise awareness sessions to their respective members. The Office of the Commissioner is not yet in a position to organise awareness sessions itself, as it is still in the process of building its organisation. Data Protection skills and exposures in this sector are also very limited.
Conclusion

It is quite evident that there is an overall need to establish and organise the Office of the Commissioner for Data Protection on a sound footing. This institution should be equipped with the necessary IT infrastructure and systems to monitor and implement data protection. Every sector in the economy revolves round the guidance and direction to be given by the Office of the Commissioner for Data Protection to ensure privacy of personal data whenever there are processing operations. It is therefore most important that a programme is carried out to build the necessary data protection skills amongst the employees of this independent institution by providing them with guidance, direction, and exposure to data protection issues. This programme is to provide for comprehensive training and skills transfer from other Supervisory Authorities in the EU Member States. Building the skills in the Public Service, and providing technical assistance in specialised sectors such as Police and Health is equally important as this will pave the way for the smooth implementation in Government Departments. Close co-operation with the Malta Communications Authority will be required in order to ensure the implementation of the future regulation on data protection in electronic communications. Once this is achieved, data protection will obtain the same levels reached in other European member states.

3.2. Linked Activities

- TAIEX: assistance to draw up a gaps and needs analysis report together with an advisor of the Office of the Commissioner for Data Protection, to outline the current situation and identify the needs to implement data protection in Malta.
- Identifying and refurbishing the premises for the Office of the Commissioner for Data Protection.
- Seminars on data protection compliance organised by a private firm and the Public Service.
- Data protection awareness courses for the Public Service.
- Preparing implementation plans so that Government Departments will comply with the Data Protection Act.
- Participating in the Article 29 Data Protection Working Group.
- Participating in the International Conference for Data Protection and Privacy Commissioners, as well as other international conferences and seminars related to data protection.
- Procurement of IT equipment, including hardware, standard office automation software, and network connectivity, to facilitate and support the functions of the Office of the Commissioner for Data Protection.
- Development of necessary software to assist in the functions of the Office of the Commissioner for Data Protection to meet data protection obligations.
- Introduction of data protection indicators in Government systems and amendment of data structures and software as necessary to provide for these indicators.
3.3. Results

Office of the Commissioner for Data Protection

(a) A fully operational Office of the Commissioner for Data Protection to meet all the requirements and obligations under the Data Protection Act in accordance with the acquis by the end of 2003.
(b) Qualified and suitably trained personnel at the Office of the Commissioner for Data Protection with full knowledge of the legal, practical, technical and organisational aspects of personal data protection.
(c) Articulation of a strategy for the period 2003 – 2005 directed to attain the efficient functioning of the Office of the Commissioner for Data Protection, and the effective implementation of the Act, to the same level as achieved by similar Supervisory Authorities in EU member states.
(d) Development of a communications strategy so as to inform all interested parties on data protection rules and obligations, and also to interface with the public in general.
(e) Subsidiary legislation for specific categories of processing of personal data.
(f) Guidelines and written procedures, including Codes of Conduct such as that required for Journalists in accordance with the Act.
(g) Development of a framework to work with associations and representatives of various sectors.
(h) Establishing international contacts and relations with other Supervisory Authorities in other EU member states.
(i) Guidance and awareness in the Private Sector on how to apply data protection rules within their organisations.
(j) Enhancements of software and procedures to improve the services offered by the Office of the Commissioner for Data Protection.

Public Service

Qualified and suitable trained personnel carrying out data protection functions within Government Departments with particular reference to specific specialised sectors such as the Police and Public Health sectors, as well as in the e-Government area.

3.4 Activities

The twinning project consists of two different modules focusing as follows:

- The proper functioning of the Office of the Commissioner for Data Protection;
- Enhancing data protection in the Public Service.

3.4.1 Office of the Commissioner for Data Protection

The Twinning will cover:

1. A Pre-Accession Advisor (PAA) for one year to be attached with the Office of the Commissioner for Data Protection. The main responsibilities will be to provide advice and technical support for the efficient functioning of the Office of the Commissioner for Data Protection, to achieve the results listed in section 3.3 above, to ensure compliance with the acquis. The PAA is expected to advise on the specific categories of processing in the Public Service that are considered to have special rules and regulations such as the Police.
and Health sectors. Furthermore, he must be capable to co-ordinate with other short-term experts which may be required on specific issues.

2. Provide short-term experts specialised on specific functions and categories of processing, to contribute towards the organisation of specific functions in their respective areas of expertise, including also the sector of electronic communications networks and services. These short-term experts are expected to work under the direction of the PAA. They are also expected to deliver presentation on their respective subjects in seminars which may be organised from time to time.

3. Provide training for personnel employed at the Office of the Commissioner for Data Protection, and offer the possibility that such personnel will visit the counterpart Supervisory Authority to study particular areas and functions, as well as to be exposed to data protection issues.

4. Provide training to personnel within the Office of the Commissioner for Data Protection, to ensure support in the efficient running and management of IT systems and software, following enhancements which may be required.

3.4.2. Public Service

1. Provide an expert on systems design to review systems requirements to meet all the obligations laid down in the rules and regulations in the specialised categories of processing, to include all data protection indicators and flags in the relative systems, and amend accordingly.

2. Develop a programme of exchange of visits to bring over short term experts in the respective specialised sectors to deliver training and hands-on assistance in the particular field. This programme should also provide the possibility so that public employees are given exposure to data protection issues and procedures in the particular sectors of the twinning country. This activity has to be developed also through the contacts enjoyed by the PAA.

4. INSTITUTIONAL FRAMEWORK

The Ministry for Justice and Local Government is responsible for the data protection portfolio. This implies that all funds passed to the Commissioner for Data Protection are voted by Parliament through the Ministry for Justice. Every financial year the Commissioner shall prepare income and expenditure estimates for the next following financial year. The Commissioner for Data Protection is independent and he administers the funds allocated to him, in accordance with the Act (see articles 52 and 53).

The Office of the Prime Minister is responsible to ensure implementation of data protection compliance within the Public Service.

The twinning project will be administered and co-ordinated by the Ministry for Justice and Local Government as most of the activities lie on the Office of the Commissioner for Data Protection.
5. **DETAILED BUDGET**

<table>
<thead>
<tr>
<th>Estimated costs (’000 €)</th>
<th>EU Funding</th>
<th>National co-financing</th>
<th>Total budget</th>
</tr>
</thead>
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<tr>
<td>Twinning</td>
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<td>500 50</td>
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<tr>
<td><strong>TOTAL</strong></td>
<td>500</td>
<td>-</td>
<td>500 50</td>
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</table>

(*) Additional parallel co-financing amounting to EUR 150,000 will be provided from Malta funds to assist the Office of the Commissioner for Data Protection in the procurement of IT systems and software as required. This amount will also enable the participation of the Commissioner for Data Protection in EU and international conferences and seminars, to honour international obligations and harmonise processes in line with other supervisory authorities.

6. **IMPLEMENTATION ARRANGEMENTS**

6.2. **Implementing Authority**

The Commissioner for Data Protection is responsible for the implementation of the activities related to the proper functioning of his Office (see 3.4.1 above).

Contact Persons:

Profs. John Mamo  
Commissioner for Data Protection in Malta  
280, Republic Street, Valletta GPO 01, Malta  
Tel: (+356) 2122 1624; (+356) 2122 1630  
Fax: (+356) 2122 1629  
E-mail: commissioner.dataprotection@gov.mt or john.mamo@gov.mt

Mr John Gatt  
Permanent Secretary,  
Ministry for Justice and Local Government,  
Palazzo Verdelin, Archbishop Street, Valletta CMR 02, Malta  
Tel: (+356) 21 242122  
Fax: (+356) 21 236187  
E-mail: john.j.gatt@gov.mt

The Director General of the Office of the Prime Minister is responsible for the implementation of the module concerning the enhancement of data protection in the Public Service (see 3.4.2 above).

The following is the contact person:

Mr Anthony Mifsud  
Director General,  
Office of the Prime Minister,  
Auberge de Castille, Valletta, Malta
6.2. **Twinning**

The project will require a PAA in post for a minimum of 12 months spread during the whole project period of 18 months. The PAA will carry out requested duties for an initial period of 6 months on a continuous basis. The remaining months will be apportioned over the project period in agreement with the twinning partner.

The PAA should have the following:

- senior management experience with a Data Protection Supervisory Authority in an EU member state;
- a comprehensive knowledge of rules and procedures to implement effective data protection including also in the telecommunications sector;
- sound knowledge of monitoring systems developed in similar institutions to facilitate the daily operations of the Commissioner’s Office;
- the ability to communicate fluently in the English language (both written and spoken);
- the ability to articulate implementation strategies.

The expert provided under point 1 of section 3.4.2 above should have experience in systems design and development with particular reference to data protection requirements and obligations especially in the field of specialised categories of processing such as the police and health sectors.

6.3 **Non-Standard Aspects**

None.

6.4. **Contracts**

The twinning covenant will represent the main contract for the project, which covers the costs of the PAA and short-term TAs.

7. **IMPLEMENTATION SCHEDULE**

Start of tendering: April 2003
Start of Project Activity: October 2003
Project Completion: March 2005

8. **EQUAL OPPORTUNITY**

The Malta Government and its authorities/agencies are equal opportunity employers.

9. **ENVIRONMENT**
Implementation of the project has no environmental impact.
10. RATES OF RETURN

Not applicable

11. INVESTMENT CRITERIA

11.1. Catalytic Effect

Assistance from the EU will result in a significant effect in helping the Office of the Commissioner for Data Protection to be fully operational in order to be able to implement the Data Protection Act.

11.2. Co-finance

National co-finance will cover costs related to refurbishment of premises, recruitment of staff, salaries and procurement of equipment, participation in international conferences and seminars as outlined under Section 3.2 Linked Activities.

11.3. Additionality

No other financiers will be displaced by the EU intervention

11.4. Project Readiness and Size

Implementation is conditional on the recruitment of staff.

11.5. Sustainability

The Data Protection Act has been enacted, and the Commissioner for Data Protection has been appointed.

11.6. Competition

Services will be procured in line with EU regulations.

12. CONDITIONALITY AND SEQUENCING

The project is dependent on the availability of the appropriate human resources, as well as on continuing financial support for the Office of the Commissioner for Data Protection, to be allocated by Parliament in accordance with the financial provisions of the Data Protection Act.

The project is conditional to the adoption by Malta of measures ensuring that there is no risk of conflict of interests that can affect the independence of the Data Protection Commissioner, in accordance with the requirements of the Data Protection directive.

ANNEXES

I  Log-frame Planning Matrix
II  Implementation Time Schedule
III  Cumulative Contracting and Disbursements Schedule
IV  List of EU Directives with relevance to the Project
V  Relevant Maltese Legislation
VI  Feasibility/pre-feasibility studies
### ANNEX I

**LOGFRAME PLANNING MATRIX**

<table>
<thead>
<tr>
<th>Implementation of the Data Protection <em>acquis</em></th>
<th>Programme number: <strong>4573/08</strong></th>
<th>Contracting period expires: November 2005</th>
<th>Disbursement period expires: November 2006</th>
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<tr>
<td></td>
<td>Total Budget 550,000</td>
<td>EU contribution 500,000</td>
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</table>

#### Wider Objectives

<table>
<thead>
<tr>
<th>Ability to implement the data protection obligations under the Acquis</th>
<th>Enforcement of Data Protection Act, in line with EU legislation</th>
<th>Commission Evaluation Reports</th>
<th>Necessary monitoring systems, procedures in place Staff recruitment and appropriate training.</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
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<td>Commission Regular Reports.</td>
<td>Annual Reports.</td>
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</table>

#### Immediate Objectives

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<tr>
<th>To support the capacity building of the Office of the Commissioner for Data Protection</th>
<th>Recruited staff adequately trained.</th>
<th>Commission Evaluation Reports</th>
<th>Availability of staff</th>
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<tr>
<td>To build and enhance data protection skills in the Public Service</td>
<td>Processes and procedures enhanced.</td>
<td>Commission Regular Reports.</td>
<td>Commitment of staff</td>
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<tr>
<td></td>
<td>Data protection procedures introduced in Government Departments.</td>
<td></td>
<td>Exposure of Public Service employees to data protection issues.</td>
</tr>
<tr>
<td>Results</td>
<td>Indicators of Achievement</td>
<td>Source of Verification</td>
<td>Assumptions and Risks</td>
</tr>
<tr>
<td>---------</td>
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</table>
| • Fully operational Office of the Commissioner for Data Protection.  
• Qualified and suitable trained personnel.  
• Communications strategy.  
• Subsidiary legislation.  
• Guidelines, procedures and Codes of Conduct.  
• Awareness.  
| Trained officials  
Operational programmes in place  
Documentation ready within time settings | Progress reports  
Commission Evaluation Reports  
Commission Regular Reports | Availability of Human Resources  
Adequate funding |

<table>
<thead>
<tr>
<th>Activities</th>
<th>Indicators of Achievement</th>
<th>Source of Verification</th>
<th>Assumptions and Risks</th>
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</table>
| • Proper functioning of the Office of the Commissioner for Data Protection.  
• Enhancing data protection in the Public Service.  
| Budget EUR 550,000 | Progress reports | Twinning partner available  
Granting of funds  
Adoption by Malta of measures to safeguard independence of Data Protection Commissioner. |
Title: The Implementation of the Data Protection Act in Malta

CRIS REF. 4573/08

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D = Design  
C = Contracting  
I = Implementation  
X = Closure
### Annex III

**Cumulative Contracting and Disbursement Schedule of EU Funding**

**Title: The Implementation of the Data Protection Act in Malta**

CRIS REF. 4573/08

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<td>50</td>
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</table>
List of EU Directives with relevance to the Project

1. Directive 95/46/EC of the European Parliament and of the Council of 24 October 1995 on the protection of individuals with regard to the processing of personal data and on the free movement of such data.

Annex V

Relevant Maltese Legislation

Act No. XXVI of 2001

An Act to make provision for the protection of individuals against the violation of their privacy by the processing of personal data and for matters connected therewith and ancillary thereto.

Short title is “Data Protection Act 2001”.

Reference to feasibility/pre-feasibility studies

Data Protection Implementation in Malta – Gaps and Needs Analysis Report produced by Avv Giuseppe Busia, Direttore del Dipartimento Comunicazioni Telematiche of the Garante per la protezione dei dati personali of Italy, and by Saviour Cachia, Special Advisor, Office of the Commissioner for Data Protection in Malta. This visit of the Italian expert was financed by TAIEX (see section 3.2 above).