

**ATT TA' L-2001 DWAR IL-PROTEZZJONI  
U L-PRIVATEZZA TAD-DATA**

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#### **Skeda**

Ġuramenti ta' lealta.

Naghti l-kunsens tiegħi.

(L.S.)

GUIDO DE MARCO  
President

14 ta' Diċembru, 2001

**ATT Nru. XXVI ta' l-2001**

*ATT sabiex jagħmel provvedimenti għall-protezzjoni ta' individwi kontra l-ksur tal-privatezza tagħhom bl-ipproċessar ta' "data" personali u dwar dak li għandu x'jaqsam ma' dan jew li hu anċillari għalih.*

IL-PRESIDENT bil-parir u l-kunsens tal-Kamra tad-Deputati, imlaqqgħa f'dan il-Parlament, u bl-awtorità ta' l-istess, hareġ b'ligi dan li ġej:-

**Taqsimi I - Preliminari**

Titolu u bidu  
fis-schh.

1. (1) It-titolu fil-qosor ta' dan l-Att hu l-Att ta' l-2001 dwar il-Protezzjoni u l-Privatezza tad-Data.

(2) Dan l-Att għandu jibda jsehh f'dik id-data li l-Ministru jista' jistabbilixxi b'avviż fil-Gazzetta, u jistgħu jiġu hekk stabbiliti dati differenti għal disposizzjonijiet differenti u għal għanijiet differenti ta' l-Att, u dawk l-għanijiet jistgħu jinkludu l-applikabbiltà ta' dawk id-disposizzjonijiet, rigward dik il-kategorija jew dawk il-kategoriji ta' proċessar ta' data personali, kif jista' jiġi stabbilit fl-avviż.

Tifsir.

2. F'dan l-Att, kemm-il darba r-rabta tal-kliem ma tehtieġx xort'ohra: -

"data personali" tfisser kull informazzjoni li tirrigwarda persuna naturali identifikata jew identifikabbli: persuna identifikabbli hija persuna li tista' tiġi identifikata, direttament jew indirettament, b'mod partikolari b'riferenza għal numru ta'

identifikazzjoni jew għal xi fattur wieħed jew iktar speċifiku għall-identità fiżika, fiżjoloġika, mentali, ekonomika, kulturali jew soċjali tagħha;

“*data personali sensitivi*” tfisser *data personali* li jkunu jiżvelaw r-razza jew l-oriġni etnika, fehmiet politiċi, twemmin reliġjuż jew filosofiku, shubija fi *trade union*, saħha, jew attività sesswali;

“kontrollur ta' *data personali*” jew “kontrollur” tfisser persuna li wahedha jew solidament ma' oħrajn tistabbilixxi l-għanijiet u l-mezzi ta' l-ipproċessar ta' *data personali*;

“Kummissarju” tfisser il-Kummissarju għall-Protezzjoni tad-*Data* mahtur skond l-artikolu 36 ta' dan l-Att u tinkludi kull uffiċjal jew impjegat tal-Kummissarju awtorizzat minnu għal dak il-għan;

“kunsens” tfisser kull indikazzjoni speċifika u informata li tinghata liberament dwar ix-xewqat tas-suġġett ta' *data* li permezz tagħha juri li jkun jaqbel li għandhom jiġu pproċessati *data personali* dwaru;

“mblokkar” dwar *data personali*, tfisser it-thaddim biex jiġi sospiż it-tibdil ta' *data* jew jiġi sospiż jew ristrett il-provdiment ta' informazzjoni lil terzi meta dak il-provdiment jiġi hekk sospiż jew ristrett skond id-disposizzjonijiet ta' dan l-Att;

“Ministru” tfisser il-Ministru responsabbli għall-protezzjoni tad-*data*;

“numru ta' karta ta' identità” tfisser in-numru ta' identifikazzjoni li jkun jinsab f'karta ta' l-identità kif provdut fl-Att dwar il-Karta ta' l-Identità;

Kap. 258.

“pajjiż terz” tfisser stat li ma jkunx inkluż f'Ordni mahruġ biex jiġi stabbilit liema stati ma għandhomx jiġu kkunsidrati bhala pajjiżi terzi għall-għanijiet ta' dan l-Att kif jista' jiġi preskritt minn żmien għal żmien taht dan l-Att;

“preskritt” tfisser preskritt b'regolamenti magħmulin mill-Ministru skond id-disposizzjonijiet ta' dan l-Att, wara konsultazzjoni mal-Kummissarju;

“proċessar” u “proċessar ta' *data personali*” tfisser kull thaddim jew sett ta' operazzjonijiet li jsiru dwar *data personali*, sew jekk dan jiġri b'mezzi awtomatiċi sew jekk le, u tinkludi l-kollezzjoni, r-rekordjar, l-organizzazzjoni, il-ħżin, l-adattament,

il-bdil, l-irkuprar, il-ġbir, l-użu, il-kxif permezz ta' trasmissjoni, it-tixrid jew l-ghemil xort'ohra ta' informazzjoni disponibbli, l-allinjament jew il-kombinazzjoni, l-imblokkar, il-kanċellament jew il-qerda ta' tali *data*;

“proċessur” tfisser persuna li tipproċessa *data* personali f'isem kontrollur;

“rappreżentant ta' *data* personali” tfisser persuna, mahtura mill-kontrollur ta' *data* personali, li ghandha tiżgura b'mod indipendenti li d-*data* personali jkunu pproċessati b'mod korrett u legittimu;

“riċevent” tfisser persuna li lilha jiġu pprovduti *data* personali; madankollu, meta jiġu pprovduti *data* personali sabiex il-Kummissarju jkun jista' jwettaq dik is-sorveljanza, kontroll jew verifika li jkun taht dmir li jwettaq, il-Kummissarju ma ghandux jitqies bhala riċevent;

“sistema ta' *filing* ta' *data* personali” jew “sistema ta' *filing*” tfisser kull sett strutturat ta' *data* personali li tkun aċċessibbli skond kriterji speċifiċi, sew jekk ċentralizzati, deċentralizzati jew mifruxin fuq bażi funzjonali jew ġeografika;

“suġġett ta' *data*” tfisser persuna naturali li lilha jkunu jirrigwardaw id-*data* personali;

“terzi” tfisser persuna li, minbarra s-suġġett ta' *data*, il-kontrollur ta' *data* personali, ir-rappreżentant ta' *data* personali, il-proċessur u dawk il-persuni li taht ir-responsabbiltà diretta tal-kontrollur ta' *data* personali jew tal-proċessur ikunu awtorizzati li jipproċessaw *data* personali.

## Taqsimha II - Applikabilità

Mod ta' pproċessar.

3. Id-disposizzjonijiet ta' dan l-Att ghandhom japplikaw għall-ipproċessar ta' *data* personali, għalkollox jew f'parti minnhom, b'mezzi awtomatizzati u għal dak l-ipproċessar li ma jsirx b'mezzi awtomatizzati meta tali *data* personali jkunu jagħmlu parti minn sistema ta' *filing* jew ikunu maħsuba biex jagħmlu parti minn sistema ta' *filing*.

Skop territorjali.

4. (1) Dan l-Att japplika wkoll -

(a) għall-ipproċessar ta' *data* personali mwettaq fil-kuntest ta' attivitajiet ta' stabbiliment ta' kontrollur f'Malta jew f'Ambaxxata Maltija jew Kummissjoni Għolja barra minn Malta;

(b) għall-ipproċessar ta' *data* personali meta l-kontrollur ikun stabbilit f'pajjiż terz sakemm it-tagħmir li jintuża għall-ipproċessar tad-*data* personali jkun jinsab f'Malta.

(2) Bla preġudizzju għad-disposizzjonijiet tal-proviso ta' hawn taht, id-disposizzjonijiet tal-paragrafu (b) tas-subartikolu (1) ta' dan l-artikolu ma għandhomx japplikaw jekk it-tagħmir jintuża biss għal għanijiet ta' trasmissjoni ta' informazzjoni bejn pajjiż terz u pajjiż tali ieħor:

Iżda f'każ bħal dan il-kontrollur għandu jahtar persuna stabbilita f'Malta biex tagħixxi bhala r-rappreżentant tiegħu.

5. Dan l-Att ma għandux japplika -

Fejn l-Att ma japplikax.

(a) għall-ipproċessar ta' *data* personali meta dak l-ipproċessar jitwettaq minn persuna naturali fil-kors ta' attività purament personali; u

(b) għal operazzjonijiet ta' proċessar li jirrigwardaw is-sigurtà pubblika, id-difiża, is-sigurtà ta' l-Istat (inkluż il-ġid ekonomiku ta' l-Istat meta l-operazzjoni ta' proċessar tirrigwarda hwejjeġ ta' sigurtà) u attivitajiet ta' l-Istat fil-kamp tal-liġi kriminali:

Iżda l-Ministru jista', wara li jikkonsulta mal-Kummissarju u bi qbil mal-Ministru responsabbli għall-Pulizija, jagħmel regolamenti biex jestendi l-applikazzjoni ta' dan l-Att jew iżid ma jew inaqqas mid-disposizzjonijiet ta' dan is-subartikolu bl-iskop illi jenforza xi obligazzjoni, konvenzjoni jew trattat internazzjonali dwar il-protezzjoni ta' *data* personali, li għalih Malta tkun parti jew tista' ssir parti.

6. (1) Bla hsara għad-disposizzjonijiet li ġejjin ta' dan l-artikolu, xejn f'dan l-Att ma għandu jkun ta' preġudizzju għall-applikazzjoni tad-disposizzjonijiet ta' l-Att dwar il-Konvenzjoni Ewropea, dwar il-libertà ta' l-espressjoni jew id-disposizzjonijiet ta' l-Att dwar l-Istampa, dwar il-libertajiet ġurnalistiċi.

Libertà ta' l-espressjoni.

Kap. 319

Kap. 248.

(2) Minkejja d-disposizzjonijiet tas-subartikolu (1) ta' dan l-artikolu, il-Kummissarju għandu jinkoraġġixxi l-abbozzar ta' kodiċi ta' kondotta adattat li jkun japplika għall-ġurnalisti u għall-medja biex jiġi regolat l-ipproċessar ta' xi *data* personali u l-kodiċi ta' kondotta għandu jipprovdi miżuri u proċeduri adattati biex jiproteġu s-sugġett ta' *data*, fil-qies tax-xorta tad-*data*.

(3) Fin-nuqqas ta' tali kodiċi ta' kondotta, il-Kummissarju jista' jistabbilixxi miżuri u proċeduri speċifiċi biex

jipproteġu s-suġġetti ta' *data*; f'dak il-każ sew il-ġurnalisti sew il-medja għandhom jikkonformaw ruħhom mal-miżuri u l-proċeduri hekk stabbiliti.

(4) Jekk il-miżuri u l-proċeduri li jinsabu fil-kodiċi ta' kondotta li japplikaw għall-ġurnalisti u l-medja skond is-subartikoli (2) jew (3) ma jitharsux, il-Kummissarju jista' jipprojbixxi kull persuna konċernata milli twettaq kull proċessar, għal kollox jew f'parti, u jordna l-imblokkar ta' *data* meta, fil-qies tax-xorta tad-*data*, l-mezzi ta' l-ipproċessar jew l-effetti li dan jista' jkollu, jkun hemm riskju gravi ta' dannu rilevanti għal xi suġġett ta' *data* wiehed jew iktar.

### Taqsimha III - Htiġiet u Kriterji għall-Ipproċessar

Htiġiet għall-  
iproċessar.

7. Il-kontrollur għandu jiżgura li -

(a) *data* personali jiġu proċessati b'mod imparzjali u skond il-liġi;

(b) *data* personali jkunu dejjam proċessati skond Prattika korretta;

(c) *data* personali jkunu miġbura biss għal għanijiet speċifiċi u leġittimi, u li jkunu espressi b'mod esplicitu;

(d) *data* personali ma jkunux proċessati għal xi skop li jkun inkompatibbli ma' dak li għalih tkun qeghda tingabar l-informazzjoni;

(e) *data* personali li jkunu qed jiġu proċessati jkunu adegwati u rilevanti dwar l-iskopijiet ta' l-iproċessar;

(f) ma jiġux ipproċessati iktar *data* personali milli jkun mehtieg fil-qies ta' l-għanijiet ta' l-iproċessar;

(g) id-*data* personali li jiġu proċessati jkunu korretti u, jekk mehtieg, aġġornati;

(h) jittiehdu l-miżuri raġonevoli kollha biex jikkompletaw, jikkoreġu, jimblokkaw jew jikkancellaw *data* jekk dawk id-*data* ma jkunux kompleti jew korretti, fil-qies ta' l-iskopijiet li jkunu qeghdin jiġu pproċessati għalihom;

(i) d-*data* personali ma jinżammux għal perjodu itwal minn dak mehtieg, fil-qies ta' l-iskopijiet li jkunu qed jiġu pproċessati għalihom.

8. L-ipproċessar ta' *data* personali għal skopijiet storiċi, statistiċi jew xjentifiċi ma għandux jitqies bhala inkompatibbli ma' l-iskopijiet li dwarhom tkun ingabret l-informazzjoni:

L-ipproċessar għal għanijiet storiċi, eċċ.

Iżda l-kontrollur għandu jiżgura li:

(a) s-salvagwardji xierqa kollha jkunu japplikaw fejn *data* personali proċessati għal skopijiet storiċi, statistiċi jew xjentifiċi jistgħu jinżammu għal żmien itwal minn dak neċessarju meta jitqiesu l-iskopijiet li għalihom id-*data* ġew proċessati; jew

(b) id-*data* personali li jinżammu għal skopijiet storiċi, statistiċi jew xjentifiċi ma għandhomx jintużaw għat-tehid ta' xi deċiżjoni li tkun tirrigwarda lil suġġett ta' *data*.

9. Id-*data* personali jistgħu jkunu proċessati biss jekk:

Kriterji għall-ipproċessar.

(a) is-suġġett ta' *data* jkun minghajr ebda ambigwiżà ta l-kunsens tiegħu; jew

(b) l-ipproċessar ikun mehtiegħ sabiex jista' jitwettaq kuntratt li fih is-suġġett ta' *data* ikun parti jew biex jittiehdu passi fuq talba tas-suġġett ta' *data* qabel l-għemil tal-kuntratt; jew

(ċ) l-ipproċessar ikun mehtiegħ biex tithares xi obligazzjoni legali li l-kontrollur ikun suġġett għaliha; jew

(d) l-ipproċessar ikun mehtiegħ sabiex jiġu protetti l-interessi vitali tas-suġġett ta' *data*; jew

(e) l-ipproċessar ikun mehtiegħ għat-twettiq ta' attività li ssir fl-interess pubbliku jew fl-eserċizzju ta' l-awtorità uffiċjali vestita fil-kontrollur jew fterzi li d-*data* jiġu zvelati lilhom; jew

(f) l-ipproċessar ikun mehtiegħ għal xi skop li jolqot l-interess legittimu tal-kontrollur jew ta' dawk it-terzi li lilhom jkunu ġew ipprovduti d-*data* personali, hliet meta dak l-interess jiġi meghlub b'kull interess biex jiġu protetti d-drittijiet u l-libertajiet fundamentali tas-suġġett ta' *data* u partikolarment id-dritt għall-privatezza.

10. (1) Id-*data* personali jistgħu ma jiġux proċessati għal skopijiet li jkunu jolqtu il-bejgħ dirett fis-suq, jekk is-suġġett ta' *data* javża lill-kontrollur ta' *data* personali li huwa jkun jopponi dak l-ipproċessar.

Tqegħid għal bejgħ dirett fis-suq.

(2) Il-kontrollur għandu jgħarraf kif xieraq lis-sugġett ta' *data* bid-dritt li jkollu li jopponi, bla ma jagħmel ebda spejjeż, għall-ipproċessar imsemmi fis-subartikolu (1) ta' dan l-artikolu.

Revoka tal-kunsens.

**11.** (1) F'dawk il-każijiet fejn l-ipproċessar ta' *data* personali jkun sar skond il-paragrafi (c) u (f) ta' l-artikolu 9, is-sugġett ta' *data*, minbarra fejn ikun provdut xort'ohra f'xi liġi ohra, ikun intitolat joġġezzjona f'kull żmien lill-kontrollur għal raġunijiet legittimi aċċettabbli għall-ipproċessar ta' dawk id-*data*.

(2) Mingħajr hsara għad-disposizzjonijiet ta' l-artikolu 10, fejn l-ipproċessar ta' *data* personali jsir bil-kunsens tas-sugġett ta' *data*, is-sugġett ta' *data* jista' f'kull żmien jirrevoka l-kunsens tiegħu għal raġunijiet legittimi aċċettabbli li għandhom x'jaqsmu mas-sitwazzjoni partikolari tiegħu.

*Data* personali sensitivi.

**12.** (1) Bla hsara għad-dispożizzjonijiet l-oħra ta' dan l-Att hadd ma jista' jipproċessa *data* personali sensitivi:

Iżda dawk id-*data* personali jistgħu jiġu proċessati f'dawk il-każijiet li hemm provdut dwarhom taht is-subartikolu (2) ta' dan l-artikolu u taht l-artikoli 13 sa 16 ta' dan l-Att jew hekk kif jista' jiġi preskritt mill-Ministru li jqis l-esiġenzi ta' interess pubbliku importanti.

(2) Id-*data* personali sensitivi jistgħu jiġu proċessati jekk is-sugġett ta' *data*:

- (a) jkun ta l-kunsens espliċitu tiegħu għall-ipproċessar; jew
- (b) jekk hareġ id-*data* għall-pubbliku.

Proċessar meħtieġ.

**13.** Id-*data* personali sensitivi jistgħu jiġu pproċessati jekk jiġu adottati salvagwardji xierqa u l-ipproċessar ikun meħtieġ sabiex:

- (a) il-kontrollur jkun jista' jikkonforma ruhu ma' dmirijietu jew jeżerċita d-drittijiet tiegħu taht xi liġi li tirregola l-kondizzjonijiet ta' l-impieg; jew
- (b) l-interessi vitali tas-sugġett ta' *data* jew ta' xi persuna ohra jkunu jistgħu jiġu protetti u s-sugġett ta' *data* ma jkunx fiżikament jew legalment kapaċi li jagħti l-kunsens tiegħu; jew
- (c) ikunu jistgħu jiġu stabbiliti, eżerċitati jew difiżi talbiet legali.

#### Taqsimta IV - Proċessar għal Skopijiet Speċifiċi

14. Sew kull korp ta' persuni sew enti ohra, li ma jkunux korp jew entità kummerċjali, li jkollhom għanijiet politiċi, filosofiċi, reliġjużi jew dwar *trade unions*, jistgħu fi hdan il-qafas ta' l-operat tagħhom u bis-salvagwardji xierqa, jipproċessaw *data* personali sensitivi li jkunu jolqtu lill-membri tal-korp jew l-enti rispettivi u lil dawk il-persuni l-oħra li minhabba fl-għanijiet tal-korp jew ta' l-enti jkollhom kuntatt regolari magħhom:

Proċessar minn fondazzjonijiet, eċċ.

Izda *data* personali sensitivi jistgħu jiġu pprovduti lil terzi biss jekk is-suġġett ta' *data* jagħti l-kunsens espliċitu tiegħu għal dan.

15. Id-*data* personali sensitivi jistgħu jiġu pproċessati għal skopijiet ta' saħħa u ta' kura fl-isptar, sakemm dawn ikunu meħtieġa għal:

Proċessar dwar is-saħħa jew skopijiet mediċi.

- (a) mediċina preventiva u l-protezzjoni tas-saħħa pubblika;
- (b) dijanjosi medika;
- (ċ) kura tas-saħħa jew il-kura li tingħata; jew
- (d) il-manigġ ta' servizzi ta' kura tas-saħħa u fl-isptar:

Izda d-*data* għandha tiġi pproċessata minn professjonist tas-saħħa jew minn xi persuna ohra li tkun suġġetta għall-obbligu impost fuqha ta' segretezza professjonali.

Għall-finijiet ta' dan l-artikolu, "professjonist tas-saħħa" tfisser persuna li jkollha *warrant* biex teżerċita professjoni regolata mill-Ordinanza dwar il-Professjoni Medika u l-Professjonijiet li għandhom x'jaqsmu magħha, u kull persuna li taġixxi taht id-direzzjoni personali u sorveljanza ta' persuna bħal dik.

16. (1) Id-*data* personali sensitivi jistgħu jiġu pproċessati għal skopijiet ta' riċerka u statistika, sakemm l-ipproċessar jkun meħtieġ kif stipulat fis-subartikolu (c) ta' l-artikolu 9.

Proċessar dwar riċerka u statistika.

(2) Jekk l-ipproċessar imsemmi fis-subartikolu (1) ta' dan l-artikolu jkun ġie approvat:

- (a) fil-każ ta' statistika, mill-Kummissarju nnifsu;
- (b) fil-każ ta' riċerka, mill-Kummissarju bil-parir ta' xi kumitat ta' riċerka fl-etika ta' xi istituzzjoni rikonoxxuta mill-Kummissarju għall-għanijiet ta' dan il-paragrafu;

id-disposizzjonijiet tas-subartikolu (1) ta' dan l-artikolu għandhom jittqiesu li jkunu sodisfatti.

(3) Id-*data* personali jistghu jiġu pprovduti sabiex jintużaw għall-finijiet imsemmija fis-subartikolu (1) ta' dan l-artikolu, kemm-il darba ma jiġix provdut xort'ohra bir-regoli applikabbli dwar is-segretezza u l-kunfidenzjalità.

Proċessar dwar reati kontra l-ligi.

17. (1) *Data* li jkollhom x'jaqsmu ma' reati, sejbien ta' htija kriminali jew miżuri ta' sigurezza, jistghu jiġu biss proċessati taht il-kontroll ta' awtorità pubblika.

(2) Għal dan l-iskop il-Ministru jista' b'regolamenti jawtorizza lil kull persuna tipproċessa d-*data* msemmija fis-subartikolu (1) ta' dan l-artikolu bla hsara għal dawk salvagwardji speċifiċi xierqa li jistghu jiġu preskritti:

Izda regjistru shih ta' sejbien ta' htija kriminali jista' biss jinżamm taht il-kontroll ta' awtorità pubblika.

Proċessar tan-numru fuq karta ta' l-identità.

18. In-numru tal-karta ta' l-identità jista', fin-nuqqas ta' kunsens, jiġi biss ipproċessat meta dan l-ipproċessar ikun b'mod ċar ġustifikat fil-qies ta':

- (a) l-iskop ta' l-ipproċessar;
- (b) l-importanza ta' identifikazzjoni sigura;
- (ċ) xi raġuni valida oħra li tista' tiġi preskritta.

#### Taqsim V - Ġbir ta' *Data* u Dritt ta' Dhul

Tagħrif dwar sugġett ta' *data*.

19. Il-Kontrollur jew xi persuna awtorizzata minnu għal dak l-ghan għandhom jipprovdur lil sugġett ta' *data* li jingabru minghandu *data* li jkunu jirrigwardaw lis-sugġett ta' *data* innifsu, b'mill-inqas din l-informazzjoni li ġejja hliet meta din tkun diġà tinsab għand is-sugġett ta' *data*:

- (a) l-identità u r-residenza abitwali jew il-post prinċipali tan-negozju tal-kontrollur u ta' kull persuna oħra awtorizzata minnu għaldaqshekk, jekk ikun hemm;
- (b) l-iskopijiet ta' l-ipproċessar li dwaru jkunu mahsuba d-*data*; u
- (ċ) kull informazzjoni ulterjuri dwar dawk il-materji bħal ma huma:
  - (i) ir-riċeventi jew kategoriji tar-riċeventi tad-*data*;

(ii) jekk l-ghoti ta' risposta ghal xi wahda mill-mistoqsijiet magħmula lis-suġġett ta' *data* ikunx obligatorju jew volontarju, kif ukoll dwar x'jista' jiġri jekk wiehed jonqos milli jwieġeb; u

(iii) id-dritt li huwa jkollu li jidhol fid-*data*, id-dritt li jirrettifika u, fejn ikun applikabbli, id-dritt li jhassar id-*data* li tkun tirrigwardah,

sakemm dik l-informazzjoni ulterjuri tkun meħtieġa, fil-qies ta' ċirkostanzi speċifiċi li fihom tingabar id-*data*, biex jiġi garantit proċessar ġust dwar is-suġġett ta' *data*.

20. (1) Meta d-*data* ma jkunx ġew miksuba mis-suġġett ta' *data*, il-kontrollur jew kull persuna oħra awtorizzata minnu ghal dak l-iskop għandu jipprovi lis-suġġett ta' *data* b'mill-inqas din l-informazzjoni li ġejja, hliet meta s-suġġett ta' *data* jkollu diġà dik l-informazzjoni:

*Data* miġbura minn oriġni oħra.

(a) l-identità u r-residenza abitwali jew post prinċipali tan-negozju tal-kontrollur u ta' kull persuna oħra minnu awtorizzata ghal dak l-iskop;

(b) l-iskopijiet ta' l-ipproċessar;

(ċ) kull informazzjoni ulterjuri inkluzi:

(i) il-kategoriji ta' *data* involuti;

(ii) ir-riċeventi jew kategoriji ta' riċeventi;

(iii) id-dritt li huwa jkollu li jidhol fid-*data*, id-dritt li jirrettifika id-*data* u, fejn japplika, id-dritt li jhassar id-*data* li tkun tirrigwardah,

u sakemm dik l-informazzjoni ulterjuri tkun meħtieġa, fil-qies ta' ċirkostanzi speċifiċi li fihom id-*data* jiġu pproċessati, biex jiġi garantit proċessar ġust dwar is-suġġett ta' *data*.

(2) L-informazzjoni msemmija fis-subartikolu (1) għandha tiġi provduta fil-waqt ta' l-irrekordjar ta' *data* personali jew, jekk hu maħsub li din tiġi żvelata lil terza persuna, mhux aktar tard minn meta d-*data* jkunu ġew żvelati l-ewwel darba.

(3) Ma jkunx hemm bżonn li tiġi provduta informazzjoni skond is-subartikolu (1) jekk ikun hemm disposizzjonijiet li jirrigwardaw ir-reġistrazzjoni jew l-iżvelar ta' *data* personali bħal dik fxi liġi oħra u jiġu adottati salvagwardji adegwati.

(4) Ma hemmx ghalfejn tiġi provduta l-informazzjoni skond is-subartikolu (1) jekk din tkun meħtieġa:

- (a) għal ipproċessar li jsir għal skopijiet xjentifiċi;
- (b) għal skopijiet ta' riċerka storika jew xjentifika,

u dan sakemm l-għoti ta' dik l-informazzjoni ma jkunx wieħed impossibbli jew ikun jinvolvi attività sproporzjonata.

Dritt ta' dhul.

21. (1) Il-kontrollur ta' *data* personali fuq talba tas-suġġett ta' *data* għandu jagħti lis-suġġett ta' *data*, mingħajr dewmien eċċessiv u mingħajr nefqa, informazzjoni bil-miktub dwar jekk *data* personali li jkunu jirrigwardaw lis-suġġett ta' *data* ikunux proċessati:

Iżda hteġġa minn suġġett ta' *data* taħt dan is-subartikolu għandha ssir biss mis-suġġett ta' *data* f'intervalli raġonevoli.

(2) Jekk tali *data* jiġu proċessati, il-kontrollur ta' *data* għandu jipprovdi lis-suġġett ta' *data* informazzjoni bil-miktub, f'format li jiftiehem, dwar:

- (i) informazzjoni attwali dwar is-suġġett ta' *data* li tkun proċessata;
- (ii) minn fejn tkun ingabret din l-informazzjoni;
- (iii) l-iskop ta' l-ipproċessar;
- (iv) lil liema riċeventi jew kategoriji ta' riċeventi l-informazzjoni tkun żvelata; u
- (v) konozzenza tal-logika involuta f'xi pproċessar awtomatiku ta' *data* li jirrigwardaw lis-suġġett ta' *data*.

(3) Applikazzjoni taħt is-subartikolu (1) ta' dan l-artikolu għandha ssir bil-miktub lill-kontrollur ta' *data* personali u għandha ġġib il-firma tas-suġġett ta' *data*.

Rettifika.

22. (1) Il-kontrollur għandu r-responsabbiltà fuq talba tas-suġġett ta' *data* li minnufih jirrettifika, jimblokka jew jikkancella dawk id-*data* personali li ma jkunux ġew ipproċessati skond dan l-Att jew regolamenti magħmulin taħt dan l-Att.

(2) Il-kontrollur għandu javża lit-terzi li lilhom id-*data* jkunu ġew żvelati dwar il-miżuri li jkunu ttiehdu taħt is-subartikolu (1) ta' dan l-artikolu:

Izda ebda avviż bhal dak ma ghandu jinghata jekk ikun jidher bhala wicied impossibbli jew jinvolvi attività sproporzjonata.

#### Taqsim VI - Eżenzjonijiet, Restrizzjonijiet u Miżuri ohra

23. (1) Id-dispożizzjonijiet ta' l-artikoli 7, 19, 20(1), 21 u 35 ta' dan l-Att ma ghandhomx japplikaw meta xi liġi speċifikatament tipprovdi għall-ghoti ta' informazzjoni bhala miżura mehtieġa fl-interess:

Eżenzjonijiet u  
restrizzjonijiet  
fil-każ ta'  
segretezza, eċc.

(a) tas-sigurtà nazzjonali;

(b) tad-difiża;

(c) tas-sigurtà pubblika;

(d) tal-prevenzjoni, investigazzjoni, kxif u prosekuzzjoni ta' reati kriminali, jew ta' ksur ta' etika għal professjonijiet regolati;

(e) ta' xi interess ekonomiku jew finanzjarju importanti li jinkludi materji monetarji, ta' estimi u tassazzjoni;

(f) ta' xi funzjoni regolatorja, ta' sorveljanza jew spezzjon konnessa, ukoll jekk okkażjonalment, ma' l-eżerċizzju ta' l-awtorità uffiċjali msemmija fil-paragrafi (c), (d) u (e) ta' dan is-subartikolu; jew

(g) li dik l-informazzjoni tkun preġudizzjali għall-protezzjoni tas-sugġett ta' *data* jew għad-drittijiet u l-libertajiet ta' l-ohrajn.

(2) Id-dispożizzjonijiet ta' l-artikolu 21 ta' dan l-Att ma japplikawx meta d-*data* jkunu proċessati biss għal skopijiet ta' riċerka xjentifika jew inkella jinżammu f'format personali għal perjodu li ma jkunx jeċċedi l-perjodu mehtieġ għall-iskop uniku li tiġi kompilata l-istatistika:

Izda d-dispożizzjonijiet ta' dan is-subartikolu ma japplikawx fejn id-*data* jintużaw għat-tehdid ta' miżuri jew deċiżjonijiet li jkunu jirrigwardaw lil xi individwu partikolari jew fejn ikun hemm riskju ta' kontravvenzjoni tal-privatezza tas-sugġett ta' *data*.

24. (1) Jekk deċiżjoni tkun imsejsa unikament fuq l-ipproċessar awtomatizzat ta' daww id-*data* personali bhalma jkun mahsub biex jiġu stmati l-kwalitajiet ta' persuna naturali, u dik id-deċiżjoni jkollha effett legali jew xi effett importanti iehor għal dik il-persuna, dik il-persuna jkollha d-dritt li titlob li d-deċiżjoni tiġi

Deċiżjonijiet  
imsejsa fuq l-  
ipproċessar  
awtomatizzat.

kkunsidrata mill-ġdid hliet b'mod bbażat unikament fuq l-ipproċessar awtomatizzat, u dik il-kunsiderazzjoni mill-ġdid tkun obligatorja fuq il-persuna li tiegħu dik id-deċiżjoni.

(2) Id-disposizzjonijiet tas-subartikolu (1) ta' dan l-artikolu ma għandhomx japplikaw meta d-deċiżjoni tittiehed filwaqt li jkun qed isir jew jiġi esegwit kuntratt mas-suġġett ta' *data*, sakemm it-talba għall-ghemil jew l-eskuzzjoni tal-kuntratt, li tkun saret mis-suġġett ta' *data*, tkun ġiet sodisfatta jew ikun hemm miżuri adattati biex jissalvagwardaw l-interessi legittimi tiegħu bhal ma hu d-dritt li jinstitwera.

(3) Persuna li tkun is-suġġett ta' deċiżjoni msemmija fis-subartikolu (1) ta' dan l-artikolu tkun intitolata li meta hekk titlob, tikseb informazzjoni minghand il-kontrollur dwar xi jkun li jkollha l-ipproċessar awtomatizzat li jkun irriżulta fid-deċiżjoni:

Izda dik l-informazzjoni li ssir disponibbli mill-kontrollur tkun suġġetta għad-dispożizzjonijiet ta' l-artikolu 21 ta' dan l-Att.

Persuni awtorizzati li jipproċessaw *data*.

25. (1) Kull persuna li taġixxi taht l-awtorità tal-kontrollur jew tal-proċessur, inkluż il-proċessur innifsu, li jkollu dhum għal *data* personali, jista' biss jipproċessa *data* personali skond l-istruzzjonijiet tal-kontrollur kemm-il darba l-persuna ma tkunx xort'ohra mitluba tagħmel hekk mil-liġi.

(2) L-ghemil ta' pproċessar permezz ta' proċessur għandu jkun regolat b'kuntratt jew bi strument ieħor li jkun jorbot legalment f'forma miktuba jew ekwivalenti, li jkun jorbot lill-proċessur mal-kontrollur u jistipula b'mod partikolari li l-proċessur:

(a) jaġixxi biss fuq struzzjonijiet li jiehu minghand il-kontrollur;

(b) għandu jiehu dawk il-miżuri msemmija fis-subartikolu (1) ta' l-artikolu 26 ta' dan l-Att.

Miżuri ta' sigurtà dwar l-ipproċessar.

26. (1) Il-kontrollur għandu jimplementa miżuri tekniċi u organizzattivi xierqa sabiex jipproteġi d-*data* personali li jkunu qed jiġu proċessati kontra kull qirda jew telf aċċidentali jew forum ta' proċessar illegittimi u b'hekk jipprovdi livell adegwat ta' sigurtà li jkun iqis:

(a) il-possibilitajiet tekniċi disponibbli;

(b) in-nefqa ta' l-implementazzjoni tal-miżuri ta' sigurtà;

(c) ir-riskji speċjali li jeżistu fl-ipproċessar ta' *data* personali;

(d) is-sensitività tad-*data* personali li jkunu qed jiġu pproċessati.

(2) Jekk il-kontrollur jqabbad proċessur, il-kontrollur ghandu jiżgura li l-proċessur:

(a) ikun jista' jimplementa l-miżuri ta' sigurtà li jkollhom jittichdu;

(b) attwalment jiehu l-miżuri hekk identifikati mill-kontrollur.

27. (1) Minghajr preġudizzju ghad-dispożizzjonijiet ta' l-artikolu 28 ta' dan l-Att, it-trasferiment lil pajjiż terz ta' *data* personali li jkunu qed jiġu proċessati jew li jkunu mahsuba li jiġu proċessati, jista' jsir biss bla hsara ghad-dispożizzjonijiet ta' dan l-Att u sakemm il-pajjiż terz li d-*data* jiġu trasferiti lejha ikun jiżgura livell xieraq ta' protezzjoni.

Trasferiment ta' *data* li pajjiż terz.

(2) Dwar kemm ikun biżżejjed il-livell ta' protezzjoni ta' pajjiż terz ghandu jiġi stmat fil-qies ta' ċirkostanzi kollha li jkunu jirrigwardaw it-thaddim ta' trasferiment ta' *data* jew sett ta' operazzjonijiet ta' trasferiment ta' *data*: ghandha tinghata konsiderazzjoni partikolari għax-xorta tad-*data*, l-iskop u għal kemm żmien jkunu se jdumu l-hidma jew l-operazzjonijiet ta' proċessar proposti, il-pajjiż ta' provenjenza u l-pajjiż ta' destinazzjoni finali, ir-regoli legali, sew ġenerali sew settorjali, li jkunu fis-seħh fil-pajjiż terz involut u r-regoli professjonali u miżuri ta' sigurtà li jkunu qed jitharsu f'dak il-pajjiż.

(3) Ikun dmir tal-Kummissarju li jiddeċiedi jekk pajjiż terz ikunx jiżgura livell adegwat ta' protezzjoni.

(4) It-trasferiment ta' *data* personali lil pajjiż terz li ma jkunx jiżgura protezzjoni adegwata hu pprojbit.

28. (1) Għall-għanijiet ta' l-implimentazzjoni ta' xi konvenzjoni internazzjonali li Malta tkun parti fiha jew ta' xi obbligu ieħor internazzjonali ta' Malta, il-Ministru jista' b'Ordni jistabbilixxi li t-trasferiment ta' *data* personali lejn xi pajjiż elenkat fl-imsemmi Ordni ma għandux, minkejja d-dispożizzjonijiet ta' dan l-Att jew ta' xi liġi oħra, ikun ristrett minhabba fil-protezzjoni tal-privatezza. Meta jagħmel Ordni bħal dan il-Ministru jista' jinkludi kondizzjonijiet u restrizzjonijiet li hemm provdut dwarhom fl-istrument internazzjonali.

Eżenzjonijiet mill-projbizzjoni ta' trasferiment ta' *data* lil pajjiż terz.

(2) It-trasferiment ta' *data* personali lil pajjiż terz li ma jiżgurax livell adegwat ta' protezzjoni fil-qies tat-tifsir mogħti fl-artikolu 27(2) jista' jsir mill-kontrollur jekk is-sugġett ta' *data* jkun ta il-kunsens tiegħu mhux ambigwu għat-trasferiment propost jew jekk it-trasferiment -

(a) ikun neċessarju għat-twettieq ta' kuntratt bejn is-sugġett ta' *data* u l-kontrollur jew l-implimentazzjoni ta' miżuri qabel il-kuntratt li jittiehdu b'konsegwenza tat-talba li ssir mis-sugġett ta' *data*;

(b) ikun neċessarju għat-twettieq jew għemil ta' kuntratt magħmul jew li jkun se jsir fl-interess tas-sugġett ta' *data* bejn il-kontrollur u terzi;

(c) ikun neċessarju jew meħtieġ skond il-liġi minhabba f'raġunijiet importanti ta' interess pubbliku, jew għat-twaqqif, eżerċizzju jew difiża ta' talbiet legali;

(d) ikun neċessarju sabiex jiġu protetti l-interessi vitali tas-sugġett ta' *data*; jew

(e) isir minn reġistru li skond il-liġijiet jew ir-regolamenti jkun maħsub li jipprovdi informazzjoni għall-pubbliku u li jkun miftuh għall-konsultazzjoni sew mill-pubbliku kollu sew minn xi persuna li tista' turi li jkollha interess leġittimu, sakemm jitwettqu f'dak il-każ partikolari l-kondizzjonijiet stipulati bil-liġi għall-konsultazzjoni.

(3) Mingħajr preġudizzju għas-subartikolu (1) ta' dan l-artikolu, il-Kummissarju jista' jawtorizza trasferiment jew sett ta' trasferimenti ta' *data* personali lil pajjiż terz li ma jiżgurax livell adegwat ta' protezzjoni fi hdan it-tifsir mogħti fl-artikolu 27(2):

Izda l-kontrollur għandu jipprovdi salvagwardji adegwati, li jistgħu jirriżultaw partikolarment permezz ta' klawnsoli kontrattwali xierqa, dwar il-protezzjoni tal-privatezza u tad-drittijiet fundamentali u libertajiet ta' l-individwu u għar-rigward ta' l-eżerċizzju tagħhom.

#### Taqsim VII - Notifikazzjoni u Proċeduri ohra

Obbligazzjoni  
ta'  
notifikazzjoni.

29. (1) Il-kontrollur għandu jinnotifika lill-Kummissarju qabel ma jagħmel xi operazzjoni ta' pproċessar awtomatizzat għalkollox jew f'parti minnu, jew sett ta' tali operazzjonijiet, maħsuba għal għan wiehed jew għal diversi għanijiet relatati.

(2) Il-Ministru jista' jippreskrivi dwar kull haġa li tirrigwarda x-xorta ta' notifikazzjoni li għandha ssir skond dan is-subartikolu dwar -

(a) l-ipproċessar li jkollu bi skop uniku ż-żamma ta' registru li skond il-liġijiet jew ir-regolamenti jkun mahsub biex jipprovdi informazzjoni lill-pubbliku u li jkun miftuh għall-konsultazzjoni sew mill-pubbliku kollu sew minn xi persuna li turi li jkollha interess legittimu; u

(b) l-operazzjonijiet ta' proċessar imsemmija fl-artikolu 14.

(3) In-notifikazzjoni msemmija fis-subartikolu (1) ta' dan l-artikolu għandha tispeċifika:

(a) l-isem u l-indirizz tal-kontrollur ta' *data* u ta' kull persuna oħra minnu awtorizzata għal dak l-iskop, jekk ikun hemm;

(b) l-iskop jew l-iskopijiet ta' l-ipproċessar;

(ċ) deskrizzjoni tal-kategorija jew kategoriji ta' suġġetti ta' *data* u tad-*data* jew kategoriji ta' *data* li jirrigwardawhom;

(d) ir-riċeventi jew kategoriji ta' riċeventi li d-*data* tista' tiġi żvelata lilhom;

(e) trasferimenti ta' *data* proposti lil pajjiżi terzi; u

(f) deskrizzjoni ġenerali li tkun tippermetti stima preliminari li jkollha ssir dwar kemm ikunu xierqa l-miżuri li jittiehdu skond l-artikolu 26 ta' dan l-Att sabiex tiġi żgurata s-sigurtà fl-ipproċessar:

Iżda l-kontrollur għandu javża lill-Kummissarju b'kull tibdil li jaffettwa l-informazzjoni msemmija f'dan is-subartikolu u l-Ministru jista' jippreskrivi dwar kull haġa li għandha x'taqsam mal-forma ta' tali avviż.

(4) Il-Kummissarju jista' jippermetti s-simplifikazzjoni ta' jew l-eżenzjoni mill-obbligi dwar notifiċi li hemm mahsub għalihom f'din it-Taqsima ta' dan l-Att għal dak biss li għandu x'jaqsam ma' kategoriji ta' operazzjonijiet ta' proċessar -

(i) li x'aktarx, meta jitqiesu d-*data* li jkunu qieghdin jiġu proċessati, ma jippreġudikawx id-drittijiet u l-libertajiet ta' suġġetti ta' *data*, u

(ii) li dwarhom il-Kummissarju jispeċifika l-ghanijiet ta' l-ipproċessar, id-*data* jew il-kategoriji ta' *data* li jkunu qiegħdin jiġu proċessati, il-kategorija jew il-kategoriji ta' suġġetti ta' *data* li jkunu milquta b'dak l-ipproċessar, ir-riċeventi jew il-kategoriji ta' riċeventi li lilhom id-*data* għandha tkun żvelata u t-tul ta' żmien li għalih id-*data* għandha tinżamm.

Deroga mill-obbligazzjoni ta' notifikazzjoni.

30. (1) Il-kontrollur għandu javża lill-Kummissarju dwar il-hatra jew it-tneħħija ta' rappreżentant ta' *data* personali.

(2) Meta rappreżentant ta' *data* personali jkun ġie hekk mahtur, in-notifika skond l-artikolu 29(1) u (3) ma tkunx meħtieġa.

Funzjoni ta' rappreżentant tad-*data*.

31. (1) Ir-rappreżentant ta' *data* personali jkollu l-funzjoni li jassigura b'mod indipendenti li l-kontrollur jipproċessa *data* personali b'mod legittimu u korrett u skond kull Prattika adatta u f'każ fejn ir-rappreżentant ta' *data* personali jidentifika affarijiet mhux adegwati, hu għandu jiġbed l-attenzjoni tal-kontrollur dwar dawn.

(2) Jekk ir-rappreżentant ta' *data* personali jkollu għaliex jahseb li l-kontrollur ta' *data* personali jkun kiser id-disposizzjonijiet applikabbli għall-ipproċessar ta' *data* personali u jekk ma ssirx ir-rettifika kemm jista' jkun Prattikament malajr wara li jintwera li jkun sar il-ksur, ir-rappreżentant ta' *data* personali għandu javża lill-Kummissarju b'din is-sitwazzjoni.

(3) Ir-rappreżentant ta' *data* personali għandu wkoll jikkonsulta lill-Kummissarju jekk ikollu xi dubju dwar kif għandhom jiġu applikati r-regoli li jirrigwardaw l-ipproċessar ta' *data* personali.

Registru ta' proċessar suġġett għal notifikazzjoni.

32. Ir-rappreżentant ta' *data* personali għandu jzomm registru ta' l-ipproċessar li l-kontrollur jimplimenta u li kien ikun suġġett għall-obbligu ta' notifikazzjoni li kieku ma kienx ġie mahtur rappreżentant. Ir-registru għandu jkun fih l-informazzjoni li mill-inqas kien ikun fiha notifikazzjoni taht l-artikolu 29 ta' dan l-Att.

Għajnuha lil suġġett ta' *data*.

33. Ir-rappreżentant ta' *data* personali għandu jgħin lis-suġġett ta' *data* jeserċita d-drittijiet tiegħu taht dan l-Att.

Notifikazzjoni obbligatorja.

34. (1) (a) L-ipproċessar ta' *data* personali li jinvolvi riskji partikolari ta' indhil mhux dovut fid-drittijiet u l-libertajiet ta' suġġetti ta' *data* għandu jingħata mill-kontrollur lill-Kummissarju għall-verifika tagħha minn qabel.

(b) Il-Ministru jista' b'regolamenti jistabbilixxi l-operazzjonijiet ta' proċessar li jinvolvu riskji partikolari kif imfisser fil-paragrafu (a) u jippreskrivi regoli dwarhom.

(2) Il-verifika minn qabel imsemmija fis-subartikolu (1) ghandha ssir mill-Kummissarju wara li jkun irieva avviz jew minghand il-kontrollur jew minghand ir-rappreżentant tad-*data* personali:

Izda f'każ ta' dubju, il-kontrollur jew ir-rappreżentant ta' *data* personali ghandhom jikkonsultaw mal-Kummissarju.

35. (1) Il-Kummissarju ghandu jzomm registru ta' hidmiet ta' pproċessar li dwarhom tkun saret notifikazzjoni skond is-subartikolu (1) ta' l-artikolu 29 ta' dan l-Att. Ir-registru ghandu jkun fih l-informazzjoni elenkata fil-paragrafi (a) sa (e) tas-subartikolu (3) ta' l-artikolu 29 ta' dan l-Att.

Registru ta' hidmiet ta' pproċessar.

(2) Il-kontrollur ta' *data* personali jew ir-rappreżentant ta' *data* personali, jekk jiġi hekk mgħarraf mill-kontrollur, ghandu jagħti għall-inqas dik l-informazzjoni msemmija fil-paragrafi (a) sa (e) tas-subartikolu (3) ta' l-artikolu 29 kemm jista' jkun malajr u b'mod xieraq lil kull persuna li titlobha, dwar dak l-ipproċessar awtomatizzat jew ipproċessar ieħor ta' *data* personali li ma tkunx saret notifikazzjoni dwaru lill-Kummissarju taħt is-subartikolu (3) ta' l-artikolu 29 ta' dan l-Att:

Izda d-disposizzjonijiet ta' dan is-subartikolu m'għandhomx ikunu japplikaw għall-informazzjoni speċifikata fil-paragrafu (a) tas-subartikolu (2) ta' l-artikolu 29 ta' dan l-Att.

#### Taqsimha VIII - Il-Kummissarju għall-Protezzjoni tad-*Data*

36. (1) Ghandu jkun hemm Kummissarju għall-Protezzjoni tad-*Data* li jkun mahtur mill-Prim Ministru wara li jkun ikkonsulta mal-Kap ta' l-Oppożizzjoni.

Kummissarju għall-Protezzjoni tad-*Data*.

(2) Persuna ma tkunx kwalifikata li jkollha l-kariga ta' Kummissarju jekk -

(a) tkun Ministru, Segretarju Parlamentari jew membru tal-Kamra tad-Deputati; jew

(b) tkun imhalled jew maġistrat fil-qrati tal-gustizzja;

(c) tkun uffiċjal fis-servizz pubbliku; jew

(d) tkun membru ta' kunsill lokali; jew

(e) ikollha xi interess finanzjarju jew ieħor f'xi impriza jew attività li x'aktarx toqot it-twettiq tal-funzjonijiet tagħha bhala Kummissarju:

Iżda l-iskwalifika ta' persuna taht dan il-paragrafu tista' tiġi mwarrba jekk dik il-persuna tiddikjara dak l-interess u dik id-dikjarazzjoni u twarrib ta' l-iskwalifika jiġu pubblikati fil-Gazzetta.

Indipendenza fl-  
eżerċizzju tal-  
funzjonijiet.

37. Fit-twettiq tal-funzjonijiet tiegħu taht dan l-Att il-Kummissarju għandu jaġixxi b'mod indipendenti u ma jkunx sugġett għad-direzzjoni jew kontroll ta' ebda persuna jew awtorità.

Personalità  
güridika u  
rappreżentanza  
tal-  
Kummissarju.

38. (1) Il-Kummissarju jkollu personalità güridika distinta u jkun kapaċi, bla hsara għad-disposizzjonijiet ta' dan l-Att, li jagħmel kull kuntratt, li jakkwista, jzomm u jiddisponi minn kull xorta ta' proprjetà għall-ghanijiet tal-funzjonijiet tiegħu, jew li jharrek u li jiġi mharrek, u li jagħmel dawk l-affarijiet kollha u li jidhol f'dawk l-operazzjonijiet kollha li jkunu inċidentali jew li jwasslu għall-eżerċizzju jew it-twettiq tal-funzjonijiet tiegħu taht dan l-Att.

(2) Kull dokument li huwa intiż bhala istrument magħmul jew mahruġ mill-Kummissarju u li jiġi ffirmat minnu għandu jiġi riċevut b'xiehda u għandu, sakemm ma jiġix ippruvat il-kuntrarju, jitqies li jkun istrument magħmul jew mahruġ mill-Kummissarju.

Zamma ta'  
kariga.

39. (1) Il-Kummissarju għandu jibqa' fil-kariga għal perijodu ta' hames snin, u jkun jista' jerga' jiġi mahtur mill-ġdid meta jispiċċa l-perijodu tal-hatra tiegħu.

(2) Il-Kummissarju m'għandux jitnehħa mill-kariga tiegħu hlief mill-Prim Ministru wara indirizz mill-Kamra tad-Deputati li jkollu favur tiegħu il-vot ta' mhux anqas minn żewġ terzi tal-membri tagħha u li jitlob għal dik it-tnehhija minhabba inkapaċità ppruvata li jaqdi l-funzjonijiet tal-kariga tiegħu (kemm jekk għall-mard korporali jew mentali jew għal xi raġuni oħra) jew imġieba hażina ppruvata.

(3) Jekk il-Kummissarju jirriżenja jew jekk il-kariga tiegħu tkun xort'oħra vakanti jew jekk ma jkunx jista' għal liema raġuni tkun iwettaq il-funzjonijiet tal-kariga tiegħu, il-Prim Ministru jista', wara li jkun ikkonsulta mal-Kap ta' l-Oppożizzjoni, jahtar persuna li tkun kwalifikata biex tkun Kummissarju temporanju, jekk tkun kwalifikata biex tinhatar bhala Kummissarju; u kull min jinhatar b'dan il-mod għandu jtemm milli jkun tali Kummissarju meta tinhatar persuna biex timla l-vakanza jew, skond il-każ, meta l-Kummissarju li ma setax iwettaq il-funzjonijiet tal-kariga tiegħu jerga' jibda jwettaq dawk il-funzjonijiet.

40. Il-Kummissarju għandu jkollu dawn il-funzjonijiet li Funzjonijiet tal-Kummissarju.  
 ġejjin:<sup>3</sup>

(a) li jwaqqaf u jzomm registru ta' kull hidma ta' pproċessar skond in-notifikazzjonijiet lilu magħmula kif speċifikat f'dan l-Att;

(b) li jeżerċita kontroll u, sew minn jeddu sew fuq talba ta' suġġett ta' *data*, jivverifika jekk l-ipproċessar ikunx qed isir b'mod konformi mad-disposizzjonijiet ta' dan l-Att jew regolamenti magħmulin tahtu;

(ċ) li jistruwixxi lill-proċessur u l-kontrollur sabiex jiehdu dawk il-miżuri li jistgħu jkunu mehtieġa biex jiġi żgurat li l-ipproċessar ikun konformi ma' dan l-Att jew regolamenti magħmulin tahtu;

(d) li jirċievi rapporti u pretensjonijiet minn suġġetti ta' *data* jew assoċjazzjonijiet li jirrappreżentawhom dwar kontravvenzjonijiet ta' dan l-Att jew ta' regolamenti magħmulin tahtu, jiehu dik l-azzjoni ta' rimedju kif jidhirlu mehtieġ jew kif jista' jkun preskritt taht dan l-Att, u jinforma dawk is-suġġetti ta' *data* jew assoċjazzjonijiet bir-riżultat ta' l-azzjoni;

(e) li johroġ dawk l-ordnijiet li jista' jkun mehtieġ johroġ għall-finijiet ta' dan l-Att;

(f) li jibda proċeduri legali ċivili fil-każijiet fejn ma jkunux ġew jew ma jkunux sejrin ikunu osservati d-disposizzjonijiet ta' dan l-Att u li jirriferrixxi lill-awtorità kompetenti pubblika kull reat kriminali li jista' jiltaqa' miegħu fit-tweġtiq jew minhabba fil-funzjonijiet tiegħu;

(g) li jinkoraġġixxi l-abbozzar ta' kodiċijiet ta' kondotta adatti mis-setturi varji milquta bil-provvedimenti ta' dan l-Att u li jaċċerta ruħu li l-provvedimenti ta' dawk il-kodiċijiet ikunu skond il-provvedimenti ta' dan l-Att u għal dak l-iskop il-Kummissarju jista' jindaga kif ikunu jaħsbuha s-suġġetti ta' *data* jew ir-rappreżentanti tagħhom;

(h) li jiehu dawk il-miżuri li jistgħu jkunu mehtieġa biex il-provvedimenti ta' dan l-Att ikunu magħrufa minn kulhadd u għal dan il-ghan jagħti pariri lil kull persuna fejn mehtieġ;

(i) li jordna l-imblokkar, il-kanċellament jew il-qirda ta' *data*, jimponi projbizzjoni temporanja jew definittiva fuq l-ipproċessar, jew iwissi jew jammonixxi lill-kontrollur;

(j) li jaghti parir lill-Gvern dwar kull miżura legiſlattiva li tkun meħtieġa li tittiehed biex ikun jista' jwettaq il-funzjonijiet tiegħu b'mod xieraq;

(k) li jabbozza rapporti annwali dwar l-attivitajiet tiegħu f'intervalli regolari, mill-inqas darba fis-sena, b'dan li r-rapporti jkunu pubbliċi;

(l) fuq talba tas-suġġett ta' *data*, jivverifika li l-proċessar ta' *data* personali kif imfisser fl-artikolu 23 ta' dan l-Att iħares id-disposizzjonijiet ta' dan l-Att jew xi liġi oħra speċifikata fis-subartikolu (1) ta' l-imsemmi artikolu 23 u f'dan il-każ li s-suġġett ta' *data* jkun hekk informat; u

(m) li jikkollabora ma' l-awtoritajiet ta' sorveljanza ta' pajjiżi oħra safejn ikun meħtieġ għat-tweġiq tad-dmirijiet tiegħu, partikolarment billi jiskambja kull informazzjoni utili, skond kull konvenzjoni li Malta tkun parti fiha jew kull obbligu ieħor internazzjonali ta' Malta.

Dritt li għandu l-Kummissarju li jidhol fl-informazzjoni.

41. (1) Il-Kummissarju jkollu jedd jikseb malli jagħmel talba għaldaqshekk:

(a) dhul fid-*data* personali li jkun ipproċessat; u

(b) informazzjoni dwar, u dokumentazzjoni relattiva għall-ipproċessar ta' *data* personali u s-sigurtà f'dak l-ipproċessar:

Izda meta d-*data* personali jkunu proċessati għall-għan li tkun tista' tiġi mharsa xi obligazzjoni skond il-liġi li l-kontrollur ikun suġġett għaliha, il-Ministru jista' b'regolamenti jippreskrivi regoli u proċeduri għall-iskopijiet ta' l-implimentazzjoni tal-paragrafu (a) tas-subartikolu (1) ta' dan l-artikolu.

(2) Mingħajr preġudizzju għal xi disposizzjoni oħra f'xi liġi oħra, min ma jikkonformax ruħu ma' xi talba legittima rilevanti għal xi investigazzjoni mill-Kummissarju, ikun hati ta' reat kontra dan l-artikolu.

(3) L-investigazzjonijiet dwar l-ipproċessar ta' *data* mfissra fl-artikolu 23 ta' dan l-Att ikunu suġġetti għall-awtorizzazzjoni bil-miktub tal-Kummissarju.

(4) Jekk il-Kummissarju ma jkunx jista', minhabba f'talba taħt is-subartikolu (1) ta' dan l-artikolu, jikseb informazzjoni biżżejjed sabiex jikkonkludi li l-ipproċessar ta' *data* personali jkun wieħed legittimu, il-Kummissarju jista' jipprojbixxi lill-kontrollur ta'

*data* personali milli jipproċessa *data* personali b'xi mod iehor milli bil-*h*zin tagħhom.

(5) Fl-eżerċizzju tal-funzjonijiet tiegħu taht dan l-artikolu, il-Kummissarju jkollu l-istess setgħat li jidhol u jagħmel tftixxija f'kull fond, li huma vestiti fil-pulizija eżekuttiva b'xi ligi li minn żmien għal żmien tkun issehh.

42. (1) Jekk il-Kummissarju jikkonkludi li *data* personali jkunu qegħdin jiġu proċessati jew jistgħu jkunu proċessati b'xi mod illeġittimu, il-Kummissarju għandu jordna rettifika, u jekk ma ssirx ir-rettifika jew jekk il-kwistjoni tkun wahda urgenti, il-Kummissarju jista' jipprojbixxi lill-kontrollur ta' *data* personali milli jkompli jipproċessa *d-data* personali b'xi mod iehor li ma jkunx il-*h*zin ta' dawk id-*data*.

Il-Kummissarju jfittex li jkiseb rettifika.

(2) Jekk il-kontrollur ma jimplementax miżuri ta' sigurtà skond l-artikolu 26 ta' dan l-Att, il-Kummissarju jista' jimponi piena amministrattiva kif stipulat fis-subartikolu li ġej.

(3) F'kull wieħed mill-kazijiet imsemmija fis-subartikoli ta' qabel ta' dan l-artikolu jew fis-subartikolu (2) ta' l-artikolu 41, il-Kummissarju jista', b'ordni bil-miktub, jehtieg lill-kontrollur ta' *data* personali li jhallas dik il-piena amministrattiva li tista' tiġi preskritta, iżda jekk il-kontrollur jonqos milli jhares dik il-htieġa, il-Kummissarju għandu jibda proċedimenti kontra l-kontrollur:

Izda dik il-piena amministrattiva għandha tkun dovuta lill-Kummissarju bhala dejn ċivili, li jikkostitwixxi titolu eżekuttiv għall-finijiet tat-Titolu VII tal-Kodiċi ta' Organizzazzjoni u Proċedura Ċivili bhallikieku l-*h*las ta' l-ammont tal-piena kien ġie ordnat b'deċiżjoni ta' qorti ta' ġurisdiżjoni ċivili.

43. (1) Meta l-Kummissarju jiddeċiedi li *data* personali jkunu ġew ipproċessati illeġittimament, il-Kummissarju għandu b'avviż jordna lill-kontrollur ta' *data* personali biex ihassar id-*data* personali.

Applicazzjoni għal kanċellament.

(2) Jekk il-kontrollur ta' *data* personali jhoss ruħu aggravat bid-deċiżjoni tal-Kummissarju, hu jista', fi żmien hmistax-il ġurnata minn meta jirċievi l-avviż imsemmi fis-subartikolu (1) ta' dan l-artikolu, b'rikors jitlob lill-Qorti ta' l-Appell kif kostitwita skond is-subartikolu (6) ta' l-artikolu 41 tal-Kodiċi ta' Organizzazzjoni u Proċedura Ċivili, biex tirrevoka l-ordni tal-Kummissarju.

Kollaborazzjoni  
ma' awgoritajiet  
ohra.

44. Qabel ma l-Kummissarju jiehu deċiżjoni fl-esercizzju tal-funzjonijiet tiegħu taht il-paragrafi (ċ) jew (e) ta' l-artikolu 40 ta' dan l-Att li tista' b'mod sinjifikattiv tagħmel impatt fuq l-operat ta' xi dipartiment governattiv jew ta' xi impriża pubblika jew privata, dan għandu jikkonsulta lill-parti jew lill-partijiet interessati li jistgħu jintlaqtu direttament bid-deċiżjoni u għandu wkoll jagħti r-ragunijiet għad-deċiżjonijiet tiegħu.

Ġurament ta'  
segretezza.

45. Il-Kummissarju u kull uffiċjal u impjegat tal-Kummissarju għandhom, qabel ma jidhlu fil-karigi tagħhom, jiehd u ġurament ta' lealtà kif hemm imsemmi fl-Iskeda ta' dan l-Att li jwettqu d-dmirijiet tagħhom b'ekwità u imparzjalità u skond id-disposizzjonijiet ta' dan l-Att, u jkunu suġġetti għad-disposizzjonijiet ta' l-Att dwar is-Sigrieti Uffiċjali u l-Kodiċi ta' Etika kif japplikaw għall-uffiċjali pubbliċi. Il-ġurament ta' lealtà għandu jittiehed quddiem l-Avukat Ġenerali.

Kap. 50.

Kumpens għal  
danni.

46. (1) Is-suġġett ta' *data* personali jista', b'ċitazzjoni li tiġi pprezentata quddiem il-qorti kompetenti, jibda azzjoni għad-danni kontra l-kontrollur li jipproċessa *data* bi ksur ta' dan l-Att jew regolamenti magħmulin tahtu.

(2) Azzjoni taht dan l-artikolu għandha tinbeda fi żmien perjodu ta' tna-x-il xahar mid-*data* meta is-suġġett ta' *data* jsir jaf jew seta' jsir jaf b'dan il-ksur, skond liema tiġi l-ewwel.

Pieni.

47. (1) Kull persuna li:

(a) tipprovdi informazzjoni mhux vera lil suġġetti ta' *data* kif hemm preskritt b'dan l-Att, jew fin-notifikazzjoni lill-Kummissarju taht l-artikolu 29 ta' dan l-Att jew lill-Kummissarju meta l-Kummissarju jitlob informazzjoni skond l-artikolu 41 ta' dan l-Att;

(b) tipproċessa *data* personali bi ksur tad-dispożizzjonijiet ta' l-artikoli 12 sa 17 ta' dan l-Att;

(ċ) tittrasferixxi *data* personali lil pajjiż terz bi ksur ta' l-artikoli 27 u 28 ta' dan l-Att;

(d) tonqos milli tagħti notifikazzjoni taht l-artikolu 29 (1) jew skond ir-regolamenti mahruġa taht l-artikolu 34 ta' dan l-Att;

tkun haġja ta' reat u tista' tehel, meta tinsab haġja, multa ta' mhux iżjed minn għaxart elef lira (Lm 10,000) jew prigunerija għal sitt xhur jew għal dik il-multu u prigunerija flimkien.

(2) Kull persuna li tinqos milli thares ordni bil-miktub

biex thallas piena amministrattiva skond id-disposizzjonijiet tas-subartikolu (2) ta' l-artikolu 41 jew is-subartikolu (1) ta' l-artikolu 42 ta' dan l-Att ma tkunx suggetta għall-hlas tal-penali skond id-disposizzjonijiet ta' dan l-artikolu.

48. (1) Ikun hemm Tribunal ta' l-Appelli dwar il-Protezzjoni tad-*Data*, f'dan l-Att imsejjah "it-Tribunal", li jkollu l-funzjonijiet u s-setgħat mogħtija lilu b'dan l-Att jew b'xi liġi oħra.

Tribunal ta' l-Appelli dwar il-Protezzjoni tad-*Data*.

(2) It-Tribunal ikun magħmul minn president u żewġ membri oħra maħtura mill-Ministru.

(3) Il-president ikun persuna li tkun eżerċitat bhala avukat għal mhux inqas minn tnaħ-il sena.

(4) Iż-żewġ membri l-oħra msemmiya fis-subartikolu (2) ikunu persuni li fl-opinjoni tal-Ministru jirrappreżentaw l-interessi ta' sugġetti ta' *data* u ta' kontrolluri ta' *data*.

(5) Il-president u l-membri l-oħra tat-Tribunal għandhom jibqgħu fil-kariga għal dak il-perijodu, li ma jkunx inqas minn tliet snin, kif jista' jiġi stabbilit fil-hatra tagħhom u ma jistgħux jitnehhew mill-kariga waqt il-hatra hlief għal raġunijiet ta' inkapacità ppruvata li jaqdu l-funzjonijiet tal-kariga tagħhom, kemm jekk għal mard fiżiku jew mentali jew għal xi raġuni oħra, jew ta' mġieba hażina ppruvata.

(6) Membru tat-Tribunal jista' jiġi rikuzat jew jastjeni għal xi wahda mir-raġunijiet li għalihom jista' jiġi rikuzat jew jastjeni mhallef skond l-artikolu 734 tal-Kodiċi ta' Organizzazzjoni u Proċedura Ċivili. F'kull każ bhal dak il-Ministru għandu jahtar persuna, li jkollha l-kwalifiki tal-membru rikuzat jew li jastjeni, biex joqgħod bhala membru tat-Tribunal minflok il-membru msemmi.

(7) Membru tal-Kamra tad-Deputati jew ta' xi Kunsill Lokali, Imhalled jew Maġistrat, jew uffiċjal fis-servizz pubbliku għandhom jkunu skwalifikati milli jinhatru jew ikomplu jkunu membri tat-Tribunal għal daqs kemm idumu f'dik il-kariga.

(8) Il-Ministru għandu wkoll jahtar persuna biex tagħmilha ta' segretarju tat-Tribunal.

49. (1) Persuna li thoss ruħha aggravata b'xi deċiżjoni tal-Kummissarju għandu jkollha l-jedd li tagħmel appell minn dik id-deċiżjoni billi tikkomunika bil-miktub lit-Tribunal fi żmien tletin jum minn meta tiġi avzata b'dik id-deċiżjoni.

Appelli.

(2) Jista' jsir appell quddiem it-Tribunal ghal kull wahda mir-raġunijiet li ġejjin:

(a) li jkun sar żball materjali dwar il-fatti;

(b) li kien hemm żball materjali fil-proċedura;

(ċ) li jkun sar żball fil-liġi;

(d) li kien hemm xi illegalità materjali, inkluża l-irragonevolezza jew nuqqas ta' proporzjonalità.

(3) It-Tribunal għandu jsejjes id-deċiżjoni tiegħu fuq raġunijiet u għandu jara li dawk id-deċiżjonijiet jkunu pubbliċi filwaqt li jithallew barra, jekk iqis li jkun hekk xieraq ghal raġunijiet ta' konfidenzjalità, l-ismijiet tal-persuni involuti.

(4) Fid-deċiżjoni ta' appell taht dan l-artikolu t-Tribunal jista':

(i) jiċhad l-appell;

(ii) jannulla d-deċiżjoni,

u meta t-Tribunal jannulla d-deċiżjoni, jista' jirreferi l-kwistjoni lill-awtorità kompetenti flimkien ma' ordni biex din terġa' tikkunsidraha mill-ġdid u tasal ghal deċiżjoni skond ir-riżultanzi tat-Tribunal.

(5) L-effett ta' deċiżjoni li dwarha jkun hemm appell ma għandux, hliċ meta t-Tribunal jew il-Qorti ta' l-Appell, skond il-każ, hekk jordna, jkun sospiż b'konsegwenza ta' l-ghemil ta' dak l-appell.

Setgħat u  
proċedura tat-  
Tribunal.

**50.** (1) It-Tribunal ikun kompetenti li jisma u jiddeċiedi appell li jinġieb quddiemu skond id-dispożizzjonijiet ta' dan l-Att u regolamenti magħmulin tahtu; u bla hsara għall-artikolu 51 ta' dan l-Att, id-deċiżjonijiet tat-Tribunal għandhom ikunu finali u vinkolanti.

(2) Għall-eżerċizzju tal-funzjonijiet tiegħu it-Tribunal jista' jharrek lil kull persuna biex tidher quddiemu sabiex tixhed u ġġib dokumenti magħha; u l-president ikollu s-setgħa li jagħti l-ġurament. It-Tribunal jista' wkoll jahtar periti biex jagħtu parir lit-Tribunal fuq kull suġġett tekniku li jista' jkun relevanti għad-deċiżjoni tiegħu.

(3) Għall-ghanijiet hawn aktar qabel imsemmija, it-Tribunal ikollu l-istess setgħat bħalma jappartjenu lill-Prim'Awla tal-Qorti Ċivili skond il-liġi.

(4) Bla hsara ghal kull ma jista' jiġi preskritt, it-Tribunal jista' jirregola l-proċedura tiegħu stess.

51. Parti f'appell quddiem it-Tribunal li thoss ruhha aggravata b'deċiżjoni tat-Tribunal, jew il-Kummissarju jekk dan iħoss ruhu aggravat b'xi deċiżjoni bhal dik, jistgħu fuq punt ta' liġi jappellaw quddiem il-Qorti ta' l-Appell kif kostitwita skond is-subartikolu (6) ta' l-artikolu 41 tal-Kodiċi ta' Organizzazzjoni u Proċedura Ċivili permezz ta' rikors li jiġi pprezentat fir-reġistru ta' dik il-qorti, fi żmien tletin gurnata minn meta dik id-deċiżjoni tiġi notifikata.

Appell quddiem  
il-Qorti ta' l-  
Appell.

52. (1) L-ispejjeż meħtieġa mill-Kummissarju għall-eżerċizzju tal-funzjonijiet tiegħu taht dan l-Att, kif jistgħu jiġu ffissati mill-Kamra tad-Deputati skond dan l-artikolu, għandhom jiġu addebitati lill-Fond Konsolidat mingħajr ebda ħtieġa ta' xi approprjazzjoni oħra taht dan l-Att.

Disposizzjoni  
finanzjarja.

(2) Meta, fil-kors ta' xi sena finanzjarja, is-somma ffissata mill-Kamra tad-Deputati tkun, fl-opinjoni tal-Kummissarju, insuffiċjenti biex hu jkun jista' jaqdi l-funzjonijiet tiegħu b'mod effiċjenti, il-Kummissarju għandu jipprepara estimi supplimentari biex jiġu kkunsidrati mill-Kamra tad-Deputati.

(3) Il-Kummissarju għandu jara li jiġu ppreparati f'kull sena finanzjarja, u għandu mhux aktar tard minn sitt ġimgħat wara l-gheluq ta' kull sena bhal dik jadotta, estimi tad-dhul u nfiq tal-Kummissarju għas-sena finanzjarja li tiġi minnufih wara:

Izda l-estimi għall-ewwel sena finanzjarja tal-Kummissarju għandhom jiġu ppreparati u adottati f'dak iż-żmien li l-Ministru jista', b'avviż bil-miktub lill-Kummissarju, jispeċifika.

(4) Kopja ta' l-estimi għandha, wara li jiġu adottati mill-Kummissarju, tintbagħat minnufih mill-Kummissarju lill-Ministru u lill-Ministru responsabbli għall-finanzi.

(5) Il-Ministru għandu, ma' l-ewwel opportunità u mhux aktar tard minn sitt ġimgħat minn meta jkun irċieva kopja ta' l-estimi mill-Kummissarju, japprova l-istess b'emendi jew mingħajrhom, wara konsultazzjoni mal-Ministru responsabbli għall-finanzi.

53. (1) Il-Kummissarju għandu jara li jinżammu kontijiet u records oħra scw għar-rigward ta' l-operazzjonijiet tiegħu, u għandu jara li jithejja prospett ta' kontijiet għar-rigward ta' kull sena finanzjarja.

Kontijiet u  
verifika.

(2) Il-kontijiet tal-Kummissarju ghandhom jigu verifikati minn awditur jew awdituri li jinhatru mill-Kummissarju u jigu approvati mill-Ministru:

Izda l-Ministru responsabbli ghall-finanzi jista', wara konsultazzjoni mal-Ministru, jehtieg li l-kotba u l-kontijiet tal-Kummissarju jigu verifikati jew ezaminati mill-Awditur Ġenerali li ghandu ghal dak l-ghan ikollu s-setgħa li jikkontrolla fizikament u jagħmel dawk l-aċċertamenti li huwa jista' jqis li jkunu mehtieġa.

(3) Wara tmiem kull sena finanzjarja, u mhux aktar tard mid-data meta l-estimi tal-Kummissarju jintbagħtu lill-Ministru taht l-artikolu 52(3) ta' dan l-Att, il-Kummissarju ghandu jara li kopja tal-prospett tal-kontijiet debitament verifikat ghandha tintbagħat lill-Ministru u lill-Ministru responsabbli ghall-finanzi flimkien ma' kopja ta' kull rapport magħmul mill-awdituri dwar dak il-prospett jew fuq il-kontijiet tal-Kummissarju.

(4) Il-Ministru ghandu, ma' l-cwvel opportunità u mhux aktar tard minn tmien ġimghat wara li jkun irċieva kopja ta' kull prospett u rapport bhal dak, jew, jekk f'xi żmien waqt dak il-perjodu l-Kamra tad-Deputati ma tkunx qieghda f'sessjoni, fi żmien tmien ġimghat mill-bidu tas-sessjoni li minnufih imiss wara, jara li kopja ta' kull prospett u rapport bhal dak jitqieghdu fuq il-Mejda tal-Kamra tad-Deputati.

(5) Il-Kummissarju ghandu, mhux aktar tard minn sitt ġimghat mit-tmiem ta' kull sena finanzjarja, jagħmel u jibgħat lill-Ministru u lill-Ministru responsabbli ghall-finanzi rapport li b'mod ġenerali jittratta l-attivitajiet tal-Kummissarju waqt is-sena finanzjarja u li jkun fih dik l-informazzjoni rigward il-proċeduri u l-policy tal-Kummissarju kif xi wiehed mill-Ministri fuq imsemmija jista' minn żmien għal żmien jehtieg. Il-Ministru ghandu, ma' l-cwvel opportunità u mhux aktar tard minn tmien ġimghat wara li jkun irċieva kopja ta' kull rapport bhal dak, jew, jekk f'xi żmien waqt dak il-perjodu l-Kamra tad-Deputati ma tkunx qieghda f'sessjoni, fi żmien tmien ġimghat mill-bidu tas-sessjoni li minnufih imiss wara, jara li kopja ta' kull rapport bhal dak titqieghed fuq il-Mejda tal-Kamra tad-Deputati.

#### Taqsim IX - Ġenerali

54. Il-Ministru jista', wara konsultazzjoni mal-Kummissarju, jippreskrivi regolamenti sabiex id-dispożizzjonijiet ta' dan l-Att ikunu jistgħu jitwettqu aħjar, u mingħajr preġudizzju għall-ġeneralità ta' dak hawn aktar qabel imsemmi huwa jista' b'mod partikolari jippreskrivi regolamenti li jirrigwardaw:-

Setgħa ta' għemil ta' regolamenti.

(a) il-każijiet li fihom ikun permess l-ipproċessar ta' *data* personali;

(b) il-htigiet li jkunu imposti fuq il-kontrollur meta jkun qed jipproċessa *data* personali;

(ċ) x'għandu jkun fiha notifikazzjoni jew applikazzjoni lil kontrollur;

(d) liema informazzjoni għandha tiġi pprovduta lis-suġġett ta' *data* u kif għandha tiġi pprovduta dik l-informazzjoni;

(e) in-notifikazzjoni lill-Kummissarju u l-proċedura meta dik l-informazzjoni notifikata tkun giet mibdula;

(f) regoli u proċeduri li għandhom x'jaqsmu ma' l-aċċess li l-Kummissarju jagħmel ta' *data* miżmuma f'dawk il-każijiet meta l-kontrollur jipproċessa *data* bil-għan li jhares xi obligazzjoni imposta skond il-liġi;

(g) il-kwalifiki mehtieġa sabiex persuna tiġi mahtura bhala rappreżentant ta' *data* personali;

(h) l-inqas garanziji li jiġu provduti mill-korpi ta' persuni jew entijiet ohra msemmija fl-artikolu 14 ta' dan l-Att fl-ipproċessar ta' *data* personali;

(i) id-drittijiet li jistgħu jingabru mill-Kummissarju;

(j) il-pieni amministrattivi li jistgħu jiġu imposti mill-Kummissarju u l-kontravvenzjonijiet amministrattivi li dwarhom jistgħu jiġu imposti dawk il-pieni; iżda dawk il-pieni ma għandhomx ikunu f'ammont iżjed minn elf lira (Lm 1,000);

(k) il-pieni li jistgħu jiġu imposti taht dan l-Att;

(l) biex jiġu stabbiliti regoli, proċeduri, formalitajiet u termini ta' żmien dwar kull haġa li hemm provdut għaliha f'dan l-Att;

(m) l-estensjoni ta' l-applikazzjoni ta' dan l-Att għal xi attività jew settur partikolari u biex jipprovdi għall-mod kif għandha tiġi implimentata l-protezzjoni tad-*data* f'setturi speċifiċi jew dwar attivitajiet speċifiċi; u

(n) dwar kull haġa li tista' tiġi preskritta taht xi wahda mid-disposizzjonijiet ta' dan l-Att.

It-test Ingliz  
ghandu  
jipprevali.

Emenda ta' l-  
Att ta' l-2000  
ghat-Twaqqif ta'  
Awtorità ta'  
Malta dwar il-  
Komunikazzjoni.

**55.** Fil-każ ta' kunflitt bejn it-test Malti u dak Ingliz ta' dan l-Att, jipprevali t-test Ingliz.

**56.** L-Ewwel Skeda ta' l-Att ta' l-2000 ghat-Twaqqif ta' Awtorità ta' Malta dwar il-Komunikazzjoni, ghandha tiġi emendata kif ġej:

- (a) il-paragrafu 2 tagħha għandu jiġi mhassar; u
- (b) il-paragrafu 3 tagħha għandu jiġi enumerat mill-ġdid bhala l-paragrafu 2.

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## SKEDA

### Artikolu 45

#### Ġuramenti ta' lealtà

Jiena ..... nahlef / solennement niddikjara illi bil-fedeltà u onestà kollha naqdi d-dmir tiegħi bhala (Kummissarju għall-Protezzjoni tad-Data / uffiċjal tal-Kummissarju għall-Protezzjoni tad-Data / impjegat tal-Kummissarju għall-Protezzjoni tad-Data) skond l-Att dwar il-Protezzjoni u l-Privatezza tad-Data u skond il-liġijiet ta' Malta, mingħajr biżà jew favur. (Hekk Alla jghinni.).

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Mghoddi mill-Kamra tad-Deputati fis-Seduta Nru. 669 tat-12 ta' Diċembru, 2001.

ANTON TABONE  
*Speaker*

RICHARD J. CAUCHI  
*Skrivan tal-Kamra tad-Deputati*

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## **DATA PROTECTION ACT, 2001**

### **Arrangement of articles**

#### Articles

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37. Independence of functions
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39. Tenure of office
40. Functions of the Commissioner
41. Commissioner's right of access to information
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49. Appeals
50. Powers and procedure of the Tribunal
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**Part IX - General**

54. Power to make regulations
55. English text to prevail
56. Amendment to the Malta Communications Authority Act, 2000

**Schedule**

Oaths of Office

I assent.

(L.S.)

**GUIDO DE MARCO**  
President

14th December, 2001

**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 or ancillary thereto.*

BE IT ENACTED by the President, by and with the advice and consent of the House of Representatives, in this present Parliament assembled, and by the authority of the same, as follows:-

**Part I - Preliminary**

Short title and commencement.

**1.** (1) The short title of this Act is the Data Protection Act, 2001.

(2) This Act shall come into force on such date as the Minister may by notice in the Gazette appoint and different dates may be so appointed for different provisions or different purposes of this Act and such purposes may include the applicability of such provisions in relation to such category or categories of processing of personal data as may be stipulated in such notice.

Interpretation.

**2.** In this Act, unless the context otherwise requires:

“blocking” in relation to personal data, means the operation to suspend modification of data or suspend or restrict the provision of information to a third party when such provision is so suspended or restricted in accordance with the provisions of this Act;

“Commissioner” means the Data Protection Commissioner appointed under article 36 of this Act and includes any officer or employee of the Commissioner authorised by him in that behalf;

“consent” means any freely given specific and informed indication of the wishes of the data subject by which he signifies his agreement to personal data relating to him being processed;

“controller of personal data” or “controller” means a person who alone or jointly with others determines the purposes and means of the processing of personal data;

“data subject” means a natural person to whom the personal data relates;

“identity card number” means the identifying number contained in an identity card as provided in the Identity Card Act;

“Minister” means the Minister responsible for data protection;

“personal data” means any information relating to an identified or identifiable natural person; an identifiable person is one who can be identified, directly or indirectly, in particular by reference to an identification number or to one or more factors specific to his physical, physiological, mental, economic, cultural or social identity;

“personal data filing system” or “filing system” means any structured set of personal data which is accessible according to specific criteria, whether centralised, decentralised or dispersed on a functional or geographical basis;

“personal data representative” means a person, appointed by the controller of personal data, who shall independently ensure that the personal data is processed in a correct and lawful manner;

“prescribed” means prescribed by regulations made by the Minister in accordance with the provisions of this Act, after consultation with the Commissioner;

“processing” and “processing of personal data” mean any operation or set of operations which is taken in regard to personal data, whether or not it occurs by automatic means, and includes the collection, recording, organisation, storage,

adaptation, alteration, retrieval, gathering, use, disclosure by transmission, dissemination or otherwise making information available, alignment or combination, blocking, erasure or destruction of such data;

“processor” means a person who processes personal data on behalf of a controller;

“recipient” means a person to whom personal data is provided; however, when personal data is provided in order that the Commissioner may perform such supervision, control or audit that it is under a duty to attend to, the Commissioner shall not be regarded as a recipient;

“sensitive personal data” means personal data that reveals race or ethnic origin, political opinions, religious or philosophical beliefs, membership of a trade union, health, or sex life;

“third country” means a state that is not included in an Order issued for the purpose of determining which states are not to be considered as a third country for the purposes of this Act as may be prescribed from time to time under this Act;

“third party” means a person other than the data subject, the controller of personal data, the personal data representative, the processor and such persons who under the direct responsibility of the controller of personal data or the processor are authorised to process personal data.

## **Part II - Applicability**

Mode of Processing.

3. The provisions of this Act shall apply to the processing of personal data, wholly or partly, by automated means and to such processing other than by automated means where such personal data forms part of a filing system or is intended to form part of a filing system.

Territorial scope.

4. (1) This Act shall also apply:

(a) to the processing of personal data carried out in the context of the activities of an establishment of a controller in Malta or in a Maltese Embassy or High Commission abroad;

(b) to the processing of personal data where the controller is established in a third country provided that the equipment used for the processing of the personal data is situated in Malta.

(2) Without prejudice to the following proviso, the

provisions of paragraph (b) of subarticle (1) of this article shall not apply if the equipment is used only for purposes of transit of information between a third country and another such country:

Provided that the controller in such a case shall appoint a person established in Malta to act as his representative.

5. This Act shall not apply -

(a) to processing of personal data where such processing is undertaken by a natural person in the course of a purely personal activity; and

(b) to processing operations concerning public security, defence, State security (including the economic well being of the State when the processing operation relates to security matters) and activities of the State in areas of criminal law:

Non-  
applicability of  
the Act.

Provided that the Minister may, after consultation with the Commissioner and with the concurrence of the Minister responsible for the Police, by regulations make provisions extending the application of this Act or adding to or derogating from the provisions of this subarticle to enforce the provisions of any international obligation, convention or treaty relating to the protection of personal data, to which Malta is a party, or may become a party.

6. (1) Subject to the following provisions of this article, nothing in this Act shall prejudice the application of the provisions of the European Convention Act relating to freedom of expression, or the provisions of the Press Act relating to journalistic freedoms.

Freedom of  
expression  
Cap. 319.  
Cap. 248.

(2) Notwithstanding the provisions of subarticle (1) of this article the Commissioner shall encourage the drawing up of a suitable code of conduct to be applicable to journalists and to the media to regulate the processing of any personal data and the code of conduct shall provide appropriate measures and procedures to protect the data subject, having regard to the nature of the data.

(3) In the absence of such code of conduct, the Commissioner may establish specific measures and procedures to protect the data subjects; in such a case journalists and the media are to comply with measures and procedures so established.

(4) If the measures and procedures contained in the code of conduct applicable to journalists and the media in terms of subarticle (2) or (3) are not complied with, the Commissioner may prohibit any person concerned from carrying out any processing, in whole or in part, and order the blocking of data when, having regard

to the nature of the data, the means of the processing or the effects that it may have, there is a serious risk of a relevant damage to one or more data subjects.

### **Part III - Requirements and Criteria for Processing**

Requirements  
for processing.

7. The controller shall ensure that:
  - (a) personal data is processed fairly and lawfully;
  - (b) personal data is always processed in accordance with good practice;
  - (c) personal data is only collected for specific, explicitly stated and legitimate purposes;
  - (d) personal data is not processed for any purpose that is incompatible with that for which the information is collected;
  - (e) personal data that is processed is adequate and relevant in relation to the purposes of the processing;
  - (f) no more personal data is processed than is necessary having regard to the purposes of the processing;
  - (g) personal data that is processed is correct and, if necessary, up to date;
  - (h) all reasonable measures are taken to complete, correct, block or erase data to the extent that such data is incomplete or incorrect, having regard to the purposes for which they are processed;
  - (i) personal data is not kept for a period longer than is necessary, having regard to the purposes for which they are processed.

Processing for  
historical  
purposes, etc.

8. The processing of personal data for historical, statistical or scientific purposes shall not be regarded as incompatible with the purposes for which the information was collected:

Provided that the Controller shall ensure that:

- (a) the appropriate safeguards are in place where personal data processed for historical, statistical or scientific purposes may be kept for a period longer than is necessary having regard to the purposes for which they are processed; or
- (b) personal data kept for historical, statistical or

scientific purposes shall not be used for any decision concerning a data subject.

**9.** Personal data may be processed only if:

Criteria for processing.

(a) the data subject has unambiguously given his consent; or

(b) processing is necessary for the performance of a contract to which the data subject is party or in order to take steps at the request of the data subject prior to entering into a contract; or

(c) processing is necessary for compliance with a legal obligation to which the controller is subject; or

(d) processing is necessary in order to protect the vital interests of the data subject; or

(e) processing is necessary for the performance of an activity that is carried out in the public interest or in the exercise of official authority vested in the controller or in a third party to whom the data is disclosed; or

(f) processing is necessary for a purpose that concerns a legitimate interest of the controller or of such a third party to whom personal data is provided, except where such interest is overridden by the interest to protect the fundamental rights and freedoms of the data subject and in particular the right to privacy.

**10.** (1) Personal data may not be processed for purposes concerning direct marketing, if the data subject gives notice to the controller of personal data that he opposes such processing.

Direct marketing.

(2) The controller shall appropriately inform the data subject of his right to oppose, at no cost, the processing referred to subarticle (1) of this article.

**11.** (1) In those cases where the processing of personal data is made in terms of paragraphs (e) and (f) of article 9, the data subject, except where otherwise provided in any other law, shall be entitled to object at any time to the controller on compelling legitimate grounds to the processing of such data.

Revocation of consent.

(2) Saving the provisions of article 10, where the processing of personal data takes place with the consent of the data subject, the data subject may at any time revoke his consent for

compelling legitimate grounds relating to his particular situation.

Sensitive  
personal data.

**12.** (1) Subject to the other provisions of this Act no person shall process sensitive personal data:

Provided that such personal data may be processed in those cases provided for under subarticle (2) of this article and under articles 13 to 16 of this Act or as may be prescribed by the Minister having regard to an important public interest.

(2) Sensitive personal data may be processed if the data subject:

- (a) has given his explicit consent to processing; or
- (b) has made the data public.

Necessary  
processing.

**13.** Sensitive personal data may be processed if appropriate safeguards are adopted and the processing is necessary in order that:

(a) the controller will be able to comply with his duties or exercise his rights under any law regulating the conditions of employment; or

(b) the vital interests of the data subject or of some other person will be able to be protected and the data subject is physically or legally incapable of giving his consent; or

(c) legal claims will be able to be established, exercised or defended.

#### **Part IV - Processing for Specific Purposes**

Processing by  
foundations, etc.

**14.** Any body of persons or other entity not being a commercial body or entity, with political, philosophical, religious or trade union objects may, in the course of its legitimate activities and with appropriate guarantees, process sensitive personal data concerning the members of the respective body or entity and such other persons who by reason of the objects of the body or entity have regular contact therewith:

Provided that sensitive personal data may be provided to a third party only if the data subject explicitly consents thereto.

Processing  
concerning  
health or  
medical  
purposes.

**15.** Sensitive personal data may be processed for health and hospital care purposes, provided that it is necessary for:

- (a) preventive medicine and the protection of public health;
- (b) medical diagnosis;
- (c) health care or treatment; or
- (d) management of health and hospital care services:

Provided that the data is processed by a health professional or other person subject to the obligation of professional secrecy.

For the purposes of this article "health professional" means a person in possession of a warrant to exercise a profession regulated by the Medical and Kindred Professions Ordinance and any person acting under the personal direction and supervision of such person.

**16.** (1) Sensitive personal data may be processed for research and statistics purposes, provided that the processing is necessary as stipulated in subarticle (e) of article 9. Processing concerning research and statistics

(2) If the processing referred to in subarticle (1) above has been approved:

- (a) in the case of statistics, by the Commissioner himself;
- (b) in the case of research, by the Commissioner on the advice of a research ethics committee of an institution recognised by the Commissioner for the purposes of this paragraph;

the provisions of subarticle (1) of this article shall be deemed to be satisfied.

(3) Personal data may be provided to be used for the purposes referred to in subarticle (1) above, unless otherwise provided by applicable rules on secrecy and confidentiality.

**17.** (1) Data relating to offences, criminal convictions or security measures may only be processed under the control of a public authority. Processing concerning legal offences.

(2) For this purpose, the Minister may by regulations authorise any person to process the data referred to in subarticle (1) above subject to such suitable specific safeguards as may be prescribed:

Provided that a complete register of criminal convictions may only be kept under the control of a public authority.

Processing of  
identity card  
number.

**18.** The identity card number may, in the absence of consent, only be processed when such processing is clearly justified having regard to:

- (a) the purpose of the processing;
- (b) the importance of a secure identification;
- (c) some other valid reason as may be prescribed.

#### **Part V - Data Collection and Right of Access**

Information to  
data subject.

**19.** The Controller or any other person authorised by him in that behalf must provide a data subject from whom data relating to the data subject himself are collected, with at least the following information, except, where the data subject already has it:

- (a) the identity and habitual residence or principal place of business of the controller and of any other person authorised by him in that behalf, if any;
- (b) the purposes of the processing for which the data are intended; and
- (c) any further information relating to matters such as:
  - (i) the recipients or categories of the recipients of data;
  - (ii) whether the reply to any questions made to the data subject is obligatory or voluntary, as well as the possible consequence of failure to reply; and
  - (iii) the existence of the right to access, the right to rectify, and, where applicable, the right to erase the data concerning him,

and, insofar as such further information is necessary, having regard to the specific circumstances in which the data is collected, to guarantee fair processing in respect of the data subject.

Data collected  
from other  
sources.

**20.** (1) Where the data have not been obtained from the data subject, the controller or any other person authorised by him in that behalf shall provide the data subject with at least the following information, except where the data subject already has it:

- (a) the identity and habitual residence or principal place of business of the controller and of any other person authorised by him in that behalf;
- (b) the purposes of the processing;
- (c) any further information including:
  - (i) the categories of data concerned;
  - (ii) the recipients or categories of recipients;
  - (iii) the existence of the right of access, the right to rectify, and, where applicable, the right to erase the data concerning him;

and insofar as such further information is necessary, having regard to the specific circumstances in which the data is processed, to guarantee fair processing in respect of the data subject.

(2) The information referred to in subarticle (1) shall be provided at the time of undertaking the recording of personal data or, if a disclosure to a third party is envisaged, not later than the time when the data are first disclosed.

(3) Information referred to in subarticle (1) need not be provided if there are provisions concerning the registration or disclosure of any such personal data in any other law and appropriate safeguards are adopted.

(4) Information under subarticle (1) need not be provided if the personal data is required:

- (a) for processing for statistical purposes;
- (b) for purposes of historical or scientific research;

and insofar as the provision of such information proves impossible or would involve a disproportionate effort.

**21.** (1) The controller of personal data at the request of the data subject shall provide to the data subject, without excessive delay and without expense, written information as to whether personal data concerning the data subject is processed: Right of access

Provided that a request by the data subject under this subarticle shall only be made by the data subject at reasonable intervals.

(2) If such data is processed the data controller shall provide to the data subject written information in an intelligible form about:

- (i) actual information about the data subject which is processed;
- (ii) where this information has been collected;
- (iii) the purpose of the processing;
- (iv) to which recipients or categories of recipients the information is disclosed; and
- (v) knowledge of the logic involved in any automatic processing of data concerning the data subject.

(3) An application under subarticle (1) hereof shall be made in writing to the controller of personal data and is to be signed by the data subject.

Rectification.

**22.** (1) The controller shall be liable at the request of the data subject to immediately rectify, block or erase such personal data that has not been processed in accordance with this Act or with regulations made under this Act.

(2) The controller shall notify the third party to whom the data has been disclosed about the measures undertaken under subarticle (1) of this article:

Provided that no such notification need be provided if it is shown to be impossible or it will involve a disproportionate effort.

#### **Part VI - Exemptions, Restrictions and other Measures**

Exemptions and restrictions in case of secrecy, etc.

**23.** (1) The provisions of articles 7, 19, 20(1), 21 and 35 of this Act shall not apply when a law specifically provides for the provision of information as a necessary measure in the interest of:

- (a) national security;
- (b) defence;
- (c) public security;
- (d) the prevention, investigation, detection and prosecution of criminal offences, or of breaches of ethics for regulated professions;

(e) an important economic or financial interest including monetary, budgetary and taxation matters;

(f) a monitoring, inspection or regulatory function connected, even occasionally, with the exercise of official authority referred to in paragraphs (c), (d) and (e) of this subarticle; or

(g) such information being prejudicial to the protection of the data subject or of the rights and freedoms of others.

(2) The provisions of article 21 of this Act shall not apply when data is processed solely for purposes of scientific research or is kept in personal form for a period which does not exceed the period necessary for the sole purpose of compiling statistics:

Provided that the provisions of this subarticle shall not apply where the data is used for taking measures or decisions regarding any particular individual or where there is a risk of breaching the privacy of the data subject.

**24.** (1) If a decision is based solely on automated processing of such personal data as is intended to assess the qualities of a natural person, and such decision has a legal or other significant effect for that person, that person shall have the right to request that the decision be reconsidered other than in a manner based solely on automated processing, and such reconsideration shall be obligatory on the person making such decision.

Decisions based on automated processing.

(2) The provisions of subarticle (1) of this article shall not apply where the decision is taken in the course of the entering into or performance of a contract with the data subject, provided that the request for the entering into or the performance of the contract, lodged by the data subject, has been satisfied or that there are suitable measures to safeguard his legitimate interests such as the right to be heard.

(3) A person who is the subject of a decision referred to in subarticle (1) of this article shall be entitled to obtain upon representation information from the controller about what has controlled the automated processing that resulted in the decision:

Provided that information made available by the controller shall be subject to the provisions of article 21 of this Act.

**25.** (1) Any person acting under the authority of the controller or of the processor, including the processor himself, who

Persons authorised to process data.

has access to personal data may only process personal data in accordance with instructions from the controller unless the person is otherwise required to do so by law.

(2) The carrying out of processing by way of a processor is to be governed by a contract or other legally binding instrument in a written or in an equivalent form binding the processor to the controller and stipulating in particular that the processor:

(a) shall act only on instructions from the controller;

(b) shall take those measures referred to in subarticle (1) of article 26 of this Act.

Security  
measures  
relating to  
processing.

**26.** (1) The controller shall implement appropriate technical and organisational measures to protect the personal data that is processed against accidental destruction or loss or unlawful forms of processing thereby providing an adequate level of security that gives regard to the:

(a) technical possibilities available;

(b) cost of implementing the security measures;

(c) special risks that exist in the processing of personal data;

(d) sensitivity of the personal data being processed.

(2) If the controller engages a processor, the controller shall ensure that the processor:

(a) can implement the security measures that must be taken;

(b) actually takes the measures so identified by the controller.

Transfer of data  
to a third  
country.

**27.** (1) Without prejudice to the provisions of article 28 of this Act, the transfer to a third country of personal data that is undergoing processing or intended processing, may only take place subject to the provisions of this Act and provided that the third country to which the data is transferred ensures an adequate level of protection.

(2) The adequacy of the level of protection of a third country shall be assessed in the light of all the circumstances surrounding a data transfer operation or a set of data transfer

operations; particular consideration shall be given to the nature of the data, the purpose and duration of the proposed processing operation or operations, the country of origin and country of final destination, the rules of law, both general and sectoral, in force in the third country in question and the professional rules and security measures which are complied with in that country.

(3) It is for the Commissioner to decide whether a third country ensures an adequate level of protection.

(4) The transfer of personal data to a third country that does not ensure adequate protection is prohibited.

**28.** (1) For the purpose of implementing any international convention to which Malta is a party or any other international obligation of Malta, the Minister may by Order designate that the transfer of personal data to any country listed in the said Order shall not, notwithstanding the provisions of this Act or any other law, be restricted on grounds of protection of privacy. In making such Order the Minister may include conditions and restrictions provided for in any said international instrument.

Exemptions  
from the  
prohibition of  
the transfer of  
data to third  
country

(2) A transfer of personal data to a third country that does not ensure an adequate level of protection within the meaning of article 27(2) may be effected by the controller if the data subject has given his unambiguous consent to the proposed transfer or if the transfer -

(a) is necessary for the performance of a contract between the data subject and the controller or the implementation of precontractual measures taken in response to the data subject's request;

(b) is necessary for the performance or conclusion of a contract concluded or to be concluded in the interests of the data subject between the controller and a third party;

(c) is necessary or legally required on public interest grounds, or for the establishment, exercise or defence of legal claims;

(d) is necessary in order to protect the vital interests of the data subject; or

(e) is made from a register that according to laws or regulations is intended to provide information to the public and which is open to consultation either by the public in general or by any person who can demonstrate legitimate interest.

provided that the conditions laid down in law for consultation are fulfilled in the particular case.

(3) Without prejudice to subarticle (1) the Commissioner may authorise a transfer or a set of transfers of personal data to a third country that does not ensure an adequate level of protection within the meaning of article 27(2):

Provided that the controller provides adequate safeguards, which may result particularly by means of appropriate contractual provisions, with respect to the protection of the privacy and fundamental rights and freedoms of individuals and with respect to their exercise.

#### **Part VII - Notification and other Procedures**

Obligation for notification

**29.** (1) The controller shall notify the Commissioner before carrying out any wholly or partially automated processing operation or set of such operations intended to serve a single purpose or several related purposes.

(2) The Minister may prescribe on any matter relating to the form of notification to be made under this subarticle in respect of -

(a) processing whose sole purpose is the keeping of a register which according to laws or regulations is intended to provide information to the public and which is open to consultation either by the public in general or by any person demonstrating a legitimate interest; and

(b) processing operations referred to in article 14.

(3) The notification referred to in subarticle (1) above must specify:

(a) the name and address of the data controller and of any other person authorised by him in that behalf, if any;

(b) the purpose or purposes of the processing;

(c) a description of the category or categories of data subject and of the data or categories of data relating to them;

(d) the recipients or categories of recipient to whom the data might be disclosed;

(e) proposed transfers of data to third countries; and

(f) a general description allowing a preliminary assessment to be made of the appropriateness of the measures taken pursuant to article 26 of this Act to ensure security of processing:

Provided that the controller shall notify the Commissioner of any changes affecting the information referred to under this subarticle and the Minister may prescribe any matter related to the form of such notification.

(4) The Commissioner may allow the simplification of or the exemption from the notification obligations provided for under this Part of this Act only in respect of categories of processing operations -

(i) which are unlikely, due account being taken of the data being processed, to prejudice the rights and freedoms of data subjects, and

(ii) in respect of which the Commissioner specifies the purposes of the processing, the data or categories of data being processed, the category or categories of data subjects affected by such processing, the recipients or categories of recipients to whom the data is to be disclosed and the length of time for which the data is to be stored.

**30.** (1) The controller shall notify the Commissioner on the appointment or removal of a personal data representative.

Derogation from the obligation for notification.

(2) Where a personal data representative has been so appointed the notification required in terms of article 29(1) and (3) shall not be required.

**31.** (1) The personal data representative shall have the function of independently ensuring that the controller processes personal data in a lawful and correct manner and in accordance with good practice and in the event of the personal data representative identifying any inadequacies, he shall bring these to the attention of the controller.

Function of data representative.

(2) If the personal data representative has reason to suspect that the controller has contravened the provisions applicable for processing personal data and if rectification is not implemented as soon as practicable after such contravention has been pointed out, the personal data representative shall notify this situation to the Commissioner.

(3) The personal data representative shall also consult

with the Commissioner in the event of doubt about how the rules applicable to processing of personal data are to be applied.

Register of processing subject to notification.

**32.** The personal data representative shall maintain a register of the processing that the controller implements and which would have been subject to the duty of notification if the representative had not been appointed. The register shall comprise at least the information that a notification under article 29 of this Act would have contained.

Assistance to data subject.

**33.** The personal data representative shall assist the data subject to exercise his rights under this Act.

Mandatory notification.

**34.** (1) (a) Processing of personal data that involves particular risks of improper interference with the rights and freedoms of data subjects shall be submitted for prior checking to the Commissioner.

(b) The Minister may by regulation define the processing operations involving particular risks as referred to in paragraph (a) and prescribe rules in relation thereto.

(2) The prior checking referred to in subarticle (1) shall be carried out by the Commissioner following receipt of a notification from either the controller or the personal data representative:

Provided that in the case of doubt, the controller or personal data representative shall consult the Commissioner.

Register of processing operations.

**35.** (1) The Commissioner shall maintain a register of processing operations notified in accordance with subarticle (1) of article 29 of this Act. The register shall contain the information listed in paragraphs (a) to (e) of subarticle (3) of article 29 of this Act.

(2) The controller or the personal data representative, if so instructed by the controller, shall provide at least the information referred to in paragraphs (a) to (e) of subarticle (3) of article 29 to any person who requests it expeditiously and in an appropriate manner about such automated or other processing of personal data that have not been notified to the Commissioner under subarticle (3) of article 29 of this Act:

Provided that the provisions of this subarticle shall not apply to the information specified in paragraph (a) of subarticle (2) of article 29 of this Act.

### Part VIII - The Data Protection Commissioner

**36.** (1) There shall be a Data Protection Commissioner who shall be appointed by the Prime Minister after he has consulted the Leader of the Opposition. Data Protection Commissioner.

(2) A person shall not be qualified to hold office as Commissioner if he:

(a) is a Minister, Parliamentary Secretary, or a Member of the House of Representatives; or

(b) is a judge or magistrate of the courts of justice; or

(c) is an officer in the public service; or

(d) is a member of a local council; or

(e) has a financial or other interest in any enterprise or activity which is likely to affect the discharge of his functions as a Commissioner:

Provided that the disqualification of a person under this paragraph may be waived if such person declares the interest and such declaration and waiver are published in the Gazette.

**37.** In the exercise of his functions under this Act the Commissioner shall act independently and shall not be subject to the direction or control of any other person or authority. Independence of functions.

**38.** (1) The Commissioner shall have a distinct legal personality and shall be capable, subject to the provisions of this Act, of entering into contracts, of acquiring, holding and disposing of any kind of property for the purposes of his functions, of suing and being sued, and of doing all such things and entering into all such transactions as are incidental or conducive to the exercise or performance of his functions under this Act. Legal personality and representation of the Commissioner.

(2) Any document purporting to be an instrument made or issued by the Commissioner and signed by him shall be received in evidence and shall, until the contrary is proved, be deemed to be an instrument made or issued by the Commissioner.

**39.** (1) The Commissioner shall hold office for a term of five years and shall be eligible for reappointment on the expiration of his term of office. Tenure of office.

(2) The Commissioner shall not be removed from his office except by the Prime Minister upon an address of the House of

Representatives supported by the votes of not less than two thirds of all the members thereof and praying for such removal on the ground of proved inability to perform the functions of his office (whether arising from infirmity of body or mind or any other cause) or proved misbehaviour.

(3) If the Commissioner resigns or if his office is otherwise vacant or if the Commissioner is for any reason unable to perform the functions of his office, the Prime Minister shall, after he has consulted the Leader of the Opposition, appoint a person who is qualified to be appointed as a temporary Commissioner, if such person is qualified to be a Commissioner; and any person so appointed shall cease to be such a Commissioner when a Commissioner is appointed to fill the vacancy or, as the case may be, when the Commissioner who was unable to perform the functions of his office resumes those functions.

Functions of the  
Commissioner.

**40.** The Commissioner shall have the following functions:

(a) to create and maintain a public register of all processing operations according to notifications submitted to him as specified in this Act;

(b) to exercise control and, either of his own motion or at the request of a data subject, verify whether the processing is carried on in accordance with the provisions of this Act or regulations made thereunder;

(c) to instruct the processor and controller to take such measures as may be necessary to ensure that the processing is in accordance with this Act or regulations made thereunder;

(d) to receive reports and claims from data subjects or associations representing them on violations of this Act or regulations made thereunder, to take such remedial action as he deems necessary or as may be prescribed under this Act, and to inform such data subjects or associations of the outcome;

(e) to issue such directions as may be required of him for the purposes of this Act;

(f) to institute civil legal proceedings in cases where the provisions of this Act have been or are about to be violated and to refer to the competent public authority any criminal offence encountered in the course of or by reason of his functions;

(g) to encourage the drawing up of suitable codes of conduct by the various sectors affected by the provisions of this

Act and to ascertain that the provisions of such codes are in accordance with the provisions of this Act and for such purpose the Commissioner may seek the views of data subjects or their representatives;

(h) to take such measures as may be necessary so as to bring to the knowledge of the general public the provisions of this Act and for such purpose to give advice to any person where it is required;

(i) to order the blocking, erasure or destruction of data, to impose a temporary or definitive ban on processing, or to warn or admonish the controller;

(j) to advise the Government on any legislative measures that are required to be taken to enable him carry out his functions appropriately;

(k) to draw up annual reports of his activities at regular intervals, at least once a year, which reports shall be made public;

(l) at the request of a data subject to verify that the processing of the personal data described in article 23 of this Act is compliant with the provisions of this Act or of any law as specified in subarticle (1) of the said article 23 and in such a case the data subject shall be informed accordingly; and

(m) to collaborate with supervisory authorities of other countries to the extent necessary for the performance of his duties, in particular by exchanging all useful information, in accordance with any convention to which Malta is a party or other any international obligation of Malta.

**41.** (1) The Commissioner shall be entitled to obtain on request: Commissioner's right of access to information.

(a) access to the personal data that is processed, and;

(b) information about and documentation of the processing of personal data and security of such processing:

Provided that where the personal data is processed for the purpose of compliance with a legal obligation to which the controller is subject, the Minister may by regulation prescribe rules and procedures for the purposes of the implementation of paragraph (a) of subarticle (1) of this article.

(2) Without prejudice to any other provision of any other law, any person who does not comply with any lawful request relevant to an investigation by the Commissioner shall be guilty of an offence against this article.

(3) The investigations on the data processing described in article 23 of this Act are subject to the written authorisation of the Commissioner.

(4) If the Commissioner cannot, pursuant to a request under subarticle (1) of this article, obtain sufficient information in order to conclude that the processing of personal data is lawful, the Commissioner may prohibit the controller of personal data from processing personal data in any other manner than by storing them.

(5) In the exercise of his functions under this article the Commissioner shall have the same powers to enter and search any premises as are vested in the executive police by any law as may from time to time be in force.

Commissioner  
to seek  
rectification.

**42.** (1) If the Commissioner concludes that personal data is processed or may be processed in an unlawful manner, the Commissioner shall order rectification, and if rectification is not effected or if the matter is urgent, the Commissioner may prohibit the controller of personal data to continue processing the personal data in any manner other than to store that data.

(2) If the controller does not implement security measures in terms of article 26 of this Act, the Commissioner may impose an administrative fine as stipulated in the following subarticle.

(3) In any of the cases mentioned in the preceding subarticles of this article or in subarticle (2) of article 41, the Commissioner may, by order in writing, require the controller of personal data to pay such administrative fine as may be prescribed, provided that if the controller fails to comply with such requirement the Commissioner shall commence proceedings against the controller:

Provided that such administrative fine shall be due to the Commissioner as a civil debt, constituting an executive title for the purposes of Title VII of the Code of Organisation and Civil Procedure as if payment of the amount of the fine had been ordered by a judgement of a court of civil jurisdiction.

Application for  
erasure.

**43.** (1) Where the Commissioner decides that personal data has been unlawfully processed, the Commissioner shall by notice

order the controller of personal data to erase the personal data.

(2) If the controller of personal data feels aggrieved by the decision of the Commissioner, he may, within fifteen days from the receipt of the notice referred to in subarticle (1) of this article, by application request the Court of Appeal as constituted in accordance with subarticle (6) of article 41 of the Code of Organisation and Civil Procedure, to revoke the order of the Commissioner.

**44.** The Commissioner, before taking a decision in the exercise of his functions under paragraphs (c) or (e) of article 40 of this Act which may significantly impact the operation of any government department or of any public or private enterprise, shall consult the interested party or parties who may be directly affected by the decision and he shall give reasons for his decisions. Collaboration with other authorities.

**45.** The Commissioner and any officer and employee of the Commissioner shall, before assuming their duties, take an oath of office contained in the Schedule to this Act to carry out their duties with equity and impartiality and in accordance with the provisions of this Act and shall be subject to the provisions of the Official Secrets Act, and the Code of Ethics applicable to public officers. The oath of office shall be taken before the Attorney General. Oath of secrecy. Cap. 50.

**46.** (1) The data subject may, by writ of summons filed in the competent court, exercise an action for damages against the controller who processes data in contravention of this Act or regulations made thereunder. Compensation for damages.

(2) An action under this article shall be commenced within a period of twelve months from the date when the data subject becomes aware or could have become aware of such a contravention, which ever is the earlier.

**47.** (1) Any person who: Penalties.

(a) provides untrue information to data subjects as is prescribed by this Act, or in the notification to the Commissioner under article 29 of this Act or to the Commissioner when the Commissioner requests information in accordance with article 41 of this Act;

(b) processes personal data in contravention of the provisions of articles 12 to 17 of this Act;

(c) transfers personal data to a third country in contravention of article 27 and 28 of this Act;

(d) omits to give notification under article 29 (1) or in accordance with regulations issued under article 34 of this Act:

shall be guilty of an offence and shall on conviction be liable to a fine (*multa*) not exceeding ten thousand liri (Lm10,000) or to imprisonment for six months or to both such fine and imprisonment.

(2) Any person who fails to comply with an order in writing to pay an administrative fine in accordance with the provisions of subarticle (2) of article 41 or subarticle (1) of article 42 of this Act, shall not be subject to the payment of a penalty under the provisions of this article.

Data Protection  
Appeals  
Tribunal.

**48.** (1) There shall be a Tribunal to be known as the Data Protection Appeals Tribunal, in this Act referred to as "the Tribunal", having the functions and powers assigned to it by this Act or by any other law.

(2) The Tribunal shall consist of a chairman and two other members appointed by the Minister.

(3) The chairman shall be an advocate with a minimum of twelve years legal experience.

(4) The two other members mentioned in subarticle (2) shall be persons who in the opinion of the Minister represent the interests of data subjects and of data controllers.

(5) The chairman and other members of the Tribunal shall hold office for such period being of not less than three years as may be determined in their appointment and cannot be removed during their term of office except on grounds of proved inability to perform the functions of their office whether arising from infirmity of body or mind or any other cause, or proved misbehaviour.

(6) A member of the Tribunal may be challenged or abstain for any of the reasons for which a judge may be challenged or abstain in accordance with article 734 of the Code of Organisation and Civil Procedure. In any such case the Minister shall appoint a person, having the qualifications of the member challenged or abstaining, to sit as a member of the Tribunal in substitution of the said member.

(7) A member of the House of Representatives or of a Local Council, a Judge or a Magistrate, or an officer in the public service shall be disqualified from being appointed or continuing to be a member of the Tribunal for so long as he holds that office.

(8) The Minister shall also designate a person to serve as secretary to the Tribunal.

**49.** (1) Any person aggrieved by a decision of the Commissioner shall have the right to appeal in writing to the Tribunal within thirty days from the notification to him of the said decision. Appeals.

(2) An appeal to the Tribunal may be made on any of the following grounds:

(a) that a material error as to the facts has been made;

(b) that there was a material procedural error;

(c) that an error of law has been made;

(d) that there was some material illegality, including unreasonableness or lack of proportionality.

(3) The Tribunal shall give reasons for its decision and shall cause such decisions to be made public omitting, if it deems it appropriate for reasons of confidentiality, the names of the persons involved.

(4) In determining an appeal under this article the Tribunal may:

(i) dismiss the appeal;

(ii) annul the decision;

and where the Tribunal annuls the decision it may refer the matter to the competent authority with a direction to reconsider it and reach a decision in accordance with the findings of the Tribunal.

(5) The effect of a decision to which an appeal relates shall not except where the Tribunal or the Court of Appeal, as the case may be, so orders, be suspended in consequence of the bringing of the appeal.

**50.** (1) The Tribunal shall be competent to hear and decide any appeal made to it in accordance with the provisions of this Act and any regulations made thereunder; and subject to article 51 of this Act, the decisions of the Tribunal shall be final and binding.

Powers and  
procedures of  
the Tribunal.

(2) For the exercise of its functions, the Tribunal may summon any person to appear before it and give evidence and produce documents; and the chairperson shall have the power to administer the oath. The Tribunal may also appoint experts to advise

the Tribunal on any technical issue that may be relevant to its decision.

(3) For the purposes aforesaid the Tribunal shall have the same powers as are competent to the First Hall, Civil Court according to law.

(4) Save as may be prescribed, the Tribunal may regulate its own procedure.

Appeal to the  
Court of  
Appeal.

**51.** Any party to an appeal to the Tribunal who feels aggrieved by a decision of the Tribunal, or the Commissioner if he feels aggrieved with any such decision, may on a question of law appeal to the Court of Appeal as constituted in accordance with subarticle (6) of article 41 of the Code of Organisation and Civil Procedure by means of an application filed in the registry of that court within thirty days from the date on which that decision has been notified.

Financial  
provision.

**52.** (1) The expenses required by the Commissioner to exercise his functions under this Act as may be fixed by the House of Representatives in accordance with this article shall be a charge on the Consolidated Fund without the need of any further appropriation other than this Act.

(2) Where during the course of any financial year the sum fixed by the House of Representatives is in the opinion of the Commissioner insufficient to enable him to efficiently fulfill his functions the Commissioner shall prepare supplementary estimates for consideration by the House of Representatives.

(3) The Commissioner shall cause to be prepared in every financial year, and shall not later than six weeks after the end of each such year adopt, estimates of the income and expenditure of the Commissioner for the next following financial year:

Provided that the estimates for the first financial year of the Commissioner shall be prepared and adopted within such time as the Minister may by notice in writing to the Commissioner specify.

(4) A copy of the estimates shall, upon their adoption by the Commissioner, be sent forthwith by the Commissioner to the Minister and to the Minister responsible for finance.

(5) The Minister shall at the earliest opportunity and not later than six weeks after he has received a copy of the estimates from the Commissioner, approve the same with or without amendment after consultation with the Minister responsible for finance.

53. (1) The Commissioner shall cause to be kept proper accounts and other records in respect of his operations and shall cause to be prepared a statement of accounts in respect of each financial year. Accounts and audit

(2) The accounts of the Commissioner shall be audited by an auditor or auditors to be appointed by the Commissioner and approved by the Minister:

Provided that the Minister responsible for finance may after consultation with the Minister require the books or the accounts of the Commissioner to be audited or examined by the Auditor General who shall for the purpose have the power to carry out such physical checking and other certifications as he may deem necessary.

(3) After the end of each financial year, and not later than the date on which the estimates of the Commissioner are forwarded to the Minister under article 52 (3) of this Act, the Commissioner shall cause a copy of the statement of account duly audited to be transmitted to the Minister and to the Minister responsible for finance together with a copy of any report made by the auditors on that statement or on the accounts of the Commissioner.

(4) The Minister shall, at the earliest opportunity and not later than eight weeks after he has received a copy of every such statement and report, or if at any time during that period the House of Representatives is not in session, within eight weeks from the beginning of the next following session, cause every such statement and report to be laid on the Table of the House of Representatives.

(5) The Commissioner shall, not later than six weeks after the end of each financial year, make and transmit to the Minister and to the Minister responsible for finance a report dealing generally with the activities of the Commissioner during the financial year and contain such information relating to the proceedings and policy of the Commissioner as either of the said Ministers may from time to time require. The Minister shall, at the earliest opportunity and not later than eight weeks after he has received a copy of every such report, or if at any time during that period the House of Representatives is not in session, within eight weeks from the beginning of the next following session cause a copy of every such report to be laid on the Table of the House of Representatives.

#### Part IX - General

54. The Minister may, after consultation with the Power to make regulations.

Commissioner, prescribe regulations for the better carrying out of the provisions of this Act, and without prejudice to the generality of the foregoing may in particular prescribe regulations concerning:-

(a) the cases in which processing of personal data is permitted;

(b) the requirements which are imposed on the controller when processing personal data;

(c) what a notification or application to a controller should contain;

(d) which information shall be provided to the data subject and how information shall be provided;

(e) notification to the Commissioner and the procedure when information notified has been altered;

(f) rules and procedures relating to access by the Commissioner of data held in instances where the controller processes data for compliance with a legal obligation;

(g) the qualifications required for a person to be appointed as a personal data representative;

(h) the minimum guarantees to be provided by the bodies of persons or other entities referred to in article 14 of this Act in the processing of personal data;

(i) the fees that may be levied by the Commissioner;

(j) the administrative fines that may be imposed by the Commissioner and the administrative violations in respect of which such fines be imposed; provided that such fines shall not be in an amount exceeding one thousand liri (Lm1,000);

(k) the penalties that may be imposed under this Act;

(l) for establishing rules, procedures, formalities and time limits in respect of any matter provided for under this Act;

(m) the extension of the application of this Act to any particular activity or sector and to provide for the manner in which data protection is to be implemented in specific sectors or in respect of specific activities; and

(n) for anything that may be prescribed under any of the

provisions of this Act.

55. In the case of conflict between the Maltese and English text of this Act, the English text shall prevail. English text to prevail.

56. The First Schedule to the Malta Communications Authority Act, 2000 shall be amended as follows: Amendment to the Malta Communications Authority Act, 2000.

(a) paragraph 2 thereof shall be deleted; and

(b) paragraph 3 thereof shall be re-numbered as paragraph 2.

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**SCHEDULE**

**Article 45**

**Oaths of Office**

I ..... solemnly swear / affirm that I will faithfully and conscientiously perform my duties as (Data Protection Commissioner / Officer of the Data Protection Commissioner / Employee of the Data Protection Commissioner) in terms of the Data Protection Act and in accordance with the laws of Malta, without fear or favour. (So help me God.).

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Passed by the House of Representatives at Sitting No. 669 of the 14th December, 2001.

ANTON TABONE  
*Speaker*

RICHARD J. CAUCHI  
*Clerk to the House of Representatives*

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