The record of processing activities in 10 questions and answers

Why maintain a record of processing activities?

Provided for in article 27 of Law no. 1.565 of December 3, 2024, the record of processing activities **lists the processing operations** in order to have an **overview of the data collected**.

Thanks to this **management tool**, data controllers and processors can:

- clearly **identify** the processing operations carried out:
    - by listing all processing operations;
    - by precisely identifying the parties involved (joint controllers, representatives, processors, etc.);
    - by identifying all the data collected (their categories, purpose, access, communication, retention periods and security).
- **monitor** these processing operations;
- **demonstrate** to the APDP at its request, that the processing operations are lawful and comply with the provisions of the Law.

When must a record of processing activities be maintained?

Companies or organizations established in the Principality must maintain a data processing record if they have **at least 50 employees**.

Can companies with fewer than 50 employees be required to have a record of processing activities?

Companies with fewer than 50 employees will be required to maintain a record of processing activities in the following cases:

- when the **data processing is likely to result in a risk to the rights and freedoms of data subjects**; or
- when the data processing is **non-occasional**; or
- when it involves **sensitive data**; or
- when it involves data relating to **offences, criminal convictions, security measures** or **suspicions of unlawful activities**.

Who must maintain the record of processing activities?

Article 27 provides that the record must be maintained by controllers and processors. However, they may appoint a **dedicated person** to be responsible for keeping the record internally. This could be the Data Protection Officer, for example.

What form should the record take?

The record of processing activities must be **in written form**.

It may therefore be in either **paper** or **electronic** format.

What must be included in the record maintained by the data controller?

When a data controller draws up a record, he/she must fill in the **compulsory information** set out in article 27 of Law no. 1.565 of December 3, 2024, including at least:

- the **name and contacts details of the data controller** and, where applicable, the **joint controller**, the **controller's representative** and the **Data Protection Officer**;
- the **purposes** of the processing;
- the categories of **data subjects** and categories of **personal data related to the processing;**
- **the categories of recipients;**
- when possible the **retention period** for personal data, or the criteria for determining this period;
- where applicable, a general description of the **appropriate technical and organisational measures** to guarantee a level of security appropriate to the risks to the rights and freedoms of natural persons;
- where applicable**, transfers of personal data** outside the Principality, the identification of the **recipient country, territory** or **international organization** and, where applicable, the **safeguards provided;**
- where appropriate, the **use of profiling** for processing carried out for the purposes of the prevention, investigation, detection or prosecution of criminal offences or the execution of criminal penalties;
- an indication of the legal basis of the processing operation, including transfers, for :
    - processing operations carried out for the **purpose of the prevention, investigation, detection or prosecution of criminal offences or the execution of criminal penalties,** or
    - processing operations relating to **national security**.

What must be included in the record maintained by the processor?

The paragraph 2 of Article 27 of the Law provides that the record maintained by the processor must, at a minimum, contain the following information:

- the **name and contact details** of the processor and of **each controller on behalf of which the processor is acting**, and, where applicable, of the controller's or the processor's **representative**, and the data protection officer;
- the **categories of processing carried out on behalf of each controller**;
- where applicable, a general description of the **appropriate technical and organisational measures** to guarantee a level of security appropriate to the risks to the rights and freedoms of natural persons;
- where applicable**, transfers of personal data** outside the Principality, the identification of the **recipient country, territory** or **international organization** and, where applicable, the **provided safeguards**.

Does the record need to be updated?

Yes, the record must be updated whenever any changes are made to the information entered in the register (new data collected, change of retention period, addition of a new recipient of the information, functional and technical developments, etc.).

Does the record have to be sent to the APDP?

No, the register is first and foremost an internal document that enables the data controller and processor to ensure that their processing operations comply with the Law. It does not therefore need to be communicated to the APDP. On the other hand, it must be made **available to the APDP** on request. It is therefore very important to keep it up to date.

What is the penalty for failing to maintain a register of processing activities?

Article 53 of Law No. 1.565 of December 3, 2024 provides that failure to comply with the obligation to maintain a record of the processing operations is punishable by an administrative fine of up to **5,000,000 Euros or, in the case of a company, up to 2% of the previous year's total worldwide annual revenue, whichever is the highest.**