

The key players in data protection in the Principality

While the data subject, i.e. the individual to whom the information being processed relates, is of course at the heart of personal data protection, there are many players involved in the processing of personal data, each with a clearly defined role.

The purpose of this factsheet is therefore to present the following players:

- the data controller;
- the processor;
- the representative.
- the recipient;
- the third party;
- the Data Protection Officer.



The data controller

Pursuant to Article 2 of Law no. 1.565 of December 3, 2024, the data controller is the « *natural or legal person, public authority, agency or other body which, alone or jointly with others, determines the purposes and means of the processing of personal data* ».

The data controller is therefore the person or body with **decision-making power** over the purposes and means of data processing.

Example: a company setting up a website to offer its products for sale

In general, this is the **legal entity** (e.g. a company) represented by **its legal representative** (e.g. its Chairman).

Example: a holding company which decides on the purposes of data processing for its entities is the data controller.

If two or more data controllers **jointly determine** the purposes and means of the processing, they are considered to be **joint data controllers** under article 24 of Law no. 1.565 of December 3, 2024.

Example: creation and use of a common platform by two data controllers who offer different services

To this end, they must determine **their respective responsibilities for compliance in a transparent arrangement**, particularly with regard to the exercise of the data subject's rights.

The broad outlines of this arrangement are made available to the data subject.

Irrespective of the terms of the arrangement, the data subject will be able to exercise his or her rights conferred by the law in respect of and against each of the controllers.

The processor

Under Article 2 of Law no. 1.565 of December 3, 2024, the processor « *the natural or legal person, public authority, agency or other body which processes personal data on behalf of the controller* ».

It is therefore an **entity separate from the controller**.

Example: a marketing company commissioned by an online shop to send a newsletter to all the shop's customers

In this respect, article 26 of Law no. 1.565 of December 3, 2024 stipulates that when the controller uses a processor, the latter must provide **sufficient guarantees regarding the implementation of appropriate technical and organizational measures** to ensure **the protection of personal data** and **respect for the rights of data subjects**.

Any recourse to a processor must be governed by a contract in written form, the minimum clauses of which are set out in article 26 of Law no. 1.565 of December 3, 2024.

This contract must define :

- the **subject-matter** and **duration** of the processing;
- the **nature** and **purposes** of the processing;
- the **type of personal data** and the **categories of data subjects**; and
- the **obligations** and **rights** of the data controller.

What are the obligations of the processor?

The contract must contain the following **information**:

- the processor **processes** the personal data **only on documented instructions** from the controller,
- the processor ensures that **confidentiality is respected**;
- the processor takes **all necessary measures** to ensure the **security** of personal data;
- the processor, **at the choice of the data controller**, **deletes** or **returns** all personal data to the data controller at the end of the provision of service, and **deletes existing copies** unless the law to which it is subject requires the personal data to be retained;
- the processor **assists** the controller, by means of appropriate technical and organizational measures, as far as possible, in fulfilling its obligation to respond to **requests made by data subjects in order to exercise their rights**;
- the processor **provides** the controller with **all the information necessary to demonstrate compliance with its obligations**;
- the processor **assists** the controller in ensuring compliance with the obligations relating to:
 - the appropriate **technical and organizational measures** to be taken,
 - **notifications of data breaches**,
 - **impact assessments**,

taking into account the **nature of the processing and the information available** to the processor.

Data controller or processor ?

Depending on the situation, the same entity may act as a data controller or as a data processor.

For example, a company is a processor if it installs and maintains a video surveillance system on behalf of another company.

On the other hand, it acts as a data controller when it installs a badge system on its own premises to calculate its employees' working hours.

The representative

Referred to in article 25 of Law no. 1.565 of December 3, 2024, the representative is the natural person or legal entity **established on the territory of the Principality** or, failing that, within a Member State of the European Union who has been **appointed** by a data controller or processor to be the **contact** both for the data subjects and for the Autorité de Protection des Données Personnelles (APDP). The data subjects will then be able to contact the representative with any questions they may have.

The representative **must** be appointed whenever a data controller or processor, **not established in Monaco, offers products or services** to individuals located in the Principality or implements processing operations relating to the **monitoring of their behaviour**.

Examples :

- an e-commerce company based in Italy offering products or services to people in the Principality
- an American press company offering an online newspaper subscription service without having an office in Monaco

A representative may be appointed by **any written means**.

This obligation is not general and has **3 exceptions**:

- the processing is **occasional** and does not **involve large-scale processing of sensitive data**;
- the processing relates to **criminal convictions or offences**;
- the data controller is a **legal person governed by public law** or a **public organization**.



Appointing a representative in the Principality **does not exempt the data controller or processor from its obligations with regard to personal data**. Legal action may therefore still be taken against them despite the appointment of a representative.

The recipient

In accordance with Article 2 of Law no. 1.565 of December 3, 2024, a recipient is the « *natural or legal person, public authority, agency or another body, to which the personal data are disclosed, whether a third party or not.* ».

However, the same article specifies that « *public authorities which may receive personal data in the framework of a particular inquiry shall not be regarded as recipients* ».

The following are therefore considered as recipients: persons, departments, divisions, etc. other than the public authorities in the context of a specific investigation, who receive the data.

Example : commercial partners

Personal data must only be made accessible to persons **authorized to access them** by virtue of their duties.

Access authorizations must be **documented** and access to the various processing operations must be subject to **traceability** measures.

Finally, it is important to note that under article 11 of Law no. 1.565 of December 3, 2024, data subjects must be informed of the recipients or categories of recipients of their personal data.

The third party

Under Article 2 of Law no. 1.565 of December 3, 2024, the third party is « *a natural or legal person, public authority, agency or body other than the data subject, controller, processor and persons who, under the direct authority of the controller or processor, are authorized to process personal data* ».

Examples :

- tax authorities
- bailiffs
- judicial authorities
- Police Department

These third parties may only have access to the data in the **strict context of their legally conferred duties**.

The Data Protection Officer

Mandatory in certain organizations and often recommended in others, the Data Protection Officer (DPO) facilitates compliance with data protection legislation and acts as the preferred point of contact for all questions relating to personal data, whether internal or emanating from a data subject, and as the correspondent for the Data Protection Authority.

The Data Protection Officer has 5 missions:

- **Inform and advise** the organization and the employees who carry out the processing on their obligations under the legislation in force in the Principality;
- **Monitor** compliance with personal data protection legislation and with the organization's internal rules on personal data protection, including the **allocation of responsibilities, awareness-raising** and **training of staff** involved in processing operations, and the related **audits**;
- **Provide advice**, on request, on data protection impact assessment;
- **Cooperate** with the Data Protection Authority and act as its contact point on matters relating to processing;
- **Submit requests for opinion** to the Data Protection Authority when they concern the following processing operations:
 - processing for the purposes of preventing, detecting, investigating, prosecuting or punishing criminal offences, including protection against and prevention of threats to public security;
 - processing carried out by administrative and judicial authorities, acting within the scope of their prerogatives as public authorities, involving genetic data or biometric data necessary for authenticating or controlling a person's identity.

[For more information, refer to the factsheet **Job Description of the Data Protection Officer**]

Who is who ?

Data controller	The natural or legal person who determines the purposes and means of the data processing
Processor	The natural or legal person acting on behalf of and on the documented instructions of the controller
Representative	The natural or legal person established on the territory of the Principality or, failing that, within a Member State of the European Union, who has been appointed by a controller or processor to be the contact both for the data subjects concerned by the processing and for the APDP
Recipient	The natural or legal person, public authority, agency or any other body that receives personal data, whether a third party or not.
Third-party	The natural or legal person, a public authority, an agency or a body other than the data subject, the controller, the processor and persons who, under the direct authority of the controller or processor, are authorized to process personal data.
Data Protection Officer	The natural or legal person who facilitates compliance with data protection legislation and acts both as the main contact for all questions relating to personal data, whether internal or emanating from a person affected by the processing carried out, and as the correspondent of the Data Protection Authority