



DATA CONTROLLER AND DATA PROCESSOR

DATA CONTROLLER AND DATA PROCESSOR

KVKK Publication No: 106

June 2025, Ankara

PERSONAL DATA PROTECTION AUTHORITY (KVKK)

Adress: Nasuh Akar Mahallesi
1407. Sokak No: 4 Çankaya/ANKARA

Phone: +90 312 216 50 00

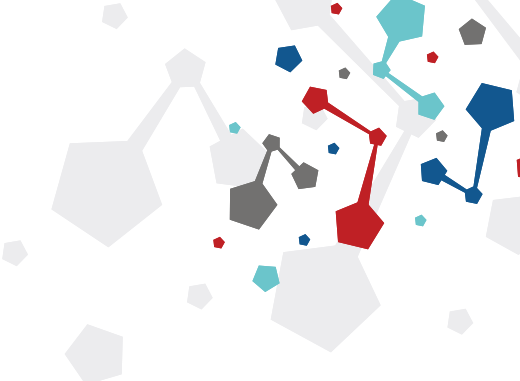
Website: www.kvkk.gov.tr



“It is strictly prohibited to copy, reproduce, use, publish, or distribute the contents of this book, whether in whole or in part, without prior permission, except for personal use. Those who violate this prohibition will be subject to legal action under Law No. 5846 on Intellectual and Artistic Works. All rights reserved.”

©Personal Data Protection Authority





DATA CONTROLLER AND DATA PROCESSOR

a. Overview

A data controller is a natural or legal person who determines the purposes and means of processing personal data and is responsible for the establishment and management of the data filing system. Legal persons are considered “*data controllers*” in relation to their personal data processing activities and bear the legal responsibilities set out in the relevant legislation. No distinction is made between public law and private law legal persons in this regard.

Units within a company do not have separate legal personality, therefore they cannot be considered data controllers. However, each company within

a corporate group has its own legal personality and may therefore be regarded as a separate data controller.

A data processor is a natural or legal person outside the data controller's organization who processes personal data on behalf of the data controller, based on the authority granted by the data controller. These persons are authorized to process personal data through a personal data processing contract and act in line with the instructions given by the data controller.

Any natural or legal person may act as both a data controller and a data processor at the same time. For instance, an accounting firm is deemed a data controller in relation to the processing of personal data of its employees, but acts as a data processor when processing personal data related to the business operations of its client companies.

The data processor's role is generally confined to the more technical aspects of personal data processing, while the data controller has the authority

to decide the purposes and means of processing. In other words, the data controller determines “*why*” and “*how*” personal data will be processed.

When determining the data controller, consideration should be given to who has decision making authority over the following:

- The collection of personal data and the collection method,
- The categories of personal data to be collected,
- The purposes for which the collected personal data will be used,
- The individuals whose personal data will be collected,
- Whether the collected personal data will be shared, and if so, with whom,
- The retention period for the personal data.

The data controller may delegate certain decisions to the data processor through a personal data processing contract, such as:

- The IT systems or other methods to be used for the collection of personal data,
- Methods for storing personal data,
- Details of security measures for the protection of personal data,
- Methods for the transfer of personal data,
- Procedures to ensure the appropriate implementation of the retention period,
- Methods for the erasure, destruction, and anonymization of personal data.

At this point, it is important to clarify some common aspects of data controllers and data processors.

First, it should be noted that the term “*data controller*” does not refer to an individual employee responsible for personal data processing activities within a company. Rather, the data controller is the legal entity itself. The status of data controller (as

well as data processor) is a designation under Law No. 6698 for the purpose of assigning legal obligations and where the elements specified in Law No. 6698's definitions are met, the company as a legal entity will hold this status. For example, while an employee may receive and record documents as part of personal data processing activities within a company, it is the company as a legal person itself, not the individual employee, that holds the status of "*data controller*."

Second, both definitions apply to natural and legal persons alike. For instance, a freelance financial advisor and a financial advisory firm can each act as a data controller or a data processor. Since units within a company do not have separate legal personality, they cannot be data controllers or data processors. However, each company within a corporate group has its own legal personality, so provided it meets the other elements of the data controller definition, each company may hold both statuses separately.

Finally, a natural or legal person may be both a data controller and a data processor at the same time. For example, a cloud service provider acts as a “data controller” with respect to the personal data of its own employees, while simultaneously acting as a “data processor” for the personal data it processes on behalf of its clients.

b. Examples¹

i. Market Research Companies

A research company has undertaken to conduct an employee satisfaction survey for a pharmaceutical company under a contract. The pharmaceutical company has delegated to the research company the determination of the list of employees to be surveyed, choice of the survey method, and the presentation of the survey results.

In this case, even though the research company is carrying out the survey and processing personal

¹ The information provided in this section is for illustrative purposes only and does not constitute a general assessment for the actors mentioned.

data on behalf of the pharmaceutical company, it is considered a data controller jointly with the pharmaceutical company. This is because the research company has the authority to determine which employees will be surveyed, which personal data will be collected, and other such matters.

ii. Payment Services

When an individual who sells products online enters into an agreement with a payment service provider for the processing of their customers' personal data, the payment service provider is not considered a data processor for the seller, but rather a data controller with respect to the processing of this personal data. This is due to the fact that the payment service provider:

- (1) Determines which personal data must be collected from costumers to ensure correct payment transactions,
- (2) Controls the purposes for which the collected personal data will be used,

- (3) Applies its own terms and conditions to the customers whose personal data are processed, independently of the seller,
- (4) Is subject to legal responsibilities independently of the seller, such as the deletions of the credit card information.

iii. Lawyers

In a scenario where a company seeks legal advice from a lawyer regarding a former employee who has stolen the company's customer list, the lawyer becomes a data controller upon receiving the personal data related to that former employee from the company. The fact that the lawyer is acting on behalf of the company does not change this status, as it is the lawyer who determines the method to process the personal data. Therefore, with respect to the personal data processed, both the company and the lawyer are data controllers. In this sense, each one of them has its own legal obligations to comply with.

For example, each must independently respond to any request from the data subject to access their personal data.

iv. Financial Advisors

Financial advisors are considered data controllers in relation to the personal data they process when maintaining records of their clients' accounts. This is because they are subject to various professional legal obligations that require them to take responsibility for the personal data they process. For example, if they detect fraudulent activity while reviewing a client's accounts, they are legally obliged to report it to judicial or administrative authorities or other competent bodies. In such cases, it is clear that the financial advisor will not act in accordance with the client's instructions.

Therefore, specialized service providers of this nature will be considered data controllers for as long as they are subject to their professional legal obligations, and they cannot transfer the

responsibilities arising from being a data controller to their clients, in whole or in part, through an agreement or contract.

v. Cloud Service Providers

If a public institution enters into a contract with a cloud service provider for the storage of personal data it has collected, the cloud service provider will be considered a data processor in this context. Because, under the terms of the contract, the cloud service provider is not permitted to use the personal data for its own purposes. Additionally, the service provider does not process personal data on its own behalf within the scope of its activities. Its only activity is to store the personal data received from the public institution in accordance with the institution's instructions.





KVKK

KİŞİSEL VERİLERİ KORUMA KURUMU

Adress: Nasuh Akar Mahallesi

1407. Sokak No: 4

Çankaya / ANKARA

Phone: 0 312 216 50 00

Web: www.kvkk.gov.tr



kvkkurumu