Who is the Controller of the processing of a smart contract?

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Recap' Qualification of **Processor**

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Legal basis ?

Art. 4 GDPR (8)

*processor' means a **natural or legal person**, public authority, agency or other body which **processes personal data on behalf of the controller**;*

- Ex. Host provider

- Ex. Externalisation of service

- Ex. CNIL's insurance use case

Other criteria ?

- Instruction / Surveillance / External visibility given by the Controller/ Influence over the finality of the processing

Consequences?

- Liability art. 28 GDPR

Hypothesis of Smart contract development

1. Open source code (licence)

2. Inhouse developer

    2.1. Using proprietary code

    2.2. Using open source code

3. Contractual developer (SaaS)

    3.1 .Using proprietary code

    3.2. Using open source code

Control the processing of a smart contract

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- *What does actual control over the smart contract means ?*
  - Criteria: Any action that can start, stop, modify, the finality of the program (Smart contract).
  - Ex. Kill switch mechanism controller / delegatecall / set up / …

- *There is however two states to differentiate influencing the result*
  - Deployed smart contract
  - Undeployed smart contract
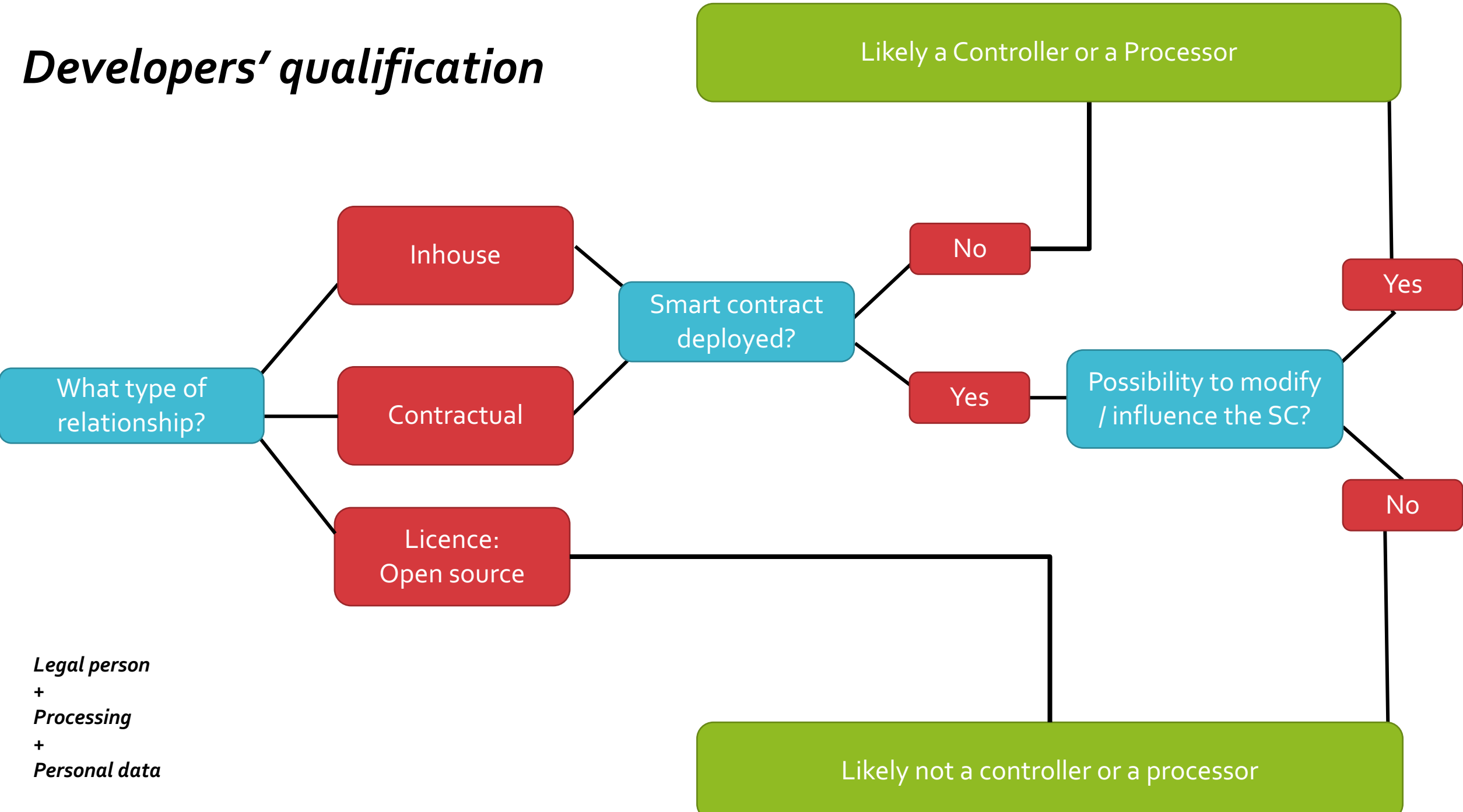
Developers

To be or not to be in control?

Qualification & Ratio decidendi

- Undeployed: Likely controller / processor
  - Developer may alter & control the finality and create specific design
  - (P. by design art. 25 GDPR?).

- Deployed: Depends / likely not controller or processor
  - Autonomous control of the developper over the SC is generally lacking at this points.
  - Efficient?

Excursus: tool or Agent?

Developers' qualification

Likely a Controller or a Processor

Inhouse

Smart contract deployed?

No

Yes

What type of relationship?

Contractual

Yes

Possibility to modify / influence the SC?

No

Licence: Open source

Likely not a controller or a processor

Legal person
+
Processing
+
Personal data

Other Controller of the processing of a smart contract?

- The full nodes?
  - (*Ex post* deployment)
  - Likely a controller (*utlima ratio*)
  - Processor (hosting like service)
- Clients?
  - Ex ante deployment: likely controller
  - Ex post deployment : likely controller or processor

Merci de votre attention

Contact

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