

Internal EDPB Documents



Internal EDPB Document 1/2019 on handling cases with only local impacts under Article 56.2 GDPR

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Important note:

This document was originally written for internal use among EDPB members. At its Plenary meeting of 14 June 2022, the EDPB has decided, in the interests of transparency, to make this document available to the public by publishing it on its website.

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The European Data Protection Board

Having regard to Article 70 (1) (e) and 56.2 of the Regulation 2016/679/EU of the European Parliament and of the Council of 27 April 2016 on the protection of natural persons with regard to the processing of personal data and on the free movement of such data, and repealing Directive 95/46/EC, (hereinafter “GDPR”),

Having regard to the EEA Agreement and in particular to Annex XI and Protocol 37 thereof, as amended by the Decision of the EEA joint Committee No 154/2018 of 6 July 2018,

Having regard to Article 12 and Article 22 of its Rules of Procedure of 25 May 2018,

HAS ADOPTED THE FOLLOWING INTERNAL GUIDANCE

1 PART 1 - INTRODUCTION

1. The general rule in the GDPR is that the cross-border processing is assessed by means of the cooperation of the lead supervisory authority (LSA) and the supervisory authorities concerned (SAC).
2. Indeed, according to Article 56.1 of the GDPR, a supervisory authority (SA) is competent to act as a LSA for the cross-border processing carried out by a controller or a processor which has its main or its only establishment in its Member State¹.
3. Article 56.2 covers cases that are derogations to the general rule: the cases involving cross-border processing but which have only local impacts in the Member State of the supervisory authority where the complaint was first lodged or that first detected a possible infringement.
4. For such cases with only local impacts, Articles 56.2 and 56.3 provide that the supervisory authority which received the complaint or was made aware of a possible infringement shall be competent if the LSA decides not to handle the case. As Article 56.2 lays down a derogation, these provisions must be given a strict interpretation. The present internal guidance aim to identify the scope of cases that come under this exception and to set up common handling procedures.
5. It is also important to underline that Article 56 does not apply to every case. Indeed, according to Article 55 of the GDPR, if the processing is carried out by public authorities or private bodies acting on the legal basis laid down by Articles 6.1.c and 6.1.e², the SA of the Member State concerned shall be competent and Article 56 does not apply.

1 In such cases, the supervisory authority acts as lead supervisory authority.

2 Article 6.1.c: “the processing is necessary for compliance with a legal obligation to which the controller is subject “ ; Article 6.1.e: “the processing is necessary for the performance of task carried out in the public interest or in the exercise of official authority vested in the controller”.

6. The procedural steps outlined in this guidance should be applied by supervisory authorities from the outset of handling any case that potentially relates to cross-border processing. For cases that clearly do not involve cross-border processing this guidance does not apply.
7. This guidance shall be read together with other documents adopted on cooperation among supervisory authorities under the GDPR (e.g. designation of Lead Supervisory Authority, one-stop-shop mechanism, mutual assistance and joint operations, territorial scope of the GDPR).

2 PART 2 – STEPS TO HANDLE A CASE UNDER ARTICLE 56.2 GDPR

8. Each supervisory authority that receives a complaint or detects an infringement is required to establish whether the case concerns a cross-border processing and whether it should be handled locally, according to the common definitions of these notions (2.1). Once the cross-border nature of the processing and the local nature of the case have been determined by the receiving SA, the handling procedures set out in this section (2.2 – 2.6) must be followed. A flowchart, providing a step-by-step guidance, is included in the annex of the present internal guidance.
9. A distinction is made between the reception of a complaint or the detection of an infringement by a supervisory authority (2.1 – 2.6) and by a lead supervisory authority (2.7).

2.1 Analysis of the case by the receiving supervisory authority

2.1.1 Determine if the case relates to cross-border processing

10. The condition for Article 56 to apply is that the processing at stake is cross-border in nature. If the processing is not cross-border in nature, the supervisory authority that receives the case is competent to handle it, if the processing is carried out in its Member State³.
11. Moreover, and as previously mentioned, according to Article 55 of the GDPR, if the processing is carried out by public authorities or private bodies acting on the basis of Articles 6.1.c and 6.1.e, the SA of the Member State concerned shall be competent and Article 56 does not apply.
12. In order to ascertain that the case at stake concerns a cross-border processing, the SA must verify if one of the two conditions laid down by Article 4(23) of the GDPR is fulfilled:
 -) The processing of personal data takes place in the context of the activities of establishments in more than one Member State of a controller or processor in the Union where the controller or processor is established in more than one Member State; or
 -) The processing of personal data takes place in the context of the activities of a single establishment of a controller or processor in the Union but which substantially affects or is likely to substantially affect data subjects⁴ in more than one Member State.

³ See point 27, second bullet, last sentence of the Internal EDPB Document 06 /2020 on preliminary steps to handle a complaint: admissibility and vetting of complaints.

⁴ For the definition of “substantially affect”, see WP 244 Guidelines for identifying a controller or processor’s lead supervisory authority, page 3. point I.

13. **To determine if the first criterion applies**, the information already gathered in the preliminary vetting phase will be helpful⁵. Indeed, the SA must determine the location of the controller or the processor's establishments⁶ within the European Economic Area's territory. It is not necessary that the processing in question is carried out "by" the EEA establishments themselves. Indeed, according to Article 4(23), the processing only has to be carried out "*in the context of the activities*" of these establishments⁷.
14. It is important to ensure that the processing mentioned in the case is cross-border and not a "national processing" that has to be handled according to Article 55 of the GDPR – a processing that takes place in the context of activities of an establishment situated in only one Member State and substantially affects or is likely to substantially affect data subjects only in that one Member State.

Example 1: National processing

The Polish supervisory authority receives a complaint from an employee of a Polish company, which is a branch of a Swedish company, about the handling of its Human resources data. The Polish SA using the preliminary vetting procedure⁸ determines that the data is processed by this company in Poland alone, and relates only to its Polish employees and any decision about the purposes and means of this processing is taken in Poland (the Human resources policy is also set in Poland and also the servers on which these data are held in Poland).

Although, there is a parent company in Sweden, the Polish Company is the controller of the Polish Human resources personal data and the Swedish Company has no role in the processing of these data. Since this complaint is not about cross-border processing, Article 56 of the GDPR does not apply and the Polish supervisory authority is fully competent to handle the case.

Example 2: National processing carried out in another Member State

The Polish supervisory authority receives a complaint from a Polish citizen who is a resident of Belgium and works for a company in Belgium, which is a branch of a Swedish company. The complaint is about the handling of its Human resources data. The data is processed by this company in Belgium alone, and relates only to its Belgian employees, and any decision about the purposes and means of this processing is taken in Belgium (the Human resources policy is set in Belgium and the servers on which these data are held are in Belgium).

Although, there is a parent company in Sweden, the Belgian company is the controller of the Belgian Human resources personal data and the Swedish company has no role in the processing of these data. Since this complaint is not about a cross-border processing, Article 56 of the GDPR does not apply.

Example 3: Cross-border processing

The Polish supervisory authority receives a complaint from an employee of a Polish company, which is a branch of a Swedish company, about the handling of its Human resources data for career advancement purposes. The data which are the object of the complaint is processed by this company in Poland and the servers on which these data are held are in Poland. However, the parent company which decides on purpose and means of the processing at issue is established in Sweden. As the Human

5 Internal EDPB Document 6/2000 on preliminary steps to handle a complaint: admissibility and vetting of complaints .

6 Recital 22 of the GDPR: "*Establishment implies the effective and real exercise of activity through stable arrangements. The legal form of such arrangements, whether through a branch or a subsidiary with a legal personality, is not the determining factor in that respect*".

7 For the definition of "*an establishment in the Union*" and "*processing of personal carried out in the context of the activities of an establishment*", see the Guidelines 3/2018 on the territorial scope of the GDPR (Article 3).

8 Internal EDPB Document 6/2000 on « preliminary steps to handle a complaint: admissibility and vetting of complaints »

resources policy is set by the Swedish parent company for several of its establishments in the EEA (including Poland) where the same kind of processing takes place, the processing at issue (concerning human resources data) is a cross-border processing because it is carried out in the context of the activities of more than one establishment (including the Polish establishment) of the same controller (the Swedish company).

The complaint is related to a cross-border processing and the Polish SA should follow the next step to determine if the complaint may be considered as having only local impacts⁹.

15. Another situation that does not regard cross-border processing, within the meaning of the first criterion of Article 4(23) of the GDPR, is where the controller or processor has several establishments only outside of the European Economic Area (even if it processes personal data of data subjects who are in the Union).

Example 4

If a company, which offers goods or services to data subjects in one or more Member States has an establishment in the United States and another one in Japan, the processing at stake is not qualified as cross-border, and therefore cannot benefit from the one-stop-shop procedure. Then, if a supervisory authority receives a complaint about this processing, it can handle the case without applying Article 56.

16. Where the SA determines that the controller or processor has only one establishment in the Union, it **must verify if the second Article 4(23) criterion applies** to determine whether the case at stake concerns cross-border processing.

Example 5

If a single establishment in the Union offers a service through a website available in different European languages, even if it is not sufficient *per se*, this may indicate that data subjects in more than one Member State are substantially affected, or are likely to be substantially affected, by the processing carried out, which could characterize the processing as cross-border.

2.1.2 Determine if the cross-border case falls under Article 56.2

17. Once the SA has deemed that the case concerns cross-border processing, it should consider whether the case has only local impacts or not.
18. As already recalled, each supervisory authority is competent to handle a complaint lodged with it or a possible infringement of the GDPR about a cross-border processing, if the case's subject **matter relates only to an establishment in its Member State or substantially affects data subjects only in its Member State**.
19. The "subject matter of a case" refers to the specific conduct of the controller or processor as detected by the supervisory authority or alleged by the complainant that amounts to a possible infringement of one or more provisions of the GDPR.

⁹ Except where Article 55.2 of the GDPR applies.

2.1.2.1 *The subject matter of the complaint or the infringement relates only to one establishment in the Member State of the supervisory authority*

20. As a first step, the SA must verify the existence of an establishment¹⁰ of the controller or processor in its Member State and that the processing of personal data in question is carried out in the context of the activities of this establishment.
21. If there is such an establishment in its territory, the SA must determine whether the case's subject matter relates only to this establishment, regardless of the impact on data subjects caused by the processing at stake. In general terms, the fact that a subject matter relates only to one establishment means that it is about¹¹ that establishment.
22. The SA should establish whether, in a cross-border processing situation, the conduct of the controller or processor is such as to relate only to the establishment in its Member State.

Example 6

A retail company is established in several Member States. Due to repeated thefts occurring in the store located in France, the Italian headquarters decides to use of video surveillance, but only for the establishment located in France. The images are stored in Italy in the headquarters' offices. Since the Italian establishment determines the purposes and means of this monitoring system, this is a cross-border processing and the controller's main establishment is in Italy. If a French employee or a customer lodges a complaint within the French supervisory authority regarding the use of the surveillance-camera, the SA may find that this case relates only to the establishment in its Member State since no other establishment makes use of video-surveillance. If that is the case, the SA may handle the complaint locally, subject to the LSA's decision.

Example 7

On the contrary, if the results of the preliminary vetting procedure made by the French SA show that the Italian establishment has in fact decided to implement video surveillance system in its stores in more than one Member States as a matter of general policy and that implementation potentially infringes GDPR's provisions, for example due to allegedly excessive retention period of the video surveillance data, the resolution of the case is not only relating to the establishment located in France and the first criterion of Article 56.2 is not fulfilled.

23. If the first criterion in 56.2 is not fulfilled (the case is related to establishments located in several Member States), the SA should verify whether the second condition of Article 56.2 is satisfied, i.e. if the case's subject **matter substantially affects data subjects only in its Member State**. This is required because the two conditions of Article 56.2 are alternative (see the 'or' used to link the two conditions). The SA could also follow this second step even when there is no controller's or processor's establishment in its Member State, as its analysis will be useful for the LSA's handling of the case.

2.1.2.2 *The subject matter of the complaint or the infringement substantially affects data subjects only in its Member State*

¹⁰ See in particular Recital 22 of the GDPR, *Google Spain SL and Google Inc. v AEPD, Mario Costeja González* (C-131/12), and the Guidelines 3/2018 on the territorial scope of the GDPR (Article 3).

¹¹ See the opinion 4/2007 of the WP29 on the concept of personal data, adopted on 20th June 2007, p. 9-12: as explained in that opinion, *mutatis mutandis*, the relationship between the case's subject matter and the controller or processor's establishment may be "a content element or a purpose element or a result element".

24. To determine whether the case has only local impacts according to the second criterion of Article 56.2 of the GDPR, the SA must determine if its subject matter substantially affects data subjects and if so, if such impact is produced only on data subjects in the SA's Member State. The SA will take into account the following precisions on a case by case basis.
25. The terms "*substantially affects*" have been defined in the Guidelines for identifying a controller or processor's lead supervisory authority (WP244)¹² which have explained how the impact can be "*substantial*"¹³.
26. After its preliminary vetting, the SA should be in a position to consider that an actual impact is caused on data subjects. For example, it could be damaging information about the complainant disclosed on a website, a loan that was not granted because of incomplete or incorrect information, a career opportunity was thwarted because of data loss.
27. To be considered as a local case, the actual impact of it should be limited to data subjects residing in the SA's Member State. On the contrary, if the SA considers that the case is likely to impact individuals in another Member State, it should consider that this is not a local case.

Example 8

A German company established in several Member States, among which Portugal, has developed an application exclusively offered to customers in Portugal. If the Portuguese SA receives a complaint against this processing or investigates a possible infringement, it may handle the case, subject to the LSA's decision, as its subject matter impacts only data subjects in the SA's Member State.

Example 9

An online retail company sells products that can be delivered in several Member States. The website provides information about the processing of personal data in many languages used in the European Economic Area. One linguistic version appears to be incomplete and this language is spoken only in the single Member State of the supervisory authority that receives the complaint. In this situation, the case could be considered as having only local impacts in the SA's territory.

Example 10

On the contrary, a complaint lodged to denounce that the online order form of this retail company requires that all customers (located in several Member States) provide information that is not necessary to deliver the products¹⁴, cannot be considered as having only local impacts and must be handled by the LSA. Indeed, the subject matter of the case as well as the resolution of this case will substantially affect data subjects in other Member States and not only in the SA's Member State.

12 See the Guidelines for identifying a controller or processor's lead supervisory authority, page 3: "*The most relevant ordinary English meanings of "substantial" include: "of ample or considerable amount or size; sizeable, fairly large" or "having solid worth or value, or real significance; solid; weighty, important (Oxford English Dictionary).*

The most relevant meaning of the verb 'affect' is 'to influence' or 'to make a material impression on'. The related noun-'effect'-means, amongst other things, 'a result' or 'a consequence' (Oxford English Dictionary). This suggests that for data processing to affect someone it must have some form of impact on them".

13 See the Guidelines for identifying a controller or processor's lead supervisory authority, p. 4: notably "*damage, loss or distress to individuals*"; "*limiting rights or denying an opportunity*"; "*affects individuals' financial or economic status or circumstances*"; "*discrimination or unfair treatment*".

14 The controller is accused to process personal data that are not "*adequate, relevant and limited to what is necessary in relation to the purposes for which they are processed*" (Article 5.1(c) of the Regulation).

28. A complaint about the exercise of an individual’s right may reveal that it does not only affect the complainant, depending on the information that the SA has been able to gather thanks to its preliminary vetting.

Example 11

A data subject lodges a complaint because he unsuccessfully exercised his right to erasure or his right to access to a social media provider whose service is used by individuals in several Member States.

If the SA receiving the complaint can establish through publicly information, in the vetting phase, or also by way of exchanges with the competent LSA (which can be aware of a multitude of similar situation for example), that the failure to reply was contrary to the general policy of the social media provider (for example because it finds in this specific case that the complainant was requested unnecessarily to provide his/her ID contrary to the policy set out by the social media provider on its website), this complaint can be considered as having only local impacts. Conversely, when the controller’s malpractice or behavior appears to be based on a general policy, the case at issue cannot be considered to have only local impact.¹⁵

2.1.2.3 *The case is about an infringement of only national legislation*

29. Among the examples of local cases quoted by Recital 131, there is the situation where “*the processing has to be assessed taking into account relevant legal obligations under Member State law*”. This could be the case where a Member State triggers exemptions or derogations provided by the GDPR or adopts a specific law that is not contrary to the GDPR.
30. In other words, if a case is about a cross-border processing that is in line with the GDPR but that may infringe the national legislation of the SA’s Member State, it might be an indication that the case could be considered as having only local impacts according to both Article 56.2 criteria.
31. Indeed, in this situation, the subject matter of the case highly is likely to relate only to one establishment in the Member State of the SA and concerns only data subjects in that territory.

Example 12

In example 7 (the Italian main establishment of a company deciding to implement video-surveillance in each of its establishments), if the French national law about video-surveillance in public space provides that the images should not be stored more than one month, and the retention period of data is excessive only according to this national law, the resolution of the case would be only relating to the local establishment and would concern only data subjects in France. Then, the complaint could be considered as a local case according to article 56.2.

2.2 *Informing the lead supervisory authority*

32. According to Article 56.3 “*the supervisory authority shall inform the lead supervisory authority without delay on that matter*” about the reception of the “local case” concerning a cross-border processing.

¹⁵ For a case to be considered as local, it must first be established that the impact is limited to data subjects residing in only one particular Member State or relates only to an establishment in that Member State (see paragraph 27).

33. Thus, as soon as the supervisory authority where the complaint was first lodged has identified that the case falls under the scope of Article 56.2, it has to inform the LSA, except when it has to reject the case which does not lie within its competence regarding the nature of the complaint¹⁶.
34. Once, the LSA has been identified¹⁷ (by using the information provided by the complainant, by contacting the controller or processor, or by requesting information from another SA), the receiving supervisory authority shall put the case into IMI.
35. If further investigations of the SA reveal that the case does not have only local impacts as it seemed to be when the SA received it and after the preliminary vetting procedure, the SA shall use the appropriate IMI procedure to transfer the case to the LSA which will handle it according to Article 56.1.
36. When the supervisory authority where the complaint was first lodged informs the LSA, it also explains why it considers that the case falls under the scope of Article 56.2 and why it would like to handle the case or would consider that the LSA should handle it.

2.3 Decision of the lead supervisory authority under Article 56.3

37. According to Article 56.3, once informed of the existence of a case with only local impacts, the LSA *“shall decide whether or not it will handle the case”*.

2.3.1 How does the LSA choose to handle the case or not?

38. As a first step, the lead supervisory authority should verify if the case falls under the scope of Article 56.2, based on the available information and on additional information the LSA may gather directly from the controller.
39. If the LSA considers that the case does not have only local impacts (i.e. depending on the specific configuration, its subject matter relates to more than one establishment in more than one Member State or affects data subjects in more than one Member State), it should handle the case.
40. If the LSA confirms that the case is a local one, it has to decide, as a second step, whether it will handle the case or let the supervisory authority where the complaint was the first lodged.
41. To do so, the LSA should, at least, verify two criteria:
 -) The presence of an establishment of the controller or processor in the Member State of the receiving supervisory authority ;
 -) Whether the case raises or not a new matter of principle which has not yet been solved at the European level.

2.3.1.1 *The presence of an establishment of the controller or processor in the supervisory authority's Member State*

¹⁶ See point 15 of the Internal EDPB Document 06/2020 on preliminary steps to handle a complaint: admissibility and vetting of complaints.

¹⁷ See the Guidelines for identifying a controller or processor's lead supervisory authority.

42. Pursuant to Article 56.3, the LSA has to take “into account whether or not there is an establishment of the controller or processor in the Member State of which the supervisory authority informed it”.
43. Recital 127 of the GDPR presents the same criterion, stating that “*when deciding whether it will handle the case, the lead supervisory authority should take into account whether there is an establishment of the controller or processor in the Member State of the supervisory authority which informed it in order to ensure effective enforcement of a decision vis-à-vis the controller or processor*”.
44. Since it is the only explicitly mentioned criterion in the GDPR, the presence of an establishment under the jurisdiction of the supervisory authority where the complaint was first lodged should be a decisive aspect in the decision. Achieving an effective remedy for the data subject is the first element of ensuring a consistent and high level of protection which the GDPR intends to achieve.
45. Indeed, the presence of such establishment is important, in order to ensure the access to the evidence during the investigative phase and the enforceability of the final decision.
46. Thus, the LSA must decide to handle the case if there is no establishment in the Member State of the supervisory authority which informs it.
47. On the contrary, the LSA could let the supervisory authority handle the case if there is an establishment in its Member State – and if the second criterion is also fulfilled (i.e. the case does not raise a new matter of principle; see point 2.3.1.2 below).
48. In the situation where the LSA decides not to handle the case even if there is no controller or processor’s establishment on the territory of the receiving SA, the latter should try to informally communicate with the LSA and reach an agreement¹⁸.
49. If this proves unsuccessful, the SA may launch a Mutual Assistance procedure in IMI in order to request the LSA to review its position in the light of the present internal guidance. As a last resort, if the LSA still does not answer the formal request within one month¹⁹, the supervisory authority which informed it may trigger Article 64.2 with a view to obtaining an opinion from the EDPB where the LSA “*does not comply with the obligations for mutual assistance with Article 61*”.

2.3.1.2 Whether the case raises a new matter of principle

50. In order to ensure the consistent application of the GDPR throughout the European Economic Area, the LSA should also verify if the case raises a new matter of principle that has not yet been addressed at the European level.
51. A “new matter of principle” could be identified, for example where the case raises a need to interpret a specific provision that has not yet been interpreted.

Example 13

A complaint calling for an interpretation of the application of the right to restriction of processing (Article 18 of the GDPR) or a complaint raising new questions regarding the application of the right to data portability (Article 20 of the GDPR).

¹⁸ Nevertheless, this situation should be rare since it is not in line with the present internal guidance.

¹⁹ Article 61.2 of the GDPR: “*Each supervisory authority shall take all appropriate measures required to reply to a request of another supervisory authority without undue delay and no later than one month after receiving the request*”.

- 52. By “addressed at European level” it is meant that the question raised has already been decided on the merits, either by the lead supervisory authority following the cooperation procedure, or by the European Data Protection Board (EDPB) or by the case law of the CJEU or the ECHR, while still noting that the facts of each case should be considered on their own merits.
- 53. Thus, the LSA may decide to handle a case, which could fall under the derogation of Art 56(2) GDPR if it raises a new matter of principle which has not yet been solved at the European level, even if there is a controller or processor’s establishment in the supervisory authority’s Member State.
- 54. On the contrary, the LSA could decide not to handle a local case if it does not raise a new matter of principle which has not yet been solved at the European level and if there is an establishment of the controller or processor in the Member State of the receiving supervisory authority.

2.3.1.3 Other criterion

- 55. In any case, and even if there is an establishment in the Member State of the supervisory authority and if the case does not raise a new matter of principle, the LSA still may decide to handle a local case for any other objective reason.
- 56. The LSA may decide to handle the case because it has already received several complaints against the same controller or because it would like to group several cases about a similar subject.

2.3.2 The LSA informs the supervisory authority of its decision to handle the case or not

- 57. Once the LSA has decided whether or not it will handle the case with only local impacts, and within a maximum three weeks period, it should inform the supervisory authority which received the case.
- 58. Article 56.3 of the GDPR does not specify whether the LSA has to justify its decision to handle the local case or not²⁰.
- 59. Nevertheless, the spirit and intentions of the GDPR are clearly in favour of transparency and exchange of information between supervisory authorities.
- 60. Therefore, as a good practice, the LSA should give to the supervisory authority a brief explanation of its decision, using the same dedicated form as the one used by the supervisory authority to inform the LSA of the local case.
- 61. This justification could be, for example that the LSA does not consider that the case has only local impacts and the reasons why (e.g. because it impacts data subjects in several Member States or is related to establishments located in more than one EEA territory), or that there is no processor’s or controller’s establishment in the SA’s Member State, or the LSA considers the case raises a “new matter of principle”, or any other relevant reason.
- 62. In the situation where the LSA decides not to handle the case even if there is no controller or processor’s establishment on the territory of the receiving SA, the latter should try to informally communicate with the LSA and reach an agreement²¹.

²⁰ For example, Article 57.1(g): each supervisory authority shall “cooperate with, including sharing information and provide mutual assistance to other supervisory authorities”.

²¹ Nevertheless, this situation should be rare since it is not in line with the present internal guidance.

2.3.3 What can be done when the LSA has not informed the supervisory authority of its choice during the period of three weeks?

63. As previously mentioned, according to Article 56.3 of the GDPR, the lead supervisory authority has “*a period of three weeks after being informed*” to “*decide whether or not it will handle the case*”.
64. Since Article 56.3 does not refer to the principle of “silent assent” (as, for example, Article 64.3 does), the LSA should explicitly inform the SA of its decision whether or not it will handle a case with only local impacts within this time frame. Thus, the decision to handle the case cannot be an “implied decision” or a “silent assent” of the lead supervisory authority.
65. It is possible that a supervisory authority will be met with the silence of the LSA – which, for example, did not succeed in examining the request within the allocated time.
66. In this situation, the staff of the supervisory authority shall try to contact the LSA’s staff using informal means, such as email and/or phone calls. If it is not enough to obtain an answer from the LSA, the same means could be used by the authorities’ members of the EDPB (i.e. At Commissioner or Head of Authority level²²).
67. If this informal request still proves unsuccessful, the SA may launch a Mutual Assistance procedure through the IMI system in order to request an answer from the LSA²³.
68. As a last resort, if the LSA still does not answer the formal request within one month²⁴, the supervisory authority may trigger Article 64.2 with a view to obtaining an opinion from the EDPB where the LSA “*does not comply with the obligations for mutual assistance with Article 61*”. In any case, CSAs have the possibility to trigger the urgency procedure under Article 66.

2.4 The Lead supervisory authority handles the case under Article 56.4

69. According to Article 56.4 “*where the lead supervisory authority decides to handle the case, the procedure provided in Article 60 shall apply*”. This means that the LSA should trigger the cooperation mechanism with the other supervisory authorities concerned²⁵.
70. Doing so, “*the supervisory authority which informed the lead supervisory authority may submit to the lead supervisory authority a draft for a decision*” (Article 56.4).
71. Since Article 56.4 provides that the supervisory authority where the complaint was first lodged “*may submit*” a draft decision to the LSA and Recital 127 provides that “*the supervisory authority which informed [the LSA] should have the possibility to submit a draft for a decision*”, this seems to be a discretionary choice for the supervisory authority to actually submit a draft or not.
72. Nevertheless, in some cases it could be appropriate that the supervisory authority where the complaint was first lodged submits such a draft decision to the LSA insofar as it has sufficient information at its

²² According to Article 53 of the GDPR.

²³ Article 61.1 of the GDPR: “*Supervisory authorities shall provide each other with relevant information and mutual assistance in order to implement and apply this Regulation in a consistent manner and shall put in place measures for effective cooperation with one another*”.

²⁴ Article 61.2 of the GDPR: “*Each supervisory authority shall take all appropriate measures required to reply to a request of another supervisory authority without undue delay and no later than one month after receiving the request*”.

²⁵ See the Guidelines about Article 60 and the cooperation mechanism.

disposal to propose such a decision. In such cases the supervisory authority where the complaint was first lodged should inform the LSA about its intention to submit a draft decision prior to its submission.

73. The LSA shall take utmost account of the draft decision transmitted by the SA, except where there are specific, overriding reasons preventing it²⁶.
74. Indeed, Article 56.4 states that “*the lead supervisory authority shall take **utmost** account of that draft when preparing the draft decision referred to in Article 60(3)*”.
75. Recital 130 mentions on this point that “*the lead supervisory authority should, when taking measures intended to produce legal effects, including the imposition of administrative fines, take utmost account of the view of the supervisory authority with which the complaint has been lodged*”.
76. According to Article 60.7, when the case is resolved, the LSA should inform the supervisory authority where the case was first lodged about its final decision.

2.5 The receiving supervisory authority handles the case under Article 56.5

2.5.1 The supervisory authority is competent to handle the case and use cooperation measures

77. When the LSA decides not to handle the case, Article 56.6 and the Article 60 procedure do not apply for this case. In other words when the cross-border case is handled “locally”, the LSA is not the sole interlocutor of the controller or processor.
78. Indeed, Article 56.6 is a general rule applying when the LSA handles the case. It does not apply when the case is handled under Article 56.2 in conjunction with Article 56.5 that lay down a derogation (the case with local impacts is handled by the local supervisory authority where the complaint was first lodged or which first detects a possible infringement).
79. The supervisory authority shall exercise its full range of powers pursuant to Article 58, including the corrective powers. The SA is then the only competent authority for this case.
80. According to Recital 131, however it is suggested, as a good practice, that the receiving supervisory authority which is dealing with a case contacts the controller and the processor, through its establishment present in its Member State, in order to “*seek an amicable settlement with*” it²⁷.
81. According to Article 56.5, “*where the lead supervisory authority decides not to handle the case, the supervisory authority which informed the lead supervisory authority shall handle it according to articles 61 and 62*”.
82. Article 61 provides the use of mutual assistance which covers, in particular, “*information requests and supervisory measures, such as requests to carry out prior authorizations and consultations, inspections and investigations*”.

²⁶ See the Guidelines about Article 60 and the cooperation mechanism.

²⁷ Depending on the national procedural legislation.

83. Article 62 provides the conduct of joint operations *“including joint investigations and joint enforcement measures”*.
84. Articles 61 and 62 provide different degrees of mutual assistance and joint operations that should be triggered depending on the circumstances of the case at stake. Consequently, the supervisory authority should use one or both of these two mechanisms, when it finds it necessary in the process of handling a case with only local impacts.
85. For example, the mutual assistance may consist for the supervisory authority to request information from another supervisory authority which also has a controller’s establishment in its Member State.
86. Joint operations may be appropriate, for example, if an investigation needs to be done in the premises of a processor located in a Member State other than that of the controller or processor involved in the local case at hand.
87. Even though in some cases it might not be necessary or effective to use either the mutual assistance or the joint operations for handling of the case the SA will, as a best practice, inform the LSA about the outcome of the local case, through the IMI system.

2.5.2 How and by whom is a binding decision imposed to the controller or the processor?

88. If the attempt to reach an amicable settlement with the controller or processor proves unsuccessful, the supervisory authority receiving a complaint or detecting an infringement *“exercises its full range of powers”* (Recital 131).
89. According to Article 55.1, *“Each supervisory authority shall be competent for the performance of the tasks assigned to and then exercise of the powers conferred on it in accordance with this Regulation on the territory of its own Member State”*.
90. Moreover, Recital 122 adds that *“this should include handling complaints lodged by a data subject, conducting investigations on the application of this Regulation”*.
91. These provisions lay down the principle of the competence of a supervisory authority on the territory of its own Member State. Conversely, a supervisory authority is not competent on the territory of another supervisory authority’s Member State.
92. Thus, where the SA decides to adopt corrective measures pursuant to the GDPR’s provisions or its national law, the binding decision should be imposed to the controller or processor’s establishment in its own Member State. If that establishment happens to be the main establishment in the EU, i.e. if the SA is the LSA, those measures will be applied by the controller in all its establishments and thus produce effects in other MS as well.

2.6 Informing the complainant

93. According to Articles 60.7²⁸ and 77.2²⁹ of the GDPR, whether the case with only local impacts is handled by the LSA or by the supervisory authority where the complaint was first lodged, this latter remains the sole interlocutor of the complainant.
94. The lead supervisory authority which handles the case shall inform the supervisory authority where the complaint was first lodged of the decision it has made in this case (corrective measures imposed to the controller/processor, amicable settlement reached with the controller/processor, etc.). The SA will then inform the complainant about this decision.

2.7 Handling a case by the lead supervisory authority under Article 56.2

95. Article 56.1 provides that “the supervisory authority of the main establishment or of the controller or processor shall be competent to act as a lead supervisory authority for the cross-border processing carried out by that controller or processor in accordance with the procedure provided in Article 60”.
96. Thus, as a principle the LSA is competent to handle a case about a cross-border processing carried out by a controller or processor which has its main or its only establishment in its Member State.
97. As explained above, Article 56.2 lays down a derogation to this principle when the case has only local impacts: the authority receiving a complaint or informed of an infringement may be competent if the case has only local impacts in its Member State.
98. A supervisory authority which is the LSA with respect to a particular cross-border processing may receive complaints which have only local impacts in its own Member State. If, after careful consideration of the circumstances of the case, the receiving SA has been satisfied that the case is to be considered local under Article 56.2, there is no need to contact other supervisory authorities. This implies that other authorities are not involved in the proceedings.
99. When considering the involvement of other supervisory authorities, careful attention must be given to the procedure as provided for by the GDPR. Compliance with procedural rules may be subject of judicial review in case the decision is challenged before the court. The lead authority should attempt to trace the authorities concerned, thus ensuring the correct application of the procedural rules.
100. When the LSA handles a local case as a supervisory authority which received the complaint in question, it acts in accordance with the procedure described in the part 2.5.

For the European Data Protection Board

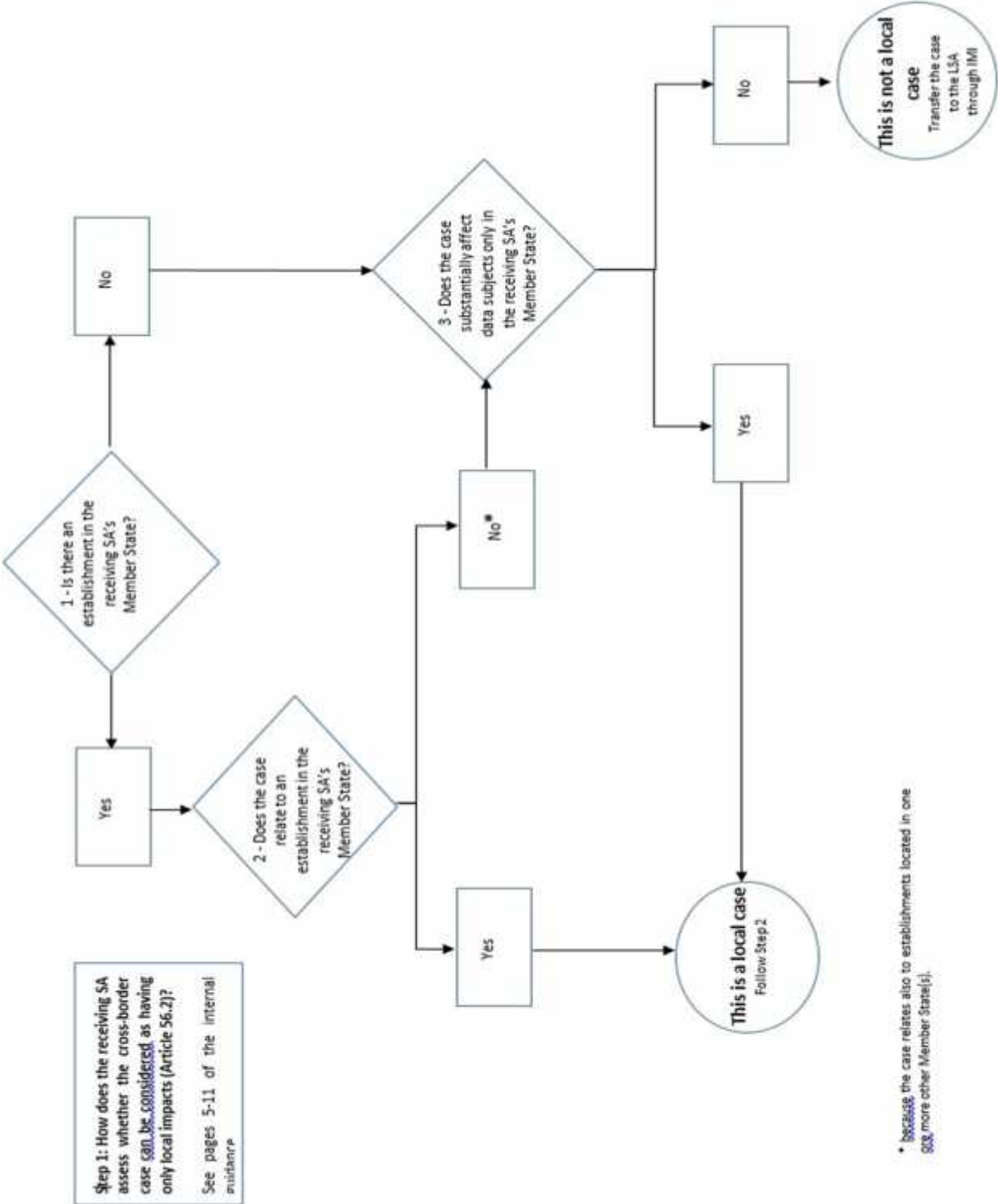
The Chair

(Andrea Jelinek)

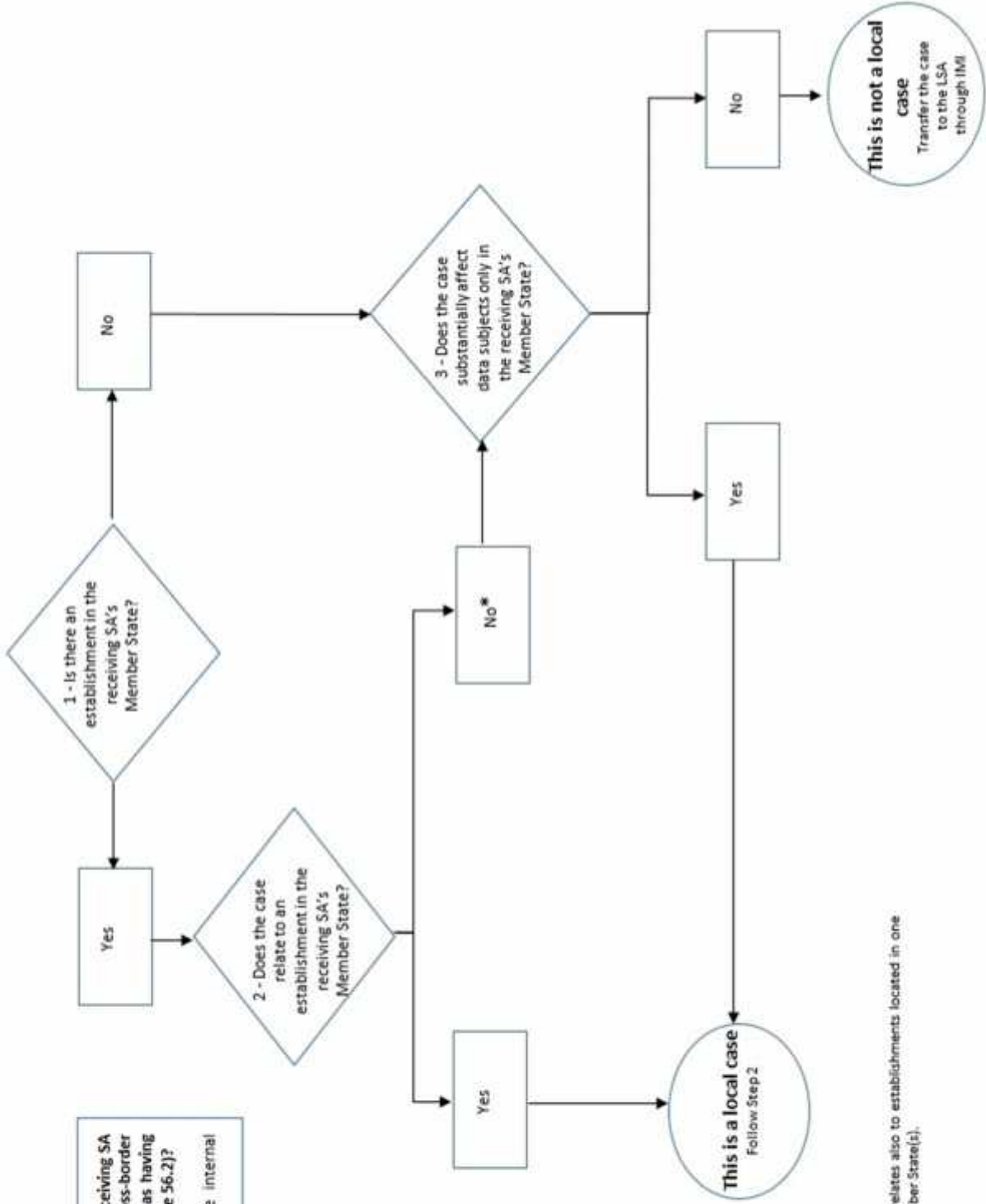
²⁸ Article 60.7: “The supervisory authority with which a complaint has been lodged shall inform the complainant on the decision”.

²⁹ Article 77.2: “The supervisory authority with which the complaint has been lodged shall inform the complainant on the progress and the outcome of the complaint”.

ANNEX: FLOWCHART



Step 1: How does the receiving SA assess whether the cross-border case can be considered as having only local impacts (Article 56.2)?
See pages 11-14 of the internal guidance



* SSC(2022) the case relates also to establishments located in one or more other Member State(s).