

Internal EDPB Documents



Internal EDPB Document 1/2021 on the application of Art. 62 GDPR – Joint Operations

Review of Art. 29 WP document

Adopted on 14 January 2021

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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1 INTRODUCTION

- (1) This paper focuses mainly on Article 62 GDPR. In order to integrate the provisions of article 62 with the overall provisions of the Regulation, reference is also made to the following provisions of the GDPR:

Recitals: 125, 127, 134, 138

Articles: 55, 56, 57(1)g, 60, 63, 66

- (2) This process guide is accompanied by two annexes:
 -) Annex I: Contain a draft outline for a joint operation action plan.
 -) Annex II: Contain a case flow diagrams illustrating of the exchanges among participating Supervisory Authorities in a joint operation in two scenarios: with and without LSA.

2 DEFINITION

- (3) A joint operation occurs where two or more SAs join forces to act toward a commonly agreed purpose. To do so, SAs make available their resources including their skills and staff.

3 PARTICIPANTS

- (4) Chapter VII provides rules on Cooperation and Consistency to ensure the consistent application of the GDPR in the Member States. Cooperation amongst Supervisory Authorities can take various forms. In accordance with the GDPR, Supervisory Authorities are at liberty to engage in one or several forms of cooperation, depending on their needs and of the goal they intend to achieve¹.
- (5) Joint operation may be conducted either by SAs cooperating on a national case (on a voluntary basis) as well as with the CSA handling a case locally pursuant to Article 56(5) or by SAs working together under the One-Stop-Shop mechanism on the impetus of the Lead Supervisory Authority:

¹ Article 61 Regulation (EU) 2018/1725 (EUDPR) provides that the EDPS shall cooperate with national supervisory authorities to the extent necessary for the performance of their respective duties, in particular by providing each other with relevant information, asking each other to exercise their powers and responding to each other's requests. See also Art. 26 of the [EDPS Rules of Procedure](#) ("Article 26 Cooperation with national supervisory authorities under Article 61 of the Regulation (referring to the possibility of joint operations between the EDPS and national supervisory authorities).

1. Joint operation between SAs cooperating on a national case pursuant to Article 55 (on a voluntary basis): the SA initiating a joint operation is at the liberty to choose to involve any other SA in the joint operation.
2. Joint operation between SAs under the One-Stop-Shop mechanism handling a case locally pursuant to Article 56(2) and 56(5).
3. Joint operation between SAs under the One-Stop-Shop mechanism pursuant to Article 56(1) (on the impetus of the Lead SA): where the joint operation targets a cross border processing of personal data, the Lead SA must seek the involvement of all SA with a right to participate.

The SAs with a right to participate are:

- The SA of a MS where a significant number of data subjects are likely to be substantially affected by processing operations.
- The SA of the MS where the Controller or Processor has establishments.

The Lead SA may contact other SAs which it may deem appropriate, including authorities that have received complaints related to the joint operation.

- (6) In any case, any other SA could be invited to participate in the joint operation if it can contribute some type of resource for the success of the joint operation.
- (7) Participating SAs must cooperate proactively to define an action plan as described in Annex I that is realistic and effective considering constraints such as resources, time, costs, etc. Thus, for example, in cases in which a large number of SAs wish to participate in the joint operation, the SAs should seek to agree on the appointment of reduced teams of personnel to carry out each specific action foreseen in the joint operation.
- (8) As Article 62 does not provide for a timescale nor for any particular method on how to organize joint operations, this process guide contains some provisions to address these aspects in item V – General terms and conditions between participating SAs and annexes I and II.

4 PROCESS

(See flow charts in annex II)

<p>4.1 Step 1 – Identification of the Supervisory Authorities participating in a joint operation</p>	
<p>(9) The initiating SA communicates on the possible operation by sharing all necessary information. Joint operations are formally initiated on the EDPB IT platforms.</p> <p>(10) In response, interested SAs get back to initiating SA.</p>	<p>No timeframe</p>
<p>4.2 Step 2 – Issue invitation to participate to a joint operation</p> <p><i>(Relevant items of the action plan in Annex I can be used as a template for an invitation to participate in the joint operation. This invitation could be sent through EDPB IT platforms).</i></p>	
<p><i>In a cross-border processing</i></p>	
<p>(11) The LSA issues the invitation to the other SAs to participate in the joint operation, including at least those SAs having a right to participate in accordance with Article 62(2). It also responds to the requests of SAs wishing to participate.</p> <p>(12) The LSA keeps conveying basic information on the case to the SAs identified as ‘non-concerned’ in order to establish as many SA with the right to participate as possible in order to include them in the Joint operation in preparation.</p> <p>(13) In case of failure by the LSA to comply with the obligation to invite within one month² or to respond without delay to</p>	<p>Timeframe: without delay within one month</p>

² Pursuant to article 62 paragraphs (2) and (7), when “a supervisory authority does not, within one month, comply with the obligation [to 1- invite the SA of each of those Member State to take part in the joint

<p>requests to participate, the other SA may adopt a provisional measure on the territory of their Member States – Triggering of the urgency procedure and requirement of an opinion or an urgent binding decision from the EDPB (art. 62(7) and 66 GDPR)</p>	
<p><i>In other cases (cf. art. 55 or 56(5)), the initiator of the joint operation invites any SA it wishes to involve in the operation</i></p>	
<p>(14) The initiating SA issues invitations to any SAs it wishes to involve and responds to the requests of SA(s) wishing to participate.</p>	<p>Timeframe³: within one month</p>
<p>4.3 Step 3 – Agreement on the “Joint Operation Action Plan” between participating SAs</p>	
<p>(15) SAs participating to a joint operation agree on the goal(s), nature(s), resources, duration, conditions, etc. of the joint operation action plan before it formally starts.</p> <p>(16) An outline for a possible joint operation action plan is offered in Annex I.</p>	<p>No timeframe</p>
<p>4.4 Step 4 – Nature of the powers exercised by the seconding SA(s)’s members and staff</p>	
<p>(17) For any joint operation involving direct participation of SA’s members and staff on the territory of another country, the host SA may confer the same powers on the seconding SA’s members or staff involved in joint operation as its own members and staff.</p>	

operations and 2- respond without delay to the request of a SA to participate] the other SAs may adopt a provisional measure on the territory of its Member State [...]”.

³ Although the RGPD does not establish a specific term for this, it is considered convenient to establish a term of one month like that established when the LSA participates in the joint operation.

<p>(18) There are two conditions to meet:</p> <ol style="list-style-type: none"> 1. The national law of the host SA allows it; and 2. The seconding SA authorizes the conferment of powers on its members and staff <p>(19) Alternatively, and for investigative actions only, the host SA may accept that the seconding SA’s members and staff exercise their own investigative powers.</p> <p>(20) There are three conditions to meet:</p> <ol style="list-style-type: none"> 1. The host SA’s national law allows it; 2. The conditions of national law of the seconding SAs are respected, and 3. The exercise of such investigative powers is carried out under the <u>guidance</u> and in the <u>presence</u> of the host SA (staff or members). <p>(21) In general, and especially prior to a joint operation, SAs should establish, within their respective organizations, all relevant procedures to confer powers to seconding SA’s members and staff.</p> <p>(22) Joint operations involving direct participation of SA’s members and staff on the territory of another country will be carried out under the guidance and instructions of the host SA. The (procedural) law applicable to joint operations is the law of the host SA’s member state.</p>	<p>No timeframe</p>
<p>4.5 Step 5 – Completion of a joint operation</p>	
<p>(23) At the completion of a joint operation, the SAs may consider sharing the results in the way they consider most appropriate, taking into account, in particular, the legal constraints applicable in the host SA Member State, whether to share information with other SAs or with the public.</p>	<p>No timeframe</p>

5 RESPONSIBILITY AND LIABILITY IN A JOINT OPERATION

- (24) The Member State of the host SA assumes responsibility, including liability, for any damage caused by the staff of the seconding SA on its territory (Article 62(4) GDPR).
- (25) In particular, the Member State of the host SA makes good any damages caused by staff of the seconding SA under the same conditions applicable to damages caused by its own staff.
- (26) The Member State of the host SA generally refrains from requesting reimbursement from any other Member State. However, the Member State of the seconding SA is under the statutory obligation to reimburse in full the Member State of the host SA in respect of any sums paid to the persons entitled as a result of damages caused by the staff of the seconding SA on the Member State territory of the host SA (Article 62(5) GDPR).

6 GENERAL TERM AND CONDITIONS BETWEEN PARTICIPATING SAS

- (27) The GDPR contains many provisions which detail the functions, competences, and powers of the supervisory authorities as well as the cooperation between them.
- (28) Article 62 together with Articles 55, 56, 57(1)g and 60, as well as Recitals 123, 127, 134 and 138 and this guide prepared by the EDPB, describe the context of joint operations with a sufficient level of detail, which makes it unnecessary to establish a specific formal agreement or MoU for each joint operation. It may be sufficient for the SAs participating in the joint operation to define a joint operation action plan using the template in annex I.
- (29) In short, the GDPR is a sufficient legal basis for the supervisory authorities, on their own, to enable and implement cooperation mechanisms and, in particular, joint operations.
- (30) Therefore, the need for further specification is limited to include only those aspects which the GDPR leaves to the free will of the parties or is strictly necessary in accordance with the applicable national laws.

6.1 General operational aspects

- (31) The GDPR considers joint operations as a cooperation mechanism including joint investigations and joint enforcement measures in which members or staff of the supervisory authorities of other Member States are involved. This open concept allows

covering different kind of actions in a very broad sense. In fact, this guide defines a joint operation where two or more SAs join forces in order to act toward a commonly agreed purpose. In order to do so, SAs make available their resources including their skills and staff.

- (32) The participating SAs, in accordance with the provisions of Article 60 (1) and 57(1)(g), must make all necessary efforts, collaborate, and exchange all relevant information between each other, to successfully complete the joint operation.
- (33) In addition, and in accordance with Recital 125, in joint operations in which there is a lead or hosting supervisory authority, it will be essential that, in its capacity as lead or hosting authority, this supervisory authority involves and closely coordinates the rest of participating supervisory authorities in the decision-making process that must be carried out to successfully complete the joint operation. Decision making should be understood as any action or outcome that may affect the later stages of the overall procedure, including the joint operation⁴.
- (34) Each SA participating in the joint operation shall draw up and keep up to date a list of its personnel involved in the joint operation.
- (35) On-site audits or inspections are carried out in accordance with the national law of the country where the audit or inspection is realised. The host SA will be responsible for coordinating and preparing an inspection plan considering the suggestions of the supervisory authorities involved to reach a consensus. The host SA should consider the different conditions related with the validity of the evidence in accordance with the respective national laws of the participating SAs if they are compatible with the law of the host SA.
- (36) When personal data are processed in the framework of the joint operation, the participating SAs will be joint controllers for such processing since they jointly determine the purposes and means of the processing. Each participating SA will be responsible for compliance with the obligations imposed by the GDPR in relation to the personal data processed and the obligations established in Chapter III of the GDPR.
- (37) With the agreement of all participant concerned, any aspect not previously agreed upon may be agreed at any time during the joint operation, as well as any previously agreed aspect may be modified.

⁴E.g. : a supervisory authority wishes to send an inspection report that includes a legal assessment to the inspected party for feedback, but as soon as the inspected party accepts the report, the legal assessment can no longer be modified. In this scenario, the supervisory authority should have agreed on that report together with the other supervisory authorities involved before sending it to the inspected party for feedback.

6.2 Duration of the joint operation

- (38) The participating SAs will decide by consensus the dates or milestones for the beginning and end of the joint operation, as well as any subsequent updates or modifications.

6.3 Confidentiality, Transparency and Publicity

- (39) Without prejudice to the provisions established in the respective national laws, the participating SAs may agree by consensus to make public the existence of the joint operation and the information related to it.
- (40) In accordance with Article 54 (2) of the GDPR, the duty of confidentiality shall extend to all SAs staff involved in the joint operation and to all SAs which, although not directly participating in the joint operation, have access to information relating to the joint operation, such as concerned authorities.
- (41) Participating SAs will implement appropriate technical and organizational measures to ensure security in the handling and exchange of information both during the development of the joint operation and after its completion.
- (42) Participating SAs will also implement appropriate mechanisms to ensure the confidentiality of information which is subject to trade secret or intellectual property both during and after the completion of the joint operation.
- (43) Notwithstanding possible national duty to share information, participating SAs shall restrict access to information relating to the joint operation to the personnel involved in the joint operation. (“*need to know*” principle).
- (44) Participating SAs shall notify without delay any breach of the confidentiality and security measures mentioned above to the other participating SAs.
- (45) Participating SAs should assume that information shared in the framework of the joint operation may have to be disclosed in accordance with national laws. When a participating SA receives a request for access to this information, it shall inform the other participating SAs without delay and will consider as far as possible the opinion of the other participating SAs in the decision made in accordance with its applicable national laws.

6.4 Information retention and re-use

- (46) Information from a joint operation will be used for the specific investigations that led to the joint operation, provided that the information is relevant for these investigations. The participating SAs will keep the information that they incorporate in their files in accordance with their respective national laws.
- (47) In accordance with their respective national laws, the participating authorities may reuse non-personal information collected in the joint operation for other different investigations that may be carried out in the exercise of their powers. The reuse of personal information should be limited to those cases in which the Union or Member State law may determine and specify the tasks and purposes for which the further processing should be regarded as compatible and lawful.

6.5 Language and translations

- (48) In each action (on-site inspection, request for information, etc.) carried out within the joint operation, the languages used will be adapted to the needs of the persons and entities affected in the joint operation: controllers, processors, third parties, data subjects, etc.
- (49) The participating SAs must agree on the working languages within the Joint Operation. Each SA, responsible for each action, will provide the necessary informal translations to share the results with the rest of the participating SAs.
- (50) Other translations (e.g.: formal translations of documents) or simultaneous interpretations (e.g.: during an on-site inspection) must be paid for and arranged by the requesting SA(s) unless otherwise agreed.

6.6 Costs

- (51) Each of the participating SAs will pay their own costs incurred for their participation in the joint operation unless a different cost sharing is agreed by the participants concerned.

6.7 Dispute resolution

- (52) To resolve possible minor disputes (for example, possible conflicts between the officials involved in the joint operation, practical or logistical problems, etc.) a contact point must be appointed by each participating SA. These contact points should act to find a solution.
- (53) All participating SAs will make their best efforts to resolve conflicts that may arise and put the joint operation at risk of viability. In the event of a conflict that makes the joint operation unfeasible, the participating SAs may use the mechanisms provided for in the GDPR, such as art 64 (2) and 66.

6.8 Withdrawal of a participant SA from the joint operation

- (54) Any of the participating SAs may decide to end their participation in the joint operation. For such withdrawal to be effective, the SA will notify the other participants in writing providing legal and/or factual reasoning or arguments for its withdrawal and sufficiently in advance and will collaborate in a loyal way to minimize the impact of its withdrawal from the joint operation.
- (55) The withdrawal of the LSA will terminate the joint operation since the CSAs will not be able to continue ex officio. For this reason, this withdrawal must be exceptional and must be based on the loss of competence as the LSA or on the cessation of the causes that led to the set up of the joint operation.

7 ANNEX I: JOINT OPERATION ACTION PLAN

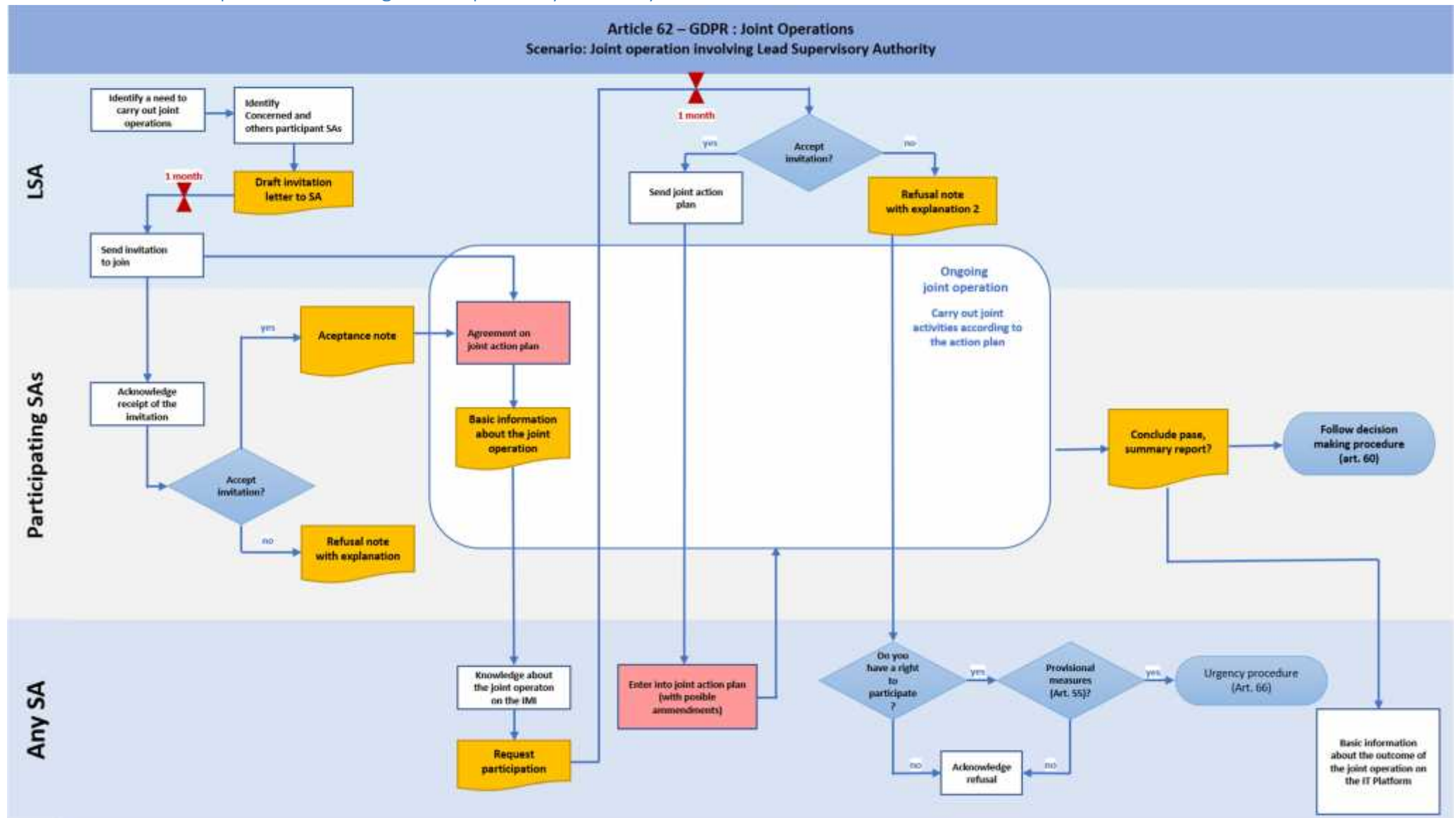
The joint operation action plan may contain:

(The existence of some specific items and, where appropriate, the level of detail, will depend on each joint operation and could be updated during the implementation of the joint operation. Participating SAs should proactively make their best to set up a realistic and effective action plan considering constraint such as resources, time, costs, etc.)

-) Background, objective, and scope of the joint operation**
-) Participating SAs**
-) Dates (or milestone) of the planned start and end of the joint operation.**
-) Staff involved in the joint operation:**
 - People with direct participation in the joint operation: identification, roles, skills, and responsibilities**
 - Persons authorized to participate in possible inspections or audits and if they will work under investigating power of the host SA or secondig SA**
 - Contact points for the dispute resolution.**
-) Joint operation planning:**
 - Calendars**
 - Activities**
 - Milestones**
 - Deliverables**
 - Etc....**
-) Agreed language(s) used**
-) Cost breakdown**
-) Confidentiality and transparency**

8 ANNEX II: JOINT OPERATION FLOW CHARTS

8.1 Scenario: Joint operation involving Lead Supervisory Authority



8.2 Scenario: Joint operation between SAs (no LSA)

