

Court of Appeal of Brussels – 18N – 2018/AR/410

Judgment of 8 May 2019

Questions referred to the Court of Justice of the European Union for a preliminary ruling:

“(1) Must Articles 55.1, 56-58 and 60-66 of Regulation 2016/679 of 27 April 2016 on the protection of individuals with regard to the processing of personal data and on the free movement of such data and repealing Directive 95/46 / EC, read in conjunction with Articles 7, 8 and 47 of the Charter of Fundamental Rights of the European Union, be interpreted as meaning that a supervisory authority which, pursuant to national legislation adopted pursuant to Article 58.5 of this Regulation has the power to engage in legal proceedings against infringements of this Regulation before a court of its Member State, cannot exercise this power in connection with cross-border processing if it is not the lead supervisory authority for that cross-border processing?

(2) Does it make a difference in that regard if the controller of that cross-border processing does not have its main establishment in that Member State but has a different establishment there?

(3) Does it make a difference whether the national supervisory authority initiates proceedings against the main establishment of the controller or against the establishment in its own Member State?

(4) Does it make a difference in that regard if the national supervisory authority has already initiated the legal proceedings before the entry into application of this Regulation (25 May 2018)?

(5) Should the answer to the previous question be positive, does Article 58 (5) of the GDPR have direct effect, so that a national supervisory authority can rely on that article to initiate or continue legal proceedings against private parties, even if Article 58 (5) of the GDPR has not been specifically transposed into the legislation of the Member States, notwithstanding this being required?

(6) Should the answer to the previous questions were positive, could the outcome of such proceedings prevent an opposite finding by the lead supervisory authority where the lead supervisory authority investigates the same or similar cross-border processing activities in accordance with the mechanism contained in articles 56 and 60 of the GDPR?”