Court of Justice of the European Union
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Press and Information

Advocate General's Opinion in Case C-103/11 P
Commission v Systran SA and Systran Luxembourg SA

Advocate General Cruz Villalón proposes that the Court of Justice should set aside the judgment of the General Court by which that court ordered the Commission to pay Systran a lump-sum amount of €12 million as compensation for the material damage sustained by it

The General Court ought to have declined jurisdiction and invited the parties to refer the matter to the competent national courts designated by the successive agreements concluded between the Systran group and the Commission

On 22 December 1975, the Commission concluded with the American company World Translation Center Inc ('WTC') an initial contract for the installation and development of machine translation software (English-French) called 'Systran' (SYStem TRANslation), created by that company in 1968. The relationship between the Commission and WTC – subsequently acquired by the company Gachot which later became Systran SA – then continued, between 1976 and 1987, leading to the creation of a machine translation system operating in the Mainframe environment, called 'EC-Systran Mainframe', consisting of a kernel of linguistic routines and dictionaries for nine pairs of languages of the European Union.

On 4 August 1987, Systran and the Commission concluded a 'collaboration agreement' concerning the joint organisation of the development and improvement of the Systran translation system for the present and future official languages of the European Community and also for its implementation. On 11 December 1991, the Commission terminated that agreement.

On 22 December 1997, Systran and the Commission concluded the first of four successive migration agreements, concluded in order to allow the EC-Systran Mainframe software to operate in the Unix and Windows environments.

On 4 October 2003, the Commission launched an invitation to tender for the maintenance and linguistic enhancement of its machine translation system. However, by letter of 31 October 2003, Systran informed the Commission that the work proposed in the invitation to tender was likely to infringe its intellectual property rights and invited the Commission to give its views in that regard. Systran stated that it was unable, under those circumstances, to respond to that invitation to tender. By letter of 17 November 2003, the Commission replied that the proposed work did not, in its view, seem likely to infringe Systran's intellectual property rights. Following that invitation to tender, two of the eight lots comprising the tender were awarded to Gosselies SA.

Taking the view that, after the award of the tender contract, the Commission had unlawfully disclosed its know-how to a third party and that the Commission was infringing its copyright when unauthorised development of the EC-Systran Unix version was carried out by the successful contractor, the Systran group brought an action for damages against the Commission before the General Court.

By a judgment delivered in 2010[1], the General Court held that the dispute could not be considered to be contractual in nature and that it did not therefore lack jurisdiction to adjudicate upon it. Although the General Court dismissed the claims in so far as they concerned the subsidiary

[1] Case T-19/07 *Systran and Systran Luxembourg* v *Commission* [2010] ECR II-6083, see also Press Release No 123/10.

Systran Luxembourg, it did, on the other hand, recognise that the Commission's conduct had caused Systran material damage for the loss in value of its intangible assets (that is the loss in value of its intellectual property rights), assessed as a lump-sum amount of €12 million, and non-pecuniary damage, assessed at €1 000.

The Commission has brought an appeal before the Court of Justice seeking to have that judgment set aside. It claims, as its principal line of argument, that its dispute with Systran and its subsidiary is not a dispute based on non-contractual liability but, in view of the various agreements which it has concluded with those companies between 1975 and 2002 as well as other contractual documents (such as some exchanges of mail and letters of commitment), a dispute based on contractual liability. The General Court thus committed a manifest error in its assessment of the legal nature of the dispute and, therefore, disregarded its own rules of jurisdiction. The Commission also claims that the General Court made a number of errors of law in concluding that there was non-contractual liability on the part of the European Union and that Systran had the right to compensation.

In his Opinion delivered today, Advocate General Cruz Villalón proposes that the Court of Justice should set aside the judgment of the General Court.

The Advocate General considers that the dispute in question must primarily be examined and possibly determined by the competent national courts, in accordance with the agreements in question and the laws applicable to them.

The approach followed by the General Court led it to make an error in law in its examination of the relationships which were established, in a very marked contractual context, between the Commission and the various companies in the Systran group which have developed or contributed to the development of the various versions of the Systran software. Therefore, the General Court wrongly declared itself as having jurisdiction to hear and determine the action for compensation for the damage allegedly caused to Systran by the Commission's conduct.

Consequently, the Advocate General proposes that the Court of Justice should find that the General Court ought to have declined jurisdiction[2] and invited the parties to refer the matter to the competent national courts designated by mutual agreement so that, under the contracts and the law applicable to them and insofar as is relevant, those courts may give a ruling on the scope of the parties' respective rights and obligations and adjudicate on the existence of any contractual breaches and contractual liability on the part of the EU.

From that perspective, the Advocate General points out in general terms that the assessment of the respective rights and obligations of the parties to the dispute entails, in particular, a precise and detailed examination of the nature, the subject-matter and the purpose of the various agreements at issue and of the main contractual provisions agreed upon, in the light of both the law applicable to those agreements and industry practice, taking into account all the relevant circumstances and in particular the principle of good faith in the performance of agreements and loyalty, weighting and collaboration obligations incumbent upon the parties.

However, should it not follow his Opinion, and find that the General Court had jurisdiction, the Advocate General invites the Court of Justice to uphold certain complaints raised by the Commission and to refer the case back to the General Court. This applies, in particular, to the argument according to which the General Court erred in finding that the directive on copyright[3], concerning acts not requiring authorisation by the rightholder, was intended to apply only to works

[2] On the basis of Article 268 TFEU and the second and third paragraphs of Article 340 TFEU.

[3] Council Directive 91/250/EEC of 14 May 1991 on the legal protection of computer programs (OJ 1991 L122, p. 42). That directive, amended by Council Directive 93/98/EEC of 29 October 1993 harmonising the term of protection of copyright and certain related rights (OJ 1993 L 290, p. 9), was codified by Directive 2009/24/EC of the European Parliament and of the Council of 23 April 2009 on the legal protection of computer programs (OJ 2009 L 111, p. 16). In the light of the date of the facts of the present case, however, the latter directive is not applicable *ratione temporis*.

carried out by the legitimate acquirer of the program and not to works entrusted to a third party acquirer (Article 5).

The Commission was also correct to argue that the General Court had erred in law in concluding there was a causal link without examining whether Systran had shown reasonable diligence in preventing or limiting its loss or damage.

Similarly, the Advocate General observes that the elements accepted by the General Court did not make it possible for it to find that there was a sufficiently direct and immediate causal link between the Commission's alleged conduct and the various components of the damage alleged by the companies.

Lastly, the failure to state reasons for the evaluation of the supplementary amount of €5 million, which the Commission invokes, is also well founded.

The Advocate General therefore proposes that the Court of Justice should, primarily, set aside the judgment of the General Court and itself give judgment in the case, declaring that the action based on non-contractual liability brought by Systran and its subsidiary is inadmissible. In the alternative, he proposes that the Court of Justice should set aside the judgment of the General Court and refer the case back to it.

NOTE: The Advocate General's Opinion is not binding on the Court of Justice. It is the role of the Advocates General to propose to the Court, in complete independence, a legal solution to the cases for which they are responsible. The Judges of the Court are now beginning their deliberations in this case. Judgment will be given at a later date.

NOTE: An appeal, on a point or points of law only, may be brought before the Court of Justice against a judgment or order of the General Court. In principle, the appeal does not have suspensive effect. If the appeal is admissible and well founded, the Court of Justice sets aside the judgment of the General Court. Where the state of the proceedings so permits, the Court of Justice may itself give final judgment in the case. Otherwise, it refers the case back to the General Court, which is bound by the decision given by the Court of Justice on the appeal.

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