Court of Justice of the European Union
PRESS RELEASE No 48/13
Luxembourg, 18 April 2013

Press and Information

Judgment in Case C-103/11 P
Commission v Systran SA, Systran Luxembourg SA

The Court of Justice sets aside the judgment of the General Court ordering the Commission to pay Systran SA lump-sum damages of around €12 million

The General Court should have declined jurisdiction and invited the parties to refer to the competent national courts, designated by the various contracts concerning the Systran machine translation system, concluded by Systran and the Commission

On 22 December 1975, the Commission concluded with the American company World Translation Center Inc (WTC) a first contract concerning the installation and development of an (English-French) machine translation software system called Systran (SYStem TRANSlation), created by that company in 1968. Relations between the Commission and WTC, which was subsequently bought by the company Gachot and then became Systran SA, continued, between 1976 and 1987, with the signature of various contracts to improve the machine translation system, functioning in the Mainframe environment, called 'EC-Systran Mainframe', composed of a node, language routines and dictionaries for nine pairs of languages of the EC.

On 4 August 1987 Systran and the Commission concluded a 'collaboration agreement' for the joint organisation of the development and improvement of the Systran translation system for the present and future official languages of the Community and also for its implementation. According to the contract, Belgian law was to apply to any dispute between the parties. Between 1988 and 1989 the Commission entered into four agreements with Gachot SA in order to obtain a licence to use the Systran software for five additional pairs of languages. In December 1991, the Commission terminated the collaboration agreement, on the ground that Systran had not complied with its contractual obligations. On the date that contract ended, the EC-Systran Mainframe version of the Systran machine translation system consisted of 16 language versions.

The Systran group subsequently created and marketed a new version of the Systran machine translation system capable of operating in the Unix and Windows operation systems (Systran Unix), while the Commission developed the EC-Systran Mainframe version, partly with the assistance of an outside contractor.

On 22 December 1997, Systran Luxembourg and the Commission concluded the first of four migration agreements in order to allow the EC-Systran Mainframe software to operate in Unix and Windows. At the time of the signature of that first contract, Systran gave its agreement for the Commission, first, to use the trade mark Systran systematically for any machine translation system deriving from the original Systran system for the sole purposes of the dissemination or supply of the Systran machine translation system, and, secondly, to use Systran products in the Unix and/or Windows environment for its internal purposes. The first migration contract provided that the Commission's machine translation system, including its components, even when modified, remained the property of the Commission, save where industrial or intellectual property rights already existed. Under the terms of that contract, Luxembourg law applied in case of dispute. The migration contract was due to end on 15 March 2002, and Systran Luxembourg was, on that date, to provide up-to-date proof of all intellectual and industrial property rights claimed by the Systran group and connected with the machine translation system. According to the Commission, Systran Luxembourg did not provide it with that information.

On 4 October 2003, the Commission issued an invitation to tender for the maintenance and linguistic enhancement of its machine translation system. However, Systran indicated to the Commission, by letter of 31 October 2003, that the works envisaged in the invitation to tender were likely to infringe its intellectual property rights and called upon the Commission to state its view in that respect. Systran stated that, in those circumstances, it could not reply to the invitation to tender. By letter of 17 November 2003, the Commission replied that the Systran group had not provided evidence of the intellectual property rights which Systran claimed in the Systran machine translation software and that it considered that Systran could not oppose the works carried out by the Belgian company Gosselies SA, which had tendered successfully for two lots out of eight. Following that tendering procedure, the Systran group took the view that the Commission had unlawfully disclosed its know-how to a third party and carried out an act of counterfeiting when Gosselies carried out unauthorised developments of the EC-Systran Unix version.

Systran therefore brought an action before the General Court of the European Union seeking compensation for the damage it claimed to have suffered.

By a judgment in 2010[1], the General Court held that the dispute was not contractual in nature and that, therefore, it had jurisdiction to hear it. While rejecting the claims in so far as they concerned the Systran Luxembourg subsidiary, the General Court recognised that the Commission's conduct had caused the parent company material damage through loss of value of its incorporeal assets (i.e. loss of value of its intellectual property rights), assessed on a lump-sum basis at €12 million, and non-material damage assessed at €1,000.

The Commission lodged an appeal before the Court of Justice, seeking to have that judgment set aside. It argues, in essence, that the General Court erred in law in holding that the dispute was of a non-contractual nature and by concluding that Systran was entitled to compensation.

In its judgment today, the Court of Justice recalls that, when hearing an action for compensation, as in this case, the EU Courts must, before ruling on the substance of the dispute, as a preliminary issue determine their jurisdiction by carrying out an analysis to establish the contractual or non-contractual character of the liability invoked and thus the very nature of the dispute in question.

For those purposes, those courts must examine, on an analysis of the various matters in the file, such as, for example, the rule of law allegedly infringed, the nature of the damage claimed, the conduct complained of and the legal relations between the parties in question, whether there exists between them a genuine contractual context, linked to the subject-matter of the dispute, the in-depth examination of which proves to be indispensable for the resolution of the said action. If a preliminary analysis of those matters shows that it is necessary to interpret the content of one or more contracts concluded between the parties in question in order to establish whether the applicant's claims are well founded, those courts are required at that point to halt their examination of the dispute and declare that they have no jurisdiction to rule thereon in the absence of an arbitration clause[2] in the said contracts.

In that perspective, it must be held that the General Court made a first error of law in applying the principles governing the determination of jurisdiction in the context of actions for compensation directed against the Community. It did not confine itself to examining, as regards the admissibility of the action, having regard to the various matters in the file, whether a genuine contractual context existed between the parties. On the contrary, the General Court carried out as early as the admissibility stage, in the context of determining its jurisdiction, a detailed examination of the content of the various contractual provisions governing the economic and commercial relations between the WTC/Systran group and the Commission from 1975 to 2002, in order to determine whether the Commission had authorisation to disclose to a third party information protected by copyright and know-how held by Systran in the Systran Unix version of the Systran machine

[1] Case T-19/07 *Systran SA and Systran Luxembourg SA* v *Commission*; see also Press Release No 123/10.
[2] Clause whereby the Community and a party to a contract agree to submit any dispute between them to the jurisdiction of the EU Courts.

translation system, taking the view that the contractual character of the Community's liability depended on the existence of that authorisation. Such an analysis, however, as the Commission rightly maintains, concerns the lawfulness or otherwise of the Commission conduct complained of, and thus falls within the substance of the dispute and not the preliminary determination of the very nature of that dispute.

In that context, the General Court also made another error of law in the legal classification of the contracts concluded from 1975 to 2002 between the WTC/Systran group and the Commission. It held, in the light of the various matters in the file, that the existence of those contracts had no effect on the classification of the dispute. However, it is undisputed that the various contractual documents relied on by the Commission before the General Court, including in particular the contract of 22 December 1975 between the Commission and WTC, the contracts concluded from 1976 to 1987 with companies of the WTC group, particularly the technical cooperation agreement of 18 January 1985 with Gachot, the collaboration agreement, the licence contracts with Gachot in 1988 and 1989 and the migration contracts, constitute a genuine contractual context, linked to the subject-matter of the dispute, an in-depth examination of which proved indispensable in order to establish the legality or otherwise of the Commission conduct complained of.

It must therefore be held that the General Court was wrong in its view that the dispute in question was of a non-contractual nature. In those circumstances, the Court of Justice sets aside the judgment of the General Court. In addition, the Court of Justice gives final judgment on the dispute, taking the view that the state of the proceedings so permits, and states in that regard that the EU Courts do not have jurisdiction to hear the action for compensation brought by the Systran group. For that reason, the latter must be dismissed.

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.

Press contact: Christopher Fretwell ☎ (+352) 4303 3355