

Case T-19/07

Systran SA and Systran Luxembourg SA

v

European Commission

(Non-contractual liability — Invitation to tender for the maintenance and linguistic enhancement of the Commission's machine translation service — Source codes of a marketed computer program — Infringement of copyright — Unauthorised disclosure of know-how — Actions for damages — Non-contractual dispute — Admissibility — Real and certain damage — Causal link — Lump-sum evaluation of the damage)

Judgment of the General Court (Third Chamber), 16 December 2010 II - 6089

Summary of the Judgment

1. *Actions for damages — Subject-matter — Claim for damages against the Union on the basis of Article 288 EC, second paragraph — Exclusive jurisdiction of the Union judicature — Assessment of whether liability incurred is contractual or non-contractual — Criteria (Arts 235 EC, 238 EC, 240 EC and 288, second para., EC; Rules of Procedure of the General Court, Art. 113)*
2. *Actions for damages — Subject-matter — Compensation for damage resulting from an alleged infringement on the part of the Commission of its duty to protect the confidentiality of know-how — Non-contractual basis — Jurisdiction of the Union judicature (Arts 235 EC, 287 EC and 288, second para., EC; Charter of Fundamental Rights, Art. 41)*

3. *Procedure — Application initiating proceedings — Formal requirements*
(*Statute of the Court of Justice, Arts 21, first para., and 53, first para.; Rules of Procedure of the General Court, Art. 44(1)(c)*)
4. *Actions for damages — Jurisdiction of the Union judicature — Jurisdiction to adjudicate on a claim that the Commission has infringed copyright — Conditions*
(*Arts 235 EC and 288, second para., EC*)
5. *Actions for damages — Jurisdiction of the Union judicature — Order that the Union make good any damage in accordance with the general principles common to the law of the Member States in the case of non-contractual liability*
(*Art. 235 EC and 288, second para., EC*)
6. *Non-contractual liability — Conditions — Sufficiently serious breach of a rule of law intended to confer rights on individuals — Actual and certain damage — Causal link*
(*Art. 288, second para., EC*)
7. *Approximation of laws — Copyright and related rights — Directive 91/250 — Legal protection of computer programs — Restricted acts — Exceptions — Scope*
(*Council Directive 91/250, Arts 4 and 5*)
8. *Non-contractual liability — Conditions — Sufficiently serious breach of a rule of law intended to confer rights on individuals*
(*Art. 288, second para., EC*)

1. As regards contractual liability, it is only in the presence of an arbitration clause within the meaning of Article 238 EC that the Union judicature has jurisdiction. In the absence of such a clause, the General Court cannot, on the basis of Article 235 EC, adjudicate on the basis of what is in reality an action for contractual damages. To do so would be to extend its

jurisdiction beyond the limits placed by Article 240 EC on the disputes of which it may take cognisance, since that article specifically gives national courts general jurisdiction over disputes to which the Union is a party. The jurisdiction of the Union judicature in contractual matters derogates from the ordinary rules of law and must therefore be construed

narrowly, so that the General Court may hear and determine only claims arising from the contract or that are directly connected with the obligations arising from that contract.

bar to proceeding within the meaning of Article 113 of the Rules of Procedure.

(see paras 58-62)

On the other hand, as regards non-contractual liability, the Union judicature has jurisdiction without there being any need for the parties to the dispute to express their consent. In order to determine its jurisdiction under Article 235 EC, the General Court must examine, by reference to the various relevant matters in the file, whether an applicant's claim for compensation is objectively and globally based on obligations of a contractual or non-contractual nature on the basis of which the contractual or non-contractual nature of the dispute can be characterised. Those matters may be inferred, in particular, from an examination of the parties' claims, of the fact giving rise to the damage in respect of which compensation is claimed and of the content of the contractual or non-contractual provisions relied on in order to settle the point at issue. Where it acts with respect to non-contractual liability, the General Court is therefore perfectly entitled to examine the content of a contract, as it does with respect to any document on which a party relies in support of its arguments, in order to ascertain whether the document in question is of such a kind as to call in question the jurisdiction expressly conferred on it by Article 235 EC. That examination forms part of the assessment of the facts relied on in order to establish the General Court's jurisdiction, the absence of which is an absolute

2. The principle that undertakings are entitled to protection of their business secrets, which finds expression in Article 287 EC, is a general principle of Union law. Article 41 of the Charter of Fundamental Rights also refers to the need for the administration to respect the legitimate interests of confidentiality and of professional and business secrecy.

Business secrets are information of which not only disclosure to the public but also mere transmission to a person other than the one that provided the information may seriously harm the latter's interests. In order that technical information be of the kind to fall within the scope of Article 287 EC, it is necessary, first of all, that it be known only to a limited number of persons. It must then be information

whose disclosure is liable to cause serious harm to the person who has provided it or to third parties. Last, the interests liable to be harmed by disclosure of the information must be objectively worthy of protection.

Where it is a question, in a particular case, of assessing the allegedly wrongful and harmful nature of the Commission's disclosure, without the express authorisation of the owner, to a third party of information protected by copyright or know-how in the light of the general principles common to the laws of the Member States applicable in such matters and not of contractual provisions set out in agreements entered into in the past on questions which do not relate to the applicant's copyright and know-how, the dispute is of a non-contractual nature.

(see paras 79-80, 103)

3. All applications must indicate the subject-matter of the dispute and contain a summary of the pleas in law on which the application is based. That statement must be sufficiently clear and precise to enable the defendant to prepare its defence and the Union judicature to exercise its power of review. In order to guarantee legal certainty and the sound administration of justice, it is necessary that the basic

legal and factual particulars relied on be indicated, at least in summary form, coherently and intelligibly in the application itself. In order to satisfy those requirements, an application seeking compensation for damage caused by a Union institution must state the evidence from which the conduct alleged against it can be identified.

(see paras 107-108)

4. Where, in the context of an action alleging non-contractual liability, the concept of infringement of copyright is relied on in conjunction with the concept of protection of the confidentiality of know-how for the sole purpose of characterising the Commission's conduct as unlawful, the assessment of the unlawful nature of the conduct in question is carried out by reference to the general principles common to the laws of the Member States and does not require a previous decision of a competent national authority.

Consequently, in view of the jurisdiction conferred on the Union judicature by Article 235 EC and the second paragraph of Article 288 EC in matters of non-contractual liability, and in the absence of any national remedy that could lead to the Commission making reparation for the damage allegedly suffered

by an applicant as a result of the alleged infringement, there is nothing to preclude the concept of infringement used by the applicant being taken into consideration for the purpose of characterising the Commission's conduct as unlawful in the context of a claim for damages.

not to do something. Consequently, the Union cannot, as a matter of principle, be excluded from a corresponding procedural measure on the part of the Courts of the Union, as the latter have exclusive jurisdiction to hear actions seeking compensation for damage attributable to the Union.

The concept of infringement used by an applicant in the context of an action for damages is to be interpreted solely in the light of the general principles common to the laws of the Member States, which, so far as computer programs are concerned, are reproduced or laid down in a number of harmonisation directives. The General Court thus has jurisdiction to make a finding of infringement in the sense that might be given to that word by a competent national authority of a Member State in application of the law of that State in an action for damages.

In a case in which the Commission is alleged to have committed an infringement of copyright, for the damage caused to be fully compensated, the right of the owner of the copyright must be re-established intact, which, irrespective of any damages to be assessed, requires at the very least the immediate cessation of the infringement of his right. The reparation in full of the damage in such cases may also take the form of the confiscation or destruction of the result of an infringement, or of publication of the General Court's decision at the Commission's expense.

(see paras 115-117)

(see paras 120-123)

5. It follows from the second paragraph of Article 288 EC and from Article 235 EC that the Union judicature has the power to impose on the Union any form of reparation that accords with the general principles of non-contractual liability common to the laws of the Member States, including, if it accords with those principles, compensation in kind, if necessary in the form of an injunction to do or
6. For the Union to incur non-contractual liability within the meaning of the second paragraph of Article 288 EC, a series of conditions must be met, namely the conduct of which the institutions are accused must have been unlawful, the damage must be real and a causal connection must exist between that conduct and the damage in question.

The unlawful conduct alleged against a Union institution must consist of a sufficiently serious breach of a rule of law intended to confer rights on individuals. Where the institution criticised has only considerably reduced, or even no, discretion, the mere infringement of Union law may be sufficient to establish the existence of a sufficiently serious breach of a rule of law.

Article 4 of that directive is intended to apply only to works carried out by the legitimate acquirer of a computer program and not to works entrusted to a third party by that acquirer. That exception is also limited to the acts necessary to enable the legitimate acquirer to use the computer program in a manner consistent with its purpose, including to correct errors.

The damage for which compensation is sought must be actual and certain and there must be a sufficiently direct causal link between the conduct of the institution and the damage.

(see para. 225)

(see paras 126-127, 268)

7. The legal exception provided for in Article 5 of Directive 91/250, on the legal protection of computer programs, to acts coming with the exclusive right of the author of the program and defined in

8. There is a sufficiently serious infringement of an undertaking's copyright and know-how in software – an infringement which is such as to give rise to non-contractual liability on the part of the Union – where the Commission grants itself the right to carry out works that necessarily entail the modification of the elements relating to that software, such as, for example, the source codes, without having first obtained the undertaking's consent.

(see paras 250, 261)