Appeal brought on 2 March 2011 by the European Commission against the judgment of the General Court (Third Chamber) delivered on 16 December 2010 in Case T-19/07 *Systran and Systran Luxembourg v Commission*

(Case C-103/11 P)

(2011/C 145/18)

Language of the case: French

Parties

Appellant: European Commission (represented by: T. Van Rijn, E. Montaguti and J. Samnadda, Agents, assisted by A. Berenboom and M. Isgour, laywers)

Other party to the proceedings: Systran SA and Systran Luxembourg SA

Form of order sought

— Declare the appeal admissible and well-founded;

— Set aside the judgment of 16 December 2010 in Case T-19/07 *Systran and Systran Luxembourg* v *Commission* to the extent that it allows in part the action for damages brought against the Commission and, consequently, by finally ruling on the case dismiss the action on the basis that it is inadmissible or unfounded;

— Order Systran SA and Systran Luxembourg SA to bear all their own costs and those of the Commission;

— In the alternative, set aside the judgment of 16 December 2010 in Case T-19/07 *Systran and Systran Luxembourg* v *Commission* and refer the case back to the General Court.

Pleas in law and main arguments

The Commission relies on eight pleas in law in support of its appeal. It claims that the judgment is vitiated by a series of errors such as to justify its being set aside. The pleas raised by it relate to the jurisdiction of the General Court to hear the case, its compliance with procedures, and its fulfilment of the three conditions which, according to settled case-law, are cumulatively necessary in order to give rise to the Community's non-contractual liability: the existence of fault, of damage and of a causal link between the fault and the damage.

By its first plea, the Commission claims that the General Court erred in law by deciding that the dispute was of a non-contractual nature and, accordingly, by declaring that it had jurisdiction to hear the case.

By its second plea, the applicant claims that the General Court infringed the rights of the defence enjoyed by the Commission and disregarded the rules on the taking of evidence.

By its third plea, it maintains that the rules on copyright were incorrectly applied with regard to the ownership of copyright.

By its fourth plea, the Commission maintains that the General Court made a manifest legal error with regard to its assessment of the existence, first, of an infringement of copyright and, second, of an infringement of Systran's know-how.

Its fifth plea alleges that, by considering that the Commission's supposed fault constitutes a sufficiently serious breach, the General Court made a manifest error of assessment which led to an infringement of the principles governing the European Union's non-contractual liability.

By its sixth plea, the applicant submits, first, that the General Court erred in law in its interpretation of the exception laid down in Article 5 of Directive 91/250/EEC and, second, that it failed to fulfil its obligation to state reasons with regard to Article 6 of that directive.

By its seventh plea, the Commission alleges, first, that the General Court made clearly incorrect findings of fact, misinterpreted evidence, and made manifest errors of assessment and, second, that it failed to fulfil its obligation to state reasons with regard to the existence of a causal link.

Finally, the eighth plea alleges that, by awarding Systran damages with interest amounting to EUR 12 001 000, the General Court, first, is guilty of making clearly incorrect findings of fact, misinterpreting evidence, and making manifest errors of assessment and, second, the General Court fails to fulfil its obligation to state reasons concerning the calculation of the damage.

Action brought on 2 March 2011 — European Commission v Ireland

(Case C-108/11)

(2011/C 145/19)

Language of the case: English

Parties

Applicant: European Commission (represented by: R. Lyal, C. Soulay, agents)

Defendant: Ireland

The applicant claims that the Court should:

— Declare that by applying a VAT rate of 4.8% to supplies of greyhounds and horses not normally intended for the preparation of foodstuffs, to the hire of horses and to certain insemination services, Ireland has failed to comply with its obligations under Articles 96, 98 (in conjunction with Annex III) and Article 110 of Council Directive 2006/112/EC [1] of 28 November 2006 on the common system of value added tax;

— order Ireland to pay the costs.

Pleas in law and main arguments

Under article 96 of the VAT directive, the standard rate of VAT fixed by each Member State, subject to a minimum rate of 15 %, is applicable to all supplies of goods and services. A rate other than the standard rate may be applied only in so far as that is permitted by other provisions of the directive.

Article 98 provides that Member States may apply one or two reduced rates to the supplies of goods and services listed in Annex III to the directive. The supplies now in issue do not appear in Annex III.

The VAT directive also contains transitional provisions which permit Member States to continue to apply rates which derogate from the general rules on the structure and level of rates contained in the directive, if the relevant national provisions were in force on 1 January 1991.

Under article 113 of the VAT directive, where a Member State applied, on 1 January 1991, a reduced rate lower than the minimum laid down in article 99, it may apply to those goods and services one of the reduced rates provided for in article 98. However, since the rate applied by Ireland to the goods and services now in issue is lower than the minimum set out in article 99 of the VAT directive, article 113 can be of no avail.

Article 110 of the directive also applies to rates lower than the minimum laid down in article 99. It lays down a transitional arrangement for certain national measures adopted for clearly defined social reasons (i.e. to reduce the tax burden levied on consumption of goods and service which cover basic social needs) and for the benefit of the final consumer. The Commission submits that the supply of horses and greyhounds (other than for use in the preparation of foodstuffs), the hire of horses and insemination services cannot be deemed to be necessary in order to cover basic social needs. The Commission also submits that, since a large proportion of horses and greyhounds are intended for racing or breeding, the benefit of the measure cannot be considered as lying with the final consumer.

[1] OJ L 347, p. 1

Reference for a preliminary ruling from Upper Tribunal (Tax and Chancery Chamber) (United Kingdom) made on 4 March 2011 — Purple Parking Ltd, Airparks Services Ltd v The Commissioners for Her Majesty's Revenue & Customs

(Case C-117/11)

(2011/C 145/20)

Language of the case: English

Referring court

Upper Tribunal (Tax and Chancery Chamber)

Parties to the main proceedings

Applicants: Purple Parking Ltd, Airparks Services Ltd

Defendant: The Commissioners for Her Majesty's Revenue & Customs

Questions referred

1. What particular factors does the Referring Court have to take into account when deciding whether, in circumstances such as those of the present case, a taxable person is providing a single taxable supply of parking services or two separate supplies, one of parking and one of transport of passengers?

   In particular:

   (a) Is this case covered by the reasoning adopted by the Court of Justice in Case C-349/96 Card Protection Plan and Case C-41/04 Levob. In particular, can the transport services in question be regarded as ancillary to the parking services or so closely linked to them that they form, objectively, a single indivisible economic supply, which it would be artificial to split?