



## Reports of Cases

### JUDGMENT OF THE COURT (Fifth Chamber)

6 October 2021 \*

(Reference for a preliminary ruling – Copyright and related rights – Legal protection of computer programs – Directive 91/250/EEC – Article 5 – Exceptions to the restricted acts – Acts necessary to enable the lawful purchaser to correct errors – Concept – Article 6 – Decompilation – Conditions)

In Case C-13/20,

REQUEST for a preliminary ruling under Article 267 TFEU from the Cour d'appel de Bruxelles (Court of Appeal, Brussels, Belgium), made by decision of 20 December 2019, received at the Court on 14 January 2020, in the proceedings

**Top System SA**

v

**Belgian State,**

THE COURT (Fifth Chamber),

composed of E. Regan, President of the Chamber, M. Ilešič (Rapporteur), E. Juhász, C. Lycourgos and I. Jarukaitis, Judges,

Advocate General: M. Szpunar,

Registrar: A. Calot Escobar,

having regard to the written procedure,

after considering the observations submitted on behalf of:

- Top System SA, by É. Wery and M. Cock, avocats,
- the Belgian State, by M. Le Borne, avocat,
- the European Commission, by É. Gippini Fournier and J. Samnadda, acting as Agents.

after hearing the Opinion of the Advocate General at the sitting on 10 March 2021,

\* Language of the case: French.

gives the following

### **Judgment**

- 1 This request for a preliminary ruling concerns the interpretation of Article 5(1) of Council Directive 91/250/EEC of 14 May 1991 on the legal protection of computer programs (OJ 1991 L 122, p. 42).
- 2 The request has been made in proceedings between Top System SA and the Belgian State concerning the decompilation by SELOR, the Selection Office of the Federal Authorities (Belgium), of a computer program developed by Top System and forming part of an application in respect of which that selection office holds a user licence.

### **Legal context**

#### *EU law*

- 3 Recitals 17 to 23 of Directive 91/250 state:

‘Whereas the exclusive rights of the author to prevent the unauthorised reproduction of his work have to be subject to a limited exception in the case of a computer program to allow the reproduction technically necessary for the use of that program by the lawful acquirer;

Whereas this means that the acts of loading and running necessary for the use of a copy of a program which has been lawfully acquired, and the act of correction of its errors, may not be prohibited by contract; whereas, in the absence of specific contractual provisions, including when a copy of the program has been sold, any other act necessary for the use of the copy of a program may be performed in accordance with its intended purpose by a lawful acquirer of that copy;

Whereas a person having a right to use a computer program should not be prevented from performing acts necessary to observe, study or test the functioning of the program, provided that these acts do not infringe the copyright in the program;

Whereas the unauthorised reproduction, translation, adaptation or transformation of the form of the code in which a copy of a computer program has been made available constitutes an infringement of the exclusive rights of the author;

Whereas, nevertheless, circumstances may exist when such a reproduction of the code and translation of its form within the meaning of Article 4(a) and (b) are indispensable to obtain the necessary information to achieve the interoperability of an independently created program with other programs;

Whereas it has therefore to be considered that in these limited circumstances only, performance of the acts of reproduction and translation by or on behalf of a person having a right to use a copy of the program is legitimate and compatible with fair practice and must therefore be deemed not to require the authorisation of the rightholder;

Whereas an objective of this exception is to make it possible to connect all components of a computer system, including those of different manufacturers, so that they can work together;

Whereas such an exception to the author's exclusive rights may not be used in a way which prejudices the legitimate interests of the rightholder or which conflicts with a normal exploitation of the program'.

4 Article 1 of the directive provides:

'1. In accordance with the provisions of this Directive, Member States shall protect computer programs, by copyright, as literary works within the meaning of the ... Convention for the Protection of Literary and Artistic Works[, signed in Berne on 9 September 1886 (Paris Act of 24 July 1971), in the version arising from the amendment of 28 September 1979]. For the purposes of this Directive, the term "computer programs" shall include their preparatory design material.

2. Protection in accordance with this Directive shall apply to the expression in any form of a computer program. Ideas and principles which underlie any element of a computer program, including those which underlie its interfaces, are not protected by copyright under this Directive

3. A computer program shall be protected if it is original in the sense that it is the author's own intellectual creation. No other criteria shall be applied to determine its eligibility for protection.'

5 Article 4 of that directive, under the heading 'Restricted Acts', provides:

'Subject to the provisions of Articles 5 and 6, the exclusive rights of the rightholder within the meaning of Article 2, shall include the right to do or to authorise:

- (a) the permanent or temporary reproduction of a computer program by any means and in any form, in part or in whole. In so far as loading, displaying, running, transmission or storage of the computer program necessitate such reproduction, such acts shall be subject to authorisation by the rightholder;
- (b) the translation, adaptation, arrangement and any other alteration of a computer program and the reproduction of the results thereof, without prejudice to the rights of the person who alters the program;
- (c) any form of distribution to the public, including the rental, of the original computer program or of copies thereof. The first sale in the [European Union] of a copy of a program by the rightholder or with his consent shall exhaust the distribution right within the [European Union] of that copy, with the exception of the right to control further rental of the program or a copy thereof.'

6 Article 5 of that directive, under the heading 'Exceptions to the restricted acts', provides:

'1. In the absence of specific contractual provisions, the acts referred to in Article 4(a) and (b) shall not require authorisation by the rightholder where they are necessary for the use of the computer program by the lawful acquirer in accordance with its intended purpose, including for error correction.

2. The making of a back-up copy by a person having a right to use the computer program may not be prevented by contract in so far as it is necessary for that use.

3. The person having a right to use a copy of a computer program shall be entitled, without the authorisation of the rightholder, to observe, study or test the functioning of the program in order to determine the ideas and principles which underlie any element of the program if he does so while performing any of the acts of loading, displaying, running, transmitting or storing the program which he is entitled to do.'

7 Article 6 of Directive 91/250, under the heading 'Decompilation', reads as follows:

'1. The authorisation of the rightholder shall not be required where reproduction of the code and translation of its form within the meaning of Article 4(a) and (b) are indispensable to obtain the information necessary to achieve the interoperability of an independently created computer program with other programs, provided that the following conditions are met:

(a) these acts are performed by the licensee or by another person having a right to use a copy of a program, or on their behalf by a person authorised to do so;

(b) the information necessary to achieve interoperability has not previously been readily available to the persons referred to in subparagraph (a);

and

(c) these acts are confined to the parts of the original program which are necessary to achieve interoperability.

2. The provisions of paragraph 1 shall not permit the information obtained through its application:

(a) to be used for goals other than to achieve the interoperability of the independently created computer program;

(b) to be given to others, except when necessary for the interoperability of the independently created computer program;

or

(c) to be used for the development, production or marketing of a computer program substantially similar in its expression, or for any other act which infringes copyright.

3. In accordance with the provisions of the ... Convention for the protection of Literary and Artistic Works, the provisions of this Article may not be interpreted in such a way as to allow its application to be used in a manner which unreasonably prejudices the rightholder's legitimate interests or conflicts with a normal exploitation of the computer program.'

8 Article 9(1) of that directive provides:

'... Any contractual provisions contrary to Article 6 or to the exceptions provided for in Article 5(2) and (3) shall be null and void.'

- 9 Directive 91/250 was repealed and 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). However, Directive 91/250 is applicable *ratione temporis* to the facts of the dispute in the main proceedings.

***Belgian law***

- 10 The loi du 30 juin 1994 transposant en droit belge la directive européenne du 14 mai 1991 concernant la protection juridique des programmes d'ordinateur (Law of 30 June 1994 transposing into Belgian law the EU Directive of 14 May 1991 on the legal protection of computer programs) (*Moniteur belge* of 27 July 1994, p. 19315), as amended by the loi du 15 mai 2007 relative à la répression de la contrefaçon et de la piraterie de droits de propriété intellectuelle (Law of 15 May 2007 on the repression of counterfeiting and piracy of intellectual property rights) (*Moniteur belge* of 18 July 2007, p. 38734) ('the LPO'), provided in Article 5:

'Subject to Articles 6 and 7, property rights shall include:

- (a) the permanent or temporary reproduction of a computer program, in whole or in part, by any means and in any form. In so far as loading, displaying, running, transmission or storage of the computer program necessitate such reproduction of the program, such acts shall be subject to authorisation by the rightholder;
- (b) the translation, adaptation, arrangement and any other alteration of a computer program and the reproduction of the results thereof, without prejudice to the rights of the person who alters the program;

...'

- 11 Article 6 of the LPO provided:

'§1. In the absence of specific contractual provisions, the acts referred to in Article 5(a) and (b) shall not be subject to authorisation by the rightholder, where those acts are necessary for the use of a computer program by the person entitled to use it, in accordance with its intended purpose, including for error correction.

...

'§3. The person having a right to use a computer program shall be entitled, without the authorisation of the rightholder, to observe, study or test the functioning of that program in order to determine the ideas and principles which underlie any element of the program, if he or she does so while performing any of the acts of loading, displaying, running, transmitting or storing the program which he is entitled to do.'

12 Article 7 of the LPO provided as follows:

‘§1. The authorisation of the rightholder shall not be required where the reproduction of the code and translation of the form of that code within the meaning of Article 5(a) and (b) are indispensable to obtain the information necessary to achieve the interoperability of an independently created computer program with other programs, provided that the following conditions are met:

- (a) the acts of reproduction and translation are performed by a person having a right to use a copy of a program, or on their behalf by a person authorised for that purpose;
- (b) the information necessary to achieve interoperability is not already readily available to it;
- (c) acts of reproduction and translation are confined to the parts of the original program which are necessary to achieve such interoperability.

‘§2. The provisions of paragraph 1 shall not permit the information obtained through its application:

- (a) to be used for goals other than to achieve the interoperability of the independently created computer program;
- (b) to be given to others, except when those communications are necessary for the interoperability of the independently created computer program;
- (c) or, to be used for the development, production or marketing of a computer program substantially similar in its expression, or for any other act which infringes copyright.

‘§3. This Article may not be interpreted in such a way as to allow its application to be used in a manner which unreasonably prejudices the rightholder’s legitimate interests or conflicts with a normal exploitation of the computer program.’

**The dispute in the main proceedings and the questions referred for a preliminary ruling**

- 13 Top System is a company governed by Belgian law that develops computer programs and provides IT services.
- 14 SELOR is the public body, which is responsible in Belgium, for selecting and orienting the future personnel of the authorities’ various public services. Following SELOR’s integration into the service public fédéral ‘Stratégie et Appui’ (Policy and Support Federal Public Service), the Belgian State replaced that body as the defendant in the main proceedings.
- 15 Since 1990, Top System has collaborated with SELOR, on whose behalf it provides IT development and maintenance services.
- 16 In order to fulfil its tasks, SELOR has gradually put in place IT tools to enable applications to be submitted and processed online.

- 17 At the request of SELOR, Top System developed several applications which contain (i) functionalities originating from its framework software called ‘Top System Framework’ (‘the TSF’) and (ii) functionalities designed to meet SELOR’s specific needs.
- 18 SELOR has a user licence for the applications developed by Top System.
- 19 On 6 February 2008, SELOR and Top System concluded an agreement for the installation and configuration of a new development environment as well as the integration of the sources of SELOR’s applications into, and their migration to, that new environment.
- 20 Between June and October 2008, there was an exchange of emails between SELOR and Top System about operating problems affecting certain applications using the TSF.
- 21 Having failed to reach agreement with SELOR on the resolution of those problems, on 6 July 2009, Top System brought an action against SELOR and the Belgian State before the tribunal de commerce de Bruxelles (Commercial Court, Brussels, Belgium) seeking, inter alia, a declaration that SELOR had decompiled the TSF, in breach of Top System’s exclusive rights in that software. Top System also claimed that SELOR and the Belgian State should be ordered to pay it damages for the decompilation of and copying of the source codes from that software, together with compensatory interest, from the estimated date of that decompilation, that is to say, from 18 December 2008 at the latest.
- 22 On 26 November 2009, the case was referred to the tribunal de première instance de Bruxelles (Court of First Instance, Brussels, Belgium) which, by judgment of 19 March 2013, in essence, dismissed Top System’s application.
- 23 Top System brought an appeal against that judgment before the referring court, the cour d’appel de Bruxelles (Court of Appeal, Brussels, Belgium).
- 24 Before that court, Top System submits that SELOR unlawfully decompiled the TSF. According to the applicant, under Articles 6 and 7 of the LPO, decompilation can be carried out only with the authorisation of the author, the successor in title of that author, or for interoperability purposes. On the other hand, decompilation is not permitted for the purpose of correcting errors affecting the functioning of the program concerned.
- 25 SELOR acknowledges that it decompiled part of the TSF in order to disable a defective function. However, it submits, inter alia, that, under Article 6(1) of the LPO, it was entitled to carry out that decompilation in order to correct certain design errors affecting the TSF, which made it impossible to use that software in accordance with its intended purpose. SELOR also relies on its right, under Article 6(3) of the LPO, to observe, study or test the functioning of the program concerned in order to ascertain the underlying ideas and principles of the relevant TSF functionalities in order to be able to prevent the blockages caused by those errors.
- 26 The referring court takes the view that, in order to determine whether SELOR was entitled to carry out that decompilation on the basis of Article 6(1) of the LPO, it is for that court to ascertain whether the decompilation of all or part of a computer program comes within the acts referred to in Article 5(a) and (b) of the LPO.

27 In those circumstances, the cour d'appel de Bruxelles (Court of Appeal, Brussels) decided to stay the proceedings and to refer the following questions to the Court of Justice for a preliminary ruling:

- '(1) Is Article 5(1) of [Directive 91/250] to be interpreted as permitting the lawful purchaser of a computer program to decompile all or part of that program where such decompilation is necessary to enable that person to correct errors affecting the operation of the program, including where the correction consists in disabling a function that is affecting the proper operation of the application of which the program forms a part?
- (2) In the event that that question is answered in the affirmative, must the conditions referred to in Article 6 of the directive, or any other conditions, also be satisfied?'

### **Consideration of the questions referred**

#### ***The first question***

- 28 By its first question, the referring court asks, in essence, whether Article 5(1) of Directive 91/250 must be interpreted as meaning that the lawful purchaser of a computer program is entitled to decompile all or part of that program in order to correct errors affecting the operation of that program, including where the correction consists in disabling a function that is affecting the proper operation of the application of which the program forms a part.
- 29 Under Article 4(a) of Directive 91/250, which establishes, inter alia, the exclusive rights of authors of computer programs, the holder of the copyright in a computer program has the exclusive right to make or to authorise the permanent or temporary reproduction of that program, in whole or in part, by any means and in any form, subject to the exceptions laid down in Articles 5 and 6 thereof.
- 30 Subject to those exceptions, Article 4(b) of Directive 91/250 grants the rightholder the exclusive right to make or authorise the translation, adaptation, arrangement and any other alteration of a computer program and the reproduction of the results thereof.
- 31 Article 5(1) of Directive 91/250 provides, however, that, where the acts referred to in Article 4(a) and (b) of that directive are necessary for the use of the computer program by the lawful purchaser thereof in accordance with its intended purpose, including for error correction, they do not require authorisation from the rightholder, except for specific contractual provisions.
- 32 Under Article 6 of Directive 91/250, under the heading 'Decompilation', the authorisation of the rightholder is also not required where the reproduction of the code or the translation of the form of that code, within the meaning of Article 4(a) and (b) of that directive, is indispensable to obtain the information necessary to achieve the interoperability of an independently created computer program with other programs, provided that certain conditions are met.
- 33 It should be noted that decompilation is not mentioned, as such, among the acts listed in Article 4(a) and (b) of Directive 91/250, to which Article 5(1) thereof refers.
- 34 That being so, it must be ascertained whether, notwithstanding that fact, the acts necessary for the decompilation of a computer program are capable of coming within the scope of Article 4(a) and/or (b) of that directive.



- 35 To that end, it should be noted at the outset, as the Advocate General observed in point 39 of his Opinion, that a computer program is initially written in the form of a ‘source code’ in a comprehensible programming language, before being transcribed into a functional form that the computer can understand, that is to say, into the form of an ‘object code’, by means of a specific program called the ‘compiler’. The process of transforming the source code into the object code is called ‘compilation’.
- 36 In that regard, it should be borne in mind that the source code and the object code of a computer program, since they are two forms of expression thereof, are entitled to be protected by copyright as computer programs under Article 1(2) of Directive 91/250 (see, to that effect, judgment of 22 December 2010, *Bezpečnostní softwarová asociace*, C-393/09, EU:C:2010:816, paragraph 34).
- 37 Conversely, ‘decompilation’ is intended to reconstruct the source code of a program from its object code. Decompilation is carried out by means of a program called a ‘decompiler’. As the Advocate General stated in point 41 of his Opinion, decompilation does not generally enable access to the original source code, but to a third version of the program concerned called ‘quasi-source code’, which can, in turn, be compiled into an object code, allowing that program to function.
- 38 Decompilation therefore constitutes an alteration of the program’s code, which involves a reproduction – at least a partial and temporary one – of that code, and a translation of the form of that code.
- 39 Consequently, it must be held that the decompilation of a computer program involves the performance of acts, namely the reproduction of the program code and the translation of the form of that code, which in fact come within the exclusive rights of the author, as defined in Article 4(a) and (b) of Directive 91/250.
- 40 This interpretation is supported by the wording of Article 6(1) of Directive 91/250 which, while referring, in its heading, to decompilation, makes express reference to the ‘reproduction of the code’ and to the ‘translation of its form within the meaning of Article 4(a) and (b)’ of that directive. It follows that the concept of ‘decompilation’, within the meaning of that directive, does indeed fall within the exclusive rights of the author of a computer program set out in the latter provision.
- 41 Under Article 5(1) of Directive 91/250, the lawful purchaser of a computer program may perform all the acts listed in Article 4(a) and (b) of that directive, including those consisting in the reproduction of the code and in the translation of the form of that code, without prior authorisation from the rightholder, provided that that act is necessary for use of that program, including for the correction of errors affecting the functioning of that program.
- 42 It follows, therefore, from the foregoing considerations that Article 5(1) of Directive 91/250 must be interpreted as meaning that the lawful purchaser of a program is entitled to decompile that program to correct errors affecting the functioning of that program.
- 43 This interpretation is not called into question by Article 6 of Directive 91/250 which, contrary to Top System’s submission, cannot be interpreted as meaning that the only permitted decompilation of a computer program is that effected for interoperability purposes.

- 44 As is apparent from its wording, Article 6 of Directive 91/250 introduces an exception to the exclusive rights of the holder of the copyright in a computer program by allowing the reproduction of the code or the translation of the form of that code without the prior consent of the holder of the copyright where those acts are indispensable to ensure the interoperability of that program with an independently created program.
- 45 In that regard, in the first place, it should be borne in mind that recitals 20 and 21 of that directive state that, in certain circumstances, a reproduction of a computer program code or a translation of its form is indispensable to obtain the information necessary to achieve the interoperability of an independently created program with other programs and that ‘in these limited circumstances only’, the performance of those acts is legitimate and compatible with fair use, so that it should not require the authorisation of the holder of the copyright.
- 46 It is apparent from Article 6(1)(b) and (c) of Directive 91/250, read in the light of recitals 19 and 20 thereof, that the EU legislature thus intended to limit the scope of the exception for interoperability, as laid down in that provision, to circumstances in which the interoperability of an independently created program with other programs cannot be carried out by any other means, but only by means of decompilation of the program concerned.
- 47 Such an interpretation is supported by Article 6(2) and (3) of Directive 91/250 which prohibits, inter alia, the use of information obtained by means of such decompilation for goals other than achieving such interoperability or developing similar programs, and which further excludes, in general terms, any use of such decompilation that would unreasonably prejudice the rightholder’s legitimate interests or conflicts with a normal exploitation of the computer program concerned.
- 48 On the other hand, it cannot be inferred either from the wording of Article 6 of Directive 91/250, read in conjunction with recitals 19 and 20 thereof, or from the scheme of that article, that the EU legislature intended to exclude any possible reproduction of the code of a computer program and the translation of the form of that code other than where those acts are carried out in order to obtain the information necessary to achieve the interoperability between an independently created computer program and other programs.
- 49 In that regard, it should be noted that, while Article 6 of Directive 91/250 concerns the acts necessary to ensure the interoperability of independently created computer programs, the objective of Article 5(1) of that directive is to enable the lawful purchaser of a program to use it in accordance with its intended purpose. Those two provisions therefore have different purposes.
- 50 In the second place, as the Advocate General observed, in essence, in point 59 of his Opinion, this analysis is supported by the *travaux préparatoires* for Directive 91/250, from which it is apparent that the addition, to the European Commission’s initial proposal, of the current Article 6 of that directive was intended specifically to govern the question of the interoperability of programs created by independent authors, without prejudice to the provisions intended to enable the lawful purchaser of the program to use that program normally.
- 51 In the third place, an interpretation of Article 6 of Directive 91/250 to the effect suggested by Top System would undermine the effectiveness of the faculty expressly afforded to the lawful purchaser of a program by the EU legislature, in Article 5(1) of Directive 91/250, to correct errors preventing the use of the program in accordance with its intended purpose.

- 52 As the Advocate General stated in point 79 of his Opinion, the correction of errors affecting the operation of a computer program, in most cases, and in particular where the correction to be effected consists in disabling a function that is affecting the proper operation of the application of which that program forms a part that, necessitates access to the source code or, at the very least, to the quasi-source code of that program.
- 53 In the light of the foregoing considerations, the answer to the first question referred is that Article 5(1) of Directive 91/250 must be interpreted as meaning that the lawful purchaser of a computer program is entitled to decompile all or part of that program in order to correct errors affecting its operation, including where the correction consists in disabling a function that is affecting the proper operation of the application of which that program forms a part.

### *The second question*

- 54 By its second question, the referring court asks, in essence, whether Article 5(1) of Directive 91/250 must be interpreted as meaning that the lawful purchaser of a computer program who wishes to decompile that program in order to correct errors affecting its operation must satisfy the requirements laid down in Article 6 of that directive or other requirements.
- 55 In that regard, it must be borne in mind that, as stated in paragraph 49 of this judgment, the exception laid down in Article 6 of Directive 91/250 has a different scope and purpose to that laid down in Article 5(1) thereof. Consequently, the requirements laid down in Article 6 are not, as such, applicable to the exception laid down in Article 5(1) of that directive.
- 56 However, it must be held that, in the light of the wording, scheme and purpose of Article 5(1) of Directive 91/250, the performance of acts which, together, constitute the decompilation of a computer program is, when carried out under that provision, subject to certain requirements.
- 57 In the first place, in accordance with the wording of that provision, those acts must be necessary for the use of the computer program concerned by the lawful purchaser in accordance with its intended purpose, including for ‘error’ correction.
- 58 In the absence of reference to the law of the Member States and of a relevant definition in Directive 91/250, the concept of ‘error’, within the meaning of that provision must be interpreted in accordance with its usual meaning in everyday language, while also taking into account the context in which it occurs and the purposes of the rules of which it is part (judgment of 3 June 2021, *Hungary v Parliament*, C-650/18, EU:C:2021:426, paragraph 83 and the case-law cited).
- 59 In that regard, it should be noted that, in the field of computing, an error commonly designates a defect affecting a computer program which is the cause of the malfunctioning of that program.
- 60 Furthermore, in accordance with the purpose of Article 5(1) of Directive 91/250, referred to in paragraph 49 of this judgment, such a defect, as constitutes an error within the meaning of that provision, must affect the use of the program concerned in accordance with its intended purpose.
- 61 In the second place, it follows from the wording of Article 5(1) of Directive 91/250 that decompilation of a computer program must be ‘necessary’ for the lawful purchaser to be able to use that program in accordance with its intended purpose.

- 62 In that regard, it should be noted that, as stated in paragraph 52 of this judgment, the correction of errors affecting the use of a program in accordance with its intended purpose will, in most cases, involve modification of the program code and the implementation of that correction will require access to the source code or, at the very least, to the quasi-source code of that program.
- 63 However, decompilation of a program cannot be regarded as ‘necessary’ where the source code is lawfully or contractually accessible to the purchaser.
- 64 In the third place, in accordance with its wording, Article 5(1) of Directive 91/250 allows errors to be corrected subject to ‘specific contractual provisions’.
- 65 In that regard, it should be noted that, under recital 18 of Directive 91/250, neither the acts of loading and running necessary for the use of the copy of a program that has been lawfully acquired nor the correction of errors affecting the operation of that program may be prohibited by contract.
- 66 Accordingly, Article 5(1) of Directive 91/250, read in conjunction with recital 18 thereof, must be understood as meaning that the parties cannot prohibit any possibility of correcting those errors by contractual means.
- 67 On the other hand, under that provision, the holder and the purchaser remain free to organise contractually the manner in which that option is to be exercised. Specifically, that holder and that purchaser may, in particular, agree that the rightholder will ensure the corrective maintenance of the program concerned.
- 68 It also follows that, in the absence of specific contractual provisions to that effect, the lawful purchaser of a computer program is entitled to perform, without the prior consent of the rightholder, the acts listed in Article 4(a) and (b) of Directive 91/250, including decompilation of that program, in so far as it is necessary to correct errors affecting the operation of that program.
- 69 In the fourth place, the lawful purchaser of a computer program who has decompiled that program in order to correct errors affecting its operation cannot use the result of that decompilation for purposes other than the correction of those errors.
- 70 Article 4(b) of Directive 91/250 grants the holder of the copyright the exclusive right to carry out and to authorise not only ‘the translation, adaptation, arrangement and any other alteration of a computer program’, but also ‘the reproduction of the results thereof’, that is to say, in the case of decompilation, that of the source code or quasi-source code resulting therefrom.
- 71 Thus, any reproduction of that code remains subject, under Article 4(b) of Directive 91/250, to the authorisation of the holder of the copyright in that program.
- 72 Article 4(c) of that directive also prohibits the distribution to the public of a copy of a computer program without the consent of the holder of the copyright in that program, which, as is apparent from Article 1(2) of Directive 91/250, also applies to copies of the source code or of the quasi-source code, obtained by means of a decompilation.

- 73 While it is common ground that Article 5 of that directive allows the lawful purchaser of a computer program to perform such acts, without the consent of the holder of the copyright, it is only in so far as those acts are necessary for the use of the computer program in accordance with its intended purpose.
- 74 In the light of the foregoing considerations, the answer to the second question referred is that Article 5(1) of Directive 91/250 must be interpreted as meaning that the lawful purchaser of a computer program who wishes to decompile that program in order to correct errors affecting the operation thereof is not required to satisfy the requirements laid down in Article 6 of that directive. However, that purchaser is entitled to carry out such a decompilation only to the extent necessary to effect that correction and in compliance, where appropriate, with the conditions laid down in the contract with the holder of the copyright in that program.

### **Costs**

- 75 Since these proceedings are, for the parties to the main proceedings, a step in the action pending before the referring court, the decision on costs is a matter for that court. Costs incurred in submitting observations to the Court, other than the costs of those parties, are not recoverable

On those grounds, the Court (Fifth Chamber) hereby rules:

- 1. Article 5(1) of Council Directive 91/250/EEC of 14 May 1991 on the legal protection of computer programs must be interpreted as meaning that the lawful purchaser of a computer program is entitled to decompile all or part of that program in order to correct errors affecting its operation, including where the correction consists in disabling a function that is affecting the proper operation of the application of which that program forms a part.**
- 2. Article 5(1) of Directive 91/250 must be interpreted as meaning that the lawful purchaser of a computer program who wishes to decompile that program in order to correct errors affecting the operation thereof is not required to satisfy the requirements laid down in Article 6 of that directive. However, that purchaser is entitled to carry out such a decompilation only to the extent necessary to effect that correction and in compliance, where appropriate, with the conditions laid down in the contract with the holder of the copyright in that program.**

[Signatures]