

2. It is for the national court to determine whether other measures or measures which are not installed in consoles could cause less interference with the activities of third parties or limitations to those activities, while still providing comparable protection of the rightholder's rights. Accordingly, it is relevant to take account, *inter alia*, of the relative costs of different types of technological measures, of technological and practical aspects of their implementation, and of a comparison of the effectiveness of those different types of technological measures as regards the protection of the rightholder's rights, that effectiveness however not having to be absolute. That court must also examine the purpose of devices, products or components, which are capable of circumventing those technological measures. In that regard, the evidence of use which third parties actually make of them will, in the light of the circumstances at issue, be particularly relevant. The national court may, in particular, examine how often those devices, products or components are in fact used in disregard of copyright and how often they are used for purposes which do not infringe copyright.

(<sup>1</sup>) OJ C 295, 29.9.2012.

**Judgment of the Court (Fourth Chamber) of 13 February 2014 (request for a preliminary ruling from the Unabhängiger Verwaltungssenat des Landes Oberösterreich (Austria)) — Proceedings initiated by Susanne Sokoll-Seebacher**

(Case C-367/12) (<sup>1</sup>)

*(Freedom of establishment — Public health — Article 49 TFEU — Pharmacies — Adequate supply of medicinal products to the public — Operating authorisation — Territorial distribution of pharmacies — Establishment of limits essentially based on a demographic criterion — Minimum distance between pharmacies)*

(2014/C 93/13)

Language of the case: German

#### Referring court

Unabhängiger Verwaltungssenat des Landes Oberösterreich

#### Parties to the main proceedings

Susanne Sokoll-Seebacher

Third party: Agnes Hemetsberger, successor to Susanna Zehetner

#### Re:

Request for a preliminary ruling — Unabhängiger Verwaltungssenat des Landes Oberösterreich — Interpretation of

Article 49 TFEU and Articles 16 and 47 of the Charter of Fundamental Rights of the European Union — Member State's rules which make the award of a concession to operate a pharmacy subject to an assessment of the needs of the market based on a number of complex and almost unforeseeable criteria.

#### Operative part of the judgment

Article 49 TFEU, in particular the requirement that the desired objective be achieved in a consistent manner, must be interpreted as precluding legislation such as that at issue in the main proceedings, which lays down, as an essential criterion for determining whether a need for the establishment of a new pharmacy exists, a rigid limit on the 'people remaining to be served', where the competent authorities cannot depart from that limit to take account of particular local geographical conditions.

(<sup>1</sup>) OJ C 331, 27.10.2012.

**Judgment of the Court (Second Chamber) of 23 January 2014 (request for a preliminary ruling from the Hoge Raad der Nederlanden (Netherlands)) — X BV v Staatssecretaris van Financiën**

(Case C-380/12) (<sup>1</sup>)

*(Tariff headings — Decolourising earth — Chapter 25 of the Combined Nomenclature — Tariff heading 2508 — Concept of washed products — Elimination of impurities without changing the structure of the product — Chapter 38 of the Combined Nomenclature — Tariff heading 3802)*

(2014/C 93/14)

Language of the case: Dutch

#### Referring court

Hoge Raad der Nederlanden

#### Parties to the main proceedings

Applicant: X BV

Defendant: Staatssecretaris van Financiën

#### Re:

Request for a preliminary ruling — Hoge Raad der Nederlanden — Common Customs Tariff — Classification of goods — Decolourising earth — Classification under subheading 2508 40 00 or under subheading 3802 90 00 of the Combined Nomenclature — Notion of 'eliminating impurities' within the meaning of Note 1 to Chapter 25 of the Combined Nomenclature