

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 right-holder'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 right-holder'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.

⁽¹⁾ 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) ⁽¹⁾

(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.

⁽¹⁾ 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) ⁽¹⁾

(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

Operative part of the judgment

1. The concept of 'eliminating impurities' referred to in Note 1 to Chapter 25 of the Combined Nomenclature constituting Annex I to Council Regulation (EEC) No 2658/87 of 23 July 1987 on the tariff and statistical nomenclature and on the Common Customs Tariff, as amended by Commission Regulation (EC) No 1549/2006 of 17 October 2006, must be interpreted as covering the elimination of chemical components found in a mineral product in a crude state through natural circumstances, in so far as that elimination takes place with a view to enhancing the ability of the products at issue to fulfil their inherent intended use, which it is for the national court to verify.
2. Note 1 to Chapter 25 of the Combined Nomenclature constituting Annex I to Regulation No 2658/87, as amended by Regulation No 1549/2006, must be interpreted as meaning that products which have undergone treatment involving the use of chemical substances and leading to the elimination of impurities may be classified under CN tariff heading 2508 only if that treatment has not modified their superficial structure, which it is for the national court to determine.

⁽¹⁾ OJ C 303, 6.10.2012.

Judgment of the Court (Grand Chamber) of 5 February 2014 (request for a preliminary ruling from the Székesfehérvári Törvényszék — Hungary) — Hervis Sport- és Divatkereskedelmi Kft v Nemzeti Adó- és Vámhivatal Közép-dunántúli Regionális Adó Főigazgatósága

(Case C-385/12) ⁽¹⁾

(Request for a preliminary ruling — Direct taxation — Freedom of establishment — National tax legislation establishing an exceptional tax on the turnover of store retail trade — Retail store chains — Existence of a discriminatory effect — Indirect discrimination)

(2014/C 93/15)

Language of the case: Hungarian

Referring court

Székesfehérvári Törvényszék

Parties to the main proceedings

Applicant: Hervis Sport- és Divatkereskedelmi Kft

Defendant: Nemzeti Adó- és Vámhivatal Közép-dunántúli Regionális Adó Főigazgatósága

Re:

Reference for a preliminary ruling — Székesfehérvári Törvényszék — Interpretation of Articles 18 TFEU, 26 TFEU, 49 TFEU, 54 TFEU, 55 TFEU, 56 TFEU, 63 TFEU, 65 TFEU and 110 TFEU — National tax legislation creating a special tax on the store retail trade sector — Progressive tax calculated on the basis of net turnover — Threshold tax rate resulting in greater impact on retail food trade undertakings owned by foreigners than on those owned by nationals.

Operative part of the judgment

Articles 49 TFEU and 54 TFEU must be interpreted as precluding legislation of a Member State relating to tax on the turnover of store retail trade which obliges taxable legal persons constituting, within a group, 'linked undertakings' within the meaning of that legislation, to aggregate their turnover for the purpose of the application of a steeply progressive rate, and then to divide the resulting amount of tax among them in proportion to their actual turnover, if — and it is for the referring court to determine whether this is the case — the taxable persons covered by the highest band of the special tax are 'linked', in the majority of cases, to companies which have their registered office in another Member State.

⁽¹⁾ OJ C 366, 24.11.2012.

Judgment of the Court (Third Chamber) of 13 February 2014 (requests for a preliminary ruling from the Tribunale amministrativo regionale per il Lazio (Italy)) — Crono Service Scarl and Others (C-419/12) and Anitrav — Associazione Nazionale Imprese Trasporto Viaggiatori (C-420/12) v Roma Capitale and Regione Lazio (C-420/12)

(Joined Cases C-419/12 and C-420/12) ⁽¹⁾

(Requests for a preliminary ruling — Articles 49 TFEU, 101 TFEU and 102 TFEU — Car and driver hire services — Purely internal situation — Jurisdiction of the Court — Conditions for admissibility)

(2014/C 93/16)

Language of the case: Italian

Referring court

Tribunale amministrativo regionale per il Lazio

Parties to the main proceedings

Applicants: Crono Service Scarl, Carla Silvestri, Nando Cese, Fabrizio Melaragno, Yahia Nafea, Robert Martin, Angelo Minosse, Raimondo Pratico, Angelo Vincenti, Bruno Pesce, Francesco Fedeli, Roberto Sebastiani, Francesco Nanni, Vincenzo Savino, Andrea Rossi, Filiberto Marinelli, Liberato Puglia, Stefano Sordelli, Carlo Antonini, Andrea Iannilli,