



Press and Information

Court of Justice of the European Union  
**PRESS RELEASE No 19/14**  
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Judgment in Case C-367/12  
Susanne Sokoll-Seebacher

## **Demographic criteria applied in Austria in relation to the opening of new pharmacies are incompatible with the freedom of establishment**

*By not allowing derogations to take account of particular local conditions, those criteria do not respect the requirement of consistency*

In Austria, opening a new pharmacy requires a prior authorisation which is subject to the existence of a 'need'. No need exists where opening a new pharmacy would result in a reduction of the customer base of an existing pharmacy below a certain threshold. In particular, a need does not exist where the 'people remaining to be served' by the existing pharmacy (namely, the number of permanent inhabitants living within a radius of less than four kilometres, by road) is reduced and falls below 5 500. However, where the number of inhabitants is lower than that figure, account must be taken of the people who need to be served owing to that fact that they work, have recourse to services or use means of transport in the existing pharmacy's area of supply.

Mrs Sokoll-Seebacher, who wanted to open a pharmacy in Pinsdorf, had her request for authorisation rejected, on the ground that no need existed within that municipality. According to an expert's report from the Austrian Chamber of Pharmacists, opening a pharmacy in Pinsdorf would have resulted in the number of people potentially served by a neighbouring pharmacy (located in the municipality of Altmünster) falling well below the threshold of 5 500 people. Mrs Sokoll-Seebacher argues that that expert's report did not take into account the future removal of the existing direct road link between Pinsdorf and Altmünster. Moreover, Mrs Sokoll-Seebacher contends that the former operator of the Altmünster pharmacy was perfectly aware, when opening the pharmacy, that the figure of 5 500 people would never be reached. Mrs Sokoll-Seebacher brought an action before an Austrian administrative court, which has sought a ruling from the Court of Justice as to whether EU law (in particular, the freedom of establishment and the freedom to conduct a business in the Charter of Fundamental Rights of the European Union) precludes such national legislation.

By its judgment delivered today, the Court holds that **the freedom of establishment** – in particular the requirement that the desired objective be achieved in a consistent manner – **precludes legislation which does not allow the competent authorities to take account of particular local conditions and to depart from a strict limit on the 'people remaining to be served'**.

The Court observes at the outset that, even if the proceedings do not have any cross-border element, the legislation at issue is capable of falling within the scope of the freedom of establishment, since it is not inconceivable that it may also apply to nationals of other Member States who wish to move to Austria to set up a pharmacy there. Moreover, it is possible that national law may require that a domestic national be granted the same rights as those which a national of another Member State would derive from EU law in the same situation.

As regards the scope of the freedom to conduct a business enshrined in Article 16 of the Charter, the Court observes that that article refers specifically to EU law and, therefore, to the freedom of establishment. The Court concludes from this that the legislation at issue should be assessed with regard to the freedom of establishment alone.

Next, the Court recalls that the freedom of establishment does not preclude, in principle, a Member State from adopting a system of prior authorisation for the establishment of new healthcare providers (such as pharmacies) where this proves indispensable both for filling in possible gaps in access to public health services and for avoiding the duplication of structures, so as to ensure the provision of public health care which, while being adapted to the needs of the population, covers the entire territory and takes account of geographically isolated or otherwise disadvantaged regions<sup>1</sup>.

The Court considers, moreover, that, by applying the criterion relating to the number of 'people remaining to be served', equal and adequate access may not be guaranteed in Austria for certain people living in rural and isolated regions outside the existing pharmacies' areas of supply (in particular for people with reduced mobility). By not allowing the competent authorities to depart from that rigid limit to take account of particular local conditions, the Austrian legislation does not respect the requirement of EU law that the desired objective be achieved in a consistent manner.

However, the Court considers that the legislation at issue satisfies the requirement of EU law that an authorisation scheme which derogates from the principle of freedom of establishment must be based on objective, non-discriminatory criteria known in advance, so that the exercise of the national authorities' discretion is sufficiently circumscribed.

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**NOTE:** A reference for a preliminary ruling allows the courts and tribunals of the Member States, in disputes which have been brought before them, to refer questions to the Court of Justice about the interpretation of European Union law or the validity of a European Union act. The Court of Justice does not decide the dispute itself. It is for the national court or tribunal to dispose of the case in accordance with the Court's decision, which is similarly binding on other national courts or tribunals before which a similar issue is raised.

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The [full text](#) of the judgment is published on the CURIA website on the day of delivery.

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<sup>1</sup>Joined Cases [C-570/07 and C-571/07](#) *Blanco Pérez and Chao Gómez*. See also [Press Release No 49/10](#).