Reports of Cases

JUDGMENT OF THE COURT (Second Chamber)

1 March 2012 *

((Directives 91/439/EEC and 2006/126/EC — Mutual recognition of driving licences — Refusal of a Member State to recognise, in respect of a person who does not satisfy the physical and mental requirements for driving under the laws of that Member State, the validity of a driving licence issued by another Member State))

In Case C-467/10,

REFERENCE for a preliminary ruling under Article 267 TFEU from the Landgericht Gießen (Germany), made by decision of 21 September 2010, received at the Court on 28 September 2010, in the criminal proceedings against

Baris Akyüz,

THE COURT (Second Chamber),

composed of J.N. Cunha Rodrigues, President of the Chamber, U. Lõhmus, A. Rosas (Rapporteur), A. Ó Caoimh and A. Arabadjiev, Judges,

Advocate General: V. Trstenjak,

Registrar: K. Malacek, Administrator,

having regard to the written procedure and further to the hearing on 26 October 2011,

after considering the observations submitted on behalf of:

— Mr Akyüz, by J. Häller, Rechtsanwalt,

— the German Government, by T. Henze and N. Graf Vitzthum, acting as Agents,

— the Italian Government, by G. Palmieri, acting as Agent, assisted by S. Varone, avvocato dello Stato,

— the European Commission, by G. Braun and N. Yerrell, acting as Agents,

having decided, after hearing the Advocate General, to proceed to judgment without an Opinion,

gives the following

* Language of the case: German.

Judgment

1 This reference for a preliminary ruling concerns the interpretation of Articles 1(2) and 8(2) and (4) of Council Directive 91/439/EEC of 29 July 1991 on driving licences (OJ 1991 L 237, p. 1) and of Articles 2(1) and 11(4) of Directive 2006/126/EC of the European Parliament and of the Council of 20 December 2006 on driving licences (OJ 2006 L 403, p. 18).

2 The reference has been made in the context of criminal proceedings brought against Mr Akyüz, a German national, for having driven motor vehicles in Germany, on 5 December 2008 and 1 March 2009, without being in possession of the driving licence required for that purpose.

Legal context

European Union legislation

Directive 91/439

3 The first recital in the preamble to Directive 91/439 states:

'… for the purpose of the common transport policy, and as a contribution to improving road traffic safety, as well as to facilitate the movement of persons settling in a Member State other than that in which they have passed a driving test, it is desirable that there should be a Community model national driving licence mutually recognised by the Member States without any obligation to exchange licences'.

4 The fourth recital in the preamble to that directive states that it is necessary, on road safety grounds, that minimum requirements for the issue of a driving licence should be laid down.

5 Under Article 1(2) of Directive 91/439, '[d]riving licences issued by Member States shall be mutually recognised'.

6 Article 7(1) of Directive 91/439 provides:

'1. Driving licences shall, moreover, be issued only to those applicants:

(a) who have passed a test of skills and behaviour and a theoretical test and who meet medical standards, in accordance with the provisions of Annexes II and III;

(b) who have their normal residence in the territory of the Member State issuing the licence, or can produce evidence that they have been studying there for at least six months.'

7 Article 8(2) and (4) of Directive 91/439 provides as follows:

'2. Subject to observance of the principle of territoriality of criminal and police laws, the Member State of normal residence may apply its national provisions on the restriction, suspension, withdrawal or cancellation of the right to drive to the holder of a driving licence issued by another Member State and, if necessary, exchange the licence for that purpose.

…

4. A Member State may refuse to recognise the validity of any driving licence issued by another Member State to a person who is, in the former State's territory, the subject of one of the measures referred to in paragraph 2.

A Member State may likewise refuse to issue a driving licence to an applicant who is the subject of such a measure in another Member State.'

Directive 2006/126

8 Under Article 2(1)of Directive 2006/126, '[d]riving licences issued by Member States shall be mutually recognised.'

9 Article 7(1) and (5) of that directive provides:

'1. Driving licences shall be issued only to those applicants:

(a) who have passed a test of skills and behaviour and a theoretical test and who meet medical standards, in accordance with the provisions of Annexes II and III;

…

(e) who have their normal residence in the territory of the Member State issuing the licence, or can produce evidence that they have been studying there for at least six months.

…

5. …

Without prejudice to Article 2, a Member State issuing a licence shall apply due diligence to ensure that a person satisfies the requirements set out in paragraph 1 of this Article and shall apply its national provisions on the cancellation or withdrawal of the right to drive if it is established that a licence has been issued without the requirements having been met.'

10 Article 11(4) of Directive 2006/126 is worded as follows:

'A Member State shall refuse to issue a driving licence to an applicant whose driving licence is restricted, suspended or withdrawn in another Member State.

A Member State shall refuse to recognise the validity of any driving licence issued by another Member State to a person whose driving licence is restricted, suspended or withdrawn in the former State's territory.

A Member State may likewise refuse to issue a driving licence to an applicant who is the subject of such a measure in another Member State.'

11 Article 16(1) and (2) of Directive 2006/126 provides:

'1. Member States shall adopt and publish, not later than 19 January 2011, the laws, regulations and administrative provisions necessary to comply with Article 1(1), Article 3, Article 4(1), (2), (3) and (4)(b) to (k), Article 6(1), (2)(a), (c), (d) and (e), Article 7(1)(b), (c) and (d), (2), (3) and (5), Article 8, Article 10, Article 13, Article 14, Article 15, and Annexes I, point 2, II, point 5.2 concerning categories A1, A2 and A, IV, V and VI. They shall forthwith communicate to the Commission the text of those provisions.

2. They shall apply those measures with effect from 19 January 2013.'

12 The first subparagraph of Article 17 of Directive 2006/126 provides:

'Directive 91/439/EEC shall be repealed with effect from 19 January 2013, without prejudice to the obligations of the Member States with regard to the deadlines indicated in Annex VII, Part B for transposing that Directive into national law.'

13 Article 18 of Directive 2006/126/EC is worded as follows:

'This Directive shall enter into force on the twentieth day following that of its publication in the *Official Journal of the European Union*.

Article 2(1), Article 5, Article 6(2)(b), Article 7(1)(a), Article 9, Article 11(1), (3), (4), (5) and (6), Article 12, and Annexes I, II and III shall apply from 19 January 2009.'

National legislation

14 Paragraph 28(1), (4) and (5) of the regulation on the authorisation of persons to drive on the highway (the regulation on driving licences) (Verordnung über die Zulassung von Personen zum Straßenverkehr (Fahrerlaubnis-Verordnung)), of 18 August 1998 (BGBl. 1998 I, p. 2214), in the version applicable up to 15 January 2009 ('the FeV'), provided:

'(1) Holders of a valid [European Union] or [European Economic Area (EEA)] driving licence who have their normal residence, within the meaning of Paragraph 7(1) or (2), in Germany shall be authorised – subject to the restrictions laid down in subparagraphs (2) to (4) — to drive motor vehicles in that country within the limits of their entitlement to do so. Conditions attached to the foreign driving licence are also to be complied with in the Federal Republic. The provisions of this regulation shall apply to driving licences in so far as there is no provision to the contrary.

…

(4) The authorisation referred to in subparagraph (1) shall not apply to holders of a [European Union] or EEA driving licence:

1. who hold only a provisional licence or other temporary licence;

2. who had their normal residence in Germany at the time at which the licence was issued, unless they acquired the licence as a student or school pupil, within the meaning of Paragraph 7(2), during a period of residence of at least six months;

3. whose driving licence has been withdrawn in Germany, either provisionally or definitively by a court, or with immediate effect or definitively by an administrative authority, or who have been refused a driving licence by a legally valid decision, or whose driving licence has not been withdrawn only because the licence has been surrendered in the meantime;

4. who, on the basis of a definitive judicial decision, may not be issued with a driving licence, or

5. as long as they are subject to a driving ban in Germany, in the State in which the driving licence was issued, or in the State in which they have their normal residence, or in the case where the driving licence has been confiscated, taken into possession or officially impounded under Paragraph 94 of the German Code of Criminal Procedure.

(5) The right to avail of a [European Union] or EEA driving licence in Germany, subsequent to one of the decisions referred to in subparagraph (4)3 and 4, shall be granted on application if the grounds for the withdrawal or ban no longer exist. Paragraph 20(1) and (3) [of the FeV] shall apply accordingly.'

15 Paragraph 28(1), (4) and (5) of the FeV, in the version resulting from the regulation of 7 January 2009 (BGBl. 2009 I, p. 29), is designed to transpose Article 11(4) of Directive 2006/126 into German law. Subparagraphs 4 and 5 are now worded as follows:

'(4) The authorisation referred to in subparagraph (1) shall not apply to holders of a [European Union] or EEA driving licence:

…

2. who, on the basis of entries appearing in the driving licence itself or of other indisputable information supplied by the Member State of issue, when the licence was issued, had their normal residence in Germany, unless they had obtained the licence as students or pupils within the meaning of Paragraph 7(2), during a period of residence of at least six months;

3. whose driving licence has been provisionally or definitively withdrawn in Germany by a court or been withdrawn by an immediately enforceable or final decision of an administrative authority, or who have been refused a driving licence by a final decision or whose driving licence has not been withdrawn solely because they have surrendered it in the meantime.

…

In cases coming under points 2 and 3 of the first sentence, the authority may issue a declaratory administrative act to the effect that there is no entitlement to drive. Points 3 and 4 of the first sentence shall be applicable only if the measures referred to therein are entered in the Central Transport Register and have not been cancelled pursuant to Paragraph 29 of the Law on Road Transport (Straßenverkehrsgesetz).

(5) The right to avail of a [European Union] or EEA driving licence in Germany, subsequent to one of the decisions referred to in subparagraph (4), points 3 and 4, shall be granted on application if the grounds for the withdrawal or ban on entitlement to drive no longer exist. Subparagraph (4), third sentence, and Paragraph 20(1) and (5) shall apply accordingly.'

16 Paragraph 21(1)(1) of the Law on Road Transport provides:

'(1) A sentence of a term of imprisonment of up to one year or a fine may be imposed on:

1. any person who drives a motor vehicle without holding the licence necessary for that purpose …

…'

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

17 Mr Akyüz, who was born in 1989, has been the subject of several criminal convictions between 2004 and 2008 for, inter alia, assault, driving without a licence, aggravated extortion with accomplices and threats and slander.

18 On 4 March 2008, Mr Akyüz applied to the Landrat des Wetteraukreises (Chief Administrative Officer for the Wetterau District; 'the Landrat') for a driving licence for vehicles in Class B. By letter of 12 June 2008, the Landrat made the issuing of the driving licence contingent on the production of a

medico-psychological report favourable to the defendant. The defendant underwent the requested assessment. In his report of 8 September 2008, the expert who examined Mr Akyüz concluded that the latter could not be regarded as satisfying the physical and mental requirements for the safe driving of a motor vehicle in Group 1 (Classes B, L, M and S) on the public highway. According to that expert, there were indications to suggest that the defendant had strong aggressive tendencies.

19 By decision of 10 September 2008, which has become final in law, the Landrat rejected the application for a driving licence on the ground that Mr Akyüz did not satisfy the physical and mental requirements for the safe driving of a motor vehicle.

20 On 24 November 2008, Mr Akyüz acquired a driving licence for motor vehicles in Class B in Děčín (Czech Republic). According to information provided by the Germany embassy in Prague, neither the authorities responsible for foreign nationals nor the police in Děčín were able to determine whether Mr Akyüz was resident in the Czech Republic on that date. According to an e-mail of 6 October 2009 from that embassy, those authorities had only a declaration covering the period from 1 June 2009 to 1 December 2009. Mr Akyüz's Czech driving licence was, it was stated, issued in Děčín on 8 June 2009. According to the photocopy of that driving licence, however, the licence had been first issued on 24 November 2008.

21 The German authorities established that Mr Akyüz was driving vehicles in Germany on 5 December 2008 and 1 March 2009.

22 By decision of 17 December 2009, the Amtsgericht Friedberg (Local Court, Friedberg) — Jugendschöffengericht (Juvenile Court) — convicted Mr Akyüz on two counts of driving without a licence on the two occasions mentioned above.

23 Mr Akyüz appealed against that decision to the Landgericht Gießen (Gießen Regional Court).

24 The Landgericht Gießen, being in some doubt, in particular, as to whether the German authorities are obliged to recognise the driving licence issued to Mr Akyüz by the competent Czech authorities, in so far as Mr Akyüz did not have any licence withdrawn by the authorities of the Federal Republic of Germany, but where the issuing of a licence had merely been refused to Mr Akyüz by that Member State, decided to stay the proceedings and to refer the following questions to the Court of Justice for a preliminary ruling:

'Are

(a) Article 1(2), in conjunction with Article 8(2) and (4), of Directive 91/439…

(b) Article 2(1), in conjunction with Article 11(4), of Directive 2006/126 …

to be interpreted as meaning:

1. that they preclude a Member State ("the host State") from refusing to recognise, within its territory, a driving licence issued by another Member State ("the issuing State") in the case where the acquisition of the driving licence in the issuing State was preceded by a refusal to grant a driving licence in the host State on the ground that the physical and mental requirements for the safe driving of a motor vehicle had not been met;

2. if Question 1 is answered in the affirmative: that they preclude a Member State ("the host State") from refusing to recognise, within its territory, a driving licence issued by another Member State ("the issuing State") in the case where the acquisition of the driving licence in the issuing State was preceded by a refusal to grant a driving licence in the host State on the ground that the physical and mental requirements for the safe driving of a motor vehicle had

not been met *and*, on the basis of information given on the driving licence, other indisputable information from the host State, or on the basis of other indisputable facts, in particular any information provided by the holder of the driving licence himself or other indisputable facts known to the host State, it is established that there has been a breach of the rule on residence under Article 7(1)(b) of Directive 91/439 … or Article 7(1)(e) of Directive 2006/126 …

— inasmuch as other indisputable facts, in particular any information provided by the holder of the driving licence himself or other indisputable facts known to the host State are not sufficient: that information, within the meaning of the case-law of the Court of Justice, is provided by the issuing State even in the case where that information has not been directly conveyed, but rather has been conveyed only indirectly in the form of a notification based on such information from a third party, in particular the host State's embassy in the issuing State –;

3. that they preclude a Member State ("the host State") from refusing to recognise, within its territory, a driving licence issued by another Member State ("the issuing State") in the case where, although the formal requirements for the issuing of a driving licence in the issuing State were fulfilled, it is nonetheless clear that the residence was solely for the purpose of acquiring a driving licence and was not for any other purposes protected by European Union law, in particular the fundamental freedoms under the TFEU, the Charter of Fundamental Rights of the European Union and the European Convention for the protection of human rights and fundamental freedoms ("Driving licence tourism")?'

The questions referred for a preliminary ruling

Preliminary observations

25 It is important to note, at the outset, that the questions referred by the national court concern the interpretation of the relevant provisions of, on the one hand, Directive 91/439 and, on the other, of Directive 2006/126, which repeals and replaces Directive 91/439.

26 It is thus necessary to determine to what extent those provisions are applicable to the facts of the dispute in the main proceedings.

27 According to the German Government, the provisions of Directive 91/439 alone are applicable to the present dispute. It is, it submits, apparent from the driving licence obtained by Mr Akyüz in the Czech Republic that the date of issue of that licence is 24 November 2008. In accordance with the second paragraph of Article 18 of Directive 2006/126, Article 11(4) of that directive is applicable as from 19 January 2009, that is to say, after the date on which that licence was issued. By contrast, the Commission takes the view that the provisions of Directive 2006/126 are applicable in respect of the journey made in Germany by Mr Akyüz on 1 March 2009.

28 Firstly, it is apparent from the documents before the Court that the journeys made in Germany by Mr Akyüz which have given rise to the dispute in the main proceedings took place on 5 December 2008 and 1 March 2009.

29 Secondly, although the referring court's decision also mentions 8 June 2009 as the date on which the Czech driving licence was issued to Mr Akyüz, it is important to note that it is clear from that decision that the photocopy of that driving licence shows, however, that it was issued for the first time on 24 November 2008.

30 It appears, therefore, that that driving licence was issued to Mr Akyüz by the competent Czech authorities on 24 November 2008, which it is for the referring court to ascertain. If that driving licence was issued only on 8 June 2009, Mr Akyüz would not have been in possession of a Czech driving licence on the dates on which the journeys giving rise to the dispute in the main proceedings took place and the question of recognition of a licence which was issued only subsequent to those journeys would be irrelevant in the context of the present case.

31 While Directive 91/439 is to be repealed only with effect from 19 January 2013, Articles 2(1) and 11(4) of Directive 2006/126 are nonetheless applicable as from 19 January 2009, in accordance with the second subparagraph of Article 18 of that directive.

32 It should be noted that Article 2(1) of Directive 2006/126 provides for the mutual recognition of driving licences issued by Member States. The second subparagraph of Article 11(4) of that directive provides, however, that a Member State is to refuse to recognise the validity of any driving licence issued by another Member State to a person whose driving licence is restricted, suspended or withdrawn in the former State's territory, irrespective of whether or not that licence had been issued before the date on which that provision became applicable.

33 It follows that those provisions are applicable *ratione temporis* in respect of the second journey which is the subject of the main proceedings, namely the journey made by Mr Akyüz on 1 March 2009.

34 In those circumstances, the questions referred by the national court must be examined both in the light of Articles 1(2) and 8(2) and (4) of Directive 91/439 and in that of Articles 2(1) and 11(4) of Directive 2006/126.

The first question

35 By its first question, the referring court asks, in essence, whether Articles 1(2) and 8(2) and (4) of Directive 91/439 in conjunction with Articles 2(1) and 11(4) of Directive 2006/126 must be interpreted as precluding legislation of a host Member State which allows that State to refuse to recognise, within its territory, a driving licence issued in another Member State when the holder of that licence has not been made by that host Member State, the subject of any measure within the meaning of Article 8(4) of Directive 91/439 or of the second subparagraph of Article 11(4) of Directive 2006/126, but was refused a first driving licence in that State on the ground that he did not satisfy, under that State's legislation, the physical and mental requirements for the safe driving of a motor vehicle.

36 The German Government submits that, if an applicant was refused the issue of a first driving licence on the ground that he did not satisfy the physical and mental requirements for the safe driving of a motor vehicle, allowing him to drive on the public highway represents at least as significant a danger as permitting such access to persons who have been deprived of their driving licences for similar reasons. According to that Government, the concept of 'withdrawal' should therefore be broadly construed, so that it includes the initial refusal to issue a driving licence too.

37 The German Government also invokes the need to take account of certain fundamental rights of road users, such as the right to life, the right to integrity of the person and the right to property, reaffirmed in Articles 2, 3 and 17, respectively, of the Charter of Fundamental Rights of the European Union, with which the fundamental freedoms must be made compatible and which require the Member States not to authorise, within their territory, the participation in road traffic of a driver who is known with certainty to represent a significant danger to other road users.

38 The Commission adds that a person who has been refused the issue of a first driving licence on grounds which, in the case of a previously issued driving licence, would have led to the restriction, suspension, withdrawal or cancellation of that licence, should be treated in the same manner as if that person was covered by those latter situations. Furthermore, that fact does not constitute a reason for granting that person preferential treatment concerning the applicable measures regarding his place of residence or for not authorising or not obliging Member States to apply the restrictive measures provided for in the case where the conditions laid down for the implementation of those measures are satisfied.

39 By contrast, the Italian Government points out that the first question raised by the referring court contains no reference to the criterion of 'normal residence'. While hoping for a progressive interpretation of the rules of European Union law in order to allow for refusal of recognition of a driving licence issued in circumstances such as those in the main proceedings, that Government concludes from those circumstances that Articles 1(2) and 8(2) and (4) of Directive 91/439 in conjunction with Articles 2(1) and 11(4) of Directive 2006/126 do not appear to permit such a refusal.

40 In that respect, it must be noted that, according to the Court's settled case-law, Article 1(2) of Directive 91/439 provides for the mutual recognition, without any formality, of driving licences issued by Member States. That provision imposes on those Member States a clear and precise obligation which leaves no room for discretion as to the measures to be adopted in order to comply with it (see, inter alia, Case C-321/07 *Schwarz* [2009] ECR I-1113, paragraph 75, and Case C-184/10 *Grasser* [2011] ECR I-4057, paragraph 19). It must be stated that the same is true as regards Article 2(1) of Directive 2006/126, whose wording is the same as that of Article 1(2) of Directive 91/439.

41 It is for the issuing Member State to investigate whether the minimum conditions imposed by European Union law, particularly those relating to residence and fitness to drive laid down in Article 7(1) of Directive 91/439, have been satisfied and, therefore, whether the issuing of a driving licence is justified (see *Schwarz*, paragraph 76, and *Grasser*, paragraph 20).

42 Once the authorities of one Member State have issued a driving licence in accordance with Article 1(1) of Directive 91/439, the other Member States are not entitled to investigate whether the conditions for issue laid down by that directive have been met. The possession of a driving licence issued by one Member State has to be regarded as constituting proof that on the day on which that licence was issued, its holder satisfied those conditions (see, inter alia, *Schwarz*, paragraph 77, and *Grasser*, paragraph 21).

43 However, Article 8(2) and (4) of Directive 91/439 permits the Member States, in certain circumstances and, in particular, for reasons of road safety, as is apparent from the final recital in the preamble to Directive 91/439, to apply their national provisions on the restriction, suspension, withdrawal or cancellation of driving licences in relation to any licence-holder who is normally resident in their territory (see *Schwarz*, paragraph 79).

44 The first subparagraph of Article 8(4) of Directive 91/439 thus authorises a Member State to refuse to recognise the validity of a driving licence obtained in another Member State by a person who is, in the first Member State's territory, the subject of a measure restricting, suspending, withdrawing or cancelling a licence. The second subparagraph of Article 11(4) of Directive 2006/126 provides that a Member State must refuse to recognise the validity of any driving licence obtained in another Member State by a person whose driving licence is the subject, in the first Member State's territory, of a restriction, suspension or withdrawal.

45 However, the Court has repeatedly pointed out that the option provided for in Article 8(4) of Directive 91/439 constitutes a derogation from the general principle of mutual recognition of driving licences and is therefore to be interpreted strictly (see, inter alia, Case C-1/07 *Weber* [2008] ECR I-8571, paragraph 29; *Schwarz*, paragraph 84; and order in Case C-334/09 *Scheffler* [2011] ECR I-12379, paragraph 63).

46 The exceptions to the obligation of mutual recognition of driving licences issued in Member States without any formality, which balances that principle against the principle of road safety, cannot be interpreted broadly without depriving of all substance the principle of mutual recognition of driving licences issued in other Member States in accordance with Directive 91/439 (see, to that effect, order of 9 July 2009 in Case C-445/08 *Wierer*, paragraph 52, and *Scheffler*, paragraph 63).

47 In the present case, it must be noted that the refusal to issue a first driving licence is not listed among the situations that can give rise to the non-recognition by a Member State of a driving licence issued in another Member State in accordance with Article 8(4) of Directive 91/43 and the second subparagraph of Article 11(4) of Directive 2006/126.

48 It is necessary to point out that, during the hearing, the German Government claimed, in essence, that, if the refusal to issue a first driving licence in a Member State is based on serious unsuitability, not taken into account by Directive 91/439, such as strong aggressive tendencies on the part of the applicant, that Member State is not obliged to recognise a driving licence issued subsequently to the person concerned in another Member State.

49 Furthermore, according to that Government, in order for it to be possible to recognise the driving licence issued in another Member State following a refusal to issue a first driving licence in the territory of the host Member State, it is necessary that, prior to the issuing of the driving licence to the person concerned by that other Member State, that Member State be informed by the host Member State of the grounds on which the refusal was based and that that Member State establish whether those grounds no longer exist.

50 That argument cannot be accepted.

51 It must be stated at the outset that, while the refusal to issue a first driving licence may indeed be based in part on the behaviour of the applicant, such a refusal, which takes place within the context of an administrative procedure, cannot constitute, unlike in the cases provided for in Article 8(2) and (4) of Directive 91/439 and the second subparagraph of Article 11(4) of Directive 2006/126, the penalty for an offence committed by that applicant.

52 Furthermore, it must be noted that the issuing of a first driving licence may be refused on grounds other than those justifying the restriction, suspension, withdrawal or cancellation of a licence.

53 In that respect, it is apparent from the fourth recital in the preamble to Directive 91/439 and from recital 8 in the preamble to Directive 2006/126 that those directives provide for only a minimum degree of harmonisation of the national provisions relating to the conditions under which a driving licence may be issued. Member States may thus maintain or adopt stricter provisions in that regard.

54 In respect of the physical and mental requirements for driving, the Court has stated that the fact that, in accordance with paragraph 5 of Annex III to Directive 91/439, a Member State may require, for any issuing of a driving licence, a fuller medical examination than those referred to in that annex does not affect the obligation for that Member State to recognise driving licences issued by the other Member States in conformity with that directive (see Joined Cases C-329/06 and C-343/06 *Wiedemann and Funk* [2008] ECR I-4635, paragraph 53).

55 It is necessary, first, to note that the solution proposed by the German Government would require an examination to be made of the grounds not taken into account by either Directive 91/439 or Directive 2006/126 and relied on by a Member State for refusing to issue a driving licence, in order to determine those that may give rise to a refusal by that Member State to recognise a driving licence subsequently issued in another Member State. Whether it is possible for a Member State to refuse to recognise a driving licence issued in another Member State would thus depend on the seriousness of the ground, not taken into account by either Directive 91/439 or Directive 2006/126, on the basis of which the issuing of a first driving licence had been refused in the first Member State. Failing any indication in that regard in Directives 91/439 and 2006/126, such a solution cannot be envisaged.

56 Second, to allow the host Member State not to recognise a driving licence issued in another Member State, on the ground that the holder of that licence was refused a first driving licence in that first State and that the issuing Member State did not verify whether the grounds which led to the refusal to issue no longer existed, would have the effect that the Member State which had the stricter conditions for the issuing of a driving licence could determine the requirements threshold that the other Member States would have to observe in order for driving licences issued in those States to be recognised within its territory.

57 In that context, it is necessary to note that acknowledgment that a Member State is entitled to rely on its national provisions in order to refuse indefinitely to recognise a licence issued in another Member State would be fundamentally incompatible with the principle of mutual recognition of driving licences which is the lynchpin of the system established by Directive 91/439 (see, to that effect, Case C-476/01 *Kapper* [2004] ECR I-5205, paragraph 77, and order of 28 September 2006 in Case C-340/05 *Kremer*, paragraph 30).

58 It follows from all the foregoing that a refusal to issue a first driving licence may not be treated in the same way as the situations set out in Article 8(2) and (4) of Directive 91/439 and Article 11(4) of Directive 2006/126, which can result in the non-recognition by a Member State of a driving licence issued in another Member State.

59 In view of the foregoing, the answer to the first question is that the combined provisions of Articles 1(2) and 8(2) and (4) of Directive 91/439 and those of Articles 2(1) and 11(4) of Directive 2006/126 must be interpreted as precluding legislation of a host Member State permitting that State to refuse to recognise, within its territory, a driving licence issued in another Member State when the holder of that licence has not been made, by that host Member State, the subject of any measure as provided for by Article 8(4) of Directive 91/439 or the second subparagraph of Article 11(4) of Directive 2006/126, but has been refused the issue of a first driving licence in that State on the ground that he did not satisfy, under that State's legislation, the physical and mental requirements for the safe driving of a motor vehicle.

The second and third questions

60 By its second and third questions, which should be considered together, the referring court asks, in essence, whether Articles 1(2) and 8(2) and (4) of Directive 91/439 in conjunction with Articles 2(1) and 11(4) of Directive 2006/126 must be interpreted as also precluding a refusal to recognise such as that referred to in the preceding paragraph, firstly, if it is also established, on the basis of information transmitted, not directly but only indirectly, by the issuing Member State in the form of a notification based on information provided by the issuing State and effected by third parties, in particular, the host Member State's embassy in the issuing Member State, that the holder of the driving licence in issue did not satisfy the condition of normal residence for the purpose of Article 7(1)(b) of Directive 2006/126 at the time when that licence was issued and, secondly, if the formal requirements for issue of that licence in the issuing Member State had indeed been met, but it is established that the sole purpose of the applicant's residence in that Member State was to obtain that driving licence.

61 It must be noted that, as claimed by the German Government, failure to observe the condition of normal residence for the purpose of Article 7(1)(b) of Directive 91/439 is capable, in itself, of justifying the refusal by a Member State to recognise a driving licence issued by another Member State (see Case C-224/10 *Apelt* [2011] ECR I-9601, paragraph 34).

62 It follows from the Court's case-law that Articles 1(2), 7(1)(b) and 8(2) and (4) of Directive 91/439 do not preclude a host Member State from refusing to recognise within its territory a driving licence issued in another Member State where it is established, on the basis, not of information coming from the host Member State, but of entries appearing on the driving licence itself or of other indisputable information from the issuing Member State, that the condition of normal residence provided for in Article 7(1)(b) had not been satisfied (see, to that effect, *Wiedemann and Funk*, paragraph 72, and *Grasser*, paragraph 33).

63 As the Court has already held at paragraph 33 of the judgment in *Grasser*, the fact that the host Member State has not applied any measure under Article 8(2) of Directive 91/439 to the licence holder is irrelevant in that regard.

64 Those arguments may be transposed to Articles 2(1) and 11(4) of Directive 2006/126 in respect of failure to comply with the normal residence condition.

65 As follows from paragraph 46 of the present judgment, that exception to the obligation of recognition of driving licences issued in Member States without any formality, which balances the principle of mutual recognition of driving licences against that of road safety, cannot be interpreted broadly without depriving the principle of mutual recognition of all substance (see, to that effect, order in *Wierer*, paragraph 52).

66 The enumeration, as referred to in paragraph 62 of the present judgment, of the sources of information on which the host Member State may base its refusal to recognise a driving licence issued in another Member State, without resorting to mutual assistance or to the procedure for the exchange of information established in Article 12(3) of Directive 91/439 and Article 15 of Directive 2006/126, is therefore definitive and exhaustive (see, to that effect, order in *Wierer*, paragraph 53).

67 In order for it to be possible for information to be classified as indisputable information from the issuing Member State demonstrating that the holder of the driving licence was not resident in that State at the time of issue of his driving licence, that information must come from an authority of that Member State.

68 In the case in the main proceedings, it follows from the foregoing that, if the German authorities possess indisputable information emanating from the Czech authorities, demonstrating that Mr Akyüz was not normally resident in the territory of the Czech Republic at the time when a driving licence was issued to him by that Member State, those authorities would be entitled to refuse to recognise that licence. The principle of mutual recognition precludes a refusal based on any other information (see, to that effect, order in *Wierer*, paragraph 59).

69 In that respect, it is conceivable that information obtained from the population registration authorities of the issuing Member State may be regarded as constituting such information (order in *Wierer*, paragraph 61).

70 By contrast, the explanations or information provided by the holder of a licence in the course of administrative or judicial proceedings pursuant to an obligation to cooperate imposed on him under the national law of the host Member State cannot be classified as indisputable information emanating from the issuing Member State and demonstrating that the holder was not resident in that latter State at the time of issue of his driving licence (order in *Weirer*, paragraph 54).

71 The fact that information is conveyed by the issuing Member State to the competent authorities of the host Member State, not directly but only indirectly, in the form of a notification from third parties, does not appear, in itself, capable of making it impossible to regard that information as emanating from the issuing Member State, in so far as it comes from an authority of that latter State.

72 Consequently, as the German Government and, in essence, the Commission claim, the mere fact that the competent authorities of the host Member State involve their representation in the issuing Member State in order to procure such information from the competent authorities of the issuing Member State does not make it impossible to regard that information as emanating from that latter State.

73 It is for the referring court to determine whether the information obtained in circumstances such as those in the dispute in the main proceedings can be classified as information emanating from the issuing Member State.

74 If necessary, it is also for that court to assess that information and to determine whether it constitutes indisputable information which demonstrates that the holder of the driving licence was not normally resident within the territory of the issuing Member State at the time when he obtained his driving licence.

75 In the context of that assessment of the information from the issuing Member State which the referring court has at its disposal, the referring court may take into account all the circumstances of the dispute before it. In particular, it can take into account the possibility that information from the issuing Member State could show that the holder of the driving licence was present in the territory of that State only for a very brief period and that he had established a purely fictional place of residence within its territory, with the sole aim of avoiding application of stricter conditions laid down for the issue of a driving licence in the Member State in which he was in fact resident.

76 It must, however, be pointed out that, as it is inherent in the exercise of his right to move and reside freely within the territory of the Member States, which is conferred on European Union citizens by Article 21(1) TFEU and recognised by Directives 91/439 and 2006/126, the fact that the holder of a driving licence established his residence in a given Member State with the purpose of benefiting from less stringent legislation concerning the conditions under which a driving licence may be issued (see, by analogy, Case C-212/97 *Centros* [1999] ECR I-1459, paragraph 27) does not, of itself, enable a finding of failure to observe the condition of normal residence as laid down in Articles 7(1)(b) and 7(1)(e) of those directives, respectively, justifying the refusal by a Member State to recognise the driving licence issued in another Member State.

77 In view of the foregoing, the answer to the second and third questions is that Articles 1(2) and 8(2) and (4) of Directive 91/439 in conjunction with Articles 2(1) and 11(4) of Directive 2006/126 must be interpreted as not precluding legislation of a host Member State permitting that State to refuse to recognise, within its territory, a driving licence issued in another Member State when it is established, on the basis of indisputable information emanating from the issuing Member State, that the holder of the driving licence did not satisfy the condition of normal residence laid down in Article 7(1)(b) of Directive 91/439 and in Article 7(1)(e) of Directive 2006/126 at the time when that licence was issued. In that respect, the fact that that information is conveyed, not directly but only indirectly, by the issuing Member State to the competent authorities of the host Member State in the form of a notification by third parties, is not, in itself, capable of making it impossible to regard that information as emanating from the issuing Member State, in so far as it comes from an authority of that Member State. It is for the referring court to determine whether information obtained in circumstances such as those in the dispute in the main proceedings can be classified as information emanating from the issuing Member State and, if necessary, to evaluate that information and to

assess, taking into account all the facts of the dispute before it, whether it constitutes indisputable information demonstrating that the holder of the licence was not normally resident in the territory of that latter State at the time when his driving licence was issued.

Costs

78 Since these proceedings are, for the parties to the main proceedings, a step in the action pending before the national 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 (Second Chamber) hereby rules:

1. **Articles 1(2) and 8(2) and (4) of Council Directive 91/439/EEC of 29 July 1991 on driving licences in conjunction with Articles 2(1) and 11(4) of Directive 2006/126/EC of the European Parliament and of the Council of 20 December 2006 on driving licences must be interpreted as precluding legislation of a host Member State permitting that State to refuse to recognise, within its territory, a driving licence issued by another Member State when the holder of that licence has not been made, , by that host Member State, the subject of any measure for the purpose of Article 8(4) of Directive 91/439 or the second subparagraph of Article 11(4) of Directive 2006/126, but has been refused the issue of a first driving licence in that State on the ground that he did not satisfy, under that State's legislation, the physical and mental requirements for the safe driving of a motor vehicle.**

2. **Those provisions in conjunction must be interpreted as not precluding legislation of a host Member State permitting that State to refuse to recognise, within its territory, a driving licence issued in another Member State when it is established, on the basis of indisputable information emanating from the issuing Member State, that the holder of the driving licence did not satisfy the condition of normal residence laid down in Article 7(1)(b) of Directive 91/439 and in Article 7(1)(e) of Directive 2006/126 at the time when that licence was issued. In that respect, the fact that that information is conveyed, not directly but only indirectly, by the issuing Member State to the competent authorities of the host Member State in the form of a notification by third parties, is not, in itself, capable of making it impossible to regard that information as emanating from the issuing Member State, in so far as it comes from an authority of that Member State.**

   It is for the referring court to determine whether information obtained in circumstances such as those in the dispute in the main proceedings can be classified as information emanating from the issuing Member State and, if necessary, to evaluate that information and to assess, taking into account all the facts of the dispute before it, whether it constitutes indisputable information demonstrating that the holder of the licence was not normally resident in the territory of that latter State at the time when his driving licence was issued.

[Signatures]