JUDGMENT OF THE COURT (Fifth Chamber)
29 April 2004 *

In Case C-476/01,

REFERENCE to the Court under Article 234 EC by the Amtsgericht Frankenthal (Germany) for a preliminary ruling in the criminal proceedings pending before that court against

Felix Kapper,

on the interpretation of Article 1(2) of Council Directive 91/439/EEC of 29 July 1991 on driving licences (OJ 1991 L 237, p. 1), as amended by Council Directive 97/26/EC of 2 June 1997 (OJ 1997 L 150, p. 41),

THE COURT (Fifth Chamber),

composed of: C.W.A. Timmermans, acting for the President of the Fifth Chamber, A. Rosas (Rapporteur) and S. von Bahr, Judges,

Advocate General: P. Léger,
Registrar: H. von Holstein, Deputy Registrar,

* Language of the case: German.

after considering the written observations submitted on behalf of:

— Mr Kapper, by W. Säftel, Rechtsanwalt,

— the German Government, by W.-D. Plessing and M. Lumma, acting as Agents,

— the Netherlands Government, by H.G. Sevenster, acting as Agent,

— the Commission of the European Communities, by M. Wolfcarius, G. Braun and H.M.H. Speyart, acting as Agents,

having regard to the Report for the Hearing,

after hearing the oral observations of Mr Kapper, represented by W. Säftel, the Italian Republic, represented by A. Cingolo, avvocato dello Stato, and the Commission, represented by G. Braun, at the hearing on 8 May 2003,

after hearing the Opinion of the Advocate General at the sitting on 16 October 2003,

gives the following

Judgment

1 By decision of 11 October 2001, corrected by letter of 19 December 2001, received at the Court on 7 and 24 December 2001 respectively, the Amtsgericht Frankenthal (Frankenthal Local Court) referred to the Court for a preliminary ruling under Article 234 EC a question on the interpretation of Article 1(2) of Council Directive 91/439/EEC of 29 July 1991 on driving licences (OJ 1991 L 237, p. 1), as amended by Council Directive 97/26/EC of 2 June 1997 (OJ 1997 L 150, p. 41) (hereinafter 'Directive 91/439' or 'the Directive').

2 That question was raised in criminal proceedings brought against Mr Kapper, who was sentenced to a fine for having driven a motor vehicle on 20 November and 11 December 1999 without being in possession of a valid driving licence, although he held a driving licence issued by the Netherlands authorities on 11 August 1999.

Legal background

Community legislation

3 Article 1 of Directive 91/439 states:

'1. Member States shall introduce a national driving licence based on the Community model described in Annex I or Ia, in accordance with the provisions of this Directive. ...

2. Driving licences issued by Member States shall be mutually recognised.

3. Where the holder of a valid national driving licence takes up normal residence in a Member State other than that which issued the licence, the host Member State may apply to the holder of the licence its national rules on the period of validity of the licence, medical checks and tax arrangements and may enter on the licence any information indispensable for administration.'

4 Under Article 7(1)(b) of that directive, driving licences are to be issued only to those applicants '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 Article 7(5) of that directive states that 'no person may hold a driving licence from more than one Member State'.

6 Article 8(1) to (4) of the Directive provides:

'1. Where the holder of a valid national driving licence issued by a Member State has taken up normal residence in another Member State, he may request that his driving licence be exchanged for an equivalent licence; it shall be for the Member State effecting the exchange to check, if necessary, whether the licence submitted is in fact still valid.

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.

3. The Member State effecting the exchange shall return the old licence to the authorities of the Member State which issued it and give the reasons for so doing.

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.'

7 Article 9 of Directive 91/439 is worded as follows:

'For the purpose of this Directive, "normal" residence means the place where a person usually lives, that is for at least 185 days in each calendar year, because of personal and occupational ties, or, in the case of a person with no occupational ties, because of personal ties which show close links between that person and the place where he is living.

However, the normal residence of a person whose occupational ties are in a different place from his personal ties and who consequently lives in turn in different places situated in two or more Member States shall be regarded as being the place of his personal ties, provided that such person returns there regularly. This last condition need not be met where the person is living in a Member State in order to carry out a task of a definite duration. Attendance at a university or school shall not imply transfer of normal residence.'

8 The second paragraph of Article 10 of the Directive states:

'With the agreement of the Commission, Member States may make to their national legislation such adjustments as are necessary for the purpose of implementing the provisions of Article 8(4), (5) and (6).'

9 Article 12(1) of Directive 91/439 states that, after consulting the Commission, Member States are, before 1 July 1994, to adopt the laws, regulations or administrative provisions necessary to comply with that directive as of 1 July 1996.

10 Article 12(3) of Directive 91/439 provides that the Member States are to assist one another in the implementation of the Directive and must, if need be, exchange information on the licences they have registered.

National legislation

11 In the Federal Republic of Germany, the mutual recognition of driving licences which Directive 91/439 provides for was governed from 1 July 1996 to 31 December 1998 by the Verordnung zur Umsetzung der Richtlinie 91/439/EWG des Rates vom 29 Juli 1991 über den Führerschein und zur Änderung straßenverkehrsrechtlicher Vorschriften (Regulation on the transposition of Directive 91/439) of 19 June 1996 (BGBl. I, p. 877) (hereinafter 'the EU-Führerschein-VO 1996').

12 Under the first subparagraph of Article 1(4) of the EU-Führerschein-VO 1996, the right to drive a motor vehicle in Germany was not available to:

'... holders of a foreign driving licence:

if when the licence was issued they had their permanent residence in the territory to which this regulation applies, unless they have been staying abroad for a minimum of six months for the sole purpose of attending a university or school,

for so long as their driving licence has been provisionally withdrawn in the territory to which this regulation applies or for so long as they are unable to obtain a driving licence by reason of a decision of a court which is final, or

if in Germany an administrative authority has adopted an immediately enforceable or definitive decision withdrawing the driving licence or if the issue of a licence to such a holder has been definitively refused; the same shall apply if there was no withdrawal solely because the licence was surrendered in the meantime. ...'

13 The The Tlaw which has applied since 1 January 1999 is the Verordnung über die Zulassung von Personen zum Straßenverkehr (Regulation on access to road traffic) of 18 August 1998, also called the Fahrerlaubnisverordnung (Regulation on the right to drive) (BGBl. I, p. 2214) (hereinafter 'the FeV 1999').

14 Paragraph 7 of the FeV 1999, which sets out the requirements as to normal residence for the grant of a driving licence, contains the national provisions which transpose Articles 7(1)(b) and 9 of Directive 91/439.

15 Paragraph 28 of the FeV 1999 provides:

'(1) The holders of a valid EU or EEA driving licence having their normal residence within the meaning of Paragraph 7(1) or (2) in the Federal Republic of Germany are authorised, subject to the restriction set out in subparagraphs (2) to (4), to drive motor vehicles in Germany to the extent to which they are qualified to do so. The conditions subject to which foreign driving licences are issued shall also have effect in Germany. The provisions of this regulation shall apply to those driving licences, save where the contrary is provided.

...

(4) The authorisation which is referred to in subparagraph (1) does not apply to the holders of an EU or EEA driving licence

1. where the licence is provisional only, whether this is because they are learning to drive or for some other reason,

2. who, 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 minimum stay of six months,

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

4. who are banned from driving, or whose driving licence has been confiscated, seized or impounded under Paragraph 94 of the Criminal Procedure Code, in Germany, in the State in which the licence was issued or in the State in which they have their normal residence.'

The procedure in the main proceedings and the question referred

16 Mr Kapper challenged a criminal order of the Amtsgericht of 17 March 2000. That court had sentenced him to a fine for having driven a motor vehicle in Germany on 20 November and 11 December 1999 without being the holder of a

valid driving licence. At the time of the offence charged, Mr Kapper was the holder of a driving licence which had been issued to him by the Netherlands authorities on 11 August 1999.

17 By a criminal order of 26 February 1998, the same court had withdrawn the German driving licence held by Mr Kapper and had instructed the administrative authorities not to issue him with a new licence before the expiry of a period of nine months, that is to say before 25 November 1998.

18 According to the order for reference, no new driving licence has been issued to Mr Kapper in Germany since 25 November 1998. There is nothing in the documents before the Court to indicate whether or not he has applied for such a licence to the German authorities since that date.

19 In the proceedings brought by Mr Kapper to have the order set aside, the Amtsgericht questions whether the German rules are compatible with Directive 91/439, while observing that if the Court is not competent to determine that point, it is competent to decide whether Community law precludes the application of criminal provisions which penalise a breach of those rules. According to the national court, the national provisions must be interpreted as meaning that the driving licence issued in the Netherlands has no validity in Germany. It refers in that regard to the first indent of Article 1(4) of the EU-Führerschein-VO 1996, which is in terms similar to Paragraph 28(4) of the FeV 1999, in force since 1 January 1999.

20 The national court also states that the application of the national rules implies verification of the residence of the holder of a licence at the time when it was issued by another Member State. That means that the sovereign act of that State is

submitted to review in Germany, and thus amounts to a restriction on the principle of the mutual recognition of driving licences issued by Member States established by Article 1(2) of Directive 91/439.

21 The Amtsgericht considers that Article 8(1) to (4) of the Directive does not provide an answer to the question raised in the main proceedings. According to the national court, that provision, which expressly authorises a Member State to check the validity of a licence issued by another Member State, applies only to the exchange of a valid licence, but does not authorise a Member State to regard a sovereign act of another State as void.

22 In those circumstances, the Amtsgericht Frankenthal decided to stay the proceedings and to refer the following question to the Court for a preliminary ruling:

'Does Article 1(2) of [Directive 91/439] preclude a Member State from refusing to recognise a driving licence where, according to its investigations, another Member State issued that licence although the holder of the licence did not have his normal residence there, and in appropriate cases is direct effect to be given to that provision in that regard?'

The admissibility of the question referred

23 The Netherlands Government has expressed doubts as to the admissibility of the question referred. It submits that the order for reference does not provide sufficient information in relation to the facts of the case, to the relevant provisions of national law, or to the reason why an answer to the question is germane to the main proceedings. It is likely that at the time of the facts charged Mr Kapper's

right to drive was still withdrawn. If so, it is of no relevance to know whether he did, or did not, possess a driving licence. It is thus also not relevant whether the German authorities were entitled to refuse to recognise the Netherlands driving licence which had been issued to Mr Kapper or whether that licence had been issued unlawfully because he did not have his normal residence in the Netherlands at that time.

24 It should be observed in that regard that according to settled case-law it is solely for the national courts before which actions are brought, and which must bear the responsibility for the subsequent judicial decision, to determine in the light of the special features of each case both the need for a preliminary ruling in order to enable them to deliver judgment and the relevance of the questions which they submit to the Court. Consequently, where the questions referred involve the interpretation of Community law, the Court is, in principle, obliged to give a ruling (see, inter alia, Case C-379/98 *PreussenElektra* [2001] ECR I-2099, paragraph 38; Case C-390/99 *Canal Satélite Digital* [2002] ECR I-607, paragraph 18; Case C-373/00 *Adolf Truley* [2003] ECR I-1931, paragraph 21; and Case C-18/01 *Korhonen and Others* [2003] ECR I-5321, paragraph 19).

25 Moreover, it follows from that case-law that the Court may decline to rule on a question referred for a preliminary ruling by a national court only where it is quite obvious that the interpretation of Community law that is sought bears no relation to the facts of the main action or its purpose, where the problem is hypothetical, or where the Court does not have before it the factual or legal material necessary to give a useful answer to the questions submitted to it (see *PreussenElektra*, paragraph 39; *Canal Satélite Digital*, paragraph 19; *Adolf Truley*, paragraph 22; and *Korhonen and Others*, paragraph 20).

26 That does not apply in the present case. It is true that the order for reference is expressed in very succinct terms, which do not make it clear, in particular, whether when Mr Kapper was charged by the police on 20 November and 11 December 1999 his right to drive in Germany was still withdrawn or restricted. Nevertheless, in response to the request for clarification addressed to it by the Court under Article 104(5) of the Rules of Procedure, the national court has stated that the ban on obtaining a new driving licence, with which the measure of 26 February 1998 withdrawing Mr Kapper's licence was coupled, expired on 25 November 1998. The national court has added that after that date Mr Kapper could have submitted a new request to the German authorities for the issue of a driving licence.

27 Moreover, it is clear from the written response of the German Government to the questions put to it by the Court that where there is a measure withdrawing ('Entziehung') a driving licence which applies to a Community national having his normal residence in Germany, the national provisions relating to the consequences of that withdrawal apply in the same manner whether that person is the holder of or subsequently obtains a licence issued by the authorities of another Member State. It follows that a foreign licence of that kind is not recognised by the German authorities.

28 Having regard to the additional information referred to above, the Court has sufficient particulars on matters of fact and law available to it to answer the question referred to it in a useful manner.

29 It should also be noted that the succinct nature of the order for reference has not prevented the governments of the Member States which have submitted observations to the Court, or the Commission, from stating their views on the question referred.

30 The question referred by the Amtsgericht must therefore be declared to be admissible.

The question referred

31 Having regard to the facts of the main proceedings and what is stated in the observations submitted to the Court, consideration of the question referred should not be limited to the matters expressly raised by the national court, but should also take into account several other provisions of Directive 91/439 which may be relevant to the answer to that question, in particular Article 8(4) of the Directive. In order to provide an answer to the question referred which is both useful and as complete as possible, the scope of the question should therefore be expanded.

32 The question should accordingly be restated and divided into two parts, which will be considered separately. The national court essentially asks, first, whether Articles 1(2), 7(1)(b) and 9 of Directive 91/439, taken together, must be interpreted as meaning that they preclude a Member State from refusing to recognise a driving licence issued by another Member State on the ground that, according to the information available to the first Member State, the holder of the licence had, on the date on which it was issued, taken up normal residence in that Member State and not in the Member State in which the licence was issued. The national court asks, secondly, whether Articles 1(2) and 8(4) of Directive 91/439, taken together, must be interpreted as meaning that they preclude a Member State from refusing to recognise the validity of a driving licence issued by another Member State on the ground that its holder has, in the first Member State, been subject to a measure cancelling or withdrawing the driving licence issued by that Member State, where a temporary ban on obtaining a new licence with which that

measure is coupled has expired before the date of issue of the licence issued by the other Member State.

The first part of the question referred

Observations submitted to the Court

33 According to the German Government, Directive 91/439, having regard in particular to Article 7(1)(b) thereof, must be interpreted as meaning that the Member State in which the holder resides may refuse to recognise a licence issued by another Member State where the holder did not have his normal residence in the Member State which issued the licence. The German Government notes that the order for reference does not provide sufficient information to determine whether Mr Kapper did in fact have his normal residence in the Netherlands within the meaning of Article 9 of the Directive. In any event, it argues that if that condition was not satisfied, the disputed Netherlands licence was void *ab initio*, or at least unlawful. In those circumstances, the Netherlands authorities ought not to have issued a driving licence, which, because of that mistake, would also not qualify for recognition. The German Government notes that Article 7(1)(b) of the Directive expressly makes the issue of a driving licence conditional on the holder having had his normal residence in the territory of the Member State issuing that licence for a period of at least six months.

34 The Netherlands Government submits, on the other hand, that it follows from the principle of mutual recognition laid down in Article 1(2) of Directive 91/439 that

a Member State must recognise a valid driving licence issued by another Member State and that it is not entitled to check the circumstances in which it was issued. It observes that, in the case at issue in the main proceedings, the Netherlands authorities had determined that Mr Kapper had his normal residence in the Netherlands, and issued the licence to him. The German authorities are not entitled to review the legality of that decision and must therefore simply recognise the licence issued.

35 In so far as the German rules impose conditions on the recognition of a valid licence issued by another Member State, it is appropriate to consider whether Article 1(2) of Directive 91/439 has direct effect. In that regard the Netherlands Government points out that wherever the provisions of a directive appear, as far as their subject-matter is concerned, to be unconditional and sufficiently precise, those provisions may be relied upon by an individual against the State where the latter fails to implement the directive in national law by the end of the period prescribed or where it fails to transpose the directive correctly (Case 80/86 *Kolpinghuis Nijmegen* [1987] ECR 3969, paragraph 7).

36 It submits that Article 1(2) of the Directive imposes a clear and precise obligation on Member States to give mutual recognition to European model driving licences and not to require the holder of a licence issued by another Member State to exchange it, whatever his nationality might be. That provision provides for mutual recognition, without any formality, of driving licences issued by Member States (Case C-193/94 *Skanavi and Chryssanthakopoulos* [1996] ECR I-929, paragraph 26). The Directive does not give the Member States to which it is addressed any freedom of action in relation to the measures requiring to be adopted in order to comply with those obligations. According to the Netherlands Government, Article 1(2) of the Directive thus has direct effect (Case C-230/97 *Awoyemi* [1998] ECR I- 6781, paragraph 43).

37 Like the Netherlands Government, the Commission notes that under Article 1(2) of Directive 91/439 the mutual recognition of driving licences issued by the Member States is not, in principle, linked to other conditions and should occur 'without any formality' (*Skanavi and Chryssanthakopoulos*, paragraph 26). It is based on mutual trust in compliance with provisions that are already largely harmonised, given that the Directive not only requires the mutual recognition of driving licences but also compliance with a number of minimum conditions and standards when those licences are issued.

38 While Directive 91/439 contains provisions allowing in exceptional cases refusal to recognise the validity of a driving licence, the host Member State cannot automatically infer from the fact that it considers that a licence has been issued in another Member State in breach of some of the conditions laid down in the Directive that it is entitled to refuse to recognise the licence. That applies particularly where the authorities of a Member State have established that a driving licence has been issued in breach of Article 7(1)(b) of the Directive to a person who did not, at the time of issue, satisfy the condition requiring a minimum period of residence of six months in the Member State which issued that licence.

39 According to the Commission, in cases involving clear irregularities the authorities of the host Member State may, in accordance with Article 12(3) of the Directive, seek clarification from the Member State which issued the licence. If a State finds evidence of clear and systematic irregularities in the issuing of licences by the authorities of another Member State, it may bring an action against that State under Article 227 EC.

40 As regards the direct effect of Article 1(2) of the Directive, the Commission notes at the outset that the Court has already confirmed, in paragraph 43 of its judgment in *Awoyemi*, cited above, that that provision is unconditional and sufficiently precise.

41 The Commission notes that, in so far as Article 28 of the FeV 1999 applies to persons who have obtained a driving licence in a Member State of the European Union or the European Economic Area other than Germany but who were resident in that country, that provision is incompatible with the principle of mutual recognition. However, it does not follow from that provision that the German authorities carry out systematic checks relating to possible breaches by other Member States of the rules governing the issue of driving licences. According to the Commission, it is only when the German authorities become aware, on the basis of the information available to them, that the holder of a foreign licence did not satisfy the residence requirement under the Directive because he was resident in Germany that those authorities refuse to recognise the licence in question.

42 The residence requirement serves in particular to prevent 'driving licence tourism'. It plays an important role in the current system since, notwithstanding the progress made in the harmonisation of the national rules relating to driving licences, there are many areas (for example, period of validity and regular medical checks) where the rules vary from one Member State to another. The residence requirement is a consequence of the fact that harmonisation is incomplete and will tend to become less important as the latter progresses, thereby permitting full implementation of the principle of mutual recognition.

43 According to the Commission, as long as the residence requirement remains in force, all Member States must comply with it. It none the less remains the duty of a Member State which issues or renews a licence to check that the requirement has been satisfied, and the other Member States must respect the principle of mutual recognition.

44 The Commission takes the view that the German legislation complies with both these requirements, although the point is a fine one. The restriction on the

principle of mutual recognition which those rules impose appears justified. Moreover, the host Member State cannot be obliged to overlook matters which have occurred within its own territory and which relate directly to the question where the person concerned resided at the time when he obtained his driving licence. The Commission refers in that regard to Case 130/88 *Van de Bijl* [1989] ECR 3039, paragraphs 24 to 26.

Findings of the Court

45 The Court has consistently held that Article 1(2) of Directive 91/439 provides for mutual recognition, without any formality, of driving licences issued by Member States (*Skanavi and Chryssanthakopoulos*, cited above, paragraph 26, and *Awoyemi*, cited above, paragraph 41). That provision imposes on 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 (*Awoyemi*, paragraph 42, and Case C-246/00 *Commission* v *Netherlands* [2003] ECR I-7485, paragraph 61).

46 In its judgment in *Commission* v *Netherlands*, the Court has thus already expressly dismissed the possibility of a host Member State introducing systematic checks to verify that the requirement as to residence in the Member State which issued the licence, laid down in Articles 7(1)(b) and 9 of Directive 91/439, was properly complied with by the holders of driving licences issued by other Member States. At paragraph 75 of that judgment, it held, first, that it is for the authorities which issue driving licences to ensure that applicants have their normal residence in the State issuing the licence, and, secondly, that if a person holds a driving licence issued by a Member State, that should be deemed to be proof that the licence holder has satisfied the conditions for the issue of a licence provided for in Directive 91/439. Accordingly, the host Member State cannot then require the holder to prove again that he or she actually satisfied the conditions laid down in Articles 7(1)(b) and 9 of Directive 91/439, without violating the principle of the mutual recognition of driving licences.

47 It follows that the principle of mutual recognition of driving licences also means that when a host Member State is carrying out a traffic check within its territory, it is precluded from refusing to recognise a driving licence issued by another Member State to the driver of a vehicle on the ground that, according to the information available to the first Member State, the holder of the licence in question had, at the date of its issue, established his normal residence in that Member State and not in the issuing Member State (order of 11 December 2003 in Case C-408/02 *Silva Carvalho*, not published in the ECR, paragraph 22). As the Advocate General has noted at point 44 of his Opinion, the considerations set out in paragraph 75 of the judgment in *Commission* v *Netherlands*, relating to a requirement that the holder of the driving licence must prove as a matter of course that he has satisfied the residence requirement in the context of a registration procedure relating to the licence in a Member State which did not issue that licence, also apply to verification procedures or ad hoc investigations by that Member State for the purpose of deciding whether to grant or to refuse recognition to that licence.

48 Given that Directive 91/439 confers exclusive competence on the Member State which issues a licence to ensure that driving licences are issued in compliance with the residence requirement set out in Articles 7(1)(b) and 9 of that directive, it is for that Member State alone to take appropriate measures in relation to driving licences held by persons who are subsequently shown to have failed to satisfy that requirement. Where a host Member State has good reason to doubt the validity of one or more licences issued by another Member State, it must so inform the latter under the rules relating to mutual assistance and the exchange of information contained in Article 12(3) of that directive. Should the Member State which issued the licence fail to take the appropriate measures, the host Member State may bring proceedings against the first State under Article 227 EC for a declaration by the Court that there has been a failure to comply with the obligations arising under Directive 91/439.

49 In the light of the above, the answer to the first part of the question referred must be that the provisions of Articles 1(2), 7(1)(b) and 9 of Directive 91/439, taken together, must be interpreted as meaning that they preclude a Member State from refusing to recognise a driving licence issued by another Member State on the

ground that, according to the information available to the first Member State, the holder of the licence had, on the date on which it was issued, taken up normal residence in that Member State and not in the Member State in which the licence was issued.

The second part of the question referred

Observations submitted to the Court

50 Mr Kapper submits that the German provisions set out in Paragraph 28 of the FeV 1999 are incompatible with Directive 91/439. In adopting those provisions, the German legislature intended that, in certain circumstances, driving licences validly obtained in another Member State should be deemed to be void and of no effect in Germany. Those provisions are contrary to the essence of the mutual recognition of measures adopted by the administrative authorities of the different Member States. They even represent a retrograde step in relation to the law as it was in force prior to Directive 91/439, under which licences issued by other Member States remained valid for at least 12 months where there was a change of residence.

51 Mr Kapper accepts that Directive 91/439 lays down certain exceptions to the principle of mutual recognition enshrined in Article 1(2). He refers in that regard to Article 1(3), which provides that where there is a change of residence the host Member State may apply its national rules in order to enter on the licence any information indispensable for administration. However, that provision does not entitle a Member State simply to refuse to recognise a licence issued by another Member State. As they involve exceptions to the principle of mutual recognition, those exceptions require in principle to be strictly interpreted.

52 Nor does Article 8 of the Directive permit the German legislature to adopt the contested provisions.

53 It relates exclusively to certain questions which arise when a licence is exchanged. In support of that interpretation, Mr Kapper notes that the wording of Article 8 (1), (2), (3) and (6) of Directive 91/439 expressly refers to various procedures which apply when a licence is exchanged. It would be illogical to treat the two remaining paragraphs of that article, Article 8(4) and (5), as containing rules of entirely general application which do not address issues arising in cases of exchange.

54 Mr Kapper accepts that the German authorities may refuse to recognise the validity of a foreign licence in Germany for so long as a measure such as a suspension or cancellation of the right to drive for a specified period is in force there. However, they certainly cannot do this once that period has expired.

55 Mr Kapper states that the absence of any limit on the duration of the effects of a provisional or final suspension or cancellation of a driving licence leads to unacceptable results. A German national whose German licence was withdrawn in that country and who had moved to another Member State would not be entitled to use a driving licence issued by that Member State when he returned to his country of origin, even if the new licence had been obtained several years after the withdrawal of the German licence. He would also not be permitted to obtain a German licence by reason of Article 7(5) of the Directive, quite apart from the fact that that State would have no power to issue him with one.

56 In addition, Mr Kapper argues that it is necessary to consider whether the Federal Republic of Germany has obtained the agreement of the Commission to the provisions in question, as Article 10 of the Directive requires.

57 The German Government submits that Directive 91/439, in particular Article 8(2) and (4) thereof, should be interpreted as meaning that the Member State of residence is entitled to refuse to recognise a licence issued by another Member State when the licence issued by the first State has been withdrawn.

58 The legislative context of Directive 91/439 means that the very general provisions set out in Article 1(2) are insufficient in themselves to afford automatic and unconditional validity to foreign licences outside the Member States which issued them. On the contrary, recognition is subject to the various conditions laid down in the detail of the Directive, in particular Articles 2 to 12 thereof.

59 The German Government points out that Article 8(2) of the Directive expressly provides that the Member State of normal residence may apply its national provisions on the withdrawal of the right to drive to the holder of a licence issued by another Member State. Community nationals who have their normal residence in Germany are thus always subject to the German rules relating to the withdrawal of the right to drive, not only as regards licences issued by the German authorities, but also as regards those issued by the authorities of another Member State.

60 Indeed, Article 8(4) provides expressly that a Member State may refuse to recognise the validity of any driving licence issued by another Member State to a person whose licence has been withdrawn in the first State.

61 The German Government does not agree with the strict interpretation of the national court, which takes the view that the provisions of Article 8(2) and (4) apply only where a valid licence is exchanged. According to that government, it is clear on the contrary from the wording of Article 8(2) that that provision applies where a licence is exchanged, but does not apply only in those circumstances.

62 As regards any direct effect that the Directive may have, this could only arise if the provisions in question were sufficiently specific and had not been properly transposed into German law. It has been shown that Paragraph 28(4)(3) of the FeV 1999 transposes Community law in a manner which is precise and complete.

63 In its written response to the questions put by the Court, the German Government has added that the Verordnung zur Änderung der Fahrerlaubnisverordnung und Straßenverkehrsrechtlicher Vorschriften (Regulation amending the Regulation on driving licences and other provisions relating to the right to drive) of 7 August 2002 (BGB1. I, p. 3267) (hereinafter 'the FeV 2002'), which came into force on 1 September 2002, amended, inter alia, Paragraph 28 of the FeV 1999, by adding a new subparagraph (5). The latter expressly permits the competent authorities to grant, on request, the right to use a driving licence in Germany which has been issued by another Member State, where the reasons which justified its holder being subject to one of the measures referred to in subparagraphs (3) and (4) of the same paragraph no longer exist.

64 The Italian Government, which intervened at the oral stage of the procedure, submits that Article 8(4) of Directive 91/439 establishes the principle that national rules of criminal law which restrict the right to drive take precedence over the automatic recognition of driving licences issued by another Member State. The provision seeks to avoid criminal sanctions involving the withdrawal of a driving

licence being disregarded in the Member State which imposed the sanctions by the use of another driving licence subsequently obtained in another Member State, irrespective of whether that licence was validly issued. None the less, the wording of Article 8(4) of the Directive refers by implication to the current nature of the sanction in question. Having regard to the fact that the fundamental principle of the Directive is the reciprocal and mutual recognition of driving licences, and that Article 8(4) constitutes an exception to that principle, that provision must be strictly construed so as to mean that a Member State cannot use it as a basis for refusing to recognise a licence issued by another Member State where the measure restricting the right to drive is no longer in force.

65 In its written observations, the Commission argues that it would be legitimate to base the refusal to recognise the Netherlands licence issued to Mr Kapper on the measure withdrawing the licence in Germany, as that is a measure listed in Article 8(2) of Directive 91/439. The refusal would be compatible with Article 8 (4) of the Directive, which was transposed into German law by Paragraph 28(4) (3) of the FeV 1999.

66 According to the Commission, the provision does not apply only where a valid driving licence is exchanged. It naturally applies where the holder requests an exchange of his foreign licence. However, it does not apply only in such a case. That approach, which is contrary to the one adopted by the national court, is confirmed by the wording of Article 8(2) and (4) of the Directive.

67 Moreover, a refusal to recognise a foreign licence in such narrow circumstances does not contradict the principle of mutual recognition laid down in Article 1(2)

of the Directive, given that all Member States have an interest in the national measures referred to in Article 8(2) of the Directive being respected. The final recital in the preamble to the Directive should be interpreted in that way. The Commission also refers in that regard to the Court's case-law which provides that Member States are entitled to take measures designed to prevent any of their nationals from attempting, under cover of the rights created by the EC Treaty, improperly to circumvent their national legislation or to prevent individuals from improperly or fraudulently taking advantage of provisions of Community law (Case C-212/97 *Centros* [1999] ECR I-1459, paragraph 24).

68 At the hearing, the Commission nevertheless took the view that the facts of the main proceedings, as they had become apparent from the clarifications supplied by the national court in response to the Court's request, required it to supplement its observations on that point. Account should be taken of the fact that, according to those clarifications, the measure imposed in Germany which restricted the right to drive was limited to nine months and that, on the date on which the Netherlands licence was issued, Mr Kapper could, in theory, have requested that a new licence be issued to him in his country of origin. In light of those points, the Commission submits that Article 8(4) of the Directive should not be interpreted as meaning that it entitles a Member State to continue to refuse to recognise any licence issued by another Member State for an indefinite period extending beyond the time when the person concerned could have obtained a new licence in the first Member State.

69 At the hearing, the Commission also supplemented the written answer it had provided to a question put by the Court as to whether the Federal Republic of Germany had obtained the agreement referred to in the second paragraph of Article 10 of Directive 91/439. The Commission gave its tacit consent to the provisions contained in Paragraph 28 of the FeV 1999, inasmuch as those provisions were notified to it and did not give rise to any objection on its part, unlike other provisions of the FeV 1999, which are the subject of infringement

proceedings. The second paragraph of Article 10 of the Directive does not require the Commission to adopt formal decisions recording its express agreement to national provisions which are notified to it by Member States.

Findings of the Court

70 Inasmuch as the first paragraph of Article 8(4) of Directive 91/439 permits a Member State to refuse to recognise the validity of any driving licence issued by another Member State if the holder is, in the first Member State's territory, subject to a measure which restricts, suspends, withdraws or cancels the right to drive, it constitutes an exception to the general principle of the mutual recognition of driving licences issued by the Member States laid down in Article 1(2) of the Directive.

71 As the first recital in the preamble to the Directive makes clear, that principle was established in order to facilitate the movement of persons settling in a Member State other than that in which they have passed a driving test. In that regard, the Court has held that rules relating to the issue and mutual recognition of driving licences by the Member States exert an influence, both direct and indirect, on the exercise of the rights guaranteed by the provisions of the Treaty relating to freedom of movement for workers, to freedom of establishment and to the freedom to provide services. In view of the importance of individual means of transport, possession of a driving licence duly recognised by the host State may affect the actual pursuit by persons subject to Community law of a large number of occupations for employed or self-employed persons and, more generally, freedom of movement (Case 16/78 *Choquet* [1978] ECR 2293, paragraph 4, and *Skanavi and Chryssanthakopoulos*, cited above, paragraph 23).

72 According to settled case-law, the provisions of a directive which derogate from a general principle established by that directive must be strictly interpreted (see, as regards exceptions to the general principle that value added tax is to be levied on all services supplied for consideration by a taxable person, Case C-141/00 *Kügler* [2002] ECR I-6833, paragraph 28, and, as regards exceptions to the general principle of recognition of professional qualifications giving the right to take up a regulated profession, Case C-102/02 *Beuttenmüller* [2004] ECR I-5405, paragraph 64). The same must apply a fortiori where that general principle aims to facilitate the exercise of fundamental freedoms guaranteed by the Treaty, such as those referred to in paragraph 71 of this judgment.

73 It should none the less be made clear that, contrary to the opinion expressed by the national court, Article 8(4) of the Directive does not apply only where an application is made to the authorities of a Member State by the holder of a driving licence issued by another Member State for the exchange of that licence. Although Article 8 of the Directive contains various provisions specifically regulating the substantive and formal conditions applicable to the exchange or replacement of a licence where the holder has submitted a request to that effect to the competent authorities, Article 8(2) and (4) serves a different aim, namely that of permitting Member States, within their territory, to apply their national provisions concerning the withdrawal, suspension and cancellation of driving licences. The exercise by the Member States of the rights given to them by Article 8(2) and (4) of the Directive is thus not dependent on a voluntary act of the holder of a licence issued by another Member State, such as an application for the exchange of that licence. It should be noted that, according to the Court's case-law, Directive 91/439 is expressly intended to abolish systems for exchanging driving licences and precludes a Member State from requiring that driving licences that were not issued by its own authorities be registered or exchanged where the holders of those licences move to the territory of that State (see *Commission* v *Netherlands*, cited above, paragraph 72, and order of 29 January 2004 in Case C-253/01 *Krüger* [2004] ECR I-1191, paragraphs 30 to 32).

74 In the present matter, it is clear from the documents in the case and the observations submitted to the Court that the national court must have regard in the main proceedings, inter alia, to the provisions of Paragraph 28(4)(3) and (4) of the FeV 1999. Those provisions, which apply where the holder of a licence has his normal residence outside the Federal Republic of Germany, preclude the German authorities from recognising the validity of a licence issued by another Member State, where, in particular, a court in Germany has ordered that the licence be withdrawn. It appears that under the national rules a person in that situation may obtain a valid driving licence in Germany only if he submits a new request for a licence and satisfies the appropriate requirements and tests. However, since 1 September 2002, Paragraph 28(5) of the FeV 2002 expressly provides that the German authorities may permit the person concerned to use a licence issued by another Member State where there no longer remain any grounds justifying the withdrawal of the licence or the temporary ban on obtaining a new licence.

75 It is also clear from the papers in the case that the measure withdrawing or cancelling the licence imposed on Mr Kapper by the criminal order of 26 February 1998 was coupled with a temporary ban on obtaining a new licence, which expired on 25 November 1998. After that date, Mr Kapper was entitled, according to the national court, to request the German authorities to issue him with a new licence. In those circumstances, it must be held that when a new licence was issued to Mr Kapper by the Netherlands authorities on 11 August 1999 he was no longer subject, in Germany, to a temporary ban on applying to the competent authorities in the Federal Republic of Germany for the issue of a new licence.

76 According to Article 8(4) of Directive 91/439, a Member State may refuse to recognise the validity of any driving licence issued by another Member State to a person who is the subject in that Member State of one of the measures referred to in paragraph 2 of that article. Given that that provision must be strictly interpreted, it may not be used by a Member State as a basis for refusing indefinitely to recognise, in relation to a person who has been the object in its

territory of a measure withdrawing or cancelling a previous licence issued by that State, the validity of any licence that may subsequently be issued to him by another Member State. Where a temporary ban on obtaining a new licence with which the measure in question was coupled has already expired in a Member State, the provisions of Articles 1(2) and 8(4) of Directive 91/439, taken together, preclude that Member State from continuing to refuse to recognise the validity of any driving licence subsequently issued to the person concerned by another Member State.

77 That conclusion is not affected by the fact that the applicable national provisions, in particular those set out in Paragraph 28 of the FeV 1999, have as their specific aim the indefinite extension of the temporal effects of a measure withdrawing or cancelling a previous licence and the reservation to the German authorities of the right to issue a new licence. As the Advocate General noted at point 75 of his Opinion, to allow a Member State to rely on its national provisions in order to refuse indefinitely to recognise a licence issued by another Member State would be fundamentally incompatible with the principle of the mutual recognition of driving licences which is the linchpin of the system established by Directive 91/439.

78 In light of all the foregoing considerations, the answer to the second part of the question referred must be that the provisions of Articles 1(2) and 8(4) of Directive 91/439, taken together, must be interpreted as meaning that they preclude a Member State from refusing to recognise the validity of a driving licence issued by another Member State on the ground that its holder has, in the first Member State, been subject to a measure withdrawing or cancelling the driving licence issued by that Member State, where a temporary ban on obtaining a new licence, with which that measure is coupled, has expired before the date of issue of the licence issued by the other Member State.

Costs

79 The costs incurred by the German, Italian and Netherlands Governments and by the Commission, which have submitted observations to the Court, are not recoverable. 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.

On those grounds,

THE COURT (Fifth Chamber),

in answer to the question referred to it by the Amtsgericht Frankenthal by order of 11 October 2001, corrected by letter of 19 December 2001, hereby rules:

1. The provisions of Articles 1(2), 7(1)(b) and 9 of Council Directive 91/439/EEC of 29 July 1991 on driving licences, as amended by Council Directive 97/26/EC of 2 June 1997, taken together, must be interpreted as meaning that they preclude a Member State from refusing to recognise a driving licence

issued by another Member State on the ground that, according to the information available to the first Member State, the holder of the licence had, on the date on which it was issued, taken up normal residence in that Member State and not in the Member State in which the licence was issued.

2. The provisions of Articles 1(2) and 8(4) of Directive 91/439, taken together, must be interpreted as meaning that they preclude a Member State from refusing to recognise the validity of a driving licence issued by another Member State on the ground that its holder has, in the first Member State, been subject to a measure withdrawing or cancelling the driving licence issued by that Member State, where a temporary ban on obtaining a new licence, with which that measure is coupled, has expired before the date of issue of the licence issued by the other Member State.

Timmermans Rosas von Bahr

Delivered in open court in Luxembourg on 29 April 2004.

R. Grass V. Skouris

Registrar President