Reports of Cases

JUDGMENT OF THE COURT (Second Chamber)

26 April 2012 *

(Directive 2006/126/EC — Mutual recognition of driving licences — Refusal by a Member State to recognise, in favour of a person whose driving licence was withdrawn on its territory, the validity of a driving licence issued by another Member State)

In Case C-419/10,

REFERENCE for a preliminary ruling under Article 267 TFEU from the Bayerischer Verwaltungsgerichtshof (Germany), made by decision of 16 August 2010, received at the Court on 23 August 2010, in the proceedings

Wolfgang Hofmann

v

Freistaat Bayern,

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: Y. Bot,

Registrar: L. Hewlett, Principal Administrator,

having regard to the written procedure and further to the hearing on 28 September 2011,

after considering the observations submitted on behalf of:

— Mr Hofmann, by W. Säftel, Rechtsanwalt,

— Freistaat Bayern, by M. Niese, Oberlandesanwalt,

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

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

after hearing the Opinion of the Advocate General at the sitting on 10 November 2011

gives the following

* Language of the case: German.

Judgment

1 The reference for a preliminary ruling concerns the interpretation of Articles 2(1) and 11(4), second subparagraph, of European Parliament and Council Directive 2006/126/EC of 20 December 2006 on driving licences (OJ 2006 L 403, p. 18, and amendment OJ 2009 L 19, p. 67).

2 The reference has been made in proceedings between Mr Hofmann, a German national residing in Viereth-Trunstadt (Germany) who holds a driving licence issued in the Czech Republic and the Freistaat Bayern (Free State of Bavaria) concerning a decision denying him the right to use his driving licence in the territory of the Federal Republic of Germany.

Legal context

European Union legislation

3 According to the second recital of Directive 2006/126:

‘The rules on driving licences are essential elements of the common transport policy, contribute to improving road safety, and facilitate the free movement of persons taking up residence in a Member State other than the one issuing the licence. Given the importance of individual means of transport, possession of a driving licence duly recognised by a host Member State promotes free movement and freedom of establishment of persons. ...’

4 According to recital 8 of that directive, on road safety grounds, the minimum requirements for the issue of a driving licence should be laid down.

5 Recital 15 of the said directive states:

‘For reasons connected with road safety, Member States should be able to apply their national provisions on the withdrawal, suspension, renewal and cancellation of driving licences to all licence holders having acquired normal residence in their territory.’

6 According to Article 2(1) of Directive 2006/126, ‘[d]riving licences issued by Member States shall be mutually recognised’.

7 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.

(a) No person may hold more than one driving licence.

(b) A Member State shall refuse to issue a licence where it establishes that the applicant already holds a driving licence.

(c) Member States shall take the necessary measures pursuant to point (b). The necessary measures as regards the issue, replacement, renewal or exchange of a driving licence shall be to verify with other Member States where there are reasonable grounds to suspect that the applicant is already the holder of another driving licence.

(d) In order to facilitate the checks pursuant to point (b), Member States shall use the EU driving licence network once it is operational.

Without prejudice to Article 2, a Member State issuing a licence shall apply due diligence to ensure that a person fulfils 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.'

8 Article 11(4) of Directive 2006/126 reads:

'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 also refuse to issue a driving licence to an applicant whose licence is cancelled in another Member State.'

9 Article 13 of that directive provides:

'1. With the agreement of the Commission, Member States shall establish equivalences between entitlements obtained before the implementation of this Directive and the categories defined in Article 4.

After consulting the Commission, Member States may make to their national legislation such adjustments as are necessary for the purpose of implementing the provisions of Article 11(4), (5) and (6).

2. Any entitlement to drive granted before 19 January 2013 shall not be removed or in any way qualified by the provisions of this Directive.'

10 Article 15 of the said directive states:

'Member States shall assist one another in the implementation of this Directive and shall exchange information on the licences they have issued, exchanged, replaced, renewed or revoked. They shall use the EU driving licence network set up for these purposes, once this network is operational.'

11 Article 16(1) and (2) of the same directive provide:

'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 provisions as from 19 January 2013.

12 Article 17, first paragraph, of Directive 2006/126 provides:

'[Council] Directive 91/439/EEC [of 29 July 1991 on driving licences (OJ 1991 L 237, p. 1)] 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 reads:

'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.'

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

15 Article 7(1) of that directive 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.'

16 Article 8(2) and (4) of the said directive provide:

'2. Subject to observance of the principle of territoriality of criminal and police laws, the Member States 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 recognize 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.'

National legislation

17 Paragraph 28(1), first sentence, of the regulation on the authorisation of persons to drive on highways [Verordnung über die Zulassung von Personen zum Straßenverkehr (Fahrerlaubnis-Verordnung)], of 18 August 1998 (BGBl. 1998 I, p. 2214), in the version resulting from the regulation of 7 January 2009 (BGBl. 2009 I, p. 29), provides:

'Holders of a valid [European Union] or European Economic Area ('EEA') driving licence having 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 Germany within the limits authorised by their driving licence ...'

18 Article 28(4) of the said regulation provides:

'The authorisation referred to in subparagraph 1 does not apply to holders of a [European Union] or EEA driving licence

...

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

...

In the cases referred to in the first sentence, points 2 and 3, the competent authority may adopt a measure establishing that the person concerned has no right to drive. The first sentence, points 3 and 4, is applicable only where the measures to which it refers are entered in the central road traffic register and no striking off from the register has taken place pursuant to Paragraph 29 of the Law on Road Traffic (Straßenverkehrsgesetz).'

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

19 By a penal order of 8 May 2007, which became final, Mr Hofmann was fined by the Amtsgericht Memmingen (Local Court, Memmingen) for driving under the influence of alcohol. His driving licence was withdrawn, and he was prohibited from applying for a new licence for a period of 15 months, namely until 7 August 2008. In that respect, it is apparent from the documents before the Court that, before obtaining restitution of that driving licence at the expiry of the period of prohibition, Mr Hofmann had to apply for the issuing of a new licence to the competent German authority, which had to check whether it was necessary to make restitution of the licence subject to a new driving test, in order to establish his capacity to drive, or to a compulsory medico-psychological test, in order to establish his fitness to drive motor vehicles.

20 At a routine check on 17 March 2009, the German authorities found that Mr Hofmann was in possession of a Czech driving licence issued on 19 January 2009 and stating as the holder's place of residence Lazany (Czech Republic). That driving licence was seized by the German police at another roadside check carried out on 25 March 2009. The said licence was sent to the German driving licence issuing authority.

21 By letter of 20 April 2009, that authority told Mr Hofmann that his Czech driving licence did not entitle him to drive motor vehicles in Germany. If he did not agree to that licence being endorsed to that effect, a declaratory administrative decision would be issued.

22 Mr Hofmann having refused such an endorsement, the said authority determined, by a decision of 15 July 2009, that his Czech driving licence did not authorise him to drive motor vehicles in German territory and ordered that the licence be endorsed with a reference to its invalidity in the said territory.

23 On 13 August 2009, Mr Hofmann brought an action before the Verwaltungsgericht Augsburg (Administrative Court, Augsburg) for the annulment of that decision.

24 By judgment of 11 December 2009, that court dismissed the action. The principle of mutual recognition of driving licences did not prevent the determination that Mr Hoffman was not entitled to use his Czech driving licence in Germany, since Article 11(4), second paragraph, of Directive 2006/126 derogated from Article 2(1) of the said directive. That Article 11(4), second paragraph, did not have to be given a restrictive interpretation in accordance with the Court's case-law on Article 8(2) and (4) of Directive 91/439, arising from the judgments of 26 June 2008 in Joined Cases C-329/06 and C-343/06 *Wiedemann and Funk* [2008] ECR p. I-4635, and Joined Cases C-334/06 to C-336/06 *Zerche* [2008] ECR I-4691). To allow exceptions of case-law origin would be contrary to the strict refusal to recognise the validity of a driving licence henceforth imposed by Article 11(4), second paragraph, of Directive 2006/126 in the conditions defined in that article. The effectiveness of the fight against 'driving licence tourism', which constituted one of the objectives of the said directive, required the prevention of any circumventing of the comparatively strict conditions on fitness applicable in Germany after a withdrawal of the German driving licence.

25 By an appeal authorised by the Bayerischer Verwaltungsgerichtshof (Higher Administrative Court, Bavaria), Mr Hofmann sought, in essence, annulment of the judgment of the Verwaltungsgericht and of the decision of the driving licence issuing authority of 15 July 2009, claiming that, as the first issue, the question arose whether Article 11(4) of Directive 2006/126 applied to foreign driving licences issued, as in this case, on 19 January 2009, or on a later date. Only as the second issue did the question arise whether the case-law of the Court of Justice mentioned in the previous paragraph of this judgment was applicable to the provisions of that directive which entered into force on 19 January 2009.

26 Being in doubt as to whether the case-law of the Court of Justice on Articles 1(2) and 8(2) and (4) of Directive 91/439 should be applied to Article 11(4) of Directive 2006/126, the Bayerischer Verwaltungsgerichtshof decided to stay the proceedings and refer the following question to the Court of Justice for a preliminary ruling:

'Are Article 2(1) and Article 11(4), second sentence, of Directive 2006/126 … to be interpreted as meaning that a Member State must refuse to recognise in its territory the validity of a driving licence issued by another Member State to a person outside a period during which that person was prohibited from applying for a new licence, in the case where that person's driving licence had been withdrawn in the national territory of the first Member State and that person's normal place of residence at the time of the issue of the driving licence was in the national territory of the issuing Member State?'

Procedure before the Court

27 By a letter which reached the Court of Justice on 13 September 2011, the referring court informed the Court of Justice that M. Hofmann had been subject to a measure withdrawing his driving licence by a judgment of 5 April 2011 of the Amtsgericht Memmingen, which had become final, and that restitution of the said licence had been excluded for a period of one year and six months. According to the said court, although there was therefore no further need to rule on the finding in the decision of the driving licence issuing authority of 15 July 2009 that Mr Hofmann's Czech driving licence did not authorise him to drive motor vehicles in German territory, it remained necessary for the Court of Justice to rule on the question referred for a preliminary ruling.

28 Firstly, Mr Hofmann's guardian *ad litem* was henceforth claiming, in reaction to the conviction of his client, that the judgment of the Verwaltungsgericht Augsburg should be set aside and that the said decision of 15 July 2009 should be held unlawful. For the referring court to be able to rule as to whether the said decision was unlawful, it was necessary for the Court of Justice to reply to the question referred for a preliminary ruling. Moreover, the proceedings brought by Mr Hofmann are only one of many sets of proceedings the outcome of which depends on the reply of the Court of Justice to that question.

The question referred for a preliminary ruling

29 By its question, the national court asks, in essence, whether, on a proper interpretation of Articles 2(1) and 11(4), second paragraph, of Directive 2006/126, a Member State is required, outside any period of prohibition from applying for a new driving licence imposed upon the holder of a licence issued by another Member State and even where the condition of normal residence in the territory of the latter has been complied with, to refuse to recognise the validity of that driving licence, where the holder of the said licence has been subject, in the territory of the first Member State, to a measure withdrawing an earlier driving licence.

Preliminary observations

30 As a preliminary, it needs to be determined whether Articles 2(1) and 11(4), second paragraph, of Directive 2006/126 are applicable to the facts in the main proceedings.

31 M. Hofmann argues that the effect of Article 16(2) and Article 13(2) of Directive 2006/126, according to which no right to drive issued before 19 January 2013 is withdrawn or accompanied by any restrictions under the terms of the provisions of that directive, that the date of entry into force of Article 11(4), second paragraph of the latter has been determined as 19 January 2013.

32 By contrast, the European Commission and the German Government take the view that Articles 2(1) and 11(4), second paragraph, of Directive 2006/126 are applicable to the facts at issue in the main proceedings. The Commission emphasises in particular that that directive entered into force on 19 January 2007 and that the decisive factor, in the present case, is the issuing of a Czech driving licence on 19 January 2009. The German Government argues that Article 13(2) of the said directive does not preclude the application of Article 11(4), second paragraph, of the same directive to driving licences issued before 19 January 2013. That is apparent in particular from the fact that that latter provision is, in accordance with Article 18, second paragraph, of Directive 2006/126, applicable as from 19 January 2009. By contrast, Article 13 of that directive does not apply, according to Article 16(1) and (2) of the latter, until after 19 January 2013. Nor had the Federal Republic of Germany transposed Article 13(2) of the said directive in advance.

33 In that regard, it should be noted that, whilst Directive 91/439 will be repealed only with effect from 19 January 2013, Articles 2(1) and 11(4) of Directive 2006/126 are applicable as from 19 January 2009, in accordance with the second subparagraph of Article 18 of that directive (see judgment of 1 March 2012 in Case C-467/10, paragraph 31).

34 In this case, it is apparent from the order for reference that Mr Hofmann's Czech driving licence, obtained on 19 January 2009, was seized by the German police on 25 March 2009 and that Mr Hofmann was informed by the German driving licence issuing authority, by letter of 20 April 2009, that the said licence did not authorise him to drive motor vehicles in Germany. That authority then ordered, by a decision of 15 July 2009, that that document be endorsed with a statement that it was invalid in German territory.

35 It follows that Articles 2(1) and 11(4) of Directive 2006/126 apply *ratione temporis* to the facts at issue in the main proceedings.

36 Mr Hofmann's argument, in essence, that Article 13(2) of Directive 2006/126 precludes the application of Article 11(4), second paragraph, of the said directive does nothing to invalidate that conclusion.

37 Except for the provisions referred to in Article 18, second paragraph of Directive 2006/126 and of which Article 11(4) forms part, the other provisions of that directive, and in particular Article 13, are applicable, in accordance with the first paragraph of Article 17 of the directive, only as from 19 January 2013.

38 Moreover, as the German Government argues, if Article 13(2) of Directive 2006/126 had to be interpreted as meaning that, generally, a driving licence issued before 19 January 2013 could be neither withdrawn nor be made subject to restrictions, it would no longer be possible to apply Article 11(4) of that directive, for which the second paragraph of Article 18 however makes express provision for application as from 19 January 2009.

39 In any event, as the German Government has also observed, the place of Article 13 in the body of Directive 2006/126 demonstrates that the said Article 13(2) refers not to measures restricting, suspending or withdrawing a driving licence but only to acquired rights for the driving of vehicles in particular categories.

40 As the Advocate General has pointed out in point 35 of his Opinion, Directive 2006/126 establishes a single model Community driving licence designed to replace the various driving licences in existence in the Member States. Article 4 of that directive prescribes and defines the various categories of driving licence with which the Member States, each of which have defined their own categories of driving licence, must establish equivalences.

41 Thus, Article 13 of Directive 2006/126, headed 'Equivalences between non-Community model licences', is designed solely to govern the question of equivalences between rights acquired before the implementation of that directive and the various categories of driving licence defined by the latter.

42 That analysis is confirmed by examining the *travaux préparatoires* of Directive 2006/126, from which it is apparent, as the Advocate General has pointed out in point 37 of his Opinion, that Article 13(2) of that directive was added at the initiative of the European Parliament, which justified the addition stating that the replacement of old driving licences was not, under any circumstances, to result in the loss or restriction of acquired rights with regard to the authorisation to drive different categories of vehicle.

Reply of the Court of Justice

43 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, Case C-184/10 *Grasser* [2011] ECR I-4057, paragraph 19, and *Akyüz*, paragraph 40).

44 As the Court has already held in paragraph 40 of its judgment in *Akyüz*, the same is true as regards Article 2(1) of Directive 2006/126, which has identical wording to that of Article 1(2) of Directive 91/439.

45 Moreover, the Court has repeatedly held that 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).

46 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).

47 Those considerations are fully transposable to the system established by Directive 2006/126, in which the principle of mutual recognition of driving licences issued in the Member States has been reaffirmed, as is apparent from paragraph 44 of this judgment, in terms identical to those appearing in Directive 91/439.

48 Concerning Directive 91/439, the Court has however held, first, that Articles 1(2), 7(1)(b) and 8(2) and (4) of that directive 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 normal residence condition laid down by Article 7(1)(b) has not been satisfied (see, to that effect, *Wiedemann and Funk*, paragraph 72, and *Grasser*, paragraph 33). It should also be noted that 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 (*Grasser*, paragraph 33).

49 Moreover, the Court has held that when the person concerned has been subject to a measure withdrawing his driving licence and prohibiting any application for a new licence for a given period, it is not contrary to Articles 1(2) and 8(4) of Directive 91/439 for a Member State to refuse to recognise a new licence issued by another Member State during the period of that prohibition (*Wiedemann and Funk*, paragraph 65; *Schwarz*, paragraph 83; Order of 3 July 2008 in Case C-225/07 *Möginger*, paragraph 38).

50 The Court has held in that respect that Article 8(4) may, however, not be used by a Member State as a basis for refusing indefinitely to recognise, in relation to a person who has been subject in its territory to a measure withdrawing or cancelling a previous licence issued by that State, the validity of any licence that may subsequently, that is to say, after the period of prohibition, be issued to him by another Member State (see, to that effect, Case C-476/01 *Kapper* [2004] ECR I-5205, paragraph 76; *Wiedemann and Funk*, paragraph 63; *Schwarz*, paragraph 85; and Order of 6 April 2006 in Case C-227/05 *Halbritter*, paragraph 28).

51 Thus, where a person's driving licence has been withdrawn in a Member State, Article 8(4) does not, in principle, authorise that Member State to refuse to recognise the validity of a driving licence subsequently issued to the same person by another Member State outside a period during which no application may be made by him for the issue of a new driving licence (see, to that effect, *Kapper*, paragraph 76; *Wiedemann and Funk*, paragraph 64; *Schwarz*, paragraph 86, and orders in *Halbritter*, paragraph 27, and *Möginger*, paragraph 44).

52 Having regard to the difference in wording between Article 8(4) of Directive 91/439 and the corresponding provision of Directive 2006/126, namely Article 11(4), it needs to be determined whether those two provisions must henceforth be interpreted in a different way, so that the conditions highlighted by the Court's case-law referred to in paragraphs 48 to 51 of this judgment for the application of Article 8(4) of Directive 91/439 are no longer applicable to a situation such as that of Mr Hofmann, which is governed by Directive 2006/126.

53 Whilst Article 8(4) of Directive 91/439 provides that a Member State may refuse to recognise, in favour of a person subject in its territory to restriction, suspension, withdrawal or annulment of the right to drive, the validity of any licence issued by another Member State, Article 11(4), second

paragraph of Directive 2006/126 provides that '[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'. Thus, the wording of that latter provision henceforth requires Member States to refuse to recognise such a driving licence, whereas Article 8(4) of Directive 91/439 left them a discretion in that regard.

54 On that point, Mr Hofmann considers that it can be easily deduced from the identity of the terms used that Article 11(4) of Directive 2006/126 contains the same exceptions to the principle of the mutual recognition of driving licences as those which already existed in application of Article 8(4) of Directive 91/439, as interpreted by the Court of Justice. If the formulation of the principle of mutual recognition appearing in Article 1(2) of Directive 91/439 and in Article 2(1) of Directive 2006/126 has remained unchanged, there is no reason to require the case-law concerning that principle to evolve. The fact of limiting the discretion of the Member States to refuse to recognise a licence issued by another Member State is irrelevant to the conditions for applying Article 11(4) of Directive 2006/126.

55 Similarly, the Commission considers that, whilst the new provisions no longer leave a full discretion to the Member States on refusing to recognise a driving licence, but require them to refuse where the conditions for such a refusal are met, the conditions under which recognition of a licence could be refused pursuant to the old provisions or must be refused henceforth have not changed. In the Commission's view, it cannot be inferred from the wording of Article 11(4) of Directive 2006/126 that the relevant judgments of the Court of Justice concerning the conditions which prevailed under Directive 91/439 have lost their relevance. Whilst the *travaux préparatoires* of Directive 2006/126 place emphasis on the newly created obligation not to issue and not to recognise a driving licence, there has been no reference to a change in the conditions underlying a measure of non-issuance or non-recognition of a licence.

56 If it were otherwise, a citizen of the Union would no longer be able to obtain a driving licence other than in the Member State in which that licence was previously subject to restriction, suspension or withdrawal, and that would apply without limitation of time on that restriction.

57 The Freistaat Bayern argues, by contrast, that the said conditions have been identified by the case-law of the Court of Justice rendered on the basis of Directive 91/439, and that that case-law now applies to driving licences issued before 19 January 2009.

58 Moreover, unlike Article 8(4) of Directive 91/439, the first paragraph of Article 11(4) of Directive 2006/126 henceforth requires a Member State, without leaving it any discretion, to refuse to issue a new driving licence to a person who has been subject to a restriction, suspension or withdrawal measure in another Member State.

59 The Freistaat Bayern concludes therefrom that the case-law of the Court of Justice on the interpretation of Article 8(4) of Directive 91/439 cannot be transposed to Article 11(4), first and second subparagraphs, of Directive 2006/126. In its view, under that latter directive, if a Member State refuses to recognise a driving licence issued to a person by a Member State where the latter has been subject to a restriction, suspension or withdrawal measure in its territory, the said State refuses to recognise an act contrary to EU law. Indeed, in accordance with the first subparagraph of Article 11(4) of Directive 2006/126, that other Member State was not authorised to carry out such issuance. Article 11(4) of that directive thus constituted a *lex specialis* in relation to Article 2(1) of the said directive and required Member States to refuse to recognise driving licences which were not issued in conformity with EU law.

60 In the view of the Freistaat Bayern, the *travaux préparatoires* of Directive 2006/126 confirm that analysis. The wording of Article 11(4), first and second subparagraphs, of the latter follows from an amendment proposed by the Transport and Tourism commission of the European Parliament, which was clearly aimed at reacting to the *Kapper* judgment and at providing a legislative response to it.

61 The German Government argues that, in accordance with its wording, Article 11(4), second subparagraph, of Directive 2006/126 does not concern either a possible infringement of the condition of normal residence in the territory of the Member State issuing the driving licence or the expiry of a possible period of prohibition from obtaining a new licence. Although the present tense is used in both the French-language version of that provision ('à une personne dont le permis de conduire *fait* l'objet, sur son territoire, d'une restriction, d'une suspension ou d'un retrait') and in the English-language version ('to a person whose driving licence *is* restricted, suspended or withdrawn in the former State's territory'), the wording of the latter allows perfectly for it to be applied to a person whose driving licence has been withdrawn under German law and in relation to whom the period of temporary prohibition from obtaining a new licence has expired. In cases where the German driving licence has not yet been restored to the said person, the latter continues to be 'the subject of a withdrawal'.

62 The addition of conditions for application not expressly provided for in Article 11(4), second subparagraph of Directive 2006/126 cannot be justified, in the German Government's submission, by a 'strict interpretation' of that provision. A provision should not be the subject of such an interpretation by reason of the mere fact that it constitutes an exception, in this instance, to the principle of the mutual recognition of driving licences laid down by Article 2(1) of the said directive.

63 The German Government adds that the obligation on a Member State to refuse to recognise the validity of driving licences in the cases envisaged by Article 11(4), second subparagraph, of Directive 2006/126 enables road safety to be assured, thereby protecting the right to life, the right to the integrity of the person and the right to property, laid down respectively by Articles 2, 3 and 17 of the Charter of Fundamental Rights of the European Union, which have the same legal value as the fundamental freedoms to which the principle of mutual recognition referred to in Article 2(1) of Directive 2006/126 contributes.

64 The German Government also considers that the origins of the second subparagraph of Article 11(4) of that directive show that its authors wished to restore priority to efforts to intensify the fight against 'driving licence tourism' and thus reinforce road safety, in relation to the principle of mutual recognition, underpinned by the concept of freedom of movement, which had hitherto prevailed in the case-law of the Court of Justice. There was, by contrast, nowhere any sign of a hypothetical desire by the entities which participated in the adoption of that directive to make application of the second subparagraph of Article 11(4) of the latter depend on an infringement of the condition of normal residence in the territory of the Member State issuing the driving licence or the non-expiry of the period of prohibition from obtaining a new licence.

65 In that regard, it should nevertheless be noted that the difference in wording between Article 8(4) of Directive 91/439 and Article 11(4) of Directive 2006/126 is not of such a kind as to call into question the conditions, as identified by the case-law of the Court of Justice, in which recognition of a driving licence could be refused by virtue of the provisions of Directive 91/439, and must henceforth be refused by virtue of the provisions of Directive 2006/126.

66 Indeed, apart from the transformation into an obligation of what was previously merely an option of non-recognition, and the establishment of a distinction between restriction, suspension and withdrawal, on the one hand, and annulment on the other, the wording of Article 11(4), second subparagraph of Directive 2006/126 has not undergone substantial modification from that of Article 8(4) of Directive 91/439.

67 Whilst it is true that some language versions of Article 11(4), second subparagraph, of Directive 2006/126, and particularly the German version ('einer Person ..., deren Führerschein ... eingeschränkt, ausgesetzt oder entzogen *worden ist*'), are formulated in such a way as not to exclude the possibility that the measures mentioned in that provision might have exhausted their effects, the fact remains that a large number of other language versions of Article 11(4), second subparagraph, of Directive 2006/126, such as the French and the English ('à une personne dont le permis de conduire *fait* l'objet,

sur son territoire, d'une restriction, d'une suspension ou d'un retrait' and 'to a person whose driving licence *is* restricted, suspended or withdrawn in the former State's territory') express the idea that the said measures must be current for a Member State to be obliged to refuse recognition of a driving licence issued to a person whose licence has been subject, in its territory, to one of those measures.

68 According to settled case-law, the wording used in one language version of an EU provision cannot serve as the sole basis for the interpretation of that provision, or be made to override the other language versions in that regard. (see, in particular, Case C-187/07 *Endendijk* [2008] ECR I-2115, paragraph 23; Case C-239/07 *Sabatauskas and Others* [2008] ECR I-7523, paragraph 38; Joined Cases C-230/09 and C-231/09 *Kurt and Thomas Etling and Others* [2011] ECR I-3097, paragraph 60). Moreover, the various language versions of a text of EU law must be given a uniform interpretation and hence, in the case of divergence between the language versions, the provision in question must be interpreted by reference to the purpose and general scheme of the rules of which it forms a part (see, to that effect, *Endendijk*, at paragraph 24; Case C-340/08 *M and Others* [2010] ECR I-3913, paragraph 44; *Kurt and Thomas Etling*, paragraph 60).

69 In any event, it should be noted that the German-language version of Article 8(4), first subparagraph, of Directive 91/439 uses the past tense ('einer Person ..., auf die ... eine der in Absatz 2 genannten Maßnahmen angewendet *wurde*'), without that fact preventing the Court of Justice from taking the view that a Member State cannot rely on that provision to refuse indefinitely to recognise, in favour of a person who has been subject in its territory to such a measure, the validity of any licence which might subsequently be issued to him by another Member State.

70 Whilst the *travaux préparatoires* of Directive 2006/126 do show that the EU legislature wanted to reinforce the fight against 'driving licence tourism' by transforming an option not to recognise a driving licence issued by another Member State into an obligation, in order to ensure mutual recognition of restriction, suspension or withdrawal measures, those *travaux préparatoires* do not show that the conditions in which a Member State is authorised or, in relation to that directive, is required, not to recognise a driving licence issued by another Member State, as identified by the case-law of the Court of Justice, have been called into question.

71 Moreover, the Court of Justice has repeatedly stated that the option provided for by Article 8(4) of Directive 91/439 constitutes a derogation from the general principle of mutual recognition of driving licences, and must therefore be interpreted strictly (see, in particular, Case C-1/07 *Weber* [2008] ECR I-8571, paragraph 29; *Schwarz*, paragraph 84; Order in Case C-334/09 *Scheffler* [2010] ECR I-12379, paragraph 63). That finding remains valid in relation to the obligation now appearing in the second subparagraph of Article 11(4) of Directive 2006/126. Indeed, that obligation also constitutes a derogation from the general principle of the mutual recognition of driving licences, reaffirmed in Article 2(1) of the said directive.

72 It should be added that the first and second subparagraphs of Article 11(4) of Directive 2006/126 distinguish the hypotheses of issuing and recognition of a driving licence to a person whose driving licence is subject to a restriction, suspension or withdrawal in another Member State. Apart from that distinction, those first and second subparagraphs are similarly worded. Therefore, if the second subparagraph of Article 11(4) of Directive 2006/126 must be interpreted as meaning that that provision lays down an obligation on a Member State not to recognise any driving licence issued by another Member State to a person whose driving licence is subject to a restriction, suspension or withdrawal measure in the first Member State, a similar interpretation must be adopted as regards the first subparagraph of Article 11(4) of that directive, which also lays down an obligation not to issue a driving licence to such a person.

73 It is apparent, in that regard, from the *travaux préparatoires* of Directive 2006/126 that the intention of the EU legislature consisted in reinforcing the principle of the uniform nature of driving licences and preventing a person whose driving licence has been subject to a restriction, suspension or

withdrawal measure in a Member State from being able to have a driving licence issued to him in another Member State or able to have the validity of such a licence recognised (see, to that effect, the proposal for an EC directive of the European Parliament and the Council on driving licences (recast), of 21 October 2003, COM(2003) 621 final, presented by the Commission, p. 6).

74 It does not, however, follow that a person whose driving licence has been subject to a restriction, suspension or withdrawal measure in a Member State can never again obtain a new driving licence in another Member State, even after the expiry of the period of temporary prohibition from obtaining a new driving licence which may have accompanied such a measure in the first Member State.

75 The interpretation of the second subparagraph of Article 11(4) of Directive 2006/126 argued for by the Freistaat Bayern and the German Government would amount to imposing, by virtue of the first subparagraph of Article 11(4) of Directive 2006/126, a permanent prohibition, not limited in time, on the issuing of a new driving licence by a Member State to a person whose driving licence has been subject, in the past, to a restriction, suspension or withdrawal in another Member State.

76 In that context, it should be remembered that, by virtue of Article 7(1)(b) of Directive 91/439 and Article 7(1)(e) of Directive 2006/126, a driving licence may be issued only by the Member State in the territory of which the applicant has his normal residence. Thus, the only possibility, for a person whose driving licence has been subject to withdrawal in a Member State and who has subsequently transferred his residence to another Member State, of obtaining a new driving licence in conformity with Directives 91/439 and 2006/126 would be to apply to the competent authorities of the new Member State of residence.

77 To interpret Article 11(4) of Directive 2006/126 as meaning that such a person can no longer obtain a driving licence in the new Member State of residence, even after the expiry of any period of prohibition from applying for a new licence, would therefore amount to a hindrance to the right to move and reside freely in the territory of the Member States, conferred on citizens of the Union by Article 21 TFEU and of which Directive 2006/126 is designed to facilitate the exercise.

78 Moreover, as the Court of Justice has held as regards Directive 91/439, 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 linchpin of the system established by Directive 2006/126 (see, to that effect, *Kapper*, paragraph 77, and order in *Halbritter*, paragraph 28).

79 It must, however, be stated that, in the course of the hearing, the Freistaat Bayern and the German Government argued, in essence, that, for a person whose driving licence has been withdrawn in a Member State to be able to obtain a new driving licence in another Member State in conformity with Directive 2006/126 and obtain recognition of that new driving licence by the other Member States, it is necessary for the Member State of issuance to cooperate with the Member State which made the withdrawal. According to that government, the Member State of issuance should be informed by that other Member State of the reasons which led to that withdrawal and should verify whether the latter have disappeared.

80 That argument cannot be accepted, however.

81 It is true that the obligation now appearing in Article 11(4), first subparagraph, of Directive 2006/126 implies cooperation between the Member States with a view to verifying, first, whether the applicant for a driving licence is already the holder of a licence issued in another Member State, where, as envisaged by Article 7(5)(c) of that directive, there are reasonable grounds for suspecting it, and, second, whether that applicant is subject, in the event of withdrawal of his driving licence in another Member State, to a period of prohibition from applying for a new licence. Article 15 of the said directive reaffirms, moreover, the need for mutual assistance and an exchange of information between Member States.

82 However, to impose, as a condition for the issuance of a licence by the Member State of residence of the applicant, an absolute obligation for the competent authorities to consult each other and to verify systematically that the reasons which led to the previous withdrawal of a driving licence have disappeared, would require the creation of a complex system for determining whether the applicant for a driving licence has not, even a long time previously, been subject to withdrawal of a driving licence in any Member State. In any event, such a system is not expressly provided for by Directive 2006/126. Even if the driving licence network of the European Union is of such a nature as to facilitate the establishment of such a system, that network is, however, not yet operational and cannot constitute a useful instrument in that regard concerning possible withdrawal measures which may have been adopted in other Member States in a distant past.

83 Moreover, the person who makes an application for a driving licence in a Member State may have been subject in the past, in another Member State, to withdrawal of a driving licence for various reasons, in particular for those at issue in the main proceedings, but also for other infringements of the highway code, even minor ones. Verification of the disappearance of some of those reasons for withdrawal could prove difficult, Directive 2006/126, moreover, providing no indication in that respect.

84 In that context, it should also be remembered that the Court of Justice has held, concerning Directive 91/439, that a host Member State making the issue of a driving licence subject to stricter domestic conditions, especially after an earlier licence has been withdrawn, may not refuse to recognise a driving licence subsequently issued by another Member State solely on the ground that the holder of that new licence has obtained it pursuant to national legislation that does not impose the same requirements as that host Member State (*Wiedemann and Funk*, paragraph 54). That interpretation is equally valid in relation to Directive 2006/126 which, like Directive 91/439, provides for a minimum degree of harmonisation of the national provisions relating to the conditions under which a driving licence may be issued (see, to that effect, *Akyüz*, paragraph 53) and the linchpin of which remains, as stated in paragraph 78 of this judgment, the principle of the mutual recognition of driving licences issued by the Member States.

85 Moreover, the conclusion that the conditions identified by the Court of Justice, referred to in paragraphs 48 to 51 of this judgment, for applying the first subparagraph of Article 8(4) of Directive 91/439 remain applicable as regards the second subparagraph of Article 11(4) of Directive 2006/126 is confirmed by the special regime reserved, in accordance with the third subparagraph of Article 11(4) of Directive 2006/126, for the annulment of a driving licence.

86 Indeed, that latter provision provides, like the second subparagraph of Article 8(4) of Directive 91/439, that a Member State may refuse to issue a driving licence to an applicant whose licence has been subject to annulment in another Member State. Thus, a Member State is not required to make such a refusal.

87 There is no provision either of Directive 2006/126 or of the *travaux préparatoires* of the latter to indicate that the annulment of a driving licence concerns, as the Freistaat Bayern, the German Government and the Commission have argued at the hearing, only formal requirements concerning the issuance of the driving licence. Moreover, the possibility cannot be excluded that, in certain Member States, annulment of a driving licence may constitute a measure relating to the capacity to drive, more severe than a withdrawal or a suspension, capable of penalising in particular driving under the influence of alcohol, which is at issue in the main proceedings.

88 It would thus be paradoxical to interpret the second subparagraph of Article 11(4) of Directive 2006/126 as meaning that, in the case of restriction, suspension or withdrawal of a driving licence, it is no longer possible, by virtue of the first subparagraph of Article 11(4) of the said directive, for the holder to obtain a licence in another Member State, whereas such a possibility still exists in the event of annulment of a licence.

89 In the present case, it is apparent from the above considerations that, since the driving licence issued to Mr Hofmann by the Czech authorities on 19 January 2009 was, as is apparent from paragraphs 19 and 20 of this judgment, issued after the expiry of the period of prohibition from applying for a new licence which accompanied the driving licence withdrawal pronounced against Mr Hofmann in Germany, the German authorities are not entitled to refuse to recognise the validity of the licence thus issued.

90 It is, however, for the national court to verify, on the basis of the information referred to in paragraph 48 of this judgment and taking into account all the circumstances of the dispute before it (see, to that effect, *Akyüz*, paragraph 75), whether Mr Hofmann had his normal residence in the Czech Republic at the time of obtaining his driving licence. If that were not the case, the German authorities would be entitled to refuse to recognise the validity of that licence. It is apparent, in that respect, from the order for reference, that the latter is based on the hypothesis that the condition of normal residence in the territory of the Member State which issued the driving licence has been complied with.

91 Having regard to all of the above considerations, the answer to the question referred is that Articles 2(1) and 11(4), second subparagraph, of Directive 2006/126 must be interpreted as precluding a Member State from refusing, outside any period of prohibition on applying for a new driving licence imposed on the holder of a driving licence issued by another Member State and when the condition of normal residence in the territory of the latter has been complied with, to recognise the validity of that driving licence, where the said holder has been subject, in the territory of the first Member State, to a measure withdrawing a previous driving licence.

Costs

92 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:

Articles 2(1) and 11(4), second subparagraph, of European Parliament and Council Directive 2006/126/EC of 20 December 2006 on driving licences must be interpreted as precluding a Member State from refusing, outside any period of prohibition on applying for a new driving licence imposed on the holder of a driving licence issued by another Member State and when the condition of normal residence in the territory of the latter has been complied with, to recognise the validity of that driving licence, where the said holder has been subject, in the territory of the first Member State, to a measure withdrawing a previous driving licence.

[Signatures]