JUDGMENT OF THE COURT (Third Chamber)

19 February 2009 *

In Case C-321/07,

REFERENCE for a preliminary ruling under Article 234 EC from the Landgericht Mannheim (Germany), made by decision of 28 June 2007, received at the Court on 12 July 2007, in the criminal proceedings against

Karl Schwarz,

THE COURT (Third Chamber),

composed of A. Rosas (Rapporteur), President of the Chamber, J.N. Cunha Rodrigues, J. Klučka, P. Lindh and A. Arabadjiev, Judges,

Advocate General: Y. Bot,
Registrar: R. Grass,

having regard to the written procedure,

* Language of the case:German.

after considering the observations submitted on behalf of:

— M. Schwarz, by W. Säftel, Rechtsanwalt,

— the German Government, by M. Lumma and C. Blaschke, acting as Agents,

— the Italian Government, by I.M. Braguglia, acting as Agent, assisted by S. Fiorentino, avvocato dello Stato,

— the Portuguese Government, by L. Fernandes and M. Ribes, acting as Agents,

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

after hearing the Opinion of the Advocate General at the sitting on 6 November 2008,

gives the following

Judgment

1 This reference for a preliminary ruling concerns the interpretation of Article 1(2) and Article 8(2) and (4) of Council Directive 91/439/EEC of 29 July 1991 on driving licences (OJ 1991 L 237, p. 1), as amended by Regulation (EC) No 1882/2003 of the European Parliament and of the Council of 29 September 2003 (OJ 2003 L 284, p. 1, 'Directive 91/439').

2 The reference was made in the course of proceedings between Mr Schwarz and the Staatsanwaltschaft Mannheim concerning a driving licence which Mr Schwarz had obtained in Austria before the accession of that State to the European Union and prior to the issue of a German licence which had been withdrawn in Germany on the ground of alcohol consumption.

Legal context

Community rules

3 Driving licences were harmonised by the adoption of First Council Directive 80/1263/EEC of 4 December 1980 on the introduction of a Community driving

licence (OJ 1980 L 375, p. 1), which, as the first recital therein states, is intended to make a contribution to improving road traffic safety, and to assist the movement of persons settling in a Member State other than that in which they have passed a driving test, or moving within the European Community.

4 According to Article 1(1) of Directive 80/1263, a national driving licence based on the Community model entitles the holder to drive, both on national and international journeys.

5 By virtue of the first subparagraph of Article 8(1) of the directive, if the holder of a valid national driving licence or valid Community model licence issued by a Member State takes up normal residence in another Member State his licence is to remain valid there for up to a maximum of a year following the taking up of residence. At the request of the holder within that period, and against surrender of his licence, the Member State is to issue him with a Community model driving licence.

6 The second subparagraph of Article 8(1) of Directive 80/1263 provides that the Member State effecting the exchange is to return the old licence to the authorities of the Member State which issued it.

7 Where a licence issued by a third country is exchanged, Article 8(3) of Directive 80/1263 provides, inter alia, that a Community model driving licence may be issued only if the licence issued by the third country has been surrendered to the competent authorities of the Member State issuing the licence.

8 According to the first recital in Directive 91/439, which repealed Directive 80/1263 with effect from 1 July 1996:

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

9 According to the ninth recital in the directive, the obligation to exchange driving licences within a period of one year of changing normal residence constitutes an obstacle to the free movement of persons, which is inadmissible in the light of the progress made towards European integration.

10 The last recital in Directive 91/439 states the following:

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

11 Article 1 of Directive 91/439 provides as follows:

‘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 licences its national rules on the period of validity of the licences, medical checks and tax arrangements and may enter on the licence any information indispensable for administration.’

12 In accordance with Article 7(1) of Directive 91/439, driving licences are to 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.'

13 In accordance with point 14 of Annex III to the directive, entitled 'Minimum standards of physical and mental fitness for driving a power-driven vehicle', alcohol consumption constitutes a major danger to road safety and in view of the scale of the problem, the medical profession must be very vigilant.

14 Point 14.1 of the said Annex states that:

'Driving licences shall not be issued to, or renewed for, applicants or drivers who are dependent on alcohol or unable to refrain from drinking and driving.

After a proven period of abstinence and subject to authorised medical opinion and regular medical check-ups, driving licences may be issued to, or renewed for, applicants or drivers who have in the past been dependent on alcohol.'

15 In accordance with Article 7(5) of Directive 91/439:

'No person may hold a driving licence from more than one Member State.'

16 Article 8 of the directive provides as follows:

'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.

...

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.

…

6. Where a Member State exchanges a driving licence issued by a third country for a Community model driving licence, such exchange shall be recorded in the latter as shall any subsequent renewal or replacement.

Such an exchange may occur only if the licence issued by the third country has been surrendered to the competent authorities of the Member State making the exchange. If the holder of this licence transfers his normal residence to another Member State, the latter need not apply Article 1(2).'

17 According to Article 10 of Directive 91/439, with the agreement of the Commission, Member States are to establish equivalences between the categories of licence issued before implementation of the directive and those defined in Article 3.

18 Article 12 of Directive 91/439 provides as follows:

‘1. After consulting the Commission, Member States shall, before 1 July 1994, adopt the laws, regulations or administrative provisions necessary to comply with this Directive as of 1 July 1996.

…

3. The Member States shall assist one another in the implementation of this Directive and shall, if need be, exchange information on the licences they have registered.’

19 Article 1 of Commission Decision 2000/275/EC of 21 March 2000 on equivalences between certain categories of driving licences (OJ 2000 L 91, p. 1), as amended by Commission Decision 2002/256/EC of 25 March 2002 (OJ 2002 L 87, p. 57) provides that it applies to all valid driving licences issued in Member States which are still in circulation.

20 Article 2 of the said decision provides that tables of equivalences between categories of driving licences, which have been issued in Member States before the implementation of Directive 91/439 and the harmonised categories as defined in Article 3 of Directive 91/439 are laid down in the annex to the decision.

National legislation

21 Paragraph 28(1), (4) and (5) of the regulation on the authorisation of persons to drive on the highways (the regulation on driving licences) (Verordnung über die Zulassung von Personen zum Straßenverkehr (Fahrerlaubnis-Verordnung)) of 18 August 1998 (BGBl. 1998 I, p. 2214, 'the FeV') provides as follows:

'(1) Holders of a valid [European Union] or [European Economic Area ("the EEA")] driving licence having their normal residence within the meaning of Paragraph 7(1) or (2) in Germany shall be authorised — subject to the restriction laid down in subparagraphs (2) to (4) — to drive motor vehicles in that country within the limits of the rights to which they are entitled. The conditions attached to foreign driving licences shall be observed in Germany also. The provisions of this regulation shall apply to those licences save as otherwise provided.

…

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

…

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

…

(5) The right to use a [European Union] or EEA driving licence in Germany after one of the decisions mentioned in subparagraphs 4(3) and (4) shall be granted on application when the grounds justifying the withdrawal or the prohibition on applying for a new licence no longer obtain. …'

22 According to Paragraph 69 of the Criminal Code (Strafgesetzbuch), a criminal court is to order the withdrawal of a driving licence if it is apparent from the facts of the case that a defendant is unfit to drive a motor vehicle. In accordance with Paragraph 69a of that code, when a court orders withdrawal of a licence it is also to order that no application may be made for the issue of a new driving licence for a given period ('the period of the prohibition') which may vary from six months to five years and may even, in some circumstances, be ordered to last for life.

23 Similarly, by virtue of Article 46 of the FeV, the driving licence authority is to withdraw the licence if it is shown that the holder is unfit to drive motor vehicles.

24 Paragraph 11 of the FeV, headed 'Fitness', provides as follows:

'(1) Applicants for a driving licence must satisfy the relevant physical and mental requirements. In particular, those requirements are not satisfied in the case of sickness or disability referred to in Annex 4 or in Annex 5 which excludes fitness [to drive motor vehicles] or entails only limited fitness. …

(2) Where circumstances exist which give rise to doubt as to the physical or mental fitness of an applicant for a driving licence, the competent authorities may order the applicant to produce a medical report preparatory to the decisions to be taken on the issue or extension of a driving licence or on the imposition of restrictions or conditions....

(3) Production of a report made by an officially approved centre for the testing of fitness to drive (medical-psychological report) may be ordered in order to dispel doubts as to fitness to drive for the purposes of subparagraph 2 [in particular]

…

4. in the case of serious or repeated contraventions of the highway code or of road traffic offences or offences related to fitness to drive …

or

5. on the new grant of a driving licence,

…

(b) when the withdrawal of the licence was based on one of the grounds set out in subparagraph 4.

…

(8) If the person concerned refuses to be examined or if he does not within the period prescribed produce to the competent driving licence authority the medical report required by the latter, the competent authority is entitled to conclude in its decision that the person concerned is unfit to drive. …'

25 Headed 'Fitness in cases of alcohol problems', Paragraph 13 of the FeV gives the competent authorities power to order, in certain circumstances, the production of a medical-psychological report for the purposes of inquiries preparatory to the decisions to be taken either to issue or extend a driving licence or to impose restrictions or conditions relating to the right to drive. That is, in particular, the case when, according

to medical opinion or on account of certain facts, there is evidence of abuse of alcohol or when road traffic offences have on several occasions been committed under the influence of alcohol.

26 Paragraph 20(1) of the FeV provides that, when a new driving licence is issued following a withdrawal, the same provisions apply as for the first issue of a licence. Although, according to Paragraph 20(2) of the FeV, the competent authority may decide not to order the tests in relation to the issue of a licence when there is nothing to suggest that the applicant no longer possesses the knowledge or fitness required for that purpose, Paragraph 20(3) provides that such a decision does not alter the obligation to produce a medical-psychological report laid down in the fifth point of the first paragraph of Paragraph 11(3) of the FeV.

27 Pursuant to Paragraph 21(1) of the law on road traffic (Straßenverkehrsgesetz, the 'StVG') any person who drives a motor vehicle without holding the necessary licence for that purpose is punishable by a term of imprisonment of up to one year or a fine.

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

28 On 28 October 1964, the Verkehrsamt Wien (Office for licensing of vehicles, Vienna (Austria)) issued Mr Schwarz with a driving licence for vehicles in categories A and B.

29 In 1968, Mr Schwarz exchanged his Austrian driving licence for a German driving licence for categories 1 and 3. He was allowed to retain his Austrian driving licence.

30 On 9 May 1988, Mr Schwarz renounced the German driving licence and handed it in.

31 On May 3 1994, after Mr Schwarz had passed a medical-psychological test, the Ordnungsamt Mannheim (Germany) issued him with a new German driving licence. He was allowed to retain his Austrian driving licence.

32 On 1 December 1997, the Amtsgericht Mannheim sentenced Mr Schwarz to a fine of 40 daily penalties of DEM 50 per day for intentional drunk driving. His right to drive was withdrawn, his licence was confiscated and he was subject to a six month ban on the obtaining of a new driving licence.

33 On 24 July 2000, Mr Schwarz applied to the Ordnungsamt Mannheim for a new driving licence for vehicles in category 3. That application was rejected on 2 April 2001 on the ground that he had not submitted the required report attesting to his fitness to drive.

34 On 11 April 2005, Mr Schwarz was found to be driving without holding the necessary driving licence. Consequently, on 30 January 2006, the Amtsgericht Mannheim

imposed on him a fine of 30 daily penalties of EUR 25 per day. Mr Schwarz paid the fine imposed in order to avoid the alternative penalty of imprisonment.

35 Mr Schwarz argued that he had been unable to lodge an objection to the court's order because it had been sent to Vienna and he had received it too late.

36 At a road check on 23 December 2005, Mr Schwarz produced his Austrian driving licence. Subsequently, by judgment of 22 June 2006, the Amtsgericht Mannheim acquitted him of driving a motor vehicle without a valid driving licence contrary to Paragraph 21(1) of the StVG.

37 Since it wished to have Mr Schwarz convicted of driving without a licence, the Staatsanwaltschaft Mannheim appealed against that judgment before the Landgericht Mannheim.

38 In those circumstances, the Landgericht Mannheim decided to stay proceedings and to refer the following two questions to the Court for a preliminary ruling:

'(1) Is it — contrary to Article 7(5) of Directive 91/439 — possible under Community law for a citizen of the EU to hold a valid German driving licence and a driving licence issued by another Member State, both of which were obtained before the accession to the EU of the foreign Member State and — if so —

(2) Does the withdrawal — before the entry into force of the [FeV] of 1 January 1999 — of the later second German driving licence as a consequence of a drunkenness offence mean that the validity in Germany of the first foreign driving licence, which was issued earlier, is also no longer required to be recognised after accession of the foreign Member State, even where the period of the ban imposed in Germany has expired?'

The questions referred to the Court

The first question

39 In its first question, the national court asks, essentially, whether Article 7(5) of Directive 91/439 must be interpreted as precluding a national of a Member State, who holds a Community driving licence issued by that Member State, from also holding another licence previously issued by another Member State where both licences had been obtained before the latter Member State acceded to the Union.

Observations of the parties

40 Mr Schwarz and the Commission consider that the holding of two driving licences, one of which was issued by the Member State of residence and the other by another Member State prior to the accession of that State to the Union, is possible even if such holding is contrary to Article 7(5) of Directive 91/439. Although the directive was not

intended to create such a situation, it will cease to exist only when a central management system for driving licences has been introduced for all the Member States.

41 Similarly, the German Government is of the opinion that it is, in principle, possible to hold two driving licences issued by two Member States where both licences were issued before the accession of one of those States to the Union.

42 However, the German Government points out that it is possible, under national law, for a driving licence issued by a third country to become invalid in the national territory before the latter State acceded to the Union. That would be the case in a situation such as the one which arises in the main proceedings under the applicable German law whereby a driver who holds a valid driving licence issued by a third country loses the right to use that licence if a period of more than 12 months has passed since he established his principal residence in Germany.

43 In any event, a possible revival of a driving licence issued in 1964 would be contrary to Article 7(5) of Directive 91/439, the purpose of which is to prevent the holding of two valid licences.

44 While observing that the period of validity of the Austrian driving licence appears to be unlimited, the Italian Government leaves it to the Court to determine whether, in a case in which two driving licences are held, Article 7(5) must be interpreted as requiring the Member State concerned, if necessary by making use of the mutual assistance procedure, to accept either the automatic loss of the licence issued previously or the nullity *ex novo* of the licence issued later.

45 The Portuguese Government points out that, pursuant to Article 7(5) of Directive 91/439, the right to drive in a Member State may be exercised only on the basis of a single, Community driving licence. Any restrictive measures thus apply to that sole licence. From an administrative point of view, a single driving licence makes it possible to monitor and implement any sanctions imposed. In order to transpose Directive 91/439 correctly, the Federal Republic of Germany should therefore have ensured that all drivers resident in its territory held only one Community driving licence.

The Court's answer

— Preliminary remarks

46 The question on the interpretation of Article 7(5) of Directive 91/439, as formulated by the national court, postulates that the two driving licences are simultaneously valid.

47 The German Government argues that, under German law, Mr Schwarz should have lost the right to use his Austrian driving licence, issued in 1964 and exchanged in 1968, 12 months after establishing his principal residence in Germany.

48 In that connection, the answer must be that the jurisdiction of the Court is confined to considering provisions of Community law only and it has no jurisdiction to rule on

national law (see, to that effect, Case C-453/04 *innoventif* [2006] ECR I-4929, paragraph 29).

49 In any event, under Article 234 EC, the Court of Justice is empowered only to give rulings on the interpretation or the validity of a Community provision on the basis of the facts which the national court puts before it (see Case 104/77 *Oehlschläger* [1978] ECR 791, paragraph 4, and Case C-11/07 *Eckelkamp and Others* [2008] ECR I-6845, paragraph 52).

50 It is apparent from the order for reference that Mr Schwarz was allowed to keep the Austrian driving licence when it was exchanged for a German driving licence in 1968 and when the German driving licence was issued in 1994, and that the Austrian licence remained valid.

51 With regard to the validity of the German driving licence issued in 1994, the question arises, first, as to the application of Directive 80/1263, and in particular Article 8(3) thereof, inasmuch as it provides that when a Member State exchanges a driving licence issued by a third country for a Community model driving licence, the exchange may be made only if the licence issued by the third country has been surrendered to the competent authorities of the Member State making the exchange.

52 In a situation such as that in the present proceedings, in so far as the issue of the German licence in 1994 was not an exchange of the Austrian driving licence but the issue of a new driving licence under German law, as the German Government has argued, the provisions concerning the exchange of driving licences do not apply.

53 Moreover, Article 7(5) of Directive 91/439, which provides that no person may hold a driving licence from more than one Member State, was irrelevant when the German driving licence was issued in 1994 since the said directive came into force only on 1 July 1996, at which date Directive 80/1263 was repealed (Case C-230/97 *Awoyemi* [1998] ECR I-6781, paragraph 33).

54 Even supposing that the issue of the German driving licence in May 1994 should not, contrary to the German Government's argument, be regarded as the issue of a new driving licence but as the exchange of an existing licence, it should be noted that a national of a Member State must not suffer a disadvantage by virtue of holding two driving licences even though the issue of the second licence results from an irregularity in the sense that the issuing Member State did not comply with Community law by failing to return the licence previously issued by another Member State to the authorities of that State.

— The application of Article 7(5) of Directive 91/439

55 Article 7(5) of Directive 91/439 provides that no person may hold a driving licence from more than one Member State. It follows that Member States are precluded from issuing a Community licence when the person applying for it already holds another driving licence issued by another Member State.

56 Although it is true that Article 7(5) of Directive 91/439 affirms the single nature of a driving licence (see Joined Cases C-329/06 and C-343/06 *Wiedemann and Funk* [2008] ECR I-4635, paragraph 70, and Joined Cases C-334/06 to 336/06 *Zerche and Others* [2008] ECR I-4691, paragraph 67), it is also true that the sole effect of that provision is to prohibit the issue of a second Community driving licence after the date at which the provision was applicable, namely 1 July 1996, at which date Directive 80/1263 was repealed.

57 However, Article 7(5) of Directive 91/439 does not prohibit a national of a Member State continuing to hold more than one valid licence when one of those licences was issued in a Member State prior to its accession in so far as that licence has not ceased to be valid.

58 In such a situation, where two valid licences exist side by side, the said provision does not therefore affect the validity of one of them. In such a case, it does not introduce an order of priority of application and does not require either the automatic loss of the first licence or the nullity of the second.

59 Where the first driving licence was issued by a State before its accession to the Union, Article 7(5) of Directive 91/439 does not require, where two valid driving licences are held, either the automatic loss of the earlier licence issued by that State before its accession or the nullity of the later licence issued in another Member State, also before the said accession.

60 It follows from the foregoing that the answer to the first question must be that Article 7(5) of Directive 91/439 must be interpreted as not precluding a national of a Member State from holding simultaneously two valid driving licences, one of which is a

Community licence and the other a driving licence issued by another Member State, where both licences were obtained before the accession of the latter State to the Union.

The second question

61 In its second question, the national court is asking, essentially, whether Article 1 and Article 8(2) and (4) preclude a Member State from refusing to recognise the right to drive stemming from a driving licence issued by another Member State before the latter acceded to the Union where that licence was issued prior to a driving licence issued by the first Member State in which the second licence was withdrawn due to the holder's unfitness to drive and where the accompanying period of prohibition has expired.

Observations of the parties

62 Mr Schwarz points out that a Member State's refusal to recognise a driving licence issued in another Member State is subject to a decision adopted by the national body responsible for road traffic, which is not the case in the main proceedings.

63 In those proceedings, the national court does not have jurisdiction and cannot therefore impose a penalty on Mr Schwarz for driving without a licence. Moreover, the withdrawal of his German driving licence in 1997, which was accompanied by a period

during which he was prohibited from applying for a new driving licence, cannot justify an indefinite refusal to recognise the Austrian driving licence issued to him in 1964.

64 The Commission points out that a driving licence issued in a Member State subsequent to the withdrawal of an earlier licence in another Member State does not have to be recognised in the latter Member State if the second licence was issued during a period in which the holder was prohibited from applying for a new licence in the Member State which had withdrawn the earlier licence.

65 On the other hand, it would be possible to drive a motor vehicle once again, on the basis of a second driving licence issued by a Member State after the expiry of the period during which the holder was prohibited from applying for a new licence. The Commission points out that, in the case of a driving licence issued before the period during which the holder was prohibited from applying for a new licence, and not during that period, the holder of such a licence normally does not have a criminal record at the time that the licence is issued and it should therefore be recognised, unless there are special circumstances which require otherwise.

66 In a case such as that before the national court, neither the fact that the Republic of Austria had not yet acceded to the Union nor the fact that a driving licence issued subsequently in Germany had been withdrawn affect the obligation to recognise a valid driving licence issued by the Republic of Austria after the period of prohibition accompanying the withdrawal.

67 In the light of the answer given to the first question, the German Government's argument that Directive 91/439 does not preclude the rule in Paragraph 28 of the FeV, under which Mr Schwarz is not permitted to drive on the basis of his Austrian driving licence until he has shown, by the submission of a medical-psychological report, that the reasons justifying the withdrawal of the German driving licence issued to him earlier

have ceased to exist, is put forward only in the alternative. The withdrawal of a German driving licence would be deprived of all useful effect if the authorities were required to recognise the foreign licence issued earlier.

68 In addition, Article 8(2) of Directive 91/439 permits the adoption of measures punishing conduct which occurred after the foreign licence was obtained.

69 In addition, unlike a person who obtained a new driving licence in another Member State after the withdrawal of a German driving licence, the person concerned in these proceedings has twice failed to demonstrate his fitness to drive motor vehicles. Article 8(1) of Directive 80/1263 and Article 7(5) of Directive 91/439 demonstrate, precisely, the wish of the Community legislature to prevent persons obtaining a double right to drive motor vehicles.

70 The German Government also argues that the withdrawal of a national driving licence must include the right to challenge the validity of a foreign driving licence obtained earlier, since the objective of Directive 91/439 to ensure the safety of road traffic requires that a person who is unfit should not be permitted to drive a motor vehicle on the public highway.

71 Finally, the German Government points out that the expiry of the period during which a new driving licence may not be applied for is irrelevant in the main proceedings since the accused did not obtain a new driving licence during the period of prohibition.

Mr Schwarz's rights were not unduly affected thereby since he is not prevented from obtaining a new driving licence at the expiry of the period of prohibition.

72 Similarly, the Italian Government argues that nothing precludes the application of Article 8(2) of Directive 91/439, according to which 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.

73 In the main proceedings, Mr Schwarz was not required to undergo a test of his fitness to drive by the authorities of another Member State after the withdrawal of his German driving licence. Nothing therefore happened subsequent to the withdrawal decision which could lead to the conclusion that Mr Schwarz was once again fit to drive. Furthermore, Mr Schwarz is entitled to apply for a new driving licence under Paragraph 28(5) of the FeV.

The Court's answer

74 It is apparent from the first recital in Directive 91/439 that the general principle of mutual recognition of driving licences issued by the Member States, laid down in Article 1(2) of that directive, was established in order, inter alia, to facilitate the movement of persons settling in a Member State other than that in which they have passed a driving test (Case C-476/01 *Kapper* [2004] ECR I-5205, paragraph 71; *Wiedemann and Funk*, paragraph 49; *Zerche and Others*, paragraph 46; and Case C-1/07 *Weber* [2008] ECR I-8571, paragraph 26).

75 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. 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 (see, to that effect, *Awoyemi*, paragraphs 41 and 42; Case C-246/00 *Commission* v *Netherlands* [2003] ECR I-7485, paragraphs 60 and 61; *Kapper*, paragraph 45; *Wiedemann and Funk*, paragraph 50; *Zerche* and *Others*, paragraph 47; and *Weber*, paragraph 26; order of 6 April 2006 in Case C-227/05 *Halbritter*, paragraph 25; order of 28 September 2006 in Case C-340/05 *Kremer*, paragraph 27).

76 It is for the issuing Member State to investigate whether the minimum conditions imposed by Community law, particularly those relating to residence and fitness to drive required by Article 7(1) of Directive 91/439, have been satisfied and, therefore, whether the issue of a driving licence is justified (*Wiedemann and Funk*, paragraph 52; *Zerche and Others*, paragraph 49).

77 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 observed. The possession of a driving licence issued by one Member State has to be regarded as constituting proof that, on the day that licence was issued, its holder fulfilled those conditions (*Wiedemann and Funk*, paragraph 53; *Zerche and Others*, paragraph 50).

78 In the present case, it must be observed that the driving licences issued in Austria between 1 January 1956 and 1 November 1997 appear in the tables of equivalences annexed to Decision 2000/275, as amended by Decision 2002/256.

79 However, Article 8(2) and (4) of Directive 91/439 permit the Member States, under certain circumstances, in particular, as is apparent from the final recital in the directive, for reasons of road safety, to apply their national provisions on the restriction, suspension, withdrawal or cancellation of driving licences in relation to any licence-holder having normal residence in their territory.

80 The right provided for in Article 8(2) of Directive 91/439 may be exercised by reason of some conduct of the person concerned after he has obtained a driving licence issued by another Member State (see, to that effect, *Wiedemann and Funk*, paragraph 59, and *Zerche and Others*, paragraph 56; orders in *Halbritter*, paragraph 38, and *Kremer*, paragraph 35; and the order of 3 July 2008 in Case C-225/07 *Möginger*, paragraph 36).

81 Although it is true that Article 8(2) of Directive 91/439 does not authorise the Member State of normal residence to refuse to recognise a driving licence issued by another Member State merely because the holder has earlier had a previous licence withdrawn in the first Member State, that provision nevertheless authorises the latter, subject to observance of the principle of territoriality of criminal and police laws, to apply to that holder its national provisions on the restriction, suspension, withdrawal or cancellation of the licence if his conduct subsequent to the issue of the licence justifies it (*Wiedemann and Funk*, paragraph 66, and *Zerche and Others*, paragraph 63).

82 The first subparagraph of Article 8(4) of Directive 91/439 authorises a Member State to refuse to recognise the validity of a driving licence obtained in another Member State by a person who is, in the first Member State's territory, the subject of a measure restricting, suspending, withdrawing or cancelling a licence.

83 The Court has held in that regard that when the person concerned has been the object of 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; *Zerche and Others*, paragraph 62; and the order in *Möginger*, paragraph 38).

84 However, the authorisation contained in Article 8(4) of Directive 91/439 constitutes a derogation from the general principle of mutual recognition of driving licences and is, therefore, to be interpreted strictly (*Wiedemann and Funk*, paragraph 60; *Zerche and Others*, paragraph 57; and *Weber*, paragraph 29).

85 The Court has held that Article 8(4) may 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, *Kapper*, paragraph 76; *Wiedemann and Funk*, paragraph 63; *Zerche and Others*, paragraph 60; and the orders in *Halbritter*, paragraph 28, and *Kremer*, paragraph 29).

86 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; *Zerche and Others*, paragraph 60; and the orders in *Halbritter*, paragraph 27; *Kremer*, paragraph 29; and *Möginger*, paragraph 44).

87 In the present case, as in the cases giving rise to the judgments and orders referred to in the previous paragraph, the driving licence at issue in the main proceedings was issued and used outside a period during which no application could be made for the issue of a new driving licence.

88 However, it remains to be considered whether the fact that a driving licence was issued by a Member State prior to a driving licence issued by another Member State and, consequently, prior to the withdrawal of the later licence, affects the latter Member State's obligation to recognise the driving licence issued by the first Member State.

89 Although it is true that a driving licence such as the Austrian licence at issue in the main proceedings was issued outside a period during which no application could be made for the issue of a new driving licence and that its holder made use of it outside any such period, that licence was, unlike the licences concerned in the cases cited above, obtained before, and not after, the issue of the German driving licence and, therefore, before the withdrawal of that licence.

90 As the Advocate General had observed in point 40 of his Opinion, Directive 91/439 is intended to strike a balance between the principle of mutual recognition, which facilitates free movement of persons, an objective of the directive which was referred to in paragraph 74 of the present judgment, and the directive's objective of improving road traffic safety, in particular, by permitting Member States, on the basis of Article 8(2) and (4), to apply their national provisions on the restriction, suspension, withdrawal or cancellation of a driving licence.

91 Thus, the Court has held that a Member State may not refuse to recognise, in its territory, the right to drive stemming from a driving licence issued in another Member State and, therefore, the validity of that licence, so long as the licence holder has not satisfied the necessary conditions in that first Member State for the issue of a new licence following withdrawal of the licence previously obtained there, including the examination of fitness to drive certifying that the grounds justifying the withdrawal are no longer in existence (see *Wiedemann and Funk*, paragraph 64, and *Zerche and Others*, paragraph 61; orders in *Halbritter*, paragraph 32, and *Kremer*, paragraph 38).

92 In those cases, the unfitness to drive, punished by withdrawal of the driving licence in a Member State, was set aside by the test of fitness carried out by another Member State when the later driving licence was issued.

93 At that time, the issuing Member State, as is pointed out in paragraph 76 of the present judgment, must, in particular, verify, in accordance with Article 7(1) of Directive 91/439, that the candidate satisfies the minimum standards of physical and mental fitness for driving.

94 In circumstances such as those in the main proceedings, the withdrawal of a driving licence issued by a Member State casts doubt on its holder's fitness to drive and thus, implicitly, on the driving licence issued earlier by another Member State.

95 As the German and Italian Governments have pointed out, unlike the cases which gave rise to the aforementioned orders in *Halbritter* and *Kremer*, the holder did not undergo, after the withdrawal of his German driving licence, a test of his fitness to drive ordered by the authorities of the other Member State. Consequently, it has in no way been

shown that the said holder is fit to drive and to move in road traffic, in accordance with the fitness requirements laid down in Directive 91/439.

96 If a national withdrawal measure such as was imposed in the main proceedings, could be sidestepped by relying on a driving licence issued earlier than the licence which was withdrawn on the ground of unfitness to drive without it being established that the person relying on the earlier licence is, on the date on which he relies on it, fit to drive in accordance with Directive 91/439, road traffic safety would be compromised.

97 Furthermore, it would be paradoxical to require a Member State to recognise the right to drive stemming from a driving licence issued by another Member State prior to a licence issued by the first Member State when the second licence has been withdrawn because of its holder's unfitness to drive. If a national of a Member State holds a single driving licence issued in another Member State, the first Member State is entitled, under Article 8(2) of Directive 91/439, to apply its provisions on withdrawal, for example, on the ground of unfitness to drive.

98 It follows from the foregoing that Article 1 and Article 8(2) and (4) of Directive 91/439 do not preclude a Member State from refusing to recognise the right to drive stemming from a driving licence issued by another Member State before that State's accession to the European Union if that licence was issued prior to a driving licence issued by the first Member State, in which the second driving licence has been withdrawn on the ground of its holder's unfitness to drive. The fact that such refusal occurs after the period during which no application could be made for the issue of a new driving licence is irrelevant in that regard.

Costs

99 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 (Third Chamber) hereby rules:

1. **Article 7(5) of Council Directive 91/439/EEC of 29 July 1991 on driving licences, as amended by Regulation (EC) No 1882/2003 of the European Parliament and of the Council of 29 September 2003, must be interpreted as not precluding a national of a Member State from holding simultaneously two valid driving licences, one of which is a Community licence and the other a driving licence issued by another Member State where both licences were obtained before the accession of the latter State to the European Union.**

2. **Article 1 and Article 8(2) and (4) of Directive 91/439, as amended by Regulation No 1882/2003, do not preclude a Member State from refusing to recognise the right to drive stemming from a driving licence issued by another Member State before that State's accession to the European Union if that licence was issued prior to a driving licence issued by the first Member State, in which the second driving licence has been withdrawn on the ground of its holder's unfitness to drive. The fact that such refusal occurs after the period accompanying that withdrawal during which no application could be made for the issue of a new driving licence is irrelevant in that regard.**

[Signatures]