Reports of Cases

JUDGMENT OF THE COURT (Tenth Chamber)

28 October 2020*

(Reference for a preliminary ruling – Directive 2006/126/EC – Article 2(1) and Article 11(4) – Driving licence – Mutual recognition – Extent of the obligation to recognise – Driving licence having been the subject of an exchange – Exchange made at a time when the right to drive had been withdrawn by the issuing Member State – Fraud – Refusal to recognise the driving licence issued in the context of the exchange)

In Case C-112/19,

REQUEST for a preliminary ruling under Article 267 TFEU from the Verwaltungsgericht Aachen (Administrative Court of Aachen, Germany), made by decision of 4 February 2019, received at the Court on 12 February 2019, in the proceedings

Marvin M.

v

Kreis Heinsberg,

THE COURT (Tenth Chamber),

composed of M. Ilešič, President of the Chamber, E. Juhász (Rapporteur) and I. Jarukaitis, Judges,

Advocate General: E. Sharpston,

Registrar: A. Calot Escobar,

having regard to the written procedure,

after considering the observations submitted on behalf of:

– Mr M., by H. D. Gebauer, Rechtsanwalt,

– the European Commission, by W. Mölls and N. Yerrell, acting as Agents,

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

gives the following

* Language of the case: German.

Judgment

1 This request for a preliminary ruling concerns the interpretation of Article 2(1) and Article 11(1) and (4) of Directive 2006/126/EC of the European Parliament and of the Council of 20 December 2006 on driving licences (OJ 2006 L 403, p. 18).

2 The request has been made in proceedings between Mr Marvin M. and Kreis Heinsberg (district of Heinsberg, Germany, 'Kreis Heinsberg'), concerning the latter's decision refusing to recognise the driving licence issued to Mr M. by the Dutch authorities.

Legal context

European Union law

3 Recitals 2 and 8 of Directive 2006/126 state:

'(2) 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. …

…

(8) On road safety grounds, the minimum requirements for the issue of a driving licence should be laid down. Standards for driving tests and licensing need to be harmonised. To this end the knowledge, skills and behaviour connected with driving motor vehicles should be defined, the driving test should be based on these concepts and the minimum standards of physical and mental fitness for driving such vehicles should be redefined.'

4 Article 1(1) of that directive provides:

'Member States shall introduce a national driving licence based on the Community model set out in Annex I, in accordance with the provisions of this Directive. The emblem on page 1 of the Community model driving licences shall contain the distinguishing sign of the Member State issuing the licence.'

5 Article 2 of that directive, entitled 'Mutual recognition', provides in paragraph 1:

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

6 Article 7(1) of Directive 2006/126 defines the conditions of issue of a driving licence regarding the applicant's aptitude for driving and the applicant's residence in the territory of the Member State issuing the driving licence.

7 Under Article 11 of Directive 2006/126:

'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 for which category the licence submitted is in fact still valid.

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

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

4. 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.

…'

8 Article 15 of Directive 2006/126, in the version applicable at the material time, provided:

'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, …'

German law

9 Under Paragraph 29(1) of the Verordnung über die Zulassung von Personen zum Straßenverkehr (Regulation relating to the entitlement of persons to drive on the road), in the version applicable to the dispute in the main proceedings:

'1. Holders of a foreign driving licence may drive motor vehicles to the extent of their entitlement within the Federal Republic of Germany where they are not normally resident there pursuant to Paragraph 7.'

10 Paragraph 29(3) of that regulation states that:

'The entitlement pursuant to Paragraph 1 does not apply to holders of foreign driving licences,

…

3. from whom the driving licence has been withdrawn in the Federal Republic of Germany by a court in a provisional or definitive manner or by an administrative authority in an immediately enforceable or legally final manner,

…

In the cases in the first sentence, the competent authority may issue an act finding the lack of entitlement.'

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

11 Mr M. was issued with a driving licence for vehicles in categories AM and B from the German authorities on 3 July 2008, and for category T on 1 July 2015.

12 During a roadside check carried out on 9 June 2016, it was established that Mr M. was driving under the influence of narcotics. On 20 September 2016, he was notified of the intention of the responsible German authorities to withdraw his right to drive.

13 After informing those German authorities on 29 September 2016 that he was no longer residing in Germany, on 13 October 2016, Mr M. made a declaration of residence in the Netherlands, where, on 1 November 2016, he requested for his German driving licence to be exchanged for a Dutch driving licence.

14 By an order of 9 November 2016, immediately enforceable and notified to Mr M. on 12 November 2016, Kreis Heinsberg (district of Heinsberg) withdrew Mr M.'s right to drive and ordered him to return his driving licence without delay.

15 After establishing, on 14 November 2016, that Mr M.'s right to drive was valid in the light of the information included in the European driving licence database (RESPER), the Dutch authorities responsible for the exchange of driving licenses issued a Dutch driving licence to Mr M. in exchange for his German licence on 17 November 2016. That exchange was communicated to Kreis Heinsberg (district of Heinsberg) by a letter of 5 December 2016, to which Mr M.'s German driving licence was attached.

16 The Dutch authorities, having been informed by the Kreis Heinsberg (district of Heinsberg) of the withdrawal of Mr M.'s German right to drive, on 4 January 2017, following a request to that effect, that they acknowledged the re-registration of Mr M.'s driving licence, on the ground that, on the date of the request to exchange the driving license, that database did not contain any reference as to a restriction on Mr M's right to drive.

17 On 17 January 2017, during a roadside check performed in Germany, the police services determined that Mr M. did not have a valid right to drive on the territory of that Member State.

18 By a decision of 5 September 2017, the Kreis Heinsberg (district of Heinsberg) declared that the driving licence issued to Mr M. in the Netherlands did not authorise him to drive vehicles in Germany.

19 Mr M. contested that decision before the Verwaltungsgericht Aachen (Administrative Court of Aachen, Germany).

20 That court found that the recognition of a driving licence issued from the exchange of a first driving licence applies to the German authorities in the same way as the recognition of a driving licence issued following a successful test of skills to drive motor vehicles. However, that court is inclined to take the view that, having regard to the objectives of road traffic safety and the protection of the lives of road users, a Member State may, under Article 11(4) of Directive 2006/126, refuse to recognise an exchanged driving licence if the exchange occurred after the withdrawal of the right to drive by the Member State which issued the driving licence.

21 The referring court wonders whether, in the event that Article 11(4) of Directive 2006/126 were to be considered inapplicable, an exception to the principle of mutual recognition would be permissible in the event that the Member State, on the territory of which the question of the recognition of a driving licence arises, could establish, on the basis of indisputable information, that the material entitlement to drive no longer existed at the time when that driving licence was exchanged.

22 In those circumstances, the Verwaltungsgericht Aachen (Administrative Court of Aachen, Germany) decided to stay the proceedings and to refer the following questions to the Court of Justice for a preliminary ruling:

‘(1) Is Article 2(1) of Directive [2006/126] to be interpreted as meaning that a driving licence document, including the driving authorisations documented therein, must be strictly recognised by the Member States also in the case where the issuing of that document is based on an exchange of driving licence documents pursuant to Article 11(1) of Directive [2006/126]?

(2) If Question 1 is to be answered in the affirmative: May a Member State refuse to recognise the exchanged driving licence document pursuant to the second subparagraph of Article 11(4) of Directive [2006/126] if the exchange by the issuing State was carried out at a time when the Member State from which the material entitlement to drive originates had already withdrawn that entitlement?

(3) If Question 2 is to be answered in the negative and an obligation of recognition does exist: May a Member State refuse to recognise the exchanged driving licence document in any event if the Member State in the territory of which the question of recognition of the driving licence document arises can establish, on the basis of ‘indisputable information’, that the material entitlement to drive no longer existed at the time when the driving licence document was exchanged?’

Consideration of the questions referred

The first question

23 By its first question, the referring court asks, in essence, whether Article 2(1) of Directive 2006/126 must be interpreted as meaning that mutual recognition, without any formality, which it lays down is applicable to a driving license issued following an exchange pursuant to Article 11(1) of that directive.

24 It should be recalled that, according to Article 2(1) of Directive 2006/126, ‘driving licences issued by Member States shall be mutually recognised’.

25 According to the Court’s well-established case-law, that provision provides for the mutual recognition, without any formality, of driving licences issued by Member States (judgment of 26 October 2017, *I*, C-195/16, EU:C:2017:815, paragraph 34 and the case-law cited).

26 That provision does not make any distinction between the means by which the driving licence is issued, namely following success in the tests laid down in Article 7 of Directive 2006/126 or following an exchange pursuant to Article 11(1) of that directive, the principle of mutual recognition applies equally as regards the driving licence issued from such an exchange, subject to the exceptions laid down by that directive.

27 In the light of the foregoing considerations, the answer to the first question is that Article 2(1) of Directive 2006/126 must be interpreted as meaning that mutual recognition, without any formality, which it lays down, is applicable to a driving licence issued following an exchange under Article 11(1) of that directive, subject to the exceptions provided for by that directive.

The second and third questions

28 By its second and third questions, which it is appropriate to consider together, the referring court asks, in essence, whether the second subparagraph of Article 11(4) of Directive 2006/126 must be interpreted as meaning that it allows a Member State to refuse to recognise a driving licence which results from an exchange pursuant to Article 11(1) of that directive, on the ground that that Member State, prior to that exchange, had withdrawn the authorisation to drive from the holder of the driving licence which was the subject of that exchange.

29 Those questions are raised by the referring court in the light of a situation in which, first, Mr M. had, prior to the issue, by the Dutch authorities, of a driving licence in accordance with the exchange procedure pursuant to Article 11(1) of Directive 2006/126, committed an offence in Germany which gave rise to the withdrawal of his right to drive, but the driving licence was not returned to the German authorities, and, second, the Dutch authorities, who were informed of that withdrawal after the issue of the new driving licence, maintained the driving licence issued to Mr M.

30 Under Article 11(1) of Directive 2006/126, 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.

31 In this regard, according to that provision, it is for the Member State making the exchange to determine for which category the licence submitted is in fact still valid. To that end, Article 15 of that directive provides that Member States are to assist one another and are to exchange information on the licences they have issued, exchanged, replaced, renewed or revoked, and that they are to use, for that purpose, the EU driving licence network.

32 In the present case, as has been recalled in paragraph 15 of the present judgment, the Dutch authorities confirmed, on 14 November 2016, the validity of Mr M.'s driving licence in the EU driving licence network and, on 17 November 2016, issued a new driving licence to Mr M.

33 Since, as is apparent from the response to the first question, mutual recognition, without any formality, as laid out in Article 2(1) of Directive 2006/126 is applicable to driving licences issued by a Member State following an exchange pursuant to Article 11(1) of that directive, the other Member States cannot, in principle, investigate whether the conditions for issue laid down in that directive have been met. The possession of a driving licence issued by one Member State has to be regarded as constituting proof that its holder satisfied those conditions (see, to that effect, judgment of 23 April 2015, *Aykul*, C-260/13, EU:C:2015:257, paragraph 47 and the case-law cited).

34 It is true that the Court has considered that, in the case where it is possible to determine, not in the light of information supplied by the host Member State but on the basis of entries appearing in the driving licence itself or on other incontestable information supplied by the Member State of issue, that one of the conditions of issue laid down in Directive 2006/126 has not been satisfied, the host Member State in whose territory the holder of that licence has been the object of a measure withdrawing an earlier driving licence may refuse to recognise a driving licence (see, to that effect, judgements of 26 June 2008, *Zerche and Others*, C-334/06 to C-336/06, EU:C:2008:367, paragraphs 69 and 70, and of 26 June 2008, *Wiedemann and Funk*, C-329/06 and C-343/06, EU:C:2008:366, paragraph 72).

35 However, in the present case, as the Commission has pointed out, the fact that the German authorities had already withdrawn Mr M.'s authorisation to drive at the time when the driving licence was the subject of an exchange by the Dutch authorities does not emerge from the driving licence itself or other information from the issuing Member State.

36 According to the wording of the second subparagraph of Article 11(4), of Directive 2006/126, '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'.

37 It is apparent from the expression 'refuse to recognise' that that provision provides not merely a possibility but an obligation (see, to that effect, judgments of 26 April 2012, *Hofmann*, C-419/10, EU:C:2012:240, paragraph 53, and of 21 May 2015, *Wittmann*, C-339/14, EU:C:2015:333, paragraph 24).

38 The Court has held that the wording of that provision permits any Member State, and not only the Member State of normal residence, to refuse to recognise the validity of a driving licence issued by another Member State (judgment of 23 April 2015, *Aykul*, C-260/13, EU:C:2015:257, paragraph 55).

39 More specifically, the Court has noted that the second subparagraph of Article 11(4) of Directive 2006/126 allows a Member State that is not the Member State of residence to take measures, in accordance with its national legislation and as a result of unlawful conduct in its territory by the holder of a driving licence obtained in another Member State, the scope of those measures being limited to that territory and the effect limited to the refusal to recognise the validity of that licence within that territory (see, to that effect, judgment of 23 April 2015, *Aykul*, C-260/13, EU:C:2015:257, paragraph 60).

40 In that regard, the Court has specified that the second subparagraph of Article 11(4) of Directive 2006/126 concerns measures taken pursuant to the criminal and police laws of one Member State which affect the validity, in the territory of that Member State, of a driving licence issued by another Member State (judgment of 23 April 2015, *Aykul*, C-260/13, EU:C:2015:257, paragraph 61).

41 Furthermore, the Court has already held that requiring a Member State to recognise the validity of a driving licence issued to a person by another Member State, although a measure prohibiting the issue of a driving licence in the first of those Member States has been pronounced against that person by that Member State with respect to events which took place before the second of those Member States issued that licence, would have the effect of encouraging persons committing offences in the territory of a Member State who are likely to be subject to such a measure to travel to another Member State in order to obtain a new licence and thus evade the administrative or criminal consequences of those offences, and would ultimately destroy the confidence on which the system of mutual recognition of driving licences rests (see judgment of 21 May 2015, *Wittmann*, C-339/14, EU:C:2015:333, paragraph 30 and the case-law cited).

42 Those considerations are equally valid where the driving licence has been issued by an exchange pursuant to Article 11(1) of Directive 2006/126. The refusal to recognise a driving licence issued by such an exchange also, in this case, meets the objective of general interest of the European Union which constitutes the improvement of road safety (see, to that effect, judgment of 22 May 2014, *Glatzel*, C-356/12, EU:C:2014:350, paragraph 51 and the case-law cited), and to which Directive 2006/126, under its second recital, contributes (judgment of 26 October 2017, *I*, C-195/16, EU:C:2017:815, paragraph 51).

43 Nevertheless it follows from the case-law of the Court that the second subparagraph of Article 11(4) of Directive 2006/126 may not be used by a Member State as a basis for refusing indefinitely to recognise the validity of a driving licence issued by another Member State where the holder of that licence has been subject, in its territory, to a restrictive measure (judgment of 23 April 2015, *Aykul*, C-260/13, EU:C:2015:257, paragraph 76 and the case-law cited).

44 As regards the consequences of such a measure, the Court has held that a Member State which refuses to recognise the validity of a driving licence in such circumstances is competent to lay down the conditions with which the holder of a driving licence must comply in order to recover the right to drive in its territory. The Court has indicated that it is for the referring court to examine whether, by applying its own rules, the Member State in question did not in fact refuse indefinitely to recognise a driving licence issued by another Member State and that, in that context, it was the referring court's responsibility to ascertain whether the conditions laid down by the legislation of the first of those Member States, in accordance with the principle of proportionality, did not exceed the limits of what is appropriate and necessary in order to attain the objective of Directive 2006/126, which is to improve road safety (see, to that effect, judgment of 23 April 2015, *Aykul*, C-260/13, EU:C:2015:257, paragraph 84).

45 That being so, it should be recalled that according to settled case-law EU law cannot be relied on for abusive or fraudulent ends (see, to that effect, judgments of 21 February 2006, *Halifax and Others*, C-255/02, EU:C:2006:121, paragraph 68, and of 16 October 2019, *Glencore Agriculture Hungary*, C-189/18, EU:C:2019:861, paragraph 34).

46 The principle of prohibition of fraud and abuse of rights, expressed by that case-law, is a general principle of EU law with which individuals must comply. The application of EU legislation cannot be extended to cover transactions carried out for the purpose of fraudulently or wrongfully obtaining advantages provided for by EU law (judgment of 6 February 2018, *Altun and Others*, C-359/16, EU:C:2018:63, paragraph 49 and the case-law cited).

47 In particular, findings of fraud are to be based on a consistent body of evidence that satisfies both an objective and a subjective factor. Thus, as regards the circumstances at issue in the main proceedings, firstly, the objective factor consists of the fact that the conditions required for the exchange of a driving licence under Article 11(1) of Directive 2006/126 are not met. Secondly, the subjective factor consists of the intention of the person in question to circumvent or evade the conditions required for such an exchange, with a view to obtaining the advantage attached to it (see, to that effect, judgment of 6 February 2018, *Altun and Others*, C-359/16, EU:C:2018:63, paragraphs 50 to 52).

48 It follows that, if it is established that a person has fraudulently obtained a driving licence in the context of an exchange pursuant to Article 11(1) of Directive 2006/126, that person is not at any time to claim the recognition, in a Member State, of the driving licence accordingly obtained.

49 In the current case, according to the facts described by the referring court and recalled in paragraphs 12 to 15 of the present judgment, Mr M. was notified, on 20 September 2016, of the intention of the German authorities to withdraw his right to drive. Following that notification, Mr M. declared that he was leaving the German territory and, on 13 October 2016, made a declaration of residency in the Netherlands, where he requested the exchange of his German driving licence for a Dutch driving licence on 1 November 2016, which was delivered to him on 17 November 2016.

50 It follows from those factors, as well as from the written responses provided by the German and Netherlands governments to the questions raised by the Court that Mr M. did not indicate, during the proceedings before the Dutch authorities, the intention of the German authorities to withdraw his driving licence, which had however been notified to him, and further that he did not subsequently inform the Dutch authorities that he had been informed on 12 November 2016 of a decision to withdraw his authorisation to drive, even though those Dutch authorities had not yet made a decision regarding Mr M's request to exchange licences.

51 It is for the referring court to assess, after ascertaining the information included in the preceding point, whether Mr M.'s conduct seeking to obtain a new driving licence by exchanging his licence in accordance with Article 11(1) of Directive 2006/126, during the period between the roadside check to

which he was subject on 9 June 2016, and the issue of a new driving licence on 17 November 2016, constitutes abusive or fraudulent conduct. If that is the case, the decision to refuse to recognise his driving licence must be considered definitive.

52 In those circumstances, the answer to the second and third questions is that the second subparagraph of Article 11(4) of Directive 2006/126 must be interpreted as meaning that it allows a Member State to refuse to recognise a driving licence which was the subject of an exchange pursuant to Article 11(1) of that directive, on the ground that that Member State had, prior to that exchange, withdrawn the authorisation to drive from the holder of that driving licence.

Costs

53 Since these proceedings are, for the parties to the main proceedings, a step in the action pending before the referring 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 (Tenth Chamber) hereby rules:

1. **Article 2(1) of Directive 2006/126/EC of the European Parliament and of the Council of 20 December 2006 on driving licences must be interpreted as meaning that mutual recognition, without any formality, which it lays down, is applicable to a driving licence issued following an exchange under Article 11(1) of that directive, subject to the exceptions provided for by that directive.**

2. **The second subparagraph of Article 11(4) of Directive 2006/126 must be interpreted as meaning that it allows a Member State to refuse to recognise a driving licence which was the subject of an exchange pursuant to Article 11(1) of that directive, on the ground that that Member State had, prior to that exchange, withdrawn the authorisation to drive from the holder of that driving licence.**

[Signatures]