

## FINAL REPORT

### Topic Group XIV on Normal Residence

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#### Article 12 – Normal residence

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

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





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## Summary

The topic of EReg's Topic Group XIV was *Normal Residence*. The goals regarding the normal residence of driving licence applicants and holders were to analyze the current problems and challenges, to suggest common procedures for all Member States how to establish normal residence, and to recommend new regulations and changes to the current regulations.

Representatives of seven member organizations participated in the work and the meetings of the group. Additionally, the group had reading members from eight EReg member organizations.

The previous Topic Group X on *Driving Licence Tourism* submitted a questionnaire to all EReg member organizations in summer 2010. The questionnaire contained seven questions regarding normal (permanent) residence. Some additional answers from the remaining member organizations were received in summer 2012. Answers to these questions were used as a base for the work of this Topic Group XIV.

The Topic Group gave out fourteen recommendations combined with several examples of current good practices in various Member States. The recommendations were divided into five subcategories: 1) Common definitions and practices, 2) Checking the person and his/her residence, 3) 185-day-rule, 4) Only one EU driving licence and 5) Revision of Articles 7 and 11.

The final report contains also a Judgement of the Court of Justice of the European Union on 26 April 2012: *Refusal by a Member State to recognize, in favor of a person whose driving licence was withdrawn on its territory, the validity of a driving licence issued by another Member State* (Annex 2).



## 1. EReg

EReg is the Association of European Vehicle and Driver Registration Authorities, a co-operation dealing with subjects concerning registration and documentation of vehicles and drivers. The structure of EReg includes a Plenary Board, a Chairman, a Secretariat, an Advisory Group and several Topic Groups.

At the moment the Association has members from 27 countries in Europe:

1. DIV (Vehicle Registration Service) from **Belgium**,
2. Department of Road Transport from **Cyprus**,
3. SKAT (Tax Administration) from **Denmark**,
4. **Estonian** Road Administration,
5. **Finnish** Transport Safety Agency (Trafi),
6. Agence Nationale des Titres Sécurisés from **France**,
7. KBA (Kraftfahrt-Bundesamt) from **Germany**,
8. MVTC (Department of Transport Motor Vehicle Test Centre) from **Gibraltar**,
9. Central Office for Administrative and Electronic Public Services from **Hungary**,
10. Umferoarstofa from **Iceland**,
11. Department of Transport Tourism and Sport from **Ireland**,
12. Department of Infrastructure from **Isle of Man**,
13. CSDD (Road Traffic Safety Directorate) from **Latvia**,
14. REGITRA from **Lithuania**,
15. SNCT (Société Nationale de Contrôle Technique) from **Luxembourg**,
16. ADT (**Malta** Transport Authority),
17. RDW (Centre for Vehicle Technology and Information) from **the Netherlands**,
18. DVA (Driver & Vehicle Agency) from **Northern Ireland**,
19. **Norwegian** Public Roads Administration, Ministry of Transport,
20. Ministry of Transport, Construction and Maritime Economy and Ministry of Interior from / Department of State Records and ICT from **Poland**,
21. IMTT (Instituto da Mobilidade e dos Transportes Terrestres) from **Portugal**,
22. Ministry of Administration and Interior and RAR (Romanian Automotive Register) from **Romania**,
23. Department of Documents and Record from **Slovakia**,
24. Ministry of Transport from **Slovenia**,
25. **Swedish** Transport Agency,
26. ASTRA (Bundesamt für Strassen) from **Switzerland** and
27. DVLA (Driver and Vehicle Licensing Agency) from **United Kingdom**.

The member organizations have the legal status of central vehicle registration and/or driver registration authority in their country.

The main objective of EReg is to bring together the European Registration Authorities to be able to:

1. Share knowledge, experience and good practices
2. Identify, follow and influence European developments and regulations
3. Take initiatives aimed at improving the performance of tasks by the members as European partners
4. Establish exchange and cooperation arrangements with relevant other parties
5. Promote effective and efficient data exchange



The members of EReg work together on several important subjects in the EReg Topic Groups. Since autumn 2008 there has been fourteen Topic Groups, namely:

- I. International data exchange
- II. Re-registration of vehicle within the EU
- III. Vehicle end of life directive (2000/53/EC)
- IV. Harmonisation of commercial plates
- V. Smart (card) vehicle documents
- VI. Vehicle registration procedures - vehicle registration to the internet
- VII. 3rd directive on driving licences
- VIII. Smart card driving license - technical chip standards
- IX. CO2 Data monitoring
- X. Driving licence tourism
- XI. Uninsured driving
- XII. CO2 Data exchange
- XIII. Vehicle mileage registration
- XIV. Normal residence

The final reports of the Topic Groups can be found at <https://www.ereg-association.eu/documents/index.php> --> Publications --> Final reports Topic Groups.



## 2. Framework and goals of Topic Group XIV

### 2.1. Framework of the Topic Group XIV

The European Union has issued three directives for driving licences in order to improve road safety and to facilitate free movement of citizens between Member States. In the directives there has been introduced a Community model driving licence that is mutually recognised by all MS<sup>1</sup> without any obligation to exchange.

The first directive was issued in December 1980 (Council Directive 80/1263/EEC). The 2nd Directive 91/439/EEC from July 1991 was amended several times. Finally, Directive 2006/126/CE was completed in December 2006, known as the 3rd Directive. MS shall adopt and publish by 19th January 2011 the laws, regulations and administrative provisions necessary to comply with the 3rd Directive. Those provisions shall be applied as from 19th January 2013.

The Topic Group VII of EReg covered the 3rd Directive on Driving Licences. The focus was on the intended implementation of the Directive. One of the recommendations of Topic Group VII was to set up a new Topic Group for analyzing in details a phenomenon called *Driving Licence Tourism*.

In spring 2010 there was set up Topic Group X for *Driving Licence Tourism*. One of the recommendations of the group was to start a small working group on the issue establishing *Normal Residence*. In the beginning of 2012 EReg started a new Topic Group XIV on the issue.

Within the scope of EReg there are also other European regulations that are affected by “normal residence”, in relation to e.g. tachograph, liability for vehicle insurance and reregistering of a vehicle.

### 2.2. Article 12 (Normal Residence) in the 3rd Directive on Driving Licences

Directive 2006/126/EC of the European Parliament and of the Council of 20 December 2006 on driving licences

#### Article 12 – Normal residence

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

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

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<sup>1</sup> MS = Member State

carry out a task of a definite duration. Attendance at a university or school shall not imply transfer of normal residence.

### **2.3. Articles 7 and 11 in the 3rd Directive on Driving Licences**

In the 3rd Directive on driving licences also the articles 7 and 11 are relevant to the issue of *Normal Residence*.

#### **Article 7 – Issue, validity and renewal**

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;
- (b) who have passed a theory test only as regards category AM; Member States may require applicants to pass a test of skills and behaviour and a medical examination for this category. For tricycles and quadricycles within this category, Member States may impose a distinctive test of skills and behaviour. For the differentiation of vehicles in category AM, a national code may be inserted on the driving licence;
- (c) who have, as regards category A2 or category A, on the condition of having acquired a minimum of 2 years' experience on a motorcycle in category A1 or in category A2 respectively, passed a test of skills and behaviour only, or completed a training pursuant to Annex VI;
- (d) who have completed a training or passed a test of skills and behaviour, or completed a training and passed a test of skills and behaviour pursuant to Annex V as regards category B for driving a vehicle combination as defined in the second subparagraph of Article 4(4)(b);
- (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.

2. (a) As from 19 January 2013, licences issued by Member States for categories AM, A1, A2, A, B, B1 and BE shall have an administrative validity of 10 years. A Member State may choose to issue such licences with an administrative validity of up to 15 years;

(b) As from 19 January 2013, licences issued by Member States for categories C, CE, C1, C1E, D, DE, D1, D1E shall have an administrative validity of 5 years;

(c) The renewal of a driving licence may trigger a new administrative validity period for another category or categories the licence holder is entitled to drive, insofar as this is in conformity with the conditions laid down in this Directive;

(d) The presence of a microchip pursuant to Article 1 shall not be a prerequisite for the validity of a driving licence. The loss or unreadability of the microchip, or any other damage thereto, shall not affect the validity of the document.

3. The renewal of driving licences when their administrative validity expires shall be subject to:

(a) continuing compliance with the minimum standards of physical and mental fitness for driving set out in Annex III for driving licences in categories C, CE, C1, C1E, D, DE, D1, D1E; and

(b) normal residence in the territory of the Member State issuing the licence, or evidence that applicants have been studying there for at least six months.



Member States may, when renewing driving licences in categories AM, A, A1, A2, B, B1 and BE, require an examination applying the minimum standards of physical and mental fitness for driving set out in Annex III.

Member States may limit the period of administrative validity set out in paragraph 2 of driving licences issued to novice drivers for any category in order to apply specific measures to such drivers, aiming at improving road safety.

Member States may limit the period of administrative validity of the first licence issued to novice drivers for categories C and to 3 years in order to be able to apply specific measures to such drivers, so as to improve their road safety.

Member States may limit the period of administrative validity set out in paragraph 2 of individual driving licences for any category in case it is found necessary to apply an increased frequency of medical checks or other specific measures such as restrictions for traffic offenders.

Member States may reduce the period of administrative validity set out in paragraph 2 of driving licences of holders residing on their territory having reached the age of 50 years in order to apply an increased frequency of medical checks or other specific measures such as refresher courses. This reduced period of administrative validity can only be applied upon renewing the driving licence.

4. Without prejudice to national criminal and police laws, Member States may, after consulting the Commission, apply to the issuing of driving licences the provisions of their national rules relating to conditions other than those referred to in this Directive.

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.

#### **Article 11 – Various provisions concerning the exchange, the withdrawal, the replacement and the recognition of driving licences**

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.

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

5. A replacement for a driving licence which has, for example, been lost or stolen may only be obtained from the competent authorities of the Member State in which the holder has his normal residence; those authorities shall provide the replacement on the basis of the information in their possession or, where appropriate, proof from the competent authorities of the Member State which issued the original licence.

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 on the Community model driving licence 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 the principle of mutual recognition set out in Article 2.

## ***2.4. Goals of the Topic Group XIV***

The EC-rules regarding normal residence are indistinct. According to the Driving Licence Directive you may have your normal residence only in one MS. Nevertheless, more than one MS may independently (without co-operation with other MS) decide that a person has his/her normal residence in their country. Indistinct rules regarding normal residence also obstruct citizens' free movement in the EU.

Checking normal residence requires better contacts between the MS. Normal residence should be established the same way in every MS.

The goals of the Topic Group XIV were to

1. Analyze the current problems and challenges
2. Suggest common procedures for all MS how to establish normal residence
3. Recommend new regulations and changes to the current regulations



## 3. Participants and meetings

### 3.1. Participants

Seven member organizations of EReg participated in the work of Topic Group XIV:

1. Sweden, Swedish Transport Agency [Birgit Sääv, Pär-Ola Skarviken and Sven Hultman (the 2nd day of the 1st meeting)]
2. Germany, Kraftfahrt-Bundesamt [Carsten Schröder]
3. Lithuania, Regitra [Saulius Sciuplys]
4. Estonia, Estonian Road Administration [Heikki Käo (the 1st meeting)]
5. Netherlands, RDW [Johan Boxma and Christien Jonker]
6. United Kingdom, Driver and Vehicle Licensing Agency [Dean Lewis, Carole Philpin (the 2nd meeting)]
7. Finland, Finnish Transport Safety Agency [Marita Löytty] and additionally, as the issuing authority of driving licences, National Police Board, Licence Administration [Kimmo Pylväs (the 2nd meeting)]

In addition, the Topic Group had eight reading members:

1. Luxembourg, SNCA, Société Nationale de Circulation Automobile
2. National Public Roads Administration, Norway
3. Federal Public Service Mobility and Road Transport-Mobility and Road Safety, Belgium
4. Danish Taks Administration, Denmark
5. Central Office for Administrative and Electronic Public Services, Hungary
6. CDSS (RTSD), Latvia
7. Driving Licence and Vehicle Registration within the Ministry of Administration and Interior, Romania
8. Federal Roads Office (FEDRO), Switzerland

The Topic Group was chaired by Mrs. Birgit Sääv (Swedish Transport Agency). Mrs. Marita Löytty (Finnish Transport Safety Agency) was the secretary and co-chairman of the Topic Group.

### 3.2. Meetings

The Topic Group participants got together two times:

1. The Swedish Transportstyrelsen (Swedish Transport Agency) hosted the first meeting in Stockholm on 5th and 6th March 2012.
2. The second meeting was held in Swansea (Wales, UK) on May 15th and 16th 2012. Driver and Vehicle Licensing Agency (DVLA) hosted the meeting.

## 4. Previous findings from Topic Group X

The previous Topic Group X on *Driving Licence Tourism* submitted a questionnaire to all EReg member organizations. The questionnaire was distributed in June 2010. Answers were received from thirteen member organizations by autumn 2010.

The questionnaire contained seven questions regarding normal (permanent) residence.

### 4.1. Recommendations for establishing normal residence in the final report of Topic Group X

Establishing *normal residence* is a fundamental problem for MS. It is also a major factor behind *driving licence tourism*. So called 185-day-rule is one problem. Another problem is a situation where a person does not live in any MS for 185 days. Indistinct EC-rules regarding permanent residence also obstruct a citizen's free movement in the EU.

Answers to the questionnaire give clear evidence that MS have various practices and procedures in establishing normal residence. It is problematic for the Member States to establish normal residence. For example only one third (31 %) of the countries that answered the questionnaire, have a national procedure on checking if the person has a bona fide address. Furthermore, only one third (31 %) of the countries do act on requests from another MS to check bona fide addresses. Majority (77 %) of the countries does not communicate with other MS about a case where a person does not live in any country for 185 days.

#### Recommendations and remarks from the Topic Group X:

- Checking permanent residence requires better contacts between MS. There should be a list of authorities or persons to contact for checking the permanent residence. It is proposed that the EReg secretariat would maintain the list on EReg's website.
- Permanent residence should be established the same way in every MS. There should be a common procedure how to establish it. It is recommended that there shall be a small working group within EReg on the issue. Answers to question number 10 are a good base for the work of the working group.
- At least the 4th Driving Licence Directive should authorize MS driving licence authorities to inquire the permanent residence of a person from other authorities for purposes of issuing a driving licence.

## 4.2. The questionnaire findings in details from Topic Group X

### 4.2.1. How is normal residence established in your country?

COUNTRY	Answer
<b>Belgium</b>	<p>Currently, “normal residence” is defined by Royal Decree as the place where a person usually lives, that is for at least 185 days in each calendar year, because of personal and occupational ties, or, in the case of a person with no occupational tie, because of personal ties which show close links between that person and the place where he is living.</p> <p>However, the normal residence of a person whose occupational ties are in a different place from his personal ties and who consequently lives in turn in different places situated in two or more MS shall be regarded as being the place of his personal ties, provided that such a person returns there regularly. This last condition need not net where the person is living in a MS in order to carry out a task of a definite duration. Attendance at a university or school shall not imply transfer of normal residence.</p>
<b>Estonia</b>	What concerns driving licences a person must just be registered at the Estonian Population Register.
<b>Finland</b>	As it is in the Directive.
<b>Germany</b>	The person has to make an announcement in the local population register at the place of residence. For exchanging a driving licence it is normally sufficient to declare the intention to live in this place for 185 days in the future.
<b>Latvia</b>	By data provided by Population Register.
<b>Lithuania</b>	We use the Resident’s Register for checking if person lives 185 days each calendar year. For citizens which have returned from abroad is enough to have intention to live in country and they have to present a proof about that (document about studying, work contract, and the similar).
<b>Luxemburg</b>	Luxembourg has a official Register of the persons that are resident. A new resident will have the obligation to inform the Commune of residence, who will transmit the data to the Register.
<b>Netherlands</b>	You can get a first issue or new category when you are living or at least 185 days in the NL. A renewal or exchange can take place from the moment you live in the NL.
<b>Norway</b>	<p>§ 3-2 of the Norwegian Driving Licence Regulation:</p> <ul style="list-style-type: none"> <li>- By normal residence is meant the place at which the person usually lives, i.e. at least 185 days every calendar year, because of personal and occupational ties or, if the case involves a person without occupational ties, because of personal ties which show close links between that person and the place where he is living.</li> <li>- If a person has personal ties to another place than the place to which he is occupationally tied and the person therefore resides alternately in different places in two or more states, the normal residence of the person in question shall nonetheless be deemed to be the place to which he has personal ties.</li> </ul>

	<p>provided that he returns there regularly. It is not necessary to meet this last condition if the person is staying in another state in order to perform a task of a definite duration. Attendance at a university or school shall not imply transfer of normal residence.</p> <p>- Normal residence is usually reckoned from such time as the person in question receives, or should have received, a Norwegian personal identity number from the National Population Register. For a person who applies for asylum, normal residence is deemed to be established from the time the person in question has been registered, or should have been registered, in Norway by the Norwegian authorities.</p>
<b>Portugal</b>	Normal residence means the place where a person usually lives, that it at least 185 days in each calendar year, because of personal and occupational ties, or in the case of a person with no occupational ties, because of personal ties which show close links between that person and the place where he is living.
<b>Sweden</b>	Immigration date is checked. If there is no immigration the applicant is required to fill in a form to certify normal residence.
<b>Switzerland</b>	Indicating an address to a residents' registration office, proving that you may reside in Switzerland.
<b>United Kingdom</b>	EEA/EEC licences: normal residence is established by self declaration. Non-EEA/EEC members: normal residency is established by immigration status.

#### 4.2.2. Is there a procedure (in your country, including also other authorities, e.g. tax authorities) to check if the person has a bona fide address?

Yes; please explain the procedure

No

Other; please explain

COUNTRY	Answer	Additional information
<b>Belgium</b>	Yes	Every citizen, upon registration in a municipality, will be visited by the local police who verifies the bona fide nature of the address.
<b>Estonia</b>	Other	We don't know about other authorities, but we can use only Population Register and the addresses there are not "bona fide" every time.
<b>Finland</b>	Other	Basically we do check our own database (population register), but we don't maintain any liaison with other authorities.
<b>Germany</b>	No	-
<b>Latvia</b>	Yes	Person's is checked in Population Register.
<b>Lithuania</b>	No	-
<b>Luxemburg</b>	Other	Official register of the persons that are resident.

<b>Netherlands</b>	Yes	Registration is at the Municipality and they check if someone is living on the address.
<b>Norway</b>	Yes	We check all addresses against the National Population Register, which is what the tax authorities use. If they are not registered there, they have a temporary registration number due to taxes, and they have to prove that they for instance are employed in Norway, e.g. by showing us a contract, and are supposed to stay here more than 185 days.
<b>Portugal</b>	Yes	If we have doubts about the residence, we ask the driver his proof of residence, through the tax authorities.
<b>Sweden</b>	No	-
<b>Switzerland</b>	Other	Basically not, if the road traffic office at a Canton wanted to check some address, they would ask the resident's registration office.
<b>United Kingdom</b>	No	-

#### 4.2.3. Do you act on requests from another MS to check the bona fide addresses?

Yes; please explain the procedure

No

Other; please explain

<b>COUNTRY</b>	<b>Answer</b>	<b>Additional information</b>
<b>Belgium</b>	Other	We only check for 3 <sup>rd</sup> countries. For MS it will be checked by the issuing authority after we sent them the original licence we have exchanged.
<b>Estonia</b>	No	
<b>Finland</b>	Other	We normally don't have any liaison with other MS in relation to requests related to driving licences.
<b>Germany</b>	Yes	We will contact the local licence offices to check the status.
<b>Latvia</b>	Yes	We provide with data at our disposal.
<b>Lithuania</b>	Other	We did not get such requests. If we'll receive them, we can check in the Register.
<b>Luxemburg</b>	No	-
<b>Netherlands</b>	No	-
<b>Norway</b>	Yes	So far we have not received requests about this that we know about, but the procedure would be to check with the National Population Register.
<b>Portugal</b>	Yes	-

<b>Sweden</b>	No	-
<b>Switzerland</b>	Other	We don't know such cases.
<b>United Kingdom</b>	No	-

**4.2.4. How many false cases (concerning normal residence or suspected false normal residence) do you reveal per year [in 2009, actual figure (A) or an estimate (E)]?**

**4.2.5. How do you deal with a case when a person does not live in any country for 185 days? (2nd Directive Article 9/2; 3rd Directive, Article 12/2)**

<b>COUNTRY</b>	<b>Answer 4.2.4.</b>	<b>Answer 4.2.5.</b>
<b>Belgium</b>	n/a	Concrete conditions for exchange render checking the 185 days rule redundant.
<b>Estonia</b>	0 (A)	The person must just ne registered at the Estonian Population Register and we'll issue a licence for him or her. We don't count days.
<b>Finland</b>	n/a	This is a problem. There have been several cases where a person has not had a permanent residence in any country. We advise them to get a permanent official residence in some country and then return to this competent authority.
<b>Germany</b>	2174 (A) of false residences in other EU MS. 10 (A) cases of probably false residency in Germany. In both cases it is difficult to prove the residency as they are legally and officially registered in two countries.	When a person is registered in a local German population register, this address is accepted as "normal residence". A registration in two or more countries is possible.
<b>Latvia</b>	5 (E)	No such a cases detected.
<b>Lithuania</b>	Just a few, we have no statistical data on this issue.	We have not had such cases as yet.
<b>Luxemburg</b>	No cases known.	Has not been the case so far.
<b>Netherlands</b>	500 (E)	Then we say the person has to choose in which country he is living. In the NL you must be registrated living here at a municipality to renewal your licence or you have to live a third country. <i>Additional information on page 24.</i>

<b>Norway</b>	This is handled by the National Population Register, the tax authorities.	We reject the application for an exchange.
<b>Portugal</b>	40	We allow to drive during 185 days.
<b>Sweden</b>	0	Application is denied.
<b>Switzerland</b>	n/a	Compare with the answer to Q 8. Yet Switzerland isn't applying the "185-day-rule" but defines residence according to the definition in civil law.
<b>United Kingdom</b>	617 (A)	We do not issue a driving licence to these individuals.

#### 4.2.6. Do you communicate with other MS about this issue (ref. question 4.2.5)?

Yes; actual number of contacts or an estimate (year 2009)

No

Other; please explain

COUNTRY	Answer	Additional information
<b>Belgium</b>	No	
<b>Estonia</b>	No	
<b>Finland</b>	No	
<b>Germany</b>	Yes	50 (E)
<b>Latvia</b>	No	-
<b>Lithuania</b>	Other	We have not had such cases as yet.
<b>Luxemburg</b>	No	-
<b>Netherlands</b>	No	-
<b>Norway</b>	No / Other	This is handled by the National Population Register.
<b>Portugal</b>	No	-
<b>Sweden</b>	No	-
<b>Switzerland</b>	No	-
<b>United Kingdom</b>	No	-



**4.2.7. How often (year 2009) did you refuse an application for driving licence exchange, renewal or first issue because of the 185-day-rule? Please tell the actual figure (A) or an estimate (E). If you don't have any figures, please explain your procedure.**

Number of cases

Description of the procedure

COUNTRY	Answer	Additional information
<b>Belgium</b>	n/a	Our conditions for exchange make such a procedure unnecessary.
<b>Estonia</b>	0 (A)	The person must just be registered at the Estonian Population Register.
<b>Finland</b>	n/a	Unfortunately we don't have any specific statistics on this issue due to different compilation of statistics in every police station.
<b>Germany</b>	n/a	Unknown, because 620 local authorities are in charge.
<b>Latvia</b>	20 (E)	-
<b>Lithuania</b>	n/a	-
<b>Luxemburg</b>	n/a	The driving licence system checks automatically versus the here above explained persons Register. In case of exchange of lost EU driving licences the 185 days rule is not applied.
<b>Netherlands</b>	n/a	We only refuse the exchange of the 185 days rule for third country licences. We regularly have question marks by the exchanges if someone really lived in another MS, but this is not the reason to deny an exchange.
<b>Norway</b>	n/a	As we are 75 inspectorates, it is impossible to give an estimate.
<b>Portugal</b>	n/a	We always refuse to exchange driving licence (except from the EEE) if the residence in Portugal is not provided.
<b>Sweden</b>	a few	-
<b>Switzerland</b>	n/a	The road traffic offices at the Cantons are responsible for it.
<b>United Kingdom</b>	2000 (E)	We frequently reject for 185 day residency rule. There is a standard reject option for this, which the clerk would use to send back with all documents.

## 5. Recommendations and best practices

### 5.1. *Common definitions and practices*

1. 3rd Directive on Driving Licences is not powerful enough for establishing *normal residence*. For the upcoming 4th Directive on Driving Licences it should be made more strict and clear, how to establish and to check *normal residence*.
2. Lack of common definitions and lack of agreement on common definitions are a problem for MS. As an example, XML-messaging Reference Guide for RESPER<sup>2</sup> includes some definitions.

Terms like *driving licence, holder of a driving licence, entitlement, validity, a valid driving licence, document, first issue, calendar year, suspension, driving ban, disqualification and withdrawal* should be defined in the 4th Directive on Driving Licences.

3. The 4th Directive on Driving Licences should include an “explanatory note” and an “impact assessment” based on public consultation. They would help the MS to understand the reasoning behind the Articles.

In several MS there is always an “explanatory note” distributed with the bill, which is publically available even after the legislation has entered in force.

4. The practice of recording the first issue date on the back of the driving licence differs between MS. In some MS the date could also be the “second first issue”.

E.g. in Germany, when a new driving licence is issued, a new first issue date (“second first issue”) is recorded on the back of the driving licence. E.g. in UK the vehicle insurance rate is the lower the longer the driver has had his/her driving licence, so for these kind of reasons as well it is important to know the real first issue date.

Therefore, as practices vary between MS, recommendation for the future is that the real “first issue date” should be added in RESPER.

### 5.2. *Checking the person and his/her residence*

5. If the MS has a population register, the register needs to be checked first.

If the applicant is not yet registered (or if there are reasonable grounds to check his/her residence) or the MS does not have a population register, the applicant needs to provide other proofs for the residence (e.g. self declaration, additionally utility bills, working contract, document of studying there for longer than 6 months).

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<sup>2</sup> RESPER = RESeau PERmis de conduire, a network for exchanging driving licence information between MS

6. When the Driving Licence Register shows “too many” driving licence issues for the same address, it needs to be checked first what is going on there before issuing or sending the driving licence(s) to the applicant(s).

An example from the United Kingdom: When it is identified that multiple driving licences have been issued to a single address, a marker is set against the post code within the database, which stops a driving licence being issued to any address within that post code without further investigation.

7. In the next version of RESPER there should be implemented additional search methods and keys [local index(es)/unique key(s) in each MS, e.g. passport number, id card number, personal number].

### **5.3. 185-day-rule**

8. “Calendar year” should be waived, instead it should be looked back one year.
9. Establish a strict 185-day-rule for first driving licence issues for each licence category. An intention to live permanently at least for 185 days is not enough, the applicant needs to live first for 185 days in the MS.

However, there are always specific cases and exceptions. The strict rule shall not be applied for driving licence renewals, exchanges etc. Furthermore, the rule shall not obstruct the “free movement” of citizens.

10. If the MS is not issuing a driving licence (because the 185-day-rule is not yet fulfilled), then the applicant shall be given a signed document that a driving licence is not issued. This will make it possible for the other MS to issue the applicant a driving licence even though the 185-day-rule is not yet fulfilled.
11. There are several cases where the person is not able to exchange his/her driving licence or get a new driving licence issued in any other way than starting from the beginning (driver training, exam, medical certification).

E.g. there are a few cases, where a person’s driving licence has been withdrawn for medical reasons, until he/she submits a doctor’s certificate in Finland. However, the person has now his/her permanent residence in Spain. The person is not able to exchange his/her Finnish driving licence in Spain, because the licence has been withdrawn in Finland until the doctor’s certificate is submitted.

A recommendation is that there should be made a bilateral agreement between the two MS to solve these kind of cases, as the national legislations prevent "reasonable ways" to solve the issue in favor of the driving licence applicant. The meaning of the 3rd Directive on Driving Licences is not meant to be that a person would never get a driving licence issued any more (ref. Articles 7 & 11).

Another recommendation is that the Commission should let the MS know how the Directive should be interpreted in these kind of cases.

#### **5.4. Only one EU driving licence**

- 12.** A recommendation for the driving licence application: It shall be asked if the applicant has or has had an EU driving licence in another MS, and if yes, in which country/countries. The applicant shall be asked to sign the document as well. This shall be asked at all driving licence cases: first issue, renewal and exchange. If the applicant is not informing about the other licence(s), it is a reason to withdraw the issued driving licence later on.

An example from the Netherlands: At application, on the application form for a driving licence (first issue and new category) the applicant signs for the fact that a) no driving licence has been issued to him/her in another EC/EEA country or Switzerland, and b) no application for a driving licence has been submitted by him/her in another EC/EEA country or Switzerland.

If it is found out that the applicant has several EU driving licences, e.g. in Sweden the applicant may choose which driving licence to hold. The Netherlands has chosen a different practice: the newest driving licence is a valid one.

Another recommendation is to work on the awareness as well: At driving licence application the applicant shall be informed of the legal base, meaning that it is not permitted to apply for several EU driving licences. Other driving licence(s) will be revoked later on and there will also be more serious consequences (depending on the MS e.g. fine, prosecution, offence, crime). The procedure benefits the applicants at the end as well.

- 13.** If it is found out that the applicant has a valid or a renewable driving licence, the driving licence needs to be exchanged in connection with the renewal (instead of issuing a new driving licence). The original MS needs to be informed that the driving licence has been exchanged or a new driving licence has been issued.

E.g. in the Netherlands, if the RDW does not exchange a driving licence, the person will go on to the municipality (the issuing authority for driving licences) and apply for a first issue of a driving licence there. This means that RDW is not able to inform the other MS that there is a "second first issue" of a driving licence.

## 5.5. **Articles 7 and 11**

14. The Articles 7 (“Issue, validity and renewal”) and 11 (“Various provisions concerning the exchange, the withdrawal, the replacement and the recognition of driving licences”) in the 3rd Directive on Driving Licences should be read in conjunction. For the upcoming 4th Directive on Driving Licences these articles should be combined.

Proposal for a revised text, Articles 7 and 11 combined:

### **Various provisions concerning the issue, exchange, withdrawal, replacement, renewal and recognition of driving licences**

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;*
- (b) *who have passed a theory test only as regards category AM;*

*Member States may require applicants to pass a test of skills and behaviour and a medical examination for this category.*

*For tricycles and quadricycles within this category, Member States may impose a distinctive test of skills and behaviour. For the differentiation of vehicles in category AM, a national code may be inserted on the driving licence;*

- (c) *who have, as regards category A2 or category A, on the condition of having acquired a minimum of 2 years' experience on a motorcycle in category A1 or in category A2 respectively, passed a test of skills and behaviour only, or completed a training pursuant to Annex VI;*
  - (d) *who have completed a training or passed a test of skills and behaviour, or completed a training and passed a test of skills and behaviour pursuant to Annex V as regards category B for driving a vehicle combination as defined in the second subparagraph of Article 4(4)(b);*
  - (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.*
2. (a) *As from 19 January 2013, licences issued by Member States for categories AM, A1, A2, A, B, B1 and BE shall have an administrative validity of 10 years.*

*A Member State may choose to issue such licences with an administrative validity of up to 15 years;*

(b) *As from 19 January 2013, licences issued by Member States for categories C, CE, C1, C1E, D, DE, D1, D1E shall have an administrative validity of 5 years;*

(c) *The renewal of a driving licence may trigger a new administrative validity period for another category or categories the licence holder is entitled to drive, insofar as this is in conformity with the conditions laid down in this Directive;*

(d) *The presence of a microchip pursuant to Article 1 shall not be a prerequisite for the validity of a driving licence. The loss or unread ability of the microchip, or any other damage thereto, shall not affect the validity of the document.*



3. *The renewal of driving licences when their administrative validity expires shall be subject to:*
- (a) *continuing compliance with the minimum standards of physical and mental fitness for driving set out in Annex III for driving licences in categories C, CE, C1, C1E, D, DE, D1, D1E; and*
- (b) *normal residence in the territory of the Member State issuing the licence, or evidence that applicants have been studying there for at least six months.*
- Member States may, when renewing driving licences in categories AM, A, A1, A2, B, B1 and BE, require an examination applying the minimum standards of physical and mental fitness for driving set out in Annex III.*
- Member States may limit the period of administrative validity set out in paragraph 2 of driving licences issued to novice drivers for any category in order to apply specific measures to such drivers, aiming at improving road safety.*
- Member States may limit the period of administrative validity of the first licence issued to novice drivers for categories C and D to 3 years in order to be able to apply specific measures to such drivers, so as to improve their road safety.*
- Member States may limit the period of administrative validity set out in paragraph 2 of individual driving licences for any category in case it is found necessary to apply an increased frequency of medical checks or other specific measures such as restrictions for traffic offenders.*
- Member States may reduce the period of administrative validity set out in paragraph 2 of driving licences of holders residing on their territory having reached the age of 50 years in order to apply an increased frequency of medical checks or other specific measures such as refresher courses. This reduced period of administrative validity can only be applied upon renewing the driving licence.*
4. *Without prejudice to national criminal and police laws, Member States may, after consulting the Commission, apply to the issuing of driving licences the provisions of their national rules relating to conditions other than those referred to in this Directive.*
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.*
6. *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.*
7. *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*

8. *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.*
9. *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.*

10. *A replacement for a driving licence which has, for example, been lost or stolen may only be obtained from the competent authorities of the Member State in which the holder has his normal residence; those authorities shall provide the replacement on the basis of the information in their possession or, where appropriate, proof from the competent authorities of the Member State which issued the original licence.*
11. *Where a Member State exchanges a driving licence issued by a third country for a Community model driving licence, such exchange shall be recorded on the Community model driving licence 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 the principle of mutual recognition set out in Article 2. licence for that purpose.*

***Annex 1. Answers from a few of the other EReg members to the questions on Normal Residence (received in May–June 2012; the original questionnaire submitted in summer 2010)***

*[Other = Those members that did not answer the questionnaire in summer 2010.]*

**4.2.1. How is normal residence established in your country?**

<b>COUNTRY</b>	<b>Answer</b>
<b>Denmark</b>	<p>When applying for a driving licence, the applicant needs to fill out an application form that must be handed in to the municipal authority (kommunen). In this regard the applicant must state his or her current address. According to section 7 of the Danish Government Circular no. 27 of 2 April 2009 on Driving Licences, the municipal authority should only require documentary proof of an applicant's normal residence in cases where it is doubtful whether the applicant meets the requirement of normal residence in Denmark.</p> <p>According to section 6, subsection 1 of the Danish Government Order no. 304 of 2 April 2009 on Driving Licences normal residence is determined as the place, where a person usually lives, i.e. at least 185 days in each calendar year as a consequence of the person's personal or occupational ties. If the person does not have occupational ties, the person must have personal ties, that show close links between the person and the place where he is living.</p> <p>Pursuant to section 6, subsection 2 of the Danish Government Order on Driving Licences the requirement of normal residence is regarded as met at the time where the person takes up residence in Denmark with the intention of meeting the requirement of residence for more than 185 days in the same calendar year.</p>
<b>Gibraltar</b>	ID card – Permit of residence.
<b>Ireland</b>	As in Directive normal residence means the place where a person usually lives, that is for at least 185 days in each year, because of personal and occupational ties, or, in the case of a person with no occupational ties, because of personal ties which show close links between that person and the place where he or she is living. However, the normal residence of a person whose occupational ties are in a different place from his or her personal ties and who consequently lives in turn in different places situated in 2 or more Member States is regarded as being the place of his or her personal ties where the person returns there regularly. This last condition need not be met where the person is living in a Member State in order to carry out a task of a definite duration. Attendance at a university or school does not imply transfer of normal residence.
<b>Romania</b>	According to the Romanian Emergency Ordinance no.195 of December 12th 2002 regarding the traffic on the public roads, the normal residence status is established as it is provided by the article 12 from EU Directive 2006/126/CE on driving licences.
<b>Slovakia</b>	According to the Directive.
<b>Hungary</b>	According to the Article No 9. of the COUNCIL DIRECTIVE of 29 July 1991 on driving licences.



**4.2.2. Is there a procedure (in your country, including also other authorities, e.g. tax authorities) to check if the person has a bona fide address?**

Yes; please explain the procedure

No

Other; please explain

COUNTRY	Answer	Additional information
Denmark	Yes	In cases where it is doubtful whether a person meets the requirement of normal residence in Denmark the person will be looked up in the central national register.  In assessing whether the mentioned requirement is met, it must be taken into account whether the person in question and the person's household (family) is established in Denmark with a permanent home and whether the person's personal possessions and closest relatives (spouse and children) are in Denmark and if the person in question usually is in Denmark. In this regard temporary departure from Denmark as a result of business travels, study trips or vacations should not be taken into account.
Gibraltar	No	-
Ireland	Yes	If there are doubts about the address, the person is asked for proof of address.
Romania	Yes	The legal procedure is established according with the Romanian Government Decision no.1375 of October 4th 2006 regarding the legal rules on the citizens residence regime, registration and identity documents. Basically, the procedure involves two specialized structures within the Ministry of Administration and Interior, such as the population registration public services (registration, ID issuing authority) and the public order police services (control, investigation).
Slovakia	Yes	If the person being granted a Slovakian Driving License can reliably prove his/her normal residence in Slovakia, by studying here for more than 6 months we demand a statutory declaration, in case of doubts further evidence.
Hungary	Other	It is possible to check the person has a reported (registered) address in Hungary, but it can not be checked if it is a bona fide address or not.

**4.2.3. Do you act on requests from another MS to check the bona fide addresses?**

Yes; please explain the procedure

No

Other; please explain

COUNTRY	Answer	Additional information
Denmark	Other	The Ministry of Justice is not aware of such requests to check bona fide addresses.
Gibraltar	No	-
Ireland	Yes	If asked whether we issued licence to address, we confirm address to which we issued a licence.

<b>Romania</b>	Yes	Using the Population National Register which is administrated by the Ministry of Administration and Interior.
<b>Slovakia</b>	Yes	
<b>Hungary</b>	Other	It is possible to check the person has a reported (registered) address in Hungary, but it can not be checked if it is a bona fide address or not.

**4.2.4. How many false cases (concerning normal residence or suspected false normal residence) do you reveal per year [in 2009, actual figure (A) or an estimate (E)]?**

**4.2.5. How do you deal with a case when a person does not live in any country for 185 days? (2nd Directive Article 9/2; 3rd Directive, Article 12/2)**

<b>COUNTRY</b>	<b>Answer 4.2.4.</b>	<b>Answer 4.2.5.</b>
<b>Denmark</b>	N/A	The Ministry of Justice is not aware of such cases.
<b>Gibraltar</b>	N/A	We do not issue driving licences to these individuals.
<b>Ireland</b>	N/A	The place of personal ties where the person returns there regularly would determine.
<b>Romania</b>	Less than 100 per year (E), including questions from other MS on Romanian driving holders who applied to exchange the driving licence.	The citizen in case must prove with relevant documents that fulfills the 3rd Directive 12/2 provisions.
<b>Slovakia</b>	N/A	We deprive him of the license.
<b>Hungary</b>	N/A	In that case we are considering the following rules:  1. Council Directive of 29 July 1991 on driving licences Article 9. : „However, the normal residence of a person whose occupational ties are in a different place from his personal ties and who consequently lives in turn in different places situated in two or more Member States shall be regarded as being the place of his personal ties, provided that such person returns there regularly. This last condition need not be met where the person is living in a Member State in order to carry out a task of a definite duration. Attendance at a university or school shall not imply transfer of normal residence.”  2. Hungarian Law: that means the six month (185 days) of residency verification is not applied in the following cases: a) Reissue of the Hungarian driving licence for third countries citizens. b) If the foreign driving licence is expired and a Hungarian

driving licence will be issued (instead of the previous one). In this case the applicant has to present the document of the verification of the residency, and declare that his/her normal residence is in Hungary.

#### 4.2.6. Do you communicate with other MS about this issue (ref. question 4.2.5.)?

Yes; actual number of contacts or an estimate (year 2009)

No

Other; please explain

COUNTRY	Answer	Additional information
Denmark	Other	As The Ministry of Justice is not aware of cases regarding the issue mentioned in question 4.2.5 The Ministry is not aware of cases, where Denmark has communicated with other member states regarding that issue.
Gibraltar	No	-
Ireland	-	-
Romania	No	If the citizen in case does not fulfill the above mentioned provisions, the request is rejected.
Slovakia	Yes	-
Hungary	No	-

#### 4.2.7. How often (year 2009) did you refuse an application for driving licence exchange, renewal or first issue because of the 185-day-rule? Please tell the actual figure (A) or an estimate (E). If you don't have any figures, please explain your procedure.

Number of cases

Description of the procedure

COUNTRY	Answer	Additional information
Denmark	N/A	The Ministry of Justice is not in possession of any specific statistics on the matter. The Ministry can however inform you that decisions on renewal and first issue of driving licences in general is made by the municipal authority (kommunen) and that it is the local police districts that, in first instance, are in charge of the exchange of foreign driving licences. In second instance it is the National Commissioner of the Danish Police.
Gibraltar	N/A	-
Ireland	-	-
Romania	Less than 10 per year (E).	-
Slovakia	N/A	We do not have records on exact numbers, but there are not many of them. The normal residence of 185 day is being considered in case of



		granting DI for the first time and also in case of DL exchange. If this precondition is not fulfilled, the issuance of a Slovak DL to a person is denied.
<b>Hungary</b>	N/A	If the application does not meet the requirements of the normal residency or there is no exception to this rule according to the Hungarian Law, the application automatically will be rejected.



***Annex 2. Judgement of the Court, 26 April 2012: Refusal by a MS to recognize, in favor of a person whose driving licence was withdrawn on its territory, the validity of a driving licence issued by another MS***

Court of Justice of the European Union (<http://curia.europa.eu>)

**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. Löhmus, 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

## 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 medicopsychological 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 caselaw 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 (Case C-467/10 Akyüz [2012] ECR I-0000, 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-0000, 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-0000, 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-0000, 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]