

JUDGMENT OF THE COURT (Second Chamber)

13 October 2011 \*

In Case C-224/10,

REFERENCE for a preliminary ruling under Article 267 TFEU from the Landgericht Baden-Baden (Germany), made by decision of 6 May 2010, received at the Court on 10 May 2010, in the criminal proceedings against

**Leo Apelt,**

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: A. Calot Escobar,

having regard to the written procedure,

\* Language of the case: German.

after considering the observations submitted on behalf of:

— Mr Apelt, by B. Stege, Rechtsanwalt,

— the European Commission, by G. Braun, acting as Agent,

after hearing the Opinion of the Advocate General at the sitting on 30 June 2011,

gives the following

## **Judgment**

- <sup>1</sup> The present reference for a preliminary ruling concerns the interpretation of Articles 1, 5(1)(a), 7(1)(b) and 8(2) and (4) of Council Directive 91/439/EEC of 29 July 1991 on driving licences (OJ 1991 L 237, p. 1), as amended by Commission Directive 2000/56/EC of 14 September 2000 (OJ 2000 L 237, p. 45) ('Directive 91/439'), and the interpretation of Article 11(4) of Directive 2006/126/EC of the European Parliament and of the Council of 20 December 2006 on driving licences (OJ 2006 L 403, p. 18).

- 2 The reference has been made in criminal proceedings which have been brought against Mr Apelt for deliberately driving a vehicle without a driving licence.

## **Legal context**

### *European Union legislation*

- 3 According to the first recital in the preamble to Directive 91/439:

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

- 4 By virtue of the fourth recital in the preamble to Directive 91/439, it is necessary, on road safety grounds, for the minimum requirements for the issue of a driving licence to be laid down.

5 Article 1(1) and (2) of Directive 91/439 is worded as follows:

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

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

6 Article 3 of that directive states:

‘1. The driving licence provided for in Article 1 shall authorise the driving of vehicles in the following categories:

...

Category B

— motor vehicles with a maximum authorised mass not exceeding 3 500 kilograms and having not more than eight seats in addition to the driver’s seat; ...

...

## Category D

- motor vehicles used for the carriage of persons and having more than eight seats in addition to the driver's seat; ...

2. Within categories A, B, B + E, C, C + E, D and D + E, a specific driving licence may be issued for the driving of vehicles in the following subcategories ...'

7 Under Article 5(1)(a) of that directive:

'1. This issue of driving licences shall be subject to the following conditions:

- (a) licences for categories C and D shall be issued only to drivers already entitled to drive vehicles in category B.'

8 Article 7(1) of that directive provides:

'Driving licences shall, moreover, be issued only to those applicants:

...

(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.’

9 Article 7(5) of Directive 91/439 provides that no person may hold more than one driving licence.

10 Article 8(2) and the first subparagraph of Article 8(4) of that directive provide:

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

...

4. A Member State may refuse to recognise the validity of any driving licence issued by another Member State to a person who is, in the former State’s territory, the subject of one of the measures referred to in paragraph 2.’

11 In accordance with the second paragraph of point 1 of subheading A of Part I of Annex II to Directive 91/439, any applicant for a licence in one category who has passed a theory test for a licence in a different category may be exempt from the common provisions of points 2 to 4 of that annex.

<sup>12</sup> Point 2 of subheading A of Part I of Annex II determines the content of the theory test concerning all vehicle categories. The specific provisions concerning categories A and A1 are laid down in point 3 of subheading A of Part I, while those concerning categories C, C+E, C1, C1+E, D, D+E, D1 and D1+E are laid down in point 4 of subheading A of Part I.

<sup>13</sup> Article 11(1) and (4) of Directive 2006/126 provides:

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

...

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.’

*National legislation*

- <sup>14</sup> Paragraph 28(1) and(4) of the regulation on the authorisation of persons to drive on the highways (the regulation on driving licences) (Verordnung über die Zulassung von Personen zum Straßenverkehr (Fahrerlaubnis-Verordnung)) of 18 August 1998 (BGBl. 1998 I, p. 2214), in the version applicable at the time of the events in the main proceedings, is worded as follows:

‘(1) Holders of a valid European Union or European Economic Area driving licence having their normal residence ... in Germany shall be authorised – subject to the restrictions laid down in subparagraphs (2) to (4) – to drive motor vehicles in that country within the limits of their entitlement to do so...

(4) The authorisation referred to in subparagraph (1) shall not apply to holders of a European Union or European Economic Area 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 ...’



- 15 Point 1 of Paragraph 21(1) of the Law on road traffic (Straßenverkehrsgesetz), in the version applicable at the time of the events in the main proceedings, provides:

‘Any person who:

1. drives a vehicle while not holding the driving licence required for that purpose or while banned from driving a vehicle in accordance with Paragraph 44 of the Criminal Code or with Paragraph 25 of this Law shall be sentenced to a term of imprisonment of up to one year or to payment of a fine ...’

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

- 16 On 14 December 1998, Mr Apelt, a German national, was issued with a driving licence for classes 1a, 1b, 3, 4 and 5 by the competent authorities of the district of Verden (Germany).
- 17 On 23 January 2006, Mr Apelt was stopped in Germany while driving a vehicle under the influence of alcohol. On the following day, his driving licence was confiscated by the German police authorities (‘polizeiliche Verwahrung’).
- 18 On 31 May 2006, Mr Apelt was fined by the Amtsgericht Osterholz-Scharmbeck (Osterholz-Scharmbeck Local Court) for driving while under the influence of alcohol. His driving licence was confiscated, his right to drive was withdrawn, and he was prohibited from applying for a new driving licence until after 29 November 2006.

- 19 On 1 March 2006, that is to say, before the court order withdrawing the driving licence issued to Mr Apelt by the German authorities, but after the confiscation of that licence by the German police authorities, Mr Apelt obtained authorisation from the competent Czech authorities to drive vehicles in category B, for which a driving licence was issued to him on the same date. The place of residence indicated on that licence is located in Germany.
- 20 On 30 April 2007, that is to say, after the expiry of the ban imposed by the Amtsgericht Osterholz-Scharmbeck on his applying for a new driving licence, Mr Apelt was authorised by the Czech authorities to drive vehicles in category D. To that end, a driving licence was issued to him on the same day, indicating a place of residence in the Czech Republic together with a date of issue of a driving licence for vehicles in category B, namely 1 March 2006.
- 21 On 11 July 2009, Mr Apelt was stopped while driving a coach in the territory of the commune of Achern (Germany). The Staatsanwaltschaft (Public Prosecutor's Office) applied to the Amtsgericht Achern (Achern Local Court) to have an order for summary punishment served on Mr Apelt for deliberately driving while not authorised to do so. The Amtsgericht Achern refused that application on the ground that the authorisation to drive granted by the Czech authorities for vehicles in category D, issued after the expiry of the ban, was valid in Germany.
- 22 The Staatsanwaltschaft lodged an appeal against that decision before the Landgericht Baden-Baden (Baden-Baden Regional Court), arguing that the authorisation to drive vehicles in category B, which was not valid in Germany, was an indispensable part of the licence to drive vehicles in category D.

- 23 In those circumstances, the Landgericht Baden-Baden decided to stay the proceedings and to refer the following questions to the Court for a preliminary ruling:

‘(1) With due regard for Article 5(1)(a) of Directive 91/439 ... which provides for licences for category D to be issued only to drivers already entitled to drive vehicles in category B, may a Member State refuse, in accordance with Article 1 and Article 8(2) and (4) of that directive, to recognise the validity of a driving licence issued by another Member State for categories B and D – particularly with respect to category D – if the holder of that driving licence was granted the right to drive vehicles in category B before the right to drive was withdrawn by a court in the first Member State, whereas the right to drive vehicles in category D was not granted until after that withdrawal and after the expiry of the period simultaneously set before a new licence might be issued?’

(2) If the first question is answered in the negative:

May the first Member State refuse to recognise the aforementioned driving licence – particularly with respect to the right to drive vehicles in category D – in application of Article 11(4) of Directive 2006/126 ..., according to which a Member State is required to refuse to recognise the validity of a driving licence issued by another Member State to a person whose driving licence has been withdrawn in the territory of the former Member State, if the right to drive vehicles in category B was granted on 1 March 2006 and the right to drive vehicles in category D was granted on 30 April 2007 and the driving licence was issued on the latter date?’

## Consideration of the questions referred

### *The first question*

<sup>24</sup> By its first question, the national court asks whether, with due regard for Article 5(1)(a) of Directive 91/439, under which driving licences for category D may be issued only to drivers who are already entitled to drive vehicles in category B, a Member State may refuse, in accordance with Article 1 and Article 8(2) and (4) of that directive, to recognise the validity of a driving licence issued by another Member State for categories B and D – particularly with respect to category D – if the holder of that driving licence was granted a right to drive vehicles in category B before the right to drive was withdrawn by court order in the first Member State, whereas the right to drive vehicles in category D was not granted until after that withdrawal and after the expiry of the period, set at the same time, during which a new licence could not be issued.

<sup>25</sup> It should be added that the national court states that, although the driving licence for vehicles in category B was issued by the Czech authorities before Mr Apelt had his right to drive withdrawn by court order in Germany, that issue took place after his German driving licence had been confiscated by the German police authorities, and that both that confiscation and the withdrawal by court order are justified on grounds which existed at the date of issue of that driving licence for vehicles in category B by the Czech authorities. Moreover, the national court makes reference to the fact that Mr Apelt's place of residence, as shown on that latter driving licence, is located in Germany.

<sup>26</sup> In accordance with Article 7(1)(b) of Directive 91/439, driving licences are, inter alia, to be issued only to those applicants who have their normal residence in the territory of the Member State issuing the licence, or who can produce evidence that they have been studying there for at least six months.

<sup>27</sup> In order to provide an answer which will be of use to the national court, its question should therefore be understood as seeking to ascertain, in essence, whether Articles 1(2), 5(1)(a), 7(1)(b) and 8(2) and (4) of Directive 91/439 preclude a host Member State from refusing to recognise a driving licence for vehicles in categories B and D issued by another Member State, first, if the holder of that driving licence was granted the right to drive vehicles in category B in disregard of the normal residence condition and after his driving licence issued by the first Member State had been confiscated by the police authorities in that Member State but before the right to drive was withdrawn by court order in the first Member State, and, second, if the holder of that licence was granted the right to drive vehicles in category D after that withdrawal by court order and after the expiry of the ban on the issue of a new driving licence.

<sup>28</sup> According to settled case-law, Article 1(2) of Directive 91/439 provides for mutual recognition, without any formality, of driving licences issued by Member States. That provision imposes on 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 (judgment in Case C-184/10 *Grasser* [2011] ECR I-4057, paragraph 19 and case-law cited).

- <sup>29</sup> It is for the Member State of issue to investigate whether the minimum requirements imposed by European Union law, particularly those relating to residence and fitness to drive, laid down in Article 7(1) of that directive, have been satisfied and, therefore, whether the issue of a driving licence is justified (*Grasser*, paragraph 20 and case-law cited).
- <sup>30</sup> 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 fulfilled those conditions (*Grasser*, paragraph 21 and case-law cited).
- <sup>31</sup> However, it follows from the judgment in Case C-1/07 *Weber* [2008] ECR I-8571 that Articles 1(2) and 8(2) and (4) of Directive 91/439 do not preclude a Member State from refusing to recognise, in its territory, a right to drive under a driving licence issued by another Member State to a person whose right to drive was withdrawn in the territory of the first Member State, even though that withdrawal was ordered after the issue of that driving licence, provided that that licence was obtained during a period in which a licence issued in the first Member State was suspended and both the suspension and the withdrawal are based on grounds existing at the date of issue of the second driving licence.
- <sup>32</sup> In the main proceedings, the withdrawal by court order of the right to drive occurred after a driving licence for vehicles in category B had been issued to Mr Apelt by the Czech authorities. However, that driving licence was issued while the driving licence issued to Mr Apelt in Germany was being held, following confiscation, by the German police authorities.

33 As the national court has observed, that confiscation may be regarded as constituting a suspension within the terms of Article 8(2) and (4) of Directive 91/439. Therefore, that directive does not preclude the German authorities from refusing to recognise, in their territory, the driving licence for vehicles in category B issued to Mr Apelt by the Czech authorities, given that both the confiscation by the German police authorities and the withdrawal by court order are justified on grounds which existed at the date of issue of that driving licence.

34 In any event, it should be remembered that it is apparent from the order for reference that the place of residence indicated on that driving licence is located in Germany. Non-compliance with the normal residence condition laid down in Article 7(1)(b) of Directive 91/439 is, however, liable in itself to justify the refusal by a Member State to recognise a driving licence issued by another Member State.

35 It follows from the Court's case-law that Articles 1(2), 7(1)(b) and 8(2) and (4) of Directive 91/439 do not preclude a host Member State from refusing to recognise, in its territory, a driving licence issued by another Member State where it is established, on the basis of entries appearing in that licence, that the normal residence condition, laid down in Article 7(1)(b) of that directive, has not been observed (*Grasser*, paragraph 33).

36 Consequently, the German authorities were entitled to refuse to recognise a driving licence such as that issued to Mr Apelt by the Czech authorities for vehicles in category B.

37 With regard to the question whether a Member State may refuse to recognise a driving licence such as that issued to Mr Apelt by the Czech authorities for vehicles in

category D, it should be observed that it follows from Article 5(1)(a) of Directive 91/439 that a licence for vehicles in category D can be issued only to drivers who are already entitled to drive vehicles in category B.

<sup>38</sup> The Commission argues that, given that the requirements laid down for obtaining a driving licence for vehicles in category D are stricter than those required for obtaining a driving licence for vehicles in category B, and given that Mr Apelt was issued with a driving licence for vehicles in category D after the expiry of the ban on his applying for a new driving licence, the date of obtaining the driving licence for vehicles in category B which appears on the driving licence for vehicles in category D cannot affect the obligation of mutual recognition of driving licences laid down in Directive 91/439.

<sup>39</sup> That argument cannot be accepted.

<sup>40</sup> In accordance with Article 3(1) of Directive 91/439, a driving licence provided for in Article 1 thereof may authorise the driving of vehicles in a variety of categories. Within those categories, a specific driving licence may be issued for the driving of vehicles in various subcategories, in accordance with Article 3(2) of that directive.

<sup>41</sup> To that end, a driving licence for vehicles in category B authorises the driving of motor vehicles with a maximum authorised mass not exceeding 3 500 kilograms and having not more than eight seats in addition to the driver's seat. A driving licence for vehicles in category D, by contrast, authorises the driving of motor vehicles used for the carriage of persons and having more than eight seats in addition to the driver's seat.



- 42 As the Advocate General observed in point 33 of his Opinion, that division into categories and subcategories makes it possible to adapt, for each of them, the minimum conditions under which driving licences must be issued.
- 43 More specifically, Directive 91/439 provides, in Annexes II and III thereto, a common basis for all categories of driving licence. The issue of any driving licence is subject to compliance with the minimum requirements set by that common basis. As the Advocate General noted in point 37 of his Opinion, drivers must, for example, have sufficient command of their vehicle so as not to create dangerous situations and to react appropriately should such situations arise. Drivers must also have an understanding of the safe distances between vehicles, braking distances and roadholding of the vehicle concerned.
- 44 In addition to those minimum requirements, there are specific tests for each category, in particular for category D.
- 45 In that regard, it must be observed that it follows from the second paragraph of point 1 of subheading A of Part I of Annex II to Directive 91/439 that any applicant for a licence in one category who has passed a theory test for a licence in a different category may be exempt from theory tests relating to, *inter alia*, road traffic regulations.
- 46 Thus, it follows from both the wording and the structure of Directive 91/439 that the driving licence for vehicles in category B is an indispensable prior basis for obtaining a driving licence for vehicles in category D.

- <sup>47</sup> It would therefore be contrary to the objective of road safety mentioned in the first and fourth recitals in the preamble to Directive 91/439 not to allow a host Member State to refuse to recognise a driving licence for vehicles in category D issued on the basis of a driving licence for vehicles in category B which is vitiated by a defect justifying the non-recognition of that latter licence.
- <sup>48</sup> Consequently, it must be held that, if a Member State may, on the basis of Directive 91/439, refuse to recognise the validity of a driving licence for vehicles in category B issued by the authorities of another Member State, it is also entitled not to recognise the validity of the driving licence for vehicles in category D issued on the basis of that driving licence for vehicles in category B.
- <sup>49</sup> Since the driving licence for vehicles in category B issued to Mr Apelt by the Czech authorities is vitiated by defects justifying its non-recognition, Articles 1(2), 5(1)(a), 7(1)(b) and 8(2) and (4) of Directive 91/439 do not preclude the German authorities from also refusing to recognise the driving licence for vehicles in category D issued to Mr Apelt by the Czech authorities on the basis of his driving licence for category B.
- <sup>50</sup> In the light of the foregoing, the answer to the first question is that Articles 1(2), 5(1)(a), 7(1)(b) and 8(2) and (4) of Directive 91/439 do not preclude a host Member State from refusing to recognise a driving licence for vehicles in categories B and D issued by another Member State, first, if the holder of that driving licence was granted the right to drive vehicles in category B in disregard of the normal residence condition and after his driving licence issued by the first Member State had been confiscated by the police authorities in that first Member State but before the right to drive was withdrawn by court order in that first Member State, and, second, if the holder

of that driving licence was granted the right to drive vehicles in category D after that withdrawal by court order and after the expiry of the ban on the issue of a new driving licence.

### *The second question*

- <sup>51</sup> Given that the events of the case in the main proceedings took place in 2006 and 2007 and, consequently, before Article 11(4) of Directive 2006/126 became applicable, there is no need to answer the second question.

### **Costs**

- <sup>52</sup> 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 1(2), 5(1)(a), 7(1)(b) and 8(2) and (4) of Council Directive 91/439/EEC of 29 July 1991 on driving licences, as amended by Commission Directive 2000/56/EC of 14 September 2000, do not preclude a host Member State from refusing to**

**recognise a driving licence for vehicles in categories B and D issued by another Member State, first, if the holder of that driving licence was granted the right to drive vehicles in category B in disregard of the normal residence condition and after his driving licence issued by the first Member State had been confiscated by the police authorities in that first Member State but before the right to drive was withdrawn by court order in that first Member State, and, second, if the holder of that driving licence was granted the right to drive vehicles in category D after that withdrawal by court order and after the expiry of the ban on the issue of a new driving licence.**

[Signatures]