



## Reports of Cases

OPINION OF ADVOCATE GENERAL  
BOT  
delivered on 18 July 2013<sup>1</sup>

**Case C-356/12**

**Wolfgang Glatzel**  
v  
**Freistaat Bayern**

(Request for a preliminary ruling from the Bayerischer Verwaltungsgerichtshof (Germany))

(Directive 2006/126/EC — Minimum standards concerning physical and mental fitness to drive a motor vehicle — Requirement that applicants for category C1 and category C1E driving licences have a visual acuity of at least 0.1 in their worse eye — Absence of any exceptions, even for persons who see properly when using both eyes and have a normal field of vision — Articles 20, 21 and 26 of the Charter of Fundamental Rights of the European Union — Principle of equal treatment — Principle of non-discrimination on the grounds of disability — Validity of point 6.4 of Annex III to Directive 2006/126/EC)

1. By this request for a preliminary ruling, the Court is asked to examine the validity of point 6.4 of Annex III to Directive 2006/126/EC of the European Parliament and of the Council of 20 December 2006 on driving licences,<sup>2</sup> as amended by Commission Directive 2009/113/EC of 25 August 2009<sup>3</sup> ('Directive 2006/126'), in the light of Articles 20, 21(1) and 26 of the Charter of Fundamental Rights of the European Union.<sup>4</sup>
2. Point 6.4 of Annex III to Directive 2006/126 requires that applicants for a category C1 or category C1E driving licence have a visual acuity, after correction, of at least 0.8 in the better eye and at least 0.1 in the worse eye. The applicant in the main proceedings was refused a driving licence for those categories on the ground that he suffers from unilateral amblyopia,<sup>5</sup> with the result that, after correction, his visual acuity in the worse eye is less than 0.1.
3. The Bayerischer Verwaltungsgerichtshof (Germany) has doubts as to whether those physical requirements are compatible with the principle of equal treatment and, more specifically, with the principle of non-discrimination on the grounds of disability and with the principle of integrating persons with disabilities.
4. In this Opinion, I shall set out my reasons for thinking that, although the situation of the applicant in the main proceedings falls within the concept of disability, point 6.4 of Annex III to Directive 2006/126 is compatible with Articles 20, 21(1) and 26 of the Charter.

1 — Original language: French.

2 — OJ 2006 L 403, p. 18, and corrigendum OJ 2009 L 19, p. 67.

3 — OJ 2009 L 223, p. 31.

4 — 'The Charter'.

5 — Unilateral amblyopia is a serious functional loss of sight in one eye, primarily affecting central vision; peripheral vision nearly always remains normal.

## I – Legal framework

### A – *European Union law*

5. Directive 2006/126 defines, inter alia, the various categories of driving licences. Article 4(4) of that directive reads as follows:

‘...

(d) Category C1:

motor vehicles other than those in categories D1 or D, the maximum authorised mass of which exceeds 3 500 kg, but does not exceed 7 500 kg, and which are designed and constructed for the carriage of no more than eight passengers in addition to the driver; motor vehicles in this category may be combined with a trailer having a maximum authorised mass not exceeding 750 kg;

(e) Category C1E:

- without prejudice to the provisions of type-approval rules for the vehicles concerned, combinations of vehicles where the tractor vehicle is in category C1 and its trailer or semi-trailer has a maximum authorised mass of over 750 kg provided that the authorised mass of the combination does not exceed 12 000 kg,
- without prejudice to the provisions of type-approval rules for the vehicles concerned, combinations of vehicles where the tractor vehicle is in category B and its trailer or semi-trailer has an authorised mass of over 3 500 kg, provided that the authorised mass of the combination does not exceed 12 000 kg,
- the minimum age for categories C1 and C1E is fixed at the age of 18 years, without prejudice to the provisions for the driving of such vehicles in Directive 2003/59/EC of the European Parliament and of the Council of 15 July 2003 on the initial qualification and periodic training of drivers of certain road vehicles for the carriage of goods or passengers [amending Council Regulation (EEC) No 3820/85 and Council Directive 91/439/EEC and repealing Council Directive 76/914/EEC] [<sup>6</sup>];

...’

6. On road safety grounds, Directive 2006/126 also lays down minimum requirements for the issue and renewal of driving licences, those requirements varying from one category of driving licence to another.

7. Article 7(1)(a) of that directive provides that driving licences are to be issued only to those applicants 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 to that directive. Article 7(3)(a) of Directive 2006/126 states that the renewal of driving licences when their administrative validity expires is to be subject to continuing compliance with the minimum standards of physical and mental fitness for driving set out in Annex III to that directive for driving licences in categories C, CE, C1, C1E, D, DE, D1 and D1E.

6 — OJ 2003 L 226, p. 4.

8. Annex III to Directive 2006/126 concerns the minimum standards of physical and mental fitness to drive a power-driven vehicle. It lays down the conditions for the issue of driving licences. To that end, it divides the categories of driving licences into two groups and the requirements to which the applicant for a driving licence is subject differ according to the group to which it belongs.

9. Thus, group 1 includes drivers of vehicles of categories A, A1, A2, AM, B, B1 and BE. Group 2 is made up of drivers of vehicles of categories C, CE, C1, C1E, D, DE, D1 and D1E.

10. With regard to the medical examinations relating to sight, Annex III to Directive 2006/126 provides as follows:

‘6. All applicants for a driving licence shall undergo an appropriate investigation to ensure that they have adequate visual acuity for driving power-driven vehicles. Where there is reason to doubt that the applicant’s vision is adequate, he/she shall be examined by a competent medical authority. At this examination attention shall be paid, in particular, to the following: visual acuity, field of vision, twilight vision, glare and contrast sensitivity, diplopia and other visual functions that can compromise safe driving.

For group 1 drivers, licensing may be considered in “exceptional cases” where the visual field standard or visual acuity standard cannot be met; in such cases the driver should undergo examination by a competent medical authority to demonstrate that there is no other impairment of visual function, including glare, contrast sensitivity and twilight vision. The driver or applicant should also be subject to a positive practical test conducted by a competent authority.

Group 1:

6.1. Applicants for a driving licence or for the renewal of such a licence shall have a binocular visual acuity, with corrective lenses if necessary, of at least 0,5 when using both eyes together.

Moreover, the horizontal visual field should be at least 120 degrees, the extension should be at least 50 degrees left and right and 20 degrees up and down. No defects should be present within a radius of the central 20 degrees.

When a progressive eye disease is detected or declared, driving licences may be issued or renewed subject to the applicant undergoing regular examination by a competent medical authority.

6.2. Applicants for a driving licence, or for the renewal of such a licence, who have total functional loss of vision in one eye or who use only one eye (e.g. in the case of diplopia) must have a visual acuity of at least 0,5, with corrective lenses if necessary. The competent medical authority must certify that this condition of monocular vision has existed for a sufficiently long time to allow adaptation and that the field of vision in this eye meets the requirement laid down in [point] 6.1.

6.3. After any recently developed diplopia or after the loss of vision in one eye, there should be an appropriate adaptation period (for example, six months), during which driving is not allowed. After this period, driving is only allowed following a favourable opinion from vision and driving experts.

Group 2:

- 6.4. Applicants for a driving licence or for the renewal of such a licence shall have a visual acuity, with corrective lenses if necessary, of at least 0,8 in the better eye and at least 0,1 in the worse eye. If corrective lenses are used to attain the values of 0,8 and 0,1, the minimum acuity (0,8 and 0,1) must be achieved either by correction by means of glasses with a power not exceeding plus eight dioptries, or with the aid of contact lenses. The correction must be well tolerated.

Moreover, the horizontal visual field with both eyes should be at least 160 degrees, the extension should be at least 70 degrees left and right and 30 degrees up and down. No defects should be present within a radius of the central 30 degrees.

Driving licences shall not be issued to or renewed for applicants or drivers suffering from impaired contrast sensitivity or from diplopia.

After a substantial loss of vision in one eye, there should be an appropriate adaptation period (for example six months) during which the subject is not allowed to drive. After this period, driving is only allowed after a favourable opinion from vision and driving experts.'

B – *German law*

11. The first sentence of Paragraph 2(2) of the Road Traffic Law (Straßenverkehrsgesetz) of 5 March 2003,<sup>7</sup> as most recently amended by Paragraph 2(118) of the Law of 22 December 2011,<sup>8</sup> provides that a driving licence must be issued for the category concerned where the applicant, inter alia, is fit to drive motor vehicles.

12. Under the first sentence of Paragraph 2(4) of the same law, any person who satisfies the physical and mental requirements for driving power-driven vehicles who has not committed any serious or repeated offences against the road traffic provisions or the provisions of criminal law is to be deemed fit to drive power-driven vehicles.

13. The specific requirements which must be satisfied in order for a person to be deemed fit to drive power-driven vehicles are laid down in the Regulation on the authorisation of persons to drive on the highway (the Regulation on driving licences) (Verordnung über die Zulassung von Personen zum Straßenverkehr (Fahrerlaubnis-Verordnung)) of 13 December 2010,<sup>9</sup> as amended by the Regulation of 26 June 2012.<sup>10</sup> Paragraph 12(1) of the FeV provides that, for the purposes of driving power-driven vehicles, the applicant's vision must satisfy the requirements laid down in Annex 6 to the FeV.

14. In that regard, point 2.2.1 of Annex 6 provides that any sight defect must be corrected, provided such correction is possible and well tolerated, so as to ensure compliance with the following minimum values of visual acuity, that is to say acuity in the better eye or binocular visual acuity of 0.8 and acuity in the worse eye of 0.5. In certain specific cases, taking into account driving experience and the use of the vehicle, the visual acuity of the worse eye may be less than 0.5 for categories C, CE, C1 and C1E, provided that it is no less than 0.1. An ophthalmological examination is necessary in such cases.

7 — BGBl. 2003 I, p. 310.

8 — BGBl. 2011 I, p. 3044.

9 — BGBl. 1998 I, p. 2214.

10 — BGBl. 2012 I, p. 1394, 'the FeV'.

15. The referring court states that the German legislature transposed the requirements of Directive 2006/126 relating to visual acuity and, in so doing, itself imposed stricter requirements as regards the visual acuity of the worse eye, in accordance with the provisions of point 5 of Annex III to that directive, allowing the minimum visual acuity of the worse eye only in certain cases and subject to restrictive substantive and procedural requirements.

16. In accordance with point 2.3 of Annex 6 to the FeV, after a recent loss of vision an appropriate period of adaptation should be observed, during which the driving of power-driven vehicles is not allowed. After that period, the driving of such vehicles is allowed only once the person concerned has undergone an ophthalmological examination and been duly advised.

17. Finally, Paragraph 74(1)(1) of the FeV provides that derogations may be introduced by the competent higher authorities of the *Land*, or by authorities appointed by those higher authorities or competent under the law of the *Land*, in certain specific cases or, in general terms, for certain specific applicants, unless the effects of those derogations are not limited to the territory of the *Land* and a uniform decision is necessary. Pursuant to point 2 of that provision, derogations may also be introduced by the Federal Ministry of Transport, Construction and Urban Development in relation to all the provisions of the FeV, where the *Land* authorities are not competent under point 1 of that provision. That ministry establishes general derogations by means of a regulation which is not subject to the approval of the Bundesrat, after consultation with the competent higher authorities of the *Länder*.

## II – The facts in the main proceedings and the question referred

18. By a decision of 28 April 2010, Mr Glatzel's driving licence was confiscated on the ground that he had driven under the influence of alcohol.

19. By a decision of 2 November 2010, the Landratsamt Schwandorf granted Mr Glatzel's application for a new driving licence for the group 1 categories as defined in Annex III to Directive 2006/126, namely categories A, A1 and BE and the national categories M, L and S, which afford the right to drive bicycles with a backup engine, light motorcycles, light motor vehicles with a maximum design speed of 45 km/h and tractors for building sites or agricultural purposes with a maximum design speed of 25 km/h and 32 km/h respectively.

20. However, by that same decision, Mr Glatzel's application for a new driving licence for categories C1 and C1E was refused, since an ophthalmological examination revealed that he was suffering from unilateral amblyopia. Although the central visual acuity in his left eye is 1.0 — that is to say, he has full visual acuity — and his binocular visual acuity is also 1.0, Mr Glatzel is able to detect only hand movements with his right eye. He therefore failed to meet the requirements laid down in German law for the issue of a category C1 or category C1E driving licence.

21. The objection lodged by Mr Glatzel against that decision was unsuccessful. He therefore brought an action before the Verwaltungsgericht Regensburg seeking the annulment in part of the decision of 2 November 2010 and the issue of a driving licence for categories C1 and C1E. That action was dismissed by a judgment of 20 June 2011, on the ground that Mr Glatzel did not have a minimum visual acuity of 0.5, which was at that time a requirement under German law.

22. Mr Glatzel appealed against that judgment before the Bayerischer Verwaltungsgerichtshof. That court commissioned an expert report from an ophthalmological service in order to establish the current status of Mr Glatzel's sight and to determine whether, and to what extent, Mr Glatzel is able to compensate for any existing deficiencies, in this case in relation to his spatial vision, and whether those abilities to compensate exist independently of his will. Furthermore, the referring court sought to ascertain, by means of another expert report, whether, from a scientific point of view, there were

proper grounds for refusing to issue a driving licence for categories C1 and C1E to persons with monocular vision for anatomical or functional reasons, even where it has been established that those persons are able to compensate sufficiently for any impairments in their vision. The Bayerischer Verwaltungsgerichtshof also wished to establish which requirements had, where appropriate, to be satisfied in order to ensure that the driving of vehicles in those categories by such persons poses no additional threat to road safety as compared with the driving of persons whose vision is in no way impaired.

23. After the submission of those reports and the hearing held before the referring court, that court ruled that Mr Glatzel's application should be granted, that is to say the administrative decisions and the judgment of the Verwaltungsgericht Regensburg should be annulled and he should be issued with a driving licence for categories C1 and C1E. In the view of the referring court, the provision of German law which precludes the issue of such a driving licence is invalid, since it is contrary to the principle of non-discrimination on the grounds of disability. However, since that provision was transposed into the German legal system in accordance with point 6.4 of Annex III to Directive 2006/126, the first question raised concerns the validity of that point.

24. The Bayerischer Verwaltungsgericht therefore decided to stay the proceedings and refer the following question to the Court for a preliminary ruling:

'Is point 6.4 of Annex III to Directive 2006/126 ... compatible with Article 20, Article 21(1) and Article 26 of the [Charter] in so far as that provision requires ? without permitting any derogation ? that applicants for Category C1 and Category C1E driving licences have a minimum visual acuity of 0.1 in their worse eye even if those persons use both eyes together and have a normal field of vision when using both eyes?'

### **III – Analysis**

25. By this reference for a preliminary ruling, the Court is asked to assess the compatibility of point 6.4 of Annex III to Directive 2006/126 with Articles 20, 21(1) and 26 of the Charter. More specifically, it is called upon to rule whether the minimum threshold of visual acuity required of an applicant for a category C1 or category C1E driving licence is valid in the light of those provisions.

26. The referring court is effectively asking whether the imposition of such a threshold on an applicant falling within group 2, as defined by the directive, is contrary to the principle of non-discrimination on the grounds of disability and, more generally, the principle of equal treatment, in so far as the directive treats group 2 applicants differently from group 1 applicants.

27. I shall examine the validity of point 6.4 of Annex III to Directive 2006/126, first, in the light of Articles 21(1) and 26 of the Charter and, secondly, in the light of Article 20 of the Charter.

#### *A – The validity of point 6.4 of Annex III to Directive 2006/126 in the light of Articles 21(1) and 26 of the Charter*

28. In order to examine the question referred to the Court for a preliminary ruling in this case, I must first of all address the application of Articles 21(1) and 26 of the Charter to the facts of the case in the main proceedings. If a situation such as that of Mr Glatzel, who suffers from a visual deficiency, does not fall within the concept of a disability, the validity of point 6.4 of Annex III to Directive 2006/126 cannot be analysed in the light of those provisions.

## 1. The concept of a disability

29. The concept of a disability is not defined in the Charter, nor is it defined in the Treaties or in secondary law. It is in the context of applying the principle of non-discrimination on the grounds of disability in employment, and more specifically in the context of Council Directive 2000/78/EC of 27 November 2000 establishing a general framework for equal treatment in employment and occupation,<sup>11</sup> that the Court has had occasion to provide a definition of that concept. Thus, further clarifying the definition which it had set out in *Chacón Navas*,<sup>12</sup> the Court recently held in *HK Danmark*<sup>13</sup> that the concept of disability must be understood as referring to a limitation which results in particular from physical, mental or psychological impairments which in interaction with various barriers may hinder the full and effective participation of the person concerned in professional life on an equal basis with other workers.<sup>14</sup>

30. In order to determine whether Mr Glatzel's situation falls within the concept of disability, I think that I must not depart from the definition provided by the Court in those judgments.

31. First of all, it must be borne in mind that, in the vast majority of cases, the purpose of an application for a category C1 or category C1E driving licence is, for the person concerned, to access the profession of lorry driver. Holding a driving licence for those categories is a prerequisite for carrying on that profession. It is, in that regard and without doubt, a condition for access to that profession for the purposes of Article 3(1)(a) of Directive 2000/78. Moreover, the same is true of the other categories of driving licence falling within group 2, which include licences to drive vehicles carrying more than eight passengers, such as coaches and public transport buses, with or without a trailer.

32. It therefore appears to me that it is in the context of possible discrimination in relation to conditions for access to employment that the Court is called upon to determine whether or not Mr Glatzel's situation falls within the concept of disability. In my view, this is also clear from the reference for a preliminary ruling, since the referring court expressly refers to the occupational integration of people with disabilities and access to the profession of lorry driver.<sup>15</sup>

33. Next, it is essential that that concept, which is a concept of EU law, is interpreted uniformly within the European Union legal order, particularly since Directive 2000/78 was adopted on the basis of Article 13 EC, on which Article 21(1) of the Charter draws directly.<sup>16</sup>

34. In the present case, I am of the opinion that Mr Glatzel's situation does indeed fall within the concept of disability.

35. It is, in my view, clear from the definition given by the Court and from that given by the United Nations<sup>17</sup> that disability must not be understood according to the degree of the deficiency at issue, but must be determined having regard to the end result occasioned by that deficiency in a given social context or environment. Accordingly, attention must be focussed on that consequence and not on the

11 — OJ 2000 L 303, p. 16.

12 — Case C-13/05 *Chacón Navas* [2006] ECR I-6467, paragraph 43.

13 — Joined Cases C-335/11 and C-337/11 *HK Danmark* [2013] ECR.

14 — Paragraph 38.

15 — See paragraphs 37 and 38 of the order for reference.

16 — See Explanations relating to the Charter of Fundamental Rights (OJ 2007 C 303, p. 17).

17 — See United Nations Convention on the Rights of Persons with Disabilities, approved on behalf of the European Community by Council Decision 2010/48/EC of 26 November 2009 (OJ 2010 L 23, p. 35), which defines, in recital (e) in its preamble, disability as '[resulting] from the interaction between persons with impairments and attitudinal and environmental barriers that hinders their full and effective participation in society on an equal basis with others'.

deficiency in itself. Where the interaction between a deficiency — or an impairment to use the term employed by the Court — and a particular environment has the effect of restricting the activity of the person concerned so that he is no longer able to participate fully and effectively in professional life on an equal basis with other workers, that person may be said to have a disability.

36. Accordingly, a deficiency or a physical, mental or psychological impairment does not necessarily constitute a disability. It all depends upon the environment in which the person concerned finds himself and the obstacles which he encounters when his deficiency comes into contact with that environment.<sup>18</sup>

37. However, taking into account Mr Glatzel's situation, that analysis leads me to consider that his deficiency indeed falls within the concept of disability.

38. Mr Glatzel suffers from unilateral amblyopia which affects the vision in his right eye. Thus, after correction, the vision in his right eye is less than 0.1 and he can detect only hand movements. The amblyopia does not necessarily impede his day-to-day life. People, like Mr Glatzel, who are born with this deficiency have learnt to compensate for the sight in the defective eye by using the other eye and are able to lead a virtually normal life in society.

39. However, the fact remains that amblyopia means that persons in a situation such as that of Mr Glatzel cannot access the profession of lorry driver, since they do not satisfy the requirements laid down for the issue of a category C1 or category C1E driving licence. In such circumstances, the deficiency does constitute a disability within the meaning of the case-law of the Court, since the interaction between that deficiency and that specific environment prevents the person concerned from participating fully and effectively in a professional activity which is, when all is said and done, not uncommon.

40. Accordingly, the situation in the main proceedings indeed falls within the concept of disability, thus triggering the application of Articles 21(1) and 26 of the Charter. It is now necessary to establish whether the imposition by the EU legislature of a minimum threshold of visual acuity for the purposes of the issue of category C1 and category C1E driving licences constitutes discrimination and whether it is contrary to the principle of integrating people with disabilities.

## 2. The infringement of Articles 21(1) and 26 of the Charter

41. It is settled case-law that the Court, when reviewing the legality of a measure, has always acknowledged that the EU legislature has broad discretion as to the nature and scope of the measures to be adopted in the fields of action of the European Union. Thus, where the European Union authorities have a broad discretion, in particular as to the assessment of highly complex scientific and technical facts in order to determine the nature and scope of the measures which they adopt, review by the European Union judicature is limited to verifying whether there has been a manifest error of appraisal or a misuse of powers, or whether those authorities have manifestly exceeded the limits of their discretion. In such a context, the European Union judicature cannot substitute its assessment of scientific and technical facts for that of the institutions on which alone the Treaty has placed that task.<sup>19</sup>

18 — Proof of this if it were needed lies in the fact that Admiral Nelson, who lost the sight in one eye at the siege of Calvi in 1794, was not prevented from continuing to lead his men or from winning the Battle of Trafalgar in 1805. Although objectively suffering from a visual deficiency, that deficiency did not constitute a disability in those circumstances.

19 — See, *inter alia*, Case C-425/08 *Enviro Tech (Europe)* [2009] ECR I-10035, paragraph 47 and the case-law cited.



42. However, the fact remains that the EU legislature is obliged to respect fundamental rights and that, in observance of the principle of proportionality, limitations on such rights may be made only if they are necessary and genuinely meet objectives of general interest recognised by the Union or the need to protect the rights and freedoms of others, as laid down in Article 52(1) of the Charter.

43. I consider that this applies in the case in the main proceedings.

44. The rules introduced by Directive 2006/126 contribute, inter alia, to improving road safety.<sup>20</sup> More specifically, on road safety grounds, the EU legislature has laid down minimum requirements for the issue of a driving licence,<sup>21</sup> requirements which are contained, inter alia, in point 6.4 of Annex III to that directive.

45. There can be no doubt that improving road safety is an objective of general interest.<sup>22</sup> Accordingly, following its third Road Safety Action Programme, in 2010 the European Commission published a communication with a view to highlighting the need to strengthen measures intended to improve road safety.<sup>23</sup> According to the latest statistics, 75 people still die on the roads every day and for every death on the European road network there are 10 serious injuries such as damage to the brain or spinal cord.<sup>24</sup>

46. Furthermore, it is indisputable that driving in general, and driving vehicles of a size such as that of a lorry in particular, requires a strong visual function, which in turn presupposes good visual acuity and an unimpaired field of vision.

47. Visual acuity is the capacity to perceive small details from afar, normally at a distance of 3 to 6 metres. It is considered the most important modality of visual function.<sup>25</sup> The field of vision, for its part, is the perception of space seen by an eye when not in motion. An unimpaired field of vision enables the detection of objects, light, colours and movements at a distance from the focal point of the eye.

48. Accordingly, it is all the more essential to have good visual function when carrying on an occupation such as that of lorry driver, which involves the driver spending the greater part of his working hours on the road network. Demands may therefore be placed on the visual function in sometimes difficult weather conditions, such as when it is raining, at night time or in thick fog. Having a visual function which allows for the best possible reflexes when faced with the unforeseen events which a driver may encounter is essential.

49. Accordingly, sight is the most important function when driving a vehicle<sup>26</sup> and the link between good vision and road safety is obvious to me.

20 — See recital 2 in the preamble to that directive.

21 — See recital 8 in the preamble to that directive.

22 — See Case C-438/08 *Commission v Portugal* [2009] ECR I-10219, paragraph 48 and the case-law cited. See also, to that effect, Case C-184/10 *Grasser* [2011] ECR I-4057, paragraph 26, and Case C-224/10 *Apelt* [2011] ECR I-9601, paragraph 47.

23 — See Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions of 20 July 2010 entitled 'Towards a European road safety area: policy orientations on road safety 2011-2020' [COM(2010) 389 final].

24 — See European Commission press release of 19 March 2013, available at the following Internet address: [http://europa.eu/rapid/press-release\\_IP-13-236\\_en.htm](http://europa.eu/rapid/press-release_IP-13-236_en.htm).

25 — See the report produced by the 'Eyesight' Working Group of May 2005, entitled 'New standards for the visual functions of drivers', available at the following Internet address: [http://ec.europa.eu/transport/road\\_safety/behavior/doc/new\\_standards\\_final\\_version\\_en.pdf](http://ec.europa.eu/transport/road_safety/behavior/doc/new_standards_final_version_en.pdf), p. 6.

26 — *Ibid.*, p. 4.

50. It is in the light of those considerations that the EU legislature was prompted to lay down minimum thresholds of visual acuity below which category C1 and category C1E driving licences may not be issued. It was in the context of Directive 91/439/EEC<sup>27</sup> that the Commission first established those minimum thresholds which had to be met by applicants for driving licences. Subsequently, since Article 8 of Directive 2006/126 allows for the adaptation of Annex III to that directive in line with scientific and technological progress, the European Union tasked a group of experts, the ‘Eyesight’ Working Group, with examining whether it was necessary to adjust those thresholds.

51. That working group was fully aware of the contribution towards integration which a driving licence may have and, with that in mind, stated at the very beginning of its report that, for that reason, the minimum requirements governing fitness should not be so strict that certain people are excluded from driving without good cause.<sup>28</sup> It was therefore necessary to find the right balance between the objective of improving road safety and the mobility of individuals.

52. After that working group had given its opinion, the EU legislature adopted Directive 2009/113 amending Directive 2006/126, in its original version, and, more specifically, Annex III to that directive. Thus, the decision was taken *inter alia* to adjust the minimum thresholds of visual acuity at which group 2 driving licences may be issued. Those thresholds were fixed, after correction, at a minimum of 0.8 in the better eye and a minimum of 0.1 in the worse eye, whereas the latter had initially been 0.5.

53. In view of the close link between visual function and safety on the road networks, there can be no doubt that the imposition of such thresholds is necessary in order to contribute to improving road safety. With regard more specifically to the case of a person such as Mr Glatzel, who suffers from unilateral amblyopia, it should be pointed out that that deficiency directly affects the visual function of the person concerned. In the present case, Mr Glatzel, who was able to detect only a hand movement with his amblyopic eye, has a visual acuity of less than 0.1 in that eye. According to the classification used by the World Health Organisation, such acuity is deemed to cause a severe visual impairment which falls under category 2, the category preceding the category which covers blindness.<sup>29</sup>

54. Although a unilateral amblyopia does not necessarily constitute a hindrance in day-to-day life, it could be regarded, in the specific context of driving, as a potential danger to the person suffering from that condition and for other road users. In its report, the ‘Eyesight’ Working Group stated that, although it is true that driving may be regarded as an activity which requires binocular vision, the fact remains that, in view of the responsibilities of drivers falling within group 2 — I would point out that such drivers operate large vehicles weighing more than 3.5 tonnes for transporting goods or vehicles carrying more than eight passengers —, such drivers must have a ‘spare eye’, that is to say an eye capable of taking in the environment on its own in the event that those drivers suddenly experience a loss of vision in the other eye. The ‘Eyesight’ Working Group therefore took the view that a minimum visual acuity of 0.1 ought to be sufficient to give the lorry or coach driver the time to react and safely bring his vehicle to a stop.<sup>30</sup>

55. The EU legislature has followed the advice of the experts and therefore requires that drivers falling within group 2 have a visual acuity, after correction, of at least 0.8 in the better eye and at least 0.1 in the worse eye.

27 — Council Directive of 29 July 1991 on driving licences (OJ 1991 L 237, p. 1).

28 — See the report by the ‘Eyesight’ Working Group, referred to above, p. 4.

29 — See the following Internet addresses: <http://apps.who.int/classifications/icd10/browse/2008/en/#/H53-H54> and <http://www.who.int/mediacentre/factsheets/fs282/en/>.

30 — See report by the ‘Eyesight’ Working Group, referred to above, p. 23.

56. The imposition of such thresholds does not appear to me to go beyond what is necessary to achieve the objective of improving road safety. First of all, prevention plays a decisive role in the area of road safety and is achieved by close examination of the physical and mental fitness of drivers of vehicles such as those in categories C1 and C1E. Minimum thresholds of visual acuity undoubtedly contribute to averting risks associated with driving. As for the fixing of those thresholds, the experts are, in my view, best placed to be able to determine whether a person has sufficient visual acuity to drive such vehicles safely. Furthermore, I would point out that Article 8 of Directive 2006/126 expressly provides that those thresholds may be amended in the light of scientific progress, as was done recently.<sup>31</sup>

57. Accordingly, having regard to the objective of improving road safety pursued by Directive 2006/126, the evidence which was available to the EU legislature and the broad discretion which it enjoys in this field, I consider that the EU legislature was legitimately able to impose those requirements and that those requirements justify a limitation of Articles 21(1) and 26 of the Charter.

58. Therefore, in the light of all the foregoing, I consider that point 6.4 of Annex III to Directive 2006/126, which lays down the requirements governing visual aptitude for the purposes of the issue of a category C1 or category C1E driving licence, is compatible with Articles 21(1) and 26 of the Charter.

*B – The validity of point 6.4 of Annex III to Directive 2006/126 in the light of Article 20 of the Charter*

59. The referring court also seeks to establish whether point 6.4 of Annex III to Directive 2006/126 is contrary to the principle of equal treatment, enshrined in Article 20 of the Charter, in so far as drivers falling within group 2 are treated differently from those falling within group 1. As far as the latter are concerned, a minimum threshold of visual acuity is required only for binocular vision. Accordingly, only applicants for Group 2 driving licences are required to have a ‘spare eye’, without any possible derogation.

60. I do not consider that that difference in treatment constitutes an infringement of the principle of equal treatment.

61. That principle requires that comparable situations must not be treated differently and that different situations must not be treated in the same way unless such treatment is objectively justified.<sup>32</sup> I consider the situation of drivers falling within group 1 and that of drivers falling within group 2 is not comparable.

62. The EU legislature took care to create two categories of drivers on the basis of the size of the vehicle, the number of passengers carried and the responsibilities which therefore result from the driving of such vehicles. Thus, it should be borne in mind that drivers falling within group 2 are called upon to drive large vehicles, such as lorries and coaches. As I previously stated in *Apelt*, that distinction and the physical and mental requirements which stem from it can be easily explained, since a coach or lorry is not driven in the same way as a car or motorcycle. Manoeuvring a coach or lorry is more difficult and the roadholding is very different. Likewise, the driver of a coach has a greater responsibility in view of the number of passengers.<sup>33</sup>

63. In addition, the difference in the situations of drivers of vehicles falling within group 1 and those falling within group 2 also lies in the fact that, as a general rule, the consequences are more serious when a lorry or a coach is involved in a road traffic accident, hence the need to apply stricter requirements for the issue of the related driving licences.

<sup>31</sup> — See point 52 of this Opinion.

<sup>32</sup> — See Joined Cases C-581/10 and C-629/10 *Nelson and Others* [2012] ECR, paragraph 33 and the case-law cited.

<sup>33</sup> — See point 39 of my Opinion in that case.

64. In addition, drivers falling within group 2 are, in most cases, professional drivers who spend a large proportion of their working hours on the road network. Vigilance as regards the physical and mental fitness of such drivers must therefore be particularly high, especially as regards the visual function, an eminently important factor when driving for extended periods of time, since long journeys will inevitably have not insignificant consequences on fatigue and, thus, on vision. Moreover, as the Council of the European Union pointed out in paragraph 29 of its observations, Member States have, pursuant to point 1.3 of Annex III to Directive 2006/126, the option to apply the same tests of physical and mental fitness to the drivers of category B vehicles who use their vehicle for professional purposes, such as taxi drivers and ambulance drivers.

65. Accordingly, since the situation of drivers falling within group 1 is not comparable to that of drivers falling within group 2, I consider that point 6.4 of Annex III to that directive is likewise compatible with Article 20 of the Charter.

#### **IV – Conclusion**

66. In the light of all of the foregoing, I suggest that the Court answer the question referred by the Bayerischer Verwaltungsgerichtshof as follows:

Point 6.4 of Annex III to Directive 2006/126/EC of the European Parliament and of the Council of 20 December 2006 on driving licences, as amended by Commission Directive 2009/113/EC of 25 August 2009, is compatible with Articles 20, 21(1) and 26 of the Charter of Fundamental Rights of the European Union.