Reports of Cases

OPINION OF ADVOCATE GENERAL
BOT
delivered on 4 September 2014[1]

Case C-260/13

Sevda Aykul
v
Land Baden-Württemberg

(Request for a preliminary ruling from the Verwaltungsgericht Sigmaringen (Germany))

(Reference for a preliminary ruling — Directives 91/439/EEC and 2006/126/EC — Driving licence — Article 8(2) of Directive 91/439 and the second subparagraph of Article 11(4) of Directive 2006/126 — Refusal of a Member State to recognise, in the case of a person having driven in its territory under the influence of narcotic substances, the validity of a driving licence issued by another Member State — Wrongful conduct by the holder of the driving licence after the issue of that licence — Withdrawal of the driving licence — Procedure for verification of fitness — Competent authorities — Improvement of road safety)

1. The request for a preliminary ruling submitted to the Court concerns the interpretation of provisions of Council Directive 91/439/EEC of 29 July 1991 on driving licences,[2] and of Directive 2006/126/EC of the European Parliament and of the Council of 20 December 2006,[3] which replaced it.

2. More specifically, the Court is requested to rule on whether a Member State, in whose territory the holder of a driving licence issued by another Member State is staying temporarily, can refuse to recognise the validity of that licence following unlawful conduct by the holder — in the present case, driving under the influence of narcotic substances — which took place in its territory after that driving licence was issued.

3. This case differs from other cases the Court has previously dealt with concerning the frequently litigated matter of driving licences,[4] as, in those cases, the issue in question was the possibility of using in one Member State, after the withdrawal or suspension of a driving licence in that Member State, a driving licence obtained in another Member State.

4. The particularity of this case is also due to the fact that, pursuant to the national law of the Member State in whose territory the offence was committed, in this case the Federal Republic of Germany, the driving licence was withdrawn within that territory, as the person concerned was no longer fit to drive.

1 — Original language: French.

2 — OJ 1991 L 237, p. 1. Directive as amended by Commission Directive 2009/112/EC of 25 August 2009 (OJ 2009 L 223, p. 26, 'Directive 91/439').

3 — OJ 2006 L 403, p. 18.

4 — See, inter alia, judgments in *Kapper*, C-476/01, EU:C:2004:261; *Wiedemann and Funk*, C-329/06 and C-343/06, EU:C:2008:366; *Weber*, C-1/07, EU:C:2008:640; *Grasser*, C-184/10, EU:C:2011:324; *Akyüz*, C-467/10, EU:C:2012:112; and *Hofmann*, C-419/10, EU:C:2012:240.

5. The assessment of fitness is not therefore being challenged at the time when the driving licence is issued, but at a later stage, following unlawful conduct by the holder of that licence. The question that arises is which authorities are competent to verify whether the licence holder is again fit to drive in the territory of the Member State where the offence was committed.

6. In the course of my assessment, I shall first identify the provisions of EU law which apply to this case and reformulate the questions referred by the Verwaltungsgericht Sigmaringen (Administrative Court of Sigmaringen, Germany).

7. After examining those questions, I shall propose that the Court reply that the second subparagraph of Article 11(4) of Directive 2006/126 requires a Member State to refuse to recognise the validity of a driving licence issued by another Member State when, following a road traffic offence of a criminal nature committed in the territory of the first Member State after the driving licence was issued, the licence has been withdrawn from the holder within that territory because he was no longer fit to drive and posed a danger to road safety. The holder of the driving licence will again be fit to drive in that territory when the conditions set out in the law of the Member State where the offence was committed are satisfied, in so far as the national rules are not intended to impose conditions that are not required by Directive 2006/126 in the case of the issue of that licence, or to refuse recognition of the validity of the driving licence indefinitely.

I – **Legal framework**

A – *EU law*

1. Directive 91/439

8. With the aim of facilitating the movement of persons within the European Community or their establishment in a Member State other than that in which they obtained their driving licence, Directive 91/439 established the principle of mutual recognition of driving licences. [5]

9. The first recital in the preamble to that directive states:

‘Whereas, 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.’

10. By virtue of the fourth recital in the preamble to Directive 91/439, ‘on road safety grounds, the minimum requirements for the issue of a driving licence should be laid down’.

11. The tenth recital in the preamble to Directive 91/439 states:

‘Whereas, in addition, for reasons connected with road safety and traffic, Member States should be able to apply their national provisions on the withdrawal, suspension and cancellation of driving licences to all licence holders having acquired normal residence [6] in their territory.’

5 — See Article 1(2) of that directive.

6 — Normal residence is defined in the first paragraph of Article 9 of the directive 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 ties, because of personal ties which show close links between that person and the place where he is living’.

12. Article 7(4) of that directive provides:

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

13. Pursuant to Article 8(2) and the first subparagraph of Article 8(4) of Directive 91/439:

‘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.’

2. Directive 2006/126

14. Directive 2006/126 recasts Directive 91/439, which was amended on numerous occasions.[7]

15. According to recital 2 in the preamble to 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. …’

16. Pursuant to recital 8 in the preamble to that directive, ‘[o]n road safety grounds, the minimum requirements for the issue of a driving licence should be laid down’.

17. Recital 15 in the preamble to the 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 [8] in their territory.’

18. Under Article 2(1) of Directive 2006/126, ‘[d]riving licences issued by Member States shall be mutually recognised’.

19. Article 7(1)(a) 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.’

7 — See recital 1 in the preamble to Directive 2006/126.

8 — The definition of normal residence set out in the first paragraph of Article 12 of Directive 2006/126 is identical to that contained in the first paragraph of Article 9 of Directive 91/439.

20. Article 11(2) and (4) of Directive 2006/126 states:

‘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 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.

…’

21. Article 16(1) and (2) of Directive 2006/126 provides:

‘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 measures as from 19 January 2013.’

22. The first paragraph of Article 17 of Directive 2006/126 is worded as follows:

‘Directive 91/439… 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.’

23. Article 18 of Directive 2006/126 states:

‘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.’

B – *German legislation*

24. Paragraph 2 of the Law on road traffic (Straβenverkehrsgesetz), in the version applicable to the main proceedings,[9] provides:

‘(1) Any person driving a motor vehicle on the public highway must have the authorisation of the competent authority (driving licence authority) to do so (authorisation to drive) …

…

9 — BGBl. 2003 I, p. 310 (‘the StVG’).

(4) Where a person satisfies the necessary physical and mental requirements and has not committed any serious or repeated contraventions of road traffic legislation or criminal law he shall be deemed to be fit to drive motor vehicles. …

…

(11) Pursuant to more detailed provisions laid down by regulation …, a foreign driving licence shall also entitle the holder to drive motor vehicles in the national territory. …'

25. Paragraph 3(1) and (2) of the StVG, entitled 'Withdrawal of driving licences', states:

'(1) If a person proves to be unfit to drive or incapable of driving motor vehicles, the driving licence authority must withdraw his driving licence. In the case of a foreign driving licence, withdrawal — even if it is made pursuant to other provisions — shall have the effect of a refusal to recognise the right to use that driving licence in the national territory. …

(2) Withdrawal terminates the authorisation to drive. In the case of a foreign driving licence, withdrawal terminates the right to drive motor vehicles in the national territory. After withdrawal, the driving licence must be surrendered to the driving licence authority or it must be submitted when the decision is registered. The first, second and third sentences hereof also apply when the driving licence authority withdraws the driving licence on the basis of other provisions.'

26. Paragraph 29(1) of the StVG, entitled 'Deadlines for removal', provides:

'Entries made in the register shall be removed upon expiry of the [following periods]:

1. two years and six months in the case of decisions on an administrative offence

(a) which … incurs one point as an administrative offence affecting road safety or as a comparable administrative offence, or

(b) in so far as the case does not fall under 1(a) or 2(b), and the decision ordered a driving ban,

2. five years

(a) in the case of decisions on a criminal offence ("Straftat"), subject to point 3(a),

(b) in the case of decisions on an administrative offence which … incurs two points as an administrative offence affecting road safety or as a comparable administrative offence,

…

3. ten years

(a) in the case of decisions on a criminal offence withdrawing the driving licence or ordering an individual ban,

…'

27. Paragraph 11(1) of the Regulation on the authorisation of persons to drive on the highway (the Regulation on driving licences) (Verordnung über die Zulassung von Personen zum Straβenverkehr (Fahrerlaubnis-Verordnung)) of 18 August 1998,[10] in the version applicable to the main proceedings, provides:

'Applicants for authorisation to drive must satisfy the necessary physical and mental requirements. Those requirements are not satisfied, inter alia, in the case of a sickness or deficiency referred to in Annex 4 or in Annex 5 which precludes fitness to drive motor vehicles or entails only limited fitness. Furthermore, such applicants must not have committed any serious or repeated contraventions of road traffic legislation or criminal law, so that fitness to drive is therefore precluded.'

28. Annex 4 to Paragraph 11 of the FeV states that the consumption of cannabis is one of the common sicknesses and deficiencies which may affect or preclude in the long term a person's fitness to drive motor vehicles. A person who regularly consumes cannabis is considered to be unfit to drive, while a person who occasionally consumes cannabis is considered to be fit to drive provided, however, that he dissociates consumption from driving and that there is no additional consumption of alcohol or other psychoactive substances, no change in personality and no loss of control.

29. Paragraph 29 of the FeV, entitled 'Foreign driving licences', is worded as follows:

'(1) Holders of a foreign driving licence may, to the extent permitted by their licence, drive motor vehicles in the national territory when they are not normally resident there within the meaning of Paragraph 7.

…

(3) Authorisation under subparagraph 1 shall not apply to foreign driving licence holders,

…

3. whose authorisation to drive in the national territory has been provisionally or definitively withdrawn by a court, or has been withdrawn by an immediately enforceable or definitive decision of an administrative authority …

(4) Following a decision referred to in subparagraph 3, points 3 and 4, the right to use a foreign driving licence in the national territory shall be granted upon application, if the grounds for withdrawal no longer exist.'

30. Paragraph 46 of the FeV, entitled 'Withdrawal, restriction, conditions', provides:

'(1) If the holder of a driving licence proves to be unfit to drive motor vehicles, the driving licence authority must withdraw his licence. The foregoing applies, in particular, in the case of a sickness or deficiency referred to in Annexes 4, 5 and 6, or where serious or repeated contraventions of road traffic legislation or criminal law have been committed and fitness to drive motor vehicles is thereby precluded. …

(5) In the case of a foreign driving licence, withdrawal shall have the effect of a refusal to recognise the right to use that driving licence in the national territory.

(6) Withdrawal terminates the authorisation to drive. In the case of a foreign driving licence, withdrawal terminates the right to drive motor vehicles in the national territory.'

10 — BGBl. 1998 I, p. 2214, 'the FeV'.

31. Paragraph 69 of the Criminal Code (Strafgesetzbuch) provides:

‘(1) If a person is convicted of an unlawful act committed while driving a motor vehicle or in breach of the duties incumbent on drivers of motor vehicles, or is not convicted solely because it was proved or could not be excluded that he enjoyed criminal immunity, the court shall withdraw his driving licence if it is apparent from the act that he is unfit to drive motor vehicles. …

(2) If, in the cases referred to in subparagraph 1, the unlawful act is an offence

…

2. of driving under the influence of alcohol (Paragraph 316),

…

4. of complete inebriation (Paragraph 323a) involving one of the acts referred to in points 1 to 3,

the offender must, as a general rule, be considered to be unfit to drive motor vehicles. …’

32. Paragraph 69b of the Criminal Code is worded as follows:

‘Effect of withdrawal in the case of foreign driving licences

(1) If the offender is authorised to drive in the national territory on the basis of a driving licence issued abroad, without any driving licence having been issued to him by a German authority, the withdrawal of the driving licence shall have the effect of a refusal to recognise the right to use that licence in the national territory. The right to drive motor vehicles in the national territory ceases on the date on which the decision acquires the authority of *res judicata*. For the duration of the ban, the right to use the foreign driving licence may not be reinstated nor may a national driving licence be issued.

(2) If the foreign driving licence was issued by an authority of a Member State of the European Union or by another State party to the Treaty on the European Economic Area and the holder is normally resident in the national territory, the driving licence shall be confiscated by the judgment and returned to the issuing authority. In all other cases, the withdrawal of and the ban on using the driving licence shall be endorsed on the foreign driving licence.’

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

33. Ms Aykul, an Austrian national, was born in 1980 and has had her normal residence in Austria since birth. On 19 October 2007, the Bezirkshauptmannschaft Bregenz (administrative authority of the district of Bregenz, Austria) issued her with an Austrian driving licence.

34. On 11 May 2012, she was stopped by the police in Leutkirch (Germany). Since Ms Aykul showed signs of being under the influence of drugs, a urine test was carried out which indicated that she had consumed cannabis. Following that test, a blood sample was ordered and taken on the same day. The medical report stated that Ms Aykul did not appear to be noticeably under the influence of drugs. According to the toxico-legal test carried out by the Enders laboratory in Stuttgart (Germany) on 18 May 2012, the blood sample analysis indicated the presence of tetrahydrocannabinol (‘THC’) in the amount of 18.8 ng/ml and THC-COOH in the amount of 47.4 ng/ml.

35. On 4 July 2012, the Public Prosecutor’s Office of Ravensburg (Germany) closed the criminal investigation proceedings without taking any further action.

36. By a decision imposing a fine, issued by the town of Leutkirch on 18 July 2012, Ms Aykul was fined EUR 590.80 for driving a vehicle under the influence of the narcotic substance THC and banned from driving for one month.

37. By decision of 17 September 2012, the Landratsamt Ravensburg (Germany) withdrew Ms Aykul's Austrian driving licence within Germany and ordered the immediate enforcement of that measure on the ground that she was not fit to drive motor vehicles. The values recorded in the blood sample analysis demonstrated that Ms Aykul consumed cannabis at least occasionally, and that she had driven a vehicle under the influence of THC. She was not able to dissociate her drug consumption from the driving of motor vehicles. In the annex to the decision of 17 September 2012, Ms Aykul was notified that she could apply for reinstatement of the authorisation to drive motor vehicles in Germany on the basis of her Austrian licence. Ms Aykul could only be found fit to drive following the submission by her of a favourable report drawn up by a driving fitness test centre with official recognition in Germany, which is, as a general rule, conditional on proof of one year's abstinence.

38. The referring court states that there are three different levels of response to road traffic offences and signs of unfitness to drive set out in German law: criminal law, legislation on administrative offences and driving licence legislation.

39. The case of Ms Aykul is consistent with the practice under driving licence legislation, that is police law, the aim of which is to combat dangers to road safety. The referring court points out that national driving licence authorities and police authorities proceed on the assumption that the German authorities are competent to withdraw foreign driving licences when, in the case of a driving offence committed in Germany, there are signs of unfitness to drive.

40. On 19 October 2012, Ms Aykul filed a complaint and lodged an application for interim relief before the Verwaltungsgericht Sigmaringen on the ground that the German authorities were not competent to verify her fitness to drive.

41. The Bezirkshauptmannschaft Bregenz, having been informed of the case by the Landratsamt Ravensburg, stated that the conditions governing the taking of action by the Austrian authorities were not satisfied under Austrian road traffic legislation.

42. By decision of 15 November 2012, the Landratsamt Ravensburg annulled the immediate enforcement of its decision of 17 September 2012. Following that annulment, the Verwaltungsgericht Sigmaringen disposed of the interim measures proceedings by order of 29 September 2012.

43. The Regierungspräsidium Tübingen (Germany) dismissed Ms Aykul's complaint by decision of 20 December 2012, pointing out that the withdrawal of the Austrian driving licence is a subsequent measure covered by Article 8(4) of Directive 91/439, which was challenged by Ms Aykul before the referring court.

44. In reply to the request dated 13 March 2013 from the Verwaltungsgericht Sigmaringen, the Bezirkshauptmannschaft Bregenz again stated that the conditions governing the taking of action by the Austrian authorities under Austrian road traffic legislation were not satisfied. It mentioned that the Austrian authorities still considered Ms Aykul to be fit to drive and that she therefore retained her Austrian driving licence.

45. The Verwaltungsgericht Sigmaringen, being in doubt as to the conformity of German law with the obligation of mutual recognition of driving licences issued by Member States, decided to stay proceedings and refer the following questions to the Court for a preliminary ruling:

'(1) Does the obligation concerning the mutual recognition of driving licences issued by Member States which is laid down in Article 2(1) of Directive 2006/126 preclude national legislation of the Federal Republic of Germany under which the right to use a foreign driving licence in Germany must be revoked *ex post facto* by the administrative authorities if the holder of the foreign driving licence drives a motor vehicle on that licence in Germany while under the influence of illegal drugs and thereafter under the relevant German provisions is no longer fit to drive?

(2) If the answer to question 1 is in the affirmative, is this also the case where the issuing State is aware of the person in question driving while under the influence of drugs but takes no action and the risk represented by the holder of the foreign driving licence therefore persists?

(3) If the answer to question 1 is in the negative, can the Federal Republic of Germany make reinstatement of the right to use a foreign driving licence in Germany subject to compliance with the national conditions applicable to such reinstatement?

(4) (a) Can the reservation with respect to observance of the principle of territoriality of criminal and police laws laid down in Article 11(2) of Directive 2006/126 justify action under its driving licence legislation by a Member State other than the issuing State? For example, does that reservation allow the recognition to use a foreign driving licence in Germany to be revoked *ex post facto* by means of a preventive measure under criminal law?

(b) If the answer to question 4(a) is in the affirmative, does the competence to reinstate the right to use the foreign driving licence in Germany, taking into account the obligation of recognition, lie with the Member State which imposed the preventive measure or with the issuing State?'

III – **Assessment**

A – *Preliminary considerations*

1. Applicable EU law *ratione temporis*

46. Both the order for reference and the written observations submitted to the Court cite the provisions of Directive 91/439 and Directive 2006/126.

47. It should be noted that Article 11(2) of Directive 2006/126, which the referring court mentioned in its questions, had not yet come into force when the events giving rise to the dispute in the main proceedings took place.

48. Those events occurred on 11 May 2012, when Ms Aykul was stopped by the police, and on 17 September 2012, when the Landratsamt Ravensburg decided to withdraw her Austrian driving licence.

49. By virtue of the first paragraph of Article 17 of Directive 2006/126, Directive 91/439 was repealed with effect from 19 January 2013. In accordance with the second paragraph of Article 18 of Directive 2006/126, a number of provisions of that directive applied from 19 January 2009. That is the case, in particular, as regards Article 2(1) and Article 11(4), the latter having replaced Article 8(4) of Directive 91/439 mentioned in the order for reference. Article 11(2) of Directive 2006/126 was not one of the provisions that applied from 19 January 2009. Article 8(2) of Directive 91/439 therefore continued to apply.

50. Furthermore, the Court has made it clear that although Article 2(1) of Directive 2006/126 provides for the mutual recognition of driving licences issued by Member States, the second subparagraph of Article 11(4) of that directive provides that a Member State is to 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, irrespective of whether or not the licence was issued before the date on which that provision became applicable. [11]

51. In accordance with settled case-law that is based on the need to give a helpful answer to the referring court, [12] the questions should be reformulated in order to interpret the provisions of EU law which applied when the events giving rise to the dispute in the main proceedings took place: in the present case, Article 8(2) of Directive 91/439, the wording of which, after all, is essentially the same as that of Article 11(2) of Directive 2006/126 referred to by the national court.

52. In those circumstances, the questions referred by the national court must be examined in the light of both Articles 2(1) and 11(4) of Directive 2006/126 and Article 8(2) of Directive 91/439.

2. Treatment of the questions referred for a preliminary ruling

53. I think that the questions referred to the Court should be taken together.

54. Indeed, the answer to the questions concerning the principle of mutual recognition of driving licences, the exceptions to that principle and the extent of those exceptions (questions 1 and 2, as well as question 4(a)) will provide the answer to the question as to which authorities are competent to decide whether the licence holder is again fit to drive in the territory of the Member State where the offence was committed.

B – *The questions*

55. From the questions referred by the Verwaltungsgericht, my understanding is that the Court is asked:

— whether a Member State, in whose territory the holder of a driving licence issued by another Member State is staying temporarily, can refuse to recognise the validity of that licence following unlawful conduct by the holder — in the present case, driving under the influence of narcotic substances — which was penalised in that territory in accordance with national law after the driving licence was issued, and

— whether that same national law is competent, to the exclusion of the law of the issuing Member State, to determine the conditions which the holder of the driving licence must satisfy in order to recover the right to drive in the territory of the Member State where the offence was committed.

11 — Judgment in *Akyüz*, C-467/10, EU:C:2012:112, paragraph 32.

12 — See judgments in *Derudder*, C-290/01, EU:C:2004:120, paragraphs 37 and 38, and *Banco Bilbao Vizcaya Argentaria*, C-157/10, EU:C:2011:813, paragraphs 17 to 21.

56. It should be noted, as a preliminary point, that this case does not involve any challenge, in the light of Article 7(1)(b) of Directive 91/439 and Article 7(1)(a) of Directive 2006/126, to the conditions for the 'issue' of Ms Aykul's driving licence.

57. As the Polish Government correctly points out, the subject-matter of the dispute involves a decision to withdraw a driving licence on the basis of the conduct of the applicant in the main proceedings 'after' the issue of that licence, such conduct having been categorised by the German authorities as a danger to road safety. Under no circumstances does this amount to a refusal to observe the assessment of driving fitness made, in accordance with those provisions, by the issuing Member State 'when the driving licence was issued'. [13]

58. In this respect, the Court has repeatedly held that '[t]he possession of a driving licence issued by one Member State has to be regarded as constituting proof that, *on the day that licence was issued*, its holder fulfilled [the minimum] conditions [imposed by EU law]'. [14]

59. In the present case, the Federal Republic of Germany calls in question the conditions for the possession of Ms Aykul's driving licence not on the day the licence was issued, but following her conduct in its territory at a later point in time.

60. After driving a motor vehicle in Germany under the influence of narcotic substances, Ms Aykul had her Austrian driving licence withdrawn. The effect of that penalty was to refuse her the right to use that licence in Germany. Ms Aykul can therefore still drive in Member States other than the Federal Republic of Germany where the offence was committed.

61. Accordingly, the problem is linked to the imposition of that penalty, the effect of which is that the German authorities refuse to recognise Ms Aykul's right to drive in their territory, as she is no longer fit to drive following her unlawful conduct.

62. Put another way, is such a refusal to recognise the validity of the foreign driving licence allowed under the permitted exceptions to the principle of mutual recognition of driving licences laid down in Article 2(1) of Directive 2006/126?

63. According to settled case-law, in the procedure laid down by Article 267 TFEU providing for cooperation between national courts and the Court of Justice, it is for the latter to provide the national court with an answer which will be of use to it and enable it to determine the case before it. On this view, the Court may have to reformulate the questions referred to it [15] in order to interpret all of the provisions of EU law which are required by the national court to give judgment.

64. To that end, the Court may extract from all the information provided by the national court, in particular from the grounds of the decision to make the reference, the legislation and the principles of EU law that require interpretation in view of the subject-matter of the dispute in the main proceedings. [16]

65. In my opinion, Article 8(2) of Directive 91/439 — on which the referring court relies in its questions — does not apply in the present case. By contrast, it is in the light of the second subparagraph of Article 11(4) of Directive 2006/126 that the referring court should be given a helpful answer.

13 — See paragraphs 10 and 11 of the written observations of the Polish Government.

14 — Emphasis added. See, inter alia, judgments in *Schwarz*, C-321/07, EU:C:2009:104, paragraph 77; *Grasser*, C-184/10, EU:C:2011:324, paragraph 21; and *Hofmann*, C-419/10, EU:C:2012:240, paragraph 46.

15 — See judgment in *Le Rayon d'Or*, C-151/13, EU:C:2014:185, paragraph 25 and the case-law cited.

16 — Ibid., paragraph 26 and the case-law referred to.

1. Article 8(2) of Directive 91/439 does not apply

66. It is important to recall that the system put in place by Directive 91/439 for the issue of driving licences is a system of territorial competence. The issuing of driving licences is the responsibility of the Member State with territorial competence by virtue of the place of the driver's normal residence. When issuing such licences, that Member State must comply with the 'minimum' requirements imposed by the directive, conditions which are obviously necessary to substantiate the mutual recognition of driving licences.

67. Following the issue of those licences, and as a result of persons exercising their right to free movement, two types of situation may arise.

68. The first situation is where the holder of the driving licence changes his normal residence. In those circumstances, the new Member State of residence may, by virtue of the territorial competence thereby transferred to it, in accordance with its criminal and police laws, impose its national provisions on the restriction, suspension, withdrawal or cancellation of the right to drive and, where necessary, exchange that licence.

69. That is the situation which was governed, at the material time, by Article 8(2) of Directive 91/439, which provides that '[s]ubject 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'.

70. That provision must be read in conjunction with the first and tenth recitals in the preamble to Directive 91/439, which state that, for the purpose of facilitating 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 driving licence mutually recognised by the Member States, but that, for reasons connected with road safety and traffic, Member States should be able to apply their national provisions on the withdrawal, suspension and cancellation of driving licences to all licence holders 'having acquired normal residence in their territory'.

71. It follows from the wording of Article 8(2) of Directive 91/439, read in conjunction with the first and tenth recitals in the preamble thereto, that it governs the situation where the holder of a driving licence resides in a Member State other than the Member State where the licence was issued. If that person commits an offence in the territory of the Member State of residence, Article 8(2) of Directive 91/439 allows that Member State to apply its national provisions on the restriction, suspension, withdrawal or cancellation of the right to drive granted by the other Member State. [17]

72. It is therefore obvious that the provisions of Article 8(2) of Directive 91/439 and, henceforth, those of Article 11(2) of Directive 2006/126, apply only where there has been a change of normal residence, which would be the case if Ms Aykul's place of normal residence were Germany. That is not the situation here, as Ms Aykul normally resides in Austria.

73. The second situation which may arise is where the holder of the driving licence is only temporarily staying in the territory of another Member State. In my view, that situation is governed by the second subparagraph of Article 11(4) of Directive 2006/126.

17 — See paragraph 3 of the observations of the Italian Government.

2. The second subparagraph of Article 11(4) of Directive 2006/126 applies

74. The second subparagraph of Article 11(4) applies not only *ratione temporis*, as stated above, but also *ratione materiae*.

75. That provision is worded as follows:

'*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 [18].'

76. In my opinion, that provision regulates the situation arising in the present case, where the penalty applies pursuant to the criminal and police laws of a Member State which is the Member State where the offence was committed, without that State being the Member State which issued the driving licence or the new Member State of normal residence. [19]

77. During the hearing, the Commission took a 'historical' approach to the interpretation of the second subparagraph of Article 11(4) of Directive 2006/126, according to which since Article 8(4) of Directive 91/439 refers to Article 8(2) thereof, the Member State concerned can only be the Member State of normal residence. According to the Commission, the omission of the reference to the Member State of normal residence in that paragraph 2 is simply an error by the EU legislature which should be corrected.

78. I cannot agree with that interpretation.

79. It seems to me that the second subparagraph of Article 11(4) of Directive 2006/126 applies independently, as regards both paragraph 2 of that article and Article 8(2) of Directive 91/439, which is identically worded and which applied at the time of the facts in the main proceedings. On the basis of my analysis, that independence precludes the interpretation that it applies only when there is a change of normal residence. A number of arguments can be put forward in support of this view.

80. First of all, I note that the heading of Article 11 of Directive 2006/126 states that it relates to 'various' provisions, which, by definition, suggests that those provisions are not necessarily interlinked.

81. Secondly, the EU legislature separated paragraph 4 of Article 11 from paragraph 2 thereof, as the former came into force four years before the latter, which hardly suggests that the constituent parts of Article 11 are indissociable.

82. Lastly, and above all, I note that the various provisions of Article 11(4) govern situations which are clearly different. Thus, the first and last subparagraphs apply when the Member State concerned takes action as an issuing Member State. [20] The second subparagraph of Article 11(4) regulates an entirely different situation, namely when a Member State applies — to a licence issued by the issuing Member State — restrictions resulting from the application of its binding national law, criminal law or police law, which is clearly the case in the present proceedings. The meaning of the second subparagraph of Article 11(4) of Directive 2006/126 is therefore clear, without it being necessary to link it to paragraph 2 of that article.

18 — Emphasis added.

19 — The letter from the Ministry of Transport and Infrastructure of the *Land* of Baden-Württemberg explained that, unlike the wording of Article 8(2) of Directive 91/439, that of Article 11(4) of Directive 2006/126 permits non-recognition not only by the Member State of normal residence, but also by any other Member State (p. 5 of the French-language version of the order for reference).

20 — Under the first subparagraph, '[a] Member State shall refuse *to issue* a driving licence' and, under the last subparagraph, '[a] Member State may also refuse *to issue* a driving licence'.

83. The provisions of the second subparagraph of Article 11(4) of Directive 2006/126 are in themselves an illustration of the principle of territoriality, as they concern the restriction of the validity of a driving licence issued by one Member State in the territory of another Member State.

84. The uncertainty is all the less obvious here because the new wording used by the EU legislature expresses a hardened approach to which effect could not be given were Ms Aykul's proposition to be accepted. While Article 8(2) of Directive 91/439 left Member States a discretion as regards the refusal to recognise the validity of a driving licence issued by another Member State, the wording of the second subparagraph of Article 11(4) of Directive 2006/126 now requires them to refuse.

85. The tangible outcome of that hardened approach is, indeed, to limit the mutual recognition of driving licences that is consistent with the spirit of the system, since mutual recognition promotes free movement, and, by penalising recklessness and seeking to eliminate a potential source of danger, its limitation in consequence of an offence improves road safety and thus strengthens freedom of movement, which is the aim of Directive 2006/126.[21] The limitation of mutual recognition in time and space is necessary here in order to avoid producing the opposite effect from that intended by Directive 2006/126 in Article 11(4) thereof, namely increased safety through more severe penalties for dangerous conduct. Here, again, I can only point out that the early implementation of Article 11(4) of the directive demonstrates the unambiguous intention of the EU legislature.

86. What would be the practical effect of that directive if the authorities of a Member State were unable to impose penalties on Union citizens who had committed offences in their territory simply because they were 'moving' through their territory? That would be tantamount to accepting that those citizens could not be penalised, despite their posing a danger to themselves and to other road users.

87. Recognising the validity of a driving licence in the present case would be at odds with the objective of improving road safety.

88. In addition, as regards the new formulation used by the EU legislature, the Court has held that it should 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, 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.[22]

89. It has also stated that the finding that Article 8(4) of Directive 91/439 constitutes an exception to the general principle of the mutual recognition of driving licences and must therefore be strictly interpreted[23] remains valid in relation to the obligation now appearing in the second subparagraph of Article 11(4) of Directive 2006/126.[24]

21 — The European Union has had the improvement of road safety at the top of its agenda for many years and has set ambitious goals to reduce the number of accidents by 2020 (see the Communication from the Commission of 20 July 2010 to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions, entitled 'Towards a European road safety area: policy orientations on road safety 2011-2020' (COM(2010) 389 final)).

22 — See judgment in *Hofmann*, C-419/10, EU:C:2012:240, paragraph 65.

23 — Judgment in *Kapper*, C-476/01, EU:C:2004:261, paragraphs 70 and 72 and the case-law cited. See also the order in *Halbritter*, C-227/05, EU:C:2006:245, paragraph 26.

24 — See judgment in *Hofmann*, C-419/10, EU:C:2012:240, paragraph 71.

90. The Court has also clarified that the circumstances in which a driving licence may not be recognised as valid, in accordance with Article 8(2) and (4) of Directive 91/439, are not limited to cases where the holder of the licence asks to exchange it. That provision also has the aim of allowing a Member State to apply, within its territory, its national provisions concerning the withdrawal, suspension or cancellation of driving licences when the holder of a licence has, for example, committed an offence. [25]

91. It is now necessary to establish whether withdrawal, by its very nature, is covered by the second subparagraph of Article 11(4) of Directive 2006/126. Put another way, is the distinction between the criminal nature and the administrative nature of the penalty effective?

92. In the present case, the Public Prosecutor's Office of Ravensburg closed the criminal investigation proceedings without taking any further action. [26] The order for reference indicates that the withdrawal of Ms Aykul's driving licence was ordered by the Landratsamt Ravensburg, which is an administrative court, and states that that measure is based on driving licence legislation. Accordingly, when there are doubts as to a person's fitness to drive, the German legal system provides, first, for such fitness to be verified and, if it is found that the person is not or is no longer fit to drive, German law requires the driving licence authority to withdraw the driving licence. The referring court points out that there is no discretion in that regard. [27]

93. The Commission, despite referring to Article 11(2) of Directive 2006/126, [28] does not share the view that the withdrawal of a driving licence due to the holder's unfitness to drive could be regarded as a precautionary measure of a criminal nature [29] and, therefore, as falling within the scope of criminal law covered by the reservation concerning the principle of territoriality of criminal and police laws. [30]

94. I cannot agree with that opinion, which was supported by Ms Aykul during the hearing.

95. As stated above, the second subparagraph of Article 11(4) of Directive 2006/126 regulates, in my view, the situation arising in the present case, where the penalty applies pursuant to the criminal and police laws of a Member State being the Member State where the offence was committed.

96. The expressions 'criminal laws' and 'police laws' appear in Article 8(2) of Directive 91/439 in the phrase '[s]ubject to observance of the principle of territoriality of criminal and police laws'. However, as in the case of Directive 2006/126, the provisions of Directive 91/439 do not define that phrase or those expressions and the case-law contains no guidance as to how they should be interpreted.

97. The expression 'criminal law' is, in itself, sufficient. As to the expression 'police law', [31] this immediately conjures up the notion of administrative policing. Both expressions clearly refer back to the idea of public order of the State, a notion which applies subject to the State's territorial limits.

98. The commission of offences which endanger citizens due to the risk and insecurity they create undermines such public order and warrants the imposition of a penalty.

25 — See judgment in *Kapper*, C-476/01, EU:C:2004:261, paragraph 73.

26 — See p. 3 of the French-language version of the order for reference.

27 — See p. 13 of the French-language version of the order for reference.

28 — I recall that it is Article 8(2) of Directive 91/439 which applies *ratione temporis* in the present case.

29 — In this case, the referring court uses the expression 'preventive measure under criminal law'.

30 — See paragraphs 39 to 41 of the Commission's observations.

31 — In the order for reference, the national court states that driving licence legislation is 'police law' (see pp. 13 and 14 of the French-language version of the order for reference).

99. That penalty, depending on its nature and seriousness, and the organisation of the courts in the State where there may or may not be a division between administrative measures and judicial measures, can take various forms, all of them geared towards achieving the same aim, set, in this case, by Directive 2006/126.

100. Consequently, far from hinting at a difference, the use of these two expressions — 'criminal law' and 'police law' — brings in complementarity.

101. In my opinion, that complementarity is imposed by the notion of 'criminal matters', as developed by the European Court of Human Rights.

102. As I explained in my Opinion in *Commission* v *Parliament and Council*, C-43/12, EU:C:2014:298, the European Court of Human Rights took a functional approach in order to define what falls within the scope of criminal matters in connection with Article 6 of the European Convention for the Protection of Human Rights and Fundamental Freedoms, signed in Rome on 4 November 1950. I was referring to its judgment in *Öztürk v. Germany* of 21 February 1984,[32] which relates to road traffic offences. Following that approach, there is no doubt that road traffic offences are of a criminal nature in so far as they give rise in the Member States to penalties which are both punitive and deterrent. It therefore does not matter whether those penalties are part of the corpus of administrative offences or the criminal law of the Member States.[33]

103. I also think that the complementary nature of the two expressions is demonstrated by the national proceedings.

104. It was in the course of those proceedings that, based on the offence which had been committed, which was punishable both criminally and administratively, the prosecuting judicial authority made a choice — by closing the criminal proceedings — in favour of the undoubtedly quicker and cheaper route of administrative proceedings for an offence whose legal and factual simplicity clearly did not warrant the burden of conventional criminal proceedings.

105. This choice, provided by the law and made by the public prosecutor, is illustrative of the classic system which, in some Member States, is known as 'the assessment of the appropriateness of proceedings', an ambiguous expression over which I prefer 'the assessment of the proportionality of proceedings'. Regardless of its name, this technique is a classic procedural method which forms part of a comprehensive, coordinated and proportionate assessment and application of the penalty for interfering with a State's public order.

106. Applied to the case of Ms Aykul, this complementarity therefore seems to dictate the specific course of action to be taken.

107. German law, which is territorially applicable, provides in Ms Aykul's case that the commission of the offence entails the suspension of the right to drive, an immediate penalty, not only as a response to the unlawful conduct, but also as a response to the potential danger to other users caused by the fact that Ms Aykul did not dissociate the use of cannabis from the act of driving. German law also provides that, following the suspension, Ms Aykul may recover her right to drive in German territory only after successfully passing a medical test. This combination of two aspects, namely the penalty in addition to measures referred to in some legislative systems as 'preventative measures', geared towards preventing repetitions of the dangerous and unlawful situation, is widespread in modern legislative systems.

32 — Series A No 73, especially paragraphs 53 to 56.

33 — Opinion in *Commission* v *Parliament and Council*, C-43/12, EU:C:2013:534, paragraph 65.

108. Whilst — in my opinion — withdrawal is, by its very nature, covered by the second subparagraph of Article 11(4) of Directive 2006/126, it is now necessary to draw the appropriate conclusions from the application of the principle of territoriality of criminal and police laws.

3. Recognition by other Member States of the criminal decision affecting the driving licence

109. Pursuant to the principle of territoriality of criminal and police laws, a person who drives in the territory of a Member State must comply with the laws of that State.

110. As the Polish Government points out [34] and the applicant in the main proceedings acknowledges, [35] the Court has previously held that the Member State in whose territory an offence is committed has sole competence to punish that offence by ordering, as necessary, withdrawal of the offender's driving licence. [36]

111. As a result of the withdrawal of Ms Aykul's Austrian driving licence, she is no longer entitled to drive in German territory until she can prove that she is again fit to drive there. The question raised by the referring court is which authorities are competent to check such fitness to drive.

112. The Court has repeatedly held that fitness to drive is a condition for 'issue' of the driving licence which is solely for the issuing Member State to check. [37] As we have seen, in the case in the main proceedings fitness to drive is raised not when the driving licence is issued, but rather following unlawful conduct by the holder of the licence, the penalty for which produces effects only in the territory of the Member State where the offence was committed.

113. Like the Polish Government, I am of the view that as a consequence of applying the principle of territoriality of criminal and police laws, it is a matter for the authorities of the Member State where the offence was committed to establish whether the holder of the foreign driving licence is again fit to drive in its territory.

114. Allowing the issuing Member State to apply its own rules on fitness enabling the holder of the driving licence to recover his right to drive in the territory of the Member State where the offence was committed is, to my mind, inconsistent.

115. As the Polish Government correctly points out, since the loss of the right to drive arose under rules which do not apply in the issuing Member State, [38] one could scarcely expect the issuing Member State to apply a procedure for the reinstatement of that right according to its own rules of assessment. [39]

116. Accepting that the issuing Member State has exclusive competence could lead to two conflicting outcomes, namely, in a situation such as that of Ms Aykul, that State could either check for itself that the conditions imposed by the law of the place where the offence was committed are met (it is clear that such an approach goes beyond the recognition of a court decision of one Member State by another), or refuse to recognise the requirements of the law of the Member State where the offence was committed on the ground that they do not exist in the issuing Member State. It is the second position, approved by the Commission, which the Republic of Austria has adopted.

34 — See paragraph 25 of the observations of the Polish Government.

35 — See paragraph 9 of the written observations of the applicant in the main proceedings.

36 — Judgment in *Weber*, C-1/07, EU:C:2008:640, paragraph 38.

37 — Judgment in *Hofmann*, C-419/10, EU:C:2012:240, paragraph 45 and the case-law cited.

38 — The Republic of Austria would not have prosecuted and, therefore, penalised Ms Aykul if she had committed the offence in its territory (see pp. 4 to 6 of the French-language version of the order for reference).

39 — See paragraph 34 of the observations of the Polish Government.

117. The acceptance of that second approach would necessarily involve conceding that the effect of Directive 2006/126, in circumstances such as those in the main proceedings, was to harmonise the criminal law of the Member States to the benefit of the issuing Member State, but in a way that was limited to the territory of the Member State where the offence was committed. In my view, it is, at the very least, difficult to claim — and what is more, implicitly — that this is one of the major innovations ushered in by the directive.

118. By contrast, once the penalty has been imposed, the Member State where the offence was committed may not — in order to reinstate the right to drive in its territory — impose conditions which are more restrictive than those set out in Directive 2006/126 as regards the conditions to be met when a driving licence is issued. In other words, the effect of the requirement to undergo a medical test, in a case such as that of Ms Aykul, must be limited to establishing whether the offender henceforth offers the assurances required under Directive 2006/126, no more and no less. In that connection, Article 7(1)(a) of Directive 2006/126 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.

119. It is apparent from points 15 and 15.1 of Annex III to Directive 2006/126 that it is prohibited to issue or renew a driving licence in respect of a person who is dependent on drugs or who, while not dependent on them, regularly consumes or abuses them.

120. The specific aim of the procedure provided for by German law pursuant to points 15 and 15.1 of Annex III to Directive 2006/126, following the commission of an offence, is to check whether the person concerned is still under the influence of drugs and to establish that he no longer poses a danger to himself and to other road users.

121. Although the authorities of the Member State where the offence was committed are indeed competent to check that the holder of the driving licence is again fit to drive in its territory, it should, nevertheless, be verified that the withdrawal — through other possible provisions or other effects of that withdrawal, in particular as to their length — complies with the provisions of EU law. [40]

122. In this respect, the Court has previously held that Article 8(4) of Directive 91/439 may not be used by a Member State as a basis for refusing indefinitely to recognise, in relation to a person who has been subject in its territory to a measure withdrawing or cancelling a previous licence issued by that State, the validity of any licence that may subsequently, that is to say, after the period of prohibition, be issued to him by another Member State. [41]

123. In my opinion, that interpretation applies *a fortiori* in the present case where the second subparagraph of Article 11(4) of Directive 2006/126 may not be used by a Member State as a basis for refusing indefinitely to recognise the validity of a driving licence issued by another Member State, when the holder of the licence has been subject, in the territory of the first Member State, to a restrictive measure.

124. The acknowledgement 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 91/439. [42]

40 — See, to that effect, judgment in *Unamar*, C-184/12, EU:C:2013:663, paragraphs 46 and 47 and the case-law cited.

41 — See judgment in *Hofmann*, C-419/10, EU:C:2012:240, paragraph 50 and the case-law cited.

42 — See judgment in *Akyüz*, C-467/10, EU:C:2012:112, paragraph 57.

125. It is therefore necessary to examine whether the Federal Republic of Germany — by applying its own rules — is not, in actual fact, refusing indefinitely to recognise the driving licence issued by the Austrian authorities.

126. In accordance with German law, Ms Aykul was fined and had her driving licence withdrawn for one month solely in German territory, as explained above. She is able to apply for reinstatement of the authorisation to drive motor vehicles in Germany on the basis of her Austrian licence. Ms Aykul can only be found to be fit to drive motor vehicles — which suffices in order to be able to drive on the highway in Germany — once she has submitted a favourable report drawn up by a driving fitness test centre with official recognition in Germany. Such a report is, as a general rule, conditional on proof of one year's abstinence.

127. In my opinion, the aim of the applicable national provisions is to extend the temporal effects of withdrawal, but they do not indefinitely preclude recognition of the driving licence, since, as the German Government points out in its written answer to the question raised by the Court, in the absence of a favourable medical-psychological expert's report, and in so far as the driving licence in question is an EU or EEA licence, the right to use a foreign driving licence must also be recognised in cases where the entry recording a person's unfitness to drive has been removed from the driving fitness register. [43]

128. In Ms Aykul's case, according to the information provided by the German Government, the period after which the entry is to be removed should be five years, under Article 29(1)(2)(b) of the StVG, as driving under the influence of narcotic substances incurs two points as an administrative offence affecting road safety in particular, or as a comparable administrative offence. Once that period expires, Ms Aykul will be able to use her Austrian driving licence again in Germany without having to submit a favourable medical-psychological expert's report. [44]

129. The fact that reinstatement of the right to drive in German territory is conditional on a favourable medical-psychological expert's report based on a favourable report drawn up by a driving fitness test centre with official recognition in Germany may, indeed, seem restrictive. [45] I have only one reservation in relation to this point. In my view, the certificate must be issued by a test centre, or equivalent, established in the territory of a Member State and the criteria set out in Directive 2006/126 must be applied. None the less, I consider the measure to be an effective method of prevention of such a kind as to improve road safety. [46]

130. As regards the goal of improving road safety, the Commission's action plan seeks to encourage road users to improve their behaviour, in particular through better compliance with the existing legislation and by pursuing efforts to combat dangerous practices. [47]

131. The Commission has also pointed out quite how important it is to educate, train, monitor and, where appropriate, penalise road users, since they are the first link in the road safety chain. [48]

43 — See paragraph 11 of the written answer.

44 — See paragraph 13 of the written answer.

45 — Proof of one year's abstinence from drugs must be submitted with the medical-psychological expert's report. Such abstinence must be proved by medical tests based on at least four laboratory tests conducted at random intervals within a period of one year.

46 — See recital 2 in the preamble to Directive 2006/126.

47 — See p. 4 of the Communication from the Commission entitled, 'European road safety action programme — Halving the number of road accident victims in the European Union by 2010: a shared responsibility' (COM(2003) 311 final).

48 — See the Communication of the Commission cited in footnote 21 (p. 5).

132. Therefore, in my view the measure is consistent with the case-law cited above and I consider it to be sufficiently effective, proportionate and dissuasive in the light of the objective of road safety which has been at the top of the Commission's agenda for many years.[49] Indeed, the prosecution of offences cannot be effective without dissuasive penalties.

133. In any event, in order to recover the right to drive in German territory, Ms Aykul can either comply with the medical expert's report over a period of one year or wait five years for the removal from the register of the entry recording her unfitness to drive.

134. Furthermore, I note that the freedom to move and reside freely in the territory of the Member States of the European Union — which is conferred on Union citizens by Article 21 TFEU and the exercise of which Directive 2006/126 seeks to facilitate — is not obstructed in the case of Ms Aykul, as the effect of non-recognition of the validity of her Austrian driving licence is limited in time and to German territory, since she can still drive in the territory of other Member States.

135. To that extent also I consider German legislation to be covered by the second subparagraph of Article 11(4) of Directive 2006/126 and not by Article 8(2) of Directive 91/439. In my view, the first provision must be interpreted as allowing the Member State where the infringement was committed to limit the effects of the refusal to recognise the validity of the driving licence issued by another Member State to its territory, while the application of the second provision, due to the possibility of exchanging the driving licence, produces effects in all Member States.

136. In the light of all of the foregoing considerations, I consider that the Court should reply that the second subparagraph of Article 11(4) of Directive 2006/126 requires a Member State to refuse to recognise the validity of a driving licence issued by another Member State when, following a road traffic offence of a criminal nature committed in the territory of the first Member State after that driving licence was issued, the licence has been withdrawn from the holder within that territory because he was no longer fit to drive and posed a danger to road safety. The holder of the driving licence will again be fit to drive in that territory when the conditions set out in the law of the Member State where the offence was committed are satisfied, in so far as the national rules are not intended to impose conditions that are not required by Directive 2006/126 in the case of the issue of that licence, or to refuse recognition of the validity of the driving licence indefinitely.

IV – **Conclusion**

137. In view of the foregoing, I propose that the Court give the following answer to the questions referred for a preliminary ruling by the Verwaltungsgericht Sigmaringen:

The second subparagraph of Article 11(4) of Directive 2006/126/EC of the European Parliament and of the Council of 20 December 2006 on driving licences requires a Member State to refuse to recognise the validity of a driving licence issued by another Member State when, following a road traffic offence of a criminal nature committed in the territory of the first Member State after that driving licence was issued, the licence has been withdrawn from the holder within that territory because he was no longer fit to drive and posed a danger to road safety. The holder of the driving licence will again be fit to drive in that territory when the conditions set out in the law of the Member State where the offence was

49 — See the action plan cited in footnote 47, which states that '[f]ailure to comply with driving rules should be dealt with … by introducing measures to improve checks and the enforcement of effective, proportionate and dissuasive penalties at EU level' (p. 10); Council Resolution of 27 November 2003 on combating the impact of psychoactive substances use on road accidents (OJ 2004 C 97, p. 1), which underlines the importance of 'taking any appropriate measures, which may include sanctions, in respect of vehicle drivers who are under the influence of psychoactive substances, which reduce their capacity to drive' (paragraph 29); and Commission Recommendation of 6 April 2004 on enforcement in the field of road safety (OJ 2004 L 111, p. 75), recital 9 in the preamble to which provides that 'Member States should apply as a general policy that violations are followed up with effective, proportionate and dissuasive sanctions'.

committed are satisfied, in so far as the national rules are not intended to impose conditions that are not required by Directive 2006/126 in the case of the issue of that licence, or to refuse recognition of the validity of the driving licence indefinitely.