

Provisional text

JUDGMENT OF THE COURT (First Chamber)

29 April 2021 (*)

(Reference for a preliminary ruling – Transport – Driving licences – Mutual recognition – Withdrawal of the licence in the territory of a Member State other than the issuing Member State – Affixing of an endorsement to the driving licence indicating that it is not valid within that Member State)

In Case C-56/20,

REQUEST for a preliminary ruling under Article 267 TFEU from the Verwaltungsgerichtshof Baden-Württemberg (Higher Administrative Court of Baden-Württemberg, Germany), made by decision of 30 January 2020, received at the Court on 4 February 2020, in the proceedings

AR

v

Stadt Pforzheim,

THE COURT (First Chamber),

composed of J.-C. Bonichot, President of the Chamber, L. Bay Larsen, C. Toader, M. Safjan and N. Jääskinen (Rapporteur), Judges,

Advocate General: P. Pikamäe,

Registrar: A. Calot Escobar,

having regard to the written procedure,

after considering the observations submitted on behalf of:

- AR, by B. Ehrle, Rechtsanwalt,
- the Austrian Government, by A. Posch, J. Schmoll and M. Winkler-Unger, acting as Agents,
- the European Commission, by R. Pethke and N. Yerrell, acting as Agents,

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

gives the following

Judgment

- 1 This request for a preliminary ruling concerns the interpretation of Directive 2006/126/EC of the European Parliament and of the Council of 20 December 2006 on driving licences (OJ 2006 L 403, p. 18), as amended by Commission Directive 2011/94/EU of 28 November 2011 (OJ 2011 L 314, p. 31) ('Directive 2006/126').

- 2 The request has been made in proceedings between AR, an Austrian national who holds a driving licence issued in Austria, and the Stadt Pforzheim (City of Pforzheim, Germany), concerning the affixing by the German competent authorities of an endorsement to his Austrian driving licence indicating a driving ban in Germany.

Legal context

European Union law

- 3 Recital 4 of Directive 2006/126 sets out:

‘In order to prevent the single European driving licence model from becoming an additional model to the 110 already in circulation, Member States should take all necessary measures to issue this single model to all licence holders.’

- 4 Recital 16 of that directive is worded as follows:

‘The model driving licence as set out in [Council] Directive 91/439/EEC [of 29 July 1991 on driving licences (OJ 1991 L 237, p. 1)] should be replaced by a single model in the form of a plastic card. ...’

- 5 Article 1(1) of that directive provides:

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

- 6 Under Article 2 of Directive 2006/126:

‘1. Driving licences issued by Member States shall be mutually recognised.

2. When the holder of a valid national driving licence without the administrative validity period set out in Article 7(2) takes up normal residence in a Member State other than that which issued the driving licence, the host Member State may apply to the licence the administrative validity periods set out in that Article by renewing the driving licence, as from 2 years after the date on which the holder has taken up normal residence on its territory.’

- 7 Article 7 of that directive provides:

‘1. Driving licences shall be issued only to those applicants:

(a) who have passed a test of skills and behaviour and a theoretical test and who meet medical standards, in accordance with the provisions of Annexes II and III;

...

(e) who have their normal residence in the territory of the Member State issuing the licence, or can produce evidence that they have been studying there for at least six months.

...

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

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

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

...’

8 Article 11 of that directive is worded as follows:

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

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

...

4. A Member State shall refuse to issue a driving licence to an applicant whose driving licence is restricted, suspended or withdrawn in another Member State.

A Member State shall refuse to recognise the validity of any driving licence issued by another Member State to a person whose driving licence is restricted, suspended or withdrawn in the former State’s territory.

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

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

...’

9 The first paragraph of Article 12 of Directive 2006/126 provides:

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

10 Article 15 of that directive provides:

‘Member States shall assist one another in the implementation of this Directive and shall exchange information on the licences they have issued, exchanged, replaced, renewed or revoked. They shall use the EU driving licence network set up for these purposes, once this network is operational.’

11 Annex I to that directive, entitled ‘Provisions concerning the European Union model driving licence’, provides, in point 3 thereof:

‘The licence shall have two sides.

Page 1 shall contain:

- (a) the words “Driving Licence” printed in large type in the language or languages of the Member State issuing the licence;
- (b) the name of the Member State issuing the licence (optional);
- (c) the distinguishing sign of the Member State issuing the licence, printed in negative in a blue rectangle and encircled by 12 yellow stars; the distinguishing signs shall be as follows:

...

Page 2 shall contain:

- (a) ...

- 13. in implementation of section 4(a) of this Annex, a space reserved for the possible entry by the host Member State of information essential for administering the licence;
- 14. a space reserved for the possible entry by the Member State which issues the licence of information essential for administering the licence or related to road safety (optional). If the information relates to one of the headings defined in this Annex, it should be preceded by the number of the heading in question.

With the specific written agreement of the holder, information which is not related to the administration of the driving licence or road safety may also be added in this space; such addition shall not alter in any way the use of the model as a driving licence;

...’

- 12 Point 4(a) of that annex provides:

‘Where the holder of a driving licence issued by a Member State in accordance with this Annex has his normal place of residence in another Member State, that Member State may enter in the licence such information as is essential for administering it, provided that it also enters this type of information in the licences which it issues and provided that there remains enough space for the purpose.’

German law

- 13 Paragraph 3 of the Straßenverkehrsgesetz (Law on road traffic; ‘the StVG’) provides:

‘(1) If a person is unfit to drive a motor vehicle, the driving-licence authority shall withdraw his or her driving licence. In the case of a foreign driving licence, withdrawal – even if under other provisions – shall have the effect of revoking the right to use that authorisation in the national territory. ...’

(2) The right to drive expires upon withdrawal of the driving licence. In the case of a foreign driving licence, withdrawal shall entail cancellation of the right to drive motor vehicles in the national territory. After withdrawal, the driving licence must be either surrendered to the driving-licence authority or presented to it for registration of the withdrawal decision. ...’

- 14 Paragraph 46 of the Verordnung über die Zulassung von Personen zum Straßenverkehr – Fahrerlaubnis-Verordnung (Regulation on granting persons permission to drive on the road) of 13 December 2010 (BGBl. 2010 I, p. 1980), in the version applicable to the dispute in the main proceedings (‘the FeV’), provides:

‘(1) The driving licence authority shall withdraw the right to drive if it is shown that the holder of a licence is unfit to drive motor vehicles. ...’

...

(5) In the case of a foreign driving licence, withdrawal shall have the effect of a refusal to recognise the right to use that authorisation to drive 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.'

15 Paragraph 47 of the FeV is worded as follows:

'(1) Once withdrawn, national and international driving licences issued by a German authority must be surrendered without delay to the authority which adopted the decision or, where limitations or conditions apply, submitted to it so they may be registered. ...

(2) Once withdrawn or an absence of the right to drive has been established, or where limitations or conditions apply, foreign and international driving licences issued abroad must be presented without delay to the authority which adopted the decision ... Once withdrawn or an absence of the right to drive has been established, the driving licence shall record that the person concerned does not have a right to drive in Germany. In so doing, as a general rule, a red "D" crossed out by a diagonal line shall be affixed to a reserved space of the driving licence, namely, in the case of a European Union driving-licence card, under heading 13, and, for international driving licences, the form provided for that purpose shall be completed. Where restrictions or conditions apply, they shall be noted on the driving licence. The authority which adopted the decision shall inform the authority which issued the driving licence, through the Kraftfahrt-Bundesamt (Federal Office for Motor Vehicles, Germany), of the refusal to recognise the right to drive or of the establishment of an absence of the right to drive in Germany. ...'

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

16 AR is an Austrian national who, for the purposes of the first paragraph of Article 12 of Directive 2006/126, has his normal residence in Austria. On 29 August 2008, he obtained in Austria a driving licence in categories A and B.

17 By decision of 10 August 2015, the competent driving-licence authority of the City of Pforzheim revoked AR's right to drive within German territory on the ground that he had driven a vehicle in Germany under the influence of narcotic drugs on 26 June 2014. That authority also ordered him to submit his Austrian driving licence without delay so that that licence could be recorded as invalid in the Federal Republic of Germany by the affixing of a red 'D' crossed out by a diagonal line thereto. By the same decision, it ordered the immediate implementation of those measures, subject, in case of failure to comply with the requirement to submit his driving licence by 28 August 2015 at the latest, to that licence being temporarily seized, explaining that it would be returned to him after the affixing of an endorsement invalidating it within the German territory.

18 AR lodged a complaint against that decision, which was rejected, and then a judicial appeal, which was dismissed. He then brought an appeal against the judgment at first instance before the Verwaltungsgerichtshof Baden-Württemberg (Higher Administrative Court of Baden-Württemberg, Germany), challenging the decision of 10 August 2015 in so far as, first, it orders him to submit his driving licence for an endorsement to be affixed thereto which invalidates it within the German territory and, second, it makes the failure to comply with that requirement to submit that licence punishable by the temporary seizure of that licence. That decision has therefore become final in so far as it concerns the refusal to recognise, within the territory of the Federal Republic of Germany, the validity of the right to drive based on the Austrian driving licence.

19 In support of its action, AR submits, in essence, that, in accordance with Directive 2006/126, only the Member State in which the holder of that licence has his or her normal residence, within the meaning of

the first paragraph of Article 12 thereof, may issue and subsequently modify driving licences. No competence in that regard is conferred on the Member State in which the holder is temporarily staying, that Member State being unable inter alia to affix information to the driving licence, such as an endorsement indicating a driving ban. AR maintains that such competence would be contrary to principle of mutual recognition of driving licences and to the objective of that directive, which is to create a single driving-licence model in the European Union.

- 20 He also takes the view that it is apparent from the wording and context of points 3 and 4(a) of Annex I to Directive 2006/126 that only the Member State which issued the driving licence may include information in the driving licence. Similarly, the detailed provisions on the anti-forgery protective measures of driving licences in the form of a plastic card, provided for inter alia in Article 3 of and in points 1 and 2 of Annex I to that directive, exclude, taking into account their meaning and purpose, the data of the tamper-proof plastic card from being altered, by the inclusion of other data either permanently or by means of a sticker (that can be easily removed), by the Member State of temporary stay. Account should also be taken of the fact that, under that directive, heading 13 of the driving licence is reserved for entries made by the Member State which issued the licence and information included by that Member State may not be simply ‘concealed’ by other information.
- 21 AR also claims that compliance with the requirement to submit his driving licence so that an endorsement can be affixed invalidating it within the German territory would restrict his freedom of movement and may subsequently lead to considerable transparency problems in practice, for example, where, during a roadside check in another Member State, members of law enforcement would not be aware of the nature of an entry on the EU driving-licence card, which could cause confusion. Given those burdens and disadvantages, explicit provision in that regard was necessary in Directive 2006/126.
- 22 According to AR, Directive 2006/126 provides that only the competent issuing Member State or the host Member State may, by way of the mutual assistance provided for in Article 15 thereof, make such an entry in the driving licence and issue a new driving-licence document.
- 23 Moreover, the Member State of temporary stay could easily ascertain by electronic means, in the event of a roadside check in its territory, whether the person concerned has a right to drive a motor vehicle in that territory.
- 24 The City of Pforzheim, for its part, takes the view, in essence, that, in not conferring on the Member State of temporary stay the competence to affix information to a driving licence issued by another Member State after a decision refusing to recognise the validity of that licence in the territory of first Member State, Directive 2006/126 presents a regulatory gap which must be filled by applying by analogy the provisions of that directive relating to the Member State of normal residence to the Member State of temporary stay.
- 25 It considers that the interpretation adopted by the Court in the judgment of 23 April 2015, *Aykul* (C-260/13, EU:C:2015:257), according to which the Member State of temporary stay of the holder of a driving licence issued by another Member State has in certain circumstances the right to refuse to recognise the validity of that licence, may be transposed to the situation at issue in the main proceedings. Pursuant to that case-law, the Member State of temporary stay should also be entitled to take measures relating to the administration of the licence, such as affixing information to it. It is an indispensable measure, which is hugely important for the effective implementation of a decision refusing to recognise the validity of the foreign driving licence for the purposes of the second subparagraph of Article 11(4) of Directive 2006/126. The supervisory authorities should be in a position to ascertain fully and immediately, during a check, the status of the licence holder’s right to drive.
- 26 Thus, since Directive 2006/126 allows the Member State in which the holder of a driving licence issued by another Member State is resident to record, in the event of a decision refusing to recognise the validity of that licence, the endorsement corresponding to a driving ban on that licence – in the form of, for example, a sticker – that measure relating to the administration of licences should also be allowed where

the holder of the licence covered by that decision is not resident in the Member State in which he or she was subject to a check.

- 27 Furthermore, since that directive provides for the possibility for the host Member State, under heading 13 of part (a) of the third sentence of point 3 and point 4(a) of Annex I to Directive 2006/126, to alter the driving licence issued by another Member State, such an alteration, in particular by affixing a sticker, is not contrary to the anti-forgery provisions.
- 28 The City of Pforzheim notes, finally, that, since AR himself was, due to his own conduct, behind the inclusion of the endorsement depriving him of the right to drive in Germany, his claim that that endorsement has a stigmatising effect should be rejected in view of the aim of that endorsement consisting in maintaining road safety.
- 29 The referring court entertains doubts as to whether a Member State which adopted, as in the case giving rise to the judgment of 23 April 2015, *Aykul* (C-260/13, EU:C:2015:257), a decision refusing to recognise the validity of a driving licence issued in another Member State, under the second subparagraph of Article 11(4) of Directive 2006/126, on account of unlawful conduct on the part of the holder of that licence, which occurred in its territory after the issue of that licence, is also permitted to record on that same licence an endorsement indicating a prohibition on driving in its territory, where that holder has not established his or her normal residence there, within the meaning of Article 12 of that directive.
- 30 In those circumstances, the Verwaltungsgerichtshof Baden-Württemberg (Higher Administrative Court of Baden-Württemberg) decided to stay the proceedings and to refer the following question to the Court of Justice for a preliminary ruling:

‘Does EU law, in particular [Directive 2006/126], preclude provisions of national law under which, where a decision refusing to recognise the validity of a driving licence, within the meaning of the second subparagraph of Article 11(4) of Directive [2006/126], is adopted, the foreign EC card driving licence of a person who does not have normal residence in national territory must be submitted to the decision-making national authority without delay so that the latter can record in the driving licence that that person does not have a right to drive in national territory; the endorsement (indicating a ban) usually being entered on an EC card driving licence by affixing a red “D”, crossed out by a diagonal line, to space 13 (for example by means of a sticker)?’

Consideration of the question referred

- 31 By its question, the referring court asks, in essence, whether Directive 2006/126 must be interpreted as precluding a Member State which has adopted, under the second subparagraph of Article 11(4) of that directive, a decision refusing to recognise the validity of a driving licence issued by another Member State on account of unlawful conduct on the part of its holder, which occurred during a temporary stay in the territory of the first Member State after the issue of that licence, from affixing to that licence also an endorsement indicating a prohibition, for that holder, on driving in that Member State, when that holder has not established his or her normal residence, within the meaning of the first subparagraph of Article 12 of that directive, in the territory of that Member State.
- 32 In that regard, it should be recalled that, in paragraph 71 of the judgment of 23 April 2015, *Aykul* (C-260/13, EU:C:2015:257), the Court found that Article 2(1) and the second subparagraph of Article 11(4) of Directive 2006/126 were to be interpreted as meaning that a Member State in whose territory the holder of a driving licence issued by another Member State is staying temporarily is not precluded from refusing to recognise the validity of that driving licence on account of unlawful conduct on the part of its holder in the territory of the first Member State after that driving licence has been issued that results, under the national law of the first Member State, in unfitness to drive motor vehicles.

- 33 It is also apparent from paragraphs 59 and 60 of that judgment that the Member State of normal residence is entitled, under Article 11(2) of Directive 2006/126, which corresponds to Article 8(2) of Directive 91/439, which was replaced by Directive 2006/126, to take measures restricting, suspending, withdrawing or cancelling a driving licence issued by another Member State that take effect in all the Member States. By contrast, the second subparagraph of Article 11(4) of Directive 2006/126 merely allows the Member State that is not the Member State of normal residence to take measures in accordance with its national legislation and as a result of unlawful conduct in its territory by the holder of a driving licence previously obtained in another Member State, the scope of those measures being limited to that territory and the effect limited to the refusal to recognise the validity of that licence within that territory.
- 34 Accordingly, Directive 2006/126 does not preclude a Member State of temporary stay, such as the Federal Republic of Germany in the case in the main proceedings, from refusing, on the basis of national rules such as those laid down in Paragraph 3(1) of the StVG and Paragraph 46(6) of the FeV, to recognise the right to use the driving licence issued to a person by another Member State by terminating that person's right to drive motor vehicles within the national territory. At the same time, however, the Member State of temporary stay cannot affix to such a licence – the model of which, as is apparent from Article 1(1) of Directive 2006/126, read in light of recital 16 thereof, is harmonised, in the form of a plastic card, by that Directive 2006/126 – an endorsement, such as that referred to in Paragraph 47(2) of the FeV, indicating a prohibition on driving within its territory.
- 35 It must be stated that Directive 2006/126 contains detailed rules on the competence of the Member States to issue driving licences, the alterations affecting them and the entries which may be made on them.
- 36 It is apparent from those rules, however, that both the issue and the subsequent alterations to a driving licence and the entries appearing on it fall within the exclusive competence of the Member State in which the holder of that licence normally resides.
- 37 Thus, Article 2(2), Article 7(1)(e) and (3)(b), Article 11(1), (2) and (5) of Directive 2006/126, and Annex I thereto, in headings 13 and 14 of part (a) of the third sentence of point 3 thereof, as well as point 4(a) thereof, regulate in detail the situations in which that Member State is competent to issue, replace, renew, exchange or make entries to a driving licence.
- 38 While the Member State of normal residence is, as a general rule, the Member State in which the driving licence has been issued, the Member State to which the holder of a driving licence transferred his or her normal residence after the issue of his or her driving licence in a Member State may also become, as is apparent in particular from Article 11(1) of Directive 2006/126, the Member State of normal residence, within the meaning of that directive. Point 4(a) of Annex I to that directive thus allows the new Member State of normal residence to enter on the licence any information essential for administration, provided that it also enters that information on the licences which it issues and that it has the space necessary for that purpose.
- 39 On the other hand, no provision of Directive 2006/126 confers on the Member State in which the holder of a driving licence is staying temporarily any competence whatsoever to make entries on the driving licence, such as that referred to, *inter alia*, in Paragraph 47 of the FeV.
- 40 As the European Commission has stated in its written observations, there is nothing to indicate that the absence of provisions to that effect in Directive 2006/126 constitutes an unintended legislative gap on the part of the EU legislature to be filled by applying, by analogy, the provisions of that directive relating to the competences of the Member State of normal residence.
- 41 On the contrary, in the light of the detailed provisions of Directive 2006/126, it appears that formal alterations to the driving licence may be made only by the Member State of normal residence of the holder of that licence so as to ensure the uniform appearance of that document guaranteed by Directive 2006/126, as is apparent from recitals 4 and 16 thereof.

- 42 It should also be borne in mind, in that regard, that the Court has held that, although Directive 2006/126 provides only for a minimum degree of harmonisation of the national provisions relating to the conditions under which a driving licence may be issued, that directive does, however, bring about exhaustive harmonisation of documents proving the existence of a right to drive which must be recognised by the Member States pursuant to Article 2(1) thereof (judgment of 26 October 2017, *I*, C-195/16, EU:C:2017:815, paragraph 57 and the case-law cited).
- 43 It follows that those documents may be amended only in accordance with the provisions set out for that purpose by Directive 2006/126.
- 44 Furthermore, it must be pointed out that, under Article 15 of Directive 2006/126, Member States are to assist one another in the implementation of that directive and to exchange information on licences they have issued, exchanged, replaced, renewed or revoked, using the EU driving-licence network set up for those purposes once that network is operational.
- 45 The mutual assistance provided for by that provision ensures the effective implementation of a decision by which the Member State of temporary stay, under the second subparagraph of Article 11(4) of Directive 2006/126, refuses the holder of a driving licence issued by another Member State the right to drive in its territory.
- 46 In such a situation, the Member State of normal residence may, at the request of the Member State of temporary stay and in accordance with headings 13 and 14 of part (a) of the third sentence of point 3, and point 4(a), of Annex I to that directive, record on the driving licence any endorsements prohibiting driving within the territory of that latter Member State.
- 47 Moreover, it does not appear to be excluded, for the Member State of temporary stay, to ascertain, *inter alia* by electronic means, in the event of a roadside check within its territory, whether the person concerned has been subject to a measure depriving him or her of the right to drive within that territory under the second subparagraph of Article 11(4) of that directive.
- 48 In the light of all the foregoing considerations, the answer to the question referred is that Directive 2006/126 must be interpreted as precluding a Member State which has adopted, under the second subparagraph of Article 11(4) of that directive, a decision refusing to recognise the validity of a driving licence issued by another Member State on account of unlawful conduct on the part of its holder, which occurred during a temporary stay in the territory of the first Member State after the issue of that licence, from affixing to that licence also an endorsement indicating a prohibition, for that holder, on driving in that Member State, when that holder has not established his or her normal residence, within the meaning of the first subparagraph of Article 12 of that directive, in the territory of that Member State.

Costs

- 49 Since these proceedings are, for the parties to the main proceedings, a step in the action pending before the national court, the decision on costs is a matter for that court. Costs incurred in submitting observations to the Court, other than the costs of those parties, are not recoverable.

On those grounds, the Court (First Chamber) hereby rules:

Directive 2006/126/EC of the European Parliament and of the Council of 20 December 2006 on driving licences, as amended by Commission Directive 2011/94/EU of 28 November 2011, must be interpreted as precluding a Member State which has adopted, under the second subparagraph of Article 11(4) of that directive, as amended by Directive 2011/94, a decision refusing to recognise the validity of a driving licence issued by another Member State on account of unlawful conduct on the part of its holder, which occurred during a temporary stay in the territory of the first Member State after the issue of that licence, from affixing to that licence also an endorsement indicating a prohibition, for that holder, on driving in

that Member State, when that holder has not established his or her normal residence, within the meaning of the first subparagraph of Article 12 of Directive 2006/126, as amended by Directive 2011/94, in the territory of that Member State.

[Signatures]

* Language of the case: German.