

ORDER OF THE COURT (Sixth Chamber)

2 December 2010*

In Case C-334/09,

REFERENCE for a preliminary ruling under Article 234 EC from the Verwaltungsgericht Meiningen (Germany), made by decision of 12 August 2009, received at the Court on 24 August 2009, in the proceedings

Frank Scheffler

v

Landkreis Wartburgkreis,

THE COURT (Sixth Chamber),

composed of A. Arabadjiev, President of the Chamber, A. Rosas (Rapporteur), and P. Lindh, Judges,

* Language of the case: German.

Advocate General: Y. Bot,
Registrar: A. Calot Escobar,

the Court proposing to give its decision by reasoned order in accordance with the first subparagraph of Article 104(3) of its Rules of Procedure,

after hearing the Advocate General,

makes the following

Order

- ¹ This reference for a preliminary ruling concerns the interpretation of Articles 1(2) and 8(2) and (4) of Council Directive 91/439/EEC of 29 July 1991 on driving licences (OJ 1991 L 237, p. 1), as amended by Council Directive 2006/103/EC of 20 November 2006 (OJ 2006 L 363, p. 344) ('Directive 91/439').
- ² The reference has been made in proceedings between Mr Scheffler, a German national and holder of a Class B driving licence issued in Poland, and the Landkreis Wartburgkreis ('the Landkreis') concerning the latter's decision to refuse him the right to use his driving licence in the territory of the Federal Republic of Germany.

Legal context

European Union legislation

- 3 The first recital in the preamble to Directive 91/439, which repealed First Council Directive 80/1263/EEC of 4 December 1980 on the introduction of a Community driving licence (OJ 1980 L 375, p. 1) with effect from 1 July 1996, states:

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

- 4 It is stated in the fourth recital of the preamble to that directive:

‘... [O]n road safety grounds, the minimum requirements for the issue of a driving licence should be laid down.’

5 The last recital in the preamble to Directive 91/439 states:

‘... [F]or 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.’

6 Article 1 of that directive provides:

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

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

3. Where the holder of a valid national driving licence takes up normal residence in a Member State other than that which issued the licence, the host Member State may apply to the holder of the [licence] its national rules on the period of validity of the [licence], medical checks and tax arrangements and may enter on the licence any information indispensable for administration.’

7 In accordance with Article 7(1) of that directive:

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

- (a) who have passed a test of skills and behaviour and a theoretical test and who meet medical standards, in accordance with the provisions of Annexes II and III;
- (b) who have their normal residence in the territory of the Member State issuing the licence, or can produce evidence that they have been studying there for at least six months.’

8 In accordance with Article 7(5) of Directive 91/439:

‘No person may hold a driving licence from more than one Member State.’

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

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

...

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

10 The first paragraph of Article 9 of the said directive states that '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'.

11 Article 12(3) of Directive 91/439 states:

'The Member States shall assist one another in the implementation of this Directive and shall, if need be, exchange information on the licences they have registered.'

National legislation

12 The relevant national legislation consists of the Regulation on the authorisation of persons to drive on the highways (the Regulation on driving licences) (Verordnung über die Zulassung von Personen zum Straßenverkehr (Fahrerlaubnis-Verordnung)) of 18 August 1998 (BGBl. 1998 I, p. 2214), in the version stemming from the Regulation of 14 June 2006 (BGBl. 2006 I, p. 1329; 'the FeV'), and the Law on road traffic (Straßenverkehrsgesetz), in the version applicable to the case before the referring court (BGBl. 2006 I, p. 1958; 'the StVG').

The legislation on recognition of driving licences issued by other Member States

- 13 With regard to the recognition of driving licences issued by other Member States, Paragraph 28(1), (4) and (5) of the FeV provide:

‘(1) Holders of a valid [European Union] or [European Economic Area (“EEA”)] driving licence having their normal residence within the meaning of Paragraph 7(1) or (2) in Germany shall be authorised — subject to the restriction laid down in subparagraphs (2) to (4) — to drive motor vehicles in that country within the limits of the rights recognised. The conditions attached to foreign driving licences shall be observed in Germany also. The provisions of this Regulation shall apply to those licences save as otherwise provided.

...

(4) The authorisation referred to in subparagraph 1 shall not apply to holders of a [European Union] or EEA driving licence,

...

3. whose driving licence has been provisionally or definitively withdrawn in Germany by a court or been withdrawn by an immediately enforceable or final decision of an administrative authority, or who have been refused a driving licence by

a final decision or whose driving licence has not been withdrawn solely because they have renounced it in the meantime,

...

(5) The right to use a [European Union] or EEA driving licence in Germany after one of the decisions mentioned in subparagraphs 4(3) and (4) shall be granted on application when the grounds justifying the withdrawal or the prohibition on applying for a new licence no longer obtain. ...'

The legislation on withdrawal of the right to use the driving licence

¹⁴ Paragraph 3(1) and (2) of the StVG provide:

'(1) If a person is unfit to drive a motor vehicle, the driving licence authority shall withdraw his 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 the driving licence in Germany...

(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 Germany. ...'

¹⁵ Under Paragraph 46(1) of the FeV, a provision implementing Paragraph 3 of the StVG, the driving licence authority is to withdraw the right to drive if it is shown that the holder of a licence is unfit to drive motor vehicles. In accordance with Paragraph 46(5),

‘in the case of a foreign driving licence, the right to drive motor vehicles in Germany shall be cancelled.’

The rules on fitness to drive

16 With regard to fitness to drive, Paragraph 11 of the FeV, headed ‘Fitness’, provides:

‘(1) Applicants for a driving licence must satisfy the relevant physical and mental requirements. Those requirements are not satisfied inter alia in the case of sickness or disability as referred to in Annex 4 or in Annex 5, which excludes fitness [to drive motor vehicles] or limited fitness. ...

(2) Where circumstances exist which give rise to doubt as to the physical or mental fitness of an applicant for a driving licence, the competent driving licence authorities may order the applicant to produce a medical report preparatory to the decisions to be taken on the issue or extension of a driving licence or on the imposition of restrictions or conditions....

(3) Production of a report made by an officially approved centre for the testing of fitness to drive (medical-psychological report) may be ordered in order to dispel doubts as to fitness to drive for the purposes of subparagraph 2 [inter alia]

...

4. in the case of serious or repeated contraventions of the highway code or of road traffic offences or offences related to fitness to drive ...

or

5. on the new grant of a driving licence,

...

- (b) when the withdrawal of the licence was based on one of the grounds set out in subparagraph 4.

...

(8) If the person concerned refuses to be examined or if he does not within the period prescribed produce to the competent driving licence authority the medical report required by the latter, the competent authority is entitled to conclude in its decision that the person concerned is unfit to drive...'

¹⁷ Paragraph 13 of the FeV, headed 'Fitness in cases of alcohol problems,' gives the competent authorities the power to order, in certain circumstances, the production of a medical-psychological report for the purposes of inquiries preparatory to the decisions to be taken either to issue or extend a driving licence or to impose restrictions or conditions relating to the right to drive. That is, in particular, the case when,

according to medical opinion or on account of certain facts, there is evidence of abuse of alcohol or when road traffic offences have on a number of occasions been committed under the influence of alcohol.

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

- 18 A number of offences have been registered against Mr Scheffler in the central traffic register, including the offence committed on 11 March 2000 of driving without a licence and in a drunken state with a blood alcohol level of 1.94‰.
- 19 Having thereby accumulated the maximum of 18 points permitted on all driving licences in Germany, on 29 February 2000 Mr Scheffler surrendered his German driving licence, which had been issued on 28 February 1986.
- 20 On 5 August 2004 Mr Scheffler submitted an application for a new driving licence, which was rejected by a decision of 17 February 2005 because he had not complied with the order of the Landkreis that he submit a medical-psychological report on his fitness to drive.
- 21 On 15 October 2004 Mr Scheffler obtained a Polish driving licence, which states that he is resident in Poland. His passport contains a confirmation of residence in Poland for a period of six months.

- 22 The Landkreis became aware that a Polish driving licence had been issued to Mr Scheffler in the course of a road check in March 2006.
- 23 On 13 April 2006 Mr Scheffler applied to the Landkreis for recognition of the right to drive in German territory using his Polish driving licence. On 26 April 2006 he submitted a medical report on his fitness to drive issued by TÜV Thüringen eV dated 1 November 2004, which was based on an examination on 18 October 2004.
- 24 According to the information provided by the referring court, that report established a negative prognosis for Mr Scheffler's fitness to drive because of his past history of driving whilst under the influence of alcohol, based essentially on the fact that the blood alcohol level of 1.94‰ established on 11 March 2000 was proof of alcohol abuse and that Mr Scheffler had not overcome his past habits regarding alcohol consumption.
- 25 By letter of 23 May 2006 the Landkreis ordered Mr Scheffler to submit a new medical report to show that his fitness to drive had been checked.
- 26 By letter of 3 August 2006 the competent Polish road traffic authority that had issued a driving licence to Mr Scheffler on 15 October 2004 stated that the latter had declared, after being informed of the consequences of bearing false witness under the criminal law, that his driving licence had not been withdrawn in Germany and that his right to drive had not been suspended.

- 27 By letters of 24 April and 30 May 2007 the Landkreis repeated its order of 23 May 2006 requiring Mr Scheffler to produce a medical report on his fitness to drive. It said that as a result of the report of 18 October 2004 new facts had emerged following the issue of the Polish driving licence on 15 October 2004, which gave cause to doubt his fitness to drive. It also accused Mr Scheffler of having given the Polish authority false information.
- 28 In the light of Mr Scheffler's refusal to submit a further medical report on his fitness to drive, the Landkreis, in a notice of 15 August 2007 ('the withdrawal notice'), withdrew his right to use his Polish driving licence in German territory, ordered the immediate enforcement of that point of its notice and dismissed the application for recognition of that right.
- 29 That notice was based essentially on the ground that Mr Scheffler's driving whilst under the influence of alcohol on 11 March 2000 with a blood alcohol level of 1.94‰ had given cause to doubt his fitness to drive. This doubt had not been dispelled by the submission of a medical report. According to the notice, account had to be taken of the fact that the administration had not become aware of the medical report of 18 October 2004 until April 2006 and that Mr Scheffler had concealed those matters from the competent Polish authority. It stated that his unfitness to drive was already established from the medical report based on the examination of 18 October 2004. The notice concluded that immediate enforcement should be ordered in the public interest, as there was a risk of Mr Scheffler again offending whilst under the influence of alcohol.
- 30 The withdrawal notice was served on Mr Scheffler on 17 August 2007. On 26 August 2007 he lodged an objection to the notice before the Thüringer Landesverwaltungssamt (Administrative Office, Land of Thuringia, Germany), and applied in parallel to the Verwaltungsgericht Meiningen (Administrative Court, Meiningen) for interim relief.

- 31 By decision of 13 December 2007 the Thüringer Landesverwaltungsamt dismissed Mr Scheffler's objection to the withdrawal notice. On 1 February 2008 he brought an action before the Verwaltungsgericht Meiningen for annulment of the decision dismissing his objection. He applied for the withdrawal notice, as set out in the objection order of 13 December 2007, to be set aside.
- 32 The question from the referring court is referred in the context of this application to have the withdrawal notice set aside.

The application for interim measures

- 33 The application for a stay of execution of the withdrawal notice was dismissed by the Verwaltungsgericht Meiningen by order of 1 October 2007. By order of 21 November 2008 the same court also dismissed Mr Scheffler's application for amendment of the order of 1 October 2007 and for the suspensory effect of his claim to be restored.
- 34 On 15 December 2008 Mr Scheffler lodged an appeal against the order of 21 November 2008 before the Thüringer Oberverwaltungsgericht (Higher Administrative Court, Land of Thuringia), on the ground that recent case-law of the Court of Justice — namely the judgments in Joined Cases C-329/06 and C-343/06 *Wiedemann and Funk* [2008] ECR I-4635 and Joined Cases C-334/06 to C-336/06 *Zerche and Others* [2008] ECR I-4691 — had led to a change in the relevant legal position in the present case. According to Mr Scheffler, since he had fulfilled the residential requirement when the Polish driving licence was issued, the Landkreis was not entitled to examine his fitness to drive. He added that the medical report on his fitness to drive was not conduct occurring after the issue of the licence that was to be taken into account

under European Union law, and that the report related to conduct that took place at a time prior to the acquisition of his Polish driving licence.

35 By order of 26 March 2009 the Thüringer Oberverwaltungsgericht finally granted suspensory effect to the action against the withdrawal notice.

36 In its order the Thüringer Oberverwaltungsgericht considers that the medical report of 1 November 2004 does not release the host Member State a posteriori from its obligation to recognise a licence. According to that court, the Court of Justice stated clearly in the order of 6 April 2006 in Case C-227/05 *Halbritter* that current findings on a person's fitness to drive that are based on events that took place prior to the issue of a driving licence are contrary to European Union law, because the possession of a driving licence issued by a Member State should be considered proof that on the date on which it was granted the holder fulfilled the conditions of its issue laid down in Directive 91/439, including fitness to drive. This would be the case unless the report on the fitness to drive were based on 'conduct' by the party concerned after the issue of the driving licence in the other Member State (order in *Halbritter*, paragraph 38). In the view of the Thüringer Oberverwaltungsgericht, it is clear that this does not mean the production of the medical report itself, but the misconduct by the party concerned in relation to road traffic matters.

The action against the withdrawal notice

37 In its order for reference the Verwaltungsgericht Meiningen states at the outset that it is only in certain situations that the Court of Justice permits exceptions to the principle of unconditional mutual recognition of driving licences under Directive 91/439.

- 38 One exception is permitted if it is established, on the basis of entries appearing in the driving licence itself or of other incontestable information supplied by the Member State of issue, that when that licence was issued its holder, who had been the object, in the territory of the host Member State, of a measure withdrawing an earlier licence, was not normally resident in the territory of the Member State of issue (*Zerche and Others*, paragraph 70).
- 39 According to the referring court, that is not the case here. Mr Scheffler's Polish driving licence gives his place of residence as Poland and there is no incontestable information from the Member State of issue to suggest that his place of residence was not in Poland on the date on which the licence was issued.
- 40 Furthermore, the Member State of normal residence can be released from the obligation to recognise driving licences and permitted to exercise the powers granted to it under Article 8(2) of Directive 91/439 to 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 only by reason of some conduct of the person concerned after he has obtained that licence (order in *Halbritter*, paragraph 38, and *Zerche and Others*, paragraph 56) or 'circumstances' arising after the acquisition of the licence (order in *Halbritter*, paragraph 38).
- 41 In the view of the referring court, the case-law mentioned in the preceding paragraph means that the Member States are, in any event, authorised by Article 8(2) of

Directive 91/439 to apply their national provisions on the checking of fitness to drive and the withdrawal of licences to drivers of motor vehicles who, after acquiring a driving licence in another Member State, commit a further offence within their territory or give rise to concerns as to their fitness to drive.

- 42 The referring court notes, however, that although ‘conduct’ that can justify the application, in the Member State of normal residence, of measures restricting, suspending, withdrawing or cancelling the right to drive pursuant to Article 8(2) of Directive 91/439 with regard to a licence obtained in another Member State undoubtedly exists where the holder of such a licence, after it has been acquired, has again committed a road traffic-related act or omission from which it can be concluded that he is unfit to drive, in the dispute in the main proceedings Mr Scheffler did not, after 15 October 2004, commit any contravention of the highway code that might constitute ‘conduct’ that might in certain circumstances be taken into account under European Union law. All there might be is the medical report of 1 November 2004 on fitness to drive, which was drawn up on the basis of the examination of 18 October 2004.
- 43 The referring court is unable to infer from the case-law of the Court of Justice, in particular, from the order in *Halbritter*, any indication whether, after the issue of a driving licence in another Member State, only misconduct in relation to road traffic matters on the part of the person concerned confers on the Member State of normal residence the right to proceed against the holder of the said licence pursuant to Article 8(2) of Directive 91/439.
- 44 The referring court considers it conceivable that the medical report produced in the present case could be considered a new fact, which affords the Member State of normal residence the right to proceed against the holder of a driving licence issued by another Member State pursuant to Article 8(2) of Directive 91/439. It is true that

the medical report discloses evidence of old facts, but it constitutes a prognosis of Mr Scheffler's fitness to drive, which was made after the date of issue of the Polish driving licence and was based on an examination conducted after that date.

- 45 In those circumstances, the Verwaltungsgericht Meiningen decided to stay the proceedings and to refer the following question to the Court of Justice for a preliminary ruling:

'May a Member State, in accordance with Article 1(2) and Article 8(2) and (4) of Directive 91/439..., exercise its authority under Article 8(2) of that directive — to 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 — in relation to a medical report on fitness to drive submitted by the holder of a driving licence issued by another Member State if that report was issued after the date of issue of the driving licence and is also based on an examination of the party concerned carried out after that date but relates to circumstances that took place prior to the issue of the driving licence?'

Consideration of the question referred

- 46 In accordance with the first subparagraph of Article 104(3) of the Rules of Procedure, when the answer to a question referred to the Court for a preliminary ruling may be clearly deduced from the existing case-law, the Court may, after hearing the Advocate General, at any time give its decision by reasoned order in which reference is made to the relevant case-law.

47 That provision must be applied in the present case.

Preliminary observations

48 It must first be noted that the Court has already examined the provisions of the FeV in connection with Articles 1(2) and 8(2) of Directive 91/439 in the order in *Halbritter* and in the order of 28 September 2006 in Case C-340/05 *Kremer*, but also in the judgments in *Wiedemann and Funk*, in *Zerche and Others*, in Case C-1/07 *Weber* [2008] ECR I-8571 and in Case C-321/07 *Schwarz* [2009] ECR I-1113, as well as in the order of 9 July 2009 in Case C-445/08 *Wierer*.

49 Secondly, it is apparent from the first recital in the preamble to Directive 91/439 that the general principle of mutual recognition of driving licences issued by the Member States, laid down in Article 1(2) of that directive, was established in order, inter alia, to facilitate the movement of persons settling in a Member State other than that in which they have passed a driving test (see *Schwarz*, paragraph 74 and the case-law cited).

50 The Court has consistently held that Article 1(2) provides for mutual recognition, without any formality, of driving licences issued by Member States. That provision imposes on them a clear and precise obligation, which leaves no room for discretion as to the measures to be adopted in order to comply with it (*Schwarz*, paragraph 75 and the case-law cited).

- 51 The Court has inferred from this that it is for the issuing Member State to investigate whether the minimum conditions imposed by European Union law, particularly those relating to residence and fitness to drive, have been satisfied and, therefore, whether the issue of a driving licence — where appropriate, that of a new licence — is justified (*Wiedemann and Funk*, paragraph 52, and *Zerche and Others*, paragraph 49).
- 52 Hence, once the authorities of one Member State have issued a driving licence in accordance with Article 1(1) of Directive 91/439, the other Member States are not entitled to investigate whether the conditions for issue laid down by that directive have been observed. The 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 those conditions (*Wiedemann and Funk*, paragraph 53, and *Zerche and Others*, paragraph 50), including fitness to drive.
- 53 It is in the light of these observations that the question submitted by the referring court must be examined.
- 54 By its question, the referring court asks essentially whether Article 1(2) in conjunction with Article 8(2) and (4) of Directive 91/439 precludes a Member State, when exercising its authority under Article 8(2) of Directive 91/439 to apply its national provisions on the restriction, suspension, withdrawal or cancellation of the right to drive to the holder of a driving licence issued in another Member State, from refusing to recognise, in its territory, the right to drive resulting from a valid driving licence issued in another Member State on account of a medical report on fitness to drive submitted by the holder of the driving licence in question if the medical report, although issued after the date of issue of the licence and based on an examination of the party concerned carried out after that date, relates essentially to circumstances that took place prior to that date.

Observations submitted to the Court

55 Mr Scheffler maintains that a medical report on fitness to drive does not, in principle, constitute conduct occurring after the issue of the driving licence in another Member State that can justify the application of the national provisions on the restriction, suspension, withdrawal or cancellation of the right to drive within the meaning of the case-law of the Court. Only contravention of road traffic rules after the issue of the licence could constitute such conduct.

56 In contrast, the European Commission contends that the concept of circumstance or conduct occurring after the issue of the licence must not necessarily consist in a contravention of road traffic rules. It considers that it is conceivable that a medical report on fitness to drive may permit a Member State to refuse the right to use, in its territory, a licence issued in another Member State, provided that the report drawn up after the issue of the licence in another Member State relates at the very least partly to the driver's conduct after the issue of the licence and reflects a level of risk indicating that the person concerned is unfit to drive on public roads.

The Court's reply

57 It must be observed, in the first, place that the question referred for a preliminary ruling does not relate to the validity, under Article 7(1) of Directive 91/439, of the driving licence issued to the applicant in the main proceedings on 15 October 2004. It is apparent from the order for reference that the Verwaltungsgericht Meiningen considers

that the issue of the driving licence in Poland complied with the conditions laid down in Directive 91/439 and that by its question it seeks solely to know whether a Member State may apply to the holder of a driving licence issued in another Member State its national provisions on the restriction, suspension, withdrawal or cancellation of the right to drive on the basis of a medical report on fitness to drive if that report was issued after the date of issue of the licence but relates to circumstances that took place solely before that date.

58 In the second place, it must be observed that in its case-law on Directive 91/439 the Court has ruled on a number of occasions on the legal consequences of the principle of mutual recognition of driving licences issued by the Member States and has thus clarified, on the basis of various situations, the rights and obligations of the Member State of issue and the host Member State with regard to the verification of the fitness to drive and the place of residence of the licence-holder.

59 Thus it is clear from the case-law referred to in paragraph 48 of this order that Articles 1(2), 7(1) and 8(2) and (4) of Directive 91/439 must be interpreted as meaning that a Member State is not precluded in all circumstances from refusing to recognise, in its territory, a right to drive under a driving licence issued by another Member State (order in *Wierer*, paragraph 50).

60 In particular, for reasons of road safety, as is made clear by the last recital in the preamble to Directive 91/439, Article 8(2) and (4) of that directive permit the Member States, in certain circumstances, to apply their national provisions on the restriction, suspension, withdrawal or cancellation of driving licences to any licence-holder having normal residence in their territory (*Zerche and Others*, paragraph 55).

- 61 The Court has, however, repeatedly pointed out that that right, as it arises from Article 8(2) of Directive 91/439, may be exercised only by reason of some conduct of the person concerned after he has obtained a driving licence issued by another Member State (see the orders in *Halbritter*, paragraph 38, and *Kremer*, paragraph 35; see also *Zerche and Others*, paragraph 56, and *Weber*, paragraph 34) and not by reason of circumstances prior to the issue of the licence in question.
- 62 As regards the first subparagraph of Article 8(4) of Directive 91/439, which authorises a Member State to refuse to recognise the validity of a driving licence obtained in another Member State by a person who is, in the first Member State's territory, the subject of a measure restricting, suspending, withdrawing or cancelling a licence, it must be stated that this provision constitutes a derogation from the general principle of mutual recognition of driving licences and is, therefore, to be interpreted strictly (see, to that effect, *Schwarz*, paragraph 84 and the case-law cited).
- 63 The exceptions to the obligation to recognise driving licences issued in the Member States without formality, which balance this principle with the principle of road safety, cannot be interpreted broadly without rendering nugatory the principle of the mutual recognition of driving licences issued in the Member States in accordance with Directive 91/439 (see, to that effect, the order in *Wierer*, paragraph 52).
- 64 The conditions in which the Member States may exercise their authority under Article 8(2) of Directive 91/439 to refuse to a person holding a licence issued in another Member State but who has established his normal residence in their territory the right to use the licence in that territory have been examined by the Court in the orders in *Halbritter* and *Kremer*, in particular.

- 65 The case that gave rise to the order in *Halbritter* involved a person who, having been the object of a measure in Germany withdrawing his driving licence and prohibiting him from obtaining a new licence for a given period, had subsequently obtained a driving licence in Austria after that prohibition period had ended. The German authorities had rejected his application to convert the Austrian licence into a German one, which had been interpreted as an attempt to obtain the right to use his Austrian driving licence in German territory. They considered that the Austrian licence could not be recognised in the territory of the Federal Republic of Germany as Mr Halbritter had been the object, in that Member State, of a measure withdrawing his driving licence and that doubts about his fitness to drive since the withdrawal measure could be dispelled only by a positive medical-psychological report drawn up in accordance with the regulations applicable in Germany. The medical report drawn up in Austria before the issue of the Austrian licence was not considered to be equivalent to a medical report in accordance with the national regulations.
- 66 In paragraph 37 of that order the Court held that if the holder of a valid driving licence issued in a Member State after the expiry of the period during which the person concerned was prohibited in another Member State from obtaining a new licence resides in the latter Member State, the latter cannot demand a new examination of the person's fitness to drive, even if such an examination is required by its national regulations by reason of the circumstances that had led to the withdrawal of a previous licence, since those circumstances pre-date the issue of the new licence.
- 67 In paragraph 38 of the order in *Halbritter* the Court held that the Federal Republic of Germany could avail itself of the possibility under Article 8(2) of Directive 91/439 of applying its national provisions on the restriction, suspension, withdrawal or cancellation of the right to drive to the holder of a licence issued in another Member State, in that instance the Republic of Austria, and who had established his normal residence in Germany, only by reason of some conduct of the person concerned after he had

obtained that driving licence in another Member State. In the case in point, however, the referring court had indicated that there was no evidence to doubt Mr Halbritter's fitness to drive on the basis of circumstances that occurred after he had obtained his Austrian driving licence.

⁶⁸ The case that led to the order in *Kremer* concerned a German national living in Germany whose German driving licence had been withdrawn following repeated offences under the highway code. Mr Kremer had obtained a new licence in Belgium, when he was subject to no prohibition on applying for a new licence. Mr Kremer had subsequently been convicted in Germany of driving without a licence and his Belgian licence had been withdrawn, because the German authorities considered that he was not entitled to drive in German territory since the date of withdrawal of his German licence and refused to recognise the validity of the licence subsequently issued in Belgium so long as Mr Kremer did not comply with the conditions required under German law for obtaining a new licence following the withdrawal of a previous one.

⁶⁹ In the *Kremer* case the Court was asked whether it is contrary to Articles 1(2) and 8(2) and (4) of Directive 91/439 for a Member State to refuse to recognise in its territory the right to drive stemming from a driving licence issued in another Member State and, therefore, to recognise the validity of that licence, so long as the licence-holder, whose previous licence in the territory of the first Member State was withdrawn without a measure prohibiting the holder from obtaining a new licence for a given period, has not satisfied the conditions required under the laws of that Member State for the issue of a new licence following the withdrawal of a previous licence, including the examination of fitness to drive certifying that the grounds justifying the withdrawal are no longer in existence.

- 70 As in the order in *Halbritter*, the Court held that a Member State could not require the holder of a valid licence issued in another Member State to fulfil the conditions imposed by its own national law for acquiring a new driving licence after the withdrawal of a previous one. In particular, the authorities of the host Member State cannot make recognition of the right to drive resulting from a driving licence issued in another Member State subject to a further examination of the holder's fitness to drive even if such an examination is required under national legislation in circumstances identical to those which led to the withdrawal of a previous licence, since these circumstances occurred prior to the issue of the new licence (order in *Kremer*, paragraphs 32 and 33).
- 71 It must be noted that in paragraph 36 of the order in *Kremer* the Court held that the referring court had provided no evidence that cast doubt on Mr Kremer's fitness to drive on the basis of circumstances occurring after he had obtained a valid Belgian driving licence. The only offences he had committed after obtaining that licence consisted in driving in Germany without a valid driving licence, as the licence obtained in Belgium was not recognised as valid on the ground that Mr Kremer had not met the conditions of German law for obtaining a new licence following the withdrawal of a previous one.
- 72 It follows from that case-law that, in order for the Member State of normal residence of the holder of a driving licence issued in another Member State to exercise its authority under Article 8(2) of Directive 91/439 to apply its national provisions on the restriction, suspension, withdrawal or cancellation of the right to drive to the holder of that licence, there must be evidence to doubt the licence-holder's fitness to drive on the basis of circumstances that must relate to conduct of the person concerned after he had obtained his driving licence in another Member State and to call into question his fitness to drive a vehicle.

73 In the light of the foregoing considerations, in order to determine whether in the main proceedings a medical report such as the one drawn up on 1 November 2004 may permit the authorities of the host Member State to refuse, under Article 8(2) of Directive 91/439, to grant to the holder of a driving licence issued in another Member State the right to use that licence in the territory of the first Member State, the referring court must examine whether that report may constitute evidence such as to cast doubt on Mr Scheffler's fitness to drive on the basis of circumstances occurring after he had obtained the said driving licence.

74 In fact, as pointed out by Mr Scheffler and the Commission, there appears to be no evidence such as to cast doubt on Mr Scheffler's fitness to drive on the basis of circumstances occurring after he had obtained his Polish driving licence. It is clear from the order for reference that the assessment of his fitness to drive conducted after the date of issue of that driving licence refers only to facts occurring before that date. The referring court states, in particular, that Mr Scheffler had committed no violation of road traffic rules after the issue of that licence.

75 It must be stated that the requirement that the holder of a driving licence issued in another Member State has engaged in conduct after the issue of the licence such as to justify the application of the national provisions of the host Member State on the restriction, suspension, withdrawal or cancellation of the right to drive must not necessarily be understood as meaning that it relates only to a violation of the road traffic rules. It remains true, however, that for such a requirement to apply it is necessary to establish, at a given time, that conduct on the part of the licence-holder after the issue of the licence gives grounds for doubting his fitness to drive a vehicle, or even to conclude that he is unfit to drive.

76 In any event, it is for the referring court, which alone has detailed knowledge of the dispute before it, to check whether a medical report on the fitness to drive such as

that at issue in the main proceedings fulfils the conditions set out in paragraphs 72, 73 and 75 of this order and relates at least in part to conduct of the person concerned detected after the issue of the Polish driving licence. If not, the Member State of normal residence cannot refuse, on account of such a medical report, to recognise, in its territory, under Article 8(2) of Directive 91/439, the right to drive resulting from a valid driving licence issued in another Member State.

- ⁷⁷ In those circumstances, the answer to the question referred is that Articles 1(2) and 8(2) and (4) of Directive 91/439 must be interpreted as precluding a Member State, when exercising its authority under Article 8(2) to apply its national provisions on the restriction, suspension, withdrawal or cancellation of the right to drive to the holder of a driving licence issued in another Member State, from refusing to recognise, in its territory, the right to drive resulting from a valid driving licence issued in another Member State on account of a medical report on fitness to drive submitted by the holder of the driving licence in question if the medical report, although issued after the date of issue of the driving licence and based on an examination of the party concerned carried out after that date, has no connection, even partial, to conduct of the person concerned occurring after the issue of the driving licence and relates solely to circumstances that took place prior to that date.

Costs

- ⁷⁸ 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 (Sixth Chamber) hereby rules:

Articles 1(2) and 8(2) and (4) of Council Directive 91/439/EEC of 29 July 1991 on driving licences, as amended by Council Directive 2006/103/EC of 20 November 2006, must be interpreted as precluding a Member State, when exercising its authority under Article 8(2) to apply its national provisions on the restriction, suspension, withdrawal or cancellation of the right to drive to the holder of a driving licence issued in another Member State, from refusing to recognise, in its territory, the right to drive resulting from a valid driving licence issued in another Member State on account of a medical report on fitness to drive submitted by the holder of the driving licence in question if the medical report, although issued after the date of issue of the driving licence and based on an examination of the party concerned carried out after that date, has no connection, even partial, to conduct of the person concerned occurring after the issue of the driving licence and relates solely to circumstances that took place prior to that date.

[Signatures]