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Provisional text

JUDGMENT OF THE COURT (Second Chamber)

26 October 2017 (*)

(Reference for a preliminary ruling — Transport — Driving licences — Directive 2006/126/EC — Article 2(1) — Mutual recognition of driving licences — Definition of ‘driving licence’ — Driving licence pass certificate authorising its holder to drive in the Member State having awarded it before the issue of the definitive driving licence — Situation in which the holder of a test pass certificate drives a vehicle in another Member State — Obligation to recognise the test pass certificate — Penalties imposed on the holder of the test pass certificate for driving a vehicle outside of the Member State in which it was awarded — Proportionality)

In Case C-195/16,

REQUEST for a preliminary ruling under Article 267 TFEU from the Amtsgericht Kehl (Local Court, Kehl, Germany), made by decision of 24 March 2016, received at the Court on 7 April 2016, in the criminal proceedings against

I,

intervening parties:

Staatsanwaltschaft Offenburg,

THE COURT (Second Chamber),

composed of M. Ilešič, President of the Chamber, A. Rosas (Rapporteur), C. Toader, A. Prechal and E. Jarašiūnas, Judges,

Advocate General: M. Bobek,

Registrar: A. Calot Escobar,

having regard to the written procedure,

after considering the observations submitted on behalf of:

- the Netherlands Government, by B. Koopman and K. Bulterman, acting as Agents,
- the Polish Government, by B. Majczyna, acting as Agent,
- the European Commission, by G. Braun and N. Yerrell, acting as Agents,

after hearing the Opinion of the Advocate General at the sitting on 16 May 2017,

gives the following

Judgment

1 This request for a preliminary ruling concerns the interpretation of Articles 18, 21, 45, 49 and 56 TFEU and of Article 2 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 and corrigendum OJ 2009 L 19, p. 67).

2 The request has been made in criminal proceedings brought against *I*, resident in France, for having driven a motor vehicle in Germany without a right to drive.

Legal context

EU law

3 According to recitals 2 to 4, 6 and 8 of Directive 2006/126:

‘(2) 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. ...

(3) The possibility of laying down national provisions with regard to the period of validity provided for in [Council] Directive 91/439/EEC [of 29 July 1991 on driving licences (OJ 1991 L 237, p. 1)] leads to the coexistence of different rules in different Member States and over 110 different models of driving licences valid in the Member States. This creates problems of transparency for citizens, police forces and the administrations responsible for the administration of driving licences and leads to the falsification of documents which sometimes date back several decades.

(4) 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.

...

(6) Driving licences are mutually recognised. ...

...

(8) On road safety grounds, the minimum requirements for the issue of a driving licence should be laid down. ...’

4 Article 1(1) of Directive 2006/126 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.’

5 Under Article 2(1) of that directive, ‘driving licences issued by Member States shall be mutually recognised’.

6 Article 3 of the directive provides:

‘1. Member States shall take all necessary steps to avoid any risk of forgery of driving licences, including that of model driving licences issued before the entry into force of this Directive. They shall inform the Commission thereof.

2. The material used for the driving licence, as set out in Annex I, shall be made secure against forgery in application of specifications designed to amend non-essential elements of this Directive, by supplementing it, which are to be laid down by the Commission in accordance with the procedure referred to in Article 9(2). Member States are free to introduce additional security features.

3. Member States shall ensure that, by 19 January 2033, all driving licences issued or in circulation fulfil all the requirements of this Directive.’

7 Article 4(1) of the directive reads as follows:

‘The driving licence provided for in Article 1 shall authorise the driving of power-driven vehicles in the categories defined hereafter. It may be issued from the minimum age indicated for each category. ...’

8 Article 5(1) of Directive 2006/126 provides:

‘Driving licences shall state the conditions under which the driver is authorised to drive.’

9 Article 7(1) of that directive provides:

‘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.’

10 Under Article 13 of the directive:

‘1. With the agreement of the Commission, Member States shall establish equivalences between entitlements obtained before the implementation of this Directive and the categories defined in Article 4.

After consulting the Commission, Member States may make to their national legislation such adjustments as are necessary for the purpose of implementing the provisions of Article 11(4), (5) and (6).

2. Any entitlement to drive granted before 19 January 2013 shall not be removed or in any way qualified by the provisions of this Directive.’

11 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 provisions as from 19 January 2013.’

German law

12 According to the order for reference, under Paragraph 21(1)(1) of the Strassenverkehrsgesetz (Law on Road Traffic, ‘the StVG’), any person who drives a motor vehicle without the entitlement to do so is guilty of the criminal offence of driving without a right to drive, which is punishable by up to a year’s imprisonment or a fine. In addition, those penalties may entail disqualification from driving for up to three months under Paragraph 44 of the Strafgesetzbuch (Criminal Code, ‘the StGB’), impoundment of the vehicle used under Paragraph 21(3) of the StVG, and the imposition of an additional period of time before a right to drive becomes valid under the third sentence of Paragraph 69a(1) of the StGB.

13 If the driver does not have his driving licence with him as evidence of his right to drive, he is liable for an administrative offence under Paragraph 75(4) of the Fahrerlaubnis-Verordnung (Regulation on driving rights, ‘the FeV’), for which a penalty of up to EUR 2 000 under Paragraph 24(2) of the StVG is foreseen, but which is generally in the amount of EUR 10, in accordance with point 168 of the annex referred to in Article 1(1) of the Bussgeldkatalog-Verordnung (Regulation categorising fines).

14 Pursuant to Paragraph 22(4) of the FeV, in principle the examiner issues the applicant for a driving licence a definitive driving licence immediately after passing the practical driving test. In accordance with the seventh sentence of Paragraph 22(4) of the FeV, exceptionally, if the driving licence is not ready to be issued, the applicant receives a temporary document certifying that the test has been passed, which serves as evidence of a right to drive in Germany.

15 In certain conditions, a right to drive granted by foreign authorities may, under Paragraph 28 et seq. of the FeV, entitle its holder to drive a motor vehicle in Germany.

16 Under the first sentence of Paragraph 29(1) of the FeV, persons who are entitled to drive abroad and who are resident abroad may, in principle and within the limits of such entitlement,

drive motor vehicles in Germany. Such entitlement to drive must, under Paragraph 29(2) of the FeV, be evidenced by a relevant driving licence.

17 Under Paragraph 29(3)(1) of the FeV, a foreign authorisation to drive, within the meaning of Paragraph 29(1) of the FeV, will not be recognised, inter alia, if the person authorised to drive is merely in possession of a provisional driving licence or another form of temporary driving licence.

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

18 On 15 May 2015, *I*, a French resident, was stopped in the municipality of Kehl (Germany) whilst driving a category B vehicle on public roads. *I* had with him a valid personal identity card and a *certificat d'examen du permis de conduire* (Driving licence test pass certificate, 'CEPC'), a provisional document issued, in principle, to every applicant having passed the theory and practical tests for category B driving licences in France and which is, under French legislation, regarded as a driving licence in the national territory in dealings with the police for a period of four months from the date of the practical test. It is common ground that, at the date *I* was stopped, he had not yet been issued his definitive driving licence by the French authorities.

19 Since, in the view of the Staatsanwaltschaft Offenburg (Public prosecutor for Offenburg, Germany, 'the public prosecutor'), the validity of a CEPC is limited to French territory, *I* did not have, at the time of the facts, a right granted abroad entitling him to drive a vehicle in Germany under Paragraph 28 et seq. of the FeV, it decided to bring proceedings before the Amtsgericht Kehl (Local Court, Kehl, Germany) seeking to have a fine imposed on *I*, by penalty order, for having committed the offence of driving without the right to do so within the meaning of Paragraph 21 of the StVG.

20 The referring court states that it must examine, in the main proceedings, whether the substantive elements of the offence of driving without the right to do so are satisfied, whether *I* was entitled to drive a vehicle in Germany, or whether other grounds preclude the facts in question from amounting to a criminal offence. In addition, should it find that these facts do not amount to a criminal offence, that court asks whether an administrative offence has been committed.

21 In the present case, the referring court states that, under French law, *I* has been authorised to drive category B power-driven vehicles on public roads from the time that the CEPC was issued to him.

22 That court states that, until his definitive driving licence was issued, which took place on 9 July 2015, *I* could provide evidence of his right to drive in France by presenting the CEPC and a personal identity card.

23 According to the referring court, the award of a CEPC grants the right to drive a power-driven vehicle in the relevant category without that right being limited to French territory. Similarly to German law, French law distinguishes between the right to drive and the document evidencing such a right, namely a driving licence, even if in French the same term is used for both concepts ('*permis de conduire*'). Thus, driving a vehicle without holding a driving licence is punishable as a criminal offence with a custodial sentence, whereas driving a vehicle without being in possession of a driving licence is punishable as an administrative offence.

24 The validity of a CEPC as a document evidencing the right to drive is limited under French law to four months. In principle, a definitive driving licence is issued to an applicant within that time. If the applicant does not, however, receive the definitive driving licence within that time, the

CEPC is no longer valid as a document evidencing a right to drive, but that right itself does not expire. Thus, a person who has not applied in the correct form within four months for the issuing of a driving licence, and whose CEPC loses its validity as a document evidencing a right to drive after four months, drives, according to French law, not without the right to drive but without a driving licence. Such a person may therefore be charged with an administrative offence but not a criminal offence.

25 After a CEPC has been issued, the issuing of a category B driving licence depends only on whether the applicant lodges an application in the correct form. Driving licences are therefore issued almost automatically. The applicant has no control over the duration of the procedure for issuing the driving licence.

26 The referring court further submits that the question arises of whether Article 2 of Directive 2006/126 must be interpreted as requiring the Member States to recognise a right to drive only where a definitive driving licence has been issued as a document evidencing such a right, or whether the obligation of mutual recognition applies to the right to drive as such, irrespective of whether a definitive driving licence has been issued by the competent authority.

27 That court considers that that ambiguity also arises from the terminology used in the German and French language versions of Directive 2006/126.

28 Furthermore, according to the referring court, the refusal to recognise *I*'s right to drive or to recognise the CEPC as a document evidencing such a right, and the resulting criminal or minor offence for *I*, seem capable of running counter to the general prohibition of discrimination within the meaning of Article 18 TFEU and the fundamental freedoms laid down in Articles 21, 45, 49 and 56 TFEU.

29 It would be impossible for an applicant for a driving licence resident in France, immediately after passing the practical driving test, to take up a post in Germany which he could reach only by driving there in his own vehicle. By contrast, an applicant for a driving licence residing in Germany would not be faced with that restriction. Thus, although both could prove that they had fulfilled the requirements for obtaining a driving licence, as harmonised under Directive 2006/126, they would not enjoy the same rights. The referring court therefore takes the view that there appears to be discrimination based on residence in another Member State.

30 In those circumstances, the *Amstgericht Kehl* (Local Court, Kehl) decided to stay the proceedings and to refer the following questions to the Court of Justice for a preliminary ruling:

‘(1) Is EU law, in particular Article 2 of Directive [2006/126] or Articles 18, 21, 45, 49 and 56 [TFEU], to be interpreted as precluding legislation of a Member State which refuses to recognise an authorisation to drive acquired in another Member State, in particular where that authorisation to drive was acquired in accordance with the requirements of Directive 2006/126?

(2) Is EU law, in particular Article 2 of Directive 2006/126 or Articles 18, 21, 45, 49 and 56 TFEU, to be interpreted as precluding legislation of a Member State which refuses to recognise a certificate evidencing authorisation to drive which another Member State has awarded to the holder of such authorisation in accordance with Directive 2006/126, even if that Member State has limited the validity of that certificate in time and to its own territory and that document does not, moreover, fulfil the requirements of the single European driving licence model of Directive 2006/126?

(3) Should the answer to the first question be in the negative: Is EU law, in particular Article 2 of Directive 2006/126 or Articles 18, 21, 45, 49 and 56 TFEU, to be interpreted as precluding legislation of a Member State which punishes as a criminal offence the driving of a vehicle without authorisation to drive, even if the driver of the vehicle has been authorised to drive in another Member State in accordance with the requirements of Directive 2006/126, but is unable to provide a document to that effect which corresponds to the single European licence model of Directive 2006/126?

(4) Should the answer to the second question be in the negative: Is EU law, in particular Article 2 of Directive 2006/126 or Articles 18, 21, 45, 49 and 56 TFEU, to be interpreted as precluding legislation of a Member State — in which an applicant for a driving licence is, as a general rule, issued a definitive driving licence immediately after passing the practical driving test — which punishes as a minor offence leading to an administrative fine driving a vehicle if the driver, who has been licensed to drive in another Member State in accordance with the requirements of Directive 2006/126, drives without a definitive driving licence as evidence of his authorisation to drive because such a licence has not yet been issued to him, yet due to the particularities of the procedure for the issuing of the definitive driving licence in that Member State, over which the driver has no control, the driver is in possession of an official document certifying that the necessary requirements for acquiring authorisation to drive have been fulfilled?

Consideration of the questions referred

The first and second questions

31 By its first and second questions, which it is appropriate to consider together, the referring court asks, in essence, whether Article 2(1) of Directive 2006/126 and Articles 18, 21, 45, 49 and 56 TFEU must be interpreted as precluding legislation of a Member State under which that Member State may refuse to recognise a certificate issued in another Member State evidencing its holder's right to drive, where that certificate does not fulfil the requirements of the model driving licence provided for in that directive, even if the conditions set by the directive for issuing a driving licence have been satisfied by the holder of that certificate.

32 In that regard, it must be borne in mind that, according to the Court's settled case-law, for the purposes of interpreting a provision of EU law, it is necessary to consider not only its wording, but also its context and the objectives of the rules of which it is part (judgment of 11 May 2017, *Krijgsman*, C-302/16, EU:C:2017:359, paragraph 24 and the case-law cited).

33 Article 2(1) of Directive 2006/126 provides that 'driving licences issued by Member States shall be mutually recognised'.

34 According to the Court's settled case-law, that provision provides for the mutual recognition, without any formality, of driving licences issued by Member States (see, to that effect, judgments of 1 March 2012, *Akyüz*, C-467/10, EU:C:2012:112, paragraph 40; of 26 April 2012, *Hofmann*, C-419/10, EU:C:2012:240, paragraphs 43 and 44; and of 23 April 2015, *Aykul*, C-260/13, EU:C:2015:257, paragraph 45).

35 In order to answer the first and second questions referred, it must nevertheless be determined whether that obligation of mutual recognition required of the Member States concerns only driving licences as documents evidencing the existence of a right to drive or whether it also concerns the actual right to drive, irrespective of the existence of such a driving licence.

36 First, as regards a literal interpretation of the provision in question, the referring court seeks guidance on the interpretation of the term ‘driving licence’ in Article 2(1) of Directive 2006/126. In evoking, more generally, the linguistic difficulties inherent in the choice of the terms used in that directive, it observes, in particular, that it is not clear whether the terms ‘*Führerschein*’ and ‘*permis de conduire*’, in the German and French language versions of the directive, denote only documents evidencing a right to drive and the terms ‘*Fahrerlaubnis*’ and ‘*droit de conduire*’ only the actual right to drive.

37 As the Advocate General stated in point 50 of his Opinion, it is nonetheless clear, having regard to the terms used in several language versions of Article 2(1) of Directive 2006/126, such as the German (‘*Führerscheine*’), English (‘*driving licences*’), Czech (‘*řidičské průkazy*’), Spanish (‘*permisos de conducción*’), Italian (‘*patenti di guida*’), Dutch (‘*rijbewijzen*’), Finnish (‘*ajokortit*’), Romanian (‘*permisele de conducere*’) or Swedish (‘*Körkort*’) language versions, that the term ‘*permis de conduire*’ used in that provision refers to the document evidencing a right to drive.

38 Next, an analysis of the context of which Article 2(1) of Directive 2006/126 forms part leads to the same conclusion.

39 The directive lays down a single Community model driving licence designed to replace the various driving licences in existence in the Member States (judgments of 26 April 2012, *Hofmann*, C-419/10, EU:C:2012:240, paragraph 40, and of 26 April 2017, *Popescu*, C-632/15, EU:C:2017:303, paragraph 36).

40 In that regard, it should be noted, first, that the provisions of the directive contain, inter alia, requirements relating to the layout, content, physical characteristics and security features of a document which is supposed to prove, in a standardised and uniform way, the existence of the right to drive, as the Advocate General stated in point 51 of his Opinion.

41 Article 1(1) of Directive 2006/126 provides that the Member States are to introduce a national driving licence based on the EU model set out in Annex I to that directive, in accordance with the provisions of the directive. That model lays down the appearance of the driving licence and sets out the information which must be included. As regards the content of such a driving licence, Article 5(1) of Directive 2006/126 stipulates that driving licences are to state the conditions under which the driver is authorised to drive. So far as concerns the security features aimed at avoiding any risk of forgery, Article 3(2) of the directive, read in conjunction with Annex I thereto, expressly provides that the material used for the driving licence is to be made secure against forgery.

42 As the Advocate General stated in point 53 of his Opinion, it appears inter alia from Annex I to Directive 91/439, which predated Directive 2006/126, that the provisions of the earlier directive also sought to harmonise actual driving licences.

43 Second, Directive 2006/126 establishes, as is clear from recital 8 thereof, a minimum degree of harmonisation of the provisions relating to the conditions under which the driving licence provided for in Article 1 may be issued. Those conditions are, in particular, set out in Articles 4 and 7 of that directive and concern, inter alia, the requisite minimum age, fitness to drive, the tests which the applicant must pass and the residency of the applicant in the issuing Member State.

44 That harmonisation of the requirements for obtaining a driving licence aims, as the Advocate General stated in points 58 and 59 of his Opinion, in particular to lay down necessary preconditions for the mutual recognition of such licences (see, to that effect, judgment of 28 November 1978, *Choquet*, 16/78, EU:C:1978:210, paragraph 7).

45 In that context, it should be recalled that the Court has held that Article 2(1) of Directive 2006/126 imposes on the Member States a clear and precise obligation for the mutual recognition, without any formality, of driving licences, which leaves no room for discretion as to the measures to be adopted in order to comply with it (see, to that effect, judgments of 1 March 2012, *Akyüz*, C-467/10, EU:C:2012:112, paragraph 40; of 26 April 2012, *Hofmann*, C-419/10, EU:C:2012:240, paragraphs 43 and 44; and of 23 April 2015, *Aykul*, C-260/13, EU:C:2015:257, paragraph 45).

46 The Court has repeatedly held that it is for the issuing Member State to investigate whether the minimum conditions imposed by EU law, particularly those relating to residence and fitness to drive laid down in Article 7(1) of Directive 91/439, now reproduced in Article 7(1) of Directive 2006/126 have been satisfied and, therefore, whether the issuing of a driving licence is justified (see, to that effect, judgments of 19 February 2009, *Schwarz*, C-321/07, EU:C:2009:104, paragraph 76, and of 23 April 2015, *Aykul*, C-260/13, EU:C:2015:257, paragraph 46).

47 The Court has held in that regard that once the authorities of one Member State have issued a driving licence in accordance with Article 1(1) of Directive 2006/126, the other Member States are not entitled to investigate whether the conditions for issue laid down by that directive have been met, since the possession of a driving licence issued by one Member State has to be regarded as constituting proof that its holder satisfied those conditions on the day on which that licence was issued (see, to that effect, judgments of 26 April 2012, *Hofmann*, C-419/10, EU:C:2012:240, paragraphs 46 and 47, and of 23 April 2015, *Aykul*, C-260/13, EU:C:2015:257, paragraph 47).

48 In the light of that case-law, a literal interpretation of Article 2(1) of Directive 2006/126 and the general scheme of that directive, it therefore appears that that provision, which provides for the mutual recognition of ‘driving licences’, refers to driving licences as documents evidencing the existence of a right to drive issued in accordance with the provisions of that directive. The only qualification in that regard concerns driving licences issued by the Member States before the entry into force of Article 1(1) of the directive, that is, under Article 16 thereof, before 19 January 2013, and for which Article 13 of Directive 2006/126 is designed to govern the question of equivalences between rights acquired before the implementation of that directive and the various categories of driving licence defined by the latter (see, to that effect, judgments of 26 April 2012, *Hofmann*, C-419/10, EU:C:2012:240, paragraph 41, and of 26 April 2017, *Popescu*, C-632/15, EU:C:2017:303, paragraph 37).

49 It follows that the recognition of the right to drive acquired in a Member State is not provided for as such by Directive 2006/126, since that recognition is only the consequence of the mutual recognition of driving licences brought about by that directive.

50 As the Netherlands and Polish Governments, in particular, have submitted in their written observations, that interpretation of Directive 2006/126 is supported, lastly, by the objectives it pursues.

51 As appears from recital 2 of Directive 2006/126, the directive is intended to contribute to improving road safety and to facilitate the free movement of persons taking up residence in a Member State other than the one which issued the licence. In addition, it appears from recitals 3 and 4 of that directive that the directive expressly aims to solve and avoid problems of transparency for citizens, police forces and the administrations responsible for the administration of driving licences and the falsification of driving licences, resulting from the coexistence of different rules in different Member States and from over 110 different models of driving licences valid in the European Union. The directive thus aims, as stated in paragraph 39 above, ultimately to introduce a single-model driving licence for all Member States, the minimal conditions for the issuing of which are

harmonised by that directive and which is set to replace the various driving licences in existence in the Member States, thereby gradually putting an end to the recognition of national driving ability tests.

52 To require a Member State to recognise certificates awarded by another Member State, such as the CEPC at issue in the main proceedings, which do not fulfil the requirements set out in Directive 2006/126 nor constitute one of the driving licences the equivalence of which with the categories defined in Article 4 of that directive is provided for in Article 13 thereof, would run counter to those various objectives, despite the fact that the holders of those certificates have, in their Member State of residence, satisfied the conditions for the issuing of a driving licence within the meaning of Article 1(1) of that directive and have received authorisation to drive in the territory of that Member State. As the Advocate General stated in point 56 of his Opinion, it would clearly go against the aim of Directive 2006/126, which is to introduce a single standardised driving licence allowing for immediate and easy recognition by any authority anywhere in the European Union, if that directive were interpreted as obliging one Member State to recognise various — potentially provisional — documents that may be issued by another Member State for the purpose of proving the existence of a right to drive.

53 The validity of such certificates issued by a Member State could prove difficult to check by the competent authorities of another Member State, which could increase the risk of fraud.

54 It follows that the refusal of a Member State to recognise a document intended to prove the existence of a right to drive, issued by another Member State, where that document, such as the CEPC at issue in the main proceedings, does not fulfil the requirements of the model driving licence set out in Directive 2006/126, is not contrary to Article 2(1) of that directive.

55 However, such a refusal must be evaluated solely in the light of Article 2(1) of Directive 2006/126 and not that of Articles 18, 21, 45, 49 and 56 TFEU, to which reference is also made in the first and second questions.

56 In accordance with the Court's settled case-law, any national measure in an area which has been the subject of exhaustive harmonisation at the level of the European Union must be assessed in the light of the provisions of that harmonising measure, and not in the light of the provisions of primary law (judgment of 12 November 2015, *Visnapuu*, C-198/14, EU:C:2015:751, paragraph 40 and the case-law cited).

57 In the present case, whilst 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 (see, to that effect, judgment of 1 March 2012, *Akyüz*, C-467/10, EU:C:2012:112, paragraph 53), 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.

58 Furthermore, as stated by the Commission, it must be found that, although Directive 2006/126 lays down the minimum conditions for issuing a driving licence, it does not govern the administrative procedure for issuing such licences. It is therefore for the Member States to establish that procedure, in particular, to determine the date on which the driving licence must be issued to an applicant who has satisfied the minimum requirements.

59 The referring court seems to take the view that the refusal of a Member State to recognise a right to drive obtained in another Member State which cannot be proved by a driving licence

conforming to the model driving licence laid down by the directive could amount to discrimination on grounds of residence, prohibited under EU law.

60 According to the referring court, the existence of differences in the administrative procedures of the Member States governing the issuing of driving licences conforming to such requirements could mean, as in the case in the main proceedings, that a person who satisfies the conditions set out in Directive 2006/126 for obtaining the right to drive in his Member State of residence is granted a driving licence conforming to those requirements only after the transition period has come to an end during which that person holds only a certificate subject to temporal and territorial limitations, whereas persons residing in other Member States also fulfilling those conditions are granted such a driving licence immediately after having passed the practical driving test.

61 In that regard, and contrary to what the referring court seems to consider, even in circumstances in which there are differences between the Member States in the procedure for issuing driving licences, the refusal by a Member State to recognise a document issued by another Member State intended to prove a right to drive, such as the CEPC at issue in the main proceedings, where that document does not fulfil the requirements of the model driving licence provided for in Directive 2006/126, is not such as to run counter to the general prohibition of discrimination laid down in Article 18 TFEU, the right to move and reside freely in the territory of the Member States conferred on citizens of the Union by Article 21 TFEU, or the fundamental freedoms enshrined in Articles 45, 49 and 56 TFEU.

62 The difference in treatment of applicants for a driving licence residing in Germany and France, which follows from the fact that, according to the information provided by the referring court, applicants for a driving licence residing in Germany generally receive a driving licence in that Member State immediately after having passed the practical driving test, whereas, as a general rule, a transitional period applies to applicants for a driving licence residing in France, during which they have only a certificate subject to temporal and territorial limitations evidencing their right to drive, before being issued with a driving licence in conformity with the requirements of the model driving licence of Directive 2006/126, is not the result of discriminatory practices in either of the two Member States, but that of the existence of different rules of administrative procedure in those Member States in a non-harmonised context (see, by analogy, judgments of 12 July 2005, *Schempp*, C-403/03, EU:C:2005:446, paragraph 45, and of 29 November 2011, *National Grid Indus*, C-371/10, EU:C:2011:785, paragraph 62). As stated in paragraphs 43, 44 and 57 above, as EU law currently stands, Directive 2006/126 provides only for minimum harmonisation of certain substantive conditions under which the driving licence provided for in Article 1 of that directive is issued.

63 Having regard to all of the foregoing considerations, the answer to the first and second questions is that Article 2(1) of Directive 2006/126 and Articles 18, 21, 45, 49 and 56 TFEU must be interpreted as not precluding legislation of a Member State under which that Member State may refuse to recognise a certificate issued in another Member State evidencing its holder's right to drive, where that certificate does not fulfil the requirements of the model driving licence provided for in that directive, even if the conditions set by the directive for issuing a driving licence have been satisfied by the holder of that certificate.

The third and fourth questions

64 By its third and fourth questions, which it is appropriate to consider together, the referring court asks, in essence, whether Article 2(1) of Directive 2006/126 and Articles 18, 21, 45, 49 and 56 TFEU must be interpreted as precluding a Member State from imposing a criminal penalty or an

administrative fine on a person who, despite having satisfied the conditions for the issuing of a driving licence as provided for in that directive, drives a motor vehicle in that Member State without a driving licence conforming to the model driving licence provided for in that directive and who, pending the issuing of such a driving licence by another Member State, can prove only that he has been authorised to drive in another Member State by means of a temporary certificate issued by that Member State.

65 As the Advocate General stated in point 64 of his Opinion, Directive 2006/126 does not contain any provision regarding potential penalties for persons driving without the right to do so or who fail to present a driving licence conforming to the requirements of the model driving licence provided for in the directive or another type of document attesting that right.

66 It should be noted in that regard that that directive also does not provide for any rules relating to the obligation for drivers to carry a driving licence with them issued in conformity with the requirements of that directive.

67 Furthermore, the obligation of mutual recognition of driving licences provided for in Article 2(1) of Directive 2006/126 does not preclude the Member States from imposing penalties on drivers who are unable to present the competent authorities with a driving licence issued in conformity with those requirements proving their right to drive.

68 It follows that, in the absence of EU rules governing the matter, the Member States, in principle, remain competent to impose penalties for breach of the obligation to present a driving licence in conformity with the requirements of the model driving licence of Directive 2006/126, which they are free to impose on persons driving a motor vehicle in their territory (see, to that effect, judgments of 29 February 1996, *Sknavi and Chryssanthakopoulos*, C-193/94, EU:C:1996:70, paragraph 36, and of 29 October 1998, *Awoyemi*, C-230/97, EU:C:1998:521, paragraph 25).

69 However, Member States may not impose a penalty in this area which would undermine the right to move and reside freely in the territory of the Member States, conferred on citizens of the Union by Article 21 TFEU and of which Directive 2006/126 is designed to facilitate the exercise (see, to that effect, judgments of 29 February 1996, *Sknavi and Chryssanthakopoulos*, C-193/94, EU:C:1996:70, paragraph 36; of 29 October 1998, *Awoyemi*, C-230/97, EU:C:1998:521, paragraph 26; and of 26 April 2012, *Hofmann*, C-419/10, EU:C:2012:240, paragraph 77); or the fundamental freedoms under Articles 45, 49 and 56 TFEU.

70 As regards Article 18 TFEU, also mentioned by the referring court, it must be borne in mind that that provision, which lays down the principle of the prohibition of discrimination on grounds of nationality, applies independently only to situations governed by EU law in respect of which the TFEU lays down no specific prohibitions of discrimination (see, to that effect, judgments of 12 May 1998, *Gilly*, C-336/96, EU:C:1998:221, paragraph 37, and of 18 July 2017, *Erzberger*, C-566/15, EU:C:2017:562, paragraph 25).

71 In the present case, since the order for reference does not state why *I* was in Germany, it is for the referring court to ascertain whether the exercise of one of the fundamental freedoms under Articles 45, 49 and 56 TFEU implementing the principle of non-discrimination could be affected by imposing a penalty on *I*.

72 If that is not the case, in so far as *I* appears to be a citizen of the Union, which it is also for the referring court to ascertain, it would seem, in any event, that, by travelling from France to Germany,

that person made use, in his capacity as a Union citizen, of his right to move freely within the European Union under Article 21 TFEU.

73 Nonetheless, according to the order for reference and the answer to the first and second questions, in the present case, unlike the persons prosecuted in the case having given rise to the judgment of 29 February 1996, *Sknavi and Chryssanthakopoulos* (C-193/94, EU:C:1996:70), *I*, despite being authorised to drive in France, did not, at the time of the facts at issue in the main proceedings, at least under EU law, have such authorisation in other Member States which the authorities of those Member States would have been required to recognise in accordance with Article 2(1) of Directive 2006/126, since *I* did not, at that time, have a driving licence conforming to the requirements of the model driving licence provided for in that directive proving that he fulfilled the requirements laid down in the directive. In addition, it is clear from the order for reference that the CEPC issued to him in France is valid only in French territory.

74 It therefore does not appear to run counter to Articles 21, 45, 49 and 56 TFEU for a penalty to be imposed in Germany on a driver, such as *I*, who does not have the right to drive in that Member State.

75 The penalty imposed must, however, not be disproportionate to the seriousness of the facts at issue in the main proceedings (see, to that effect, judgment of 29 February 1996, *Sknavi and Chryssanthakopoulos*, C-193/94, EU:C:1996:70, paragraphs 36 and 38).

76 The fact remains that driving a vehicle in the territory of a Member State while holding a right to drive granted in another Member State but not yet being in possession of a driving licence conforming to the requirements of the model driving licence of Directive 2006/126 appears much less objectionable than driving in a Member State without any right to drive, in particular having regard to the objective of that directive, as recalled in paragraph 51 above, which is to contribute to improving road safety.

77 Accordingly, for a Member State to impose a severe penalty, whether criminal or administrative, such as a custodial sentence or a heavy fine, on a driver, such as *I*, who had the right to drive in another Member State, but who had not yet been issued with a driving licence conforming to the requirements of the model driving licence of Directive 2006/126, would be disproportionate to the seriousness of the facts at issue in the main proceedings and thus undermine the right of that driver to move and reside freely in the territory of the Member States, conferred on citizens of the Union by Article 21 TFEU, or the fundamental freedoms under Articles 45, 49 and 56 TFEU. By contrast, to impose a minor penalty, such as an administrative fine in a reasonable amount would not be disproportionate.

78 It is therefore for the referring court to take into account, in its assessment of the seriousness of the offence committed by *I* and of the severity of the penalty to be imposed on him, as a potentially mitigating circumstance, the fact that *I* obtained the right to drive in France, evidenced by the existence of the CEPC which, as the referring court itself stated, will, in principle, be exchanged before its expiry, at *I*'s request, for a driving licence conforming to the requirements of the model driving licence of Directive 2006/126. That court will also need to consider, in the context of its assessment, what actual risk *I* posed for road safety in Germany territory.

79 Having regard to all of the foregoing considerations, the answer to the third and fourth questions is that Article 2(1) of Directive 2006/126 and Articles 21, 45, 49 and 56 TFEU must be interpreted as not precluding a Member State from imposing a penalty on a person who, despite having satisfied the conditions for the issuing of a driving licence as provided for in that directive,

drives a motor vehicle in that Member State without a driving licence conforming to the model driving licence provided for in that directive and who, pending the issuing of such a driving licence by another Member State, can prove only that he has been granted the right to drive in another Member State by means of a temporary certificate issued by that Member State, provided that that penalty is not disproportionate to the seriousness of the facts at issue. In that regard, it is for the referring court to take into account, in its assessment of the seriousness of the offence committed by the person in question and of the severity of the penalty to be imposed on him, as a potentially mitigating circumstance, the fact that that person had been granted the right to drive in another Member State, evidenced by a certificate issued by that other Member State which will, in principle, be exchanged before its expiry, at that person's request, for a driving licence conforming to the requirements of the model driving licence provided for in Directive 2006/126. That court must also consider, in the context of its assessment, what actual risk that person posed for road safety in its territory.

Costs

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

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

- 1. Article 2(1) of Directive 2006/126/EC of the European Parliament and of the Council of 20 December 2006 on driving licences and Articles 18, 21, 45, 49 and 56 TFEU must be interpreted as not precluding legislation of a Member State under which that Member State may refuse to recognise a certificate issued in another Member State evidencing its holder's right to drive, where that certificate does not fulfil the requirements of the model driving licence provided for in that directive, even if the conditions set by that directive for issuing a driving licence have been satisfied by the holder of that certificate.**
- 2. Article 2(1) of Directive 2006/126 and Articles 21, 45, 49 and 56 TFEU must be interpreted as not precluding a Member State from imposing a penalty on a person who, despite having satisfied the conditions for the issuing of a driving licence as provided for in that directive, drives a motor vehicle in that Member State without a driving licence conforming to the model driving licence provided for in that directive and who, pending the issuing of such a driving licence by another Member State, can prove only that he has been granted the right to drive in another Member State by means of a temporary certificate issued by that Member State, provided that that penalty is not disproportionate to the seriousness of the facts at issue. It is thus for the referring court to take into account, in its assessment of the seriousness of the offence committed by the person in question and of the severity of the penalty to be imposed on him, as a potentially mitigating circumstance, the fact that that person had been granted the right to drive in another Member State, evidenced by a certificate issued by that other Member State which will, in principle, be exchanged before its expiry, at that person's request, for a driving licence conforming to the requirements of the model driving licence provided for in Directive 2006/126. That court must also consider, in the context of its assessment, what actual risk that person posed for road safety in its territory.**

[Signatures]

* Language of the case: German.
