

EU Legislation on Driving Licences: Does It Accelerate or Slow Down the Free Movement of Persons?

By Marek Szydło *

A. Introduction

Driving licences, understood as an official authorisation issued by a State permitting a person to drive power-driven vehicles, belongs to those kinds of legal documents that can potentially significantly facilitate and enhance the free movement of persons (EU citizens) between Member States. Provided that a driving licence is duly recognized by Member States other than the State issuing the licence, the holder of the licence can move to those other Member States using his/her individual means of transport, and is entitled to use power-driven vehicles there while pursuing a large number of occupations as an employed or self-employed person. Thus, a driving licence duly recognized by the host Member State enables its holder to move, work, or conduct an economic activity there more effectively and gives the holder some additional options in that regard.¹ Moreover, the driving licence recognized by the host Member State may be used by its holder while there to prove his/her identity and nationality as a Union citizen, and, consequently, it may serve as an equivalent of a passport or identity card.² This is important insofar as the requirement to hold those latter documents (or their equivalents) is a formal prerequisite under the relevant EU legislation for Union citizens exercising their rights to enter and to reside in other Member States.³ The practical importance of driving licences and of the legislation concerning those issues in the EU, especially in the context of free movement of persons, is

* Professor at the University of Wrocław, Poland. This article was financed by Polish budgetary resources designated for science in 2010–2011. Email: marekszydlo@poczta.onet.pl.

¹ As the Court of Justice has put it: “In view of the importance of individual means of transport, possession of a driving licence duly recognized by the host State may affect the actual pursuit by persons subject to Community law of a large number of occupations for employed or self-employed persons and, more generally, freedom of movement.” Case 16/78, *Criminal Proceedings Against Michel Choquet*, 1978 E.C.R. 2293, para. 4; Case C-193/94, *Criminal Proceedings Against Sofia Skanavi and Konstantin Chryssanthakopoulos*, 1996 E.C.R. I-929, para. 23; Case C-476/01, *Criminal Proceedings Against Felix Kapper*, 2004 E.C.R. I-5205, para. 71.

² See Case C-215/03, *Salah Oulane v. Minister voor Vreemdelingenzaken en Integratie*, 2005 E.C.R. I-1215, paras. 28–35.

³ See Directive 2004/38/EC of the European Parliament and of the Council of 29 April 2004 on the Right of Citizens of the Union and Their Family Members to Move and Reside Freely Within the Territory of the Member States Amending Regulation (EEC) No 1612/68 and Repealing Directives 64/221/EEC, 68/360/EEC, 72/194/EEC, 73/148/EEC, 75/34/EEC, 75/35/EEC, 90/364/EEC, 90/365/EEC and 93/96/EEC, arts. 5, 6, 8, 2004 O.J. (L 158) 77.

additionally reinforced by the fact that a valid driving licence is held by an estimated 60% of the Union's population, which means 300 million citizens.⁴ The EU and national legislation on driving licences has an undisputed direct impact on their lives.

The first EU legislation on driving licences dates back to 1980, when the Council Directive 80/1263/EEC established a Community model of a national driving licence and the mutual recognition by Member States of those national licences.⁵ It also provided for the harmonization of standards for driving tests and licensing as well as obligatory exchange of licences by holders transferring their place of normal residence or place of employment from one Member State to another. The subsequent Directive 91/439/EEC maintained the existence of national driving licences based on the Community model and their mutual recognition by Member States.⁶ It deepened the harmonization of conditions that the issue of a driving licence in Member States should be subject to, and abolished the rule included in Directive 80/1263/EEC according to which a person transferring its normal residence to another Member State had to obtain a new driving licence in that latter State. Directive 91/439/EEC will be repealed with effect from 19 January 2013, and it will be replaced by Directive 2006/126/EC of the European Parliament and of the Council of 20 December 2006 on driving licences.⁷ However, Member States were already under an obligation to adopt and publish the laws, regulations, and administrative provisions necessary to comply with the majority of Articles of the latter Directive by 19 January 2011.⁸ Directive 2006/126/EC constitutes a further step in eliminating the differences existing between Member States in regard to the various aspects of national driving licences based on the Community (EU) model, and it is intended to contribute to improving road safety and facilitating the free movement of persons taking up residence in a Member State other than the one issuing the driving licence.⁹

The aim of the present article is to verify the suitability of EU legislation on driving licences (i.e., the provisions of Directive 91/439/EEC and Directive 2006/126/EC) for enhancing and facilitating the free movement of persons between Member States. On the one hand, the paper will identify those institutions included in the said legislation which abolish the

⁴ *Driving Licence*, EUR. COMM'N MOBILITY & TRANSP., http://ec.europa.eu/transport/road_safety/behavior/driving_licence_en.htm (last updated 30 Oct. 2010).

⁵ Council Directive 80/1263/EEC, 1980 O.J. (L 375) 1 (EC).

⁶ Council Directive 91/439/EEC, 1991 O.J. (L 237) 1 (EC).

⁷ Council Directive 2006/126/EC, 2006 O.J. (L 403) 18 (EC).

⁸ Those adopted provisions shall be applied as of 19 January 2013. *Id.* at 26–27.

⁹ In particular, Directive 2006/126/EC provides for the harmonization of such issues—until now being beyond the scope of the harmonized EU rules—as the rules on periodicity of licences renewal, on a storage medium (microchip) as part of the driving licence. *Id.*

obstacles hindering free movement and which promote the values underlying the EU concept of internal market (e.g., mutual recognition of driving licences, harmonization of standards required from applicants, potential existence of regulatory arbitrage on the part of candidates for drivers). On the other hand, the article will detect those provisions of the aforementioned legislation which constitute by themselves or form a basis for the introduction by Member States of some restrictions impeding the free migration of EU citizens between Member States (e.g., refusal of recognition of driving licences, the powers of Member States to restrict, suspend, withdraw or cancel driving licences issued by other Member States). At the same time the article will also consider whether those restrictions on free movement might indeed be justified by some other competing values, in particular, by the need to ensure road safety.

Against such a background the article is structured as follows. Part B considers the legal nature of driving licences that are regulated in EU legislation. It is submitted there that the driving licences under discussion, while belonging to the general category of administrative acts triggering cross-border effects, should at the same time be classified under a specific, and indeed new, subcategory. Namely, they should be situated in the intermediate subcategory between, on the one hand, uniform EU administrative acts producing transnational effects and, on the other hand, national administrative acts which on the ground of EU law are harmonized and produce transnational legal effects. Part C analyzes the mutual recognition by Member States of driving licences issued by other Member States. Special attention is paid to the legal essence of the institution of mutual recognition, to the mutual trust as the basic value on which the mutual recognition is based, and to the procedure and conditions of mutual recognition of driving licences. Part D is devoted to the permitted refusal of recognition of driving licences, which constitutes a strict and narrow exception to the principle of mutual recognition. Part E considers the powers granted by the EU legislation on driving licences to the Member State where the holder of a driving licence issued by another Member State has transferred his/her normal residence. This Part shows how the driving licence issued by one Member State can also be influenced (i.e., restricted, suspended or withdrawn) by another Member State. Part F raises the issue of harmonization of standards that the candidates for drivers must comply with. Since the EU legislation has mostly set out the minimum standards, the Part analyzes how Member States should make use of their leeway in creating more restrictive standards while at the same time not infringing the Treaty rules on free movement. This Part also considers the potential for the emergence of regulatory arbitrage on the part of the candidates for drivers seeking such national legal order that from their point of view is the most favourable. Finally, Part G presents the conclusions.

B. The Legal Nature of Driving Licences as Regulated in EU Legislation

National driving licences based on the EU model belong to the general category of administrative acts encompassing all those acts which on the ground of the EU law trigger cross-border effects, i.e., are recognized as valid and producing legal effects not only within the territory of one Member State (e.g., within the territory of the Member State issuing the given act, or within the State where the addressee of the act has its residence), but within the territories of other Member States as well. However, within that general category of administrative acts the driving licences under discussion form a specific subcategory.

Traditionally, the aforementioned general category of administrative acts is perceived as including two specific subcategories.¹⁰ The first subcategory encompasses uniform EU administrative acts which, while being valid and recognized in all Member States, are usually issued by EU institutions, and the legal structure of which is exhaustively regulated at the EU level, without the possibility for that structure to be modified by individual Member States (e.g., Community trade mark;¹¹ authorization to permit placing on the market a genetically modified organism for food use).¹² The second subcategory includes administrative acts which are issued at the national level, and the legal structure of which is harmonized in the EU law, albeit not exhaustively. These acts are also governed by the national law of the Member State issuing the act, under the stipulation that the EU law orders a mandatory recognition of those acts, including the legal effects attached to them, by all other Member States. Such national administrative acts thus produce transnational legal effects, but the important thing is that the power to withdraw, suspend, or modify those acts rests exclusively with the authorities of the Member State issuing the given act (e.g., authorization granting the right to carry on the business of a credit institution;¹³ licence for railway undertakings^{14, 15}).

¹⁰ As regards a more detailed classification of such administrative acts with cross-border effects, see, for example, Hans Christian Röhl, *Procedures in the European Composite Administration*, in *TRANSFORMING ADMINISTRATIVE PROCEDURE* 91 (Javier Barnes ed., 2008).

¹¹ See Council Regulation 207/2009, 2009 O.J. (L 78) 1 (EC).

¹² See Council Regulation 1829/2003, 2003 O.J. (L 268) 1 (EC).

¹³ See Council Directive 2000/12/EC, 2000 O.J. (L 126) 1 (EC).

¹⁴ See Council Directive 95/18/EC, O.J. (L 143) 70 (EC).

¹⁵ For more on this second subcategory of transnational administrative acts, see, for example, MATTHIAS HERDEGEN, *BANKENAUFICHT IM EUROPÄISCHEN VERBUND* 101 (2010); Franz Mayer, *Internationalisierung des Verwaltungsrechts?*, in *INTERNATIONALES VERWALTUNGSRECHT* 55 (Christoph Möllers et al. eds., 2007); JÖRG MENZEL, *INTERNATIONALES ÖFFENTLICHES RECHT* 826 (2011); FRANZ-JOSEPH PEINE, *ALLGEMEINES VERWALTUNGSRECHT* 117 (2008); THOMAS VON DANWITZ, *EUROPÄISCHES VERWALTUNGSRECHT* 646 (2008); Joachim Becker, *Der transnationale Verwaltungsakt*, 116 *DEUTSCHES VERWALTUNGSBLATT* 855 (2001); Volker Neßler, *Der transnationale Verwaltungsakt—Zur Dogmatik eines neuen Rechtsinstituts*, 14 *NEUE ZEITSCHRIFT FÜR VERWALTUNGSRECHT* 863 (1995).

Driving licences as regulated in EU legislation undoubtedly belong neither to the first, nor to the second subcategory. True, the legal structure of these licences includes such elements that make them very akin to administrative acts of the second subcategory. In that regard, it is very telling that in the EU Directives on driving licences the latter are referred to as: “[N]ational driving licences based on the Community (EU) model.”¹⁶ It thus results that the legal structure of the driving licences under discussion is composed of two equally ranked components: The “national” one and the one forming “the Community (EU) model.” “The Community (EU) model” consists in bringing into the said licence such important elements as: the uniform physical characteristics of the card of a driving licence and the specific data to be included in that card,¹⁷ the harmonized categories of a driving licence,¹⁸ and the harmonized conditions that the applicants for driving licences must comply with.¹⁹ At the same time, it has to be admitted that the “national” component of the said licence is also very significant. Namely, driving licences are introduced and issued as well as restricted, suspended, withdrawn and cancelled by individual Member States and contain the distinguishing sign of the Member State issuing the licence;²⁰ individual Member States are permitted to introduce more restrictive conditions of issuing driving licences than the minimum standard provided for in the EU Directives,²¹ and are authorized to apply such conditions of issue that are not mentioned in the EU Directives at all.²² If one additionally bears in mind that such national driving licences based on the Community (EU) model must be mutually recognized by Member States,²³ and thus produce transnational legal effects, this all may at first sight prompt the qualification of those licences as belonging to the second of the aforementioned subcategories of administrative acts with cross-border effects.

However, there is one important element which prevents such qualification and which justifies the separation of driving licences regulated in EU legislation into a specific subcategory of administrative acts with cross-border effects. Namely, in the case of the discussed driving licences, the power to restrict, suspend, cancel, or withdraw the driving licence does not rest exclusively with the authorities of the Member State issuing the

¹⁶ Directive 91/439/EEC, *supra* note 6, at art. 1(1); Directive 2006/126/EC, *supra* note 7, at art. 1(1).

¹⁷ See Directive 91/439/EEC, *supra* note 6, at annex I; Directive 2006/126/EC, *supra* note 7, at annex I.

¹⁸ Directive 91/439/EEC, *supra* note 6, at art. 3; Directive 2006/126/EC, *supra* note 7, at art. 4.

¹⁹ Directive 91/439/EEC, *supra* note 6, at arts. 6–7; Directive 2006/126/EC, *supra* note 7, at arts. 4, 7.

²⁰ Directive 91/439/EEC, *supra* note 6, at art. 1(1), 2(1); Directive 2006/126/EC, *supra* note 7, at art. 1(1).

²¹ See Directive 91/439/EEC, *supra* note 6, at arts. 6–7; Directive 2006/126/EC, *supra* note 7, at arts. 4, 7.

²² Directive 91/439/EEC, *supra* note 6, at art. 7(4); Directive 2006/126/EC, *supra* note 7, at art. 7(4).

²³ Directive 91/439/EEC, *supra* note 6, at art. 1(2); Directive 2006/126/EC, *supra* note 7, at art. 2(1).

licence, but it is also granted to the authorities of the Member State where the holder of the licence has subsequently transferred his/her normal residence.²⁴ In the case of typical administrative acts issued at a national level, including administrative acts producing transnational legal effects in all other Member States, merely the authorities of the Member State issuing the act that are authorized to modify it next or to abolish its binding power completely. In the case of driving licences as regulated in EU legislation, this latter aspect of the power over administrative acts looks quite different: The influence on the content and on the binding power of those administrative acts might decisively be exerted also by the authorities of every single Member State where the holder of the licence has in the meantime established his/her normal residence. Thus, driving licences in the EU, perceived as a kind of administrative act, have not only one, but two (and possibly even more) different sovereigns that may take autonomous decisions with regard to a given licence, under the stipulation that those sovereigns must mutually respect and recognize their actions in the discussed field. The result of this circumstance is that within a single EU administrative area the driving licences are bestowed with a very specific status.

C. Mutual Recognition of Driving Licences Issued by Member States

As already mentioned, driving licences issued by Member States shall be mutually recognised.²⁵ This mutual recognition means that the binding power and the legal effects (both procedural and material) of an administrative act granting (restricting, suspending, withdrawing, or cancelling) a driving licence are extended onto the territories of all other Member States. In the case of an administrative act granting a driving licence, the material legal effects of such an act boil down to the authoritative confirmation that the given person has effectively fulfilled all the conditions required and is now vested with the right to drive a specific category of power-driven vehicles, for a definite or indefinite period of time. By analogy, the material legal effects of an administrative act restricting, suspending, withdrawing, or cancelling a driving licence are equivalent to an authoritative statement that some statutory prerequisites, determined in advance, have been materialized and as a consequence, the right to drive as previously granted to the addressee of the act are at the moment restricted, suspended, withdrawn or cancelled, respectively. The mutual recognition of those administrative acts issued by one Member State means that the above-mentioned legal effects are also materialized within the jurisdictions of all other Member States, and are extended to those other jurisdictions as well.²⁶

²⁴ Directive 91/439/EEC, *supra* note 6, at art. 8(2); Directive 2006/126/EC, *supra* note 7, at art. 11(2). As regards the notion of “normal residence,” see Directive 91/439/EEC, *supra* note 6, at art. 9; Directive 2006/126/EC, *supra* note 7, at art. 12. See also *infra* Part E.

²⁵ Directive 91/439/EEC, *supra* note 6, at art. 1(2); Directive 2006/126/EC, *supra* note 7, at art. 2(1).

²⁶ It seems that as regards the very legal essence of mutual recognition of driving licences and other administrative acts, one may subsidiarily refer to the concept of mutual recognition of judgments in civil and commercial matters which has its normative basis in Article 33(1) of Council Regulation 44/2001, 2001 O.J. (L 12) 1 (“A judgment given in a Member State shall be recognised in the other Member States without any special

This mutual recognition of driving licences should take place automatically, without any special formalities or procedures.²⁷ It means that a non-issuing Member State cannot demand of the holder of a driving licence that he/she apply for recognition of that licence in the first Member State.²⁸ The host Member State is also not allowed to require from the holder of a driving licence issued in another Member State that he/she register that licence with the competent authorities of the host State as a condition of recognition (especially when driving a vehicle without registration of a licence is regarded in a given State as an offence for which a fine may be imposed).²⁹ All the more, a Member State other than the one issuing the licence cannot impose upon the holder of a licence obtained in another Member State a duty to exchange his/her licence in the host State,³⁰ even if the holder moved his/her normal residence to that host State, and even if the driving licence issued by the host Member State in exchange for a licence issued by another Member State was not regarded as constituting the basis of the right to drive a motor vehicle in the territory of the host State, but was considered to be merely the evidence of the existence of such a

procedure being required.”). As the Court of Justice has put it (referring to the Brussels Convention of 27 September 1968 on Jurisdiction and the Enforcement of Judgments in Civil and Commercial Matters which had been in force in the Community before Regulation 44/2001 came into force), a foreign judgment which has been recognized (by virtue of the aforementioned Convention) “must in principle have the same effects in the State in which enforcement is sought as it does in the State in which judgment was given.” Case 145/86, *Horst Ludwig Martin Hoffmann v. Adelheid Krieg*, 1988 E.C.R. 645, para. 11. It thus follows that giving the recognized judgment the same conclusive effects as it has in the original country under its law is inherent in the very concept of mutual recognition of judgments. See PETER STONE, *EU PRIVATE INTERNATIONAL LAW: HARMONIZATION OF LAWS* 210 (2006).

²⁷ Case C-193/94, *Criminal Proceedings Against Sofia Skanavi and Konstantin Chryssanthakopoulos*, 1996 E.C.R. I-929, para. 26; Case C-230/97, *Criminal Proceedings Against Ibiyinka Awoyemi*, 1998 E.C.R. I-6781, para. 41; Case C-246/00, *Comm’n v. Kingdom of the Netherlands*, 2003 E.C.R. I-7485, para. 60; Case C-195/02, *Comm’n v. Kingdom of Spain*, 2004 E.C.R. I-7857, para. 53; Cases C-329/06 and C-343/06, *Arthur Wiedemann (C-329/06) v. Land Baden-Württemberg and Peter Funk (C-343/06) v. Stadt Chemnitz*, 2008 E.C.R. I-4635, *Arthur Wiedemann (C-329/06) v. Land Baden-Württemberg and Peter Funk (C-343/06) v. Stadt Chemnitz*, 2008 E.C.R. I-4635, paras. 50–51; Cases C-334/06 to C-336/06, *Matthias Zerche (C-334/06), Manfred Seuke (C-336/06) v. Landkreis Mittweida and Steffen Schubert (C-335/06) v. Landkreis Mittlerer Erzgebirgskreis*, 2008 E.C.R. I-4691, paras. 47–48.

²⁸ Cases C-329/06 and C-343/06, *Arthur Wiedemann (C-329/06) v. Land Baden-Württemberg and Peter Funk (C-343/06) v. Stadt Chemnitz*, 2008 E.C.R. I-4635, *Arthur Wiedemann (C-329/06) v. Land Baden-Württemberg and Peter Funk (C-343/06) v. Stadt Chemnitz*, 2008 E.C.R. I-4635, para. 51; Case C-334/06 to C-336/06, *Matthias Zerche (C-334/06), Manfred Seuke (C-336/06) v. Landkreis Mittweida and Steffen Schubert (C-335/06) v. Landkreis Mittlerer Erzgebirgskreis*, 2008 E.C.R. I-4691, para. 48.

²⁹ Case C-246/00, *Comm’n v. Kingdom of the Netherlands*, 2003 E.C.R. I-7485, paras. 60–63; Case C-253/01, *S.A. Krüger v. Directie van de rechtspersoonlijkheid bezittende Dienst Wegverkeer*, 2004 E.C.R. I-1191, paras. 32–33; Case C-195/02, *Comm’n v. Kingdom of Spain*, 2004 E.C.R. I-7857, paras. 55–56.

³⁰ Case C-230/97, *Criminal Proceedings Against Ibiyinka Awoyemi*, 1998 E.C.R. I-6781, para. 42; Case C-246/00, *Comm’n v. Kingdom of the Netherlands*, 2003 E.C.R. I-7485, para. 72; Case C-253/01, *S.A. Krüger v. Directie van de rechtspersoonlijkheid bezittende Dienst Wegverkeer*, 2004 E.C.R. I-1191, paras. 30–33.

right.³¹ True, 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 voluntarily request that his driving licence be exchanged for an equivalent licence.³² However, it is the above-mentioned holder's right and not duty. As the EU legislator itself admitted, the obligation to exchange driving licences within a specific period of time after changing normal residence constitutes an obstacle to the free movement of persons. Such an obstacle is clearly inadmissible in light of the progress made towards European integration.³³

The principle of automatic mutual recognition of driving licences also means that once the authorities of one Member State have issued a driving licence, the other Member States are not entitled to investigate or re-check whether the conditions for issue of a licence laid down by Directive 91/439/EEC or Directive 2006/126/EC have in fact been observed.³⁴ This inadmissibility of verification concerns also the condition according to which an applicant for a driver's licence must have his/her normal residence in the territory of the Member State issuing the licence.³⁵ The host Member State cannot then require the holder to prove again that he/she actually satisfied that latter condition, without violating the principle of mutual recognition of driving licences.³⁶ It is for the issuing Member State only to investigate whether the minimum conditions imposed by the EU law, particularly those relating to residence and fitness to drive, have been satisfied.³⁷ The possession of a driving

³¹ See Case C-193/94, *Criminal Proceedings Against Sofia Skanavi and Konstantin Chryssanthakopoulos*, 1996 E.C.R. I-929, para. 34.

³² Directive 91/439/EEC, *supra* note 6, at art. 8(1); Directive 2006/126/EC, *supra* note 7, at art. 11(1).

³³ Directive 91/439/EEC, *supra* note 6, at pmb1.

³⁴ Case C-227/05, *Daniel Halbritter v. Freistaat Bayern*, 2006 E.C.R. I-49, para. 34; Case C-340/05, *Criminal Proceedings Against Stefan Kremer*, 2006 E.C.R. I-98, para. 27; Cases C-329/06 and C-343/06, *Arthur Wiedemann (C-329/06) v. Land Baden-Württemberg and Peter Funk (C-343/06) v. Stadt Chemnitz*, 2008 E.C.R. I-4635, *Arthur Wiedemann (C-329/06) v. Land Baden-Württemberg and Peter Funk (C-343/06) v. Stadt Chemnitz*, 2008 E.C.R. I-4635, para. 53; Cases C-334/06 to C-336/06, *Matthias Zerche (C-334/06), Manfred Seuke (C-336/06) v. Landkreis Mittweida and Steffen Schubert (C-335/06) v. Landkreis Mittlerer Erzgebirgskreis*, 2008 E.C.R. I-4691, para. 50; Case C-445/08, *Kurt Wierer v. Land Baden-Württemberg*, 2009 E.C.R. I-119, para. 40; Case C-184/10, *Mathilde Grasser v. Freistaat Bayern*, 48 C.M.L.R. 459, para. 21 (2011).

³⁵ Directive 91/439/EEC, *supra* note 6, at art. 7(1)(b); Directive 2006/126/EC, *supra* note 7, at art. 7(1)(e).

³⁶ Case C-246/00, *Comm'n v. Kingdom of the Netherlands*, 2003 E.C.R. I-7485, para. 75; Case C-476/01, *Criminal Proceedings Against Felix Kapper*, 2004 E.C.R. I-5205, para. 46.

³⁷ Cases C-329/06 and C-343/06, *Arthur Wiedemann (C-329/06) v. Land Baden-Württemberg and Peter Funk (C-343/06) v. Stadt Chemnitz*, 2008 E.C.R. I-4635, *Arthur Wiedemann (C-329/06) v. Land Baden-Württemberg and Peter Funk (C-343/06) v. Stadt Chemnitz*, 2008 E.C.R. I-4635, para. 52; Cases C-334/06 to C-336/06, *Matthias Zerche (C-334/06), Manfred Seuke (C-336/06) v. Landkreis Mittweida and Steffen Schubert (C-335/06) v. Landkreis Mittlerer Erzgebirgskreis*, 2008 E.C.R. I-4691, para. 49; Case C-321/07, *Criminal Proceedings Against Karl Schwarz*, 2009 E.C.R. I-1113, para. 76; Case C-445/08, *Kurt Wierer v. Land Baden-Württemberg*, 2009 E.C.R. I-119, para. 39; Case C-184/10, *Mathilde Grasser v. Freistaat Bayern*, 48 C.M.L.R. 459, para. 20 (2011).

licence issued by one Member State has to be regarded as constituting proof that, on the day that the licence was issued, its holder fulfilled those conditions.³⁸ The above-mentioned proof must be automatically recognized in the host Member State and must produce all its relevant effects there.

Therefore, it is contrary to the principle of mutual recognition for the host Member State to refuse to recognise a driving licence issued by another Member State on the ground that, according to the information supplied by the host Member State, the holder of that licence did not, at the date of its issue, satisfy the necessary conditions for obtaining it.³⁹ In particular, the principle of mutual recognition of driving licences means that when the host Member State is carrying out a traffic check within its territory, it is precluded from refusing to recognise a driving licence issued by another Member State on the grounds that, according to the information available to the host Member State, the holder of the licence in question had, at the date of its issue, established his normal residence in that Member State and not in the issuing Member State, as the EU Directives require (as regards the admissible exceptions to that prohibition of refusal, see more in Part D).⁴⁰ True, if a Member State has good reason to doubt the validity of a licence issued by another Member State, it should not be inactive. It must so inform the latter State under the rules relating to mutual assistance and exchange of information contained in EU Directives.⁴¹ Should the issuing Member State fail to take the appropriate measures, the host Member State may bring proceedings against it under Article 259 TFEU for a declaration by the Court that there has been a failure to fulfil the obligations arising under EU Directive.⁴² However, the host Member State cannot examine or verify the holder's

³⁸ Cases C-246/00, *Comm'n v. Kingdom of the Netherlands*, 2003 E.C.R. I-7458, para. 75; Case C-476/01, *Criminal Proceedings Against Felix Kapper*, 2004 E.C.R. I-5205, para. 46; Cases C-329/06 and C-343/06, *Arthur Wiedemann (C-329/06) v. Land Baden-Württemberg and Peter Funk (C-343/06) v. Stadt Chemnitz*, 2008 E.C.R. I-4635, para. 53; Cases C-334/06 to C-336/06, *Matthias Zerche (C-334/06), Manfred Seuke (C-336/06) v. Landkreis Mittweida and Steffen Schubert (C-335/06) v. Landkreis Mittlerer Erzgebirgskreis*, 2008 E.C.R. I-4691, para. 50; Case C-321/07, *Criminal Proceedings Against Karl Schwarz*, 2009 E.C.R. I-1113, para. 77; C-445/08, *Kurt Wierer v. Land Baden-Württemberg*, 2009 E.C.R. I-119, para. 40; Case C-184/10, *Mathilde Grasser v. Freistaat Bayern*, 48 C.M.L.R. 459, para. 21 (2011).

³⁹ Case C-329/06 and C-343/06, *Arthur Wiedemann (C-329/06) v. Land Baden-Württemberg and Peter Funk (C-343/06) v. Stadt Chemnitz*, 2008 E.C.R. I-4635, para. 55; Cases C-334/06 to C-336/06, *Matthias Zerche (C-334/06), Manfred Seuke (C-336/06) v. Landkreis Mittweida and Steffen Schubert (C-335/06) v. Landkreis Mittlerer Erzgebirgskreis*, 2008 E.C.R. I-4691, para. 52.

⁴⁰ Case C-476/01, *Criminal Proceedings Against Felix Kapper*, 2004 E.C.R. I-5205, para. 47; Case C-445/08, *Kurt Wierer v. Land Baden-Württemberg*, 2009 E.C.R. I-119, para. 41.

⁴¹ See Directive 91/439/EEC, *supra* note 6, at art. 12(3); Directive 2006/126/EC, *supra* note 7, at art. 15.

⁴² Case C-476/01, *Criminal Proceedings Against Felix Kapper*, 2004 E.C.R. I-5205, para. 48; Cases C-329/06 and C-343/06, *Arthur Wiedemann (C-329/06) v. Land Baden-Württemberg and Peter Funk (C-343/06) v. Stadt Chemnitz*, 2008 E.C.R. I-4635, para. 57; C-334/06 to C-336/06, *Matthias Zerche (C-334/06), Manfred Seuke (C-336/06) v. Landkreis Mittweida and Steffen Schubert (C-335/06) v. Landkreis Mittlerer Erzgebirgskreis*, 2008 E.C.R. I-4691, para. 54; C-445/08, *Kurt Wierer v. Land Baden-Württemberg*, 2009 E.C.R. I-119, para. 43.

satisfaction of conditions for the issue of a licence during or in connection with the process of recognition of a foreign licence, and cannot treat the fulfilment of those conditions as a prerequisite for recognition.

The host Member State is not allowed to make the recognition of a licence issued by another Member State conditional upon the fulfilment by the holder of the licence of those requirements for the issue of a licence that are provided for in the legislation of the host Member State, including when the latter requirements are stricter than those established in the law of the Member State that issued the licence in question.⁴³ In particular, when a person has been the subject of a measure withdrawing his/her driving licence in the territory of one Member State, but not including a period in which it is prohibited to apply for a new licence, or when this period of prohibition has expired, and the person in question obtained a new licence in another Member State, then the first Member State must recognize this driving licence automatically. The first Member State cannot require the aforementioned person to satisfy the necessary conditions in that first Member State for the issue of a new licence following that withdrawal, including the examination of fitness to drive certifying that the grounds justifying the withdrawal are no longer in existence.⁴⁴

The mutual recognition of driving licences must take place not only automatically, i.e., without any formalities, but it must also be effected exactly at the moment in which an administrative act granting (restricting, suspending, withdrawing, or cancelling) a driving licence is issued and becomes effective in the issuing Member State. Thus, no delay or hiatus should occur between, on the one hand, the moment of issuance of the aforementioned administrative act (or, to be more precise, between the moment in which the act becomes legally effective) in one Member State and, on the other hand, the moment of recognition of that act in all other Member States. This recognition of a foreign driving licence should be effected *ipso iure* exactly at the above-mentioned moment and, in order to have a licence recognized in a Member State other than the issuing one, the holder of that licence does not even have to move or drive to that other Member State, and is under no obligation to invoke or present the licence there. It thus follows that when a holder of a driving licence issued in one Member State moves to another Member State and potentially wishes to make use of his/her right to drive power-driven vehicles there,

⁴³ Cases C-329/06 and C-343/06, Arthur Wiedemann (C-329/06) v. Land Baden-Württemberg and Peter Funk (C-343/06) v. Stadt Chemnitz, 2008 E.C.R. I-4635, para. 53; C-334/06 to C-336/06, Matthias Zerche (C-334/06), Manfred Seuke (C-336/06) v. Landkreis Mittweida and Steffen Schubert (C-335/06) v. Landkreis Mittlerer Erzgebirgskreis, 2008 E.C.R. I-4691, para. 50.

⁴⁴ Case C-340/05, Criminal Proceedings Against Stefan Kremer, 2006 E.C.R. I-98, para. 38; C-329/06 and C-343/06, Arthur Wiedemann (C-329/06) v. Land Baden-Württemberg and Peter Funk (C-343/06) v. Stadt Chemnitz, 2008 E.C.R. I-4635, paras. 54, 62–64; C-334/06 to C-336/06, Matthias Zerche (C-334/06), Manfred Seuke (C-336/06) v. Landkreis Mittweida and Steffen Schubert (C-335/06) v. Landkreis Mittlerer Erzgebirgskreis, 2008 E.C.R. I-4691, paras. 51, 59–61; Case C-321/07, Criminal Proceedings Against Karl Schwarz, 2009 E.C.R. I-1113, para. 91.

then he/she has a driving licence already recognized in that Member State, because this recognition has been effected already at the moment when the holder obtained his/her licence in the issuing Member State.

It has to be remembered that the provision of the Directive that obliges Member States to mutually recognise driving licences produces direct effect, because it contains a precise and unconditional obligation and leaves Member States no room for discretion as to the measures to be adopted in order to comply with that requirement.⁴⁵ It thus results that when a host Member State fails to recognize a driving licence issued by another Member State automatically and/or at the moment in which it was issued in another Member State, then the holder of the licence is entitled to rely directly on the said provision of the Directive and has the right to invoke that provision before national courts or other bodies. In such a way the above-mentioned holder of the licence can challenge the presumptive sanction, in particular in the form of imprisonment or fine, which the host Member State imposes on him/her for not having a licence,⁴⁶ or for non-compliance with some formalities concerned with recognition.⁴⁷

There is no doubt that the general principle of mutual recognition of driving licences issued by the Member States was established in order to facilitate the free movement of persons, in particular of those persons who want to settle in a Member State other than that in which they have passed a driving test, or, in more general terms, of those persons who wish to drive power-driven vehicles in Member States other than the State in which they have obtained their driving licence.⁴⁸ This instrumental role of the principle of mutual

⁴⁵ Cases Case C-230/97, *Criminal Proceedings Against Ibiyinka Awoyemi*, 1998 E.C.R. I-6781, paras. 39–43; Case C-246-00, *Comm'n v. Kingdom of the Netherlands*, 2003 E.C.R. I-7458, para. 61; Case C-253/01, *S.A. Krüger v. Directie van de rechtspersoonlijkheid bezittende Dienst Wegverkeer*, 2004 E.C.R. I-1191, para. 25; Case C-476/01, *Criminal Proceedings Against Felix Kapper*, 2004 E.C.R. I-5205, para. 45; Case C-195/02, para. 54; Case C-227/05, *Daniel Halbritter v. Freistaat Bayern*, 2006 E.C.R. I-49, para. 25; Case C-340/05, *Criminal Proceedings Against Stefan Kremer*, 2006 E.C.R. I-98, para. 27; Cases C-329/06 and C-343/06, *Arthur Wiedemann (C-329/06) v. Land Baden-Württemberg and Peter Funk (C-343/06) v. Stadt Chemnitz*, 2008 E.C.R. I-4635, para. 50; Cases C-334/06 to C-336/06, *Matthias Zerche (C-334/06), Manfred Seuke (C-336/06) v. Landkreis Mittweida and Steffen Schubert (C-335/06) v. Landkreis Mittlerer Erzgebirgskreis*, 2008 E.C.R. I-4691, para. 47; Case C-1/07, *Criminal Proceedings Against Frank Weber*, 2008 E.C.R. I-8571, para. 27; Case C-321/07, *Criminal Proceedings Against Karl Schwarz*, 2009 E.C.R. I-1113, para. 75; Case C-445/08, *Kurt Wierer v. Land Baden-Württemberg*, 2009 E.C.R. I-119, para. 38; Case C-184/10, *Mathilde Grassler v. Freistaat Bayern*, 48 C.M.L.R. 459, para. 19 (2011).

⁴⁶ Case C-230/97, *Criminal Proceedings Against Ibiyinka Awoyemi*, 1998 E.C.R. I-6781, para. 45.

⁴⁷ Case C-246-00, *Comm'n v. Kingdom of the Netherlands*, 2003 E.C.R. I-7458, paras. 62–64.

⁴⁸ See Directive 91/439/EEC, *supra* note 6, at pmb.; Directive 2006/126/EC, *supra* note 7, at pmb.; see also Case C-476/01, *Criminal Proceedings Against Felix Kapper*, 2004 E.C.R. I-5205, para. 71; Cases C-329/06 and C-343/06, *Arthur Wiedemann (C-329/06) v. Land Baden-Württemberg and Peter Funk (C-343/06) v. Stadt Chemnitz*, 2008 E.C.R. I-4635, para. 49; Cases C-334/06 to C-336/06, *Matthias Zerche (C-334/06), Manfred Seuke (C-336/06) v. Landkreis Mittweida and Steffen Schubert (C-335/06) v. Landkreis Mittlerer Erzgebirgskreis*, 2008 E.C.R. I-4691, para. 46; Case Case C-1/07, *Criminal Proceedings Against Frank Weber*, 2008 E.C.R. I-8571, para. 26; Case C-

recognition in enhancing and facilitating the free movement is a very well known phenomenon in the EU law. The importance of the principle of mutual recognition for ensuring the free movement is substantiated by the fact that now this principle extends not only to goods,⁴⁹ or diplomas,⁵⁰ but also to foreign judgments in civil and commercial matters,⁵¹ authorizations to pursue an economic activity,⁵² and even to criminal laws of other Member States and the results of their application.⁵³ It has to be remembered that this principle of mutual recognition is strongly based on the mutual trust in the Member States' legal, judicial, and regulatory systems. This mutual trust in turn, which is intrinsically linked to the meta-aim of an "ever close Union"⁵⁴ and which reflects the Member States' willingness to give up national judicial and regulatory sovereignty, can be currently regarded as a sub-category to the principle of loyalty and solidarity contained in Article 4(3) TEU.⁵⁵ In this context the mutual trust can now be qualified as a part of the EU's constitutional law, which operates horizontally between the individual Member States. This principle of mutual trust ensures an incomparably much stricter cooperation between States than the principle of reciprocity, which traditionally dominated the transnational judicial relations.⁵⁶

However, it is rightly observed that the principle of mutual trust cannot be imposed on Member States solely from above, because in such instances it will not endure long. It is necessary thus to invest some efforts in trust-building measures.⁵⁷ Numerous examples of

321/07, *Criminal Proceedings Against Karl Schwarz*, 2009 E.C.R. I-1113, para. 74; Case C-445/08, *Kurt Wierer v. Land Baden-Württemberg*, 2009 E.C.R. I-119, para. 37.

⁴⁹ See, e.g., Case 120/78, *Rewe-Zentral AG v. Bundesmonopolverwaltung für Branntwein*, 1979 E.C.R. 649, para. 14.

⁵⁰ See, e.g., Case C-340/89, *Irène Vlassopoulou v. Ministerium für Justiz, Bundes- und Europaangelegenheiten Baden-Württemberg*, 1991 E.C.R. I-2357, para. 16; Council Directive 2005/36/EC, 2005 O.J. (L 255) 22.

⁵¹ Council Regulation 44/2001, 2001 O.J. (L 12) 1 (EC).

⁵² See *supra* Part B.

⁵³ Cases C-187/01 and C-385/01, *Hüseyin Gözütok (C-187/01) and Klaus Brügge (C-385/01)*, 2003 E.C.R. I-1345, para. 33.

⁵⁴ See Consolidated Version of the Treaty on the Functioning of the European Union *pmbl.*, 9 May 2008, 2008 O.J. (C 115) 47, 49.

⁵⁵ For more on this latter principle, see, for example, Laurence Gormley, *Some Further Reflections on the Development of General Principles of Law Within Article 10 EC*, in *GENERAL PRINCIPLES OF EC LAW IN A PROCESS OF DEVELOPMENT* 303 (Ulf Bernitz et al. eds., 2008); John Temple Lang, *The Duties of Cooperation of National Authorities and Courts Under Article 10 E.C.: Two More Reflections*, 26 *EUR. L. REV.* 84 (2001); John Temple Lang, *Community Constitutional Law: Article 5 EEC Treaty*, 27 *COMMON MKT. L. REV.* 645 (1990).

⁵⁶ See Felix Blobel & Patrick Späth, *The Tale of Multilateral Trust and the European Law of Civil Procedure*, 30 *EUR. L. REV.* 535 (2005).

⁵⁷ *Id.* at 540.

such trust-building measures, or at least measures which might potentially be used by Member States to achieve that aim, are provided by EU Directives on driving licences. The Directives state that Member States shall assist one another in the implementation of those Directives and shall exchange information on the licences they have issued, exchanged, replaced, renewed or revoked.⁵⁸ In some instances, Member States must not only exchange some information or documents, but must also mutually give the reasons for the actions they have taken with regard to driving licences issued by other Member States.⁵⁹ Member States should also verify with other Member States some specific circumstances concerning individual driving licences, if there is some uncertainty in that regard.⁶⁰ It is very significant that Directive 2006/126/EC provides for the establishment of the EU driving licence network, which will serve as an official forum for mutual assistance between Member States in driving licence matters, including the exchange of information.⁶¹ One may reasonably expect that all those measures will help not only to resolve the current and practical issues, but—by giving the relevant authorities of Member States the chance to mutually get familiar with the regulatory provisions and practices of their counterparts in other Member States—they will also contribute to deepening and enhancing the mutual trust between Member States, which is the necessary basis for the proper functioning of mutual recognition.

D. Refusal of Recognition of Driving Licences

The refusal of recognition of a driving licence, or, to be more precise, the refusal of recognition of an administrative act granting the driving licence, means that a Member State prevents a driving licence issued by another Member from producing its legal effects in the territory of the refusing Member State. In other words, by refusing to recognise a driving licence issued by another Member State, the given Member State blocks the extension of legal effects of that licence on the jurisdiction of that latter State. As a result, the holder of the licence in question cannot invoke the licence as being valid in the host Member State, and is not entitled to make legal use of the licence in the refusing Member State.

Taking into account the relevant provisions of EU Directives on driving licences, as well as their interpretation by the Court of Justice, it turns out that while in some instances the refusal of recognition is obligatory, i.e., Member States are under a duty to refuse to recognize a licence,⁶² in some other circumstances the refusal of recognition is facultative,

⁵⁸ Directive 91/439/EEC, *supra* note 6, at art. 12(3); Directive 2006/126/EC, *supra* note 7, at art. 15.

⁵⁹ Directive 91/439/EEC, *supra* note 6, at art. 8(3); Directive 2006/126/EC, *supra* note 7, at art. 11(3).

⁶⁰ Directive 2006/126/EC, *supra* note 7, at art. 7(5)(c).

⁶¹ *Id.* at art. 7(5)(d), 15.

⁶² *Id.* at art. 11(4).

i.e., Member States may then choose an option to refuse, but equally well they may decide to recognize the driving licence.⁶³ It is especially when the refusal of recognition of driving licences is optional under the EU law that the question arises as to whether the Member States must decide then about the presumptive refusal using the general and abstract norms, i.e., by determining in general, on a statutory level, that in circumstances specified in the EU law the validity of all driving licences issued by other Member States will not be recognized (*ipso iure*), or whether the Member States are also entitled to authorize some competent public authorities to decide, on a case-by-case basis, if in the aforementioned circumstances a given driving licence issued by another Member State should then be recognized or not?⁶⁴ On the one hand, this second alternative may be regarded as being more beneficial for holders of licences issued by other Member States, because it does not exclude the possibility of recognition completely: There is still a chance that, irrespective of the fact that some prerequisites for refusal determined in the EU law have been fulfilled, the competent authorities of the host Member State will not decide to effectuate the refusal in a given case. On the other hand, however, such deciding on refusal on a case-by-case basis may introduce a lot of uncertainty on the part of individual holders regarding the future status of their licences in a host Member State. While moving to a Member State which decides on refusal of a licence not *ipso iure*, but on a case-by-case basis, the holder of a licence may not be sure whether he/she will finally be entitled to make use of his/her licence there. Moreover, there is always the risk that the competent authorities of a Member State vested with the power to make individual decisions on refusal will make different decisions with regard to holders being in similar situations, or that they will make the same decisions with regard to holders being in significantly different situations.

It seems that the final answer to this question should combine both of the above-mentioned considerations: The opening of an option of recognition, even if in the light of EU law a Member State is then fully authorized to refuse the recognition, and the need to avoid the uncertainties and risks on the part of driving licence holders. Therefore, it is submitted that when the EU law, including the Court of Justice's interpretation of that law, allows in some circumstances the facultative refusal of recognition of driving licences, then the Member States are permitted to authorize competent authorities to decide on refusal on a case-by-case basis, provided that the Member State concerned will then guarantee

⁶³ Directive 91/439/EEC, *supra* note 6, at arts. 6(3), 8(4). See also Cases C-329/06 and C-343/06, Arthur Wiedemann (C-329/06) v. Land Baden-Württemberg and Peter Funk (C-343/06) v. Stadt Chemnitz, 2008 E.C.R. I-4635, paras. 67–73; C-334/06 to C-336/06, Matthias Zerche (C-334/06), Manfred Seuke (C-336/06) v. Landkreis Mittweida and Steffen Schubert (C-335/06) v. Landkreis Mittlerer Erzgebirgskreis, 2008 E.C.R. I-4691, paras. 64–70 (specifying some circumstances under which the refusal of recognition is optional, and, what is more, which are not provided for expressly in Directive 91/439/EEC). It is submitted that those latter judgments retain their full validity also under Directive 2006/126/EC.

⁶⁴ Assuming obviously that a given Member State chooses then the option of refusal, because, as already said, a Member State may then equally well not introduce statutory rules providing for refusal of recognition, which will in fact be equivalent to recognition.

the effective implementation of the principle of equality with regard to all interested holders. That principle of equality constitutes the general principle of EU law,⁶⁵ and must be observed by Member States in all instances when they implement the EU law.⁶⁶ In the discussed situations, this principle is observed when the relevant national law provides for more specific and objective criteria, connected with such issues as the individual behaviour of a given holder or actual threats produced by him/her for road safety, on the basis of which the competent authorities of a Member State will decide which driving licences— from among those which can legally be denied recognition on the grounds of the EU law— deserve to be recognised and which of them should be denied recognition. Those criteria should be so concrete, relevant, fair and objective as to avoid any suspicion that the decisions of national authorities on refusal of recognition are taken quite arbitrarily and voluntarily. Moreover, when a Member State authorizes the competent authorities to refuse to recognize driving licences facultatively on a case-by-case basis (provided such a facultativeness is permitted by EU law), then it cannot require from holders of driving licences issued by other Member States to notify their licences or to submit some application to the competent authorities (so that the latter could then make the individual decision). As already mentioned in Part C, the recognition of driving licences must take effect without any formalities, and it thus follows that also the presumptive (and facultative) refusal of recognition must take place without any formalities imposed on the holders concerned.⁶⁷ It means that this facultative refusal of recognition effectuated by the competent authorities of a Member State may only take place *ex officio*, in particular as the result of carrying out traffic checks.

Facultative refusal of recognition of a driving licence is provided for in Article 8(4) of Directive 91/439/EEC. According to that provision, a Member State may refuse to

⁶⁵ Cases 117/76 and 16/77, *Albert Ruckdeschel & Co. and Hansa-Lagerhaus Ströh & Co. v. Hauptzollamt Hamburg-St. Annen*; *Diamalt AG v. Hauptzollamt Itzehoe*, 1977 E.C.R. 1753, para. 7; Cases 201 and 202/85, *Marthe Klensch and others v. Secrétaire d'État à l'Agriculture et à la Viticulture*, 1986 E.C.R. 3477, para. 9; Cases C-267/88 to C-285/88, *Gustave Wuidart and Others v. Laiterie coopérative eupenoise société coopérative and Others*, 1990 E.C.R. I-435, para. 13; Cases C-133/93, C-300/93 and C-362/93, *Antonio Crispoltoni v. Fattoria Autonoma Tabacchi and Giuseppe Natale and Antonio Pontillo v. Donatab Srl*, 1994 E.C.R. I-4863, paras. 49–50; Case C-313/04, *Franz Egenberger GmbH Molkerei und Trockenwerk v. Bundesanstalt für Landwirtschaft und Ernährung*, 2006 E.C.R. I-6331, para. 33; Case C-127/07, *Société Arcelor Atlantique et Lorraine and Others v. Premier ministre, Ministre de l'Écologie et du Développement durable, Ministre de l'Économie, des Finances et de l'Industrie*, 2008 E.C.R. I-9895, para. 23; Case C-519/07 P, *Comm'n v. Koninklijke FrieslandCampina NV*, 2009 E.C.R. I-8495, para. 100; see also HANS JARASS, *EU-GRUNDRECHTE* 285 (2005); Thorsten Kingreen, *Gleichheitsgrundrechte und soziale Rechte, in EUROPÄISCHE GRUNDRECHTE UND GRUNDFREIHEITEN* 482 (Dirk Ehlers ed., 2005).

⁶⁶ Article 20 read in conjunction with Article 51(1) of the Charter of Fundamental Rights of the European Union, Dec. 7, 2000, 2010 O.J. (C 83) 395, 402.

⁶⁷ See also *infra* Part E; Directive 91/439/EEC, *supra* note 6, at art. 8(2); Directive 2006/126/EC, *supra* note 7, at art. 11(2). They are also not allowed to impose any prior formalities on the holders of driving licences, as for example the duty of registration, notification or application, even if those formalities could significantly facilitate the competent authorities in taking individual decisions with regard to driving licences.

recognize 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 such measures as the restriction, suspension, withdrawal or cancellation of the driving licence. The latter measures constitute the kind of sanctions that are imposed by a Member State on holders of driving licences for committing a traffic offence or an even more serious infringement of the law. Those sanctions are very often accompanied by an express prohibition of application for a new licence for a given period in that Member State. However, there is a possibility that during the period of that prohibition the person concerned will apply for a new licence in another Member State. In the light of EU law every other Member State is then merely *entitled* to refuse to issue a new driving licence to that person, but is not *obliged* to refuse the issue thereof.⁶⁸ There exists thus the necessity of permitting the first Member State (where the person concerned has been the subject of the above-mentioned prohibition) to refuse the recognition of a new licence issued by another Member State.⁶⁹ However, where a temporary ban on obtaining a new licence has already expired in a Member State, that State is not permitted to refuse to recognize the validity of any driving licence subsequently issued to the person concerned by another Member State.⁷⁰

In the situations presented above, Article 11(4) of Directive 2006/126/EC provides not for a facultative, but for an obligatory refusal of recognition. It means that a Member State must 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. One might argue that under Directive 2006/126/EC such an obligation to refuse the recognition is not necessary at all, since the same Article of Directive 2006/126/EC provides that when a driving licence of a given person is restricted, suspended, or withdrawn in one Member State, then any other Member State must obligatorily refuse to issue a new driving licence.⁷¹ However, it cannot be excluded that

⁶⁸ Directive 91/439/EEC, *supra* note 6, at art. 8(4).

⁶⁹ See Cases C-329/06 and C-343/06, Arthur Wiedemann (C-329/06) v. Land Baden-Württemberg and Peter Funk (C-343/06) v. Stadt Chemnitz, 2008 E.C.R. I-4635, para. 65; Cases C-334/06 to C-336/06, Matthias Zerche (C-334/06), Manfred Seuke (C-336/06) v. Landkreis Mittweida and Steffen Schubert (C-335/06) v. Landkreis Mittlerer Erzgebirgskreis, 2008 E.C.R. I-4691, para. 62; Case C-321/07, Criminal Proceedings Against Karl Schwarz, 2009 E.C.R. I-1113, para. 83.

⁷⁰ Cases C-476/01, Criminal Proceedings Against Felix Kapper, 2004 E.C.R. I-5205, para. 76; C-227/05, Daniel Halbritter v. Freistaat Bayern, 2006 E.C.R. I-49, para. 27; Case C-340/05, Criminal Proceedings Against Stefan Kremer, 2006 E.C.R. I-98, para. 29; C-329/06 and C-343/06, Arthur Wiedemann (C-329/06) v. Land Baden-Württemberg and Peter Funk (C-343/06) v. Stadt Chemnitz, 2008 E.C.R. I-4635, *supra* note 27, para. 63; C-334/06 to C-336/06, Matthias Zerche (C-334/06), Manfred Seuke (C-336/06) v. Landkreis Mittweida and Steffen Schubert (C-335/06) v. Landkreis Mittlerer Erzgebirgskreis, 2008 E.C.R. I-4691, para. 60; C-321/07, Criminal Proceedings Against Karl Schwarz, 2009 E.C.R. I-1113, paras. 85–86.

⁷¹ Obviously, it has to be interpreted as meaning that this new licence cannot be issued by another Member State merely during the period of prohibition (if such a period has been ordered), or within the scope of restriction, which is determined, *inter alia*, by the category of the licence that has been restricted in the first Member State.

the latter Member State will fail to comply with that obligation (e.g., due to the lack of knowledge about the measures taken by another Member State), and will issue a new driving licence. It is then understandable that the new driving licence should be denied recognition in the Member State where the person concerned has been the subject of the measure restricting, suspending, or withdrawing his/her previous driving licence.

The question remains, however, as to whether in the aforementioned situations the other Member States are also under a duty, or are at least entitled, to refuse to recognize such a new licence. On the one hand, neither of the EU Directives provides for such a duty or possibility on the part of other Member States. Since the provisions of those Directives on refusal of recognition of driving licences constitute derogation from the general principle of mutual recognition and are, therefore, to be interpreted strictly, it seems that the answer to the above-mentioned question should be negative.⁷² On the other hand, especially under Directive 2006/126/EC, it is hardly understandable that a person whose driving licence is obligatorily denied recognition in one Member State is at the same time entitled to legally make use of its licence in other Member States, particularly since his/her new driving licence has been issued contrary to the express prohibition contained in Directive 2006/126/EC.⁷³ Therefore, it is submitted that Article 11(4) of Directive 2006/126/EC should be amended in that regard.

According to the settled jurisprudence of the Court, in some instances a Member State is authorized to use discretion to refuse the recognition of a driving licence issued by another Member State to a holder who, when that licence was issued, was not a resident in the territory of the Member State of issue. However, it is permissible only if the information about non-compliance with the requirement of normal residence⁷⁴ is determined not in the light of information supplied by the host Member State, but on the basis of entries appearing in the driving licence itself or other incontestable information supplied by the

⁷² Cases C-476/01, *Criminal Proceedings Against Felix Kapper*, 2004 E.C.R. I-5205, paras. 70, 72; Case C-227/05, *Daniel Halbritter v. Freistaat Bayern*, 2006 E.C.R. I-49, paras. 26, 35; Case C-340/05, *Criminal Proceedings Against Stefan Kremer*, 2006 E.C.R. I-98, para. 28; Cases C-329/06 and C-343/06, *Arthur Wiedemann (C-329/06) v. Land Baden-Württemberg and Peter Funk (C-343/06) v. Stadt Chemnitz*, 2008 E.C.R. I-4635, para. 60; Cases C-334/06 to C-336/06, *Matthias Zerche (C-334/06), Manfred Seuke (C-336/06) v. Landkreis Mittweida and Steffen Schubert (C-335/06) v. Landkreis Mittlerer Erzgebirgskreis*, 2008 E.C.R. I-4691, para. 57; Case C-1/07, *Criminal Proceedings Against Frank Weber*, 2008 E.C.R. I-8571, para. 29; Case C-321/07, *Criminal Proceedings Against Karl Schwarz*, 2009 E.C.R. I-1113, para. 84.

⁷³ It leads to a situation in which a person who has been the subject of a measure restricting, suspending, or withdrawing his/her previous driving licence in one Member State benefits from the non-compliance by another Member State with its express obligations arising from the EU law.

⁷⁴ This is set out in Directive 91/439/EEC, *supra* note 6, at art. 7(1)(b); Directive 2006/126/EC, *supra* note 7, at art. 7(1)(e).

Member State of issue.⁷⁵ It is submitted that this jurisprudence is also valid under Directive 2006/126/EC.

E. The Powers of Member State of Normal Residence with Regard to Driving Licences Issued by Other Member States

It has already been emphasized that under the EU Directives on driving licences the power to exert an influence on the content and the binding power of a driving licence is vested not only in the Member State of issue, but also in the Member State where the holder of the licence has subsequently transferred his/her normal residence. The concept of “normal residence” is defined within those Directives as the place where a person usually lives, i.e., 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/she is living. However, the normal residence of a person whose occupational ties are in a different place from his/her personal ties and who consequently lives in turn in different places situated in two or more Member States shall be regarded as being the place of his/her personal ties, provided that such person returns there regularly. This last condition need not be met where the person is living in a Member State in order to carry out a task of a definite duration. Attendance at a university or school shall not imply transfer of normal residence.⁷⁶

The above criteria for determining “normal residence” refer both to a person’s occupational and personal ties with a particular place and to the duration of those ties. Consequently, they must be examined in conjunction with each other. Normal residence must, accordingly, be regarded as the place where a person has established his/her permanent centre of interests.⁷⁷ In determining normal residence as the permanent centre of interests of the person concerned, all the relevant facts must be taken into

⁷⁵ Cases C-329/06 and C-343/06, Arthur Wiedemann (C-329/06) v. Land Baden-Württemberg and Peter Funk (C-343/06) v. Stadt Chemnitz, 2008 E.C.R. I-4635, paras. 72–73; Cases C-334/06 to C-336/06, Matthias Zerche (C-334/06), Manfred Seuke (C-336/06) v. Landkreis Mittweida and Steffen Schubert (C-335/06) v. Landkreis Mittlerer Erzgebirgskreis, 2008 E.C.R. I-4691, paras. 69–70; Case C-445/08, Kurt Wierer v. Land Baden-Württemberg, 2009 E.C.R. I-119, paras. 51–63; C-184/10, Mathilde Grasser v. Freistaat Bayern, 48 C.M.L.R. 459, para. 23.

⁷⁶ Directive 91/439/EEC, *supra* note 6, at art. 9; Directive 2006/126/EC, *supra* note 7, at art. 12.

⁷⁷ Case C-297/89, Rigsadvokaten v. Nicolai Christian Ryborg, 1991 E.C.R. I-1943, para. 19; Case C-262/99, Paraskevas Louloudakis v. Elliniko Dimosio, 2001 E.C.R. I-5547, para. 51; Case C-156/04, Comm’n v. Hellenic Republic, 2007 E.C.R. I-4129, para. 44; Case C-392/05, Georgios Alevizos v. Ipourgos Ikonomikon, 2007 E.C.R. I-3505, paras. 54–55. All those judgments were concerned with notions of normal residence which are defined in Council Directive 83/182/EEC and 83/183/EEC in terms identical to those included in Directive 91/439/EEC Directive 2006/126/EC. See Directive 83/182/EEC, of 28 March 1983 on Tax Exemptions Within the Community for Certain Means of Transport Temporarily Imported into one Member State from Another, 1983 O.J. (L 105) 59, art. 7(1) (EC); Directive 83/183/EEC, of 28 March 1983 on Tax Exemptions Applicable to Permanent Imports from a Member State of the Personal Property of Individuals, 1983 O.J. (L 105) 64, art. 6(1).

consideration, in particular, the actual presence of the person concerned and of the members of his/her family, availability of accommodation, the place where the children actually attend school, the place where business is conducted, the place where property interests are situated, that of administrative links to public authorities and social services, inasmuch as those factors express the intention of that person to confer a certain stability on the place of connection, by reason of the continuity arising from a way of life and the development of normal social and occupational relationships.⁷⁸ However, in the event that an overall assessment of occupational and personal ties does not suffice to locate the permanent centre of interests of the person concerned, i.e., where those ties are not concentrated in a single Member State, primacy must be given, for the purposes of locating it, to personal ties.⁷⁹

Both Directives state that, 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.⁸⁰ It is quite logical that those powers of the Member State of normal residence might be exercised only by reason of some conduct of the person concerned after he/she has obtained a driving licence issued by another Member State.⁸¹ They cannot be exercised with regard to the driving licence that has been denied recognition in a given State. The powers under discussion have to be realized in full accordance with the Treaty rules on free movement, which implies that holders of driving licences issued by other Member States cannot be treated more restrictively or rigorously than holders of national driving licences. Those former holders also cannot be obliged to comply with some disproportionate requirements, for example the prior registration or notification, even if it could facilitate the exercising of the above-mentioned powers by the competent

⁷⁸ Case C-297/89, *Rigsadvokaten v. Nicolai Christian Ryborg*, 1991 E.C.R. I-1943, para. 20; Case C-262/99, *Paraskevas Louloudakis v. Elliniko Dimosio*, 2001 E.C.R. I-5547, para. 55; Case C-156/04, *Comm'n v. Hellenic Republic*, 2007 E.C.R. I-4129, para. 45; Case C-392/05, *Georgios Alevizos v. Ipourgios Ikonomikon*, 2007 E.C.R. I-3505, para. 57.

⁷⁹ Case C-262/99, *Paraskevas Louloudakis v. Elliniko Dimosio*, 2001 E.C.R. I-5547, paras. 52–53; Case C-156/04, *Comm'n v. Hellenic Republic*, 2007 E.C.R. I-4129, para. 45; Case C-392/05, *Georgios Alevizos v. Ipourgios Ikonomikon*, 2007 E.C.R. I-3505, paras. 60–61.

⁸⁰ Directive 91/439/EEC, *supra* note 6, at art. 8(2); Directive 2006/126/EC, *supra* note 7, at art. 11(2).

⁸¹ Case C-227/05, *Daniel Halbritter v. Freistaat Bayern*, 2006 E.C.R. I-49, para. 38; Case C-340/05, *Criminal Proceedings Against Stefan Kremer*, 2006 E.C.R. I-98, para. 35; Cases C-329/06 and C-343/06, *Arthur Wiedemann (C-329/06) v. Land Baden-Württemberg and Peter Funk (C-343/06) v. Stadt Chemnitz*, 2008 E.C.R. I-4635, para. 59; Cases C-334/06 to C-336/06, *Matthias Zerche (C-334/06), Manfred Seuke (C-336/06) v. Landkreis Mittweida and Steffen Schubert (C-335/06) v. Landkreis Mittlerer Erzgebirgskreis*, 2008 E.C.R. I-4691, para. 56; Case C-1/07, *Criminal Proceedings Against Frank Weber*, 2008 E.C.R. I-8571, para. 32; Case C-321/07, *Criminal Proceedings Against Karl Schwarz*, 2009 E.C.R. I-1113, para. 80.

authorities of a Member State.⁸² However, those prohibited requirements do not include road checks carried out by the competent authorities of the Member State of normal residence. On the contrary, those road checks have to be regarded as the primary source of information on circumstances that give rise to a Member State's application of the measures under discussion. According to the Court, the fact that, at roadside checks, the driver of a vehicle may, for the duration of the check, be temporarily immobilised cannot be regarded as constituting, in principle, a restriction on the free movement of persons contrary to the Treaty.⁸³

Both Directives authorize the Member State of normal residence to enter on a driving licence issued in another Member State such information as is essential for administering the licence, provided that it also enters this type of information on the licences which it issues and provided that there remains enough space for the purpose.⁸⁴ The latter power of the Member State of normal residence must also be exercised in compliance with the Treaty rules on free movement, which excludes, among others, imposition on a holder of an obligation to register a foreign driving licence.⁸⁵ In turn, when the space provided on the licence for the recording of observations necessary for the administration thereof ceases to be available, the Member State of normal residence cannot oblige the holder to exchange the driving licence issued by another Member State.⁸⁶

In sum, the power to authoritatively interfere with the content and the binding power of a driving licence does not constitute the exclusive domain of the Member State of issue, but is also granted to the Member State of normal residence, although it must be exercised in accordance with the Treaty rules on free movement. The Member State of issue retains its powers with regard to the licence it has issued, but it must also recognize all those measures that are later taken on the ground of EU law with regard to that licence by the Member State of normal residence.

⁸² Case C-195/02, *Comm'n v. Kingdom of Spain*, 2004 E.C.R. I-7857, paras. 62–63.

⁸³ *Id.* at para. 64.

⁸⁴ Directive 91/439/EEC, *supra* note 6, at art. 1(3), annex I; Directive 2006/126/EC, *supra* note 7, at annex I.

⁸⁵ Cases C-246-00, *Comm'n v. Kingdom of the Netherlands*, 2003 E.C.R. I-7458, paras. 66–67; Case C-253/01, *S.A. Krüger v. Directie van de rechtspersoonlijkheid bezittende Dienst Wegverkeer*, 2004 E.C.R. I-1191, para. 26.

⁸⁶ Case C-195/02, *Comm'n v. Kingdom of Spain*, 2004 E.C.R. I-7857, paras. 69–71.

F. Harmonisation of Standards that Candidates for Driver's Licences Must Comply With

Both EU Directives on driver's licences harmonise the standards and conditions that the candidates for driver's licences must comply with. Those standards include a test of skills and behaviour, a theoretical test, medical standards,⁸⁷ normal residence in the territory of the Member State issuing the licence,⁸⁸ age requirements,⁸⁹ and the entitlement to drive vehicles in some category, if a candidate applies for a licence in some other category (staging between categories).⁹⁰ It is important to note that no person may hold a driving licence from more than one Member State, and a Member State shall refuse to issue a licence where it establishes that the applicant already holds a driving licence issued by another Member State.⁹¹

Most of the standards specified in EU Directives, in particular the driving tests, medical standards, and age requirements, constitute the minimum standards, and thus leave Member States space for aggravating them. In addition, Member States may, after consulting the Commission, apply to the issue of driving licences the provisions of their national rules relating to conditions other than those referred to in EU Directives.⁹² However, this leeway of Member States in creating more heavy or new standards is not unlimited, because Member States, since they then implement the EU law and thus act within the scope of the EU law, remain bound by the general principles of the EU law, including the Treaty rules on free movement, the fundamental rights, and the principle of proportionality. This means, among other things, that they cannot discriminate against candidates from other Member States, neither directly nor indirectly, unless it is duly justified. Restrictions other than the discriminatory restrictions on Treaty freedoms or fundamental rights must also be appropriately justified and proportionate (e.g., general prohibition to apply for a driving licence addressed to some specific categories of persons).

In that regard, the requirement of normal residence in the Member State of issue might appear to be particularly contentious, since there is settled case law that the national rules under which a distinction is drawn on the basis of residence are liable to operate mainly to

⁸⁷ Directive 91/439/EEC, *supra* note 6, at art. 7(1)(a); Directive 2006/126/EC, *supra* note 7, at art. 7(1)(a). All of the latter standards are specified in more detail in Directive 91/439/EEC, *supra* note 6, at annexes II, III; Directive 2006/126/EC, *supra* note 7, at annexes II, III.

⁸⁸ Directive 91/439/EEC, *supra* note 6, at art. 7(1)(b); Directive 2006/126/EC, *supra* note 7, at art. 7(1)(e).

⁸⁹ Directive 91/439/EEC, *supra* note 6, at art. 6; Directive 2006/126/EC, *supra* note 7, at art. 4.

⁹⁰ Directive 91/439/EEC, *supra* note 6, at art. 5(1); Directive 2006/126/EC, *supra* note 7, at art. 6(1).

⁹¹ Directive 91/439/EEC, *supra* note 6, at art. 7(5); Directive 2006/126/EC, *supra* note 7, at art. 7(5).

⁹² Directive 91/439/EEC, *supra* note 6, at art. 7(4); Directive 2006/126/EC, *supra* note 7, at art. 7(4).

the detriment of nationals of other Member States, and are thus covertly discriminatory.⁹³ True, the requirement of normal residence is introduced by the Member States on the ground of EU Directives, and Member States cannot avoid its actual implementation. However, this very source of its origin does not immunize it from evaluation in the light of the Treaty rules on free movement, since this is also the EU legislator itself who is bound by the said Treaty rules.⁹⁴ This requirement must therefore be appropriately justified, and such justification can be seen in that it helps the fight against “driving-licence-tourism” in the absence of complete harmonisation of the laws of Member States relating to the issue of driving licences, and is indispensable if observance of the condition of fitness to drive is to be monitored. Moreover, this condition of residence assumes special importance in relation to the other conditions laid down by EU Directives on driving licences, because it is a precondition making it possible to establish whether a particular candidate has observed the other conditions imposed by the said Directives.⁹⁵

The above-mentioned “driving-licence-tourism” is a part of a much broader phenomenon known as regulatory arbitrage. This is a practice of persons (or companies) that consists in relocation from one Member State to another in order to take advantage of regulatory differences existing between those States.⁹⁶ Such a regulatory arbitrage is, in turn, a reverse side of the process of regulatory competition, i.e., rivalry between States in creating a more favourable regulatory environment that is able to attract persons from other States.⁹⁷ It has to be admitted that on the ground of EU Directives on driving

⁹³ Case C-57/96, *H. Meints v. Minister van Landbouw, Natuurbeheer en Visserij*, 1997 E.C.R. I-6689, paras. 44–46; Case C-350/96, *Clean Car Autoservice GesmbH v. Landeshauptmann von Wien*, 1998 E.C.R. I-2521, paras. 27–29; Case C-35/97, *Comm’n v. French Republic*, 1998 E.C.R. I-5325, paras. 37–39; Case C-224/97, *Erich Ciola v. Land Vorarlberg*, 1999 E.C.R. I-2517, para. 14; Case C-124/99, *Carl Borowitz v. Landesversicherungsanstalt Westfalen*, 2000 E.C.R. I-7293, paras. 24–28; Case C-388/01, *Comm’n v. Italy*, 2003 E.C.R. I-721, paras. 13–14; Case C-209/03, *The Queen v. London Borough of Ealing, Sec’y of State for Educ. and Skills*, 2005 E.C.R. I-2119, paras. 51–53; Case C-382/08, *Michael Neukirchinger v. Bezirkshauptmannschaft Grieskirchen*, 2 C.M.L.R. 33, paras. 32–34 (2011).

⁹⁴ For more in that regard, see Kamiel Mortelmans, *The Relationship Between the Treaty Rules and Community Measures for the Establishment and Functioning of the Internal Market—Towards a Concordance Rule*, 39 COMMON MKT. L. REV. 1303 (2002).

⁹⁵ Cases C-476/01, *Criminal Proceedings Against Felix Kapper*, 2004 E.C.R. I-5205, para. 42; Cases C-329/06 and C-343/06, *Arthur Wiedemann (C-329/06) v. Land Baden-Württemberg and Peter Funk (C-343/06) v. Stadt Chemnitz*, 2008 E.C.R. I-4635, paras. 69–70; Cases C-334/06 to C-336/06, *Matthias Zerche (C-334/06), Manfred Seuke (C-336/06) v. Landkreis Mittweida and Steffen Schubert (C-335/06) v. Landkreis Mittlerer Erzgebirgskreis*, 2008 E.C.R. I-4691, paras. 66–67; Case C-184/10, *Mathilde Grasser v. Freistaat Bayern*, 48 C.M.L.R. 459, paras. 27–28 (2011).

⁹⁶ See, e.g., DOHA ABDELHAMID, *INTERNATIONAL REGULATORY RIVALRY IN OPEN ECONOMIES: THE IMPACT OF DEREGULATION ON THE US AND UK FINANCIAL MARKETS* 27–29 (2003).

⁹⁷ See, e.g., DALE MURPHY, *THE STRUCTURE OF REGULATORY COMPETITION: CORPORATIONS AND PUBLIC POLICIES IN A GLOBAL ECONOMY* (2007); HENRI TJONG, *THE POLITICAL ECONOMY OF REGULATORY COMPETITION: A DIACHRONIC INSTITUTIONAL THEORY OF LEGAL CHANGE IN AN ERA OF GLOBALIZATION* (2009); *REGULATORY COMPETITION AND ECONOMIC INTEGRATION: COMPARATIVE PERSPECTIVES* (Daniel Esty & Damien Gérardin eds., 2004); *INTERNATIONAL REGULATORY COMPETITION AND COORDINATION: PERSPECTIVES ON ECONOMIC REGULATION IN EUROPE AND THE UNITED STATES* (Joseph McCahery et al. eds., 2001).

licences, Member States still have a relatively wide leeway in creating such conditions of issue of driving licences that could be less restrictive than those established by other Member States, and which could potentially attract candidates for drivers licences from other Member States. First, a Member State might keep up the minimum standards only, without raising them, as the other Member States will probably do. Second, the potential for regulatory arbitrage exists in particular in the case of those persons whose driving licences have been withdrawn in one Member State, provided that this withdrawal was not accompanied by the prohibition to apply for a new licence, or such a prohibition has already expired. While some Member States establish more restrictive criteria for obtaining a new licence as compared to conditions applied with regard to candidates who apply for their first licence (e.g., additional examinations of fitness to drive certifying that the grounds justifying the withdrawal are no longer in existence), other Member States do not. Therefore, if a given Member States chooses not to establish more restrictive conditions, it may become a more attractive place to obtain a new licence for those persons whose first licence has been withdrawn in another Member State. Third, EU Directives on driving licences themselves allow Member States to derogate in some instances from the minimum standards they set out.⁹⁸ True, the requirement of normal residence in the Member State of issue significantly diminishes the chances for the occurrence in the EU of the kind of regulatory arbitrage that would be quite unlimited or too easy to accomplish. However, it does not exclude such an arbitrage completely, especially in the case of persons who are very mobile and rather easily change the centre of their vital interests.

On the other hand, especially under Directive 2006/126/EC, regulatory arbitrage on the part of candidates for driver's licences does not seem to be particularly harmful for the road safety. This Directive harmonizes the issue conditions to a much greater extent than Directive 91/439/EEC, and takes into account the scientific and technical progress that has been made in the discussed field since the adoption of the previous Directive. Thus, the obligatory standards necessary for ensuring road safety seem to be guaranteed by that Directive. Moreover, Member States may mutually observe their legislation and administrative practices in the field of issuing driving licences, and when they observe that such legislation or administrative practices of some Member States, even though being in compliance with the content of the Directive, do not guarantee an adequate level of road safety, they can react accordingly. In that regard they can initiate amendments of those Annexes to the Directive, which concretize the issue conditions and which—within the special procedure—can be further adapted to the scientific and technical progress.⁹⁹ In turn, if a Member State is afraid of undesired consequences of regulatory arbitrage on the part of persons whose driving licences have been withdrawn in that State, it may

⁹⁸ Directive 91/439/EEC, *supra* note 6, at art. 6(2), 7(3); Directive 2006/126/EC, *supra* note 7, at art. 4(6).

⁹⁹ Directive 2006/126/EC, *supra* note 7, at art. 8.

appropriately aggravate its legal rules concerning the prohibitions of application for a new licence which are imposed on the above-mentioned persons.