OPINION OF ADVOCATE GENERAL

BOT

delivered on 6 November 2008 [1]

1. May a person whose German driving licence was withdrawn for drunk driving in 1997 and who has not proved that he was once again fit to drive rely on an Austrian driving licence issued to him in 1964? That, in essence, is the question which the Landgericht (Regional Court) Mannheim (Germany) has asked the Court.

2. This reference for a preliminary ruling is distinguished from the other cases brought before the Court by the fact that the two driving licences, issued by two different Member States, were issued to the person before the accession of the Republic of Austria to the European Union in 1995.

3. Having regard to those dates, the relevant Community measures are Council Directive 80/1263/EEC of 4 December 1980 on the introduction of a Community driving licence, [2] Council Directive 91/439/EEC of 29 July 1991 on driving licences [3] and Commission Decision 2000/275/EC of 21 March 2000 on equivalences between certain categories of driving licences. [4]

4. The Court must therefore determine, initially, whether, in the light of those rules, the person concerned could validly hold two driving licences under such circumstances, even though Article 7(5) of Directive 91/439 provides that no person may hold a driving licence from more than one Member State.

5. That question will then lead the Court to consider, once again, the scope of Article 8(2) and (4) of the aforementioned directive, which permit a Member State to refuse to recognise

1 — Original language: French.

2 — OJ 1980 L 375, p. 1. This Directive entered into force on 1 January 1983.

3 — OJ 1991 L 237, p. 1. Directive as amended by Regulation (EC) No 1882/2003 of the European Parliament and of the Council of 29 September 2003 (OJ 2003 L 284, p: 1, hereinafter 'Directive 91/439').

4 — OJ 2002 L 91, p. 1.

the validity of a driving licence issued by another Member State to a person who is, in the former State's territory, the subject of a restriction, suspension, withdrawal or cancellation of the right to drive.

6. In the present Opinion, I will set out the reasons why I consider that Article 7(5) of Directive 91/439 must be interpreted as not preventing a person holding two driving licences where the first licence was issued by a non-member country before the entry into force of Directive 80/1263 and where, before the entry into force of Directive 91/439, that person, who already held a driving licence recognised in the territory of the Community, undergoes the test of skills required for the issue of a driving licence.

7. I will also indicate why I consider that Article 8(2) and (4) of the latter directive must be interpreted as meaning that, in the circumstances of the main proceedings, a Member State is not prevented from refusing to recognise the validity of a driving licence issued earlier by another Member State.

I — Legal framework

A — *Community law*

1. Directive 80/1263

8. In order to assist the movement of persons within the Community or their settling in a Member State other than that in which they have passed a driving test, Directive 80/1263 established a Community model driving licence.

9. Pursuant to the first paragraph of Article 1 of the directive, a national driving licence based on the Community model entitles the holder to drive both on national and international journeys.

10. The first subparagraph of Article 8(1) of the directive provides that the holder of a driving licence issued by a Member State who

resides in another Member State must, within a year following the taking up of residence, exchange his licence. The Member State in which he has taken up residence is to issue him with a driving licence for the corresponding category or categories.

11. According to the second subparagraph of Article 8(1) of Directive 80/1263, the Member State effecting the exchange is to return the old licence to the authorities of the Member State which issued it.

2. Directive 91/439

12. Directive 91/439, which repealed Directive 80/1263 on 1 July 1996, laid down the principle of mutual recognition of driving licences. [5]

13. Article 7(1)(a) of Directive 91/439 lays down minimum conditions for the issue of a driving licence and makes such issue subject to the passing of a test of skills and behaviour and a theoretical test and to meeting medical standards.

14. In particular, points 14.1 and 15.1 of Annex III, to which that provision refers, provide that a driving licence is not to be issued to or renewed for an applicant or a driver who is dependent on alcohol or drugs or who is not dependent on such substances but regularly consumes or abuses them.

15. In addition, pursuant to Article 7(5) of Directive 91/439, no person may hold a driving licence from more than one Member State.

16. Article 8(2) of the directive provides that 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.

5 — See Article 1(2).

17. Article 8(4) of the directive reads as follows:

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

A Member State may likewise refuse to issue a driving licence to an applicant who is the subject of such a measure in another Member State.'

3. Decision 2000/275

18. Directive 91/439 provides that the Member States are to establish equivalences between the categories of licences issued before the implementation of the directive and those defined in Article 3 thereof. [6] The purpose of Decision 2000/75 is to lay down tables of equivalences between those two categories of licences. [7]

19. The models of driving licences issued in Austria between 1 January 1956 and 1 November 1997 appear in the annex to the decision and are therefore recognised as equivalent to the Community model.

B — *National law*

20. Paragraph 28(1) of the Regulation on access to driving on the highways (Verordnung über die Zulassung von Personen zum Straßenverkehr, 'the FeV') provides that holders of a driving licence issued by a Member State of the Union are authorised to drive in the territory of the Federal Republic of Germany.

21. However, Paragraph 28(4)(3) of the FeV provides that the authorisation does not apply to persons whose driving licence has, in Germany, been provisionally or definitively withdrawn by act of a court or tribunal or been withdrawn by an immediately enforceable or final decision of an administrative authority.

22. According to Paragraph 69(1) of the German Criminal Code (Strafgesetzbuch), a competent criminal court is to order the withdrawal of the driving licence of a driver convicted of a driving offence if he is

6 — See the first paragraph of Article 10 of Directive 91/439 and the third recital in Decision 2000/275.

7 — See Article 2 of Decision 2000/275.

considered to be unfit to drive. In accordance with Paragraph 69a of the criminal code, when a court orders withdrawal of a licence, it is to couple the withdrawal with a ban on applying for a new driving licence for a period which may vary from six months to five years.

23. Paragraph 20 of the FeV, and Paragraph 11 thereof, to which it refers, provides that the issue of a new driving licence following a withdrawal or surrender of the licence is subject to proof that the candidate satisfies the required physical and mental conditions, which may be provided by submission of a medical-psychological report.

24. Furthermore, Paragraph 21 of the Law on Road Traffic (Straβenverkehrsgesetz) provides that any person who drives a vehicle without having the licence required for that purpose is liable to imprisonment for up to one year or to a fine.

II — Facts and main proceedings

25. On 28 October 1964, the Austrian authorities issued a driving licence to Mr Schwarz, an Austrian national. In 1968, following the transfer of his residence to Germany, and at Mr Schwarz's request, the competent German authorities issued him a German licence, on the basis of his Austrian licence. Mr Schwarz retained his Austrian licence.

26. On 9 May 1968, Mr Schwarz surrendered his German driving licence to the competent German authorities and applied for a new German licence on 11 November 1993. Since he had passed the medical-psychological test required by German law, the Ordnungsamt Mannheim (administrative police service of the city of Mannheim) issued him with a new licence on 3 May 1994, without withdrawing his Austrian licence.

27. By judgment of 1 December 1997, the Amtsgericht (Local Court) Mannheim sentenced Mr Schwarz to a fine of 40 daily penalties of DEM 50 for drunk driving. His German driving licence was withdrawn and he was banned from applying for a new driving licence within six months. Pursuant to German law, Mr Schwarz was required to prove, in order to obtain a new driving licence, that he was again fit to drive by submitting, in particular, a medical-psychological report.

28. On 24 July 2000, Mr Schwarz applied to the Ordnungsamt Mannheim for a new driving licence. By decision of 2 April 2001, the latter rejected the application since Mr Schwarz had not submitted the required medical-psychological report.

29. On 30 January 2006, the Amtsgericht Mannheim made an order sentencing Mr Schwarz to a fine of 30 daily penalties of EUR 25, since he had been convicted of driving without a licence on 11 April 2005.

30. At a second road check, carried out in Mannheim on 23 December 2005, Mr Schwarz showed his Austrian driving licence, which he still possessed, since it had not been withdrawn when his German licence was issued in 1968 or in 1994. The question of the validity of his Austrian licence therefore arose.

31. By judgment of 22 June 2006, the Amtsgericht Mannheim acquitted Mr Schwarz of driving on German territory without a valid driving licence.

32. The Mannheim Public Prosecutor (Staatsanwaltschaft Mannheim) appealed against that judgment to the Landgericht Mannheim. Before that court, it sought to have Mr Schwarz convicted of driving on 23 December 2005 without a valid driving licence.

III — The questions referred to the Court

33. Since the Landgericht Mannheim had doubts as to the validity of the Austrian licence, it stayed proceedings and referred the following questions to the Court for a preliminary ruling:

‘(1) Is it — contrary to Article 7(5) of Directive 91/439 — possible under Community law for a citizen of the EU to hold a valid German driving licence and a driving licence issued by another Member State, both of which were obtained before the accession to the EU of the foreign Member State and — if so —

(2) Does the withdrawal — before the entry into force of the Regulation on the right to drive [Fahrerlaubnisverordnung] of 1 January 1999 — of the later second German driving licence as a consequence of a drunkenness offence mean that the validity in Germany of the first foreign driving licence, which was issued earlier, is also no longer required to be recognised after accession of the foreign

Member State, even where the period of the ban imposed in Germany has expired?'

IV — Analysis

34. Mr Schwarz, who holds an Austrian driving licence and a German driving licence issued before Austrian accession to the Union, had his German licence withdrawn. Several years after that withdrawal, at a road check on German territory, he showed his Austrian driving licence to the competent authorities.

35. The national court asks whether Mr Schwarz was guilty of driving without a driving licence or whether the Austrian driving licence must be recognised as valid by the German authorities notwithstanding the withdrawal of the German driving licence.

36. Thus, the national court is asking this Court whether, in view of Article 7(5) of Directive 91/439, which provides that no person may hold more than one driving licence, a European citizen may, in circumstances such as those of the main proceedings, hold two driving licences.

37. If the answer to that question is in the affirmative, the national court asks this Court to rule on the question whether Article 8(2) and (4) of Directive 91/439 must be interpreted as allowing a Member State to refuse to recognise the validity of a driving licence issued by another Member State, at a date prior to its accession to the Union, to a person whose driving licence has been withdrawn in the first Member State.

38. After indicating what I believe to be the scope of Article 7(5) of Directive 91/439, I will set out the reasons why I consider that Mr Schwarz could validly hold two driving licences. I will then explain why, in my view, the Federal Republic of Germany may, by virtue of the withdrawal of the German driving licence, refuse to recognise the validity of the Austrian driving licence.

A — *Preliminary observations*

39. The scope of Article 7(5) of Directive 91/439 in the scheme which the directive introduces must first be determined.

40. Directive 91/439 is intended to facilitate free movement of persons in the territory of the Union and to improve road safety in that territory. [8]

41. For that purpose, Article 1(2) of the directive states that driving licences issued by Member States are to be mutually recognised. That obligation to recognise driving licences permits European citizens to move freely in the 27 Member States of the Union with a single driving licence.

42. Article 7(5) of the directive, which provides that a person may not hold more than one driving licence, is the corollary of the principle of mutual recognition of driving licences laid down in that provision. Since a Member State is obliged to recognise a driving licence issued by another Member State, that licence is sufficient for free movement in European territory.

43. Holding a single driving licence is also, in my view, a means of making effective the restrictive measures that the competent authorities of a Member State might adopt in regard to that licence. The fact that the right to drive is embodied in a single driving licence prevents the holder, if the licence is withdrawn, from making use of another driving licence and thereby evading the sanction which has been imposed on him.

44. Thus, Directive 91/439 provides that the competent authorities effecting the exchange of a driving licence issued by another Member State are to return the old licence to the competent authorities of the latter State. [9] In the case of a driving licence issued by a non-member country, the old licence must be surrendered to the competent authorities of the Member State making the exchange. [10]

45. Consequently, in the framework of the exchange of a driving licence, the issue of a new driving licence is subject to the surrender

8 — See the first recital.

9 — See Article 8(3) of the directive.

10 — See the second subparagraph of Article 8(6) of the directive.

of the old licence. In the analysis which follows, I will show that the latter rule is not applicable to the main proceedings by reason of the chronological order of the facts.

46. In my view, therefore, the national court's questions must be answered in the light of those considerations.

B — *The first question*

47. In its first question, the national court asks whether, in the circumstances of the main proceedings, Mr Schwarz could validly hold two driving licences.

48. The following is a brief summary of the facts.

49. It is apparent from the file that Mr Schwarz obtained an Austrian driving licence in 1964. Later, in 1968, after he transferred his residence to Germany, and at Mr Schwarz's request, the competent German authorities issued a German licence to him, on the basis of his Austrian licence. Having surrendered his German licence to the competent authorities in 1988, Mr Schwarz obtained a new German licence in 1994. In 1968, as in 1994, the German authorities did not require Mr Schwarz to surrender his Austrian licence. He was therefore in possession of two driving licences until his German licence was withdrawn in 1997 for drunk driving. Mr Schwarz is now relying on his Austrian licence.

50. In the light of those facts, I am of the opinion that a distinction should be drawn between the situation in which the facts occurred before the entry into force of Directive 80/1263 and the situation in which the facts antedate the entry into force of Directive 91/439.

51. When the first German licence was issued in 1968, Austria was not a Member of the Union. Moreover, at that date, there were no Community rules on driving licences and, in particular, on the exchange of driving licences issued by a non-member country for a driving licence issued by a Member State. The Federal Republic of Germany could therefore validly issue a German driving licence to Mr Schwarz without requiring him to surrender his Austrian licence.

52. In 1994, when the second German driving licence was issued, Directive 91/439 was not yet applicable. Pursuant to Article 12(1) of that directive, Member States were to adopt the laws, regulations or administrative provisions necessary to comply with the directive as of 1 July 1996.

53. On the other hand, Directive 80/1263, which was applicable, provided that a driving licence issued by a non-member country and exchanged for a Community model driving licence must be surrendered to the competent authorities of the Member State which carried out the exchange.

54. However, it is apparent from the dispute in the main proceedings that the issue of the German licence on 3 May 1994 did not take place in the context of an exchange with the Austrian licence but as a result of an ordinary application for a driving licence in Germany.

55. At the time, since Community law contained no rule preventing a Member State from issuing a driving licence to a person who already held another licence and since the Federal Republic of Germany did not have the physical means of verifying whether Mr Schwarz already held a driving licence, [11] he was legitimately able to obtain a second driving licence.

56. It is true that Article 1(2) of Directive 91/439 requires Member States to recognise driving licences issued before the accession to the Union of the issuing Member State. [12] However, I note that Article 7(5) of the directive is not retroactive and does not therefore require a choice to be made in such circumstances between the automatic loss of the first driving licence and the nullity of the second.

57. On the other hand, with effect from the entry into force of Directive 91/439 on 1 July

11 — The cases on driving licences previously before the Court show that even when Directive 91/439 entered into force and, with it, the obligation not to hold more than one driving licence, it is, in practice, difficult to verify whether the person already holds a driving licence issued by another Member State. It is certain that the competent authorities in the Member State issuing the licence will continue to have difficulties until such time as a network containing the files on driving licences is operational within the Union. In that regard, 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), which is intended to replace Directive 91/439 and will enter into force on 19 January 2013, expressly provides in Article 7(5)(b), (c) and (d) that the Member States are to refuse to issue a licence where it establishes that the applicant already holds a driving licence. It is provided that where there are reasonable grounds to suspect that the applicant is already the holder of another driving licence, the Member States are to verify that fact with other Member States. In order to facilitate that requirement, Member States are to use the EU driving licence network once it is operational.

12 — See point 1 of the statement of the reasons for Decision 2000/275. I would also point out that driving licences issued in Austria between 1 January 1956 and 1 November 1997 are recognised as equivalent to the Community model.

1996, I think that, in order for Article 7(5) of the directive to be effective, persons must not hold more than one driving licence.

58. To that end, it seems logical to me that a driving licence issued after that date when the holder already had a driving licence recognised in Community territory should be regarded as void.

59. In the light of the foregoing factors, I consider that, in the circumstances of the main proceedings, Mr Schwarz could hold two valid driving licences, which the national court and the Commission of the European Communities seem to accept. [13]

60. However, the fact that Mr Schwarz can, in those special circumstances, hold two valid driving licences must not permit him to evade the withdrawal of his licence by the German authorities in 1997 and the obligation to undergo a test of his fitness to drive, including the submission of a medical-psychological report.

13 — See point 11 of the order for reference and points 22 to 26 of the Commission's observations.

C — *The second question*

61. The question which now arises is whether the withdrawal of the licence by the German authorities, which affects the German driving licence, also affects the validity of the Austrian driving licence and thereby prevents Mr Schwarz from relying on that licence.

62. The Commission seems to accept that the withdrawal has no effect on the latter licence. It considers that if the Austrian licence had been issued while the withdrawal of the other licence was still in effect, the Federal Republic of Germany could, under Article 8(2) and (4) of Directive 91/439, have refused to recognise the Austrian licence. However, the Commission notes that at the time when the Austrian licence was issued, no other driving licence issued to the holder had been withdrawn. It therefore considers that the Austrian licence must be recognised by the German authorities, notwithstanding the withdrawal of the German licence.

63. I am not of that opinion for the following reasons.

64. Certainly, the Court has consistently held that driving licences must be mutually recognised without any formality and that Member States have no discretion as to the measures to be adopted in order to comply with that obligation. [14]

65. On the other hand, Article 8(2) and (4) of Directive 91/439 clearly provide an exception to that principle. They provide that a Member State may refuse to recognise the validity of any driving licence issued by another Member State to a person who is, in the former State's territory, the subject of a restriction, suspension, withdrawal or cancellation of the right to drive.

66. As I already pointed out in point 58 of my Opinions in *Wiedemann and Funk* and *Zerche and Others*, [15] that provision allows a Member State to ensure that persons whom it considers, as a result of legal proceedings and in accordance with Community rules, to be unfit to drive, because dangerous, are unable to rely on a licence issued by another Member State.

67. However, the Court has decided that a Member State may not refuse to recognise the validity of any driving licence issued by another Member State to a person whose driving licence has been withdrawn in that Member State where the licence was issued after the period in which the person was banned from obtaining a new licence with which the measure in question was coupled had expired. [16] The same is true where the withdrawal was not coupled with a measure prohibiting the holder from obtaining a new licence for a given period and the new licence was issued following that withdrawal. [17]

68. In *Kapper* and *Kremer*, the holders of the driving licences whose validity was challenged had obtained their licences after the withdrawal or after the expiry of the period in which they were banned from applying for a new licence. However, the competent authorities were able to ascertain, in accordance with Article 7(1)(a) of Directive 91/439, whether those persons were again fit to drive and whether their dangerous condition had disappeared.

69. The situation is different in the main proceedings. Mr Schwarz obtained his Austrian driving licence 43 years before committing the offence which led to his German licence being withdrawn. In addition, on 2 April 2001, the Ordnungsamt Mannheim

14 — See, in particular, Case C-230/97 *Awoyemi* [1998] ECR I-6781, paragraphs 41 and 42.

15 — Joined Cases C-329/06 and C-343/06 [2008] ECR I-4635 and Joined Cases C-334/06 to C-336/06 [2008] ECR I-4691 respectively.

16 — See the judgment in Case C-476/01 *Kapper* [2004] ECR I-5205, paragraph 76.

17 — Order in Case C-340/05 *Kremer* [2006] ECR I-98, paragraphs 34 and 35.

refused to issue him a new licence on the ground that he had not submitted the required medical-psychological report and he had not therefore proved that he was again fit to drive.

70. Thus, after the withdrawal of his German licence and the six-month ban on applying for a new licence, no authority was able to carry out a verification of his capacity to drive. In my opinion, the mere fact of holding a driving licence obtained years before the commission of the offence is also not enough to ensure that Mr Schwarz fulfils the medical conditions required by Article 7(1)(a) of Directive 91/439.

71. I would point out in that regard that it is apparent from points 14.1 and 15 of Annex III to the directive that a driving licence is not to be issued to, or renewed for, a person who is dependent on alcohol or drugs or who is not dependent on such substances but regularly consumes or abuses them.

72. The medical-psychological report required by the German authorities for the issue of a new licence in application of those points makes it possible, precisely, to verify the capacities of the person whose driving licence has been withdrawn for drunk driving.

73. Accepting that Mr Schwarz could rely on his Austrian driving licence when he has undergone no test proving his fitness to drive would amount to evading the safety rules laid down in Directive 91/439 and would run counter to the directive's objective of improving road safety.

74. I would point out that it is precisely for that reason that the directive provides that a person may hold only one driving licence. The holding of two driving licences in a very special case, such as the one in the main proceedings, must not endanger the double purpose of Directive 91/439, namely, free movement of persons through the principle of mutual recognition of driving licences and improvement of road safety.

75. In other words, although Mr Schwarz can hold two driving licences, he none the less has only one right to drive.

76. It would not be in accordance with Directive 91/439 to permit a person who has committed a serious traffic offence to rely on a second driving licence when it is not even established that the person is again fit to drive.

77. In the light of the foregoing, I think that a Member State may, under Article 8(2) and (4) of Directive 91/439, refuse to recognise the validity of a driving licence issued by another Member State at an earlier date to a person whose driving licence has been withdrawn in its territory.

78. In the light of all those considerations, I consider that Article 7(5) of Directive 91/439 must be interpreted as not preventing a person holding two driving licences where the first licence was issued by a non-member country before the entry into force of Directive 80/1263 and where, before the entry into force of Directive 91/439, that person, who already held a driving licence recognised in the territory of the Community, undergoes the test of skills required for the issue of a driving licence. However, I consider that Article 8(2) and (4) of the latter directive must be interpreted as meaning that, in the circumstances of the main proceedings, a Member State is not prevented from refusing to recognise the validity of a driving licence issued earlier by another Member State.

79. Before concluding, I think it would be useful to outline the general scheme of the application of the principle of mutual recognition of driving licences and the exceptions thereto, as results from Directive 91/439 and the case-law of the Court.

80. Pursuant to Directive 91/439:

— a European citizen may hold only one driving licence issued by a Member State;

— a Member State cannot issue a driving licence to a person who has been resident in its territory for less than six months or to a person who is dependent on alcohol or drugs;

— a driving licence issued by a Member State is recognised in the other Member States;

— however, under certain circumstances, a Member State may apply to the driving licence its national provisions on the restriction, suspension, withdrawal or cancellation of the right to drive, and

— the Member States have a duty to cooperate with each other in good faith.

81. According to the Court's case-law:

— the Court held in *Awoyemi*, cited above, that driving licences must be mutually recognised without any formality and that Member States have no discretion as to the measures to be adopted in order to comply with that obligation, [18]

— it stated in *Kapper*, cited above and in the orders in *Halbritter* [19] and *Kremer*, cited above, that when the period in which the person was banned from obtaining a new licence has expired in the territory of the host Member State or where the withdrawal was not coupled with such a ban, that Member State may not refuse to recognise the validity of a driving licence issued later by another Member State;

— in *Wiedemann and Funk*, cited above, it laid down an exception to the principle of mutual recognition. It decided that a Member State may refuse to recognise a new licence issued to a person who has been the subject, in its territory, of a measure withdrawing his driving licence and prohibiting any application for a new licence for a given period by another Member State during the period of that prohibition, [20] and

— the Court has decided that a person whose right to drive has been restricted must not be able to obtain a driving licence in disregard of the residence condition. The Court has decided that that condition helps, inter alia, the fight against 'driving-licence-tourism', in the absence of complete harmonisation of the laws of the Member States relating to the issuing of driving licences. Moreover, since the condition is a precondition making it possible to establish that the other conditions imposed by Directive 91/439 have been observed, the condition of residence assumes special importance. [21] Here, the Court has emphasised the imperatives of road safety.

18 — Paragraphs 41 and 42.
19 — Case C-227/05 [2006] ECR I-49.
20 — See *Wiedemann and Funk*, cited above, paragraph 65.
21 — Ibidem (paragraphs 68 to 71). See also *Zerche and Others*, cited above (paragraphs 65 to 68).

82. In the light of the foregoing, it is clear to me that the consistent case-law of the Court, as I understand it, reflects the desire to combine the exercise of free movement with the need to ensure that all those who avail themselves of that right enjoy the essential conditions of safety.

83. It seems appropriate to point out that freedom of movement can be a concrete reality only if the citizens who exercise it are not thereby exposed to unjustified dangers. In my view, a person who, although he has been found to be unfit by a judicial or administrative decision, none the less continues to drive without fulfilling the conditions required by the directive in force creates such a danger.

84. For that reason, I consider it right to say that, in the present state of the Community rules, the case-law will not be sufficient to prevent situations of that kind.

85. Even if the Court accepts my proposal, the present case unquestionably shows that Directive 91/439 has left a legal void in this regard. If it is decided, as I will propose, that the Federal Republic of Germany was justified in its refusal to recognise the validity of Mr Schwarz's Austrian licence, he could drive without difficulty on the basis of that licence in the other Member States of the Union, where he would create the same danger as in Germany.

86. For those reasons, I think it would be useful if the Community legislature were to address this problem and provide an appropriate solution to it.

V — Conclusion

87. In the light of the foregoing considerations, I propose that the Court should reply as follows to the questions referred to it by the Landgericht Mannheim:

Article 7(5) of Council Directive 91/439/EEC of 29 July 1991 on driving licences, as amended by Regulation (EC) No 1882/2003 of the European Parliament and of the Council of 29 September 2003, must be interpreted as not preventing a person holding

two driving licences where the first licence was issued by a non-member country before the entry into force of Council Directive 80/1263/EEC of 4 December 1980 on the introduction of a Community driving licence and where, before the entry into force of Directive 91/439, that person, who already held a driving licence recognised in the territory of the Community, undergoes the test of skills required for the issue of a driving licence.

In addition, Article 8(2) and (4) of Directive 91/439, as amended by Regulation No 1882/2003, must be interpreted as meaning that, in the circumstances of the main proceedings, a Member State is not prevented from refusing to recognise the validity of a driving licence issued earlier by another Member State.