OPINION OF ADVOCATE GENERAL BOT
delivered on 31 March 2011 [1]

1. The question referred leads the Court, once again, to interpret the provisions of Directive 91/439/EEC of the Council of 29 July 1991 on driving licences. [2]

2. Article 1(2) of Directive 91/439 provides that driving licences issued by Member States are to be mutually recognised. The issue of those licences is subject to a number of conditions. In particular, under Article 7(1)(b) of the directive, acquisition of a driving licence is subject to the condition of normal residence in the territory of the issuing Member State.

3. The Bayerischer Verwaltungsgerichtshof (Bavarian Higher Administrative Court) (Germany) asks, therefore, if a Member State may refuse to recognise a driving licence issued by another Member State, once it is established that the licence has been issued in disregard of the residence requirement.

4. This question leads me to clarify the rules developed by the Court in its judgments of 26 June 2008 in *Wiedemann and Funk* [3] and *Zerche and Others*, [4] according to which a host Member State may refuse to recognise in its territory the right to drive stemming from a driving licence subsequently issued by another Member State, if it is established, on the basis of entries appearing in the driving licence itself or of other incontestable information supplied by the issuing Member State, that when that licence was issued its holder, who had been the object, in the territory of the first Member State, of a measure withdrawing an earlier driving licence, was not normally resident in the territory of the issuing Member State.

5. The specific feature of the dispute in the main proceedings arises from the fact that, contrary to the circumstances considered by the Court in the cases which gave rise to those judgments, Ms Grasser, a German national whose driving licence (issued by the Czech authorities) the German authorities refuse to recognise, has never had a German

1 — Original language: French.
2 — OJ 1991 L 237, p. 1.
3 — Joined Cases C-329/06 and C-343/06 [2008] ECR I-4635.
4 — Joined Cases C-334/06 to C-336/06 [2008] ECR I-4691.

driving licence and has therefore never been the object of a measure withdrawing an earlier licence. The question is, therefore, whether *Wiedemann and Funk* and *Zerche and Others* can be applied to Ms Grasser's case.

6. In this Opinion, I propose that the Court should rule that Articles 1(2) and 7(1)(b) of Directive 91/439 are to be interpreted as not precluding a Member State from refusing to recognise in its territory the right to drive stemming from a driving licence issued by another Member State, if it is established, on the basis of entries appearing in the driving licence itself or of other incontestable information supplied by the issuing Member State that, when the licence was issued, its holder was not normally resident in the issuing Member State.

I — Legal context

A — *European Union legislation*

7. With the aim of facilitating the movement of persons within the European Community or their establishment in a Member State other than that in which they obtained their driving licence, Directive 91/439 established the principle of mutual recognition of driving licences. [5]

8. The laying down, in that directive, of minimum requirements for the issue of a driving licence also has the objective of improving road safety within the European Union. [6]

9. In particular, Article 7(1)(b) of Directive 91/439 provides:

'1. Driving licences shall, moreover, be issued only to those applicants:

…

(b) who have their normal residence in the territory of the Member State issuing the licence, or can produce evidence that they have been studying there for at least six months.' [7]

5 — See Article 1 of the directive.

6 — See the fourth recital to the directive

7 — The first paragraph of Article 9 of Directive 91/439 states that a person's normal residence is the place where he usually lives, that is, for at least 185 days in each calendar year. If the licence holder is a student in that Member State, he must produce evidence that he has been studying there for at least six months.

10. Article 7(5) of Directive 91/439 provides that no person may hold more than one driving licence.

11. 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.

12. Under the first subparagraph of Article 8(4) of the directive, a Member State may also refuse to recognise the validity of a driving licence issued by another Member State to a person who is, in the former State's territory, the object of one of the measures referred to above.

B — *National legislation*

13. The regulation on the authorisation of persons to drive on highways (Verordnung über die Zulassung von Personen zum Straßenverkehr), in the version in force on 19 January 2009 ('the FeV'), provides in Paragraph 28(1) that holders of a valid European Union ('EU') or European Economic Area ('EEA') driving licence having their normal residence, within the meaning of Paragraph 7(1) or (2) of the FeV, in Germany shall be authorised — subject to the restrictions laid down in subparagraphs (2) to (4) of Paragraph 28 — to drive motor vehicles in Germany within the limits authorised by their driving licence.

14. Paragraph 28(4) (first sentence, subparagraphs 2 and 3, and second sentence) of the FeV provides that that authorisation to drive does not apply to holders of an EU or EEA driving licence in two circumstances. Firstly, the authorisation does not apply when, on the basis of entries appearing in the driving licence itself or of other incontestable information supplied by the issuing Member State, the holder had, on the date of issue, his normal residence in the national territory, unless he obtained the licence during a stay of at least six months as a scholar or student. Secondly, holders of an EU or EEA driving licence are not authorised to drive in Germany if their driving licence has, in Germany, been provisionally or finally withdrawn by a court, or has been withdrawn by an immediately enforceable or definitive decision of an administrative authority, if they have been definitively refused a driving licence, or if their driving licence has not been withdrawn solely because they have surrendered it in the meantime.

II — The facts of the main proceedings and the question referred for a preliminary ruling

15. Ms Grasser, the applicant in the main proceedings, is of German nationality and lives in Viereth-Trunstadt (Germany). She has never had a German driving licence.

16. The applicant obtained a driving licence on 31 May 2006, issued by the municipal authority of Plzeň (Czech Republic). Her place of residence as shown on the driving licence is the town of Viereth-Trunstadt.

17. In a letter of 3 April 2009, the German authority responsible for the issuing of driving licences asked Ms Grasser to present her Czech driving licence in order that it could be noted on the licence that she was not entitled to drive in Germany, since the residence requirement had not been observed when the licence was issued. The authority also heard the applicant in order to give a decision revoking her right to drive.

18. Ms Grasser challenged the authority's decision and asked it to grant her the right to use her Czech driving licence in Germany, since she had never committed a driving offence. Failing that, she asked to be issued with a German driving licence. Both requests were refused by the competent German authority.

19. By decision of 3 June 2009, the authority banned Ms Grasser from using her Czech driving licence in Germany and required her to present that licence so that the fact that she is not entitled to drive could be entered on it. If she failed to do so, the licence would be confiscated.

20. On 1 July 2009, the applicant brought an action for annulment in the Verwaltungsgericht Bayreuth (Bayreuth Administrative Court) against that decision. By judgment of 22 September 2009, that court upheld Ms Grasser's application and annulled the decision. The Verwaltungsgericht Bayreuth considered that the infringement of the principle of residence may not, in and of itself, constitute a reason for non-recognition of the right to drive in Germany. According to that court, the applicant would also have had to be the object of a measure restricting, suspending, withdrawing or cancelling her driving licence.

21. The Freistaat Bayern, defendant in the main proceedings, brought an appeal against the decision of the Verwaltungsgericht Bayreuth before the Bayerischer Verwaltungsgerichtshof, which decided to stay the proceedings and refer the following question to the Court:

'Are Articles 1(2) and 8(2) and (4) of Directive 91/439 … to be interpreted as meaning that

a host Member State is entitled to refuse to recognise a driving licence issued by another Member State where entries appearing in the driving licence show that Article 7(1)(b) of that directive has been infringed, if the host Member State has not previously applied to the holder of the licence a measure under Article 8(2) of Directive 91/439 …?'

III — My analysis

22. By its question, the referring court is asking, in essence, if a Member State may refuse to recognise a driving licence issued by another Member State, if it is established, on the basis of entries appearing in that licence, that the residence condition has not been observed, even though the holder of the licence has never been the object, in the territory of the first Member State, of any measure withdrawing a previous driving licence.

23. First, it should be noted that Directive 91/439 has two specific purposes: firstly, to facilitate the movement of persons settling in a Member State other than that in which they have passed a driving test and, secondly, to improve road safety. [8]

24. Those objectives are inextricably linked. The principle of freedom of movement for persons requires that such movement may safely occur.

25. Therefore, in order to meet those imperatives of road safety, the EU legislature considered it necessary to establish minimum requirements or conditions under which driving licences may be issued. [9]

26. In particular, under Article 7(1)(a) and (b) of Directive 91/439 issue of a driving licence is subject to a person having passed a test of mental and physical abilities and aptitudes as well as a theory test, and, in addition, to having normal residence in the territory of the issuing Member State.

27. Thus, driving licences issued on the basis of those minimum conditions are covered by the principle of mutual recognition, under Article 1(2) of Directive 91/439.

8 — See the first recital to the directive.
9 — See the fourth recital to the directive.

28. Of the minimum conditions subject to which a driving licence may be issued, the condition relating to normal residence in the territory of the issuing Member State plays a special role within the system established by the EU legislature, as interpreted by the Court in its case-law.

29. In *Weidemann and Funk* and *Zerche and Others*, the Court stated that the residence 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. [10] Indeed, that condition is indispensable if observance of the condition of fitness to drive is to be monitored. [11] The condition is a precondition making it possible for the issuing Member State to establish that the other conditions have been observed. [12] It is for that reason that the residence condition, which determines the issuing Member State, assumes special importance in relation to the other conditions laid down by Directive 91/439. [13]

30. The Court has therefore concluded that road safety could be jeopardised if this condition was not observed. [14]

31. At the hearing, Ms Grasser's lawyer stated that, in the present case, there is no imminent danger or urgency, in contrast to the circumstances before the Court in the cases giving rise to the judgments in *Wiedemann and Funk* and *Zerche and Others*. He stated that, in those cases, the holders of the driving licences in question had already demonstrated how much of a danger they represented, since they had had their previous driving licences withdrawn for road traffic offences. Ms Grasser had never had a driving licence before and had therefore never been the object of any measure withdrawing a previous driving licence. For this reason, that case-law did not apply.

32. To my mind there is no merit in that submission. It is tantamount to repudiating the objectives referred to in Directive 91/439.

33. As we have seen, the EU legislature has established minimum conditions subject to which a driving licence may be issued, in order to ensure road safety in the European Union. Those conditions apply to all applicants for a driving licence. The provisions of Directive 91/439 make no distinction, in this respect, between applicants passing their driving test for the first time and those requesting a new licence following the withdrawal of a previous licence.

10 — *Wiedemann and Funk* (paragraph 69) and *Zerche and Others* (paragraph 66).

11 — Ibidem.

12 — *Wiedemann and Funk* (paragraph 70) and *Zerche and Others* (paragraph 67).

13 — Ibidem.

14 — *Wiedemann and Funk* (paragraph 71) as well as *Zerche and Others* (paragraph 68).

34. The reason for this is obvious, namely that the level of danger posed by a driver must be assessed well before the driving licence is issued. It would be inconceivable to wait for a driver to cause an accident in order to confirm how much of a danger he represents and to apply the necessary measures when he seeks renewal of his driving licence. As the defendant in the main proceedings observed at the hearing, road safety is a matter which is relevant not only for persons who have caused an accident, but also for persons applying for a driving licence.

35. Thus, in accordance with Article 7(1)(a) and (b) of Directive 91/439, when a competent national authority issues a first driving licence, the same minimum requirements must be observed.

36. It should be recalled that the residence condition has an essential role to play here. If that condition is not observed, it is impossible, or at least very difficult, for the national authority issuing the driving licence to verify certain of the conditions laid down by Directive 91/439. The first of these is that there should be a single driving licence per holder. Article 7(5) of the directive provides that no person may hold more than one driving licence. [15] As there are not yet any central databases for driving licences at EU level, who is better placed than the national authorities in the normal place of residence of the applicant for a driving licence to establish whether the applicant already has a driving licence?

37. The same is true of other essential information, such as the checking of criminal records, in order to confirm that the applicant's history does not preclude a driving licence being issued.

38. For this reason compliance with the residence condition is an essential precondition making it possible to ascertain whether the applicant has complied with the other minimum conditions of Directive 91/439.

39. The consequence of disregarding the residence condition, when an applicant passes the driving test for the first time, would therefore be to upset the system established by the EU legislature, to the detriment of the safety of road users.

40. I would add that, during the hearing, the European Commission and, subsequently, Ms Grasser's lawyer, argued that the entry on residence on her driving licence could involve a simple drafting error, that the issuing

15 — See, to that effect, *Wiedemann and Funk* (paragraph 70) and *Zerche and Others* (paragraph 67).

Member State could have made a mistake when making reference to a residence in Germany and that there was, therefore, no need to take it into account and the licence should be recognised as valid. In my view, that argument cannot be accepted.

41. If such reasoning were to be accepted, all information provided by the issuing Member State which appears in an official document, in this case a driving licence, could be challenged. As the Court has held, information appearing in the driving licence is incontestable information supplied by the authorities of the issuing Member State. [16]

42. Consequently, I consider that, when it is possible to determine, on the basis of entries appearing in the driving licence itself or of other incontestable information supplied by the issuing Member State, that the residence requirement laid down in Article 7(1)(b) of Directive 91/439 was not satisfied when that licence was issued, the host Member State may refuse to recognise the right to drive stemming from that driving licence.

43. It could be argued that such a solution would destroy the mutual trust between Member States which the principle of mutual recognition presupposes.

44. However, the principle of mutual recognition of driving licences cannot achieve its full potential unless the minimum conditions for the issue of driving licences, prescribed by a directive adopted for the purpose of harmonisation, are fulfilled and respected by all Member States. Herein lies the very essence of the principle. The Member States have mutual trust and mutually recognise driving licences issued by their authorities, because the EU legislature has put in place a system serving to ensure that all Member States have a minimum standard concerning the issue of those licences.

16 — See, to that effect, *Wiedemann and Funk* (paragraph 72) and *Zerche and Others* (paragraph 69). See also order of 9 July 2009 in Case C-445/08 *Wierer* (paragraph 51).

45. Therefore, when that minimum standard is not respected, the principle of mutual recognition cannot be applied in the normal way.

46. Moreover, if it were accepted that a driving licence, such as that of Ms Grasser, must be recognised by the host Member State, even though the residence requirement has not been respected, that would encourage 'driving-licence-tourism'. Although Directive 91/439 lays down minimum conditions for fitness to drive, the fact remains that the Member States are free to impose stricter standards than those mentioned in the directive. [17] It would become, therefore, more advantageous for a person resident in a Member State imposing such standards to take the test in another Member State with less stringent standards.

47. The aim of Directive 91/439 is not to offer EU nationals opportunities for driving-licence forum shopping, but to allow a person who has a driving licence to settle in the territory of a Member State other than the Member State in which the licence was issued, without having to take another driving test or exchange that licence.

48. It seems to me that the principle of mutual recognition has, in the present case, been diverted from its function in order to circumvent stricter national rules.

49. Consequently, for all of the above reasons, I take the view that Articles 1(2) and 7(1)(b) of Directive 91/439 should be interpreted as not precluding a Member State from refusing to recognise in its territory the right to drive stemming from a driving licence issued by another Member State, if it is established, on the basis of entries appearing in the driving licence itself or of other incontestable information supplied by the issuing Member State that, when the licence was issued, its holder was not normally resident in the issuing Member State.

17 — See point 5 of Annex III to the directive.

IV — Conclusion

50. In the light of the foregoing considerations, I propose that the Court give the following answer to the question referred to it by the Bayerischer Verwaltungsgerichtshof:

Articles 1(2) and 7(1)(b) of Directive 91/439/EEC of the Council of 29 July 1991 on driving licences should be interpreted as not precluding a Member State from refusing to recognise in its territory the right to drive stemming from a driving licence issued by another Member State, if it is established, on the basis of entries appearing in the driving licence itself or of other incontestable information supplied by the issuing Member State that, when the licence was issued, its holder was not normally resident in the issuing Member State.