

COMMISSION DECISION

of 25 January 1999

concerning a dispute between the Netherlands and France and Italy concerning authorisation of a regular passenger service by coach

(notified under document number C(1999) 111)

(Only the Danish, Dutch, English, French, German, Italian and Spanish versions are authentic)

(Text with EEA relevance)

(1999/102/EC)

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Community,

Having regard to Council Regulation (EEC) No 684/92 of 16 March 1992 on common rules for the international carriage of passengers by coach and bus ⁽¹⁾, as amended by Regulation (EC) No 11/98 ⁽²⁾, and in particular Article 7(7) thereof,

Whereas:

I. FACTS

- (1) On 17 March 1998 the Dutch company Atlas Reizen BV submitted to the competent Dutch authorities, hereinafter referred to as the 'authorising authority', an application for the authorisation of a regular service by coach through various Member States, namely Belgium, Denmark, Germany, Spain, France, Italy, the Netherlands, Austria and the United Kingdom.
- (2) The service proposed by Atlas Reizen BV is aimed only at non-European tourists, who reserve a full tour which is payable in advance to a travel agency, the price covering the whole tour and the ticket being valid for the entire season. The route can be taken only once. Tourists may be set down at one of the predetermined stops in one of the Member States and continue their trip a few days later in another coach of the same service. Coaches stop every other day to collect passengers at special stops, usually near hotels. The tour operates from April to October.
- (3) In accordance with the authorisation procedure set out in Article 7(1) of Regulation (EEC) No 684/92, authorisation is issued in agreement with all the Member States in whose territories passengers are picked up or set down; whereas in a letter dated 25 March 1998, the Dutch authorities transmitted the

application with a favourable opinion to all the Member States concerned. Belgium, Denmark, Germany, Spain, Austria and the United Kingdom endorsed the application but France and Italy rejected it.

- (4) On 10 April 1998 the French authorities stated that they were opposed to the application on the basis that it differed only slightly from a previous application submitted by the Dutch company Vermaat's Autobedrijf BV in a letter dated 12 August 1997, which the French authorities rejected on 10 October 1997 on the grounds that it was not possible, from the application, to define the category of service (regular, special regular or occasional), that it was aimed at the most lucrative market since it was offered only during the tourist season, and it constituted unauthorised cabotage within the meaning of Council Regulation (EEC) No 2454/92 of 23 July 1992 laying down the conditions under which non-resident carriers may operate national road passenger transport services within a Member State ⁽³⁾, as amended by the Act of Accession of Austria, Finland and Sweden.
- (5) On 21 April 1998 the Italian authorities informed the Dutch authorities that they would endorse the application on condition that no services would be provided between two or more towns on Italian territory, thus effectively refusing authorisation of the service as presented.
- (6) On 16 June 1998 the dispute in question was referred to the Commission under Article 7(6) of Regulation (EEC) No 684/92, which states that 'If the procedure for reaching the agreement referred to in paragraph 1 does not enable the authorising authority to decide on an application, the matter may be referred to the Commission within the time limit laid down in paragraph 3', that is three months from submission of the application.

⁽¹⁾ OJ L 74, 20. 3. 1992, p. 1.⁽²⁾ OJ L 4, 8. 1. 1998, p. 1.⁽³⁾ OJ L 251, 29. 8. 1992, p. 1.

II. LEGAL ASSESSMENT

- (7) Despite the fact that at the time of the adoption of this Decision the amendments made by Regulation (EC) No 11/98 have become applicable, the type of service for which authorisation is requested must be assessed in accordance with the rules and definitions applicable when the application was submitted.
- (8) The service in question has certain characteristics of a regular service as defined by Article 2(1) of Regulation (EEC) No 684/92 in that it carries passengers at specified intervals along specified routes, passengers being taken up and set down at predetermined stopping points. However, in this instance the service cannot be said to be open to all, since it is available solely to non-European tourists who reserve and pay for their ticket before arriving in Europe, where the service is not marketed. It cannot, therefore, be called a regular service within the meaning of Article 2(1.1) of Regulation (EEC) No 684/92.
- (9) A service can be called a special regular service under Article 2(1.2) of Regulation (EEC) No 684/92 if it carries a specified category of passengers to the exclusion of other passengers, and the fact that passengers are non-European is sufficient to constitute a specified category of passengers.
- (10) The Court of Justice of the European Communities established in its judgment in Case C-47/97 *Clarke & Sons and Ferne* ⁽¹⁾ that 'the term "specified categories of passengers" within the meaning of Regulation (EEC) No 684/92 must be understood as referring to passengers sharing the same status. That interpretation stems from the examples given in Article 2(1.2) of Regulation (EEC) No 684/92 which refers, *inter alia*, to the carriage of workers, school pupils, students and soldiers. It is not sufficient, on the other hand, for there merely to be a group of passengers assembled in advance (...). In the case in the main proceedings, the transport service is on each occasion carried out for a different group of passengers, the only common element being that they all made reservations for a journey with the same tour operator. Such passengers do not therefore belong to a single specified category'.
- (11) In this instance, the passengers are non-Europeans who reserved their trip through the same tour operator, which does not mean that they share the same status as defined by the Court of Justice. Furthermore, the passengers do not make the journey regularly in the same way as specified categories of

passengers such as students, soldiers or workers who travel between their home and place of activity. In the present instance, passengers take the coach service in one direction, once only in the season, stopping off as they please for a few days at one of the stopping points and subsequently taking another coach of the same service to another destination, so that at no time can the group be considered homogenous. It must therefore be concluded that this service does not fall into the category of a special regular service.

- (12) It is then necessary to examine whether this service could be called a shuttle service within the meaning of Article 2(2) of Regulation (EEC) No 684/92. Such services are defined as services whereby groups assembled in advance are carried from a single area of departure to a single area of destination by means of repeated outward and return journeys. These groups, made up of passengers who have completed the outward journey, are carried back to the place of departure in the course of a subsequent journey.

The terms 'area of departure' and 'area of destination' mean the place where the journey begins and the place where the journey ends, together with, in each case, localities within a radius of 50 kilometres. Outside the areas of departure and destination, groups may be picked up and set down respectively at up to three different places.

For the purpose of shuttle services, a group assembled in advance is a group for which a body or person responsible in accordance with the rules of the state of establishment has taken charge of conclusion of the contract or collective payment of the service or has received all reservations and payments before departure.

The service proposed by Atlas Reizen BV does not meet these criteria, since it comprises a tour and not several outward and return journeys, there are more than three stops, payment is not collective since each person reserves and pays for the trip independently, and the group is not assembled in advance. Classification under shuttle services with accommodation, defined in Article 2(2.2), requires the additional condition of accommodation at the place of destination for at least 80 % of the passengers, which is not the case for the service in question, as it offers some accommodation but in various destination areas. It can therefore be concluded that the service offered by Atlas Reizen BV cannot be classified as a shuttle service within the meaning of Regulation (EEC) No 684/92.

⁽¹⁾ [1998] ECR I-2147, paras 21, 22 and 23.

- (13) Regulation (EEC) No 684/92 defines occasional services as services falling neither within the definition of regular services nor within the definition of shuttle services.
- (14) The service proposed by Atlas Reizen BV cannot fall within the category of tours referred to in Article 2(3.1)(a), where the same vehicle is used to carry out a tour with one or more groups of passengers previously assembled. In the present instance, the conditions of the same vehicle carrying out the tour and previously assembled group are not met since, as already noted, each passenger decides where to stop off and for how long. For the same reasons the service cannot be classified in the category of services carrying groups of passengers previously assembled and providing accommodation for these groups as defined in Article 2(3.1)(b). Neither can it be considered a service organised on the occasion of special events such as seminars, conferences and cultural or sporting events as referred to in Article 2(3.1)(c), or as a service within the meaning of Article 2(3.1)(d), that is a closed-door tour or a laden journey followed by an empty journey to the vehicle's place of departure or an empty journey followed by a laden return journey. However, it can be considered a residual occasional service as defined in Article 2(3.1)(e), which defines these services as those which do not meet the criteria in (a) to (d).
- (15) Moreover, Article 2(3.3) of Regulation (EEC) No 684/92 states that 'The services referred to in recital 3 shall not cease to be occasional services solely because they are provided at certain intervals'. In the case in question a coach comes to pick up passengers every other day. It must be concluded that the service offered by Atlas Reizen BV can be classified as a residual occasional service within the meaning of Article 2(3.1)(e) of Regulation (EEC) No 684/92.
- (16) Under Article 4(4) of Regulation (EEC) No 684/92, residual occasional services are subject to authorisation and the reasons for refusing such authorisation are the same as the reasons for refusing authorisation of regular services. Those reasons for refusal are set out in Article 7(4) of Regulation (EEC) No 684/92. Consequently, it must be examined whether the reasons given by France and Italy for refusing authorisation are well-founded.
- (17) The justification given by France for refusing authorisation in their correspondence of 10 April 1998 was that the application was similar to a previous application submitted by another Dutch company, Vermaat's Autobedrijf BV, in a letter dated 12 August 1997, which the French authorities rejected on 10 October 1997. Since the current application for authorisation was submitted by another company, Atlas Reizen BV, France cannot plead similarity to an application from another company as a ground for rejecting the application within the meaning of Regulation (EEC) No 684/92. Article 7 of Regulation (EEC) No 684/92 gives a list of grounds for rejecting an application and this list must be interpreted restrictively in order to guarantee legal certainty. The justification put forward by France cannot be considered as a ground for refusal within the meaning of Regulation (EEC) No 684/92. France should have reconsidered the grounds for refusal previously drawn up in order to reject the application for authorization. Moreover, it has not been established that such grounds could have been accepted in this case and as the file now stands these grounds cannot be taken into account.
- (18) The Italian authorities endorsed the application on condition that no links were provided between two or more towns on Italian territory, on the grounds that this would constitute unauthorised cabotage within the meaning of Regulation (EEC) No 2454/92. They thus effectively refused authorisation. However, this condition cannot be taken into account inasmuch as cabotage has been liberalised for all occasional services with effect from 1 January 1996.
- (19) The Member States concerned were consulted on 28 October 1998. It emerged from this consultation that the majority of Member States present support the draft decision submitted by the Commission, including the classification as a residual occasional service. However, France remains opposed to such classification as a residual occasional service. Several Member States have expressed the view that the parts of the journey effected on the same national territory could be considered to be cabotage within the meaning of Regulation (EEC) No 2454/92.
- (20) The amendments made by Regulation (EC) No 11/98, which are applicable from 11 December 1998, do not call in question the classification of the service offered by Atlas Reizen BV as an occasional service, as has been shown. However, the new rules change the market access of that type of service since occasional services are now grouped in a single category and are no longer subject to authorisation pursuant to the new Article 4(1),

HAS DECIDED AS FOLLOWS:

Article 3

Article 1

The service carried out by Atlas Reizen BV, Heemskerk, the Netherlands, between Belgium, Denmark, Germany, Spain, France, Italy, the Netherlands, Austria and the United Kingdom is classified as a residual occasional service within the meaning of Article 2(3.1)(e) of Regulation (EEC) No 684/92. From the date on which the provisions of Regulation (EC) No 11/98 amending Regulation (EEC) No 684/92 became applicable, that service is no longer subject to an authorisation.

This Decision is addressed to the Kingdom of Belgium, the Kingdom of Denmark, the Federal Republic of Germany, the Kingdom of Spain, the French Republic, the Italian Republic, the Kingdom of the Netherlands, the Republic of Austria and the United Kingdom.

Done at Brussels, 25 January 1999.

Article 2

This Decision shall take effect 30 days after notification to the Member States concerned.

For the Commission

Neil KINNOCK

Member of the Commission
