COMMISSION DECISION

of 7 September 1989

on a dispute between Luxembourg and France on the establishment of a special regular passenger service between these two States

(Only the French text is authentic)

(89/524/EEC)

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Economic Community,

Having regard to Council Regulation (EEC) No 517/72 of 28 February 1972 on the introduction of common rules for regular and special regular services by coach and bus between Member States (1), as last amended by Regulation (EEC) No 1301/78 (2), hereinafter called 'the Regulation', and in particular Article 14 thereof,

Whereas on 9 January 1986 Autocars Emile Frisch Sàrl submitted to the Luxembourg government an application for authorization to introduce a special regular service to transport workers from Thil and certain other places in that region of France to the Villeroy and Boch factory in Luxembourg, operating two services in each direction daily, departing from Thil at 4.20 a.m. and 12.20 p.m. and from Luxembourg at 2 p.m. and 10 p.m. respectively in order to take workers to and from that factory in time for shifts operating from 6 a.m. to 2 p.m. and 2 p.m. to 10 p.m.; whereas Villeroy and Boch supports the application by Emile Frisch and would contribute to the transport costs of these workers;

Whereas on 5 March 1987 Frisch submitted a new application to introduce a special regular service which differed from the abovementioned one in that it would also take workers to the Arbed factory at Dommeldange; whereas Arbed would not contribute to the travel costs of these workers;

Whereas, in spite of long discussions between the Luxembourg and French authorities, no agreement could be reached on these requests for authorization by the authorities;

Whereas the Luxembourg Government referred the applications to the Commission for a decision on 14 March 1988 in accordance with Article 14 of the Regulation;

Whereas the French Government and the company Schiocchet oppose the applications for authorization on the grounds that the new service would be detrimental to existing regular passenger services in the area and, in particular, to regular services run by Schiocchet, since it could take passengers away from them and they are of general benefit to the public; whereas they consider therefore that Schiocchet should be able to participate in the service proposed by Frisch in order to be able to obtain benefits to counterbalance any loss suffered from the introduction of the new service;

Whereas the French Government is of the opinion that, in any event, should the proposed special regular service provide transport for workers to the Arbed factory as well, it no longer remains a special regular service but rather becomes more akin to a regular service since the definition of a special regular service in Regulation No 117/66/EEC (3) refers to a special regular service as serving 'a place of work' in the singular;

Whereas the French Government is of the opinion that the applications for authorization submitted by Autocar Emile Frisch Sàrl are inadmissible since the 1986 application refers to both the introduction of a special regular service and also erroneously to the renewal of such a service and the French authorities did not receive a copy of the 1987 application from the Luxembourg authorities;

Whereas the French Government considers that the *status quo* established following Commission Decision 82/595/EEC (4) also on the setting up by Emile Frisch sàrl of certain special regular services to take French workers in the frontier region to the Villeroy and Boch factory in Luxembourg would be disturbed if the new service proposed by Frisch were to be allowed;

Whereas it can be considered that the special regular service proposed by Autocars Emile Frisch Sàrl to take workers to the Villeroy and Boch factory meets the criteria laid down in Article 8 of the Regulation; whereas it fulfils a proven need for a new service both quantitatively and qualitatively in the area since it will provide a service at convenient times for some 50 workers who at present do not have public transport to the Villeroy and Boch factory to arrive for and return from the 6 a.m. and 2 p.m. shifts; whereas the service will call at certain places with at present no public transport at that time;

(1) OJ No L 67, 20. 3. 1972, p. 19.
(2) OJ No L 158, 16. 6. 1978, p. 1.
(3) OJ No 147, 9. 8. 1966, p. 2688/66.
(4) OJ No L 244, 19. 8. 1982, p. 32.

Whereas Autocars Emile Frisch Sàrl are already working in the road passenger transport market in this area;

Whereas a special regular service rather than a regular service is the most appropriate form of service for Villeroy and Boch employees since it can be easily adapted to meet their needs;

Whereas the timetable for the special regular service proposed by Autocars Emile Frisch Sàrl is more convenient and the service takes less time than that of the regular service envisaged by Schiocchet for the 6 a.m. shift of the Villeroy and Boch workforce; whereas Schiocchet does not envisage any service to cater for workers on the 2 p.m. shift at the Villeroy and Boch factory;

Whereas the application by Autocars Emile Frisch Sàrl to take workers to the Arbed factory in Dommeldange as well would have the effect of turning the special regular service to the Villeroy and Boch factory, which is defined in Regulation 117/66/EEC as a service for the carriage of workers to their place of work, into a service more akin to a regular service;

Whereas half of the Arbed workforce interested in taking the new service already use existing coach services which could therefore suffer from this loss of customers;

Whereas the two applications by Autocars Emile Frisch Sàrl may be regarded as valid since, despite the error in the heading to the application of 4 January 1986, it would have become clear from the subsequent exchanges between the Luxembourg and French authorities concerning the application that it related to the introduction of a special regular service and not the renewal of one; whereas it is to be regretted that, in the case of the second application of 5 March 1987, the Luxembourg authorities did not send the French authorities a copy, but they informed the French authorities adequately in their letter of 28 July 1987 of the contents of the application; whereas the French authorities subsequently received a copy of this application, together with all the other relevant documentation, from the Commission services under cover of their letter of 21 April 1988, on which they have made observations;

Whereas Decision 82/595/EEC concerned different routes and is not to be regarded as establishing a system of road passenger services which can never be altered,

HAS ADOPTED THIS DECISION:

Article 1

The competent authority of the Grand Duchy of Luxembourg shall authorize Autocars Emile Frisch Sàrl to introduce a special regular service between Thil in France and Luxembourg for the Villeroy and Boch workforce starting from Thil at 4.20 a.m. and 12.20 p.m. and from the Villeroy and Boch factory at 2 p.m. and 10 p.m. and serving the following localities:

Thil — Hussigny — Tiercelet — Aumetz — Beuviller — Audun-le-Roman — Serrouville — Errouville — Crusnes — Cantebonne — Villerupt — Audun-le-Tiche — Esch/Alzette — Schifflange — Villeroy and Boch factory.

This service is exclusively for the workforce of Villeroy and Boch, established in Luxembourg at 330, rue de Rollingergrund, L-1018 Luxembourg.

Article 2

This Decision is addressed to the Grand Duchy of Luxembourg and the Republic of France.

Done at Brussels, 7 September 1989.

For the Commission

Karel VAN MIERT

Member of the Commission