II

(Acts whose publication is not obligatory)

COMMISSION

COMMISSION DECISION

of 22 June 1987

concerning reductions in air and sea transport fares available only to Spanish nationals resident in the Canary Islands and the Balearic Islands

(Only the Spanish text is authentic)

(87/359/CEE)

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Economic Community, and in particular Article 90 (1) and (3) thereof,

Whereas :

1. By Decree-Law No 22/62 of 14 June 1962 [1] and Law No 46/81 of 29 December 1981 [2], Spain introduced special arrangements relating to transport under which certain persons tavelling between continental Spain and the Canary and Balearic Islands are granted reductions in fares for air and sea transport.

2. Under Article 2 of Decree-Law No 22/62 concerning air links with the Canary Islands, provision is made for a State subsidy amounting to 33 % of the price for tickets on scheduled passenger services on that route. Article 3 of the Decree-Law requires transport undertakings receiving the subsidy to reduce the price of their tickets by the same amount.

3. Pursuant to Law 46/81 concerning air and sea links with the Balearic Islands, provision is similarly made for a State subsidy allowing reduced fares to be charged on scheduled transport services between the archipelago and the rest of the national territory. As provided in Article 2 of the Law, the reduction in fares amounts to 25 % of the fare for sailings between the archipelago and the rest of Spain and to 10 % of the fare for sailings between islands within the archipelago. Articles 3 and 4 of the Law provide that the relevant underakings, which are required to grant the reductions in fares, will be reimbursed by the Stae for the resulting loss of revenue.

4. Article 1 of Decree-Law No 22/62 expressly provides that the State subsidies for air transport services to and from the Canary Islands are applicable only to tickets used by Spanish nationals resident in the Islands. Similarly, Article 1 of Law No 46/81 provides that only Spanish nationals resident in the Balearic Islands are eligible for the reductions in fares.

5. The special arrangements regarding transport laid down by Decree-Law No 22/62 and Law No 46/81 were again clearly stated in Article 1 of Royal Decree No 3269/82 of 12 November 1982 [3]. This stipulates that the reductions in fares for scheduled passenger transport services provided for in Decree-Law No 22/62 and Law No 46/81 and granted through the intermediary of the publicly owned transport companies are to be available only to Spanish nationals who, at the time of purchasing their tickets, can provide evidence that they are resident in the provinces of the Balearic Islands, Las Palmas and Santa Cruz de Tenerife.

[1] *Boletin Oficial del Estado* No 143, 15. 6. 1962.
[2] *Boletin Oficial del Estado* No 312, 30. 12. 1981.
[3] *Boletin Oficial del Estado* No 287, 30. 11. 1982.

6. Private individuals and Members of the European Parliament have on several occasions made their objections to these preferential transport arrangements known to the Commission, and an official complaint has been lodged with the Commission.

7. By restricting eligibility for the reduced-fare air and sea transport arrangements to Spanish nationals resident in the Canary and Balearic Islands, Spain is clearly placing them at an advantage over nationals of other Membr States similarily resident in the islands.

8. The transport arrangements applied by Spain are of obvious economic importance in view of the number of nationals of other Member States in the islands, the cost of transport between the islands and continental Spain, and the scale of the reduction granted only to Spanish residents.

9. On 23 December 1986, the Commission made representations to the Spanish Government, pointing out that the arrangements were incompatible with the Treaty and inviting it to submit its comments in this respect. The Commission's position was reiterated on 5 February 1987 and reaffirmed on 4 March 1987 after the Commission had received the Spanish authorities' comments and had, in particular, been informed that the special transport arrangements applied by Iberia and Transmediterranea were being maintained. These two companies are public undertakings, the State holding 99 % and 95 %, respectively, of their share capital.

10. Article 90 (1) of the EEC Treaty provides that, in the case of public undertakings, Member States shall neither enact nor maintain in force any measure contrary to the rules contained in the Treaty, in particular to the rules provided for in Article 7 and Articles 85 to 94. The same requirement applies to undertakings to which Member States grant special or exclusive rights.

11. By continuing to apply after 1 January 1986 the preferential transport fare arrangements introduced by Decree-Law No 22/62 of 14 June 1962 and Law No 46/81 of 29 December 1981, Spain has maintained in force in the case of public undertakings, namely the national transport companies Iberia and Transmediterranea, measures within the meaning of Article 90 (1) of the EEC Treaty.

12. Article 90 (3) of the EEC Treaty provides that the Commission shall ensure the application of the provisions of Article 90 and shall, where necessary, address appropriate Directives or Decisions to Member States.

13. Pursuant to Article 90 (1), the provisions of Article 7 of the EEC Treaty must in particular be observed. These prohibit any discrimination on grounds of nationality.

14. Since, even though no exception clause is provided for in the transitional measures laid down in the Act of Accession, Spain has continued to apply its preferential transport arrangements, the discrimination on grounds of nationality must be brought to an end,

HAS ADOPTED THIS DECISION:

Article 1

The following provisions are hereby declared incompatible with the provisions of Article 90 (1), in conjunction with those of Article 7, of the EEC Treaty:

— Article 1 of Spanish Decree-Law No 22/62 on the subsidization of air transport links with the Canary Islands,

— Article 1 of Spanish Law No 46/81 on the subsidization of fares for Spanish nationals resident in the Balearic Islands,

— Article 1 of Spanish Royal Decree No 3269/82 on the certification of residence for the purposes of the subsidization of fares and the payment of the subsidy towards scheduled transport services between the peninsula, the Canary Islands and the Balearic Islands,

to the extent that they restrict the application of the reductions in transport fares for which they provide to Spanish nationals resident in the provinces of the Balearic Islands, Las Palmas and Santa Cruz de Tenerife to the exclusion of nationals of other Member States resident in the islands.

Article 2

Spain shall inform the Commission, within two months of notification of this Decision, of the measures which it has taken to comply with it.

Article 3

This Decision is addressed to the Kingdom of Spain.

Done at Brussels, 22 June 1987.

For the Commission

Peter SUTHERLAND

Member of the Commission