

**Commission notice pursuant to Article 4(1)(a) of Council Regulation (EEC) No 2408/92 —
Amendment of public service obligations imposed on certain scheduled air services within Portugal**

(Text with EEA relevance)

(2008/C 104/08)

1. Pursuant to Article 4(1)(a) of Council Regulation (EEC) No 2408/92 ⁽¹⁾, the Portuguese Government has decided to amend, with effect from the 30th day following the date of this notice, the public service obligations imposed on scheduled air services operated on the following routes:

- Lisbon-Ponta Delgada-Lisbon,
- Lisbon-Terceira-Lisbon,
- Lisbon-Horta-Lisbon,
- Funchal-Ponta Delgada-Funchal,
- Oporto-Ponta Delgada-Oporto,
- Lisbon-Santa Maria-Lisbon,
- Lisbon-Pico-Lisbon,
- Oporto-Terceira-Oporto.

2. The public service obligations are as follows:

Capacity and continuity of service:

On each route, the overall capacity of scheduled air passenger and cargo transport offered by all carriers combined on the route in question must be at least equivalent to the capacity offered which is specified in Annex I.

Where average seat sales on a particular route exceed 75 % in any IATA season, the minimum capacity to be offered in the next corresponding season must be increased by the difference in supply needed to maintain this figure.

Seats filled under promotional fare campaigns for residents and students will not count towards this limit.

The planned services must be guaranteed throughout each calendar year at least and, except in the following circumstances, may be suspended only with six months' notice.

Reductions in transport capacity are subject to prior authorisation by the Portuguese Civil Aviation Institute, and may not be applied for six months if, as a result, the overall capacity offered would fall below the threshold specified in the first paragraph of this point; the Portuguese Civil Aviation Institute must reply to the operator within 30 days following notification.

Except in cases of *force majeure*, the number of flights cancelled for reasons directly attributable to the carrier must not exceed 2 % of the number of flights scheduled for the relevant season, 'cancellation' being taken to mean that a flight previously scheduled to take place and on which at least one seat was booked fails to take place.

In the event of a temporary interruption of the air services due to unforeseen circumstances, cases of *force majeure* or other reasons, the programmed capacity must be increased by at least 60 % from the moment when services can be resumed until all the traffic backlog accumulated during the interruption in services has been cleared.

If flights on the Lisbon-Horta-Lisbon and Lisbon-Pico-Lisbon routes are cancelled owing to adverse weather conditions, the carriers may, if they wish, land on the nearest island, on condition that, at their own expense, they provide transport between the island of destination and the island on which the flight was initially scheduled to land.

⁽¹⁾ OJL 240, 24.8.1992, p. 8.

Punctuality:

Except in cases of *force majeure*, delays of over 15 minutes directly attributable to the carrier must not affect more than 15 % of flights.

Type of aircraft used and operating conditions:

Services must be operated using duly certified jet-propelled aircraft with a minimum seating capacity of 90; for services to and from Horta and Pico airports carriers must observe the conditions published in Aeronautical Information of Portugal (AIP).

Services on the Funchal-Ponta Delgada-Funchal route may also be operated by duly certified turboprop aircraft with a minimum capacity of 50 passengers.

Minimum frequency:

- on the Lisbon-Ponta Delgada-Lisbon route, at least one round trip a day, between 8.00 and 21.00, throughout the year; one trip a week may be combined with the Lisbon-Santa Maria-Lisbon route,
- on the Lisbon-Terceira-Lisbon route, at least four round trips a week, on different days, between 8.00 and 21.00, throughout the year; one trip a week may be combined with the Lisbon-Pico-Lisbon route,
- on the Lisbon-Horta-Lisbon route, at least three round trips a week, between 8.00 and 21.00, throughout the year, on non-consecutive days,
- on the Funchal-Ponta Delgada-Funchal route, at least one round trip a week, throughout the year,
- on the Oporto-Ponta Delgada-Oporto route, at least two round trips a week, throughout the year, from October to June inclusive, which may be combined with Lisbon,
- on the Lisbon-Santa Maria-Lisbon route, at least one round trip a week, which may be combined with the Lisbon-Ponta Delgada-Lisbon route,
- on the Lisbon-Pico-Lisbon route, at least one round trip a week, Friday to Sunday, throughout the year, which may be combined with the Lisbon-Terceira-Lisbon route,
- on the Oporto-Terceira-Oporto route, at least one trip a week from 1 June to 30 September.

Where the flight schedules submitted by the carrier(s) provide for more than one service a day, flights must have started and ended between 6.30 local time at the place of departure and 00.30 local time at the destination; there must be at least one service a day between 8.00 and 21.00 and, at least three days a week, one of the services must be operated before 14.00.

Carriers are not precluded from operating other flights outside the timetables fixed above, provided they comply with the minimum frequencies and capacities laid down in the Commission notice. This option is subject to the operating restrictions laid down by law for national airports.

On the Funchal-Ponta Delgada-Funchal, Lisbon-Santa Maria-Lisbon and Lisbon-Pico-Lisbon and Oporto-Terceira-Oporto routes, if the schedules submitted by the carrier(s) provide for more than one service a week, these must be operated on different days. On the Lisbon-Terceira-Lisbon, Lisbon-Horta-Lisbon and Oporto-Ponta Delgada-Oporto routes services must be spread evenly throughout the week. If the total number of services offered per week on any given route by all operators combined is more than 6 (six), there must be at least one service a day.

Fares:

1. The fare structure must include:
 - (a) A fully flexible economy fare, a range of fares with levels and conditions tailored to different demand segments (tourist, business, general cargo and specific products, etc.).

- (b) A return PEX fare of EUR 233 on flights between the Azores and mainland Portugal, and a return PEX fare of EUR 172 on flights between the Azores and Funchal.
- (c) Promotional fare (subject to restrictions) for residents and students, reserved for at least 10 % of the seats per route, during each IATA season, and for a number of seats and prices on each flight, to be defined by the airline, irrespective of the number of available seats, to be used for other classes of fare. This promotional tariff will be at least 30 % cheaper than the fare for residents or students, subject to a minimum of EUR 120.
- (d) Persons who have been resident for at least six months in the Autonomous Region of the Azores on islands with a direct service to mainland Portugal or to Funchal and residents of the Autonomous Region of Madeira will be entitled to a reduction of 33 % on the fully flexible economy class public fare.
- (e) Students aged 26 or under whose home or educational establishment is located in the Autonomous Region of the Azores and who, respectively, attend educational establishments or live elsewhere on national territory will be entitled to a reduction of 40 % on the fully flexible economy class public fare.
- (f) On days when there is no direct service on the Funchal-Ponta Delgada-Funchal route, students aged 26 or under travelling to or from the Autonomous Region of the Azores may travel via Lisbon provided they use the same carrier on all sections of the journey. The flight schedule chosen must not allow a stopover in Lisbon.
- (g) The maximum cargo tariffs are set out in Annex II.

Each carrier must have the same fare structure for all the routes specified in point 1, whether the place of departure or destination is Lisbon or Oporto, and apply it without discrimination; however, promotions may be offered from time to time for point-to-point flights.

The fares must be displayed to the public, both at the points of sale and at check-in counters.

2. Residents and students will be charged the following net amounts, after deduction of the discounts specified in point 1(d) and (e) above:

- (a) EUR 194 for residents of the Autonomous Region of the Azores, for return trips to mainland Portugal;
- (b) EUR 170 for residents of the Autonomous Region of the Azores and the Autonomous Region of Madeira, for return trips between the Azores and Funchal;
- (c) EUR 151 for return trips between the Azores and mainland Portugal in the case of students;
- (d) EUR 107 for return trips between the Azores and Funchal in the case of students.

The fares and tariffs specified in point 1(b) and (g) and in point 2(a) and (d) will be revised annually on 1 November, beginning in 2008, on the basis of the inflation rate for the previous year published in the *Grandes Opções do Plano* (Major Planning Options) and notified, by the preceding 30 September, by INAC (Portuguese Civil Aviation Institute) to the carriers operating the routes in question.

Carriers may levy a charge to offset the additional cost entailed by fuel price increases (AC), to be reviewed quarterly, by applying the following formula, rounded to the nearest unit:

$$AC = k \times (b - 50,00)$$

where:

AC = additional cost of fuel OW (in EUR),

k = 0,685 × average USD/EUR exchange rate for the preceding quarter,

b = average price per barrel in USD in the preceding quarter.

Carriers may also levy a charge of up to EUR 16 and EUR 4, in respect of reservation and ticket issuing services, through their direct sales outlets and the call centre, respectively.

The reservation and issuing of tickets referred to in point 1(c) is subject to a tax of up to EUR 4, once the reservation has been made at the call centre or sales counters at airports.

3. The State will, under terms to be established by law, subsidise the journeys of residents and students, provided the criteria and fares specified in points 1 and 2 are applied. In 2008 the subsidy **will be as follows**:

— **EUR 105 per return journey on the following routes:**

— **Lisbon-Santa Maria-Lisbon,**

— **Lisbon-Pico-Lisbon,**

— **Oporto-Terceira-Oporto.**

— **EUR 86 per return journey on the following routes:**

— **Lisbon-Ponta Delgada-Lisbon,**

— **Lisbon-Terceira-Lisbon,**

— **Lisbon-Horta-Lisbon,**

— **Funchal-Ponta Delgada-Funchal,**

— **Oporto-Ponta Delgada-Oporto.**

Passenger fares and freight tariffs from or to any airport in the Autonomous Region of the Azores without a regular direct link to mainland Portugal or Funchal will be identical to those referred to above; passenger routes between mainland Portugal and the Autonomous Region of the Azores and between the Autonomous Regions will be limited to two flight coupons, i.e. one in each direction, and passenger routes within the Autonomous Region of the Azores are to be limited to:

— two flight coupons (non-residents),

— three flight coupons (residents and students),

— except for Corvo, where one additional flight coupon will be allowed on days when there is no service.

On days when an island has no direct service to mainland Portugal or to Funchal, residents and students may be routed via another gateway.

In addition to the abovementioned subsidy, the State will also pay the cost of transport for passengers in respect of journeys to or from islands where there is no direct service with mainland Portugal or Funchal. The fares approved by the Azores Regional Government for services within the Autonomous Region shall be taken into account when calculating the cost of transport.

A no-show penalty may be set, not exceeding 20 % of the relevant economy class reference fare.

These public service obligations will apply without prejudice to the conclusion of interline agreements with other carriers on fares for services from or to places other than Lisbon, Oporto and Funchal.

Carriers may combine air services and use the same flight numbers, provided this has been authorised by the Portuguese Civil Aviation Institute.

Flight marketing:

Flights must be marketed using at least a computerised reservation system.

Transfer conditions:

Where the routes in question are operated by different carriers, the latter must make agreements between themselves to allow residents and students travelling to or from any airport in the Autonomous Region of the Azores to use different carriers for different sections of their journey.

Cargo and postal service:

For the routes described in point 1, the airlines are obliged to accept as cargo to and from any island in the Azores, subject to the capacity offered and in accordance with the tariffs set out in Annex II.

The tariffs set out in Annex II may be subject to an additional security charge of no more than EUR 0,10/kg and a fuel tax per kg of 2 % of the additional cost of fuel (AC), as defined in the formula given in point 2 of the section relating to Tariffs.

The transport of cargo, including mail, must enable at least two tonnes of cargo to be carried on each flight; the capacity offered by the carrier must be spread evenly throughout the week, with the following minimum requirements:

- 30 tonnes per day on the Lisbon-Ponta Delgada-Lisbon route,
- 25 tonnes on days when the minimum service required is operated on the Lisbon-Terceira-Lisbon route.

The quantity of cargo and mail that must be carried per return journey on the Lisbon-Pico-Lisbon route every week shall be 2 tonnes.

The cargo and mail capacity on each flight will be determined by applying the following formula:

$$C = W - (0,75 \times S \times 97)$$

where:

C = is the cargo and mail capacity, in kg, offered on a flight,

P = is the total weight, in kg, of the passengers, baggage, cargo and mail which can be transported on an aircraft in a given sector (allowed traffic load), obtained by subtracting the operating weight (aircraft, crew, fuel, catering and other operating items) from the maximum certified take-off weight,

S = is the number of seats on the aircraft,

0,75 = is the coefficient adopted for a load factor of 75 %,

97 = is the standard passenger and baggage weight of an adult passenger and his/her baggage (84 kg + 13 kg) as specified in JAR-OPS 1.620.

3. Given the special importance of the routes in question, and the exceptional nature of the service continuity requirements, Community carriers are hereby informed of the following conditions:

— Carriers wishing to operate the routes covered by these public service obligations must submit flight schedules for those routes for one year, in accordance with the requisite obligations.

— **Flight schedules will be accepted** if they are offered under code-share schemes, in which case fulfilment of the public service obligations regarding minimum frequency will be assessed with reference to all the flights offered on the shared flight schedule. In this case, the following requirements must be met:

- (a) carriers offering a flight schedule for one or more routes under a code-share scheme will be responsible for implementing the schedule;
- (b) carriers which sign a code-share agreement must expressly state that they are collectively responsible for fulfilling the public service obligations and liable for the consequences of failing to fulfil these obligations, including administrative fines;
- (c) where services are operated under a code-share scheme, carriers must tell passengers which carrier will actually be operating each section of the journey when tickets are reserved, issued or sold and at the airport at the time of check-in.

— Within 30 days after receiving the flight schedules and having consulted the carriers, the Portuguese Civil Aviation Institute must notify carriers of its final decision on the schedules submitted.

- Where a specific carrier announces that it intends to withdraw from or change its proposed flight schedule, the Portuguese Civil Aviation Institute must notify this fact to the other carriers, who may reformulate their flight schedules within the next 15 days.
- All carriers holding a valid operating licence issued by a Member State in accordance with Regulation (EEC) No 2407/92 on licensing of air carriers, and an appropriate air operator's certificate may operate these services.
- All carriers holding a valid operating licence and an appropriate air operator's certificate, as specified in the preceding paragraph, and which in addition meet the following requirements may operate these services:
 - (a) they have paid all taxes owed to the Portuguese State;
 - (b) they have paid all their social security contributions in Portugal or in the State of which they are nationals or in which they are established.
- Given the special nature of these services, carriers will have to demonstrate that the majority of the cabin crew on the flights in question can speak and understand Portuguese.
- Carriers will be allowed, in accordance with the applicable legislation and regulations, to subcontract to other carriers any additional capacity needed to meet the requirements of the flight schedule, but they remain responsible for complying with their obligations and implementing the schedule.
- Carriers must submit to the Portuguese Civil Aviation Institute, within the set time limits and separately from any flight schedules for other services, the flight schedule for each service subject to these amended public service obligations, giving the following information:
 - (a) the route in question;
 - (b) IATA seasons;
 - (c) flight identification number;
 - (d) timetables;
 - (e) capacity offered (per month, either in terms of frequency or in terms of seats);
 - (f) period and days on which the service is to be operated;
 - (g) type of aircraft/number of seats/cargo capacity;
 - (h) passenger cabin layout;
 - (i) written confirmation of knowledge and acceptance of the continuity of service conditions imposed by the amended public service obligations;
 - (j) current or future insurance policies.

Carriers must also provide written details of the prices and associated conditions to be applied.

In addition they must submit a summary economic and financial plan. This must, however, contain a detailed estimate of their operating costs, for the purpose of calculating the operating guarantee, in the form of a bank guarantee.

- Interruption of the services in question without the advance notice provided for in the public service obligations set out above or failure to comply with those obligations will result in an administrative fine.
 - If, 60 days after the publication of this notice, the flight schedules submitted do not correspond, as a whole, to a volume of scheduled air transport that is at least equivalent to the capacity specified in Annex I, or if, at any time, the total supply falls to levels below the abovementioned capacity threshold without this being justified by decreased demand, the Portuguese Government reserves the right to impose new public service obligations, in accordance with the law.
 - Community carriers are informed that the Portuguese Civil Aviation Institute will monitor compliance with the public service obligations imposed.
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ANNEX I

Minimum overall seating capacity

Route	IATA summer	IATA winter
Lisbon-Ponta Delgada-Lisbon	240 000	111 900
Lisbon-Santa Maria-Lisbon	8 100	5 500
Lisbon-Terceira-Lisbon	140 000	64 600
Lisbon-Horta-Lisbon	60 000	28 000
Lisbon-Pico-Lisbon	9 500	5 500
Oporto-Ponta Delgada-Oporto	55 000	22 500
Ponta Delgada-Funchal-Ponta Delgada	17 000	5 600

Minimum overall cargo capacity*(tonnes)*

Route	IATA summer	IATA winter	Additional capacity in high season
Lisbon-Ponta Delgada-Lisbon	14 000	7 500	
Lisbon-Santa Maria-Lisbon			
Lisbon-Terceira-Lisbon	8 000	4 400	
Lisbon-Horta-Lisbon	1 000	500	40
Lisbon-Pico-Lisbon	30	20	
Oporto-Ponta Delgada-Oporto			
Ponta Delgada-Funchal-Ponta Delgada			

ANNEX II

Maximum cargo tariffs

(EUR)

	Lisbon and Oporto-Azores	Funchal-Azores
Minimum	8,90	8,90
Normal	1,07/kg	0,86/kg
Quantity	0,94/kg	0,66/kg
Perishables/Quantity	0,67/kg	0,55/kg
Special products	0,84/kg	0,62/kg
Special products/Quantity	0,77/kg	