

**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**

(2004/C 248/06)

(Text with EEA relevance)

1. Pursuant to Article 4(1)(a) of Regulation (EEC) No 2408/92 of 23 July 1992 the Portuguese Government has decided to amend, for a period of one year commencing on 1 January 2005, 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.

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 must be at least equivalent to the capacity specified in Annex I.

The services must be guaranteed throughout 2005 and, except in the cases mentioned below, may be suspended only with six months' notice.

Reductions in capacity are subject to prior authorisation by the Portuguese Civil Aviation Institute, and may not be applied for six months if the overall capacity offered thereby falls below the threshold specified in the first paragraph of this section; the Portuguese Civil Aviation Institute must reply to the operator within thirty days following the 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 that season; 'cancellation' means that a flight scheduled to take place and on which at least one seat was booked fails to take place.

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

*Punctuality*

Except in cases of force majeure, delays of more than 15 minutes directly attributable to the carrier may 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 seating capacity of at least 90; for services to and from Horta and Pico airports carriers must observe the conditions published in Aeronautical Information of Portugal (AIP).

*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; one of these trips may be combined with Lisbon, from October to June inclusive,
- 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, throughout the year, which may be combined with the Lisbon/Terceira/Lisbon route.

If the flight schedules submitted by the carrier(s) provide for more than one service a day, flights must be operated 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.

On the Funchal/Ponta Delgada/Funchal, Lisbon/Santa Maria/Lisbon and Lisbon/Pico/Lisbon 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 215 on flights between the Azores and mainland Portugal, and a return PEX fare of EUR 158 on flights between the Azores and Funchal;
  - (c) 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 % off the fully flexible economy class public fare;
  - (d) 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 % off the fully flexible economy class public fare;

- (e) on days when there is no direct service between Funchal/Ponta Delgada/Funchal, 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 stop-over in Lisbon;
- (f) the maximum cargo tariffs are set out in Annex II.

Each carrier must have the same fare structure for all the routes specified in section 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 the check-in counters.

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

- (a) EUR 179: for residents of the Autonomous Region of the Azores, for round trips to mainland Portugal,
- (b) EUR 156: for residents of the Autonomous Region of the Azores and the Autonomous Region of Madeira, for round trips between the Azores and Funchal,
- (c) EUR 139: for students, for round trips between the Azores and mainland Portugal; EUR 98: for students, for round trips between the Azores and Funchal.

The fares and tariffs specified in point 1(b) and (f) and in point 2(a), (b) and (c) will be revised on 1 April 2005 on the basis of the inflation rate for the previous year published in the *Grandes Opções do Plano* [Major Planning Options] and notified, by 28 February 2005, by the Portuguese Civil Aviation Institute to the carriers operating the routes in question.

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 2005 the subsidy will be EUR 87 per round trip.

Passenger fares and cargo tariffs to or from any airport in the Autonomous Region of the Azores without a scheduled direct link to mainland Portugal or Funchal must be the same as those specified above. Passengers travelling between mainland Portugal and the Autonomous Region of the Azores and between the Autonomous Regions will be entitled to two flight coupons, one for each direction, and passengers travelling within the Autonomous Region of the Azores will be entitled to:

- two flight coupons (non-residents),
- three flight coupons (residents and students),
- for Corvo, 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.

For passengers travelling to or from islands with no direct service to mainland Portugal or Funchal, the State will pay the cost of transport, as specified in Annexes A and B to Notice on the Imposition of Public Service Obligations No 2002/C 115/02, published in the *Official Journal of the European Union* C 115 of 16 May 2002.

A no-show penalty may be set, not exceeding 10 % 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 one computerised reservation system.

#### *Transfer conditions*

If 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*

This must enable at least two tonnes of cargo, including mail, 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 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;

W is the total weight, in kg, of passengers, baggage, cargo and mail that can be transported in 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 (Translator's note: the equation in Portuguese is  $C = P - (0,75 \times S \times 97)$ . C is 'capacidade de carga e correio' and P is 'peso total'.)

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 all the routes in question must submit their flight schedules for 2005 within 30 days following publication of this notice,
- flight schedules not covering all the routes specified in section 1 will not be accepted, unless they are offers 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 until the end of the calendar year;

- (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 check-in desk at the airport,
- 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 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 Council 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 all 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, overall, 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.

These obligations will be revised in 2005.

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## ANNEX I

**Minimum overall seating capacity**

Route	Summer IATA	Winter IATA
Lisbon/Ponta Delgada/Lisbon	240 000	111 900
Lisbon/S. Maria/Lisbon	8 100	5 500
Lisbon/Terceira/Lisbon	140 000	64 600
Lisbon/Horta/Lisbon	60 000	28 000
Lisbon/Pico/Lisbon	8 100	5 500
Oporto/Ponta Delgada/Oporto	55 000	22 500
P.Delgada/Funchal/P.Delgada	17 000	5 600

**Minimum overall cargo capacity**

(tonnes)

Route	Summer IATA	Winter IATA	Additional capacity in high season
Lisbon/Ponta Delgada/Lisbon	14 000	7 500	
Lisbon/S. Maria/Lisbon			
Lisbon/Terceira/Lisbon	8 000	4 400	
Lisbon/Horta/Lisbon	1 000	500	40
Lisbon/Pico/Lisbon			
Oporto/Ponta Delgada/Oporto			
P.Delgada/Funchal/P.Delgada			

## ANNEX II

**Maximum cargo tariffs**

	Lisbon and Oporto/Azores	Funchal/Azores
Minimum	8,23	8,23
Normal	0,99/kg	0,80/kg
Quantity	0,88/kg	0,60/kg
Perishables/Quantity	0,61/kg	0,52/kg
Special products	0,78/kg	0,57/kg
Special products/ quantity	0,71/kg	