

Decision about the request from the Portuguese Post Office (CTT) for deduction of the records of postal deliveries affected by air traffic disruptions in the Autonomous Region of the Azores, from 19 to 23 December 2019, for the purpose of calculating the QSI

1. By determination of 12/07/2018¹, the National Communications Regulatory Body (ANACOM), under the provisions of article 13 (1) of Law 17/2012 of 26 April, in its current wording (Postal Law), established the "Quality of service parameters and performance objectives associated with the provision of the universal postal service", relating to the 2018-2020 three-year period, to be fulfilled by CTT – Correios de Portugal, S.A (CTT) as the concessionary charged with providing the universal postal service.
2. In accordance with article 7 (1) of the said "Quality of service parameters and performance objectives associated with the provision of the universal postal service", should situations of force majeure or natural phenomena occur, whose consequences and evolution are plainly outside the control of CTT, and which have an impact on the quality of CTT's services, for the purposes of calculating the quality of service indicators (QSI), CTT may request the deduction of the records for the periods of time and geographic locations affected.
3. Point 2 of the same article defines the situations considered to be force majeure or natural phenomena alluded to number 1 as "[...] unforeseeable and unavoidable natural or third-party events whose consequences, evolution and effects take place regardless of the will and outside the control of CTT, such as acts of war or subversion, epidemics, cyclones, earthquakes, fire, lightning, floods, general strikes and any other similar events that affect the normal conditions of acceptance, processing, transport and distribution of postal items".
4. The request to activate the deduction shall be submitted in writing by CTT, duly justified, within 60 working days from the date the event occurs, in accordance with article 7 (4).

¹ Available at <https://www.anacom.pt/render.jsp?contentId=1457268>.

5. The decision about whether to accept or reject the request from CTT is taken, under article 7 (5), by ANACOM, which shall notify CTT within 30 working days from the date of receipt of the same. This decision, if the request is rejected, must be duly justified. Regardless of the submission of the request for deduction, CTT undertakes to try to find the best alternatives while the situations referred to in points 1 and 2 of article 7 are ongoing.
6. As is public knowledge and was widely disseminated, mainland Portugal and the Autonomous Region of the Azores (AAR) were hit in December 2019 by the Elsa atmospheric depression, characterised by inclement weather, including rain, strong winds and rough seas, affecting transport systems, in particular air connections in the Autonomous Region of the Azores (Azores AR)². The aforementioned atmospheric disturbance caused, in particular, delays and cancellations of mainland – Azores AR – mainland air traffic routes and inter-island flights within the Azores AR, in particular on 19/12/2019, and also on 20/12/2019 of inter-island flights within the Azores AR.
7. Additionally, a strike by technical maintenance staff of SATA Air Açores (SATA) between 21 and 23 December 2019 caused the cancellation of several flights scheduled for those days for inter-island flights within the Azores AR, notwithstanding the mandatory minimum services having been decreed³.
8. CTT, through a letter of 18/03/2020, received by this Authority on the same date⁴, informed us that the restrictions on Portuguese airspace, together with the strike by technical maintenance staff of SATA, seriously disrupted the normal conditions for air transport from and to the Azores AR due to the cancellation of the vast majority of flights operated by SATA for inter-island routes between 19/12/2019 and 23/12/2019 and on the Lisbon - Ponta Delgada (flights cancelled or flown without mail transport) and Lisbon - Terceira routes operated by TAP on 19/12/2019, which made it impossible to

² See, for example, the following news reports:

<https://24.sapo.pt/atualidade/artigos/acoes-depressao-elsa-leva-ao-cancelamento-de-voos-e-afeta-1-000-passageiros>;

https://www.rtp.pt/noticias/mundo/mau-tempo-a-evolucao-da-depressao-elsa_e1193077.

³ See, for example, the following news reports:

<https://www.tsf.pt/portugal/sociedade/tecnicos-de-manutencao-da-sata-suspendem-greve-11648768.html>;

<https://eco.sapo.pt/2019/12/22/sata-cancelou-15-voos-devido-a-greve-dos-tecnicos-de-manutencao/>.

⁴ In other words, the request for deduction was received within the deadline established in article 7 (4) of the "Quality of service parameters and performance objectives associated with the provision of the universal postal service", established for the 2018-2020 three-year period.

fly various air transport routes to the Azores AR, thus causing delays in postal deliveries, which affected the quality of service performance in the routes to and from that Autonomous Region in December.

9. In order to minimise the impact of this situation on the quality of service and to make up for the delays caused by the air transport problems as quickly as possible, CTT announced that it had taken the following set of measures:

- a) after the said disruption to the airspace, CTT used the maximum transport capacity afforded to it by the airlines (TAP and SATA), therefore increasing the deliveries via Lisbon and Porto;
- b) after the said atmospheric depression had passed, distribution activities in the Azores AR were also increased, in particular through extending the working hours at various mail distribution centres.

10. CTT, invoking the nature and causes of the anomalous situations which occurred in December 2019, whose consequences and effects were in its opinion clearly beyond its control, requested that ANACOM⁵ consider the impact of the said force majeure situations in the calculation for the December 2019 QSI. In other words, the deduction of the records of the following deliveries:

- a) standard mail, bulk mail, newspapers and periodicals published at more than a weekly frequency and normal deliveries:
 - i) from 17 to 19 December (inclusive) for items sent to or from the islands of São Miguel and Terceira;
 - ii) from 17 to 23 December (inclusive) for items sent to or from the other islands in the Azores AR (Flores, Corvo, Graciosa, São Jorge, Pico, Faial and Santa Maria);
- b) priority mail, registered mail and newspapers and periodicals published at a weekly or shorter frequency:

⁵ In the terms and for the purposes of article 7 of the "Quality of service parameters and performance objectives associated with the provision of the universal postal service", established by the ANACOM decision of 12/07/2018 for the 2018-2020 three-year period.

- i) from 18 to 19 December (inclusive) for items sent to or from the islands of São Miguel and Terceira;
- ii) from 18 to 23 December (inclusive) for items sent to or from the other islands in the Azores AR (Flores, Corvo, Graciosa, São Jorge, Pico, Faial and Santa Maria),

directly affected by the interruptions to air traffic at airports in the Azores AR caused by the passage of the Elsa depression and by the strike by technical maintenance staff of SATA, on all routes to and from the Azores AR, except for internal deliveries to the different islands in the Azores AR⁶.

11. Taking into account the delivery deadline for the various services to and from the Azores AR (delivery within 3 working days, for standard mail, bulk mail, newspapers and periodicals published at more than weekly frequency and delivery within 2 working days for priority mail, newspapers and periodicals published at a weekly or shorter frequency and registered mail), the air transport problems that occurred between 19 and 23 December 2019, due to the Elsa depression and to the strike by the technical maintenance staff of SATA, may affect the performance quality for the following deliveries:

- a) standard mail, bulk mail, newspapers and periodicals published at more than a weekly frequency from 17 to 19 December (inclusive) on routes to and from the Azores AR, except for inter-island routes, and from 20 to 23 December (inclusive) on routes to and from the islands of Corvo, Faial, Flores, Graciosa, Pico, Santa Maria and São Jorge, except for inter-island routes;
- b) priority mail, registered mail and newspapers and periodicals published at a weekly or shorter frequency from 18 to 19 December (inclusive) on routes to and from the Azores AR, except for inter-island routes, and from 20 to 23 December (inclusive) on routes to and from the islands of Corvo, Faial, Flores, Graciosa, Pico, Santa Maria and São Jorge, except for inter-island routes.

⁶ CTT thus requests the deduction of the following routes: from the mainland to the Azores AR and vice-versa; from the Azores AR to the Madeira Autonomous Region and vice-versa; the inter-island routes of the Azores AR. It does not request the deduction of internal deliveries to the different islands in the Azores AR (inter-island routes).

12. Therefore, considering:

- a) the information communicated by CTT through the letter of 18/03/2020;
- b) the provisions of the aforementioned article 7 (1 and 2) of the "Quality of service parameters and performance objectives associated with the provision of the universal postal service", for the 2018-2020 three-year period;
- c) that mainland Portugal and the Azores AR were hit by the Elsa depression, bringing inclement weather, rain, strong winds and rough seas, which caused, in particular, delays and cancellations of mainland – Azores AR – mainland air traffic routes and inter-island flights within the Azores AR, in particular on 19/12/2019, and also on 20/12/2019 for inter-island flights within the Azores AR;
- d) that the strike held by the technical maintenance staff of SATA between 21 and 23 December 2019 caused the cancellation of several flights scheduled for those days for inter-island flights within the Azores AR;
- e) that the said delays and cancellations caused delays to the delivery of mail deliveries, which affected the quality of service performance for routes to and from the Azores AR, despite CTT having implemented a set of measures to minimise their impact;
- f) that the events alleged by CTT qualify as situations of force majeure or natural phenomena whose consequences and evolution are plainly outside its control and which have an impact on the quality of CTT's services, disrupting the normal air transport conditions for sending standard mail, bulk mail, priority mail, newspapers and periodicals, with normal delivery and registered mail on routes from, to and within the islands of the Azores AR;
- g) that CTT, under numbers 2 and 3 of article 8 of the "Quality of service parameters and performance objectives associated with the provision of the universal postal service", send to ANACOM by 31/03/2020:
 - (i) information about the annual quality levels recorded in 2019, together with the quality levels recorded in the last quarter of 2019;

- (ii) information about the quality levels obtained, broken down by mainland, Azores, Madeira and CAM (including routes from or to the Azores and Madeira Autonomous Regions), for all QSI, except for QSI relating to cross-border intra-community mail,

the ANACOM Board of Directors, exercising the powers granted to it by article 8 (1) (h and i) of its Statutes, approved by Decree-Law 39/2015 of 16 March, under article 7 (5) of the "Quality of service parameters and performance objectives associated with the provision of the universal postal service", established by the ANACOM decision of 12/07/2018 for the 2018-2020 three-year period, and exercising the powers granted to it by article 26 (1) (b) of its Statutes, hereby determines:

1. Approval of the deduction of the records of the following deliveries:
 - a) standard mail, bulk mail, newspapers and periodicals published at more than a weekly frequency from 17 to 19 December (inclusive) on routes to and from the Azores AR, except for inter-island routes, and from 20 to 23 December (inclusive) on routes to and from the islands of Corvo, Faial, Flores, Graciosa, Pico, Santa Maria and São Jorge, except for inter-island routes;
 - b) priority mail, registered mail and newspapers and periodicals published at a weekly or shorter frequency from 18 to 19 December (inclusive) on routes to and from the Azores AR, except for inter-island routes, and from 20 to 23 December (inclusive) on routes to and from the islands of Corvo, Faial, Flores, Graciosa, Pico, Santa Maria and São Jorge, except for inter-island routes.
2. CTT is exempted from a prior hearing, under article 124 (1) (f) of the Administrative Procedure Code;
3. CTT shall send ANACOM, within ten working days:
 - a) the QSI figures covered by this decision, referring to December 2019, the 4th quarter of 2019 and the whole of 2019, with and without the deduction of records mentioned in point 1; and
 - b) all information relating to the QSI figures for 2019, the 4th quarter of 2019 and December 2019 already sent to ANACOM under article 8 (2 and 3) of

the "Quality of service parameters and performance objectives associated with the provision of the universal postal service" that needs to be updated following this decision, which also includes a copy of the database for calculating the QSI with and without the records deducted in 2019.

02/04/2020