

Decision concerning CTT's request for the deduction of mail forwarding records affected by air traffic disruptions at Funchal airport on 26 March 2019, for purposes of calculating QSI

1. By determination of 12.07.2018¹, the Autoridade Nacional de Comunicações (ANACOM) established, pursuant to the provisions of Article 13 (1) of Law 17/2012, of 26 April, as per its current amended version (Postal Act), the “Quality of service parameters and performance targets associated with the provision of the universal postal service in the 2018 – 2020 period”, to be complied with by CTT – Correios de Portugal, SA (CTT), as a concessionaire for the provision of the universal postal service.
2. In accordance with Article 7 (1) of the aforementioned “Quality of service parameters and performance targets associated with the provision of the universal postal service 2018 - 2020”, for the purposes of calculating the quality of service indicators, in the event of force majeure, or phenomena, the causes and progression of which are clearly outside CTT's control and which have an impact on CTT's quality of service performance, it may request the deduction of records relating to the time periods and geographical flows affected.
3. Paragraph 2 of the same Article establishes that situations of force majeure or the phenomena referred to in paragraph 1 are considered to be: “[...] events caused by third parties or natural phenomena that are unpredictable or inevitable, the causes, progression and effects of which are outside the volition and control of CTT, such as acts of war or subversion, epidemics, cyclones, earthquakes, fire, lightning, floods, general strikes and any other events of a similar nature that undermine normal conditions of acceptance, handling, transport and distribution of postal items”.
4. The request for application of the deduction shall be presented by CTT, in writing, in a reasoned manner, within a maximum of 60 working days of the date of the event, in accordance with Article 7 (4).

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

5. Pursuant to Article 7 (5), ANACOM shall be responsible for deciding whether or not to grant CTT's request, which shall be notified to CTT no later than 30 working days from the date of receipt thereof. Where the request is rejected, that decision must be duly substantiated. Regardless of the submission of the request for deduction, CTT undertakes to try to find the best alternatives during the period of occurrence of the situations referred to in Article 7 (1) and (2).
6. Particularly on 26.03.2019, Funchal airport, on Madeira Island, was affected by strong winds that caused the cancellation of flights to and from that airport and the diversion of other flights to other airports, affecting air connections with that island².
7. CTT, by means of a letter dated 25.06.2019 and received by this Authority on that same date³, reported that the atmospheric disturbances registered on 26.03.2019 caused disruptions in air traffic at Funchal airport, with the cancellation of the vast majority of flights to and from Funchal.
8. According to CTT, the restrictions observed at Funchal airport severely undermined the normal conditions of air transport of mail to and from the Autonomous Region of Madeira (ARM) due to the cancellation of the vast majority of flights operated by TAP, rendering impossible various air transport links with Madeira (including six flights on which the transport of mail was planned), thus causing delays in the transit of postal items, which affected the quality of service in the flows to and from that Autonomous Region during the month of March.
9. In order to minimise the impact of this situation on quality of service and with a view to recovering as soon as possible from the delays caused by the disruption of air transport, CTT reported that it had implemented a series of measures, in particular the following:

² See, for example, the following news items published on 26.03.2019:

<https://tvi24.iol.pt/sociedade/26-03-2019/vento-forte-na-madeira-obriga-varios-voos-a-divergir;>

<https://www.cmjornal.pt/portugal/detalhe/sete-voos-ja-divergiram-devido-ao-vento-forte-no-aeroporto-da-madeira;>

[https://observador.pt/2019/03/26/foram-desviados-todos-os-avioes-que-iam-aterrar-no-aeroporto-da-madeira/;](https://observador.pt/2019/03/26/foram-desviados-todos-os-avioes-que-iam-aterrar-no-aeroporto-da-madeira/)

[https://www.dn.pt/pais/interior/vento-forte-no-aeroporto-da-madeira-cancelou-21-voos-e-fez-divergir-sete-10728369.html;](https://www.dn.pt/pais/interior/vento-forte-no-aeroporto-da-madeira-cancelou-21-voos-e-fez-divergir-sete-10728369.html)

[https://www.dnoticias.pt/madeira/vento-forte-faz-cancelar-19-voos-no-aeroporto-da-madeira-CN4807073.](https://www.dnoticias.pt/madeira/vento-forte-faz-cancelar-19-voos-no-aeroporto-da-madeira-CN4807073)

³ In other words, the request for deduction was received within the deadline laid down in Article 7 (4) of the "Quality of service parameters and performance targets associated with the provision of the universal postal service 2018 – 2020".

- a) continued use by CTT of cargo capacity on the cargo aircraft operating between Lisbon and Funchal, which was diverted to Porto Santo airport on 26.03.2019;
- b) on flights subsequent to the period Funchal airport was out of action, CTT asked TAP for more air transport capacity to Madeira;
- c) bolstering of distribution activities in the ARM, in particular by extending the working hours of various postal distribution centres in that Autonomous Region.

10. CTT, citing the nature and causes of the anomalous situation that occurred on 26.03.2019, the causes and effects of which were clearly beyond its control, asked ANACOM ⁴to take into account the impact of said force majeure situation in the March 2019 QSI calculations. In other words, the deduction of the records of mailings of standard mail, standard parcels and newspapers and periodicals with a frequency greater than weekly, from 22 to 25 March (inclusive) and mailings of blue (priority) mail, newspapers and periodicals with a frequency equal to or less than weekly and registered mail on 25 March, directly affected by air traffic disruptions at Funchal airport caused by very strong winds, in all flows to and from the ARM (which includes mainland to ARM and vice versa and ARM to the Autonomous Region of the Azores (ARA) and vice versa), except postal items internal to the ARM.

11. Taking into account the transit times for the various services to and from the ARM (delivery in up to 3 working days, in the case of standard mail, standard parcels and newspapers and periodicals with a frequency greater than weekly; delivery in up to 2 working days, in the case of blue (priority) mail, periodicals with a frequency equal to or less than weekly and registered mail), the aforementioned air transport anomalies that occurred on 26.03.2019 may affect quality performance:

- a) of standard mail, standard parcels and newspapers and periodicals with a frequency greater than weekly from 22 to 25 March (inclusive) in all flows to and from the ARM, except postal items internal to the ARM;

⁴In accordance with and for the purposes of Article 7 of the “Quality of service parameters and performance targets associated with the provision of universal postal service 2018 – 2020”, as laid down by ANACOM’s determination of 12.07.2018.

- b) of blue (priority) mail, newspapers and periodicals with a frequency equal to or less than weekly and registered mail on 25 March in all flows to and from the ARM, except postal items internal to the ARM;

12. Thus, considering:

- a) the information reported by CTT by means of the letter dated 25.06.2019;
- b) that laid down in the above-mentioned Article 7 (1) and (2) of the “Quality of service parameters and performance targets associated with the provision of the universal postal service 2018 – 2020”;
- c) that Funchal airport on the island of Madeira was affected, particularly on 26.03.2019, by strong winds that caused the cancellation of flights to and from that airport and the diversion of other flights to other airports, affecting air connections with that island;
- d) that this disruption, as reported by CTT, influenced, in all flows to and from the ARM (flows from the Mainland to the ARM and vice versa and from the ARM to the ARA and vice versa), except postal items internal to the ARM, mailings of standard mail, standard parcels and newspapers and periodicals with a frequency greater than weekly from 22 to 25 March (inclusive) and mailings of blue (priority) mail, registered mail and newspapers and periodicals with a frequency equal to or less than weekly on 25 March, without prejudice to CTT having implemented a series of measures to minimise their impact;
- e) that the facts alleged by CTT qualify as phenomena, the causes and progression of which were manifestly outside its control and which had an impact on its quality of service performance, undermining the normal conditions of carriage of standard mail, blue (priority) mail, newspapers and periodicals, standard parcels and registered mail in all flows to and from the ARM (flows from the Mainland to the ARM and vice versa and from the ARM to the ARA and vice versa), except postal items internal to the ARM;
- f) that CTT, pursuant to Article 8 (1) to (3) of the “Quality of service parameters and performance targets associated with the provision of the universal postal service 2018 - 2020”, should send to ANACOM:

- (i) by the last working day of the second month following the end of the first, second and third quarters of 2019, a report containing information on the quality levels recorded in that quarter, in each of the months of that quarter and accumulated over the year for each of the QSI;
- (ii) by 31 March 2020, or the next working day where this falls on a non-working day, a report containing information on the annual quality levels recorded in 2019, as well as a report containing information on the quality levels recorded in the last quarter of 2019;
- (iii) together with the information referred to in paragraphs 1 and 2, information on the quality levels obtained, broken down by Mainland, Azores, Madeira and CAM (includes flows to and from the Autonomous Regions of the Azores and Madeira), for all QSI except for cross-border intra-community mail QSI,

ANACOM's Management Board, in the exercise of the duties conferred upon it by Article 8 (1) (h) and (i) of its Charter, as approved by Decree-Law 39/2015, of 16 March, pursuant to Article 7 (5) of the "Quality of service parameters and performance targets associated with the provision of the universal postal service 2018 – 2020", laid down by ANACOM determination of 12.07.2018, and in the exercise of the powers conferred upon it by Article 26 (1) (b) of the ANACOM charter, determines:

1. The granting of the deduction of the records of mailings of standard mail, standard parcels and newspapers and periodicals with a frequency greater than weekly, from 22 to 25 March (inclusive) and blue (priority) mail, newspapers and periodicals with a frequency equal to or less than weekly on 25 March, directly affected by air traffic disruptions at Funchal airport caused by very strong winds, in all flows to and from the ARM, except postal items internal to the ARM;
2. The exemption of CTT from a prior hearing, pursuant to Article 124 (1) (f) of the Code of Administrative Procedure;
3. That CTT should be ordered to send to ANACOM, when reporting for the second quarter of 2019, for the QSI covered by this decision, the information for the first quarter of 2019 provided for in Article 8 (1) and (3) of the "Quality of service parameters and performance targets associated with the provision of the universal

postal service 2018 – 2020”, calculated with and without the deduction of the records referred to in paragraph 1;

4. That CTT should be informed that the information to be sent to ANACOM, pursuant to Article 8 (2) and (3), concerning the values for the year 2019, shall include, where applicable, information with and without deduction of the records referred to in paragraph 1.