



EUROPEAN COMMISSION
DIRECTORATE-GENERAL FOR MOBILITY AND TRANSPORT
DIRECTORATE-GENERAL COMPETITION

Directorate E - Aviation
Directorate F- Markets and cases V : Transport, Post and other services

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HE Mr Michele QUARONI
Ambassador
Deputy Permanent Representative of Italy
to the EU

Email: rpue@rpue.esteri.it

Subject : Public Service Obligations (PSO) from and to Sardinia

Your Excellency,

We refer to our meeting on 26 March 2019.

In this context, we would like to communicate to you our position on the PSO scheme that was adopted under Ministerial Decree 367/2018 dated 8 August 2018 and that imposes PSOs on six routes from Sardinia to the mainland for the period 2019-2022. This PSO scheme has been the topic of many and extensive exchanges and meetings between our respective services since March 2017. In the context of these exchanges, the Commission's services have repeatedly raised concerns regarding the compliance of this proposed PSO scheme with Regulation No 1008/2008¹ (hereinafter the Air Service Regulation).

These concerns were communicated to your authorities by our letters dates 11 November 2017 and 27 April 2018 and they concern in particular the adequacy and proportionality (frequency and capacity) of the imposed PSOs. As specified in Article 16(3) of the Air Service Regulation and in the Commission's Interpretative Guidelines on PSO,² the scope of PSOs should take account of the combined effect of all existing air transport supply. In particular, in cases where air carriers are already operating to other substitutable airports in the destinations cities – here Rome and Milan – the assessment of the existing and potential air transport supply and the impact of the obligations should be carried out with particular care.

On these elements, the Commission's services have not found compelling evidence showing that air carriers would not assume obligations to meet a genuine transport need if they were solely considering their commercial interests, in particular during the summer months. In addition, the Commission's services consider that when defining the obligations on frequency and capacity, your authorities have insufficiently taken account of the actual and potential offer from other airlines operating to alternative airports in Milan (Malpensa and Bergamo) and

¹ Regulation (EC) No 1008/2008 of the European Parliament and of the Council on common rules for the operation of air services in the Community (OJ L 293, 31.10.2008, p. 3).

² C(2017)3712 final.

Rome Ciampino³, in particular during the summer period. As a result, the obligations in terms of frequency and capacity appear to be disproportionate, especially over the summer season, and may hinder the development of competing services and new routes connecting the island.

The Commission's services have also expressed their concerns about other requirements: while a maximum fare level for residents is acceptable, it is less so for non-residents. The extensive requirements on the flexibility and refundability of tickets and the obligation to block two seats for medical reason may also be considered as disproportionate in a context of relatively low load factors and proposed high frequencies on PSO routes.

To conclude, and as already highlighted in our joint letter dated 11 October 2017 and 27 April 2018, these PSOs seem to have been designed to meet the whole estimated demand through maximum requirements instead of minimum requirements as required by Article 16(1) of the Air Service Regulation.

As we informed you during the meeting, the Commission services have received a complaint concerning the PSO scheme imposed in Sardinia. Based on this complaint, we have carried out an investigation in accordance with Article 18(2) of Regulation No 1008/2008 and our services are in advanced stage of preparation of a Commission implementing decision adopting a position that Articles 16 and 17 may not continue to apply to the six routes concerned.

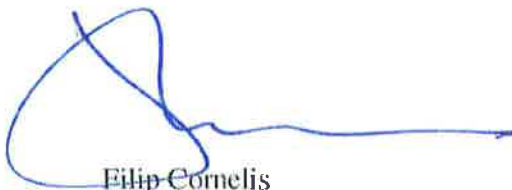
Such a decision would mean an obligation to withdraw the PSOs, with potentially serious consequences on the connectivity of the island. In addition, the potential non-compliance with the rules of the Air Service Regulation means that any financial compensation paid to the air carriers would very likely be found to constitute incompatible State aid, which could, in turn, lead to the recovery of any such incompatible aid.

Based on our meeting of 26 March, we understand that your authorities are envisaging the following measures:

- To confirm an open PSO on the two routes from Olbia where Air Italy expressed its willingness to operate without exclusivity and without compensation for a period of 12 months.
- To avoid signing the PSO contracts with compensation with Alitalia and withdraw the tenders for Cagliari and Alghero routes.
- Unless an open PSO is accepted on these routes as well, to submit to us a precise timetable should your authorities decide to reorganise the tender in full compliance with the EU rules.

Our services are ready to assist in the formulation of a future tender, should your authorities wish to organise one. We would be grateful if you can confirm the above at your earliest convenience.

Yours sincerely,



Filip Cornelis

Director



Henrik Mørch

Director

³ Most of the existing services to these alternative airports are operated all year round. For example, on routes to Milan the alternative services represented 45-49 % of the total seat offer during the period September 2016 – September 2017.