



THE JET FUEL CRISIS AND COMMERCIAL AVIATION: AN EMERGENCY CALLING FOR A BINDING EUROPEAN RESPONSE

A month ago we identified a qualitative shift in the nature of the risk: it was no longer merely a price risk but had become a genuine risk of physical access to product. One month on, far from receding, that assessment has been confirmed.

The remarks of the European Commissioner for Energy, Dan Jorgensen, describing the situation as *"the most severe energy crisis in history"*, capture with eloquence the institutional scale of the phenomenon. By way of its Communication of 8 May¹, the Commission has formally acknowledged the possibility of flight cancellations due to fuel shortages and has issued an initial set of interpretative guidelines. This is, however, only a first step — necessary, but plainly insufficient — which will need to be supplemented by binding instruments should the situation persist, as all indicators suggest it will.

The Spanish Association of Airlines (ALA), for its part, has conveyed a measured message of caution: Spain's comparatively favourable position in terms of refining capacity² does not insulate the country from the impact on international routes, European connectivity and long-haul operations.

In these pages we examine the technical and economic scope of the phenomenon, its global propagation, the response of the aviation sector and the measures adopted by the Commission, together with a critical assessment of the areas in which, in our view, that response should be reinforced.

THE CRACK SPREAD: WHY JET A-1 HURTS MORE THAN CRUDE

The price of Jet A-1 — the standard specification for commercial aviation fuel — has practically doubled since the outbreak of the conflict. Brent has sustained a consistent upward trend, and the spread between crude and middle distillates has reached historical highs³. For its part, the International Energy Agency⁴ has publicly warned that European kerosene stocks would cover demand only for a very limited horizon if normal supply flows are not restored.

In order to grasp the magnitude of the impact, it is essential to distinguish between the price of crude and that of refined distillates. The difference

between the two, known as the *crack spread*⁵, reflects the cost of the refining process and the capacity and logistical tensions specific to each product. Over recent weeks, kerosene has become proportionally far more expensive than crude itself, with the result that even if the price per barrel were to stabilise tomorrow, the cost of aviation fuel would not recover its previous levels in the short term.

This amplification is explained by three converging factors: a European refining capacity which is structurally reduced following a prolonged period of closures, and which now operates as a critical bottleneck; the direct competition between Jet A-1 and diesel in the cracking process, in which diesel is prioritised on account of its essential role in the economy; and a deeply disrupted logistics chain, given that approximately 25% to 30% of global kerosene transited the Strait of Hormuz prior to the conflict, and roughly 75% of European imports came directly or indirectly from refineries in the Middle East. For airlines — whose fuel costs represent between 25% and 35% of operating expenses — this differential translates into pressure on margins which can scarcely be absorbed entirely through internal channels.

A GLOBAL SHOCK RIPPLING THROUGH THE ECONOMY

One of the most significant features of the energy crisis is the speed with which its effects have propagated to regions apparently less exposed to the Middle East.

The intuition that certain markets — particularly the North American market, with sufficient domestic production — could remain insulated from the shock has been disproved by the very dynamic of the global energy system. Thus, despite its status as a net producer and having become one of the principal emergency suppliers to the European market, multiplying its usual Jet A-1 exports to Europe several times over⁶, the United States has seen its domestic prices come under strain, with significant increases driving major logistics operators and express transport companies to activate specific fuel surcharges.

In Asia, the principal Chinese refiners have received government instructions to suspend the acceptance of new export contracts; South Korea

¹ This edition is published with some delay relative to its usual periodicity. We have preferred to await the formalisation of the European Commission's response to the aviation fuel crisis, finally published on 8 May in Communication C(2026) 3172 final, the content of which is analysed in these pages.

² [Spanish Association of Airlines \(Asociación de Líneas Aéreas, ALA\)](https://www.alaes/): eight operational refineries, with domestic production covering approximately 80% of the kerosene consumed at Spanish airports, and 11.7% of crude processed from Middle Eastern origin. <https://www.alaes/>.

³ The standard price references are, for crude, Brent, Dubai, Oman and WTI; and, for aviation kerosene, NorthWest Europe (NWE), US Gulf Coast (USGC) and Mean of Platts Singapore (MOPS). Additionally, in April an unusually wide gap was recorded between the Brent 'spot' and three-month futures prices, attributed by market sources to operations carried out by the United States Department of the Treasury aimed at containing stock-market volatility; in normal conditions the differential is narrow by arbitrage, and its widening is a further indicator of the current tension.

⁴ International Energy Agency (IEA), [Oil Market Report](#).

⁵ Crack spread: the differential between the sale price of a refined product (here, Jet A-1) and that of the crude from which it is derived. It reflects the gross margin of the refining process and constitutes a standard indicator for measuring capacity or demand tensions specific to each product.

⁶ U.S. Energy Information Administration (EIA), [Weekly Petroleum Status Report](#).



has reduced production as the arrival of crude from the Gulf has been compromised; Japan and Australia have activated contingency plans; and Singapore, the leading Asian fuel hub, has redirected volumes to Europe, absorbing logistical premiums which ultimately cascade through the supply chain⁷. Domestic sufficiency, in a globalised energy market, does not equate to immunity.

This realignment is also reflected in the other production chains dependent on petroleum. In road transport, the increase in the price of diesel has been passed through to the pump and, by way of the automatic price-review clauses contained in transport contracts, to the final cost of the service. In maritime transport, shipping companies have activated the *Bunker Adjustment Factor* (BAF) and, in periods of sharp escalation, the *Emergency Bunker Surcharge* (EBS), to which War Risk Surcharges have been added. In international logistics, the leading operators have activated explicit fuel surcharges.

As may be seen, consumers experience the shock through multiple simultaneous channels: the aviation sector therefore does not operate in isolation, nor in any singular fashion.

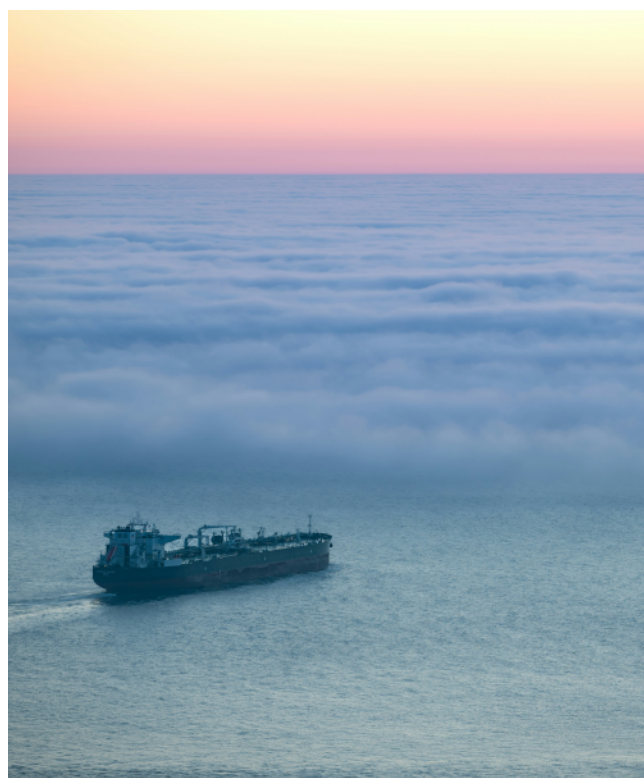
THE RESPONSE OF THE AVIATION SECTOR

Faced with a cost which represents a very significant share of operating structure and which has multiplied within a matter of weeks, the airlines' internal capacity to absorb the shock is limited. While a first line of defence is provided by financial hedging contracts entered into in advance by much of the sector, one essential point must be borne in mind: hedging protects prices, not volumes. A financially well-hedged airline may equally be affected by the physical unavailability of product, which explains why, alongside the hedges, operational and commercial responses have been activated: capacity adjustments through the cancellation of less efficient routes, partial pass-through of cost by way of surcharges on newly issued tickets — differentiated by route distance and, in certain cases, indexed to public references of the fuel market — and internal fleet reallocation towards the most profitable and efficient itineraries. Each operator is reacting as best it can, within the narrow margin which the situation permits.

The Director General of the European Regions Airline Association (ERA) has summed up a perception widely shared across the sector: the Commission's Communication is a necessary first step in recognising the immediate operational flexibility which the sector requires, but the real test will lie in its effective implementation by the Member States. She further notes that regional airlines are subject to particularly acute pressure, lacking the same hedging capacity and the same financial cushion as the large network carriers, and that Europe cannot assume they will indefinitely absorb rising costs while continuing to guarantee essential territorial connectivity.

It must be emphasised, in any event, that the measures adopted do not shield airlines themselves from a considerable economic impact, as is evidenced by the fact that several listed European operators have reported to the market half-year losses in the millions directly linked to the evolution of fuel cost, which confirms that the pass-through to passengers is only partial and that the bulk of the shock is being absorbed internally.

Added to all of the above is a legal dimension which warrants particular attention. The Communication of 8 May expressly addresses the question of extraordinary circumstances under Regulation (EC) No 261/2004⁸, taking two distinct positions: on the one hand, it considers that a local fuel shortage preventing the operation of a flight may qualify as an extraordinary circumstance, in line with the case-law of the Court of Justice (Case C-308/21, SATA International); on the other, it holds that



cancellations arising exclusively from an exceptionally high fuel price, in the absence of physical shortage, do not constitute an extraordinary circumstance, on the basis that price volatility is an ordinary risk of the airline business. In our view, this distinction merits critical reflection: in a context in which the European Commissioner for Energy himself describes the situation as the most severe energy crisis in recent history, and in which the price of Jet A-1 has doubled within a matter of weeks as a direct consequence of an armed conflict, the clear-cut separation between physical shortage and exceptional pricing is artificial. Volatility of this nature and magnitude, caused by a geopolitical event outside the operator's control, should equally be capable of being brought within the scope of force majeure.

THE COMMISSION'S RESPONSE: A FIRST STEP CALLING FOR FOLLOW-THROUGH

The Communication of 8 May structures its response along three principal axes: the rights of passengers and travellers; air transport *stricto sensu*; and a cross-cutting reference to the remaining modes of transport. In the aviation sphere, the guidelines focus on four vectors: airport slots; fuel uplift obligations under ReFuelEU Aviation⁹; the safeguarding of essential connectivity through public service obligations (PSOs); and the possibility of the transitional use of Jet A in lieu of Europe's standard Jet A-1. The overall assessment is reasonably sound in diagnostic terms but plainly insufficient in terms of instruments: the Commission itself acknowledges that most of the measures take the form of clarifications of existing flexibilities, rather than properly regulatory amendments. Without diminishing their interpretative value, it is worth highlighting three areas in which, in our view, the response must extend significantly further.

First: the slots regime and the 80/20 rule. The Commission confirms that the Justified Non-Use of Slots (JNUS) may apply, within the framework of Regulation (EEC) No 95/93¹⁰, where cancellation is due to fuel shortage. The Communication rightly clarifies that the JNUS opera-

⁷ As regards the foreseeable duration of the logistical disruptions, it should be recalled that even were the tensions to ease in the short term, the recovery of flows and maritime transport timings would take months. A recent precedent is provided by the blockades of the Bab el-Mandeb strait by the Houthis ('Ansar Allah') between 2023 and 2025, during which traffic had to be re-routed around the Cape of Good Hope, with an additional cost of between seven and twelve days per crossing; despite the ceasefire, traffic never fully recovered its previous levels.

⁸ Regulation (EC) No 261/2004 of the European Parliament and of the Council of 11 February 2004 establishing common rules on compensation and assistance to passengers in the event of denied boarding and of cancellation or long delay of flights. The doctrine on 'fuel shortage at the airport' as an extraordinary circumstance was consolidated in the CJEU judgment of 7 July 2022, Case C-308/21, SATA International – Azores Airlines.

⁹ Regulation (EU) 2023/2405 of the European Parliament and of the Council of 18 October 2023 on ensuring a level playing field for sustainable air transport (ReFuelEU Aviation).

¹⁰ Council Regulation (EEC) No 95/93 of 18 January 1993 on common rules for the allocation of slots at Community airports.



tes in respect of both airports affected by the flight — both the airport of departure and the airport of destination — and thus also covers the situation in which the operator has fuel available at airport A but cannot refuel at airport B in order to operate the subsequent leg. The difficulty, however, lies in temporal predictability: the mechanics of the airline business (and most particularly the unavoidable advance sale of tickets) require seasons to be planned months in advance, while the effective triggering of the JNUS requires a contemporaneous determination of the shortage at one of the airports involved, ordinarily evidenced by a NOTAM. The airline cannot know, at the moment of planning and marketing the flight, whether in three months' time there will be sufficient fuel at each of the airports in its network. To this is added the fact that the minimum 80% slot-use requirement (the 80/20 rule) continues to weigh upon operators as an operational sword of Damocles. In our view, a proportionate response would require the temporary suspension of the 80/20 rule for so long as the exceptional situation persists, or, at the very least, its substitution by a substantially lower threshold with assessment criteria adapted to the context.

Second: the 90% anti-tankering rule. ReFuelEU Aviation requires aircraft operators to uplift at least 90% of the fuel needed at each EU airport of departure. The Communication recalls that the rule admits of exceptions on grounds of operational safety, and that a shortage at the destination airport — evidenced by a NOTAM — may justify non-compliance with the 90%. The problem is that the rule, as currently conceived, is producing perverse effects in two opposing directions in present circumstances. On the one hand, it obliges airlines of third countries — which operate from European airports but whose networks would enable them to access fuel without restrictions in other geographies — to uplift at least 90% on European soil, thereby draining reserves which Europe needs to preserve. On the other hand, it does not prevent the reverse practice: third-country airlines may uplift at European airports — and very particularly at Spanish airports, given the relative strength of our refining capacity — volumes significantly in excess of 90% of the flight plan (110% or more), with the result that the surplus may end up fuelling subsequent legs of extra-Community domestic flights, thereby extracting European fuel in quantities greater than necessary towards markets which are unaffected and which may yet be subject to local restrictions. A reasonable easing of the rule, articulated in a coordinated and time-limited fashion, would allow both effects to be mitigated simultaneously.

Third: binding instruments still outstanding. Beyond the above, the leading sector associations — A4E, ACI Europe, ERA and IATA — have transmitted to the EU institutions a package of additional measures²¹ which the Communication of 8 May does not address with the necessary depth: the temporary suspension of the EU ETS regime as applied to aviation for the duration of the exceptional situation; the establishment of joint purchasing mechanisms for kerosene at European scale, similar to those applied to other strategic goods in moments of tension; the express inclusion of Jet A-1 within the mandatory strategic reserves of the Member States, currently structured around crude and other derivatives but with no specific provision for aviation fuel; and the elaboration of a European contingency plan in the event of a rationing scenario, with objective and predefined criteria for allocation among operators and Member States²². Any exceptional intervention upon the market must, in any event, respect the principles upon which Regulation (EC) No 1008/2008 rests, whose criteria of proportionality, non-discrimination and time-limitation must govern the design of any such measure.



CONCLUSION

The jet fuel crisis has consolidated as a quiet emergency whose implications will foreseeably extend well beyond the summer. The energy shock is being distributed across the entire economic chain, and the aviation sector is internally absorbing the bulk of the impact, passing only a fraction through to passengers by way of operational cancellations and differentiated surcharges.

The Commission's Communication of 8 May 2026 constitutes a necessary first institutional step which is reasonably sound in diagnostic terms, but its content lies predominantly at the interpretative level and consists of clarifications of flexibilities already provided for in the legal order, which makes it a prologue rather than the definitive response.

The management of a crisis of this nature requires concrete, timely and legally binding regulatory instruments — from the temporary suspension of the 80/20 rule to the modulation of the anti-tankering rule, including joint purchases and the inclusion of Jet A-1 within strategic reserves — without prejudice, in parallel, to the legal protection of operational decisions adopted under conditions which, by reason of their gravity and exceptional character, should be capable of being fully accommodated within the force majeure regime contemplated under Regulation (EC) No 261/2004. The European response must now move, without further delay, from observation to action.

PionAirLaw

Agapito Maricalva Esteban
Diego Olmedo de Cáceres

²¹ Public documents of A4E (www.a4e.eu), ACI Europe (www.aci-europe.org), ERA (www.eraa.org) and IATA (www.iata.org).

²² In parallel, at the national level, approval of the National Plan for the Decarbonisation of Air Transport — currently under discussion — remains pending; its main lines will necessarily need to incorporate the new geopolitical circumstances of the sector. The equivalent plan for maritime transport, approved in November 2025, provides for public support of EUR 250 million for the period 2026-2030, financed through ETS revenues, and offers a useful precedent for the design of the aviation plan.

²³ Regulation (EC) No 1008/2008 of the European Parliament and of the Council of 24 September 2008 on common rules for the operation of air services in the Community. Articles 22 (freedom of pricing) and 23 (price transparency) constitute the framework to which any exceptional measure must refer.