



**SUBMISSION BY AIR TRANSAT TO THE  
CANADIAN TRANSPORTATION AGENCY**

**Pre-Consultation on Proposed Changes to the  
*Air Passenger Protection Regulations***

August 10, 2023

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## **INTRODUCTION**

### ***Air Transat***

Founded over 35 years ago, Air Transat A.T. Inc. and its affiliates (« **Air Transat** ») are a 5,000 employee-strong Montréal-based airline recently awarded the distinction of the world's best leisure airline for the fifth time. From its Montréal and Toronto hubs (with service also offered from Québec City and airports across Ontario, and Eastern Canada), Air Transat flies to dozens of destinations across Europe, Latin America, and the United States (Florida and California). Air Transat is presently evolving its business model in-line with its five-year strategic plan delivering expanded and ambitious new offerings for travellers.

As a best-in-class airline, Air Transat places customer service at the heart of its values. This is reflected in various leading statistics, such as having the lowest level of passenger complaints among major Canadian airlines, as recorded by the Canadian Transportation Agency (CTA)<sup>1</sup>.

Amid widespread aviation sector challenges during the post-pandemic restart, Air Transat cautiously deployed capacity as staff resumed operations resiliently. In 2022, of almost 20,000 flight segments operated, Air Transat completed all but a single flight rotation to Vancouver due to extreme winter weather that forced the closure of the airport. Air Transat expends all efforts within its control to complete every flight possible and, in the rare event of significant flight disruptions under its control (and often well beyond), Air Transat accepts and exceeds its obligations to take care of its customers.

### ***Impact of the COVID-19 pandemic***

The COVID-19 pandemic and related public health measures and travel restrictions devastated Canada's travel and tourism sectors which were the first hit, the hardest hit and among the last to recover. With borders closed and travel curtailed, as a primarily international airline, Air Transat was forced to suspend all its operations twice, with a devastating impact on travellers, its employees, and their families. Financially, the Government of Canada deployed emergency liquidity measures including the *Canadian Emergency Wage Subsidy* (CEWS) and the *Large Employer Emergency Financing Facility* (LEEF) for which Air Transat and its workers express their continued gratitude. While operations have since recovered and staffing has returned to pre-pandemic levels, Air Transat alongside Canada's airlines and the rest of the aviation ecosystem have taken on significant amounts of pandemic debt which weigh on the sector. The post-pandemic period has been characterized by strong inflationary pressures, notably sharp increases in the cost of fuel, which have already impacted airfares. The entire economic and financial picture, including warnings of possible economic contraction, are important considerations in any regulatory process centred on financial compensation and increased costs.

Furthermore, Canada's *Air Passenger Protection Regulations* (SOR/2019-150) (« **APPR** ») is a relatively new instrument which has yet to be subjected to any period of normalcy given the immediate arrival of the pandemic and the turbulence across the aviation ecosystem of the post-pandemic restart. As several experts have pointed out, the timing of such a major regulatory reform is therefore questionable.

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<sup>1</sup> Canadian Transportation Agency, Air Travel complaints per 100 flights, April 2022 to June 2023 [[Available Online](#)]

***The proposed regulatory changes constitute a dramatic paradigm shift which will not improve the flying experience and will alter competition amongst Canadian air carriers.***

Canada's air transport system is vital to the lives of Canadians and to many important economic sectors such as tourism. As the industry regulator, it is paramount for the Canadian Transportation Agency (« CTA ») to ensure that Canada has a safe, integrated aviation ecosystem, that is competitive, affordable, sustainable, resilient and offers a positive passenger experience.

Improving the flying experience should be the goal of any regulatory reform of the sector, second only to the overriding policy imperative of safety which must transcend every facet of aviation, and Air Transat supports all initiatives that contribute to achieving these objectives.

However, the proposed changes to the APPR are mainly centred on increased financial compensation from airlines to passengers. Whereas the current rules are governed by categories of responsibility with compensation tied to the control airlines have over events, the reform proposes, amongst other drastic changes, that airlines be financially responsible to provide compensation in all situations, save a list of exceptional circumstances defined according to the following test:

- *Event that caused the disruption must have been outside the airline's control, and not inherent to the normal exercise of the activities of the airline; and*
- *Event could not be avoided even if the airline took all reasonable measures to do so.*

This regulatory reform, imposing significantly expanded financial penalties on responsible actors, whether intentionally or not, is counterproductive as increased compensation costs for airlines (and therefore to consumers) would harm growth, jobs, competitiveness, accessibility and weaken competition without improving the travel experience. The costs and risks borne by a consumer during a flight delay can already be mitigated by products readily available in the market such as a more flexible air ticket and/or travel insurance. Transferring such costs onto airlines suddenly and unilaterally, especially for situations outside airline control, would be tantamount to imposing obligations of an insurer onto airlines.

Furthermore, a one-size-fits-all regulatory response of broadly expanded financial compensation to situations outside airline control should be avoided as it would not reflect operational realities of various airlines, including flight frequencies. Air Transat, with its record of operational resilience and customer-centred respect for its APPR obligations, should not face dramatically increased financial consequences under the proposed regulatory reform.

- **Proposal 1:** Each proposed change in this regulatory reform should be carefully analyzed to ensure it encourages safety and improves air travel for Canadians.
- **Proposal 2:** A broader financial and economic analysis of the industry, in the post-pandemic context, should be undertaken as part of the current regulatory reform centred on increased financial compensation and costs.
- **Proposal 3:** No final decisions on APPR regulations should be made until such time as the full cost analysis of each proposed change is completed and made public. This fulsome analysis should include information on cost impacts on airfares paid by consumers.

- **Proposal 4:** Regulations should be balanced and not cause undue financial harm to airlines. Principles of fairness and proportionality would require that compensation be limited to the airfare paid and assistance costs be reasonably capped.
- **Proposal 5:** Simplicity and clarity in new regulations should negate the imposition of any vaguely worded obligations for air carriers<sup>2</sup>.

### ***EU Regulation 261 (« EU261 ») – A step in the wrong direction***

A vocal chorus of intervenors, including those directly involved in passenger compensation claims, point to EU261, as the example to be replicated in Canada. According to experts, elements of EU261 represent outlier passenger rights policies not replicated elsewhere. Examples include the lack of a safety or unplanned mechanical compensation exemption and a duty of assistance in the widest possible circumstances.

Stark differences between Europe and Canada are apparent: the smaller geography (distances), much higher population density and vastly different climate negate the direct importation of EU261 to Canada's aviation sector. European studies<sup>3</sup> demonstrate the failure of EU261 in terms of the imposition of billions of dollars of added compensation costs (with a significant portion funding a lucrative compensation claim industry), airline bankruptcies and no improvements to air travel. Finally, recent dramatic expansions of airline obligations under EU261 have come not at the expert hands of European legislators or regulators, but rather by successive decisions of European courts amid a highly litigious regime incrementally expanding airline liability for compensation beyond recognition of the original text of EU261 (2004).

EU legislators have advanced various initiatives to re-codify a more balanced regulatory regime more faithful to international norms including aviation safety which would exempt unplanned mechanical delays from financial compensation, which efforts were interrupted by the pandemic. With 27 Member States, the legislative and regulatory process in the EU can be long and complex. For these reasons, EU261 represents a cautionary tale rather than an example to be followed.

In stark comparison to EU261, our largest trading partner and neighbour, the United States, currently has no passenger rights regime. A growing regulatory gap, with the US leading to ever-increasing costs, would exacerbate the trend of the leakage of air passengers to US airports and favour the growth of US hubs at the expense of Canadian hubs and airlines. This problem is already pervasive with studies estimating that over 5 million Canadian passengers cross the border to fly from US airports each year.

- **Proposal 6:** The CTA should examine the impacts and developments of EU261 critically and comparatively, including its significant costs, in light of global aviation norms and guiding principles (ICAO, IATA) including safety, simplicity, ease and balance.

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<sup>2</sup> The CTA's proposed test for exceptional circumstances should not include the vaguely worded « not inherent to the normal exercise of the activities of the airline ». This over-broad criterion does not meet the CTA's guiding principle of clarity, ease of implementation and balance among consumers and carriers. Other examples: « **Any situation the airline knew about, or should have known about, when it sold the ticket to the passenger** » and « **Any action, or failure to act, by the airline or others with which the airline has a contractual relationship** » (Circumstances that would not be considered exceptional)

<sup>3</sup> European Commission, Study on the current level of protection of air passenger rights in the EU [\[Available Online\]](#)

## **CTA'S CONSULTATION PAPER: AIR TRANSAT'S SPECIFIC PROPOSALS**

### **1. Identifying the « exceptional circumstances »; Aviation safety must be promoted.**

*« Government authorities should have the flexibility to develop consumer protection regimes which strike an appropriate balance between protection of consumers and industry competitiveness (...) without prejudice to the safety and security of aviation.<sup>4</sup> »*

All aviation actors around the world are unequivocally dedicated to the paramountcy of aviation safety. Canada's aviation sector is entirely committed to upholding Canada's record as one of the safest air travel systems in the world, particularly as the world's capital of civil aviation. This record is a competitive advantage. As such, decisions made for safety reasons must be actively encouraged and never penalized.

Air travel in Canada continues to be the safest mode of transportation. Airline operations are carefully planned to consider all applicable safety rules and regulations. However, given the unique nature of aviation, some situations, like a mechanical or technical failure discovered during the pre-flight inspection or in-flight, are simply not preventable and cause delayed flights. Airlines should not be penalized for this, and compensation should not be payable in situations when airlines have not committed any fault and are following prescribed preventative maintenance and safety regulations that restrict the operation of the aircraft or their safety management systems.

**Canada's APPR currently strikes a balance between passenger rights, compensation, and maintaining the safety of aviation; this balance must be preserved.**

As recently as three years ago, Canada adopted the APPR with an entire category preserving the inviolability and primacy of aviation safety, including an exemption from compensation for unplanned mechanical malfunctions, in line with global norms and core aviation principles. The current APPR proposals have suddenly discarded these critical safety elements.

Indeed, one of the most significant changes that is proposed by the CTA is the complete elimination of the safety-related category which would ultimately penalize decisions pilots, maintenance personnel or airlines make based on their Safety Management System (which constitutes the pillar of Canada's aviation safety culture and are implemented *to help save lives*<sup>5</sup>).

In a sudden reversal, the proposed regulation suggests imposing significant new financial compensation obligations when unexpected safety or mechanical issues arise, save for « *hidden manufacturing defects* ». Alarming, and contrary to the *ICAO Core Principles* cited above, the proposal also explicitly excludes « *unplanned mechanical problems that are an inherent part of normal airline operations* », from the list of exceptional circumstances.

In the parlance of the CTA's proposed test for exceptional circumstances, unplanned mechanical defects requiring an aircraft to be grounded should be considered events which are outside an airline's control and cannot be avoided by airlines who undertake the prescribed preventative maintenance, set forth by the manufacturer and certified by regulatory authorities, or who follow their Safety Management Systems.

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<sup>4</sup> International Civil Aviation Organization, *ICAO core principles on consumer protection* [\[Available Online\]](#)

<sup>5</sup> Transport Canada, *Safety management systems in aviation* [\[Available Online\]](#)

A relatively small number of rare uncontrollable mechanical delays required for safety, currently exempt from compensation, could now suddenly attract significant compensation amounts under the proposal with no reasonable possibility for mitigation by airlines:

- Long safety-related uncontrollable mechanical delays are extremely **rare** occurrences. In 2022, Air Transat recorded 120 such uncontrollable mechanical delays (required for safety) of three hours or longer of a total of 19,480 flight segments operated, constituting 0.006% of its flights. Air Transat undertook the necessary repairs and completed those journeys, as soon as was safe and practicable. The length of these rare uncontrollable delays is the work of highly skilled multidisciplinary teams working at all hours and are dependent on factors outside airline control such as airport curfews at origin and destination, crew rest regulations, availability of resources, passenger comfort, and more. During such uncontrollable delays, Air Transat teams provide standards of treatment (assistance) to customers in all such cases as available and to the best of its abilities, at its entire and considerable expense.
- Though small in number, the proposed change to the APPR discarding the safety and unplanned mechanical exemptions would exponentially increase compensation expense for airlines without improving the air travel experience, while infringing guiding principles of aviation safety and passenger rights. For example, a single long-haul Airbus A330 (approx. 350 seats) wide-body flight that endures a 9-hour+ uncontrollable mechanical delay could attract up to 350 claims for \$1,000 new APPR compensation, totalling \$350,000. For the 120 such flights in 2022 at up to \$350,000 compensation per flight = up to **\$42 million** of new annual compensation costs just for mechanical delays. (Figures will vary due to multiple variables and do not include refund or standards of treatment costs which together could easily exceed any profit margin of a particular flight).
- It is impossible for airlines to position reserve aircraft, parts, tools, equipment and other resources at all destinations and possible diversion points across their vast networks. By their uncontrollable nature, unplanned mechanical defects can arise without warning at any time or place. A resulting uncontrollable delay, impossible to reasonably avoid and taken in compliance with safety obligations, should hardly attract additional financial consequences.

**The CTA's proposal would therefore highly penalize an airline (and its workers) for upholding their legal and safety obligations, represents a disincentive for operating to/in Canada and a significant financial burden added to the system impacting competition and competitiveness.**

Air Transat concurs with the CTA that clarity is needed, including on any definition of a safety and mechanical exemptions from APPR compensation. Air Transat therefore endorses the proposed NACC list of « exceptional circumstances » which has been developed in consultation with safety, technical and operational experts, and a review of other regulatory regimes<sup>6</sup>.

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<sup>6</sup> Please refer to **Appendix 1**

- **Proposal 7:** Clear exemptions for safety (particularly for unplanned mechanical delays) should be preserved in the new exceptional circumstances list, protecting the primacy and inviolability of aviation safety in line with global norms.
- **Proposal 8:** For greater certainty, the APPR should explicitly state that where an airline follows preventative maintenance schedules and makes decisions in conformity with applicable safety regulations, and a mechanical or technical defect is discovered prior to or during a flight which affects safety, such an event must be considered an exceptional circumstance, which is exempt from financial compensation.

## ***2. Airlines' responsibilities regarding claims for compensation (reverse onus)***

Under the Canadian legal system, a claimant must advance proof to justify their case. The amended Canadian Transportation Act reverses this onus, effectively generating a strict liability regime where the airline is presumed to be liable for compensation unless the event in question falls under a narrow scope of exceptional circumstances which the airline must always prove.

Air Transat endorses the NACC position as regards principles of fundamental justice and procedural fairness, including the ability of airlines to meet their evidentiary burden in exceptional circumstances beyond their control where elements of proof are in the hands of third parties.

## ***3. Rebooking and refunds; new obligations are not viable in the context of Air Transat's operations.***

### *Rebooking*

The current APPR provides a 9-hour rebooking window for controllable delays and a 48-hour rebooking window for uncontrollable delays, for large airlines. Collapsing the APPR categories and suddenly imposing an impossible 9-hour rebooking window in all cases of delay, in place of the 48-hour window, is not feasible for Air Transat. Air Transat concurs with the CTA that the rules must be clarified in line with the CTA's Guiding Principles of simplicity, ease (possibility/practicality), and balance. The current rules, in particular a 9-hour rebooking window, are complex, costly, imbalanced and do not reflect operational realities for all but the densest shorter-haul mostly domestic routes, which Air Transat does not operate. Simply put, the 9-hour rebooking rule is unworkable in the context of Air Transat operations.

Most Air Transat flights, which are medium and longer-haul international flights, operate once daily or less frequently (once, twice, or thrice weekly). While expanding and constantly offering additional options for travellers, Air Transat is not a large global network carrier nor part of a global airline alliance. Regional or remote flights of other Canadian carriers would similarly be less frequent. These direct, mainly international flights, are generally not available within a 9-hour rebooking window.

Air Transat practice is not to cancel flights but rather to resume delayed flights as quickly as is safe and operationally possible, thereby protecting its customers and respecting its APPR obligations. For these reasons, the current 48-hour rebooking window (formerly, in uncontrollable situations) is a reasonable and practical rebooking solution. From Air Transat's perspective, where an airline



resumes or replaces a delayed journey within 48 hours, barring further exceptional circumstance, no further rebooking obligation should be imposed under APPR.

Imposing an obligation on Air Transat to rebook delayed passengers on indirect routes via third countries on other airlines with whom we have no commercial nor operational agreements is unlikely to improve a traveller's journey, may not even be possible at the last minute and could have the very opposite effect. Further, a last-minute full-fare ticket on a competing carrier, if any seats were available, could cost multiple times the original fare paid to a more affordable leisure-oriented carrier like Air Transat, and therefore be punitive, unfair and disproportionate.

- **Proposal 9:** Regulations on rebooking should reflect diverse operating realities such as flight frequencies (not one-size-fits-all) and encourage airlines to complete disrupted flights as quickly as is safe and practicable. The current 48-hour rebooking window (formerly, in uncontrollable situations) is a simple, practical and balanced rebooking solution. Stated otherwise, where an airline resumes a delayed journey within 48 hours, barring further exceptional circumstances, no further Rebooking obligation should be imposed under APPR.
- **Proposal 10:** Regulations should recognize the cost-prohibitive nature of imposing obligations on airlines to purchase last-minute full-fare tickets on other airlines with which they have no commercial relationships in place.

#### *Refunds in delay situations*

As regards a new refunding obligation of non-refundable non-insured tickets in delay situations, given Air Transat practice to not cancel flights and to resume the journey, it is respectfully submitted that three hours is too short a timeframe. It should be noted that consumers can readily protect their time-critical journeys with the purchase of flexible airfares and trip interruption insurance. A shorter three-hour delay threshold would be punitive and costly to Air Transat, whose practice will be to protect its passengers and resume the journey as quickly as is safe and possible. Further, shorter (three-hour) refund windows would also be counterproductive by potentially further delaying disrupted flights, in particular flights carrying large numbers of passengers (for example, 150+). In such situations, airport staff would have to be diverted from their duties during a busy delay situation to instead process potentially large numbers of refunds including off-loading passengers and reuniting them with their luggage, which may already be on-board the aircraft.

- **Proposal 11:** Refunds for significantly delayed flights should be made available following a delay at departure of at least six hours, rather than the proposed three hours.

#### **4. Assistance in the event of exceptional circumstances need to be clarified and approached with care and balance, so as not to unintentionally create new and unachievable standards.**

Air Transat accepts responsibility for events under its control. As noted by the CTA in its consultation paper, some airlines at times have taken steps to ensure passengers receive assistance even when a situation was outside their control. Air Transat is one such customer-

centred airline. The CTA goes on to note in its paper, without naming the airline(s) in question, of recent well-publicized situations of abandonment of customers. In accepting their respective legal obligations, Canada's airlines do not accept such occurrences nor believe them to be normal or representative. Extreme or isolated events should invite review and investigation, rather than trigger industry-wide wholesale regulatory expansion which will have wide-ranging industry impacts.

In line with the legislation, the CTA proposes that the APPR be expanded to require airlines to give passengers some assistance in all circumstances of flight disruptions, including in (uncontrollable) exceptional circumstances. Extension of legal obligations in exceptional circumstances, and defining them, will be problematic on its face. To meet heightened consumer expectations should the CTA proceed, APPR regulations will have to be clear and deliverable.

In exceptional circumstances, the availability of amenities for assistance will be severely limited while the demand could be widespread. At the time of writing, Canadians are witnessing increasingly frequent extreme weather and climate events, which impact flight operations. Unlike ecosystem partners whose business are terrestrial and may include commercial ties to local amenities, airlines do not have operations in the areas of hotel accommodation, ground transport nor food services across their vast networks and overseas. In most cases, outside hub airports, airlines are reliant on third-party ground handlers for ramp and passenger services at the airport. While airlines fully assume and accept their responsibilities for events in their control, the proposed expansion in this area will be fraught with complexity and must be approached with caution and balance, so as not to unintentionally create new challenges.

Assistance obligations on Canada's airlines are costly. The proposed expansion, yet to be defined, would add to these costs. Consumers can protect themselves from such costs via travel insurance. It is respectfully submitted that prospective regulations, subject always to the availability of such standards of treatment, include proportionality limits or caps on such expenses in time (24 hours) and in quantum (liability should be limited to the fare paid and to what is reasonable in the circumstances).

- **Proposal 12:** The CTA should undertake a careful regulatory process in line with its Guiding Principles of simplicity, ease (possibility/practicability) and balance, in partnership with Canada's airlines, to attempt to define what assistance airlines would unilaterally be held responsible to provide, unlike any other aviation ecosystem partner, in exceptional circumstances, if such a balance is prudent or possible.
- **Proposal 13:** Airlines cannot be expected to provide standards of treatment when the availability of this assistance does not exist or is not attainable due to circumstances not within their control.
- **Proposal 14:** The costs of such prospective additional duty of assistance in exceptional circumstances must be considered. Caps or limits should be included in prospective regulations, for the sake of clarity and balance.

##### **5. Airlines require clear regulatory language on required communications.**

To meet their increasingly complex obligations in this area, airlines require clear regulatory language on the frequency and content of required communications. To be simple, easy and balanced, the CTA's regulatory approach on Communications should be the subject of a CTA-industry working group to develop a joint industry-regulator communication schedule.

In its consultation paper, the CTA notes increased complaints from consumers in this area, underlining the need for clarity and feasibility analysis in preparing new regulations. Additionally, as noted by the CTA, airlines must have access to customer contact information preferably from the time of the initial reservation (in order to notify passengers of events which occur prior to check-in), regardless of booking channel used. Legislation or regulation may be required for airlines to have access to this contact information.

Flight disruptions can occur unexpectedly at any hour or place. Often, the reasons for flight delays are not immediately known, or they may change. Detailed communication obligations to passengers including entitlements and reasons for delays can be difficult or impractical to meet. Regular updates to passengers could, however, include updates on projected departure times, when known. Consumers may refer to the CTA website as a repository of passenger rights and entitlements, rather than regulating individualized communication which may become complex, impractical, not understood or not easily accessible.

- **Proposal 15:** A CTA-industry working group should develop an agreed communication schedule for delayed flights. Such working group could also recommend timelines for the roll-out of new Communication protocols, mindful of the time necessary for systems upgrades and training.
- **Proposal 16:** The CTA should legally require all third-party booking agents to provide airlines with passenger contact information (mobile number and email address) at the time of booking. Airlines may communicate with a lead passenger in the cases of families or groups.
- **Proposal 17:** Rather than require detailed reasons for delays, which reasons may not be readily known and may subsequently change, communications should focus on flight status and estimated departure time.
- **Proposal 18:** Flight disruptions can happen unexpectedly at any hour or place. In keeping with guiding principles of simplicity, ease and balance, airlines could direct passengers to the CTA website as a repository of guidance material on passenger rights and entitlements, rather than be forced to improvise elaborate individualized communications.

## **6. Chain reactions (knock-on-effects)**

It is important that Canada's APPR reflects operational realities of air travel, as discussed in the above sections on exceptional circumstances and Rebooking. Currently, when a delay is caused by reasons outside airline control, the APPR recognizes and exempts the subsequent flights suffering knock-on effects of the delay. However, the proposed changes to the APPR set a narrow limit of knock-on effects to a single subsequent flight.

It can take airlines up to 48 hours to overcome the knock-on effects of delays. This can be even longer for significant weather events, or widespread interruptions at one or more hub airports, where despite best efforts, impacts can continue for days. The proposed one flight limit is therefore impractical and unbalanced.

It is now well understood that an uncontrollable delay on a particular flight will impact subsequent flights that a given aircraft is scheduled to operate. The proposed change arbitrarily limiting the knock-on effect exemption to a single subsequent flight would mean that airlines will now have to factor in the significant potential cost of compensating delayed passengers on all subsequent flights despite an exceptional circumstance outside airline control, with little reasonable possibility to mitigate.

As has been repeated throughout this paper, Air Transat accepts responsibility for events within their control. Yet this proposed regulatory change would represent another undue and significant financial burden on airlines who ultimately will be responsible for compensating passengers when the root cause of the delay is outside their control and there is little airlines can do differently. This will again punish airlines and consumers through increased costs associated with air travel in Canada and could ultimately further undermine growth, competition and competitiveness.

- **Proposal 19:** Airlines should be able to claim knock-on effects for a period of 48 hours after the original disruption, due to exceptional circumstances.

## **7. Refunds for Changes to Government Travel Advisories**

Currently, passengers do not have any right under the APPR to a refund if they cancel their ticket based on a change in Government of Canada travel advisories, which constitutes an event entirely outside airline control. Any such risk can readily be covered by travel insurance or the purchase of a flexible airline ticket. In line with the proposals of the NACC and tourism industry, any such expanded financial liability arbitrarily imposed on Canada's airlines should be limited to the most exceptional Level 4 (Avoid All Travel) travel advisories, if at all. In a more uncertain world, Level 3 advisories are increasing in occurrence and would constitute an unreasonable and imbalanced obligation for airlines, as well as a significant competitive disadvantage out of synch with the global market, especially when flight operations routinely continue under Level 3 conditions around the world without refund obligations. Here again, Canada's airlines should not be expected to assume insurance-type liabilities for travellers in such circumstances.

- **Proposal 20:** Canada's airlines and tourism industry propose that any such expanded financial liability imposed on Canada's airlines should be limited to the most exceptional Level 4 (Avoid All Travel) travel advisories, if at all. Similarly, if an airline cancels a flight because of a change in Government Travel Advisories, such cancellation would be exempt from APPR financial compensation.

## **CONCLUSION**

Air Transat and Canada's airlines accept their responsibility and regulatory oversight for situations within their control. Airlines are eager to continue working with the CTA and government to improve the air travel experience for travellers, while unconditionally safeguarding aviation safety. Canada's new exceptional circumstances list must preserve the current APPR exemptions for safety and for unplanned uncontrollable mechanical delays, to ensure that safety-related decisions are encouraged and never punished.

The proposed APPR amendments will not lead to improvements in the aviation ecosystem. To the contrary, the singular focus on airlines and broadly expanded financial compensation will necessarily increase airline costs and administrative burdens. Increased costs translate into higher fares for consumers, less choice, and a less competitive market, disproportionately harming smaller airlines. Instead of a one-size fits all approach, regulations must reflect diverse operational realities across the industry and should encourage airlines such as Air Transat with strong customer-service practices and low complaint levels which conduct their operations in a passenger-centred way.

### ***Aviation Is Not Limited to Airlines; It Is a Complex Inter-Dependent Ecosystem of Actors***

Airlines in Canada operate in a complex aviation ecosystem which is comprised of airports, airlines, and various government or independent entities which deliver essential services: NAV Canada (air traffic control), CATSA (security) and CBSA (customs and border services). Each of the actors is heavily interdependent on the others for its operations. Notwithstanding this interconnectedness, Canada's APPR focus uniquely on airlines in terms of regulated standards of service including financial compensation and penalties. Further, Canada's entire aviation ecosystem operates on a user-pay financial model, unlike for example, the United States located a mere one-hour drive from many of Canada's largest cities and airports, where government funds airport and aviation infrastructure. Ensuring the necessary infrastructure, including funding, and a regulatory framework requiring the widest possible accountability to travellers across the aviation ecosystem are essential ingredients in the pursuit of improvements in travel, alongside airline responsibility for events under their control.

### ***Air Transat Endorses the Submission of the National Airline Council of Canada (NACC)***

For all the reasons set forth above, and as a NACC member, Air Transat endorses the submission and detailed expert recommendations of the NACC to the CTA on proposed changes to APPR.

## APPENDIX 1

### Exceptional circumstances list – NACC Proposal

- (a) war or political instability
- (b) illegal acts or sabotage
- (c) weather or other atmospheric conditions, or natural disasters, that make it impossible to safely operate the flight, including items such as actual or forecasted blizzards, heavy winds, lightning, hurricanes, etc.
- (d) instructions from air traffic control
- (e) a NOTAM, as defined in subsection 101.01(1) of the *Canadian Aviation Regulations*
- (f) a security threat or risk, incompatible with the safe operation of the flight, including unruly passengers
- (g) airport operation issues
- (h) a medical emergency
- (i) a collision with wildlife, drones, or any other unforeseeable accident
- (j) a labour disruption within the carrier or within an essential service provider, or labour shortages within an essential service provider such as an airport or an air navigation service provider
- (k) a manufacturing defect in an aircraft that reduces the safety of passengers and that was identified by the manufacturer of the aircraft concerned, or by a competent authority
- (l) technical defect(s) and/or problems, provided that all of the following criteria is fulfilled:
  - the maintenance has been executed in accordance with the approved maintenance programme, including/taking into account Minimum Equipment List (MEL) and Configuration Deviation List (CDL).
  - the defect is related to the airworthiness of the aircraft, is not listed in the Minimum Equipment List (MEL) and results in the defect having to be fixed before the flight can operate or several defects occur which are listed in the MEL and/or CDL and in accordance with the *Canadian Aviation Regulations* the pilot decides that it is not safe to operate the aircraft with the combination of these defects.
- (m) a defect or concern discovered via the carrier's, a supplier's, or a relevant 3rd party's safety management system or quality assurance program that requires immediate action to ensure the safety of further flight(s)
- (n) an order or instruction from a manufacturer of an aircraft, engine or part, or from an official of a state or a law enforcement agency or from a person responsible for airport security
- (o) system outage or infrastructure breakdown by governmental or essential service providers, essential to the operation of a flight
- (p) a delay, cancellation or denial of boarding that is directly attributable to earlier delay(s) or cancellation(s) which has occurred within the last 48 hours and that was due to exceptional circumstances, is considered to also be due to situations of exceptional circumstances if that carrier took all reasonable measures to mitigate the impact of the earlier flight delay or cancellation
- (q) any other situation that cannot be reasonably foreseen if the carrier proves that it and its servants and agents took all measures that could reasonably be required to avoid the delay or cancellations or that it was impossible for it or them to take such measures

## **APPENDIX 2**

### **Summary of Air Transat's proposals**

**Proposal 1:** Each proposed change in this regulatory reform should be carefully analyzed to ensure it encourages safety and improves air travel for Canadians.

**Proposal 2:** A broader financial and economic analysis of the industry, in the post pandemic context, should be undertaken as part of the current regulatory reform centred on increased financial compensation and costs.

**Proposal 3:** No final decisions on APPR regulations should be made until such time as the full cost analysis of each proposed change is completed and made public. This fulsome analysis should include information on cost impacts on airfares paid by consumers.

**Proposal 4:** Regulations should be balanced and not cause undue financial harm to airlines. Principles of fairness and proportionality would require that compensation be limited to the airfare paid and assistance costs be reasonably capped.

**Proposal 5:** Simplicity and clarity in new regulations should negate the imposition of any vaguely worded obligations for air carriers.

**Proposal 6:** The CTA should examine the impacts and developments of EU261 critically and comparatively, including its significant costs, in light of global aviation norms and guiding principles (ICAO, IATA) including safety, simplicity, ease and balance.

**Proposal 7:** Clear exemptions for safety (particularly for unplanned mechanical delays) should be preserved in the new exceptional circumstances list, protecting the primacy and inviolability of aviation safety in line with global norms.

**Proposal 8:** For greater certainty, APPR should explicitly state that where an airline follows preventative maintenance schedules and makes decisions in conformity with applicable safety regulations, and a mechanical or technical defect is discovered prior to or during a flight which affects safety, such an event must be considered an exceptional circumstance, which is exempt from financial compensation.

**Proposal 9:** Regulations on rebooking should reflect diverse operating realities such as flight frequencies (not one-size-fits-all) and encourage airlines to complete disrupted flights as quickly as is safe and practicable. The current 48-hour rebooking window (formerly, in uncontrollable situations) is such a simple, practical and balanced rebooking solution. Stated otherwise, where an airline resumes a delayed journey within 48-hours, barring further exceptional circumstances, no further Rebooking obligation should be imposed under APPR.

**Proposal 10:** Regulations should recognize the cost-prohibitive nature of imposing obligations on airlines to purchase last-minute full-fare tickets on other airlines with which they have no commercial relationships in place.

**Proposal 11:** Refunds for significantly delayed flights should be made available following a delay at departure of at least six hours, rather than the proposed three hours.

**Proposal 12:** The CTA should undertake a careful regulatory process in line with its Guiding Principles of simplicity, ease (possibility/practicability) and balance, in partnership with Canada's airlines, to attempt to define what assistance airlines would unilaterally be held responsible to provide, unlike any other aviation ecosystem partner, in exceptional circumstances, if such a balance is prudent or possible.

**Proposal 13:** Airlines cannot be expected to provide standards of treatment when the availability of this assistance does not exist or is not attainable due to circumstances not within their control.

**Proposal 14:** The costs of such prospective additional duty of assistance in exceptional circumstances must be considered. Caps or limits should be included in prospective regulations, for the sake of clarity and balance.

**Proposal 15:** A CTA-industry working group should develop an agreed communication schedule for delayed flights. Such working group could also recommend timelines for the roll-out of new Communication protocols, mindful of the time necessary for systems upgrades and training.

**Proposal 16:** The CTA should legally require all third-party booking agents to provide airlines with passenger contact information (mobile number and email address) at the time of booking. Airlines may communicate with a lead passenger in the cases of families or groups.

**Proposal 17:** Rather than require detailed reasons for delays, which reasons may not be readily known and may subsequently change, communications should focus on flight status and estimated departure time.

**Proposal 18:** Flight disruptions can happen unexpectedly at any hour or place. In keeping with guiding principles of simplicity, ease and balance, airlines could direct passengers to the CTA website as a repository of guidance material on passenger rights and entitlements, rather than be forced to improvise elaborate individualized communications.

**Proposal 19:** Airlines should be able to claim knock-on effects for a period of 48 hours after the original disruption, due to exceptional circumstances.

**Proposal 20:** Canada's airlines and tourism industry propose that any such expanded financial liability imposed on Canada's airlines should be limited to the most exceptional Level 4 (Avoid All Travel) travel advisories, if at all. Similarly, if an airline cancels a flight because of a change in Government Travel Advisories, such cancellation would be exempt from APPR financial compensation.