

Letter of 28 January 2015 from the Minister of Security and Justice, the Minister of Foreign Affairs, the Minister of Defence and the State Secretary for Infrastructure and the Environment to the House of Representatives answering questions put to the government by the House's Permanent Committee on Foreign Affairs in its letter of 16 January 2015 relating to the MH17 air disaster

Question 1

What organisations exist at present to represent next of kin?

Answer:

The MH17 Aviation Disaster Foundation was set up by relatives of the victims on 11 November 2014. Its object is to represent the interests of the next of kin in a wide range of areas. The family members of 136 victims have now registered with the foundation. The board of the foundation, which consists of relatives of those who died in the air disaster, acts as an intermediary for contact with central government. There are also initiatives dealing with specific subjects such as the erection of a memorial. Some of these initiatives are being undertaken by next of kin and others by third parties (sometimes with the involvement of next of kin).

Question 2

How many next of kin have joined the various groups established to represent their interests?

Answer:

The next of kin of 136 victims have registered with the MH17 Aviation Disaster Foundation.

Question 3

Has the government yet provided financial or other assistance to the Victim Support Fund for the next of kin? If so, what assistance?

Answer:

The Victim Support Fund should not be confused with the organisation known as Victim Support Netherlands (SHN). The government does not provide financial assistance to the Victim Support Fund. The fund is a charity which has public benefit (PBO) status and raises money to provide facilities for victims and represent their interests. Victim Support Netherlands, in consultation with the government, has assisted the next of kin of victims of the air disaster in Ukraine since 18 July 2014. It does so by maintaining the Ukraine Information and Referral Centre (IRC) website, by assigning case managers to provide

individual assistance and arranging for its staff to provide psychological counselling during gatherings of family members. Victim Support Netherlands is funded by the Ministry of Security and Justice to offer legal, practical and emotional support to victims of suspected criminal offences as defined in section 6 of the Justice Subsidies Act and their next of kin. In 2014 Victim Support Netherlands provided support to the next of kin of the MH17 victims as part of these standard services. A financial contribution has now been made to the MH17 Aviation Disaster Foundation.

Question 4

Is the members-only section of the website for next of kin still operational and, if so, is it regularly updated?

Answer:

Both the open and the restricted sections of the Information and Referral Centre (IRC) website are still operational and will remain so for at least another year. The restricted section is still regularly updated. Victim Support Netherlands supplies next of kin with the latest information in the form of a newsletter, which is posted three times a week on the restricted section of the website.

Question 5

Have the next of kin given any indication of how they feel about the support they have received from the various authorities?

Answer:

It is apparent from word-of-mouth reactions, reactions posted on the website, feedback from family liaison officers and conversations during gatherings of relatives that, on the whole, the next of kin take a positive view of the support provided by the various authorities. In collaboration with the MH17 Aviation Disaster Foundation, the TV current affairs programme *EenVandaag* conducted a survey among the next of kin in the period from 19 to 23 December 2014. Some of the findings were announced on the programme's broadcast of 27 December.

Question 6

Three victims have not yet been identified. Have all the human remains present in Hilversum been exhaustively examined? In your view, how likely is it that the three remaining victims can still be identified?

Answer:

There are still human remains in Hilversum whose DNA profile has not yet been established. Experts are doing their utmost to obtain profiles from this material with a view to identifying the three missing victims. This is a difficult process. DNA can be damaged by sunlight, moisture and heat. Any human remains that cannot be identified using today's profiling techniques will be kept, in the hope that new techniques may make identification possible at a later date.

Question 7

Does the government intend to hold any future information meetings with next of kin? If so, are there already definite plans for this?

Answer:

A private meeting for the next of kin was held in Nieuwegein on Friday 30 January 2015. The aim of the meeting was to brief the relatives about various subjects, including the identification process and Dutch activities in Ukraine. The MH17 Aviation Disaster Foundation also took the opportunity to briefly introduce itself. After the next of kin had had the chance to put questions to representatives of various organisations, the meeting closed with an informal session. Victim Support Netherlands and the family liaison officers were also present at the meeting.

Question 8

Can you report on the progress of the investigation by the Public Prosecution Service?

Answer:

The criminal investigation is still at the stage of gathering evidence about the criminal offences that may have been committed. This is being done in collaboration with the other countries involved in the Joint Investigation Team (JIT), which is sifting through the available data in various ways: analysing phone calls, interviewing witnesses, studying weapons systems etc. At Gilze-Rijen Air Base the Public Prosecution Service and the police are working closely with the Dutch Safety Board in examining the wreckage recovered from the crash site. The criminal investigation is also still in full swing at the field office in Kiev. The aim of the criminal investigation is to deliver incontrovertible proof about the circumstances of the crash and the identity of those responsible. Every possible scenario is being exhaustively examined, and hard evidence is being assembled that will support one explanation while excluding any other reasonable alternatives. How much time will be needed for the

investigation is therefore difficult to estimate, but it will certainly continue for some months yet.

Question 9

Can you report on the level of international cooperation in the criminal investigation and prosecution?

Answer:

There is intensive daily cooperation between the JIT partners in both the Netherlands and Ukraine. Requests for legal assistance have also been sent to a number of countries in order to obtain further information for the criminal investigation. Some of these countries have already provided substantive information in response to these requests. The other countries are working to provide the requested information and are keeping in touch with the Dutch authorities.

Question 10

When do you expect to be able to provide the written briefing requested by the House of Representatives about the options for prosecuting and trying those responsible and the pros and cons of these options?

Answer:

The investigation into the circumstances of the MH17 crash on 17 July and the involvement of individuals is still in the evidence-gathering stage and has not yet reached the point where an overview can be given of the options for prosecuting and trying those responsible. For example, the scope for bringing a prosecution is affected not only by the nationality of potential suspects but also by the location of any arrest that might be made. The technical investigation must shed more light on the circumstances of the crash before an overview can be given of the options for prosecution. The Minister of Security and Justice will provide the House with a memorandum setting out the options for prosecution as soon as the international investigation permits this.

Question 11

Are there plans to carry out a further investigation of the crash site once the weather improves again?

Answer:

Yes, the repatriation mission is expected to return in the spring as soon as the security situation at and around the crash site permits, weather conditions improve and the terrain becomes passable again. A fact-finding mission will then be sent out to determine whether further investigation at the crash site is still possible and worthwhile.

Question 12

When are the next of kin expected to be able to visit the wreckage of the aircraft?

Answer:

When the wreckage arrived at Gilze-Rijen Air Base, the Dutch Safety Board announced that the next of kin would be given the opportunity to view it. This viewing will probably take place in the first week of March.

Question 13

To what extent is it standard practice for the Ministry of Infrastructure and the Environment or the Human Environment and Transport Inspectorate to be notified by other ministries about possible dangers to civil aviation over the territory of other countries?

Answer:

Individual airlines are responsible for ensuring the safe operation of their flights and to that end make their own risk assessments. In compliance with national and international legislation, when preparing flights, airlines use internationally available information supplied by countries about their own airspace, such as Notices to Airmen (NOTAMs), as well as information from other sources. If the intelligence and security services have information about specific threats to civil aviation, they will pass this on to the Dutch airlines through or in consultation with the National Coordinator for Security and Counterterrorism and not through the Ministry of Infrastructure and the Environment or the Human Environment and Transport Inspectorate.

Question 14

To what extent was the Ministry of Infrastructure and the Environment or the Human Environment and Transport Inspectorate informed by Ukrainian authorities or by other ministries of incidents involving aircraft in Ukrainian airspace from March to July 2014?

Answer:

Ukrainian air traffic control issued several Notices to Airmen (NOTAMs) on the situation in eastern Ukraine. The last NOTAM issued prior to the downing of flight MH17 closed part of

eastern Ukrainian airspace below 9.7 km (flight level 320). Current NOTAMs are publicly available on the website of EUROCONTROL. Besides these NOTAMs, Ukraine provided no information prior to 17 July relating to the safety of the airspace over eastern Ukraine. There were no specific consultations on the safety of the airspace over eastern Ukraine.

The airspace over Crimea is claimed by both Ukraine and Russia. With both countries asserting their right to provide air traffic control services, the situation there became unsafe, and some airlines (including Dutch airlines) have been avoiding the airspace over Crimea since the start of the conflict in Crimea in early April.

Naturally, after 17 July Ukraine closed the airspace over eastern Ukraine and explained in various international meetings the position regarding safety in that airspace.

See also the answer to question 13 above.

Question 15

To what extent was the Ministry of Infrastructure and the Environment or the Human Environment and Transport Inspectorate informed by the Ministry of Foreign Affairs about a briefing on 14 July 2014 (three days before the MH17 disaster) in which the downing of a Ukrainian military aircraft earlier that day had been cited by Ukraine's Minister of Foreign Affairs as an example of the increasing escalation of the conflict and Russia's role in this?

Answer:

The report of the briefing was received by the Ministry of Foreign Affairs and the Ministry of Defence. The substance of the briefing was communicated to the Ministry of Security and Justice, the Ministry of the Interior, the Ministry of Finance and the Ministry of General Affairs. See also the answers to questions 13 and 14 above.

Question 16

Is it standard practice for the Ministry of Infrastructure and the Environment or the Human Environment and Transport Inspectorate to pass on information about airspace safety to Dutch-registered airlines? If not, why not?

Answer:

See the answer to questions 13 and 14 above.

Question 17

What specific information about incidents involving flights in Ukrainian airspace was passed on by the Ministry of Infrastructure and the Environment or the Human Environment and Transport Inspectorate to Dutch-registered airlines in the period from March to July 2014?

Answer:

See the answers to questions 13 and 14 above.

Question 18

Was contact sought by the Netherlands, at either political or civil service level, with Ukraine's Civil Aviation Authority in the period from March to July 2014 about the risks in Ukrainian airspace and, if so, what information was discussed?

Answer:

There was no reason to do so on the basis of the NOTAMs.

Question 19

What information was provided by Ukraine to EUROCONTROL in the period from March to July 2014? Was the Dutch Civil Aviation Authority or any other government body informed about this by Ukraine and/or EUROCONTROL? If so, how?

Answer:

The government has no knowledge of what information was exchanged between EUROCONTROL and Ukraine. However, there was a meeting of EUROCONTROL's Provisional Council (see the answer to question 20 below).

Question 20

Did EUROCONTROL hold consultations with its member states between March and July 2014 about the risks in Ukrainian airspace and, if so, was the Netherlands represented and at what level?

Answer:

Ukraine was one of the topics discussed in the meeting of EUROCONTROL's Provisional Council on 22 May 2014. Ukraine was represented at the meeting. The consultations only related to the situation over and around Crimea and EUROCONTROL's recommendation to avoid the airspace over Crimea in view of the unsafe situation created by the competing claims of Ukraine and Russia regarding the provision of air traffic control services in this airspace. There was also a discussion of measures to minimise the resultant disruption to air

traffic and the network overall. The Netherlands was, as usual, represented by members of the civil service.

Question 21

Is it standard practice for Dutch-registered airlines to contact Dutch government bodies about security issues?

Answer:

Regular consultations are held with the airline industry about numerous matters relating to safety and security (e.g. operational level, international developments and legislation).

Question 22

How often in the period from March to July 2014 did Dutch-registered airlines reach out to Dutch government bodies? What data were provided in this connection and by what bodies?

Answer:

There were no consultations about the safety of the airspace over eastern Ukraine. Naturally, however, meetings were held with Dutch-registered airlines in the course of the regularly scheduled consultations. See also the answer to question 21 above.

Question 23

The Dutch embassy in Ukraine reported on a meeting held on 14 July, at which it was stated that a military aircraft had been downed the previous day. These reports were made available to the Dutch Safety Board. Can these reports (or failing that, a paraphrased version) be released to the House of Representatives? By what Ukrainian authorities and persons was this meeting convened, and who gave the briefing? Was it a standard briefing? Was explicit mention made in this report/briefing of an increased air threat? Was there any discussion of the other downed aircraft and helicopters (almost 30) at this meeting, which a Dutch diplomat attended? Was it stated at what altitude these aircraft were flying when they were shot down? Was there explicit mention by the Ukrainian hosts of the possibility that these aircraft could have been downed by advanced long-range surface-to-air missiles rather than, say, by relatively simple Man-Portable Air Defence Systems (Manpads)?

Answer:

The meeting on 14 July was organised by Ukraine's Presidential Administration, and the briefing was given by the Minister of Foreign Affairs, Pavlo Klimkin, and the deputy head of

the Presidential Administration, Valeriy Chaly. It was the third in a series of regular fortnightly briefings to a wide group of friendly countries.

During the briefing the Ukrainian Minister of Foreign Affairs outlined the general security situation, particularly the increasing escalation of the conflict in eastern Ukraine and Russia's role in this. The briefing took place the day before the special session of the European Council on 16 July. During the briefing the spokespersons for the Ukrainian government urged the international community above all to adopt a strong stance on Russian interference in the conflict. This was the central theme of the briefing.

The downing earlier that day of an Antonov flying at an altitude of 6,200 metres was cited as an example of the general security situation. The hosts mentioned in this connection the possible presence of anti-aircraft weapons, which, according to them, the separatists did not have. It was not known what weapon system had been used.

On the same day (14 July) the Ukrainian authorities issued a NOTAM setting the minimum flight altitude for Ukrainian airspace at 9.7 km (flight level 320). No statements were made during the briefing about the safety of the airspace. Airlines which had been flying over eastern Ukraine before 14 July continued to do so after the briefing. And airlines which avoided the area had decided to do so previously owing to the air traffic control dispute over Crimea.

A Dutch diplomat was present at the briefing on 14 July. On 23 January the House was informed that the report itself would not be made public. It must be possible to write reports of such briefings and other diplomatic contacts in the knowledge that they will be treated confidentially, particularly since they also contain the views of representatives of other countries. Confidentiality is crucial to the proper functioning of international diplomacy.

Question 24

With what other ministries was the report of the briefing shared? Could it be inferred from the report that the situation in eastern Ukraine had seriously deteriorated? Could it also be inferred from the report that not only had many aircraft (besides the Antonov) been downed, but also that this had occurred at a high altitude and by potentially advanced surface-to-air missiles?

Answer:

The report was received by the Ministry of Foreign Affairs and the Ministry of Defence. The substance of the briefing was also communicated to the Ministry of Security and Justice, the Ministry of the Interior, the Ministry of Finance and the Ministry of General Affairs.

The Dutch Safety Board is investigating how decisions are made on the choice of flight routes. This includes questioning parties involved in civil aviation safety. In addressing the specific question of what information was available to the intelligence and security services, the Dutch Safety Board will be assisted by the Intelligence and Security Services Review Committee. You were informed about this in the Committee's letter to the House of Representatives of 22 December 2014 (reference 2014/0224).

Question 25

Have official reports about regional threat situations ever previously prompted the Dutch government to issue a warning to Dutch airlines, including KLM? Who is responsible for informing the airlines about this? Is there a standard procedure in place, or is this solely the responsibility of the intelligence and security services in their direct dealings with the Dutch airlines?

Answer:

When the intelligence and security services have information about specific threats to civil aviation, they pass this on to the Dutch airlines. They do so through or in consultation with the National Coordinator for Security and Counterterrorism. The intelligence and security services do not investigate global threats to civil aviation and Dutch airlines, but can pass on information about specific threats obtained from other investigations.

Question 26

Was the increased threat to the airspace over eastern Ukraine conveyed to the Dutch authorities in any way other than through press publicity and the briefing?

Answer:

No information was provided to the Dutch authorities about the threat situation in the airspace over eastern Ukraine. Nor was anything said on this subject in the briefing of 14 July. The downing of a Ukrainian military aircraft (an Antonov AN-26) earlier that day was cited by the Ukrainian Minister of Foreign Affairs as an example of the increasing escalation of the conflict and Russia's role in this. Information about the airspace was passed by Ukraine to the airlines through NOTAMs. The NOTAMs concerned have already been passed to you.

Question 27

At the time the disaster occurred, flight MH17 was cruising at an altitude one kilometre lower than shown on the flight plan in order to maintain a sufficient distance from another aircraft (according to the government's letter of 29 August 2014). Does responsibility for the decision to fly at a lower altitude rest with Ukrainian air traffic control, the airline or a different body?

Answer:

Ukrainian air traffic control is responsible for separating air traffic within its designated area and had consequently requested flight MH17, in accordance with its flight plan, to climb to a higher cruising altitude to avoid a potential separation conflict with another flight. Flight MH17 requested permission to continue flying at a lower altitude, which was granted by Ukrainian air traffic control. The other aircraft then climbed to a higher altitude, thereby avoiding a potential separation conflict. A precise description of what happened has been included in the Dutch Safety Board's report of its initial findings. Despite this lower course, the MH17 was still cruising at an altitude of over 9.75 kilometres, the altitude at which it was possible, according to the prevailing NOTAM, to fly safely.

Question 28

What role did KLM play in assisting the next of kin in the hours and days after the disaster?

Answer:

Airlines make agreements about what action is to be taken in respect of code-share flights (flights involving more than one airline). Such flights have a so-called operating carrier and a code-share carrier. In the case of flight MH17, Malaysia Airlines (MH) was the operating carrier and KLM the code-share (marketing) carrier. The operating carrier is the responsible party and hence also the primary contact in the case of disasters of the kind that befell flight MH17. At the request and under the direction and responsibility of MH, KLM provided support for the next of kin through its care team. This support, which started immediately after the crash on 17 July and lasted until mid-September, consisted of calling on the next of kin at home, helping them to complete forms and answering their questions. This was of particular value to Malaysia Airlines since KLM supplied people with a command of Dutch.

Question 29

How many of the people on board had a KLM ticket and how many a Malaysian Airlines ticket?

Answer:

Eleven of the people on board MH17 were KLM code-share passengers (five of whom had Dutch nationality), while two passengers had a Qantas ticket, one a Garuda ticket and 269 a Malaysian Airlines ticket.

Question 30

Can you describe how KLM and the Dutch authorities work together in matters relating to civil aviation safety?

Answer:

KLM and the various Dutch authorities collaborate in matters of aviation safety and security. Consultations on numerous issues, ranging from operational issues to international policy affairs, are held both routinely and on an ad hoc basis.

Question 31

In your answers 8 and 9 of 8 January 2015 to the written questions submitted by MPs Sjoerd Sjoerdsma and Pieter Omtzigt (2014Z00015), you stated as follows: 'In so far as airlines did not fly over eastern Ukraine, this was due to decisions made some months earlier in connection with the chaotic situation in Crimea.' Can you inform us which airlines stopped flying over Crimea some months earlier and explain how you have verified the reasons for this? Did these airlines avoid both Crimea and eastern Ukraine?

Answer:

In answering the written questions of MPs Sjoerdsma and Omtzigt (2014Z00015), we indicated that airlines are responsible for operating their flights safely, and for that purpose they make their own risk assessments. This is done on the basis of official announcements by countries about their own airspace (NOTAMs) and information from other sources. The government does not know what information the airlines have or what their reasons are for making particular decisions. Clearly, however, different airlines may reach different conclusions. This explains why some airlines (including Air France, Virgin Atlantic and Lufthansa) did fly over eastern Ukraine and others did not (British Airways and Korean Air). This was not changed by the briefing of 14 July at which it was announced that an Antonov had been shot down. Airlines which flew over eastern Ukraine continued to do so after 14 July.

In connection with the situation in Crimea, the Ukrainian authorities had made statements about their airspace in various European meetings. An unsafe situation had arisen because

both Ukraine and Russia claimed the right to provide air traffic control services in this airspace. This prompted a number of airlines, including Dutch airlines, to avoid the airspace over Crimea. This had been the case since the conflict in Crimea started in early April.

Question 32

Was the government aware before 17 July that (mobile) surface-to-air missile systems able to reach an altitude of more than 9.7 kilometres were present in Ukraine and not in the hands of the Ukrainian army?

Answer:

The Dutch Safety Board is investigating how decisions are made on the choice of flight routes. This includes questioning parties involved in civil aviation safety. In addressing the specific question of what information was available to the intelligence and security services, the Dutch Safety Board will be assisted by the Intelligence and Security Services Review Committee. You were informed about this separately in the Review Committee's letter to the House of Representatives of 22 December 2014 (reference 2014/0224).

Question 33

What was the basis for Ukraine's decision to set the minimum flight altitude at 9.7 kilometres?

Answer:

We had no information other than that which appears in the NOTAM. It is the sovereign right of each country to assess the safety of its own airspace. The Netherlands has no part to play in assessing the safety of the airspace of other states.

Question 34

Why did the Netherlands immediately accept Ukraine's minimum flight altitude of 9.7 kilometres?

Answer:

It is the sovereign right of each country to assess the safety of its own airspace. The Netherlands has no part to play in assessing the safety of the airspace of other states.

Question 35

What weapon system was used to down the Antonov on 14 July? Why did you not immediately inquire about the type of weapon system involved in this incident?

Answer:

During the briefing, the Ukrainian Minister of Foreign Affairs outlined the general security situation, particularly the increasing escalation of the conflict in eastern Ukraine and Russia's role in this. The downing of the Antonov flying at an altitude of 6,200 metres was cited as an example. The Ukrainian Minister of Foreign Affairs shared the information that was available at the time. This did not include the type of weapon system that was used, which is still unknown.

Question 36

Are you prepared to request Ukraine to waive its objections to disclosure of the report of the briefing of 14 July 2014?

Answer:

The House was informed on 23 January that the report itself would not be disclosed. It must be possible to write reports of such briefings and other diplomatic contacts in the knowledge that they will be treated confidentially.

Question 37

Since when has it been sufficient for airlines to rely on information in the public domain to assess possible airspace risks?

Answer:

Individual airlines are responsible for ensuring the safe operation of their flights and to that end make their own risk assessments. In compliance with national and international legislation, when preparing flights, airlines use internationally available information supplied by countries about their own airspace, such as Notices to Airmen (NOTAMs), as well as information from other sources. If the intelligence and security services have specific information about threats to civil aviation, they will pass this on to the Dutch airlines through or in consultation with the National Coordinator for Security and Counterterrorism.

Question 38

Can you define what is meant by 'information in the public domain'?

Answer:

Information in the public domain means information that is accessible to everyone.

Question 39

Is it true that the intelligence and security services do not routinely provide the airlines with information?

Answer:

See the answer to question 25.

Question 40

Was the information provided by General Breedlove on 30 June previously shared at diplomatic level with NATO partners, including the Netherlands? If so, when?

Answer:

At the press conference the general discussed the presence of heavy weaponry in the vicinity of the Russo-Ukrainian border, the suspected arming of the separatists by Russia and their training with heavy equipment on the eastern side of the border. At the time of the briefing by General Breedlove on 30 June this information was known to the NATO allies.

Question 41

Why did the government consider it necessary to validate reports of aircraft downings but not the Ukraine's estimate that it was safe to fly at an altitude of over 9.7 kilometres?

Answer:

The present system of international air safety is based on three main pillars, namely the sovereign right of each country to control its own airspace, binding international law such as the Convention on International Civil Aviation (ICAO), and the responsibility of each airline for ensuring the safe operation of its flights. Under this system Ukraine can close certain parts of its airspace. The intelligence and security services do not investigate global threats to civil aviation and Dutch airlines. However, they do validate facts and circumstances when they become a subject of investigation. If the Dutch authorities have information about specific threats to civil aviation, they share it with the Dutch airlines. See also the answer to question 24 above.

Question 42

Is it correct that reports of downed aircraft must always be individually validated, regardless of the numbers involved, before any warning can be given by the government to civil aviation?

Answer:

This question does not admit of a simple answer since it depends on the situation. Whether and to what extent the downing of aircraft in a given area affects the safety of civil aviation depends on assessment of the circumstances such as location, flight altitude and the type of aircraft, as well as the extent to which the intentions, capabilities and activities of the parties on the ground pose a specific threat to civil aviation.

Question 43

What is the exact meaning of 'validation'?

Answer:

Validation is the qualitative assessment of incidents, occurrences and developments by reference to data already available about (in this case) the intentions, capabilities and activities of the parties to the conflict.

Question 44

How long does it take on average to validate a report of the downing of an aircraft?

Answer:

It is impossible to give a standard length of time. The time needed depends on the nature of the circumstances, the intelligence and analysis capacity available and the level of priority accorded to the validation.

Question 45

Does the government proceed on the principle that airspace is safe until reports to the contrary have been validated?

Answer:

Individual airlines are responsible for ensuring the safe operation of their flights and to that end make their own risk assessments. Airlines comply with the airspace restrictions announced by the country concerned. Civil aviation authorities are thus responsible for managing their airspace and, where necessary, closing it for safety reasons. If the intelligence and security services have information about specific threats to civil aviation, they will pass this on to the Dutch airlines.

Question 46

Is it true that the airlines that were no longer flying over eastern Ukraine made that decision solely because of the dispute between the Ukrainian and Russian air traffic control organisations? If not, what led them to make this decision?

Answer:

See the answer to question 31 above.

Question 47

Have there been even minor changes since 17 July 2014 to the chain of intelligence communication and to the procedure for notifying airlines of information about safety threats, particularly in the light of what has since become known?

Answer:

A public information system to be established by ICAO was discussed this week at the High-Level Safety Conference in Montreal. You will receive separate information about this from the State Secretary for Infrastructure and the Environment. The existing system, under which the Dutch authorities share with the airlines any information they have about specific risks to civil aviation, has remained unchanged.

Question 48

How do the intelligence and security services normally deal with unverifiable information concerning potential threats to the safety of civil aviation? Are there guidelines for this? If so, what form do they take?

Answer:

The intelligence and security services do not investigate the global threat to civil aviation and Dutch airlines, but can pass on information about specific threats obtained from other investigations.

Question 49

The General Intelligence and Security Service (AIVD) itself states that much of the information which it gathers comes from public sources. When precisely do the intelligence and security services deem data to be 'validated' or 'verified'? Don't these services have a duty to warn organisations such as airlines in all circumstances, regardless of whether information about the danger is in the public domain as a result of media coverage?

Answer:

If the Dutch authorities have information about specific threats to civil aviation, they share it with the Dutch airlines.

Question 50

What is your reaction to the detailed reconstruction carried out by the German investigation agency Correctiv, the German magazine *Der Spiegel* and the Dutch newspaper *Algemeen Dagblad* and their conclusion that flight MH17 was shot down by a Russian BUK surface-to-air missile of the Russian 53rd Air Defence Brigade?

Answer:

As noted previously, both investigations (by the Dutch Safety Board and the Public Prosecution Service) are still in progress, and it would be wrong to anticipate their findings. In principle, the information from the reconstruction, like all other press publications, can be taken into account in both investigations.

Question 51

How intense is the fighting on and around the crash site at present and how is this affecting the continuation of the two current investigations?

Answer:

Fighting along the frontline has greatly intensified since 8 January, with frequent use of heavy weapons. The frontline is in the immediate vicinity of the crash site, which is within the range of artillery. The repatriation investigation at the crash site is not possible at present because of the frozen state of the ground and wintry conditions, but will be resumed as soon as possible. A decision on when the investigation can resume will be made by the fact-finding mission.

See also the answer to question 11 above.

Question 52

What are the results and findings of the Ukrainian investigation into the alleged attempted attack on the Dutch delegation in Kharkiv, which is referred to in the government's letter, and, if the investigation is still in progress, when are its findings expected?

Answer:

The Ukrainian investigation is still in progress.

Question 53

Are you aware of the reports on fighting around Donetsk airport? Do you consider it likely that the capture of the airport by the rebels will cause further delays for the repatriation mission? And do you also consider it likely that the fall of the airport would bring about a change in the balance of power between the Ukrainian government and the rebel groups?

Answer:

Donetsk airport is not of direct military importance, but is of great symbolic value to both sides. The capture by separatists of the ravaged airport will probably not bring about a change in the balance of power.

Question 54

How are the arrangements for the receipt of death certificates from Ukraine and their translation into Dutch progressing, and do they make full allowance for the needs of the victims' next of kin?

Answer:

At the request of the next of kin, death certificates have already been issued by The Hague District Court for the Dutch victims and victims of foreign nationality resident in the Netherlands. However, this court is not competent to issue certificates for foreigners resident abroad. Death certificates for these victims are being issued by Ukraine. The Ministry of Foreign Affairs has agreed a procedure with Ukraine for the issuing of these death certificates. This procedure is being coordinated by the Ministry of Foreign Affairs, which is also arranging for the certificates to be translated and the translations to be legalised or apostilled. The procedure has been designed to take maximum account of the needs of the next of kin. The first death certificates issued by Ukraine have been translated into Dutch and English. Before they can be handed over to the next of kin they must be legalised or apostilled. It is hoped that the first Ukrainian death certificates can be issued to the next of kin in the next few weeks. The embassy concerned or the family liaison officers will arrange for them to be handed over, depending on the situation of the next of kin.

Question 55

Has the Combined Joint Interagency Task Force (IP-CJIATF) already been scaled back? What is its present size?

Answer:

Yes, the IP-CJIATF has already been scaled back to the point where a Dutch mission in Kiev is now maintaining contact with the local and national authorities. However, personnel of the Ministry of Defence and the National Police are ready to be deployed within 48 hours in order to investigate, as soon as circumstances permit, whether and on what conditions the operation can be resumed. In addition, the Head of Mission, the special military adviser and the commander of the IP-CJIATF and his deputy will pay six-weekly visits to the national and local authorities, in particular to the Ukrainian Minister of the Interior, the Governor of Kharkiv and the special official appointed to assist the governor in dealing with the MH17 disaster.

Question 56

Can you arrange for disclosure of the arrangements on confidentiality and secrecy to the House of Representatives?

Answer:

In so far as this question concerns the JIT agreement, disclosure would not be appropriate since the agreement contains operational provisions relating to an ongoing criminal investigation. Naturally, the Netherlands wishes to ensure that the investigation is not compromised and can take place in strict confidentiality.

Question 57

Is broad support and cooperation still forthcoming in the UN Security Council and the UN generally for the investigations carried out by the Dutch Safety Board and the Public Prosecution Service, and what has been Russia's attitude in the period since the government sent its letter to the House?

Answer:

There is still broad support in the UN, specifically in the UN Security Council, both for the Dutch-led technical investigation into the circumstances of the crash and for the criminal investigation. Russia's attitude has remained unchanged since the government's letter.

Question 58

How has the cooperation with Australia and Malaysia progressed since the government's letter to the House?

Answer:

Malaysia and Australia have been actively involved in both investigations. Australia is a member of the JIT and there is intense cooperation with the Australian authorities both in the

Netherlands and at the field office in Kiev. Last December the formal admission of Malaysia as a member of the JIT was approved. The parties are now working to reach agreement on the division of responsibilities, the exchange of information and various practical matters.

Question 59

How is the cooperation with the MH17 Aviation Disaster Foundation progressing, and what assistance is the government providing to this foundation for the next of kin?

Answer:

The Minister of Security and Justice met with the board of the MH17 Aviation Disaster Foundation on 9 January. There are monthly meetings between the foundation and the National Coordinator for Security and Counterterrorism. The cooperation and coordination are going well. It is been agreed that all initiatives for the erection of memorials and plaques and the creation of places of remembrance should be arranged through the foundation. A financial contribution has also been made to the foundation on behalf of the government. Talks have also been recently held with the foundation by representatives of the government, the Public Prosecution Service and the Dutch Safety Board. In consultation with the government, Victim Support Netherlands and the Impact Foundation are assisting the board of the foundation in carrying out its activities.

Question 60

What information forms the basis for the statement 'It is probable that not all these aircraft were shot down'? Do you have information from which it can be inferred with certainty that some aircraft were shot down?

Answer:

According to our information, eleven aeroplanes and eight helicopters crashed over eastern Ukraine in the period from 15 April to 17 July 2014. As this information is drawn from public sources (disclosed by parties with varying interests) and as it is not the duty of Dutch intelligence services to verify the accuracy of this information, we are unable to supply an itemised and validated list.

Question 61

Can you indicate, as requested on various occasions, precisely what happened to each aircraft that crashed in eastern Ukraine in the period from April to 17 July, stating the probable cause and flight altitude?

Answer:

As noted previously, the intelligence and security services did not have specific instructions to investigate the safety of the airspace over Ukraine, and therefore they do not have sufficient information to be able to say with certainty what caused the aircraft to crash. In any event, all the crashes involved military aircraft which were flying significantly lower than the minimum altitude of 9.7 km mentioned in the NOTAM.

Question 62

What diplomats of what countries were present at the briefing given by the Ukrainian authorities on 14 July when it was reported that an Antonov flying at an altitude of 6,500 m had been downed?

Answer:

As noted previously, this briefing was attended by a wide group of countries on friendly terms with Ukraine. Disclosing what countries were represented at the briefing is a matter for Ukraine.

Question 63

Can you send the House the report of the briefing by the Ukrainian authorities on 14 July, as you gave an undertaking to Mr Jansen (of the *Telegraaf* newspaper) in the press conference of 9 January to examine whether and, if so, how this could be disclosed (possibly confidentially)?

Answer:

The House was informed on 23 January that the report itself would not be made public. This is because it must be possible to write reports of such briefings and other diplomatic contacts in the knowledge that they will be treated confidentially. The substance of the briefing has been communicated in previous answers and also above. The report has been made available to the Dutch Safety Board, pursuant to the Dutch Safety Board (Kingdom) Act, for the purposes of the ongoing, independent investigation.

See also the answer to question 36 above.

Question 64

Was it stated at the briefing given by the Minister of Foreign Affairs of Ukraine, at which the Dutch diplomat was present, that it was possible or probable that the Antonov had been

downed on 14 July by a surface-to-air missile? Was this information also contained in the report sent to the ministries?

Answer:

It was stated at the briefing that the Antonov had been downed by anti-aircraft fire. According to the Ukrainian authorities, this pointed to the active involvement of Russia. Ukraine published this information in a press release the following day.

Question 65

What ministries received the report of the Dutch diplomat of 14 July?

Answer:

The report was received by the Ministry of Foreign Affairs and the Ministry of Defence. The substance of the briefing was also communicated to the Ministry of Security and Justice, the Ministry of the Interior, the Ministry of Finance and the Ministry of General Affairs.

See also the answer to question 15 above.

Question 66

Can you provide the House with a translation of the press release issued by the Ukrainian authorities about the briefing of 14 July?

Answer:

The press release of the Ukrainian authorities as posted on the website of the Presidential Administration has been enclosed with this letter, together with a working translation into English.

Question 67

What ministries and services knew of General Breedlove's warning on 30 June 2014 that the Russians were training the rebels to use heavy weaponry, including surface-to-air missiles? Can you send the House the relevant documents containing this information?

Answer:

The press conference given by General Breedlove on 30 June 2014 was public. At the press conference the general discussed the presence of heavy weaponry in the vicinity of the Russo-Ukrainian border, the suspected arming of the separatists by Russia and their training

with heavy equipment on the eastern side of the border. A transcript of the press conference can be found at: <http://www.defense.gov/Transcripts/Transcript.aspx?TranscriptID=5456>.

Question 68

Was a report of General Breedlove's briefing made by a member of the Dutch military or a Dutch official or diplomat present at the briefing? If so, could you publish this and inform the House who received it?

Answer:

This was a press conference for the media. No Dutch government officials were present.

Question 69

Did the Dutch authorities receive reports in the period from January to 17 July 2014 that Ukraine was possibly using civilian aircraft as human shields by ordering its own aircraft to fly immediately below them? If so, can you indicate when these reports were received and what form they took?

Answer:

No reports of this kind were received.

Question 70

Have you ever received any information suggesting that one or more aircraft flew with or immediately below MH17 while it was in the airspace over eastern Ukraine? If so, what information?

Answer:

Russia has alleged that aircraft were flying close to or below MH17. There has been no other evidence to support this allegation.

Question 71

Why are our intelligence and security services still unable to provide a precise list of the number of aeroplanes and helicopters shot down?

Answer:

As the information comes from public sources and cannot be validated by the Dutch intelligence and security services, there is no validated list of downed or crashed Ukrainian aeroplanes and helicopters.

Question 72

Have our intelligence and security services shared information with airlines in the past, for example about the safety of the airspace in other parts of the world? If so, when?

Answer:

See the answer to question 25 above.

Question 73

Does the government still stand behind the following answer, which it gave during its meeting of 25 July 2014 with the Permanent Committees for Foreign Affairs and Security & Justice: 'In so far as it is possible to ascertain, no international civil aviation authority or intelligence and security service issued a recommendation before 18 July to avoid Ukrainian airspace. Airlines which were no longer flying over Ukrainian airspace, such as British Airways, had made their own assessment of the situation.'?

Answer:

Yes, as far as we know, no other countries issued a warning concerning the safety of Ukrainian airspace, with the exception of the airspace over Crimea.

Question 74

What is the current status of the proposal by a team of international experts to draft guidelines on making risk analyses for flying over conflict zones, and how can the central exchange of relevant and reliable information about the risks of flying over conflict zones be improved? What steps are being taken and/or prepared in this respect? Were there any guidelines already in place on making risk analyses for flying over conflict zones? If so, in what respect do you expect the new guidelines to differ from them?

Answer:

The proposal drawn up by ICAO on how to improve risk analyses for flying over conflict zones will be discussed this week during its High-Level Safety Conference. You were informed about this by letter on 30 January. The existing ICAO material on risk analyses for civil aviation will thus be expanded to include guidelines specifically on the risks of flying over conflict zones. These guidelines can be used by all those involved in making risk analyses of this kind, for example states and airlines. The proposal deals, among other things, with the main risk factors to be taken into account in a risk analysis. It also contains a list of public websites where information relevant to risk analysis can be gathered, and describes a

methodology that can be used for sound risk analysis. The issue of the central exchange of relevant and reliable information about the risks of flying over conflict zones is dealt with by the government in its answer to question 76.

Question 75

When can you inform the House about what action has been taken on the Dutch proposal to include guidelines on the provision of information to passengers about flying over conflict zones in the work programme of the Task Force on the Risks to Civil Aviation arising from Conflict Zones (TF RCZ)? Has this subject already been tackled by the International Air Transport Association (IATA)?

Answer:

The work programme will be submitted to the ICAO member states this week during the High-Level Safety Conference. No concrete proposal on this subject has yet been published. During the conference the Netherlands will ascertain what progress has been made and urge that a set of best practices be developed quickly. We will inform you afterwards of the outcome of the conference.

Question 76

How does the government view the prototype information-sharing system for flying over conflict zones which the ICAO will present during its High-Level Safety Conference in February, what action will it take on this and what does it see as a good practice?

Answer:

This proposal relates to the creation of a global information system for sharing relevant information. The information available to a given airline depends on its individual contacts and capabilities and on the country in which it is based, and therefore differs from airline to airline. A global information system could at the very least help to reduce the differences in the amount of information available to individual airlines.

The proposal for a prototype system for exchanging information about flying over conflict zones can be seen as a good first step and will be supported by the Netherlands in the ICAO.

Question 77

Can you state whether the United States and Russia have now shared all relevant information with the Dutch Safety Board and the Joint Investigation Team (JIT)? Has all

relevant information been requested by the Dutch Safety Board and the JIT, and are the United States and Russia cooperating in providing the requested information?

Answer:

It is standard practice for information to be shared within a JIT by means of requests for legal assistance. Requests for legal assistance have been submitted to both Russia and the United States in the context of the criminal investigation. These complex requests are being dealt with by the requested countries with due care. This is taking time, which is not unusual in the case of requests of this kind. Both countries are still dealing with the requests and are in contact with the Dutch authorities about responding to them.

The Dutch Safety Board cannot provide information about the information requested and received in the context of the technical investigation.

Question 78

What is the significance of the non-disclosure agreement between the Netherlands, Australia, Belgium and Ukraine? Is it true that the provisions of this agreement require consensus between the parties before information concerning the investigation can be disclosed? If not, what is its significance? (source: <http://www.rtlnieuws.nl/nieuws/binnenland/vetorecht-oukraine-strafonderzoek-mh17>)

Answer:

The agreement establishing the JIT includes provisions on how information should be gathered, shared and used. As this concerns an ongoing criminal investigation, the participating countries have agreed that in the interests of the investigation they will not disclose substantive information unless they all agree that the investigation permits this.

Question 79

Why was the House previously informed that there was no non-disclosure agreement (Parliamentary Paper no. 33997-17)?

Answer:

It is not an agreement but a procedure, which is perfectly normal in the case of criminal investigations (and related international cooperation).

Question 80

When will the cockpit voice recordings and the airspace radar data (including the radar data of the airspace below 32,000 feet) be released?

Answer:

Pursuant to paragraph 5.12 of Annex 13 to the ICAO Convention, the recordings and radar data will not be released.

Question 81

Is the Dutch Safety Board also permitted to investigate the National Coordinator for Security and Counterterrorism and question members of the National Coordinator's staff under oath, if it considers this necessary?

Answer:

Yes, the Dutch Safety Board (Kingdom) Act makes provision for this.

Question 82

Is it true that the Dutch Safety Board is carrying out three technical investigations into the MH17 attack? Why is only one of three investigations being reported on? Can you provide information about the issues being dealt with in the other two investigations, the progress made with them and so forth, and also request the Board to post reports of these investigations on its website.

Answer:

The Dutch Safety Board announced on 18 July 2014 that it was investigating both the decisions leading to the choice of flight routes and the availability of passenger lists. On 23 July 2014, at the request of Ukraine, it assumed responsibility for leading the international investigation into the cause of the crash. On 25 July 2014 the Board explained on its website the aims of these three investigations.

Question 83

Did the National Coordinator for Security and Counterterrorism ever share relevant safety information about Ukraine (including Crimea) with airlines in 2014? If so, what information and when?

Answer:

No, the National Coordinator shares information with airlines only if there is information about specific threats to the safety of civil aviation. This was not the case here.

Question 84

Has agreement been reached with other countries about the prosecution of suspects? Or, to put it another way, has agreement been reached on whether suspects will be tried in one of the countries concerned or before an international court? Please provide a detailed account of the current position because a letter was promised on this subject before 28 November.

Answer:

The criminal investigation is still in the fact-finding stage. No agreement has yet been made about the prosecution of any suspects.

Question 85

When will the House receive the letter about the options for prosecution?

Answer:

After the Minister of Security and Justice had promised a broadly-worded memorandum on the options for prosecuting and trying suspects, your House was confidentially informed by the Public Prosecution Service about the progress of the investigation. During the meeting with the Permanent Committee for Foreign Affairs on 13 November 2014 the Minister undertook to ensure that your House would again be briefed by the Public Prosecution Service once the state of the investigation permits this. The Minister of Security and Justice will also inform the House in more detail about the prosecution options once the international investigation permits this. We consider it to be of the utmost importance for the Public Prosecution Service to be able to continue its investigation unhindered.

Question 86

Is it certain that any suspects will be tried in the Netherlands?

Answer:

See the answer to question 84 above. No agreement has yet been made about prosecution.

Question 87

Why does the evaluation by the Research and Documentation Centre (WODC) relate only to the period after 17 July?

Answer:

As already described in the outline sent to your House (enclosure with the letter to the House of Representatives of 22 December 2014), the evaluation by the Research and Documentation Centre of the Ministry of Security and Justice focuses on the functioning of the national crisis management organisation. This organisation began operating on 17 July 2014 immediately after the MH17 crash. That date is therefore the logical starting point for the period to be covered by the evaluation.

Enclosure: Press release of the Ukrainian authorities of 14 July 2014.