

Questions by member Omtzigt (Omtzigt) to the Minister of Infrastructure and Water Management about the investigation by the Dutch Safety Board (DSB) into the air disaster in Faro, in which 56 people died and 106 were seriously injured. (Questions submitted October 11, 2021).

Reply by Minister Visser (Infrastructure and Water Management -*IenW*-) (received 1 December 2021)

See also Appendix Bulletin, session year 2021-2022, no. 543

Question 1

Do you recall that on 18 August 2020, your predecessor in office requested the DSB to conduct further research as a result of the *EenVandaag* TV-broadcast of 16 January 2016, the expert investigation and the final verdict in the court case (in which the State was held liable for 20% of the unpaid damages)?

Answer 1.

Yes.

Question 2

Do you recall that the court ruled harshly on the *Dutch Aviation Safety Board* (Board), the legal predecessor of the DSB, when it rendered its verdict, as follows:

Question 3

"...the *Board* [has] acted negligently and unlawfully. In the investigation into the causes of the disaster the Board put forward too strongly that a so-called windshear (sudden change in wind speed and direction) should be considered the primary cause of the accident. However, in the final Report of Accident of the *Portuguese Safety Board (D.G.A.C.)*, windshear was not recognized as a cause"?

Answer 2.

I have taken note of the ruling of the Court of The Hague in the case about the damage of the air disaster in Faro in which the Court concluded that the *Board* had drawn a conclusion that was too firm or wrong on certain points and/or had informed the victims and surviving relatives incorrectly or incompletely; and ruled that the State is liable for 20% of the damage suffered by the plaintiffs insofar as this damage has not yet been compensated under the settlement agreements and does not exceed the liability limit of the Warsaw Convention. Your Chamber was further informed about this ruling on 11 May 2020 (Parliamentary Papers 2019-2020, 24804, no.130).

NB In her answer, the Minister combined questions 2 and 3 to one single answer. This is why the numbering of questions and answers deviate from this point

Question 4

Do you recall that on August 18, 2020, your predecessor explicitly sketched, "By letter dated October 5, 2017, additional information obtained from the Portuguese investigation body was transferred to the DSB. I request that you also include this information in your investigation."?

Answer 3.

Yes. See the answer to question 10 for an explanation of the information transferred to the *DSB*.

Question 5

Are you aware that the State, as the owner of the aircraft, had an interest in the outcome of the investigation carried out by the Board, which was then part of the Ministry?

Answer 4.

Although the State was the owner of the aircraft, it was operated under the full responsibility of *Martinair* at the time of the accident. The State therefore had no interest in the outcome of the investigation. The investigation was conducted by the *D.G.A.C.*, the *Board* contributed to the investigation in accordance with the *Chicago Convention on International Civil Aviation*.

Question 6

Are there any relevant matters known about the accident (about the purchase and ownership of the aircraft, about the contracts under which *Martinair* leased the aircraft back from the State, about political or other interference in the investigation) that are known to the Government but have not yet been brought out? If so, would you hereby report them to the Parliament?

Answer 5.

As far as I have been able to ascertain within the Ministry of *IenW*, no matters have come to light regarding the above subjects that have not already been shared with the *DSB* for the purpose of the investigation. The information known to the Ministry of *IenW* concerning the investigation into the Faro disaster was transferred to the National Archives in 2010. It concerns in particular the archives of the *Board* and the *State Aviation Administration*. As also indicated in the answer to question 10, the *DSB* had full access to the files concerned at the *National Archives*.

Question 7

How is it ensured that the *DSB* conducts an independent investigation into the actions of the *DSB's* predecessor, the *Board*?

Answer 6.

Since 1 February 2005 the *DSB* has been the legal successor to the *Council for Transport Safety*, which took over some of the tasks of the *Board* in 1999. The *Board* was part of the Ministry of Transport, Public Works and Water Management, the predecessor in law of the Ministry of Infrastructure and Water Management. Unlike the *Dutch Civil Aviation Authority*, the *DSB* was established as an independent administrative body (ZBO), independent of my Ministry. This ZBO falls under the ministerial responsibility of the Minister of *JenV*.

The independence of the *DSB* is partly guaranteed by the *Dutch Safety Board Act*. This *Act* is applicable to the present investigation, as well as the regulations forming part of it.

Question 8

Did you ask the *DSB* to conduct a more extensive investigation and in any case to include the matters related to the engines and the Portuguese report, in response to the fact that the *DSB* indicated in a letter to you on 14 September 2020 that it would conduct a limited investigation into the landing gear only and that that investigation would be completed in early 2021?

Answer 7.

The investigation and the research question to be submitted were decided in response to *Question Time* in your House of Representatives on 19 January 2016. During this *Question Time* the then *State Secretary of Infrastructure and the Environment* promised, in response to the TV *EenVandaag* broadcast on 16 January 2016 about the Faro air disaster and questions from Member of Parliament *Monasch*, to be prepared to request the *DSB* to conduct further investigation into any new facts. On 16 February 2016, your House was subsequently informed by letter of the request also sent on 16 February to the Chairman of the *DSB* (Parliamentary Paper 24804, no. 88). In this context, written questions from members *Omtzigt* and *Van Helvert* were also answered (see Appendix to the Bulletin, session year 2015-2016, 2040).

In the request of 16 February 2016 to the *DSB*, taking into account what was discussed in the aforementioned question time of 19 January 2016, it was requested to investigate whether, based on what was presented in the broadcast of *EenVandaag* of 16 January 2016, there are new facts and, if so, whether these facts shed a different light on the accident and the accident investigation carried out at the time. In response to the request of 16 February 2016, the *DSB* has indicated that it first wishes to await the outcome of the expert investigation involved in the court case. Following the ruling by the District Court of The Hague, the *DSB* undertook the further investigation at the request of the Minister of IenW. Within this framework, the *DSB* indicated on 14 September 2020 that it would conduct a limited investigation.

The *DSB* published its investigation results on Thursday 18 November 2021. The *DSB* indicates that in order to gain insight into the maintenance performed, in addition to answering the specific question regarding the status of the landing gear, they also formed a picture of the status of the overall maintenance of the aircraft. The *DSB* concluded that the aircraft complied with all maintenance requirements and was airworthy upon departure from Amsterdam for the flight to Faro. I also submitted this report by letter to the House of Representatives on 23 November.

Question 9

Do you assess the *DSB*'s investigation question as complete or not?

Answer 8.

As also explained in the answer to question 6, the *DSB* is an independent administrative body. The *DSB* has investigative powers and can independently decide whether and how to answer the government's questions.

In this case the *State Secretary of Infrastructure and the Environment* has requested the *DSB* the following (see parliamentary paper 24804, no. 88): "I request you to investigate whether, based on what has been presented in the broadcast of *EenVandaag*, there are new facts

and, if so, whether these facts shed a different light on the accident and the accident investigation carried out. To this the *DSB* has answered as follows: "The *Dutch Safety Board (DSB)* will conduct a limited investigation that will focus on the technical questions regarding the landing gear."

Question 10

If the *DSB* did not want to adopt the government's question, was there consultation with the *DSB* about this and did they agree to the new question?

Answer 9.

As explained in my answer to question 8, the *DSB* determines independently whether and how it will take on board government research questions.

Question 11

Can you provide an overview of all the documents that the State made available to the *DSB* for this investigation?

Answer 10.

The following information was made available to the *DSB* for the purpose of its investigation:

a) I sent the information received from the *D.G.A.C.* by letter on 5 October 2017, including 15 appendices ;

b) Full access at the *National Archives*, number archive inventory: 2.16.107: 2608-2636 Documents concerning the accident with the PH-MBN, McDonnell Douglas DC-10 on 21 December 1992 at Faro, Portugal , ;

Pursuant to Annex 13 of the *Chicago Convention and the Dutch Safety Board Act*, the above documents cannot be made public.

Question 12

Are there also relevant documents about the air disaster that have not yet been made available to the *DSB*? If so, which?

Answer 11.

See answer to question 5.

Question 13

Have any documents in this case been declared *State Secret*? If so, which ones and can the Parliament receive a copy?

Answer 12.

None of the documents have been designated as state secrets. However, the information made available for the *DSB* investigation involves information that cannot be disclosed pursuant to Annex 13 to the *Chicago Convention* and the *Dutch Safety Board Kingdom Act*. However, I can share this information with your House in confidence if you so request.

Question 14

Has the *DSB* at any time encountered limited cooperation from the State in its investigation? If so, with whom and about what?

Answer 13.

In order to answer this question properly, I have contacted the *DSB*. They confirmed by e-mail that "in the course of this investigation all parties involved have fully cooperated".

Question 15

Can you indicate when the *DSB* expects to conclude the investigation?

Answer 14.

The *DSB* published the conclusions of its investigation on 18 November 2021.

Question 16

Can you answer these questions one by one and within three weeks?

Answer 15.

The questions have been answered one by one. Unfortunately, due to the coordination required, it was not possible to answer the questions within three weeks.

Source:

<https://www.tweedekamer.nl/kamerstukken/kamervragen/detail?id=2021Z17645&did=2021D37955>

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