
Kingdom Act Instituting a Safety Investigation Board (Kingdom Act concerning Safety Investigation Board)

EXPLANATORY STATEMENT

(The article numbers in this statement refer to the concept of the Act as discussed in Parliament; the article numbers that match with the final Kingdom Act can be found in the following table .)

Old	Final	Old	Final	Old	Final
1	1	28	34	61	66
2	2	29	35	62	67
3	3	30	36	63	68
4	4	31	37	64	69
5	5	32	38	65	70
6	6	33	39	66	71
7	7	34	40	67	72
8	8	35	41	68	73
9	9	36	42	69	74
10	10	37	43	69a	75
11	11	38	44	69a	76
12	12	39	45	70	77
12a	13	40	46	71	78
13	14	41	47	72	79
14	15	42	48	73	80
15	16	43	49	74	81
16	17	44	50	75	82
17	18	45	51	76	83
18	19	46	52	77	84
18a	20	47	53	78	85
18b	21	48	54	79	86
18c	22	49	55	80	87
18d	23	50	56	81	88
18e	24	51		82	89
19	25	52	57	83	90
20	26	53	58	84	91
21	27	54	59	85	92
22	28	55	60	86	93
23	29	56	61	87	94
24	30	57	62	88	95
25	31	58	63	89	96
26	32	59	64	90	97
27	33	60	65	91	98

GENERAL

CHAPTER 1. INTRODUCTION

General purport of the legislative proposal

This present legislative proposal is intended to institute a Safety Investigation Board. The task of the Board will be the investigation of incidents with unfortunate consequences and incidents that could have had unfortunate consequences, as well as the investigation of the consequences of such incidents. It is to establish the causes or probable causes of the incidents and of the extent of the consequences thereof. If it sees any reason to do so it will have to attach recommendations to these observations for measures to be taken to such an effect that in future safety will be increased.

Safety is a decisive factor for the quality of life. Safety is threatened by acts of war, terrorist attacks and criminality. Violation of safety may also be the result of natural disasters and smaller natural events. However, safety will be affected just as much in consequence of human acts or defective objects. The risk of such accidents has strongly increased due to the progress of technical developments and the increasing application thereof. The tragic Enschede firework disaster, the fire in the Volendam café and the disaster at the Toulouse factory have recently brought the existing risks into focus. Apart from these disasters smaller accidents happen frequently.

The aim is to take measures in order to limit the risk of accidents in social life. The authorities play an important part in this. For some time now the view is held that by studying the accidents and near-accidents a lot of knowledge can be gained about the possible causes of such events. Investigating such incidents therefore offers an important source of knowledge for measures aimed at the increase in safety through accident prevention. By instituting the Safety Investigation Board a body is created that will occupy itself with the aforesaid study in as wide a field as possible and with the formulation of recommendations for measures on the basis of this study.

History

Transport

In the field of transport there is a long tradition of independent bodies that investigate the causes of accidents. As early as the beginning of the previous century the Maritime Court of the Netherlands was established, assigned to conduct investigations into the causes of shipping disasters, whereby the concept of 'shipping disaster' was broadly defined. In 1931 a separate Committee Inland Shipping Disasters Act was instituted for inland shipping. In 1935 the Civil Aviation Disasters Act introduced the Civil Aviation Board for investigation into aviation accidents. In 1956 the Railway Accidents Inquiry Board was instituted for the investigation of railway accidents.

The aforesaid bodies did not have the task to take responsibility for the investigation of accidents from the very first collection of factual information. The initial examination of the facts, the so-called preliminary investigation, was assigned to a service coming under the Ministry of Transport, Public Works and Water Management and the Dutch Railway Company (NS) respectively. In the beginning of the nineties this changed with respect to aviation, because of the Civil Aviation Accidents Act. By virtue of this Act the entire investigation into the causes of accidents and incidents in aviation were placed under the responsibility of the Civil Aviation Board.

In 1999 the sectoral approach to accident investigation in the field of transport was replaced by a multisectoral approach. In the very same year the Transport Safety Board was instituted, which was assigned to conduct investigations into the causes of accidents and incidents for all sectors of transport. In the first place this Board started to cover the transport sectors for which previously the aforesaid sectoral boards had been instituted. Consequently, when the Transport Safety Board was instituted the Committee Inland Shipping Disasters and the Railway Accidents Inquiry Board were dissolved. For the time being, the Maritime Court of the Netherlands has been maintained until new provisions will be made for the disciplinary function this court also exercised. In the second place, the Transport Safety Board started to cover sectors for which no investigation committee existed so far: road transport and pipe-line transport. In the Transport Safety Board Act the development pointed out above, started by the Civil Aviation Accidents Act, was extended to all transport sectors: the entire investigation was placed under the responsibility of the Board.

Defence

In the field of Defence the Netherlands Naval Board was established in 1928. This board was assigned to conduct investigations into the causes of disasters and accidents that happened to Dutch warships. Furthermore, in 1987 the Advisory Body on Civil Aviation Accidents was instituted by the Ministry of Defence, which was assigned to conduct investigations into the causes of accidents with aircraft of the Royal Air Force and the Royal Navy.

In the nineties it was decided to review the system of the investigations into accidents in the field of Defence. For this purpose in 1998 a legislative proposal for a Kingdom Act concerning the institution of a Defence Accidents Board (Defence Accidents Board Act; parliamentary documents II 1997-1998/26 110, R 1619) was submitted to the Second Chamber. This new board was to take over the task of the Netherlands Naval Board and the Advisory Board concerning Civil Aviation Accidents at the Defence department, and would also be assigned to investigate other military accidents. Reasons why a separate board for defence accidents beside the Transport Safety Board was opted for, were the deviating military ordnance, which requires special knowledge, the fact that there are specific (NATO) regulations on accident investigation, aspects of secrecy, the relations with foreign countries where investigations usually take place under a military flag as well, and the fact that investigations in the field of defence also concern subjects not related to transport. The legislative proposal provided for a number of guarantees for the independent performance of the tasks of this board.

Other sectors

In other fields, too, investigations into the cause of accidents have been performed for quite some time now. However, apart from ad hoc instituted independent committees, such as the Committee Oosting for the Enschede fire work disaster and the Committee Alders for the Volendam café fire, this has so far been carried out by inspectorates under ministerial authority. In this respect the Fire Services and Disaster Relief Inspectorate and the Police Inspectorate, both explicitly assigned to learn from investigations of relevant incidents, may be mentioned in particular.

In the nineties the insight gained ground that for these other sectors, too, an independent body conducting investigations into accidents would have a useful function in this respect. In April 1998 the Minister of the Interior and Kingdom Relations started a study into the relevant aspects of independent investigations falling beyond the scope of the Transport Safety Board and the intended Defence Accidents Board. This happened also as a result of advice by the then Board for the Promotion of Studies on Safety Effects with *mr.* Pieter van Vollenhoven as its chairman. In May 1999 this exploration was extended and the field covered by the aforesaid boards was included in the study.

The study performed by KPMG Consulting was completed in 2000. It was *inter alia* recommended to have the investigation of transport accidents and defence accidents conducted by the Transport Safety Board, the Defence Accidents Board respectively, and to institute a new body for the other accidents. Furthermore, it was recommended to provide for inter-institutional linkage of these three boards, which would be evaluated after a number of years in order to see whether a co-ordinating body would be useful. In the advice on the KPMG study issued by the aforesaid Board for the Promotion of Studies on Safety Effects this latter board indicated that in its opinion one board was to be preferred to three bodies.

In a letter of 21 June 2000 (parliamentary documents II 199-2000, 26 800 VII, no. 44) the Minister of the Interior and Kingdom Relations and the undersigned reported to the Second Chamber of the States General that the Council of Ministers had decided to follow the aforesaid recommendations by KPMG Consulting. As regards accidents not falling within the scope of the Transport Safety Board and the Defence Accidents Board, a third body, the Committee Disasters and Calamities would be created. This committee would also be assigned an investigative task with respect to disaster relief and aftercare not covered by other boards. In addition, a linkage as mentioned by KPMG Consulting would be set up. Furthermore, an evaluation of this linkage was envisaged, raising the question whether the construction of three boards and a linkage would suffice or whether a further step should be made.

Motions by Wagenaar c.s. and Van den Doel c.s.

When the aforesaid letter was dealt with in the Second Chamber, the Chamber advised not to create a Committee Disasters and Calamities first and a linkage as referred to above, but to aim directly at creating one board covering all sectors. Two motions were proposed, one by the member of parliament Wagenaar c.s. and one by the member of parliament Van den Doel c.s. (parliamentary documents II 2000-2001, 27 400 VII, no. 33 and 34). The Chamber passed both motions.

In these motions the government was requested:

- “to prepare a legislative proposal in order to come to one independent investigation board for disasters and major accidents among which transport accidents and other accidents such as defence accidents” (motion Wagenaar c.s.);
- “to explicitly take the specific position of defence into account in the newly to be drafted Act for a National Accidents Board and to make special provisions for those investigations in which national security is at issue”. (motion Van den Doel c.s.)

Reaction of the Council of Ministers

The Second Chamber was informed by letter of 19 February 2001 (parliamentary documents II 2000-2001, 27 400 VII, no. 43) of the decision of the Council of Ministers to implement the motions unimpaired. This promise is fulfilled by the present legislative proposal. An Outline Memorandum on independent investigation of accidents was sent to the Second Chamber by letter of 14 September 2001 (parliamentary documents II 2001-2002, 27 927, no. 1). The outlines set forth in this memorandum form the basis of the present legislative proposal. The Safety Investigation Board arranged for in this Act will replace the Transport Safety Board and the intended Defence Accidents Board and Committee Disasters and Calamities. It will also make instituting ad hoc committees, such as the Oosting Committee for the fire work disaster in Enschede and the Alders Committee for the café fire in Volendam superfluous.

CHAPTER II. CHARACTERISTICS OF THE BOARD

Broad definition of the concept of incident

The Safety Investigation Board will, *inter alia*, be assigned to investigate incidents and to establish the causes or probable causes of these incidents (Article 3). The concept of ‘incident’ is broadly defined. It concerns incidents that cause the death or injury of a person or damage to an object or to the environment and incidents that have created the risk of such consequences (Article 1, first paragraph, sub e). The concept does not only include disasters and major accidents, but also less serious accidents and incidents. The term ‘incident’ is understood to mean near-accidents, incidents that have not had any damaging consequences but yet caused the risk thereof.

The reason of also declaring the Board competent to investigate smaller accidents and incidents, lies in the fact that the Board exclusively investigates incidents in order to find out what lesson can be learnt from them, so that safety measures can be taken. An incident does not need to have had damaging consequences in order to be able to learn such a lesson. In view of this, it would seem wise if an investigation into relevant smaller accidents and incidents can also be conducted and not to wait until an accident with serious consequences has taken place.

Using the broad term of ‘incident’ links up with the definition of the task of the Transport Safety Board and of the Defence Accidents Board. Internationally the usefulness of incident investigation has also been recognized. It is mentioned in international regulations concerning civil aviation and ocean shipping. In Directive 94/56/EC of the Council of the European Union of 23 November 1994 with respect to establishing principles for investigation of accidents and incidents in civil aviation (Pb EC L 319) the investigation into so-called major incidents in civil aviation is made obligatory for the EC member states.

Broad field

The Safety Investigation Board will cover a broad field. It will be competent to investigate incidents in any conceivable sector. It not only concerns the fields of transport and defence, provided for by the Transport Safety Board and the Defence Accidents Board, but for instance also

- incidents in the industry sector, including industrial accidents, mining accidents (including off-shore) and nuclear accidents;
- natural disasters, including water nuisance, extreme weather conditions and earthquakes;
- incidents concerning environment and health, including pollution of the food chain, personal accidents, epidemics and pollution of the natural environment;
- explosions, heavy fires and collapses.

The Board will not only have the task of investigating incidents within the scope of the broad field referred to above in order to establish the causes or probable causes of these incidents, but also of investigating the consequences of incidents in order to detect the causes or probable causes of the extent thereof. Thus disaster relief and aftercare may also be subjected to investigation by the Board. Lessons for the future can be learnt from these issues as well, so that the consequences of incidents may remain limited in future.

An advantage of the broad field in which the Board will be competent to conduct investigations is that related investigations can be conducted in mutual connection. It will no longer be necessary, as it sometimes is in the present situation, to have various aspects of an incident investigated by separate investigative bodies. The Board will be able to consider all the facets of an investigation in their mutual connection. Duplications in the investigations with possibly incoherent conclusions, as well as omissions will be prevented by such an integrated approach.

Another advantage of the circumstance that one Board will cover a broad field is that knowledge gained from the investigation in one sector can be used in other sectors much more easily.

However, the Board will not be assigned to investigate accidents literally falling under the concept of 'incident' in the sense that death, injury or damage to property have arisen or the risk thereof, but which are of a different nature from the accidents and calamities for which the Board is instituted. As to the concept of 'incident', in Article 1, second paragraph, an exception is made for a number of such incidents. In the first place, this concerns disturbances of the public order, riots and other serious disorder as referred to in the Municipalities Act and situations in which such events are seriously to be feared for. In the second place, it concerns incidents in which competent authorities act in order to maintain legal order. In the third place, it concerns actions by armed forces in a war situation or armed conflict during an operation to maintain or support the international legal order, during the rendering of assistance as referred to in the 1993 Police Act or during the rendering of assistance as a result of the Directions with respect to the deployment of armed forces in the Netherlands Antilles and Aruba.

Regulation by a Kingdom Act

The Transport Safety Board has been provided for by a 'normal' Act. Apart from more extended powers in respect of Dutch aircraft and Dutch sea-going vessels, this Board is only

assigned to investigate incidents on the territory of the Netherlands, including the waters bordering on the Netherlands. The initially intended Defence Accidents Board was to be provided for by a Kingdom Act. The background of this was the relation existing between the investigation of defence incidents and the duty of Defence to maintain the independence and defence of the Kingdom of the Netherlands. By virtue of Article 3, first paragraph sub a, of the Charter for the Kingdom of the Netherlands, this duty is a matter of the Kingdom of the Netherlands. Moreover, the Royal Navy is permanently present in the Netherlands Antilles and Aruba. The Defence Accidents Board would also be competent to investigate incidents with the coastguard of the Netherlands Antilles and Aruba.

In respect of the Safety Investigation Board a Kingdom Act was opted for. After all, it is advisable that the task intended for the Defence Accidents Board with respect to the aforesaid incidents in the Netherlands Antilles and Aruba, can also be fulfilled by the new Board.

Otherwise the task of the new Board is in principle limited to incidents on the territory of the Netherlands, including the waters under European jurisdiction (apart from more extended powers with respect to incidents with Dutch aircraft, Dutch sea-going vessels and ferry boats that have last called in at a Dutch port). In these cases it seems advisable to leave the arrangement of the investigation of incidents on the territory of the Netherlands Antilles and Aruba to those countries. The Charter for the Kingdom of the Netherlands offers the possibility to do so.

If the government of the Netherlands Antilles or of Aruba requests it, the Board will be given the authority to investigate incidents in those parts of the Kingdom of the Netherlands or incidents with a Netherlands-Antillean or an Aruban sea-going vessel or aircraft (Article 4, first paragraph, sub b, f and g, and second paragraph sub b and d). However, with the exception of the incidents referred to in the third paragraph, the investigation of incidents in those countries in principle remains the concern of those countries.

Independence

In order to form a clear picture of the facts of an incident and to draw objective conclusions from this, it is required that an investigative body can adopt an absolutely independent attitude in respect of the incident. It shall by no means be involved in the interests at issue in an incident. On the one hand this may concern interests of the authority that has created the regulation at issue in the incident, or that performs executive duties in connection with the incident. On the other hand it may concern parties in society that have some personal or business involvement in an incident.

The Board will be given the required independent position. The legislative proposal includes a number of guarantees thereto:

- The members of the Board are not bound by a mandate (Article 14, first paragraph).
- They are appointed for a fixed term of four years (Article 7, fifth paragraph). Apart from resignation at their own request they can only be suspended or dismissed because of inaptness or incompetence in the performance of their duties or because of other serious reasons in connection with the person concerned (Article 7, eighth paragraph). For that reason a point of view held by a member in connection with an investigation conducted by the Board or a recommendation made by the Board, cannot be a ground for suspension or dismissal.
- It is provided that the members of the Board shall refrain from participation in the execution of an investigation concerning themselves or their relatives by blood or affinity up to the fourth degree, concerning institutions or legal persons at which they

are employed or in which they have an interest, or concerning an incident in which they have been involved in any way whatsoever (Article 14, second paragraph).

- It is provided that the employees of the Office coming under the Board shall report to the chairman of the Board that an investigation concerns themselves or their relatives by blood or affinity up to the fourth degree or institutions or legal persons at which they are employed or in which they have an interest (Article 15, first paragraph). The same applies to experts put at the disposal of the Board by a Minister (Article 15, first paragraph).
- Persons whom the Minister puts at the disposal of the Board for the purpose of an investigation, shall come under the responsibility of the Board for the duration of the investigation (Article 13, fifth paragraph).
- Apart from the investigative duties laid down under Article 5 by or pursuant to a Kingdom Order in Council or an Order in Council, the Board itself is free to decide whether it will proceed to investigations (Article 35, first paragraph). A Minister, Queen's Commissioner or a mayor may request the Board to conduct an investigation but it is for the Board to decide whether it will start an investigation (Article 37, second paragraph). From its authority to decide whether an investigation will be conducted, it can be inferred that the Board also defines the width and depth of the investigation.
- Apart from the defined investigative duties the Board can also terminate an investigation without issuing a report, if in its opinion the investigation cannot result in any meaningful recommendations (Article 57).
- The Board and its investigators have powers at their disposal to collect the required information (Article 25, 30 et seq. and 42 et seq.).
- The Board shall determine its own methods of investigation (Article 60).
- The Board shall decide on the contents of its report (Article 49).
- The Board itself shall also publish the report. (Article 54, first paragraph).

From the above it can be inferred that the Board will get the position of an independent administrative body in the sense of the Instructions for regulatory measures. As this Board is a body of a legal person instituted pursuant to public law (the State), it forms an administrative body in accordance with Article 1:1 of the General Administrative Law Act. As a hierarchic subordinate position towards a Minister is definitely out of the question, it here concerns an independent administrative body (see direction 124a of the Instructions for regulatory measures).

Expertise

For the performance of the Board it is of great importance that the conclusions drawn from an investigation are accepted and that its recommendations for measures to be taken will be experienced as authoritative. In order to achieve this, the Board must have extensive and high-quality expertise at its disposal. A number of provisions will be made for that purpose.

First of all, the Board itself will consist of five permanent members who will be appointed on the basis of more general expertise. Apart from them, the Board will have associated members who contribute more sector-oriented expertise. In the legislative proposal it is determined that the members of the Board shall be selected in such a way that all relevant expertise is available in the Board (Article 7, third paragraph).

The Board will furthermore have an Office at its disposal, in which pre-eminently expert investigators participate. These investigators will have to possess expertise as regards the best methods to conduct an investigation and as regards general aspects such as human factors playing a part in all incidents, as well as expertise aimed at more specific sectors. The legislative proposal provides that the selection of the employees of the Office shall take place in such a way that all relevant expertise is available in the Office (Article 11, fourth paragraph).

It will not be possible for the Board to have all the required expertise available itself. In order to be able to use expertise not available in the Board itself, it will have the possibility to recruit experts from outside. This may be done by hiring private experts. Furthermore, the legislative proposal provides for a request by the Board to the Minister to have one or more departmental experts assist the Board in a specific investigation (Article 13, first paragraph).

The Board shall furthermore have to ensure that its expertise is kept up-to-date. Consequently, the starting point is that the Board will run a specific training programme for the employees of its Office but also for its own members. Furthermore, it is considered advisable for the Board to maintain close contacts with investigation boards abroad so that a permanent exchange of the latest views is possible. A similar approach is already pursued by the Transport Safety Board. It may be assumed that the Safety Investigation Board will also form part of the International Transportation Safety Association in which the Transport Safety Board participates at present, besides independent investigation boards of other countries.

Separation of criminal proceedings and other proceedings

In order to form as correct a picture as possible of the facts of an incident the Board needs information that is as complete as possible. Therefore it is very important that witnesses can speak freely before the Board. In order to achieve this, witnesses must run as little risk as possible that by making a statement they may harm themselves or their closest relatives.

In the first place, the task of the Board is therefore exclusively limited to detecting causes or probable causes of incidents and the extent of the consequences thereof, and to making recommendations on the basis of its conclusions, so that measures can be taken to increase safety (Article 3). In the legislative proposal it is explicitly determined that a recommendation shall not contain a presumption of guilt or liability because of an incident (Article 56). By this system the legislative proposal is in line with the Transport Safety Board Act and with international regulations, such as the aforesaid Directive 94/56/EC concerning civil aviation. This was different in the past. Pursuant to the scope of the Civil Aviation Disasters Act the Civil Aviation Board conducted investigations in order to learn from them and it also applied disciplinary law. At present the same still applies for the Maritime Court of the Netherlands.

However, the legislative proposal is more extensive with respect to the protection of witnesses. It is explicitly determined that statements made within the scope of the investigation of the Board shall not be used as evidence in criminal, disciplinary or civil proceedings and that imposing a disciplinary measure, an administrative sanction or an administrative measure may not be based on these statements either (Article 64, first paragraph). An exception is naturally made for prosecution because of perjury in connection with a statement made by a witness before the Board. An exception is also made if the person who has made a statement has given his explicit consent to use this statement as evidence or to base a measure or sanction on this statement.

This regulation is in line with a similar regulation in the Transport Safety Board Act. However, the provision included in the present legislative proposal is more extensive, since the Transport Safety Board Act limits the regulation to legal actions.

Also intended for the protection of the position of the witnesses is the provision that, at the request of the person who is heard, the case or part of the case will not be dealt with in public if the person thinks that he would harm himself or a relative of a category to be further specified (Article 44, second paragraph). Thus it is prevented that the statements made by him can be used in other proceedings, for instance as guidance within the scope of a prosecution. Apart from that, it is determined that statements of witnesses can only be included in the final report of the Board in so far as they are essential for the analysis of the facts of the incident (Article 49, third paragraph). Furthermore, the legislative proposal contains the provision that documents collected by the Board for the purpose of an investigation, are not public (Article 54, fifth paragraph).

Furthermore, it is determined that for the purpose of criminal or disciplinary proceedings or proceedings to impose a disciplinary punishment, an administrative sanction or an administrative measure, it is not possible to demand inspection of statements of witnesses and other documents, to be further specified, collected by the Board (Article 64, second paragraph). In this case, too, the person who has made the statement can give his explicit consent to use this statement as evidence or to base a measure or sanction on it.

Furthermore, Article 65 provides that the Board, the employees of the Office, the general secretary and the other investigators shall not report offences that have come to their notice in the performance of their duties. An exception is made for offences to which an obligation to report applies pursuant to the Netherlands Code of Criminal Procedure and offences related to the investigations of the Board itself.

Transparency and public access.

Optimal transparency and public access strengthen the confidence of society in the investigation conducted by the Board.

With a view to transparency the legislative proposal provides that the Board shall draw up an investigation protocol of the investigation methods it will use. This protocol will be made public (Article 60). Besides, it is assumed that in the event of incidents of a larger extent the Board shall inform the authorities involved of its plan of action with respect to the investigation. Furthermore, the Board will have to motivate in its reports how it has arrived at its statements.

The report of the Board shall be made public by the Board (Article 54, first paragraph). By the application *mutatis mutandis* of exception grounds to be further specified, derived from Article 10 of the Government Information Public Access Act, certain information shall not be included in the report (Article 52, first and second paragraphs). Drafts of the report and the documents collected by the Board for the purpose of an investigation, other than the report, shall not be made public (Article 54, fifth paragraph). As referred to above, the protection of the witnesses heard, plays an important part in this respect. The regulation in question corresponds to the regime of public access laid down in the Transport Safety Board Act.

In principle, the sessions of the Board are open to the public. For serious reasons the Board may decide that a case or part of it will not be dealt with in public (Article 44, second paragraph). The interests, referred to in Article 10 of the Government Information Public Access Act, can also be used as a criterion. This regulation is also derived from the Transport Safety Board Act. The fact that a case or part of it will not be dealt with in public at the request of the person who is heard, if he thinks that he would harm himself or a relative of a category to be further specified, has been added to this regulation. This has been referred to above.

In connection with the security of the countries of the Kingdom of the Netherlands, the relations of the Kingdom of the Netherlands or the countries of the Kingdom of the Netherlands with other states and with international organisations, public access to confidential company data or manufacturing data and the application of special detecting powers can be restricted by the Ministers of Defence, of the Interior and Kingdom Relations and of Justice. This will be further specified in chapter V.

CHAPTER III. WORKING METHOD

Steps

In the investigation process and the follow-up on the recommendations the following steps can be distinguished:

- Reporting
- Selection of incidents to be investigated
- Investigation
- Establishing structural safety defects
- Drawing up recommendations
- Issuing a report
- Follow-up on recommendations
- Reopening

Reporting

The adequate performance of the Board fully depends on the system of reporting incidents. The Board will only be able to start an investigation into an incident, if it has been fully informed of such an incident. The Board can only make a justified choice as to which incidents it is going to investigate, if it has received extensive information on the incidents that have occurred. It is most efficient for the Board itself to make appointments with authorities that have been informed of the incidents, notably the police.

Selection of incidents to be investigated

In a number of cases the Board will be obliged to investigate an incident. It concerns certain incidents in civil and military aviation and in ocean shipping as well as major incidents, to be further specified, in which dangerous substances are involved. It here concerns investigation obligations laid down in international regulations. The obligations will be imposed on the Board by virtue of Article 5 of the legislative proposal.

In other cases the Board is free in its choice which incidents it is going to investigate. The selection criterion will always be to what extent in the opinion of the Board a lesson can be learnt from studying an incident and what recommendations can be based on this as regards measures to increase safety. In fact, it may be assumed that the Board will always investigate major disasters that draw particular attention in society, in order to find out what can be learnt from them. In that case the investigation of the Board will also have the function of dispelling the social unrest created by such an incident. In other cases – as already remarked above – it will not be the extent of the consequences but the expected learning effect that will be decisive whether or not an incident is to be investigated. The Board may determine whether conducting an investigation is worthwhile on the basis of reports from which it may be inferred that a particular type of incident occurs frequently. It may also infer this from statistical material collected by others. In this respect it may be useful to point out that the Board is not necessarily obliged to limit itself to one single incident, but that the legislative proposal explicitly provides for taking a category of incidents under investigation (Article 3).

The Board can investigate what the causes or probable causes of an incident are but also what the causes of the extent of the consequences of an incident are. When selecting objects of investigation the Board may investigate both the incident itself and the disaster relief and/or aftercare, but if in its opinion only one of the elements will yield interesting results, it can limit itself to this one element.

Investigation

For the actual investigation the legislative proposal offers a number of powers. In the Articles 30 et seq. powers are included to which the investigators of the Office and the members of the Board are entitled. In Articles 42 et seq. the instrument of a public hearing of the Board is provided for.

In accordance with international practice the Board shall appoint a project leader for an investigation, an investigator-in-charge. He is the responsible chief investigator. This will often concern an investigator who is connected with the Office of the Board. If required a member of the Board can also function in such a capacity. Pursuant to Article 48 all this will be provided for by a Kingdom Order in Council.

Establishing structural safety defects

Detecting the actual causes of an incident belongs to the task of the Board, but as an isolated activity it is of little use. The investigation of the Board is intended to bring underlying causes to light and to detect shortcomings in the system used. Consequently, the Board should find out which structural safety defects appear to be the cause of an incident. Only by remedying such defects can safety actually be increased. In this respect the investigation should be an in-depth investigation, as it is called in the report of KPMG Consulting referred to above. Obviously, the same applies to an investigation with respect to disaster relief or aftercare.

Recommendations

If an investigation of the Boards results in detecting structural safety defects, the Board should consider whether any recommendations can be based on this. These recommendations should relate to defects that can be corrected. When formulating its recommendations the Board will have to take the technical and financial feasibility into account.

Just as the Transport Safety Board is doing at present, the Board will be able to address its recommendations to anyone who, in the opinion of the Board, is the appropriate party to take measures in this respect. This implies that it is not necessary to address the recommendations of the Board exclusively to an authority; they may, for instance, also be addressed to the industry sector.

Issuing a report

The conclusions of the Board with respect to an investigation and the recommendations based on them, shall be laid down in a report. The report shall be made public by the Board. Furthermore, it will at any rate be sent to the Minister concerned and to those to whom the recommendations formulated in the report are directed. The report will also be sent to the Minister of the Interior and Kingdom Relations, in his role as co-ordinating Minister, and to persons and authorities who were involved in the incident (Article 54).

Before the Board completes the report, a draft will be sent to the persons or authorities concerned for their comment. In cases to be further specified by an Order in Council, the draft will also be sent to other states that have participated in the investigation for their comment. If required, the Board will adjust the draft on the basis of the comments (Article 50).

Follow-up on recommendations

The party to which/whom the recommendation is addressed, must define its/his position in this respect. If it concerns an administrative body, this should be done not later than half a year after the final report has been drawn up. This term may be extended twice by three months at most. An authority other than an administrative body has to define its/his position on a recommendation within one year.

An administrative body shall report its position to the Minister concerned. A copy shall be sent to the Board. An authority other than an administrative body shall notify the Minister concerned of its/his position and send a copy of the notification to the Board. The Minister may draw the conclusion that the measures taken are insufficient and that government measures are appropriate. He shall inform the Board of this fact (Articles 68 and 69).

Defining a position with respect to a recommendation does not imply that the case is closed. The position defined must also be put into practice. The responsible specialist Minister will check whether this is done and will regularly inform the Second Chamber about this. Besides a survey of reports issued, the Board may also include a survey of the positions taken with respect to these reports. In addition, in connection with new incidents the Board has the possibility to draw attention to recommendations made in earlier annual reports.

Reopening

If after closing the investigation, new facts come to light which in the opinion of the Board are of essential importance in relation to the conclusions or recommendations laid down in the report, the Board shall reopen the investigation (Article 59, first paragraph). The Board will exclusively have reason to do so, if it has substantial grounds for believing that a renewed investigation will lead to different conclusions or recommendations.

Coping with victims

During its investigation the Board will get into contact with victims and surviving relatives and be addressed by them. The Board is expected to be open to such contacts and to be aware that such contacts play a part in the process of the victims coping with the consequences. The Board shall explicitly not have the task of actively taking care of the victims and surviving relatives. Giving the Board such an operational task would impede the objectivity of its attitude in the investigation.

CHAPTER IV. STRUCTURE OF THE BOARD

Organisation

For the organisation of the structure of the Board advice has been sought from RAND Europe. In an outline memorandum previously sent to the Second Chamber it has been set forth which structure the Council of Ministers has decided upon on the basis of this advice. When choosing the structure, testing against four criteria was performed:

1. independence
2. integral approach to the investigation
3. expertise
4. decisiveness

In view of what has been remarked above about the characteristics of the Board, these criteria do not need any further explanation.

The structure includes the following elements:

- Five permanent members of the Board.
- A number of associated members of the Board.
- Committees.
- A supporting Office.

The permanent members of the Board

The Board will have five so-called ‘permanent members’ (Article 6, first paragraph). They form the core of the Board. Apart from inability to attend for personal reasons or because they have to claim exemption because of conflict of interests, they shall attend all deliberations of a Board. In this composition the Board takes its decisions on management matters. Associated members will be involved in the activities of the Board in connection with the investigation. The small number of permanent members will make it possible to operate decisively. The circumstance that they are always involved in the deliberations of the Board guarantees an integral approach by the Board and prevents splitting up into sectors.

Permanent members of the Board shall be appointed chairman and deputy chairman (Article 8). The chairman will have a full-time function. The other members will be appointed for a full-time or part-time functions.

The permanent members will be generalists who have built up a reputation of independence. They should have a broad orientation on and knowledge of safety issues. They will for instance be recruited from professors, persons who have gained high-quality experience in public administration or in the private sector, and legal professionals.

The members shall be appointed by Royal Decree. The draft decree shall be passed through the Council of Ministers of the Kingdom of the Netherlands. Prior to this the Board shall be heard.

The associated members of the Board

In order to be able to function properly it is necessary that at Board level the Board also has members with a more sector-oriented expertise at its disposal. This should always concern rather extensive and not very specialist expertise. The expertise of the associated members should reflect the extensive field of activity of the Board.

When the permanent members of the Board are working on decisions with respect to investigations, they will have to involve the qualifying associated members in the deliberations of the Board (Article 6, third paragraph). This applies to the entire working process: from the selection of incidents to be investigated to the drawing up of the report and the possible reopening of an investigation because of new facts.

In principle, it is up to the Board, obviously with the required expertise as a criterion, to decide which associated members they will involve in specific activities. For a certain investigation they may opt for an ad hoc composition geared to the activities. As regards fields for which reports come in frequently and in which investigations will have to be conducted with some regularity, however, it is obvious that a permanent composition of the permanent members and some associated members will operate best. Notably with a view to a consistent approach when selecting incidents to be investigated, it is advisable to have a permanent team functioning. Consequently, the undersigned assume that the Board will have to institute such a team. In view of the procedure at the Transport Safety Board where there are four rooms and an informal committee functioning for separate sectors, it seems reasonable that the new Board is going to work with permanent working teams for those sectors, possibly in combination with each other or with another sector. Furthermore, a permanent composition of the Board may be thought of in respect of military incidents but also in respect of other sectors that will fall under the Board. However, a permanent composition of the Board for a certain category of incidents has no effect on the authority of the Board to temporarily engage an associated member in its composition for a specific incident, in view of the special characteristics or circumstances of such an incident.

Committees

It is efficient nor advisable that the Board itself invariably performs the activities in principle assigned to it. In view of this, the legislative proposal offers the possibility for the Board to institute a committee and to give this committee authority to take decisions on behalf of the Board (Article 10). For a field such as civil aviation in which, due to international obligations implemented pursuant to the present legislative proposal, numerous investigations have to be conducted every year, which do not always result in new insights, it is conceivable that a committee will be instituted. Instituting committees will increase the decisiveness of the Board.

At least one member of the Board will have to participate in a committee and he will also be chairman. of this committee. Apart from this, it is reasonable that in the cases in which a permanent composition of the Board applies, as referred to above, the associated members concerned also have seats in the committee. In addition the Board may engage other

associated members in a committee. In a concrete case, this may also be a non-recurrent provision.

Office

The Board is supported by an Office. The general secretary of the Board is the head of the Office (Article 11). The employees of the Office are on the one hand expert investigators and on the other hand people who provide the secretarial support of the Board. The Office must have sufficient quality to be able to supply a project leader for the investigation of major calamities. Examining the facts of an incident for the Board is also an important function of the investigators of the Office. Apart from this, the Office will have to carry out a continuous flow of other kinds of activities, such as processing the reports of incidents, studying statistic data etcetera.

CHAPTER V. OTHER POINTS

No advisory body

The activities of the Board are always linked with one or more concrete incidents investigated by the Board. The same applies to the situation in which the Board institutes an investigation into a category of incidents. The Board attaches recommendations to this investigation into concrete incidents if it sees reasons to do so. It will not be the task of the Board to give extensive advice, in the form of recommendations, about the policy of one or more Ministers. Nor does advice on policy intentions of a Minister belong to the task of the Board.

In this respect the Board is not different from the Transport Safety Board. Just as the Transport Safety Board, the new board is not an advisory body in the sense of Article 79 of the Constitution. It follows that the Safety Investigation Board also falls beyond the field covered by the advisory bodies Framework Act.

Independent administrative body

In chapter II it was pointed out that the Board will have the position of an independent administrative body. Direction 124c of the Directions for regulatory measures indicates that an independent administrative body can only be opted for in case of one of the three situations to be further specified, and moreover, if the advantages of reducing ministerial powers for the administrative task concerned counterbalances the disadvantages of the reduced possibilities of control by the States General. The first of the three cases referred to implies that there is a need for independent forming of judgment on the basis of specific expertise. From the above it appears that this is pre-eminently the case with the Safety Investigation Board. The explicit need for this also implies that the second condition mentioned has been complied with as well.

The institution of an independent administrative body at central-government level was opted for. Although the incidents to be investigated by the Board obviously only have a local character, it is considered desirable that lessons can be learnt from them for the entire country. Furthermore, the recommendations of the Board will often concern measures to be taken on a national level.

When formulating the present legislative proposal the regulations of the proposal for an independent administrative bodies Framework Act (submitted to the Second Chamber by Royal Message of 27 September 2000, parliamentary documents II 2000-2001 27 426, numbers 1 and 2) have been followed to such an extent as is reasonable. The present legislative proposal provides that after its formation in due time, the Framework Act will be directly applicable to the Safety Investigation Board, in so far as there is no reason to deviate from the regulations thereof.

Transport Safety Board

By instituting the new Board the Transport Safety Board will be dissolved. The new Board will take over the task of the Transport Safety Board. The intention is that the activities of this Board will be fully continued by the new Board. In this respect the budget which the Transport Safety Board has at its disposal at the moment, will be transferred to the new Board. With the aid of the annual report of the Board it will be annually monitored whether the new Board keeps paying full attention to the transport sector. If this sector should appear to be affected, attention will again be paid to the financial means put at the disposal of the Board.

Defence Accidents Board

The legislative proposal for a Kingdom Act for the Defence Accidents Board will be repealed. The tasks this Board was to perform, will partly be taken over by the Safety Investigation Board, i.e. in so far as a lesson can be learnt from the incidents to be investigated. As far as it concerns other investigations, they will be transferred to a committee or an inspectorate of the Ministry of Defence, either already in existence or to be created.

Special provisions in connection with external and national safety and detection and prosecution

In view of the necessity to treat a number of cases confidentially because of external and national safety and the detection and prosecution of criminal offences, some special provisions will be included in the legislative proposal.

All the functions within the Board and the Office will be regarded as positions involving confidentiality in the sense of the Security Clearances Act (Article 7, fourth paragraph, and Article 11, fourth paragraph). This means that the information collected by the Board will only be dealt with by people to whom a certificate has been issued that there are no objections against fulfilment of the function for reasons of state security or other vital interests of the state.

As regards investigations referred to in Article 4, third paragraph, it also applies that experts who are appointed at the request of the Board to render assistance in an investigation, must have passed a security screening, unless the Minister of Defence decides otherwise on the matter (Article 13, second paragraph). The Ministers of Justice and of the Interior and Kingdom Relations have the possibility to set the same requirements in respect of another investigation (Article 13, third paragraph).

Within the scope of issuing the certificate the level of screening will be determined. Despite the screening it may occur that it concerns information that cannot be disclosed to the persons screened either. In this respect the provision that the Ministers of the Interior and Kingdom

Relations and of Defence can refuse their own co-operation and the co-operation of persons coming under their jurisdiction, is included in the legislative proposal for reasons of security of the countries of the Kingdom of the Netherlands or the relations of the Kingdom of the Netherlands with other states and with international organisations (Article 34, second paragraph). The same right is granted to the Minister of Justice, if the interest of co-operation with the investigation of the Board does not counterbalance the interest of the detection and prosecution of offences (Article 34, third paragraph). The aforesaid ministers are intended to make only a very restrictive use of the provisions concerned. It should be noted in this respect that the power to intervene in a criminal interest does not belong to the Public Prosecutions Department but to the Minister of Justice. The Minister of Justice shall only use this authority in extraordinary situations. Notably a criminal investigation is thought of, in which special investigative powers are used, as referred to in titles IVa, V and Va of the Book I of the Netherlands Code of Criminal Procedure, and in which it is essential that certain information is not made public. If the Board comes to the conclusion that it has not obtained sufficient material to conduct a useful investigation, it can actually refrain from further investigation, unless it concerns an investigation obligation imposed pursuant to the Act proposed here (Article 57).

It goes without saying that confidential information which has come to the notice of the Board for the purpose of its investigation, shall not be disclosed in a session of the Board or through its report. In view of this, the legislative proposal provides that the Ministers of the Interior and Kingdom Relations, of Defence and of Justice can decide that a complete session or part of a session to be held by the Board will not take place in public (Article 44, third and fourth paragraphs). They may also determine that, prior to the session, it will not be permitted to inspect documents, to be further specified (Article 43, third and fourth paragraphs). Finally, the Ministers concerned may decide that information, to be further specified, cannot be included in the draft report (Article 51, second paragraph), in the report itself (Article 52, third and fourth paragraphs) respectively, which is to be sent to the person or authority concerned. In these cases, too, the aforesaid Ministers shall only use these powers in exceptional cases. On the basis of Articles 3:46 and 3:47 of the General Administrative Law Act a decision as referred to in Articles 34, 43, 44, 51, and 52 should be reasoned. These decisions are open to objection and appeal. If information must be omitted that in the opinion of the Board is essential for the analysis of the facts of the incident or the basis of the conclusions, the Board may record this information, with the conclusions and recommendations based on it, in a separate document which will only be sent to persons or authorities to whom the secret information concerned is known (Article 55, first paragraph). In such a case the Board may decide not to issue a public report, if it does not consider this meaningful (Article 55, second paragraph).

The purpose of the aforesaid system is to ensure that no public access is allowed with respect to information that is to be kept secret. On the other hand, the purport of the system is to do justice to the position of the Board. The Board need not conduct an investigation or issue a report if it does not consider it justified, whereas it can issue recommendations, based on otherwise secret information, to the persons or bodies it is intended for. The Board has complete freedom to determine (except for the legal investigation obligations) which incidents it wishes to investigate, what conclusions it wants to attach to them and what recommendations it likes to formulate on the basis of the investigation.

Carrying out the motion Van den Doel c.s.

In the aforesaid motion Van den Doel c.s. the government is requested to take explicitly into account the specific position of defence in the legislative proposal and to make special arrangements for those investigations in which state security is at issue. This motion is to be carried out by a number of arrangements.

The intention is to appoint one or more soldiers who are not in active service as associated members of the Board. Furthermore, one or more soldiers shall be placed with the Office of the Board (Article 11, fifth paragraph) each time for a number of years. This ensures the Board to have general and more specialist knowledge at its disposal about the defence organization, the procedures and requirements applied within this organization and the specific defence ordinance. Furthermore, in this way the defence component is recognizably present within the Board, which is especially important when foreign armed forces are involved in an incident. In other countries the investigation into military accidents is usually conducted by military authorities. The same guarantees for independence shall apply to the persons concerned as apply to the other members of the Board and the employees of its Office.

With respect to the special provisions laid down in the legislative proposal in order to guarantee secrecy of data related to state security, the above remarks are referred to.

Relation with inspectorates

An incident investigated by the Board will often also be an object of investigation by an inspectorate. In most cases it will have to be determined whether, in connection with the incident, a sanction should be imposed or an administrative measure should be taken. The aim of such an investigation is different from the aim of the investigation by the Board. Both kinds of investigation will have to be conducted parallel to each other.

However, at present it sometimes occurs that an inspectorate also conducts an investigation for the purpose of learning from it. If, after its institution, the Board decides to investigate an incident, no independent investigation into the same incident by an inspectorate in order to learn from it shall take place (no 'double' investigation). At the moment, conducting an investigation into an incident for the purpose of learning from it is defined as a legal duty of the Inspectorate of Fire Services and Disaster Relief (Article 19, first paragraph sub b, of the 1985 Fire Services Act) and the Inspectorate for the Police (Article 53a, first paragraph sub c and d, of the 1993 Police Act). Simultaneously with the submission of this legislative proposal for a Kingdom Act to the Second Chamber, a legislative proposal will be submitted providing that the independent investigation task of the Inspectorate of Fire Services and Disaster Relief and the Inspectorate for the Police, which have the same objective as the investigations by the Board, will be cancelled with respect to the incidents investigated by the Board. However, the Board may ask the Minister concerned to appoint one or more experts for an investigation to be further specified, who will assist the Board, under responsibility of the Board, for the duration of the investigation (Article 13). Aforesaid amendments to the 1985 Fire Services Act and the 1993 Police Act will not be included in the present proposal for a Kingdom Act but in a separate proposal for an Act, not being a Kingdom Act, because it here concerns an amendment to Acts that do not have the status of a Kingdom Act.

However, it should be stated that the inspectorates can start an investigation for the purpose of monitoring and developing a policy without an incident having taken place. These possibilities remain unimpaired.

International regulations

With the present legislative proposal a number of international regulations are complied with as well. These regulations have partly been included in the text of the legislative proposal and will otherwise be incorporated in regulations to be determined pursuant to the proposed Act. In the first place it concerns Directive no. 94/56/EC of the Council of the European Union of 21 November 1994, in which the principles for the investigation of accidents and incidents in civil aviation (PbEC L 319) have been laid down. So far, this Directive was implemented in the Transport Safety Board Act. Furthermore, the present legislative proposal complies with regulations related to the investigation into incidents, laid down in Directive no. 96/82/EC of the Council of the European Union of 9 December 1996, concerning control of the dangers of major accidents in which hazardous materials are involved (PbEC L 10) and Directive no. 1999/35/EC of the Council of the European Union of 29 April 1999 concerning a system of obligatory investigation for the safe exploitation of regular ferry lines with ro-ro-ferryboats and high-speed passenger vessels (PbEC L 138).

In addition, the legislative proposal complies with Appendix 13 of the Chicago Convention on international civil aviation (Bulletin of Treaties 1973, 109). Furthermore, regulations as regards the investigation of accidents with sea-going vessels in a number of international treaties will be complied with, and the Code for investigation of marine casualties and incidents passed by Resolution A.849 (20) of the general meeting of the International Maritime Organization of 27 November 1997, hereinafter to be referred to as IMO code. Aforesaid treaties concerning ocean shipping will be dealt with in more detail in Article 5.

Finally – also for the purpose of carrying out the Van den Doel c.s. motion – a number of standardization arrangements (Stanags) adopted within the scope of the North Atlantic Treaty Organization have been taken into account. This will be dealt with in more detail in Article 5.

Consultations with organizations

The outline memorandum on which the this legislative proposal is based, has been submitted for comment to a large number of authorities and representatives of interested parties. Comments received as a result of this have led to adjustments of the outline memorandum. Furthermore they have been incorporated in the present legislative proposal. This proposal has also been submitted in draft to the relevant authorities and representatives of interested parties for comment. The reactions received have been taken into account upon completion of the legislative proposal.

ARTICLES

Article 1

In this Article a broad definition of the concept of ‘incident’ has been included (first paragraph sub e). In this way the task of the Board is given a wide scope. As to the definition of ‘incident’ the general part of the explanation is referred to.

The definition of the concept of ‘ship’ (first paragraph sub g) is derived from Article 1, first paragraph of Book 8 of the Netherlands Civil Code. At present it is also used in Article 1, first paragraph sub d, of the Transport Safety Board Act.

With respect to sea-going vessels having the nationality of the Kingdom of the Netherlands, a distinction is made in this Article between Dutch sea-going vessels (first paragraph sub i), Netherlands-Antillean sea-going vessels (first paragraph sub j) and Aruban sea-going vessels (first paragraph sub k). Which sea-going vessels have the character of Dutch sea-going vessels will in future be arranged for in the proposal submitted to the Second Chamber by Royal Message of 14 January 2002 for an Act concerning registration under public law of sea-going vessels. Netherlands-Antillean and Aruban sea-going vessels are sea-going vessels which by virtue of the Netherlands-Antillean and the Curaçao Decree on Certificates of Registry respectively, have been registered in the Netherlands-Antillean, Aruban respectively Register of Shipping.

The definition of the concept of ‘aircraft’ (first paragraph sub n) is derived from Article 1.1, first paragraph, sub g, of the Aviation Act.

The definition of the concept of ‘causes’ (first paragraph sub u) has also been derived from Directive 94/56/EC referred to in the general part. It also corresponds to the IMO-code referred to in the general part.

As regards the definition of the concept of ‘recommendation’ (part v), a link was made with the definition of ‘safety recommendations’ in the aforesaid Directive 94/56/EC. In the present legislative proposal the term ‘recommendation’ was opted for instead of ‘safety recommendation’ because of the fact that recommendations by the Board will also be related to limitation of the extent of the consequences of an incident.

The definition of the concept of ‘flight recorder’ (first paragraph sub r) is derived from the aforesaid Directive 94/56/EC.

Article 3

Article 3 forms the core of the legislative proposal. It contains a general definition of the task of the Board: conducting investigations into incidents and the extent of the consequences thereof with a view to learning from them for the future.

The investigation is aimed at detecting the causes or probable causes of an incident and the extent of the consequences thereof. The objective of the investigation is to learn and make recommendations for measures that will prevent future incidents and will limit the consequences thereof. Questions of guilt or liability will not be dealt with. In this respect Article 56 is referred to.

By virtue of Article 5 incidents will be specified in respect of which investigation is obligatory.

Article 4

In the first place the Board is authorised to conduct investigations as regards incidents within the territory of the Netherlands. The waters bordering on the Netherlands and under jurisdiction of the Netherlands (first paragraph sub a) are included. This entails that the Board

can also investigate incidents at drilling platforms situated in the part of the continental shelf designated to the Netherlands. Furthermore, the Board has investigation authority as regards incidents with Dutch sea-going vessels and Dutch aircraft, having occurred outside the territory of the Netherlands (first paragraph sub c and e). As regards ro-ro ferryboats and high-speed passenger vessels the Board is also authorised to investigate, if prior to the incident, the ship has last put in at a Dutch port (part d).

If the Board can investigate an incident, it is also authorised to institute an investigation into the way in which the consequences of the incident are dealt with (second paragraph sub c). Apart from this, investigation into the way in which the consequences of an incident are dealt with is also possible if the incident took place in another country but the consequences extended to the territory of the Netherlands (second paragraph sub a).

In general, the authority of the Board does not extend to incidents that have taken place on the territory of the Netherlands Antilles and Aruba. This is different when it concerns an incident as referred to in the third paragraph. Furthermore, the Board is authorised to conduct an investigation in respect of an incident or dealing with the consequences of such an incident falling within the jurisdiction of the Netherlands-Antilles or Aruba, if the government of the Netherlands Antilles or Aruba respectively request the Board to conduct such an investigation (first paragraph sub b and second paragraph sub b and d). The same applies to incidents in which a Netherlands-Antillean or Aruban sea-going vessel is involved (first paragraph sub f and g).

The third paragraph provides that incidents with ordnance and staff in use with or in the course of exercising a function respectively on behalf of the Minister of Defence fall under the scope of the Board. By this latter formulation the presence of a person in the service of the Minister of Defence in an otherwise civil incident, does not make this incident an incident falling under Article 4, third paragraph. The single fact, for instance, that a soldier is flying along with a civil aircraft, does not mean that, if the aircraft crashes, this crash will be considered a military accident. However, if the incident takes place at the moment when the staff member is carrying out military tasks, this incident will indeed fall under the scope of the Board.

As a result of the fourth paragraph the Board can investigate incidents in which an organisation under the control of the Minister of Defence is involved. This means an organisation which is not charged with military duties – since these would fall under the third paragraph of Article 4 – but which is closely interwoven with the defence organisation. For instance, the deployment of defence staff or defence ordnance during the performance of the (civil) task of the organisation referred to. As a concrete example the coast guard for the Netherlands-Antilles and Aruba may be mentioned. The reason why this organisation is also brought under the scope of the Safety Investigation Board is the fact that it is interwoven with the defence organisation, which in its entirety already falls within the scope of this Board. Obviously, Article 4 does not change the present mutual control between the organisation concerned and the Minister of Defence. As regards the coast guard for the Netherlands-Antilles and Aruba this is anchored in the Temporary Arrangement Coast Guard for the Netherlands-Antilles and Aruba. The clause ‘organisation of which the management has been assigned to ...’ in the fourth paragraph refers to this temporary regulation. Article 4 does not alter this.

Article 5

The first paragraph of Article 5 provides that it will be determined by a Kingdom Order in Council or an Order in Council with respect to which incidents the Board is obliged to conduct an investigation. Furthermore, pursuant to the second paragraph rules may be laid down with respect to incidents to be specified there, in which another state or another country is involved, concerning the organisation of an investigation as well as the co-operation with this other state or this other country and the role of the Board in those cases.

Pursuant to this Article investigation obligations applicable to the Netherlands as a result of international agreements will be complied with. At the moment it concerns the following agreements. First of all, the investigation obligation with respect to aviation accidents and major incidents in aviation, which obligation results from the aforesaid Directive 94/56/EC concerning civil aviation. In addition, a number of investigation obligations relating to seagoing vessels are at issue. Some examples are the obligations resulting from Article 94, seventh paragraph, of the United Nations Convention on the Law of the Sea (Bulletin of Treaties 1983, 83) (the UNCLOS Convention) concluded in Montego Bay on 10 December 1982, Article 12, first paragraph of the International Convention for the Prevention of Pollution from Ships (Bulletin of Treaties 1975, 147, and 1978, 187) (MARPOL Convention) concluded in London on 2 November 1973, Article 23, first paragraph, of the Convention on Discharge of Water from Ships (Bulletin of Treaties 1966, 275) concluded in London on 5 April 1966, Article 21 sub a of the Convention on Protection of Human Lives at Sea (Bulletin of Treaties 1976, 157) (SOLAS Convention) concluded in London on 1 November 1974, Article 7, first paragraph of the Convention on the Safety of Fishing Vessels (Bulletin of Treaties 1980, 139) concluded in Torremolinos on 2 April 1977 and Article 7, first paragraph of the Protocol for the Safety of Fishing Vessels (Bulletin of Treaties 2001, 168) concluded in Torremolinos on 3 April 1993 and Article 12, third paragraph of the aforesaid Directive 1999/35/EEC concerning ro-ro ferryboats and high-speed passenger vessels. Furthermore the STANAG no. 3531 concerning safety investigation and reporting of accidents/incidents involving military aircraft and/or missiles concluded on 4 October 1991 will be complied with. Finally it concerns the aforesaid Directive 96/82/EC concerning Control of the Dangers of Major Accidents in which Hazardous Materials are involved.

Pursuant to the second paragraph the STANAG no. 1179 concerning Combined Investigation of Maritime Incidents concluded on 24 November 1977 will be complied with.

In so far as the rules to be laid down by an Order in Council pursuant to this Article refer to concerns of the Kingdom of the Netherlands in the sense of the Charter for the Kingdom of the Netherlands, they shall obviously be laid down by a Kingdom Order in Council. However, the Article presents the possibility that obligations which only refer to the country of the Netherlands are laid down by an Order in Council which is only applicable to this country.

If at a future date substantial amendments are proposed to the rules to be laid down pursuant to this Article by a Kingdom Order in Council or an Order in Council, the interested organisations will have to be consulted about this.

Article 7

Appointment and possible suspension and dismissal of all the members of the Board shall occur by Royal Decree (first paragraph). The appointment of the 'permanent' members referred to in Article 6, first paragraph, will be performed by the Minister of the Interior and

Kingdom Relations. It is assumed that the appointment is discussed in the Council of Ministers in accordance with Article 4 of the rules of procedure of the Council of Ministers. In view of the broad field of activity of the Board it is reasonable that all the Ministers are thus involved in the recommendation for the appointment of the 'core staff' of the Board. The Board shall be heard in advance.

As regards the associated members the recommendation will be performed by the Minister of the Interior and Kingdom Relations in agreement with the Minister whom it also concerns (second paragraph). In this way justice is done to the responsibility of the former Minister in respect of the performance of the Board, as well as to the responsibility of the specialist Minister concerned to guarantee the presence within the Board of the required expertise in the field or fields concerned. In these cases the Board shall also be heard in advance.

The term of appointment is determined at four years (fourth paragraph). The transitional arrangement referred to in Article 79 provides for the retirement of the 'regular' members every two years. The first time, two years after the inauguration of the Board, the chairman and another member will resign, two years later the remaining three members will resign. By this system continuity is guaranteed, as the 'regular' members do not resign simultaneously and if no reappointments take place, the core staff will not have to be replaced all at once.

On the basis of the fifth paragraph, placing a vacancy on the Board comes under responsibility of the Minister of the Interior and Kingdom Relations, in agreement with Our Minister whom it also concerns in the Netherlands. However, the Board has the possibility to propose a vacancy, for instance when it is of the opinion that a special expertise is lacking.

The first sentence of the seventh paragraph is derived from Article 7, second paragraph, of the proposal for the independent administrative bodies Framework Act. The reasons mentioned are limitative. This means that *inter alia* a view held by a member in connection with an investigation conducted by the Board or a recommendation made by the Board, cannot be a reason for dismissal.

Article 10

Apart from the committees provided for in this Article, the Board may institute other working relations, if required. However, these working relations cannot be granted powers as regards taking decisions on behalf of the Board.

Article 11

The Office supporting the Board will be constituted by employees performing secretarial work for the Board, as well as investigators supporting the Board in its investigations.

The fifth paragraph provides that, in agreement with the Board, the Minister of Defence can place soldiers in the Office. For the duration of their placement in the Office these soldiers will be part of the Office. The permanent presence of up-to-date military expertise in the Office of the Board is essential for the investigation of defence accidents. This particularly applies in case of involvement of foreign armed forces. The international regulations in respect of this matter primarily depart from investigation by military authorities. This permanent contribution of 'up-to-date know-how' is to be realised by placing military investigation expertise in the field of industrial safety and accidents in the Office of the

Board, each time for a period of approximately 3 years. It goes without saying that these soldiers will carry out their investigative activities under full responsibility of the Board and that they can be called in for investigations other than defence investigations. By deploying defence staff in other investigations, standardization as regards method and integrated approach to investigations will be promoted.

Article 13

Besides permanent employees the Board may also employ temporarily employed persons, pursuant to Article 13, first paragraph. For the purpose of an investigation the Board may request a Minister to appoint persons who will assist the Board in conducting an investigation to be further specified. In particular, this concerns persons working at inspectorates under the jurisdiction of a Minister and who have extensive technical knowledge in the fields in question. During the investigation these experts will be working under exclusive responsibility of the Board, in view of the independence of the investigation. This Article obviously concerns the appointment of persons working as officials or as employees under the Minister. This Article does not exclude that the Board hires experts from other than government circles.

Article 14

In the first paragraph it is provided that the members are not bound by a mandate. In order to guarantee the independence of the Board, it is important that the members cannot be appointed as representatives of social or interest organisations in the Board. Neither shall they be allowed to receive instructions from the government.

In view of the independence of the investigation the second paragraph provides that the members of the Board shall refrain from participating in dealing with an investigation in cases in which they may be confronted with a conflict of interests. In order to promote that this regulation will indeed be used if necessary, the third paragraph provides that the members shall notify any other functions than their membership of the Board by reporting these other functions to the Board and to the Minister of the Interior and Kingdom Relations.

Article 15

A comparable regulation in respect of conflicts of interests as formulated with respect to the members of the Board in the preceding Article, is laid down in Article 15 with respect to employees of the Office and the persons temporarily appointed by a Minister pursuant to Article 13, on the understanding that in this case the Board decides whether someone will have to refrain from participation in an investigation.

Article 16

In principle, the working method of the Board is an internal matter regulated by the Board itself by means of management regulations. The right of approval as granted to the Minister of the Interior and Kingdom Relations in Article 16, refers to the responsibility of this Minister for the proper performance of the independent administrative body. In the second paragraph a ground for refusal of approval in this respect is formulated. Apart from this ground the general ground for refusal 'in conflict with the law' laid down in Article 10:27 of the General Administrative Law Act, is also applicable.

Article 19

On the basis of the report referred to in Article 19 the Board will make its activities public annually. The annual report will be generally available. It will include a review of the activities and the investigation policy of the Board. It will have to give insight into the efficiency and expediency of the working method of the Board. The latter obviously does not only concern efficiency in a financial sense but also the efficiency and expediency of the entire working method.

Article 20

On the basis of the first paragraph the Minister of the Interior and Kingdom Relations may demand information from the Board, for the purpose of a correct insight into the performance of the Board. This particularly concerns information related to the management of the Board. Consequently, information about a concrete investigation is not covered by this provision. Information cannot be required with respect to the contents of and approach to concrete investigations of the Board. However, the Minister may ask whether a certain incident is being investigated and what the state of affairs of the investigation is.

The second paragraph entails that the Board shall not be deprived of the required information supply from the Minister of the Interior and Kingdom Relations. In this paragraph of the Article it does not concern information related to a concrete investigation, but information the Board needs for its general performance.

Article 22

This Article provides for the possibility to impose obligations, by a Kingdom Order in Council or an Order in Council, to report incidents to the Board. In view of the fact that, for the time being, the Board only has the possibility of conducting independent investigations with respect to military incidents in the Netherlands Antilles and Aruba without a request to that purpose by these countries, the obligations to report incidents in the Netherlands Antilles and Aruba will only refer to such incidents. This provision presents the possibility that, in so far as no obligations have been defined with respect to the aforesaid incidents, and consequently the obligations to be defined only refer to the country of the Netherlands, these obligations will be laid down by an Order in Council which is only applicable to the Netherlands.

Article 24

It is conducive to the investigation that the situation as it was at the time of the accident is preserved as much as possible, until the investigators of the Board have been able to inspect the situation. This is after all the best way to discover the cause of an accident. On the other hand the local authorities must have the possibility to act wherever necessary. In view of this, the choice was made not to impose obligations on the local authorities but only to give them the power to protect the scene of the accident. This power coexists with the possibilities of the mayor, by virtue of his emergency powers, (Articles 175 and 176 of the Municipalities Act)

to take measures within the scope of his responsibility for public order, besides the possibility to close off the scene in connection with the detection of offences. It is to be expected that the Board will make arrangements with the authorities concerned about the application of the authority granted in the first paragraph.

The second paragraph presents the possibility of imposing obligations on the authorities concerned, by a Kingdom Order in Council or an Order in Council, to leave the scene of the accident unchanged. This provision presents the possibility that, in so far as the rules only refer to the country of the Netherlands, these rules will be laid down by an Order in Council which is only applicable to this country.

Article 25

In order to find out the causes of an incident, it is important that the Board will be able to investigate objects directly involved in that incident. On the other hand it is not desirable that objects must be kept at the disposal of the Board unnecessarily. Article 25, first paragraph, provides that it may be decided by a Kingdom Order in Council or an Order in Council that in the cases to be further specified the aforesaid objects remain at the disposal of the Board for the duration of the investigation or so much longer or shorter as the chairman of the Board may consider necessary.

The second paragraph implies that, if the possibility presented in the first paragraph is used, it may also be determined that no-one is permitted to remove objects involved in the incident without authority, or to withdraw them in any other way from the investigation. Unauthorised removing or otherwise withdrawing of objects from the investigation shall apply in so far as the objects are removed or withdrawn by persons other than persons conducting the investigation for the Board. This could be done by the lawful owner of an object or by another person. The prohibition has a different purport than the prohibition of theft, laid down in Article 310 of the Netherlands Criminal Code, aimed at retaining objects in the possession of the party entitled to them. However, situations may occur in which there is concurrence of a penal provision formulated pursuant to the present paragraph of the Article and the aforesaid Article 310. Such a situation is covered by the regulation included in the Netherlands Criminal Code concerning concurrence of penal provisions.

If necessary in view of the further rules laid down pursuant to the first paragraph by a Kingdom Order in Council or an Order in Council, the further rules provided for in the third paragraph will also refer to returning Defence ordnance in respect of which the Minister of Defence is of the opinion that the interest of its availability for the investigation does not counterbalance the interest of deploying the ordnance in question within the scope of actual operational action of the armed forces. This may occur in respect of ordnance that is only available in a limited number, like for instance aircraft used for the purpose of refuelling other aircraft during the flight (of type KDC-10), of which Defence only has two.

This provision presents the possibility that, in so far as the rules to be laid down pursuant to this Article only refer to the country of the Netherlands, these rules will be laid down by an Order in Council which is only applicable to this country.

Articles 26 through 34

For the greater part the powers granted in these Articles are derived from section 5.2 of the General Administrative Law Act, related to supervision of compliance. The powers for supervisory authorities provided for in this section, present a useful set of instruments for the investigators of the Board.

Article 26

As regards the employees of the Office of the Board, the investigative powers shall only be granted to those who have been appointed as investigators and not to those who exclusively perform secretarial or administrative work.

Article 27

This Article corresponds to Article 5:12 of the General Administrative Law Act. As the model of the identification card referred to in the third paragraph of this Article is not drafted for the investigators of the Board, the provision concerned will not be included in the present legislative proposal.

Article 28

Article 5:13 of the General Administrative Law Act has been taken over, while ‘supervisor’ has been substituted by ‘investigator’.

Article 29

The powers granted in this paragraph of the legislative proposal to an investigator are far-reaching. For this reason this Article presents the possibility for the Minister of the Interior and Kingdom Relations to lay down further rules for the use of these powers. Thus excessive use of these powers can be curbed, if necessary. The power of the Minister does not extend to giving directions in case of a specific investigation, for such power would put the independent character of the investigation at risk.

Article 30

This Article is based on Article 5:15 of the General Administrative Law Act. In accordance with the power of entry applying in the shipping sector, as formulated in Article 12 of the Merchant Shipping Act, the clause that living quarters of ships can also be entered without the consent of the resident has been inserted in the Article. The reason of this insertion is that living quarters and cargo space on ships are often not separated.

In view of the fact that with respect to a military area secrecy is of great importance, it has been determined that areas and ships in use with our Minister of Defence can only be entered in agreement with the Minister of Defence. In practice consent by telephone from a person within the Ministry of Defence authorized thereto will usually suffice.

The General Act on Entry into Dwellings shall apply to the application of this power of entry.

Article 31 and 32

Article 5:16 and 5.17 of the General Administrative Law Act have been taken over, while ‘supervisor’ has been substituted by ‘investigator’.

Article 33

This Article is based on Article 5:18 of the General Administrative Law Act. Since an investigation of the Board is not a matter of the position of interested parties, as referred to in the third and sixth paragraphs of the aforesaid Article, those provisions will not be taken over.

The powers provided for in this Article are of considerable importance for the investigation. The powers to investigate cases, to inspect objects and take samples of objects are necessary for the field work of the investigator. By virtue of the third paragraph objects such as wreckage, components, black-box etc. can be seized for an investigation to be conducted elsewhere. For it is possible that investigation on the scene can only take place during a short period of time. For instance, by virtue of this Article wreckage can be taken away in order to reconstruct a means of transport and to examine these objects in a place other than the place of the incident.

In practice the concept of ‘short period of time’ in the third paragraph should be explained in connection with activities to be performed by the investigators. It should be possible for investigators to have such objects available long enough for the proper performance of their investigative activities.

As regards the possible cumulation with criminal seizure, arrangements are intended to be made with the Public Prosecutions Department, which, if required, can be anchored in rules laid down pursuant to Article 62.

Article 34

The first paragraph is derived from Article 5:20 of the General Administrative Law Act. Article 64 contains provisions intended to prevent that the co-operation which must be rendered pursuant to the present Article, will have detrimental consequences for the person concerned in other proceedings, such as criminal proceedings.

Article 35

The first paragraph reflects the independence of the Board: the Board decides independently, without interference of others, whether an investigation will be conducted. This obviously does not affect an investigation obligation imposed on the Board pursuant to Article 5.

As it is important that investigators can start the investigation on the scene immediately after an incident, the second paragraph provides that in anticipation of the decision of the Board, the chairman of the Board can already decide to institute a provisional investigation. For practical reasons the chairman may declare another member of the Board or the general secretary authorised to take such a decision on his behalf. If he has been declared authorised by the chairman, he may in his turn declare a qualifying staff member of the Office authorised to take the decision.

In order to offer as much clarity as possible about the question whether the Board will proceed to an investigation, the third paragraph provides that, apart from a few exceptions, the

decision or the provisional decision to conduct an investigation is taken within five days, calculated from the day of the incident. It here concerns a procedural term.

Article 36

In very exceptional cases it may occur that for the sake of security of the countries of the Kingdom of the Netherlands or for the sake of maintaining or supporting the international legal order, it is not adequate for the Board to start an investigation. An accident during an action prepared in absolute secrecy could be an example of this. It will be clear that an interfering investigation and publicity should be prevented in such an exceptional case. In this context Article 36 provides that for weighty reasons related to the aforesaid circumstances the Minister of the Interior and Kingdom Relations may decide that the Board shall refrain from investigations.

Article 37

It may occur that a Minister, a Queen's Commissioner or a mayor, on the basis of his administrative responsibility considers an independent investigation advisable into a particular incident with respect to which the Board has not instituted an investigation. Article 37, first paragraph, provides that a request can be addressed to the Board in such a case. It is up to the Board to assess whether, in connection with its independent position, it will comply with the request. Pursuant to the third paragraph the Board must give reasons for a possibly negative decision.

Articles 38, 39 and 40

Pursuant to these Articles the Netherlands will be able to comply with a number of agreements laid down in international regulations.

Article 41

Article 41 is derived from the aforesaid Directive no. 94/56/EC on civil aviation. Obviously this has no effect on the fact that the Board may request assistance in other cases as well.

Article 42

Article 42, first paragraph, provides that the Board can hold a session. It explicitly concerns an optional possibility which the Board will only need to avail itself of if considered advisable by the Board. The regulations included in Article 42 et seq. were mainly taken over from the Transport Safety Board Act.

'Surviving relatives' in Article 42, second paragraph, sub a, will be understood to mean those persons who have been closest to a natural person: his partner and his (adult) children and in their absence his parents or brothers and sisters.

Besides publication in the Netherlands Government Gazette pursuant to the third paragraph, the Board is free to give publicity to the session to be held in a different manner, too. This may for instance be through local or regional media.

Article 43

Article 43 contains a regulation on disclosing information to a number of persons involved, in preparation of the session. The second, third and fourth paragraphs contain some exceptions as regards data that may be disclosed, among which data related to the security of the countries of the Kingdom of the Netherlands.

Guaranteeing a possibly less wide public access regime in another state is obviously also included in the relations of the Kingdom of the Netherlands or the countries of the Kingdom of the Netherlands with other states. After all, it will not benefit foreign relations and the willingness of other countries to participate in investigations, if data that are confidential in a foreign, involved state, are disclosed at a public hearing of the Board.

Article 44

In Article 44 the principle is laid down that sessions of the Board are public. The second paragraph provides that for serious reasons a case may be dealt with behind closed doors. Furthermore it is provided that in a number of cases the Board is obliged to close the doors at the request of the Minister of the Interior and Kingdom Relations, of Defence or of Justice or of the person who is heard. With respect to the Ministers referred to this is further specified in the general part of chapter II under Separation of criminal and other proceedings, and with respect to the person who is heard in the general part of chapter V under Special Provisions in connection with external and national security and detection and prosecution.

Article 48

To an important extent it is up to the Board to give shape to its investigation. See also Article 60. However, in connection with international regulations a limited number of rules related to the investigation will be laid down by or pursuant to an Order in Council. Notably the regulation may be mentioned that a project leader (in aviation called an Investigator-in-charge) shall be appointed for the investigation of an incident.

Article 49

The Board shall complete its investigation with a report. In principle the Board will have to issue an integrated report of an investigation. However, the fourth paragraph presents the possibility that, if the Board conducts an investigation both into an incident and into dealing with the consequences of the incident, the report is issued in two parts. The reason of this is that the investigation into dealing with the consequences may take longer. It would be undesirable if the Board would have to delay issuing its findings as a result of the investigation of the incident until the report on dealing with the consequences can also be issued. It is obvious that the Board should guard the connection between the two parts.

Article 50

This Article provides for the right to be heard. From the judgement of the European Court for Human Rights in the so-called Fayed-judgement (ECHR 21 September 1994, Fayed, A.294-B) it could be inferred that persons who are criticized, even if it does not concern a criminal accusation, should be given the opportunity to react to the contents of a report. They are offered this opportunity in Article 50. If the comments are not taken over, the Board should state reasons for this.

Article 52

Personal data as referred to in paragraph 2 of chapter 2 of the Personal Data Protection Act (first paragraph, section d), concern the so-called special personal data. Pursuant to Article 52 these data shall not be included in the final report, unless the supply of these data is evidently not an intrusion on privacy. This restriction is generally applied, hence to personal data of both Dutch people and of foreigners.

Article 54

Information that the Board has supplied to other parties by or pursuant to the provisions of this Act during the investigation, is understood to mean *inter alia* provisional messages.

Article 55

On the basis of Article 54 the report issued by the Board is in principle public. However, as a result of applying Article 52 the situation may arise that information must be deleted from the report which is essential to such an extent that the analysis of the facts of the incident is no longer complete or that the conclusions are not sufficiently supported. In such a case publishing those parts may not be opportune. Consequently, Article 55 offers the possibility to disclose the information referred to and the conclusions and recommendations based on it, to the person or body concerned without including it in the public report, while maintaining secrecy.

If the secret information is of such a nature that it is not advisable to issue a public report on the remaining public information, the Board may decide, on the basis of the second paragraph, to refrain from issuing the report altogether.

Article 57

Article 57 explicitly provides that the Board may terminate an investigation started by it without issuing a report, if in its opinion the investigation will not lead to any meaningful recommendations. It would be a waste of energy if the Board would have to complete an investigation which initially presented itself as promising, if it gradually appears that nothing conducive to increasing safety will result. This possibility also presents itself if the Board does not have sufficient information available as a result of refusal of the Ministers concerned to co-operate with the investigation, by virtue of Article 34, second and third paragraphs. Since in such a case, too, the Board will not be able to make any meaningful recommendations. Obviously the authority to interrupt an investigation does not apply to investigations which the Board is obliged to conduct.

Article 59

The Board may decide to reopen the investigation on the basis of new facts that have come to light after the investigation was closed. The present Article explicitly indicates that it is up to the Board to judge whether new facts justify a reopening.

Article 62

In order that a criminal investigation does not interfere with an investigation conducted by the Board with respect to the same incident, it is advisable that arrangements are made about the

relations between the Board, the Public Prosecutions Department and the Police. As regards the Transport Safety Board a new set of arrangements between the Board and the Public Prosecutions Department is almost completed. Article 62 presents the possibility to lay down these arrangements by a Kingdom Order in Council or an Order in Council and to supplement them, if required. From the point of view of efficiency, the arrangements will obviously also have to be aimed at co-operation between on the one hand the Board and on the other the Public Prosecutions Department and the Police, in so far as this does not harm the proper performance of one of the authorities concerned.

In so far as the rules to be laid down pursuant to this Article only refer to the country of the Netherlands, this regulation presents the possibility that these rules will be laid down by an Order in Council which is only applicable to this country.

Article 63

This Article makes it possible that rules of conduct are laid down by or pursuant to a Kingdom Order in Council or an Order in Council with respect to concurrence of the activities of an inspectorate in imposing an administrative sanction, with the activities in an investigation by the Board.

This regulation presents the possibility that, in so far as the rules to be laid down pursuant to this Article only refer to the country of the Netherlands, these rules are laid down pursuant to an Order in Council which is only applicable to this country.

Article 64

Article 64 contains provisions intended to prevent that information collected by the Board within the scope of its investigation, will be used to the detriment of persons or bodies involved in the investigation. The intention of the regulation is to promote that the Board will have as much information as possible at its disposal so as to be able to form as correct a picture as possible of the incident .

The regulation of the first paragraph is based on Article 74, first paragraph, of the Transport Safety Board Act, which in its turn was based on Article 5.12 of Appendix 13 of the Chicago Convention on Civil Aviation. With respect to Article 74 of the Transport Safety Board Act, documents defined by the Board have been added to the protected information. Practice has taught that such documents may find their way to the criminal court by virtue of the aforesaid Article 74. An exception was made for the public report in so far as this is not based on information sources as referred to in sections a through e. Consequently, it is possible to use conclusions based on the Board's own observations, which have been included in the report.

Furthermore, the regulation in the present Article has been extended in relation to the Article in the Transport Safety Board Act in such a sense that the latter Article only prohibits the use of the information referred to in legal proceedings, whereas in the present Article this is also the case in proceedings in connection with imposing a disciplinary measure, an administrative sanction or an administrative measure. 'Disciplinary measure' will also include a measure against a person who is employed on the basis of an employment contract, in conformity with the Netherlands Civil Code.

Arbitral proceedings shall also fall under civil proceedings.

The second paragraph is based on Article 40, first paragraph, of the proposal for a Kingdom Act concerning a Defence Accidents Board. The paragraph implies that a claim under Article 96a of the Netherlands Code of Criminal Procedure for handing over one of the data carriers referred to in the present second paragraph is not possible. Nor can Article 5:17 of the General Administrative Law Act be applied with respect to these data carriers. However, the possibility exists that a person who has made a statement or a person about whom medical or private information has been compiled, gives his consent to use this in a further investigation or in other proceedings. The same applies for using it as evidence, as referred to in the first paragraph.

In the third paragraph an exception has been made for use of the information, referred to in the first paragraph, sections b and d, in a criminal investigation into hostage taking, murder, manslaughter or offences with a terrorist purpose. If for instance it would appear from the cockpit voice recorder that a plane has crashed due to a terrorist attack, the police and the public prosecutions department should be able to use this information.

Finally, in the fourth paragraph it is prohibited that an investigator of the Board can be called as a witness or an expert in respect of an investigation in which he is or has been involved.

A voyage data recorder as referred to in the first paragraph is understood to mean a voyage data recorder as referred to in Resolution A.861 (20) on performance standards for ship-borne voyage data recorders, passed by the General Assembly of the International Maritime Organisation on 27 November 1997.

By means of the present Article the so-called Saunders-judgement of the European Court for Human Rights (ECHR 17 December 1996, NJ 1997, 699) is also complied with, in which it was decided that the ECHR convention entails that it is not allowed to use a statement obtained under duress of, for instance, threat of punishment against the person who has made the statement.

Article 76

Unlike Article 27 of the proposal for the independent administrative bodies Framework Act the term for the first evaluation is not fixed at five years but at three years. In the Transport Safety Board Act such a term is already prescribed for the first evaluation of that Board. It seems advisable that the new Board will also be subject to an evaluation after such a term.

Article 77

The desired independent position of the Board implies that the Board can choose which incidents it is going to investigate. However, this does not apply to a number of categories of incidents in respect of which, in connection with international regulations, the Board is obliged to have an investigation conducted pursuant to Article 5. If the Board remains seriously in breach in investigating these incidents properly, it fails in the performance of its duties. Article 77 provides for a regulation on neglect of duties in respect of such situations.

If the Board remains seriously in breach in conducting obligatory investigations, the Minister of the Interior and Kingdom Relations and the Minister concerned can make alternative provisions for investigations. In this respect the Prime Minister will play a part in connection with his responsibility for the performance of the Board in general, and the Minister concerned in connection with his responsibility for the field of policy concerned.

Article 78

This Article provides for the amendments made to the Kingdom Act proposed here, if the legislative proposal submitted by Royal Message of 27 September 2000 providing for regulations concerning independent administrative bodies (independent administrative bodies Framework Act) (Parliamentary documents II, 2000-2001, 27 426), hereinafter to be referred to as: the legislative proposal independent administrative bodies Framework Act, will take effect before the present proposal takes effect.

On the basis of Article 14, second paragraph, of the independent administrative bodies Framework Act, the Minister of the Interior and Kingdom Relations has the possibility to determine the remuneration or the reimbursement. Consequently, the provision concerning delegation in Article 9, first sentence and sub b, is no longer necessary.

In derogation of the independent administrative bodies Framework Act the supply of data, referred to in Article 20, first paragraph, will only take place with respect to data which the Minister of the Interior and Kingdom Relations needs for his task in respect of the Board. In connection with the independent position of the Board, data on contents of and approach to concrete investigations cannot be required by the Minister of the Interior and Kingdom Relations.

The independence of the Board entails that the performance of tasks is left to the Board. The possibility for the Minister concerned to lay down policy rules with respect to the performance of tasks, referred to in Article 12 of the independent administrative bodies Framework Act, should therefore be excluded.

In derogation of Article 23 of the independent administrative bodies Framework Act, the possibility to interfere in case of neglect of duties shall only exist in respect of the obligatory investigations of the Board, referred to in the provisions pursuant to Article 5. For a further explanation the explanation in Article 77 is referred to.

Article 82

The assets of the Transport Safety Board, which will pass to the State, shall be put at the disposal of the Board.

Article 88

If it should be decided that decisions of the Board, such as the decision to institute an investigation, are to be regarded as decisions in the sense of Article 1:3, first paragraph, of the General Administration Law Act, it would not be advisable to create the possibility of lodging a complaint or bringing an appeal against this. In view of the nature of the decisions it is desirable that it concerns immediately final decisions. Consequently, the decisions will be registered in the so-called negative list in Article 8:5 of the General Administrative Law Act.

An exception is made for decisions with respect to the general secretary and the employees of the Office. Notably, this concerns decisions on legal status and the decision on exclusion from participation in an investigation. In these cases the employees should be able to have the necessary legal protection available.

Article 89

A decision of an international institution, apart from for instance a decision by the Council of the European Union, can also be understood to mean a decision taken by the International Maritime Organisation, the international Civil Aviation Organisation or the North Atlantic Treaty Organization.

In so far as the rules to be laid down pursuant to this Article by an Order in Council concern matters of the Kingdom of the Netherlands in the sense of the Charter for the Kingdom of the Netherlands, they will obviously be laid down pursuant to a Kingdom Order in Council. However, the Article presents the possibility that obligations which only refer to the country of the Netherlands, will be laid down by an Order in Council which is only applicable to his country.

Article 90

In respect of incidents with sea-going vessels not in use with the Ministry of Defence or foreign armed forces a later entry into force is possible. The reason is that the present Act can only enter into force for the aforesaid sea-going vessels after dissolution of the Maritime Court of the Netherlands, which will take place after a new arrangement has been made for the disciplinary rules in ocean shipping.

The State Secretary of the Interior and Kingdom Relations,
R.H. Hessing

