

## Safe flight routes. Responses to escalating conflicts

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### 1. About this report

Passengers and crew must be able to rely on enjoying a safe flight, irrespective of the airline, the point of departure and the destination they choose. The safety of the chosen flight route clearly plays an important role. Recent geopolitical developments once again demonstrate that conflicts between states can escalate rapidly. Such conflicts result in unsafe situations, not only on the ground. Risks also arise for civil aircraft overflying conflict zones. Over the past decade, passenger aircraft were hit by surface-to-air missiles while overflying conflict zones, on two occasions. The crash of flight MH17 above Ukraine in 2014, and the crash of flight PS752 above Iran in 2020 show that flying above or close to a conflict zone can have catastrophic consequences. In response to a request from the Minister of Infrastructure and Water Management to reflect on the recommendations from the *MH17 Crash Report*, the Dutch Safety Board conducted an additional follow-up investigation into the safety of flight routes.

### 2. General conclusion on follow-up to the recommendations

In the report, the Dutch Safety Board issues five recommendations to further improve the safety of flight routes. These recommendations are focused on improving the risk assessment method, developing criteria for closing airspace above conflict zones, accelerating the sharing of information and decision-making at a European level, and enabling the Dutch government to advise airlines on or to prohibit them from overflying conflict zones. By implementing improvements at these four levels, the risks of overflying conflict zones can be better managed so that passengers and crew can rely on enjoying a safe flight.

The Safety Board concludes that the recommendations have been sufficiently followed up on. Flight safety in relation to conflict zones demands constant attention and further development at national, European and global level. With regard to recommendations 2 through to 5, the first steps taken by the various stakeholders are promising, although it is important that parties continue to strive to further implementation of the recommendations.

#### *Overview of follow-up per recommendation*

In evaluating the extent to which recommendations from aviation reports have been followed up on, the Dutch Safety Board is bound by the assessment criteria from the European classification system, in line with EU Regulation No. 996/2010. The European classifications with the corresponding assessment criteria appear in an appendix to this memorandum.

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Recommendations to	(Core of) Recommendation	Compliance
Minister of Infrastructure and Water Management and Minister of Justice and Security	1. Consider also issuing advice and, as the ultimate remedy, imposing a flight prohibition for Dutch operators in foreign airspace.	Adequate
Minister of Infrastructure and Water Management	2. Encourage the development and application of risk assessment methods based on the precautionary principle, and take the initiative on international level to further develop these risk assessment methods.	Adequate
Minister of Infrastructure and Water Management	3. Take the initiative at international level to enhance the responsibility of states with regard to airspace management so that it is clear in which cases the airspace should be closed.	Adequate
European Union Aviation Safety Agency (EASA)	4. Further develop the European platform by expanding the available information without losing rapidity.	Adequate
European Commissioner for Home Affairs and Commissioner for Transport	5. Enhance the efficiency and effectiveness of the EU Integrated Aviation Security Risk Assessment process.	Adequate

## Follow-up per recommendation

### *Recommendation 1*

*To the Minister of Infrastructure and Water Management and the Minister of Justice and Security*

National: advice and regulation

Consider expanding the possibilities for the Dutch state, in addition to the provision of information to airlines, to also issue advice, and as the ultimate remedy, to impose a flight prohibition for Dutch operators in foreign airspace.

*Response from the Minister of Infrastructure and Water Management, on behalf of the Cabinet*

In his reaction, the Minister dealt with this recommendation in detail. The Minister suggested that the Cabinet has carefully considered whether the recommended change

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to the national system would contribute to the better management of the risks of flying over or near conflict zones. In its considerations, the Cabinet further discussed five aspects.

Firstly, the Minister concluded that the current legal framework is insufficient, and that the international principle of sovereignty represents a major hindrance to any amendment to the law. Secondly, the Minister suggested that the information position of Dutch airlines is very good. The third aspect discussed by the Minister is the statutory task of the intelligence and security services that issue information among others to airlines. The Minister argued that in his judgement, it is not a realistic option to instruct these services to conduct worldwide investigations into the intentions and capacities that represent a threat to civil aviation, and concluded that the efforts of the services should remain unchanged. Fourthly, according to the Minister, the Dutch airlines support the further development of the risk assessment method as described in recommendation 2. Finally, the Minister discussed the supervision of flight routes. He explained that a request has been issued to the Human Environment and Transport Inspectorate (ILT) to determine what is necessary within the existing legal frameworks to take further steps in terms of supervision, for a (subsequent) assessment of the decisions by airlines on the chosen flight routes. In a follow-up letter<sup>1</sup>, the Minister pointed out that the Inspector General has requested additional resources both to fund the further efforts and to promote internal expertise. The letter explains that the Minister is currently further considering his position.

The Minister concluded with the observation that there are no reasons to assume that the current system will be further improved if the government is given the possibility of issuing advice or imposing a flight prohibition for Dutch airlines. The legal and practical objections raised, in addition to the preference for a European approach (as described in recommendations 4 and 5), have led the Cabinet to decide not to create any legal possibilities for issuing advice or imposing a flight prohibition.

#### *Assessment of the follow-up*

In accordance with the European classification, the follow-up to the recommendation is classified as adequate. The Safety Board notes that in part it considers the supporting arguments presented by the Minister as unsatisfactory.

#### *Explanation of the assessment*

The letter reveals that the Cabinet has considered expanding the instruments available to it, and in those considerations has discussed a variety of aspects. In that sense, the recommendation has been complied with. As noted by the Dutch Safety Board in its

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<sup>1</sup> Letter from the Minister of Infrastructure and Water Management to the Dutch House of Representatives, 'Additional steps in supervision ILT safe flight routes', dated 17 February 2021. This is a response to the letter from the I-G at ILT to the Ministry, 'Your letter Supervision ILT on safe flight routes (conflict zones)', dated 16 December 2021.

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report, creating the possibility of issuing recommendations or imposing prohibitions is no light-hearted decision. In exceptional cases, in which other barriers fail, however, it would be an instrument that offers the Netherlands the possibility of protecting passengers of Dutch airlines. Below, the Safety Board briefly discusses the aspects raised by the Minister that played a role in the decision not to expand the available instruments.

With regard to the supposed legal obstacles to expanding the set of instruments raised by the Minister, the following can be said. The fact that each country has sovereignty over its own airspace, pursuant to the Chicago Convention, does not mean that another country could not advise or prohibit its own airlines from flying through that airspace. As wrongly suggested by the Minister in his letter, such advice or prohibitions would not be in contravention of the aviation rules under the Convention. Moreover, other signatory states to the Convention such as the United States, the United Kingdom, Canada and France have created and in fact use precisely these possibilities in their national legislation. The Minister describes 'deviating' from the principle of sovereignty as a political choice. Although in the opinion of the Safety Board there is no case of deviation from this principle, it is indeed a political choice by the Cabinet to not wish to establish the possibility to advise or to prohibit airlines from overflying conflict zones. With regard to the second aspect - in line with the report - the Minister concludes that the information position of Dutch airlines is good. Important steps in this respect have been taken over the past few years. The Minister is correct in concluding that expanding the set of instruments would result in an additional responsibility and as a consequence additional capacity for the intelligence services (third aspect). The choice to not take this step is a political consideration. The fourth aspect, the further development of the risk assessment method, makes an important contribution to the safety of flight routes. Expanding the set of instruments relates to a different safety barrier, and both can coexist and reinforce each other. Finally, the Minister refers to his correspondence with the ILT, in which the ILT requests resources to be able to expand the substance of supervision on decision-making by airlines. Although the Minister issues no specific undertakings in that connection, strengthening supervision is an integral part of the overall package of measures aimed at promoting safe flying.

In summary, in his considerations regarding the expansion of the set of instruments available, the Minister above all looks at other barriers for promoting flight safety. As a consequence, in his judgement, the need for additional instruments is reduced. With regard to the two obstacles to expanding the set of instruments, raised by the Minister, namely the alleged deviation from the principle of sovereignty and the need for capacity expansion at the intelligence services, the Safety Board concludes that these are primarily the result of a political consideration. Nonetheless, it remains possible that this political choice may be reconsidered at some point in the future.

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### *Recommendation 2*

#### *To the Minister of Infrastructure and Water Management*

International: innovation of the risk assessment methods

Encourage the development and application of risk assessment methods based on the precautionary principle for civil aviation operations over or near conflict zones. Take the initiative on international level to further develop the risk assessment methods as described in ICAO Doc 10084. Closely involve airlines and work out how possible catastrophic scenarios can be identified in the event of an escalating conflict, and how uncertainties must be taken into account in the analysis and decision-making.

#### *Response from the Minister of Infrastructure and Water Management, on behalf of the Cabinet*

The Minister writes that the Netherlands has joined Canada in placing this recommendation on the agenda of the Safer Skies Consultative Committee (SSCC) which has since included the recommendation in its working programme. In a paper submitted in autumn 2021, the SSCC announced its adoption of recommendations 2 and 3, whereby it intends to further elaborate the application of the precautionary principle with regard to unlikely but catastrophic scenarios in its risk assessment methods. After the recommendation has been put into practice, and experience with its application has been acquired, this could in the longer term result in a further tightening up of the underlying standards and working methods.

The Minister also writes that the major Dutch airlines recognize the importance of further developing risk assessment methods and that they are in favour of the efforts by the Cabinet to have international criteria developed in this area, by the SSCC. On a national level, within the Covenant with the airlines, work will continue on the elaboration and application of the precautionary principle in the face of uncertainty of rapidly escalating conflicts with potentially catastrophic consequences. According to the Minister, the results will be included in the next evaluation of the Covenant. Any experience acquired nationally will subsequently be submitted to the SSCC by the Netherlands.

#### *Assessment of the follow-up*

In accordance with the European classification, the follow-up to the recommendation is classified as adequate.

#### *Explanation of the assessment*

The reaction from the Minister demonstrates that both at national level - together with the Dutch airlines - and at international level - together with Canada within the SSCC - steps have been taken to follow up on this recommendation. These steps represent an energetic response from the Minister, to this recommendation. The further development

of the risk assessment methods involves a practical elaboration of the relatively abstract precautionary principle, and is a time-consuming process according to which new guidelines will be developed on the basis of specific cases. It is therefore of vital importance to continue working within the collaborative fora in order to jointly arrive at a further practical elaboration of the precautionary principle, which can then be put into international practice.

### *Recommendation 3*

#### *To the Minister of Infrastructure and Water Management*

International: criteria for airspace closures

3. Take the initiative at international level to develop a specific proposal for a stricter definition of the responsibility of states with regard to airspace management, so that it is clear in which cases the airspace should be closed. Urge the inclusion of this proposal in the Chicago Convention and the underlying Standards and Recommended Practices.

#### *Response from the Minister of Infrastructure and Water Management, on behalf of the Cabinet*

In his letter, the Minister points out that the first step taken by the Netherlands was to support the inclusion of this subject in the working programme of the SSCC. The working group established for this purpose, with the Netherlands as an active participant, intends to elaborate scenarios for the closure of airspace. Information subsequently supplied<sup>2</sup> reveals that in mid-March 2022, 'Guiding Principles Related to Airspace Closures' were published within the SSCC, based on the precautionary principle.

In his letter, the Minister further suggests that ICAO will be asked to include the elaborated scenarios in a new revision of the Doc 10084 manual, which is expected to be ready in 2023. According to the Minister, once these scenarios have been used in practice and experience is acquired, the Netherlands intends to encourage the further tightening up of the Chicago Convention and the underlying standards and working methods.

#### *Assessment of the follow-up*

In accordance with the European classification, the follow-up to the recommendation is classified as adequate.

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<sup>2</sup> Safer Skies Consultative Committee – Information Paper – Guiding Principles for Airspace Closure, 18 March 2022.

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### *Explanation of the assessment*

The letter reveals that the Minister has taken the first steps in putting this recommendation into practice, and intends to comply fully with its content. As he himself indicates in his letter, making any changes to the Chicago Convention is a complex and lengthy process. It is therefore essential that the Netherlands, with its allies, continues to encourage the development of criteria in order to bring the flying start already made to the follow-up on the recommendation to a successful conclusion.

### *Recommendation 4*

*To the European Union Aviation Safety Agency (EASA):*

European: effectiveness of European guidance

Further develop the European Information Sharing and Cooperation Platform on Conflict Zones by expanding the available information without losing rapidity, including analysis and recommendations to member states, airlines and other stakeholders.

### *Response from EASA*

EASA announced that since its launch on 25 February 2021, it has further developed the test version of the Information Sharing and Cooperation Platform on Conflict Zones. The platform gives access to information for airlines and countries over and above their own risk analysis, and is a means of sharing information and warnings in a timely manner, between EU institutions, EASA member states and airlines. The test version was evaluated in May 2021, and the future of the platform was discussed in a workshop, in June 2021. The positive feedback and interest shown led EASA to launch a procedure aimed at further developing the test version into a long-term version. EASA also writes that it is working to further streamline the exchange of information and cooperation so that relevant information on developments in conflict zones that could influence flight safety can be shared between platform members, without delay.

### *Assessment of the follow-up*

In accordance with the European classification, the follow-up to the recommendation is classified as adequate.

### *Explanation of the assessment*

It can be concluded from the response that since the launch of the test version of the platform, EASA has actively retrieved feedback from the users and has taken steps to further develop the platform into a long-term version. The information subsequently received reveals that the operational version of the platform was launched on 3 March 2022.

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### *Recommendation 5*

*To the Commissioner for Home Affairs and the Commissioner for Transport of the European Commission*

European: effectiveness of European guidance  
Enhance the efficiency and effectiveness of the European Integrated Aviation Security Risk Assessment process, so that Conflict Zone Information Bulletins are published faster and include information and recommendations that are tailored to the operational needs of airlines.

### *Response from the Commissioner for Home Affairs and the Commissioner for Transport of the European Commission*

In their response, the Commissioners write that the European Commission has recently started reflections with member states and EASA about how the conflict zone risk assessment process can be further streamlined. The focus of these reflections will be on four aspects: Firstly, tightening up the regulations for the issuance of CZIBs and EASA information notes. Secondly, tightening up the work agreements, including deadlines for the discussion of CZIBs and information notes, under both normal and urgent circumstances. A third aspect relates to facilitating the dissemination of EASA information notes to relevant parties, including airlines, through their publication on the EASA platform. Finally, enabling the possibility of deviating from the general regulations, in urgent situations in which it is not possible to conduct an appropriate risk assessment, by tasking EASA to publish CZIBs and information notes.

### *Assessment of the follow-up*

In accordance with the European classification, the follow-up to the recommendation is classified as adequate.

### *Explanation of the assessment*

The focus on the four areas for attention is evidence that much attention is focused on accelerating information exchange, in particular in urgent situations. The report analysed how valuable time is lost in the European process of preparing CZIBs and information notes. If, as described by the European Commissioners, the possibility is established of placing information notes directly on the EASA platform, this will bring about the necessary acceleration, also because the information is then made directly available to the affiliated airlines. The fourth aspect, in which deviation from the regular procedure is made possible in urgent situations, and EASA is mandated to publish recommendations, represents an important acceleration of the process. The further elaboration of the four aspects and their consolidation in specific agreements are steps that will require further attention over the coming period.