



Review Report

arising from the crash of flight MH17

The role of the General Intelligence and Security Service of the Netherlands (AIVD) and the Dutch Military Intelligence and Security Service (MIVD) in the decision-making related to the security of flight routes

CTIVD nr. 43

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CTIVD nr. 43

SUMMARY

arising from the crash of flight MH17

What is the reason for this investigation?

Following the crash of Malaysia Airlines flight MH17 on 17 July 2014 in Eastern Ukraine, the Dutch Safety Board is investigating, among other things, the decision-making related flight routes. The question arose whether the AIVD and the MIVD have a legal duty in this respect and how they implement it. The Dutch Review Committee for the Intelligence and Security Services conducted an investigation into this matter at the request of the Minister of the Interior and Kingdom Relations and the Minister of Defence. Our Committee presented its report to the Dutch Safety Board on 10 April 2015.

What did we investigate?

The report focuses on answering the following questions:

- Do the Services have a legal duty related to the security of flight routes through foreign airspace?
- How is the formal consultation structure organised between the AIVD and the MIVD and the civil aviation parties with regard to security issues and what information exchange takes place in this respect?
- What information did the Services possess prior to the crash regarding the security of civil aeroplanes above Eastern Ukraine and did they share this knowledge with external parties?

What are our conclusions?

Below we present the broad outlines and main conclusions of the report.

Do the Services have a legal duty related to the security of flight routes through foreign airspace?

The Committee has established that the legal security and intelligence tasks of the AIVD (Art. 6 paragraph 2 a/d Wiv 2002 (Intelligence and Security Services Act 2002, Wet op de inlichtingen- en veiligheidsdiensten 2002)) and the MIVD (Art. 7 paragraph 2 subsection a, c/e) do not include the Services conducting independent investigations into the security of foreign airspace and therefore into the security of flight routes that lie within it.

The Committee is of the opinion that the security of flight routes through foreign airspace does fall under the AIVD's security promotion task (Art. 6 paragraph 2 c). Other aspects of civil aviation security, such as promoting the security at Dutch airports and checking passengers and their luggage, also form part of this task. The MIVD also has a security promotion task but it focuses on the defence sector.

The AIVD's security promotion task does not involve conducting independent investigations. The task focuses on making a contribution to promoting the protection of important and vulnerable parts of society in the Netherlands. This is done using all the information gathered in investigations that fall under the security and intelligence task. When performing this task the AIVD can be expected to make a contribution to effectively providing information to Dutch airlines. This comprises two aspects:

- On the one hand, at the AIVD's initiative: The AIVD is expected to share information that points to an actual threat to civil aviation abroad, such as shooting down an aircraft, as quickly as possible with Dutch airlines or the National Coordinator for Security and Counterterrorism (NCTV).
- On the other hand, at the initiative of the Dutch airlines: They can, for example, ask the AIVD for information related to flight routes and airports in foreign countries. The AIVD cannot be expected to independently assess which information airlines need (except in the event of an actual threat).

The MIVD can also be expected to share information that points to a specific threat to civil aviation abroad as quickly as possible with the NCTV or Dutch airlines. This arises from the general principles of good governance.

How is the formal consultation structure organised between the AIVD and the MIVD and civil aviation parties with regard to security issues and what information exchange takes place?

The AIVD performs various activities that focus on promoting the security of civil aviation. The MIVD's role in this area is more limited due to its military orientation.

The AIVD participates in several consultation structures with which it shares non-classified information about potential threats.

- Joint consultation with the so-called vital sectors, including civil aviation;
- The Schiphol Security and Public Safety Platform (BPVS);
- Consultation with regional airports.

At the NCTV's request, the AIVD and the MIVD compile threat analyses for civil aviation (national airports and arriving and departing air traffic) that include threat-related information from their ongoing investigations.

Moreover, the AIVD maintains an extensive network of relationships with the civil aviation sector, including Dutch airlines. The AIVD provides information from its investigations to the airlines on a demand-driven basis. The MIVD only maintains contact with KLM. In this relationship, the MIVD provides information from its investigations on a demand-driven basis.

The Services share specific threat-related information with Dutch airlines and/or the NCTV on the basis of each Service's policy. They determine the severity and probability of a threat using a set of threat factors (i.e. capacity, potential, intention and activity). The Committee is of the opinion that these factors constitute an effective basis for this assessment.

What information did the Services possess prior to the crash regarding the security of civil flights above Eastern Ukraine and did they share this knowledge with external parties?

The Committee is the only body other than the Services themselves that has had access to all the State secret material that the Services possessed prior to the crash of flight MH17. It arrived at the following judgement:

The material available at the Services does not indicate any factors that point to a specific threat to civil aviation prior to the crash of flight MH17. The material available to the Services does not indicate that any one or more actors involved in the conflict in Eastern Ukraine displayed a combination of military resources, possibilities and intention to shoot down a civil aeroplane at cruising altitude, prior to the crash.

Based on the available information it therefore follows that the MIVD and the AIVD could not have been expected to identify any specific threat to civil aircraft above Eastern Ukraine or report it to external parties.

Recommendation

In light of the discussion within the international community and in Dutch society following the crash of flight MH17 related to improving the provision of information in the context of the security of flight routes, the Committee recommends that Dutch airlines be able to address a single contact point for both Services with their questions about the security of flight routes, including routes through foreign airspace. Establishing such a contact point would help increase collaboration in this area between the AIVD and the MIVD, as well as information exchange with Dutch airlines.

1 Introduction

On 21 November 2014, the Dutch Review Committee for the Intelligence and Security Services (the Committee) received the request from the Minister of the Interior and Kingdom Relations and the Minister of Defence to conduct an investigation into the role of the AIVD and the MIVD in the decision-making related to the security of flight routes.

The Dutch Safety Board asked the ministers to submit this request to the Committee. Following the crash of Malaysia Airlines flight MH17 on 17 July 2014 in Eastern Ukraine, the Dutch Safety Board is investigating, inter alia, the decision-making related to the selection of flight routes. This investigation raised three research questions related to the role of the AIVD and the MIVD that the Dutch Safety Board wanted the Committee to investigate.

The following research questions were presented to the Committee:

- a) What is the formal structure between the AIVD or the MIVD respectively and the parties relevant to aviation security, such as airlines, air navigation service providers and ministries, with regard to the provision of information about security threats?
- b) What are the two Services' specific activities related to exchanging information with parties relevant to aviation security?
- c) What information did the AIVD and the MIVD possess prior to the crash regarding the security situation in Eastern Ukraine, and to what extent did they share this information with parties involved in aviation security and safety? What were the considerations for doing / not doing so?

On 6 January 2015, the Committee announced that it would conduct the requested investigation.

This review report is structured as follows:

- Chapter 2 describes the procedure followed for this report and the Committee's research method.
- Chapter 3 includes the legal framework that applies to the role of the AIVD and the MIVD in the decision-making related to flight routes.
- Chapter 4 focuses on research questions (a) and (b): the consultation structure and the information exchange between the AIVD and the MIVD and the civil aviation sector.

- Chapter 5 concerns the situation prior to the crash of flight MH17. This chapter focuses on research question (c): what information did the Services possess and did they share this information?
- Chapter 6 includes the final conclusion and therefore the answers to the research questions.
- Chapter 7 provides the Committee's concluding remarks with a view to the future.

The Committee's review report was presented to the Dutch Safety Board on 10 April 2015, to be included in its entirety as an appendix to the report that the Dutch Safety Board will publish on the decision-making related to flight routes.

2 The organisation of the investigation

2.1 Procedure

The Committee's task is laid down in the Intelligence and Security Services Act 2002 (Wiv 2002). The Committee monitors the legality of the AIVD's and the MIVD's operations. The research questions that the Dutch Safety Board presented to the Committee do not directly fall under this task. The Committee did, however, conduct this investigation in accordance with the application of the Wiv 2002. This was based on the request submitted by the two ministers.

In contrast to what is stipulated in the Wiv 2002, in this particular case the Committee reports its findings directly to the Dutch Safety Board. The ministers will not send the report to both Chambers of the States General accompanied by their response. The Dutch Safety Board will make the Committee's report public, along with its own report. In this respect, the ministers and the Dutch Safety Board agreed that the Dutch Safety Board will first present the Committee's report to both ministers to examine it for the presence of any State secret information before the Dutch Safety Board makes the Committee's report public.

This report does not contain any secret appendix.

2.2 Methodology

Shortly after receiving the letter from both ministers, the Committee launched a preparatory investigation. In this phase the Committee held exploratory interviews with the management of the AIVD and the MIVD, conducted an exploratory case study of both Services and developed an action plan for the investigation.

In its investigation, the Committee focused on the period from 1 January 2014 through 17 July 2014. The Committee interviewed seventeen people during the investigation. Several people were interviewed twice. In total, the Committee conducted twenty interviews. They mainly involved staff from both Services. The Committee also conducted an extensive case study of both Services.

The investigation consisted of two phases. The initial phase was characterised by a process of familiarisation and elaboration. In this phase an initial investigation of the systems took place and a request was submitted for the material that the Services had gathered as part of internal investigations into the level of knowledge prior to the crash.

This material was studied and then assessed and supplemented by interviews with the staff members involved. During the second phase, the Committee performed a cross-check in the Service's digital systems. Broad investigative activities were conducted to examine the systems and ascertain whether all the relevant documents had been identified. This approach provided the Committee with a complete picture of the level of knowledge both Services possessed prior to the crash of flight MH17.

3 Legal framework

3.1 Introduction

Following the crash of flight MH17, society raised the question whether the AIVD and the MIVD have a legal duty with regard to the security of flight routes through foreign airspace. The first step is to examine what the law says on the matter. This constitutes the content of the current chapter. In the following chapter the Committee addresses the Services' specific activities related to civil aviation security.

This chapter provides an answer to the following question:

- Is the security of civil aviation flight routes through foreign airspace within the legal duties of the AIVD and the MIVD?

3.2 The responsibility of central government

The question in this paragraph is to which extent central government is responsible for the security of the airspace and the flight routes Dutch airlines use abroad.

According to the Convention on International Civil Aviation (ICAO Treaty¹), each State has sovereignty over its own airspace. This means that the airspace above a State is part of the territory over which the State concerned exercises sole authority². This has two implications:

- On the one hand the State has sole authority to take measures related to its airspace. This includes the decision to open its airspace to international air traffic, possibly subject to a particular flight altitude.
- On the other hand the State is responsible for the safety of its airspace and for the national and international air traffic that passes through it.

It follows from the above that the Dutch central government is sovereign with regard to Dutch airspace. This is the airspace above the Netherlands. This means that it exclusively possesses the power to take measures related to this airspace. Examples of such measures are closing the airspace or establishing a compulsory flight altitude. The powers of central government to make decisions related to the airspace goes hand in hand with a responsibility for its safety. The national and international air traffic that passes through it also falls under this responsibility.

Based on the principle of sovereignty, the Dutch central government therefore has no power to take measures related to foreign airspace. This also means that the Dutch central government bears no responsibility for the safety of the airspace above other States.

¹ ICAO stands for International Civil Aviation Organization (in Dutch: 'internationale burgerluchtvaartorganisatie'). The organisation was founded in 1947 by the United Nations Convention on International Civil Aviation (the Chicago Convention). Its objective is to develop international standards and agreements for safe and orderly air traffic.

² In the event of an armed conflict this may be different. Based on the UN Charter, the UN Security Council can decide to establish a No-Fly Zone. Parties embroiled in the fighting (ie, States that are involved in the armed conflict) can also establish such zones and may enforce them above their own territory as well as above enemy territory.

There is another aspect that is closely related to the limitations of central government's responsibility outlined here. It involves the decision-making of Dutch airlines with regard to the use of open foreign airspace, whether subject to a compulsory flight altitude or not. This does not involve the demarcation of responsibilities between sovereign States, but between the authorities and the business community. The decision whether to use foreign airspace or not falls beyond the Dutch central government's sphere of influence. The Dutch Aviation Act does not contain any explicit provision for imposing a flight ban on Dutch airlines with regard to flying in foreign airspace. In the Netherlands the airlines are the ones that decide whether they use other countries' open airspace or not. This decision also includes the consideration of any relevant safety aspects. To this end, in practice, the airlines use risk analyses that they produce in-house.

The answer to the question posed is: Central government has no control over the decision-making related to opening foreign airspace and therefore no responsibility for the safety of that airspace; it has no control either over the choices made by Dutch airlines with regard to use of the airspace and therefore it does not bear responsibility for those choices.

3.3 The security tasks of the AIVD and the MIVD

In short, the legal security duties of the AIVD and the MIVD³ involve the Services conducting investigations into threats to national security. In doing so the AIVD focuses on civil aspects and the MIVD on military aspects. Investigating threats includes monitoring the security situation so that new threats can be identified. The objective of these investigations is to enable the central government to assume its responsibility for protecting national security.

In the previous paragraph, the Committee established that the Dutch central government has no control over, and consequently does not bear responsibility for, decisions related to opening foreign airspace, or for the choices made by Dutch airlines with regard to using the airspace. Since the AIVD and the MIVD's task allocation is linked to the central government's responsibilities, the Committee concludes that the AIVD and the MIVD do not have a legal duty related to the safety of foreign airspace and consequently for the safety of flight routes that pass through them.

3.4 The intelligence tasks of the AIVD and the MIVD

The AIVD and the MIVD are charged with the task of conducting investigations concerning other countries.⁴ This is the foreign intelligence task. The Services perform this task with regard to matters that are referred to in the Foreign Intelligence Designation Order. This order does not mention the safety of foreign airspace or foreign civil aviation flight routes. Conducting investigations into the safety of foreign flight routes and the decision to use them is not part of this task.

³ This is the so-called 'a' task of the AIVD (Article 6 paragraph 2 subsection a Wiv 2002) and the 'a' and 'c' tasks of the MIVD (Article 7 paragraph 2 subsections a and c).

⁴ This is the so-called 'd' task of the AIVD (Article 6 paragraph 2 subsection d Wiv 2002) and the 'e' task of the MIVD (Article 7 paragraph 2 subsection e).

3.5 The AIVD security promotion task

One of the legal duties of the AIVD and the MIVD is to promote measures to protect the interests these Services serve.⁵ This is called the security promotion task. The MIVD focuses on the defence sector (including the defence industry) when executing this task, which means that although the MIVD produces threat analyses for military flights to support Dutch defence, civil aviation falls outside its scope.⁶ Therefore we only discuss the AIVD below.

The AIVD's security promotion task is not an investigative task per se. This task mainly involves using the information that the Service has gathered during its investigations in the context of its security task to better protect vulnerable and/or vital parts of society. This could be by providing the information to administrative bodies that can take measures, such as the NCTV⁷, or by informing the business community, het is e.g. by means of presentations. This allows companies to better protect themselves against certain threats.

A broad interpretation of the security promotion task is appropriate given its nature and objective. It does not involve obtaining a comprehensive view of potential threats (as in the security task), but of making a contribution to protecting important parts of society where possible. In the Committee's opinion, in addition to promoting other security aspects related to civil aviation, such as airport security and passenger and luggage control, this task also includes promoting the security of flight routes.

To perform this task, the AIVD can be expected to make a contribution to effectively provide reliable information to the civil aviation sector.

Information that is relevant to the security of civil aviation can be divided into two categories:

- Specific threat information

If information from ongoing investigations points to a specific threat⁸ (such as shooting down an aircraft), the AIVD must take the initiative to report this as soon as possible. The report is made either directly to the civil aviation party concerned or to the NCTV. Chapter 4 explores this matter in more detail.

⁵ This is the so-called 'c' task of the AIVD (Article 6 paragraph 2 subsection c Wiv 2002) and the 'd' task of the MIVD (Article 7 paragraph 2 subsection c).

⁶ The MIVD does have a separate legal duty (Article 7, paragraph 2 subsection f Wiv 2002), just like the AIVD, in the context of the so-called surveillance and protection system (stelsel bewaken en beveiligen), which may include civil aviation (airports and arriving and departing air traffic) in the Netherlands. In this system, the central government bears responsibility for taking security measures (or additional security measures) for certain people, services and objects in the so-called State domain due to the national interest involved in their security and unimpeded operations. The MIVD compiles threat analyses at the request of the NCTV, who acts as information coordinator in the system. This activity is further addressed in Chapter 4 insofar as it is relevant to this report.

⁷ For the sake of completeness, here we also refer to the separate legal duty assigned to the AIVD in the context of the surveillance and protection system (Article 6 paragraph 2 subsection e Wiv 2002). This system is explained in the previous footnote. At the NCTV's request, the AIVD compiles threat and risk analyses for the persons, objects and services in the State domain. This activity is further addressed in Chapter 4 insofar as it is relevant to this report. The Service often performs this system task alongside the security promotion task. There may be a certain degree of overlap in the focal areas of the two tasks. The security promotion task extends to, among other things, vulnerable and important parts of society, such as civil aviation, which can also fall under the system's State domain.

⁸ This term is elaborated in the AIVD's policy. See Chapter 4, paragraph 4.2.3.

- Other information that is relevant to security

With regard to other information that the AIVD possesses, it will be difficult for the Service to independently estimate exactly what the civil aviation parties need. Close collaboration with these parties is therefore required to properly implement this information provision.⁹ The AIVD will not generally be aware of the flight routes taken by Dutch airlines or of the foreign airports at which the airlines land. In this respect, the initiative must be taken by the airlines and not the AIVD. This means that information requests from airlines must constitute the basis for the provision of information by the AIVD (except in the event of an actual threat). Subsequently it is up to the AIVD to consider whether it falls within its legal tasks to provide information.¹⁰ Chapter 4 explores this matter in more detail.

3.6 Threat reporting by the MIVD

In contrast to the AIVD, the MIVD does not have a legal duty that relates to civil aviation security. Therefore, the MIVD cannot generally be expected to provide civil aviation parties with information that is important for civil aviation security.

Specific threat information¹¹ constitutes an exception to this. The Committee is of the opinion that if ongoing investigations conducted by the MIVD reveal a specific threat to civil aviation, the MIVD must take the initiative to report it as quickly as possible, either directly to the civil aviation party concerned or to the NCTV. This arises from the principle of balanced interests that is part of the general principles of good governance.¹²

3.7 Collaboration between the AIVD and the MIVD

The law stipulates that the Services must collaborate with each other as much as possible.¹³ This collaboration can at any rate involve providing data that may be important to the other Service.¹⁴ Since the AIVD has a security promotion task that also includes civil aviation security, the MIVD can be expected to cooperate in this area. This is important because, given the MIVD's military orientation, it often possesses specific knowledge of weapons and weapons systems.

⁹ Dutch Parliamentary Papers (*Kamerstukken*) II 1999/00, 25 877, no. 8, p. 122.

¹⁰ See Article 36 Wiv 2002.

¹¹ This term is elaborated in the MIVD's policy. See Chapter 4, paragraph 4.3.1.

¹² These legal principles arise from jurisprudence. See: Damen et al., *Bestuursrecht* (Administrative Law) 1, The Hague: Boom Juridische uitgevers 2005, p. 336-342.

¹³ Article 58 paragraph 1 Wiv 2002.

¹⁴ Article 58 paragraph 2 subsection a Wiv 2002.

4 Consultation structure and information exchange

4.1 Introduction

This chapter provides answers to two research questions that were presented to the Committee. These questions are:

- a) What is the formal structure between the AIVD or the MIVD respectively and the parties relevant to aviation security, such as the airlines, air navigation service providers and the ministries, with regard to the provision of information about security threats?
- b) What are the two Services' specific activities related to exchanging information with parties relevant to aviation security?

This chapter describes how the AIVD and the MIVD generally contribute to promoting civil aviation security. The specific activities of the Services related to providing information about the security situation in Eastern Ukraine prior to the crash are discussed in Chapter 5.

This is followed by an overview of the structure per Service (first the AIVD, followed by the MIVD), of the consultation between the Service and the parties relevant to civil aviation related to security and threats (question a). In this context the Committee also identifies the Services' specific activities related to promoting civil aviation security, especially how the Services exchange information with the parties relevant to civil aviation security in the sector and the type of information which the Services share (question b). Question b also involves the policy adopted by both Services related to sharing information about threats.

The other parties (including government parties) that play a role in aviation security, such as the National Coordinator for Security and Counterterrorism (NCTV), are only mentioned here where relevant.

4.2 The AIVD

This section provides an overview of the consultation structure between the AIVD and parties in the civil aviation sector and of AIVD's specific activities related to promoting the security of civil aviation.

This section is organised as follows:

- Contact with the vital sectors: Joint consultation with the vital sectors, the Schiphol Security and Public Safety Platform (BPVS) and consultation with regional airports.
- The compilation of threat analyses for civil aviation.
- The account manager and the network of relationships with the civil aviation sector.
- Sharing information with Dutch airlines, both on request and of its own accord.

4.2.1 Contact with the vital sectors

Joint consultation with the vital sectors

Based on its security promotion task, the AIVD maintains contact with the so-called vital sectors in the Netherlands. These include transport sectors, such as the railways and Amsterdam Airport Schiphol, as well as major events and the gas and electricity sector. The Minister of the Interior and Kingdom Relations has designated fourteen sectors.¹⁵ The failure of the products or services that fall under these sectors may cause social disruption.

The AIVD holds formal joint consultations with the vital sectors two to four times a year. KLM represents the Dutch civil aviation sector at these consultations. During the meetings, the AIVD shares information that is deemed relevant for the security of the vital sectors. In doing so, the AIVD does not share any State secret information. It involves, for example, political analyses.

Schiphol Security and Public Safety Platform (BPVS)

The AIVD also contributes to informing civil aviation parties about security in other ways. One example is its participation in the Schiphol Security and Public Safety Platform (BPVS). This platform is a consultation body with a coordinating and steering role. Public and private parties cooperate in the Platform to improve the effectiveness and efficiency of security and crime management at Schiphol. It was founded following the diamond heist at Schiphol in 2005.

The Platform is chaired by the director of Schiphol and the NCTV. The NCTV is jointly responsible for the security of national airports. In addition, parties that have an interest in and can contribute to security at Schiphol are represented, such as the Mayor, the Royal Netherlands Marechaussee, the Public Prosecution Service (OM), customs, the national police, KLM, air traffic control, the Ministry of Infrastructure and the Environment and the AIVD. The Ministry of Infrastructure and the Environment and Air Traffic Control the Netherlands are (partly) responsible, on behalf of the government, for the safety of Dutch airspace and for inbound, outbound and domestic air traffic.

The Platform convenes twice a year. At this level the AIVD is represented by a member of its management. Operating below the Platform is a steering group that meets every two months. The steering group mainly focuses on aligning policy. A head of unit from the AIVD participates in this group. Another working group operates below the latter, convening on a monthly basis. The working group especially serves to share needs and questions. The AIVD is represented in this group by its civil aviation account manager. The AIVD has several account managers that maintain contact with the vital sectors.

In the Platform, the AIVD shares unclassified information about threats to Schiphol airport. This concerns information about the situation on the ground in the Netherlands. Examples of this kind of information are: What general impression does the Service have with regard to Schiphol? Is left-wing extremism stirring things up at Schiphol? Are there any problems expected involving factions related to asylum policy or animal rights extremism? The Platform also addresses themes such as security investigations involving employees.

Consultation with regional airports

Each regional airport is also involved in a similar biannual consultation to discuss, among other things, security issues. The AIVD account manager participates in the consultation in his/her capacity as relationship manager. This allows the AIVD to reach airports that do not participate in the BPVS Platform.

¹⁵ Information brochure on vital sectors, Ministry of the Interior and Kingdom Relations (BZK), 25 June 2010, available (in Dutch) at www.rijksoverheid.nl.

4.2.2 Threat analyses on request

Every six months, the AIVD compiles an update of its threat analysis related to civil aviation at the request of the NCTV. This activity is performed in the context of the Alerteringssysteem Terrorismebestrijding (Dutch Counterterrorism Alert System, ATb) for the airports sector in the Netherlands. In addition to the AIVD, the NCTV also submits requests to the MIVD and the National Information Organisation Service of the National Police (DLIO)¹⁶ for information on this matter.

In its threat overview, the AIVD not only includes threats to national airports, but also associated threats related to incoming aircraft in the Netherlands (eg coming from risk areas), threats to Dutch airlines abroad or their interests (eg the security of Dutch crews during a stay abroad, the security of foreign destination airports, threats from known terrorist groups to civil aircraft that are going to land or possibly overfly) and threats to air traffic departing from the Netherlands (e.g. a person posing a threat in the Netherlands).

To this end, the AIVD draws on the information, knowledge and expertise regarding specific and possible threats already available to the Service. The AIVD bases this on known Dutch and foreign persons and factions that pose a threat, their working methods and the extent to which they have the intention and potential (in this context: resources and possibilities) to actually violate the safety of the civil aviation sector. These threat analyses are classified as State secret, because the AIVD reveals its subjects under investigation, level of knowledge, working method and/or sources in them.

4.2.3 Contact with the civil aviation sector

Network of relationships with the civil aviation sector

The AIVD has an account manager civil aviation. His/her main task is to maintain an extensive network of relationships with parties in the Dutch civil aviation sector. This concerns relationships with the security managers of the Dutch airlines¹⁷, with security managers of Dutch airports, flight school owners, Air Traffic Control the Netherlands, the Dutch Air Line Pilots Association and other parties involved in civil aviation, such as the Royal Netherlands Marechaussee, the NCTV and certain ministries.

The objective of the relationships network is to promote mutual information provision. On the one hand, the AIVD aims to provide an entry point for relevant reports coming from the civil aviation sector and, on the other, to create an opening for developing the Service's security promotion task. In practice the AIVD does this by, for example, informing civil aviation parties about developments in the area of terrorism and cyber threats that are relevant to them. This may, for example, involve providing instruction through presentations to pilots of Dutch airlines about possible threats. The AIVD contributes to increasing security awareness by providing instruction and sharing knowledge. Furthermore, the AIVD enables the sector to take security measures.

¹⁶ DLIO is charged, as part of the national police, with international information exchange, national information coordination, acquiring an insight into and an overview of the national and international security situation for operational police work (source: thesaurus.politieacademie.nl).

¹⁷ Airlines registered with the Dutch Human Environment and Transport Inspectorate (IL&T) as Dutch airlines.

An important component of the AIVD's contact, via the account manager, with Dutch airlines involves sharing information that is relevant to civil aviation security. The AIVD can do so in a solicited or unsolicited manner (see below). Dutch airlines bear independent responsibility with regard to selecting the flight routes they use, selecting the foreign airports at which they land and the safe execution of their flights.¹⁸ In addition to the information that airlines obtain independently and the risk analyses they compile in-house, the AIVD can be a link in the chain of information provision for airlines.

Unsolicited sharing of threat-related information

The AIVD informs Dutch airlines in an unsolicited manner about a specific threat to civil aviation. This may, for example, involve a terrorist attack on board an aircraft or a specific threat targeting civil air traffic above a certain area. The information supplied by the AIVD may relate to areas (ground situations) over which flights will or may pass. It may also involve risks to foreign airports where flights will or may land.

One instance of an actual threat about which the AIVD informed Dutch airlines took place at the end of 2013. It involved a threat from a terrorist group in the Sinai desert, in Egypt, that specifically targeted civil aviation. At the time, the AIVD issued a report to the NCTV, the Ministry of Foreign Affairs and the Dutch airlines. The latter subsequently decided not to fly over the Sinai desert temporarily.

In accordance with the AIVD policy, an actual threat exists if there are three threat factors. These factors denote the severity and probability of a threat. These factors are:

- Capacity (the availability of resources)
- Potential (capabilities of resources and actors)
- Intention (motives)

This policy applies to all threats, not only threats to civil aviation. For example, an actual threat exists if a person or a faction possesses a resource such as a weapon or explosives (capacity) that enables it (potential) to target civil aviation, for example, and the person or faction also has the motivation to use that resource as such (intention). If the AIVD possesses such information (intelligence), it often constitutes classified material (State secret), such as that from sensitive sources. Therefore, the AIVD cannot simply make this intelligence public. However, the AIVD can issue a report (alert) to enable the authorities and the business community to take the necessary measures.

The Committee is of the opinion that these factors constitute an effective basis for assessing whether an actual threat exists.

With regard to issuing such a report, the AIVD, the NCTV and the Ministry of Foreign Affairs established joint agreements (including procedural agreements) following the situation in the Sinai. They agreed that, if the occasion arises, the AIVD, together with the NCTV, will contact the Dutch airlines (or their security managers). If the information is relevant to all Dutch airlines, their representatives, the NCTV and the AIVD's account manager for civil aviation will meet to discuss it. If it involves an individual airline, the NCTV and the AIVD's account manager for civil aviation would specifically approach the airline concerned.

Solicited sharing of information

Dutch airlines can ask the AIVD account manager for specific information about the security of its foreign destinations. Questions may pertain to the security of flight routes, as well as whether it is safe enough to land in certain countries or for crews to stay overnight there. The AIVD may possess relevant information in this respect.

¹⁸ See section 3.2.

In that case, the AIVD can share information in accordance with its security promotion task. As discussed in Chapter 3, the AIVD will not generally be aware of the flight routes used by Dutch airlines or of the airports at which they land. The provision of information therefore only takes place based on the airlines' request.¹⁹

4.3 The MIVD

This section provides an overview of the consultation structure between the MIVD and the civil aviation sector and of the MIVD's specific activities related to promoting the safety of civil aviation. In contrast to the AIVD, the MIVD does not have a security promotion task that partly focuses on the safety of civil aviation. Due to its military orientation, the MIVD does not participate in consultation with civil aviation such as joint consultation with the vital sectors and the Schiphol Security and Public Safety Platform. However, the MIVD does contribute to civil aviation security in three ways.

This section is organised as follows:

- Contact with the NCTV:
 - Compiling threat analyses.
 - Reporting specific threat information related to civil aviation.
- Informal contact with KLM following requests for information sharing.

4.3.1 Contact with the NCTV

The compilation of threat analyses for civil aviation

Every six months, the MIVD compiles an update of its threat analysis related to civil aviation at the request of the NCTV, just like the AIVD. This activity is performed in the context of the Dutch Counterterrorism Alert System for the airports sector in the Netherlands.

Due to the military orientation of its intelligence operations, the MIVD possesses barely any information related to actual and potential threats to civil airports in the Netherlands. In its threat analyses, the MIVD provides knowledge and information about mission areas (including potential mission areas) for which the Service is conducting an investigative assignment, or information from ongoing investigations that is relevant to civil aviation. In this respect, the MIVD takes a broader perspective of the airports sector than just Dutch airports and also includes threats to civil aviation abroad in its analysis. The MIVD coordinated this response method with the NCTV.

In its threat analyses, the MIVD provides an overview of known terrorist organisations that possibly pose a threat to civil aviation, per area or region in which the Service is conducting its investigations. The assessment of the severity and probability of the threat is based on the intention, capacity and activities of the persons involved. These threat factors are discussed below.

Reporting actual threat information

In the event of an actual threat to civil aviation, the MIVD issues a report on its own initiative to the NCTV. This also applies to specific threats that involve flight routes.

¹⁹ See section 3.5.

In accordance with the MIVD's policy, an assessment is made of whether a genuine threat is involved using three threat factors²⁰:

- Intention
- Capacity
- Activity

These factors provide an indication of the severity and probability of a threat. They apply regardless of the nature of the threat. Thus they do not only apply to a threat to civil aviation.

The policy says the following with regard to these factors. The intention describes an actor's (i.e. an enemy's or faction's) willingness and desire to carry out a particular threat. The intention may be deduced from the enemy or faction's objective (or strategic objective), political and/or military ideology, military doctrine, socio-cultural context or statements made, etc. The intention may also be deduced from actions performed in the past. Capacity refers to the resources and possibilities that an actor possesses to carry out the threat. The activity factor comprises all of an actor's activities that directly or indirectly relate to carrying out an identified threat. The threat factor activity can be viewed as a 'list' of critical indicators or necessary conditions. In other words: a minimum number of conditions must be met before a threat manifests itself.

The Committee is of the opinion that these factors constitute an effective basis for assessing whether a genuine threat exists.

The Committee recognises that the Services do not use the same terminology. It has established that both Services use the capacity factor for the availability of resources. The AIVD uses a separate 'potential' factor to refer to the possibilities of the resources and of the actors. The MIVD includes the possibilities of the resources and of the actors in the capacity factor. Both Services use the intention factor to refer to the actors' motivation for focusing on a particular goal. In addition, the MIVD uses another factor, 'activities', that the AIVD does not use separately.

The Committee proposes that the Services examine the extent to which they can align the terminology related to the threat factors that they use.

4.3.2 Contact with KLM

In contrast to the AIVD, the MIVD does not maintain any extensive, structured network of relationships with the civil aviation sector in the Netherlands. Given the MIVD's military orientation, this is not to be expected. Consequently, at the MIVD there is no account manager role for civil aviation. A number of years ago, informal communications with KLM were established, however. In this context, KLM can submit specific questions to the MIVD related, for example, to the security of flight routes. The MIVD provides, for example, information about weapons systems, such as the range and possibilities of MANPADS²¹ or about the situation in a particular area. This exclusively concerns unclassified information.

²⁰ These factors are in line with the working method and definition with regard to threat analyses as used by NATO.

²¹ This stands for *man-portable air-defence systems*. This is a weapon that is fired from the shoulder

4.4 Answers to research questions a and b

The AIVD has a security promotion task that partly focuses on the security of civil aviation. The Service engages in various activities in this field:

- The AIVD participates in various consultation structures in which, among other things, the security of the civil aviation sector plays a key role. The AIVD holds formal joint consultations with the vital sectors several times a year. The Schiphol Security and Public Safety Platform is concerned with security at Schiphol airport. In addition, the AIVD participates in meetings of regional airports. At these consultations, the AIVD shares information that it possesses related to the security of the airports concerned.
- At the NCTV's request, the AIVD compiles threat analyses for civil aviation that includes available threat-related information.
- The AIVD maintains an extensive network of relationships with parties in the civil aviation sector, including Dutch airlines. On a demand-driven basis, the AIVD provides the airlines with available information that could be relevant to civil aviation security (including the security of flight routes). The AIVD also provides information about potential threats as part of this relationship.
- The AIVD shares information that indicates specific threats to civil aviation on an unsolicited basis with the Dutch airlines and with the NCTV.

Due to its military orientation the MIVD does not have a security promotion task that also focuses on civil aviation. Consequently the MIVD plays a limited role in this sector. However, the MIVD does contribute to civil aviation security in three ways.

- At the NCTV's request, the MIVD compiles threat analyses for civil aviation that includes available threat-related information.
- The MIVD shares information that indicates a specific threat to civil aviation with the NCTV on an unsolicited basis.
- The MIVD maintains informal contacts with KLM. As part of this relationship, the MIVD provides available information that could be relevant to civil aviation security (including the security of flight routes) on a demand-driven basis.

5 The MIVD and AIVD's level of knowledge prior to the crash of flight MH17

5.1 Introduction

This chapter provides an overview of the information related to the security situation in Eastern Ukraine, which the MIVD and the AIVD possessed prior to the crash of flight MH17. It also addresses whether the Services shared information on this matter externally and the Services' consideration for doing or not doing so. This answers the following research question:

- c) What information did the AIVD and the MIVD possess prior to the crash regarding the security situation in Eastern Ukraine, and to what extent did they share this information with parties involved in aviation security? What were the considerations for doing / not doing so?

In contrast to the previous chapters, in this chapter the Committee first discusses the MIVD followed by the AIVD. This is because the MIVD, due to its military orientation, possessed more information regarding the security situation in Eastern Ukraine than the AIVD.²²

In discussing the information related to the security situation in Eastern Ukraine that the Services possessed prior to the crash, the Committee focused on the information that is relevant for identifying a threat to civil aviation. This information relates to the threat factors that were discussed in the previous chapter.

The Committee will treat the three threat factors in the following sections in a specific order, which it will first explain. First, the threat factors capacity (MIVD)/capacity and potential (AIVD) are addressed (i.e., military resources and possibilities), because the Committee is of the opinion that these factors can serve as a clear indicator for identifying a threat (a so-called 'red flag'). The availability of certain military resources may constitute a reason for examining the other factors. In most cases, intention will not be easy to establish and will therefore only constitute a red flag in exceptional cases. The 'activity' factor used by the MIVD will generally form the final element in the assessment, because it involves examining indications that the 'enemy' has begun carrying out the identified threat (on which the intention is focused).²³

Since the Dutch airlines were not flying to destinations in Eastern Ukraine, only threat information that was relevant to civil aircraft flying over the area plays a role.

With regard to the conflict in Eastern Ukraine, there were three relevant actors with military capacities in the period prior to the crash:

- Russian armed forces
- Ukrainian armed forces and
- Pro-Russian separatists

The information that the Services possessed concerning these three actors will be treated per threat factor.

²² See paragraphs 5.2.1 (MIVD) and 5.3.1 (AIVD) for the Services' investigative assignments

²³ However, it cannot be ruled out that specific information related to a particular intention or particular activities represents the first indication of a threat.

Information that can be traced back to the current level of knowledge and the working method or sources of the AIVD and the MIVD is State secret. This means that the Committee will not name any specific documents or sources in this chapter. Details will only be described insofar as they are necessary to substantiate a conclusion. The AIVD and the MIVD's investigative assignments are only provided in general terms because these assignments could provide a picture of the Services' current level of knowledge.

5.2 The MIVD's degree of knowledge

5.2.1 The MIVD's focus

During the investigative period (1 January through 17 July 2014) there was no separate investigative assignment inside the MIVD focusing on Ukraine. An investigative team at the MIVD (referred to hereafter as the Team) was occupied with the Russian Federation. The Team worked on the basis of the MIVD investigation plan for 2014, which is based on the 2014-2019 Defence Intelligence and Security Needs (Inlichtingen- en Veiligheidsbehoefte Defensie 2014-2019) and the 2011-2016 Foreign Intelligence Designation Order. In general terms, the assignment was to conduct research into the foreign, security and defence policies of the Russian Federation. This also involved examining the proliferation of Russian weapons, military knowledge and technology.

The political situation in Ukraine had been unstable since October 2013. From 18 February 2014, when shots were fired at demonstrators on the Ukrainian Maidan Square in Kiev, the conflict in Ukraine began to escalate. At the end of February, Russia conducted military activities in the Crimean Peninsula and this area was annexed. This event was followed by unrest in Eastern Ukraine between Ukrainian armed forces and pro-Russian separatists (referred to hereafter as the Separatists). The Team investigated these developments as part of its existing investigative assignment. This means that it examined possible Russian involvement in the conflict.

In March 2014, the Ministry of Defence issued the MIVD with the request to submit weekly reports on the crisis between Ukraine and the Russian Federation. This led to a slight shift in the focus of the investigation, towards Russian military capacities and activities in the vicinity of Ukraine. To a lesser extent, attention was also devoted to the Ukrainian armed forces and the Separatists.

From the beginning of the unrest in Eastern Ukraine, the Team focused on the threat of a Russian attack in the area. The information it received was viewed from this perspective.

5.2.2 The information in the MIVD's possession

The capacity of the Russian armed forces and the Ukrainian armed forces

The information that the Team gathered as part of its investigative assignment provided a more complete picture of the Russian capacities than of those of the other two actors.

The general impression with regard to anti-aircraft defence systems was that the Russian armed forces possessed advanced systems that had been installed in the territory of the Russian Federation close to the border with Ukraine. These systems had sufficient range to be able to hit a civil aircraft at cruising altitude, which is a height of at least 7.5 kilometres.²⁴ Anti-aircraft systems that have sufficient range to reach this height are referred to hereafter as powerful anti-aircraft systems.

According to the MIVD's information, the Ukrainian armed forces mainly possessed outdated resources, including, however, certain powerful anti-aircraft systems. A number of these systems were located in the eastern part of the country.

The Separatists' capacity

The MIVD's information indicates that the Separatists were procuring an increasing number of weapons in the months prior to the crash. Since they were also attacked from the air by the Ukrainian armed forces, mainly after the Ukrainian government had reactivated its so-called anti-terrorism operation in the course of May 2014, the Separatists tried to acquire anti-aircraft systems with the aim of defending themselves.

Prior to the crash, the MIVD knew that, in addition to light aircraft artillery, the Separatists also possessed short-range portable air defence systems (man-portable air-defence systems; MANPADS) and that they possibly possessed short-range vehicle-borne air-defence systems. Both types of systems are considered surface-to-air missiles (SAMs). Due to their limited range they do not constitute a danger to civil aviation at cruising altitude.

On 29 June 2014, the Separatists captured a Ukrainian armed forces military base in Donetsk. At this base, there were Buk missile systems.²⁵ These are powerful anti-aircraft systems. This development was reported extensively in the media prior to the crash. The MIVD also received intelligence information on the subject, on 30 June and 3 July 2014 as well as on other dates. During the course of July, several reliable sources indicated that the systems that were at the military base were not operational. Therefore, they could not be used by the Separatists.

Since the beginning of the unrest in Eastern Ukraine, the question arose whether the Separatists were receiving material support and training from the Russian Federation. It was fitting that attention would be devoted to this matter in the MIVD's investigation. Even though there was information pointing to the fact that the Separatists had been supplied with heavy weapons by the Russian Federation, there were no indications that these were powerful anti-aircraft systems. Certain documents from the end of June 2014 state that material was being assembled at collection sites in the west of the Russian Federation to subsequently be supplied to the Separatists. One document (from a publicly accessible source), dating from 14 July 2014, states that advanced anti-aircraft systems (further details unknown) had also arrived at a collection point. However, according to this document, such systems, if they were indeed powerful anti-aircraft systems, had not (or not yet) been delivered to the Separatists in Ukraine.

²⁴ Based on the 'Report on the development of best practice guidance for conducting and sharing risk assessments' by the International Civil Aviation Organization (ICAO), adopted at the conference held in Montreal on 2-5 February 2015. This document States that the cruising altitude for civil aircraft is at least 25,000 feet. This is equal to 7.620 metres.

²⁵ Another name for it is SA-11.

The MIVD's impression was that the Separatists were trained to use weapon systems, including MANPADS, in the Russian Federation. There were no indications that they were being trained to use powerful anti-aircraft systems. The Separatists' training in the Russian Federation came to light as a result of the press conference given by General Breedlove, Supreme Allied Commander Europe (SACEUR) of NATO, on 30 June 2014. Breedlove stated that Separatists on the Russian side of the border had been trained to use vehicle-borne air defence systems. He also stated that the Americans had not yet observed that these systems were being transported across the border to Ukraine. These statements contained little new information for the MIVD. The terms 'vehicle-borne capability' and 'air defence vehicles' are generic and are also used to refer to short-range anti-aircraft systems.

On 14 July 2014, an An-26 military cargo aeroplane (referred to hereafter as: the Antonov), belonging to the Ukrainian airforce, was shot down. The Ukrainian authorities reported the event the same day in a briefing with Ukraine's presidential administration in Kiev. The MIVD also received a concise report of the briefing from the Dutch Defence attaché. The report revealed that the Ukrainian Minister of Foreign Affairs, Klimkin, declared that the situation in the east had reached a new and dangerous phase because the Russian Federation was now openly providing the Separatists with military support. As an example of the escalation, Klimkin cited the Antonov's being shot down in the area of Lugansk. Klimkin reported that the Antonov was flying at an altitude of 6,200 metres and could only have been hit with Russian equipment, because the Separatists did not possess this kind of anti-aircraft systems. According to a media report on 14 July 2014 (which the MIVD possessed), the Ukrainian authorities stated that the aeroplane was flying at 6,500 metres and was not shot down by a portable anti-aircraft system but by a more powerful system. This was probably carried out from Russian territory. In the media, the Separatists claimed that they had shot down the aeroplane and taken some of the crew prisoner.

If the Antonov had indeed been shot down by, or even from, the Russian Federation, this would have been a game changer. Direct Russian participation in the conflict would have become a fact. That is why the MIVD immediately launched an investigation into the incident.

In the morning of 17 July 2014, the MIVD communicated the results of this investigation in its daily intelligence summary ('dagintsum'), which had a number of users, including the NCTV and the AIVD. The MIVD assessed it to be unlikely that the Antonov had been shot down by a powerful anti-aircraft system (separate from the question whether this had been carried out from Russian territory). From pictures of the wreckage and eyewitness accounts it was clear that the aeroplane's right-hand engine had been hit and that 5 to 6 parachutes had subsequently appeared. The Antonov had allegedly crashed only then. On this basis, the MIVD concluded that the appearance of the damage was not consistent with a hit by a powerful anti-aircraft system. The aeroplane would in that case probably have been destroyed in the air.

The crew would probably not have survived if this had been the case. According to the MIVD, the wreckage and the eyewitnesses supported the fact that the aircraft was shot out of the air by a MANPADS from Ukrainian territory. This would only have been possible if the Antonov were flying substantially lower than 6,200 or 6,500 metres. Another possibility was that a short-range, vehicle-borne anti-aircraft system had been used. The information received from the MIVD does not point to the use of a powerful air defence system.

On 14 July 2014, the Ukrainian authorities publicly issued a NOTAM, which meant that Ukrainian airspace was closed up to a height of 9,700 metres (FL320). The MIVD did not receive any information regarding the reasons for this restricted airspace.

The intentions of the Russian armed forces, the Ukrainian armed forces and the Separatists

Prior to the crash, the MIVD did not possess any indication that one of the three actors involved in the conflict in Eastern Ukraine had the intention to shoot down a civil aircraft.

However, unlike the other two actors, the Separatists were not a homogeneous group. They were composed of factions with different specific objectives and working methods. It was clear, however, that the Separatists all shared the intention to shoot Ukrainian air force fighter aeroplanes and helicopters out of the air.

In a threat analysis performed at the end of June 2014, as part of the potential police training mission in Eastern Ukraine, the MIVD reported that the Separatists were attacking Western targets of opportunity. This involved the kidnapping of OSCE officials in Donetsk and Slavyansk. According to the MIVD, the Separatists' intention was probably to keep 'unwanted' outsiders at a distance or to kidnap foreign officials to use them as bargaining chips in negotiations. This information does not reveal any indication of the intention to shoot down a civil aircraft.

The activities of the Russian armed forces, the Ukrainian armed forces and the Separatists

As is clear from the above, the MIVD had no indication that one of the three actors (the Russian armed forces, the Ukrainian armed forces or the Separatists) had the intention, combined with the necessary capacity, to shoot down a civil aircraft. There was no information either pertaining to activities aimed at carrying out a threat to civil aviation, such as preparatory actions.

Information from foreign partner services

During the investigative period (1 January 2014 through 17 July 2014) the MIVD did not receive any warnings from its foreign partner services pertaining to a risk to civil aviation above Eastern Ukraine. The messages that the MIVD received from partner services during this period also did not contain any passages that - even with hindsight - should have served as a warning.

5.3 The AIVD's level of knowledge

5.3.1 The AIVD's focus

During the investigative period (1 January 2014 through 17 July 2014) a team from the AIVD (referred to hereafter as: the Team) conducted an investigation into matters related to the domestic, foreign and energy policies of the Russian Federation. In this context, the Team predominantly examined Russia's political intentions and Russian geopolitics, with a special focus on relationships with the Netherlands, the EU, NATO and neighbouring countries such as Ukraine.

The AIVD did not have a separate investigative assignment focusing on Ukraine. The investigation into the Russian Federation originated from the 2011-2016 Foreign Designation Order. It concerns the AIVD's foreign intelligence task. As part of this task, the AIVD gathers intelligence that can support the government in determining foreign policy and conducting international negotiations. This is also called 'political intelligence'.

The escalation of the conflict in Ukraine starting in February 2014 affected European, and therefore Dutch, interests. Ukraine became a pawn in a geopolitical power struggle between the EU and the US on the one hand and the Russian Federation on the other. In March 2014, this led the Ministry of Foreign Affairs to request that the AIVD also report on developments in political circles in Ukraine. As part of its existing task, the Team was already investigating the Russian influence over Ukraine, and Russia's energy policy. It was important to the Dutch government to obtain political intelligence in order to be able to determine its standpoint on potential measures to be taken by the European Union against the Russian Federation and pro-Russian leaders in Ukraine.

During the period prior to the crash, the Team's focus was on the political power play in Ukraine and the Russian influence on this. The AIVD Team examined the information it received from this perspective. It is important to note that the AIVD Team did not gather any information about the military capacities of the parties involved in the conflict in Eastern Ukraine. The Team was occupied, as previously mentioned, with the politico-strategic aspect of the conflict. The Team did receive information that offered a broader perspective on the conflict in Eastern Ukraine and on the military capacities and activities of the parties involved. The Team used this intelligence as background information to support its investigative assignment.

5.3.2 The information in the AIVD's possession

The capacity and potential of the Russian armed forces and the Ukrainian armed forces

The Team was aware, via the MIVD, that Russian armed forces on their side of the border with Eastern Ukraine possessed powerful anti-aircraft systems.

The Team was also aware that the Ukrainian armed forces possessed powerful anti-aircraft systems in certain parts of Eastern Ukraine.

The Separatists' capacity and potential

The AIVD's information indicates that the Separatists were procuring an increasing number of weapons in the months prior to the crash. Furthermore, a connection could be made between the intensification of the fight against the Separatists by the Ukrainian armed forces. In April 2014, the Ukrainian government launched its so-called anti-terrorism operation in Eastern Ukraine, aimed at isolating the Separatists. From May onwards, the Ukrainian armed forces increased their air operations. The Separatists gradually obtained more and better weapons with greater potential.

The AIVD was aware that the Separatists, in addition to a broad range of artillery (eg machine guns), light anti-aircraft artillery (e.g. rocket launchers), anti-tank weapons and tanks, also possessed MANPADS and possibly short-range vehicle-borne anti-aircraft systems. Both types of systems are considered surface-to-air missiles (SAMs). Due to their limited range, the aforementioned weapons do not constitute a danger to civil aviation at cruising altitude.

On 16 July, the AIVD received a report from a reliable source that stated that there was no information that indicated that the Separatists possessed a medium-range SAM system. This comment was made in view of the circumstances related to the Ukrainian armed forces' Antonov being shot down on 14 July 2014 in Eastern Ukraine.

The AIVD did not have any information that indicated that the Separatists possessed an operational, powerful anti-aircraft system such as a Buk system, also called an SA-11, prior to the crash of flight MH17.

In its investigative assignment, the Team focused on the question how the Russian Federation exerted political influence on Ukraine and on the conflict. This also extended to the question whether the Russian Federation was involved in the Separatists' activities in Eastern Ukraine. The Team possessed several pieces of intelligence that referred to the Russian Federation's involvement with the Separatists with more or less certainty. The information contained indications that the Separatists (or some of them) were probably under the control of the Russian Federation. There were also indications that the Russian Federation provided the Separatists with support in the form of manpower and weapons. Those cited included artillery, anti-tank weapons, tanks and MANPADS. The AIVD had no indications that the Russian Federation had provided the Separatists with powerful anti-aircraft systems.

The AIVD had indications that the Separatists were being trained to use weapon systems, including MANPADS, in the Russian Federation. There were no indications that they were being trained to use powerful anti-aircraft systems.

On 14 July 2014, the Team received a concise report from the Ministry of Foreign Affairs concerning a briefing by Ukraine's presidential administration in Kiev. The report revealed that the Ukrainian Minister of Foreign Affairs, Klimkin, declared that the situation in the east had reached a new and dangerous phase because the Russian Federation was now openly providing the Separatists with military support. As an example of the escalation Klimkin cited the Antonov's being shot down in the area of Lugansk.

During the morning of 17 July 2014, the AIVD received the MIVD's daily intelligence summary ('dagintsum'). In this summary the MIVD reports, among other things, on its investigation into the circumstances related to the Antonov's crash. We refer you to paragraph 5.2.2 for these findings.

The intention of the Separatists, the Russian armed forces and the Ukrainian armed forces

The Team did not possess any indication that the Separatists in Eastern Ukraine had the intention of shooting down civil aeroplanes above Eastern Ukraine. The same applied to the other two parties, the Ukrainian armed forces and the Russian armed forces.

The information did make the Team aware of the fact that the Separatists harboured the motivation to shoot down military aeroplanes and helicopters of the Ukrainian airforce.

Information from foreign partner services

During the investigative period (1 January 2014 through 17 July 2014), the AIVD did not receive any explicit or implicit warning from its foreign partner services regarding a risk to civil air traffic above Eastern Ukraine, as was the case at the MIVD.

5.4 Collaboration between the MIVD and the AIVD

In March 2014, the two Teams from the AIVD and the MIVD that were working on the crisis in Ukraine and Russia's role in this crisis established a close collaboration. The Teams made agreements regarding the exact details and established them in writing. The Committee has viewed the agreements and discussed their practical implementation with the Teams.

This led the Committee to conclude that, among other things, the Teams shared relevant information with each other in the context of their investigative assignments. The Teams held weekly consultations. The aim of this was to avoid any overlap in the investigations and to keep each other informed. The Teams also presented each other with their end products. In this way, they could stay abreast of possibly relevant information that the other Service possessed. This could lead to a further exchange of information. Which information was actually shared was not recorded at this stage. However, the Committee has no indication that the Services' information position was flawed due to a lack of information exchange.

5.5 Assessment of the information by the MIVD and the AIVD

Above, the Committee explained which of the information that the MIVD and AIVD possessed prior to the crash it considers relevant to assessing the threat to civil aviation above Eastern Ukraine. At the time, the Services did not identify any specific threat to civil aircraft flying over the area. In internal investigations that took place following the crash, the Services also came to the conclusion that, during the period from 1 January through 17 July 2014, there were no indications of a threat to civil aviation above Eastern Ukraine.

5.6 The provision of information to external parties

Given that the Services did not identify any specific threat to air traffic above Eastern Ukraine, they did not issue any threat warning to external parties prior to the crash.

The MIVD and the AIVD stated that the Dutch airlines did not ask them about the security situation in Eastern Ukraine prior to 17 July 2014. This has been confirmed by the Committee's investigation.

The MIVD did provide information about the security situation in Eastern Ukraine to, among others, the NCTV in the form of daily intelligence summaries ('dagintsums'). These summaries did not report a threat to civil air traffic.

In April 2014, the NCTV asked the AIVD and the MIVD for an update of the biannual threat analysis related to civil aviation in the Netherlands. This analysis involves potential new threats, modi operandi and resources. The NCTV was especially looking for information regarding three specific aspects that could present a potential threat to the airports sector and/or arriving and departing civil air traffic, including the current situation in Ukraine. In their threat analyses of May 2014 the AIVD and the MIVD did not provide any information about the security situation in Eastern Ukraine. This was because, at that time, the Services did not possess any information about persons or factions in Eastern Ukraine that presented a possible threat to civil aircraft.

5.7 Answer to research question c

With regard to the level of knowledge that the Services possessed before the crash of flight MH17, the Committee has established the following:

- The MIVD's investigation focused on the Russian Federation and the possible risk of an incursion into Eastern Ukraine. Knowledge of the Ukrainian armed forces and the Separatists was limited.
- The AIVD's investigation focused on the politico-strategic aspect of the conflict in Eastern Ukraine and on the Russian Federation's political influence on Ukraine. The AIVD was not focused on information related to military capacities.

- According to the information the Services possessed, the Russian and Ukrainian armed forces had the capacity and potential to hit a civil aeroplanes at cruising altitude. However, they did not have the intention. There were no indications that they were engaged in activities (such as preparations) targeted against civil aeroplanes.
- The AIVD and the MIVD did not have any indication that the Separatists had the capacity to hit civil aeroplanes at cruising altitude. Moreover, there were no indications either that they would target civil aeroplane or that they were engaged in activities with this objective in mind.
- The AIVD and the MIVD did not receive any information from partner services that explicitly or implicitly indicated a risk to civil aviation above Eastern Ukraine.
- The AIVD and the MIVD's assessment is that, prior to the crash, there were no indications that pointed to a specific threat to civil aircraft above Eastern Ukraine.
- The Services did not provide any information to external parties due to the absence of information related to a specific threat.

The Committee's assessment

The above findings constitute the answer to the research question. The Committee believes that it is also important to draw its own conclusion based on the information the Services possessed. Ultimately, it is the only body to have had access to all the State secret material, apart from the Services themselves.

The Committee believes that the material available to the Services does not reveal any factors that point to a specific threat to civil aviation prior to the crash of flight MH17. The information available to the Services does not indicate that one or more actors that were involved in the conflict in Eastern Ukraine prior to the crash displayed a combination of military resources, possibilities and the intention to shoot down a civil aeroplane at cruising altitude.

This analysis reveals that, based on the available information, the MIVD and the AIVD could not have been expected to identify any specific threat to civil aircraft above Eastern Ukraine or share it with external parties.

6 Conclusions

Below are the answers to the research questions that are submitted to the Committee. As mentioned previously, questions (a) and (b) we are addressed jointly.

Research questions a and b

- a) What is the formal structure between the AIVD or the MIVD respectively and the parties relevant to aviation security, such as airlines, air navigation service providers and ministries, with regard to the provision of information about security threats?**
- b) What are the two Services' specific activities related to exchanging information with parties relevant to aviation security?**

The AIVD has a security promotion task that partly focuses on the security of civil aviation. The Service engages in various activities in this field:

- The AIVD participates in various consultation structures which focus on, among other things, the security of the civil aviation sector. The AIVD holds joint consultations with the vital sectors several times a year. The Schiphol Security and Public Safety Platform (BPVS) is concerned with security and safety at Schiphol Airport. In addition, the AIVD participates in meetings of regional airports. At these consultations, the AIVD shares information that it possesses relevant to the security of the airports concerned.
- At the NCTV's request, the AIVD compiles threat analyses related to civil aviation that include threat-related information from its ongoing investigations.
- Apart from the consultation structures cited above, the AIVD maintains an extensive network of relationships with parties in the civil aviation sector and with Dutch airlines. The AIVD provides the airlines with basic information from its investigations that could be relevant to civil aviation security (including the security of flight routes) on a demand-driven basis. The AIVD also provides information about potential threats in the context of this relationship.
- The AIVD shares information indicating specific threats to civil aviation with the Dutch airlines and the NCTV on an unsolicited basis.

Due to its military orientation, the MIVD does not have a security promotion task that also focuses on civil aviation. Consequently, the MIVD plays a limited role in this sector. However, the MIVD does contribute to civil aviation security in three ways:

- At the NCTV's request, the MIVD compiles threat analyses related to civil aviation that include threat-related information from its ongoing investigations.
- The MIVD shares information that indicates a specific threat to civil aviation with the NCTV on an unsolicited basis.
- The MIVD maintains informal contacts with KLM. The MIVD provides basic information from its investigations that could be relevant to civil aviation security (including the security of flight routes) in the context of this relationship on a demand-driven basis.

Research question c

What information did the AIVD and the MIVD possess prior to the crash related to the security situation in Eastern Ukraine, and to what extent did they share this information with the parties relevant to aviation security? What were the considerations for doing / not doing so?

What information did the AIVD and the MIVD possess prior to the crash related to the security situation in Eastern Ukraine?

Prior to the crash of flight MH17, the AIVD and the MIVD possessed the following information regarding the security situation in Eastern Ukraine that was relevant for assessing a threat to civil aircraft flying over the area:

- The Russian and the Ukrainian armed forces did have the capacity and potential to hit a civil aircraft at cruising altitude. However, they did not have the intention. There were no indications that they were engaged in activities (such as preparations) targeting civil aviation.
- There were no indications that the Separatists had the capacity to hit civil air traffic at cruising altitude. Moreover, there were no indications that they would target civil air traffic or that they were engaged in activities with this objective in mind.

Prior to the crash, the MIVD and the AIVD did not possess any information that indicated that one or more of the three actors involved in the conflict in Eastern Ukraine displayed a combination of military resources, possibilities or the intention to shoot down a civil aeroplane at cruising altitude. The AIVD and the MIVD did not receive any information from partner services either that explicitly or implicitly pointed to a risk to civil aviation above Eastern Ukraine. Based on its findings, the Committee shares the assessment made by the MIVD and the AIVD: the available information did not reveal a specific threat to civil air traffic flying over the area.

To what extent did the Services share this information with parties relevant to aviation security and what were the considerations for doing/not doing so?

The AIVD and the MIVD did not issue any notifications to external parties concerning a specific threat to civil aircraft above Eastern Ukraine. The reason for not providing any information to external parties was that, prior to the crash of flight MH17, the AIVD and the MIVD did not possess any information that pointed to a specific threat.

7 Concluding remarks

The crash of flight MH17 has led to a discussion in the international community and Dutch society about improving the provision of information in the context the security of flight routes.

With this in mind, the Committee deems it desirable that Dutch airlines be able to approach a single contact point for both Services with their questions related to the security of flight routes, including foreign flight routes. Establishing such a contact point would help intensify collaboration in this area between the AIVD and the MIVD as well as the information exchange with Dutch airlines.

Furthermore, the Committee recommends that the Services examine the extent to which they can align the terminology they use in relation to the threat factors.

This list explains a number of terms that are used in this review report. In the definitions provided, the Committee has not aimed for completeness but rather to provide the reader with an explanation of these terms that is as specific as possible.

Airspace

The volume of air above the earth's surface in which air traffic can take place. The airspace above a State is part of the territory over which the State has sole power (sovereignty). The airspace above the Netherlands is part of the territory of the Dutch State. The Dutch Government is responsible for the safety of Dutch airspace.

AIVD Account Manager

A position that focuses on maintaining a network of relationships with a vital sector. The objective is the mutual provision of information. One example is the AIVD giving presentations to increase security awareness in the sector concerned. The AIVD has a number of account managers, such as for the Dutch aviation sector (which includes civil aviation).

AIVD head of unit

AIVD official who is hierarchically embedded in the organisation as follows: head, director, head of unit, team head.

Anti-aircraft weapons

Weapons intended for shooting down airborne targets such as aeroplanes or helicopters. Today, these are often guided systems, such as the radar-guided Buk/SA-11. They can also be non-guided systems, such as anti-aircraft guns or certain machine guns. Anti-aircraft systems are often mobile (eg, mounted on a truck or trailer) so that it can be transported easily.

Anti-tank weapon

Any weapon that can disable armoured vehicles such as tanks. These include missile launchers, cannon and mines. These weapons do not have sufficient range to hit aeroplanes that are flying at a great altitude.

BPVS Platform

Schiphol Security and Public Safety Platform. This is a cooperative partnership between public and private parties aimed at improving security and crime control at Schiphol airport. The Platform is a consultation body with a coordinating and steering role. The AIVD is one of the participants. It was founded following the diamond heist at Schiphol in 2005.

Buk system

This weapon system is a radar-guided, ground-based air defence system for medium long range (maximum 35 kilometres). The system consists of the following components (referred to as a battalion): six 9A310M1 radar and launch vehicles, three 9A39M1 reload and launch vehicles, a 9S18M1 (SNOW DRIFT) target search and acquisition radar and a 9S470M1 battalion command post. Each 9A310M1 radar and launch vehicle is fitted with a 9S35 (FIRE DOME) fire control radar and can be fitted with a maximum of four ready-to-fire 9M38M1 (GADFLY) surface-to-air missiles. Because the 9A310M1 radar and launch vehicle is fitted with its own fire control radar, the 9S35 (FIRE DOME), it is possible to operate it independently without support from the battalion. The vehicle can detect, establish and monitor targets using the 9S35 radar. With only the 9M39M1 reload and launch vehicle, it is not possible to independently attack an aircraft; this is because it lacks a fire control radar which means that once fired, the missile cannot be guided to its target. In NATO terminology, the Buk system is referred to as the SA-11.

Capacity

A factor that is relevant to identifying a threat. It reflects the extent to which an actor possesses certain resources (eg weapons) or knowledge to carry out a particular action.

Civil aviation sector

The term 'sector' collectively refers to the parties in the Netherlands involved in civil aviation, such as the Dutch airports and Dutch airlines.

Cruising altitude

A flight altitude that is maintained for a considerable part of the duration of the flight.

Dagintsum

Intelligence summary. An MIVD intelligence product. This product is published on a daily basis. It is distributed to a fixed number of users, including the NCTV and the AIVD.

Dutch airline

An airline that is registered with the competent authority in the Netherlands, e.g. KLM and ArkeFly.

Dutch Counterterrorism Alert System (Alerteringssysteem Terrorismebestrijding, ATb)

A system of information provision focused on reporting threats and potential threats in and to the Netherlands. The National Coordinator for Security and Counterterrorism acts as the central collection point for relevant information. He can subsequently take security measures. The AIVD is one of the information suppliers.

Foreign Intelligence Designation Order (Aanwijzingsbesluit buitenland)

A list of subjects and areas abroad into which the AIVD and MIVD conduct investigations. This list is established for several years by the Minister-President in consultation with the Minister of the Interior and Kingdom Relations and the Minister of Defence. The intelligence collected by the AIVD and the MIVD can support the government in its foreign policy and international negotiations.

Intelligence service

A service that conducts investigations into other countries to identify threats (including potential threats) to its own national security.

Intelligence task

Conducting an investigation into other countries (see Article 6 paragraph 2 subsection d (AIVD) and Article 7 paragraph 2 subsection e (MIVD) of the Intelligence and Security Services Act 2002). The Services conduct investigations into subjects and areas that are specified in the Foreign Designation Order. This is done to gather intelligence that can support the government in determining foreign policy and conducting international negotiations.

Intention

A factor that is relevant to identifying a threat. It reflects the extent to which an actor intends to carry out a particular action.

Light anti-aircraft artillery

Anti-aircraft artillery can be a canon or missile system (such as a Stinger, Patriot etc.) In this report, 'light' refers to short-range anti-aircraft artillery, which cannot hit aeroplanes at an altitude of 7.5 kilometres or higher.

MANPADS

This stands for man-portable air-defence systems. It is a weapon that falls in the category of surface-to-air missile (SAM), that is to say, aircraft artillery. This weapon has a limited range (up to 6 kilometres). It requires a physical view of the target. Weather conditions play a major role in its operation. The weapon is fired from the shoulder.

NOTAM

Notice to airmen. This is an international message to all persons involved in preparing and executing a flight. It may contain important information about, for example, flight altitudes or the closure (including partial closure) of airspace. This announcement is issued by the air navigation service provider of the country to which the involved airspace belongs.

Political intelligence

This term refers to the AIVD and the MIVD's intelligence task. As part of this task, the Services conduct investigations into other countries. The Services conduct investigations into subjects and areas that are specified in the Foreign Intelligence Designation Order. The intelligence collected can support the government in its foreign policy and international negotiations.

Potential

A factor that is relevant to identifying a threat. It refers to the extent to which the resources that an actor possesses or the actor himself are capable of causing an incident, e.g., the range of a certain weapon or an actor's ability to move to a different location.

Powerful anti-aircraft system

The Committee uses this term in this report to refer to aircraft artillery (surface-to-air missiles; SAM) that can hit aeroplanes at or above 7.5 kilometres. An example would be the Buk system/SA-11.

Risk analysis

This term is used in the surveillance and protection system. It involves an analysis of specific (predictable) and potential (conceivable) threats to persons, objects and services in the State domain. The options that the target of the threat has to resist the threats ('ability to resist') are also analysed. The risk in this context involves the extent to which the resistance is inadequate for a particular threat. Only the AIVD performs risk analyses, at the request of the National Coordinator for Security and Counterterrorism.

SA-11

The NATO term used to refer to the Russian Buk system. See under Buk system.

Security promotion task

The promotion of measures to protect the interests served by the Services. The MIVD's security promotion task focuses on the defence sector (including the defence industry). The AIVD's task focuses on, among other things, better protection for vulnerable and/or important parts of society, such as the vital sectors. This can be done by providing information to administrative bodies that can take measures (such as the National Coordinator for Security and Counterterrorism), by providing information to the business community, such as in the form of presentations, or by responding to questions regarding safety issues, such as those raised by airlines (Article 6 paragraph 2 subsection c (AIVD) and Article 7 paragraph 2 subsection d (MIVD) of the Intelligence and Security Services Act 2002).

Security service

A service that conducts investigations into persons and organisations that potentially represent a threat to the continued existence of the democratic rule of law, or to security or other vital interests of the State (AIVD), or to the security and readiness of the armed forces (MIVD).

Security task

A task that focuses on identifying threats to the continued existence of the democratic rule of law or to security or other vital interests of the State, or to the security and readiness of the armed forces (Article 6 paragraph 2 subsection a (AIVD) and Article 7 paragraph 2 subsections a and c (MIVD) of the Intelligence and Security Services Act 2002).

State domain

This is a limitative list of persons, services and objects with regard to which the central government is responsible for taking security measures (including additional security measures). This list is part of the surveillance and protection system. The list is not made public. The Dutch airports and their infrastructures fall under the State domain.

Surface-to-air missile

This term refers to a category of anti-aircraft systems. It is abbreviated to SAM. It may refer to weapons with a relatively short range (e.g., man-portable air-defence systems; MANPADS) as well as weapons with a medium or long range (e.g. Buk /SA-11).

Surveillance and protection system

This system was created following the murder of Pim Fortuyn in 2002. It implements the central government's responsibility for the protection of certain persons, objects and services that are included on a list. The National Coordinator for Security and Counterterrorism acts as an information coordinator in this system. In addition to the police, the AIVD and the MIVD are charged with the task of producing threat analyses related to persons, services and objects in the State domain on request. The AIVD also produces risk analyses on request (Article 6 paragraph 2 subsection e (AIVD) and Article 7 paragraph 2 subsection f (MIVD) of the Intelligence and Security Services Act 2002).

Threat analysis

This term is used in the Dutch surveillance and protection system (Stelsel bewaken en beveiligen). It involves an analysis of specific and potential threats to a person, object or service in the State domain. The AIVD and the MIVD produce threat analyses at the request of the National Coordinator for Security and Counterterrorism.

Threat factors

Factors used to establish the severity and probability of a threat. These factors can be: capacity, potential, intention and activity.

Vehicle-borne air-defence system

This term refers to air artillery that is mobile, since it is installed, for example, on a truck or a trailer. This is a generic term, which means that it can refer to air artillery that can hit aeroplanes flying at a height of 7.5 kilometres and higher, as well as air artillery that cannot reach these altitudes.

Vital sector

A product or service whose failure may cause a disruption of society. The Minister of the Interior and Kingdom Relations compiles a list of these products and services. The majority of the vital sectors are in the hands of private companies. The mainport Schiphol is designated a vital service under the vital sector of transport.

