



# The cost to the Netherlands government of the Flight MH17 disaster

2024

Algemene  
Rekenkamer



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# Preface

On 17 July 2014 a Malaysia Airlines aircraft crashed near the village of Hrabove in southeast Ukraine. It was Flight MH17. 298 passengers and crew from many countries lost their lives; 196 were from the Netherlands. After it had been established that a Buk missile system under the control of the Russian army had shot down Flight MH17, the Kingdom of the Netherlands and Australia held the Russian Federation responsible for its part in downing the aircraft. The case has been before the International Civil Aviation Organization (ICAO) in Montreal since 14 March 2021. As part of the case, the Netherlands government intends to apply for compensation from the Russian Federation.

The Prime Minister of the Netherlands accordingly asked the Netherlands Court of Audit to establish the cost to the Netherlands government of the MH17 disaster. This report presents the outcome of our assessment of the costs incurred by various ministries, local authorities and other public institutions since 17 July 2014.

We systematically assessed government activities and the costs incurred for them on account of the MH17 disaster. This report describes the activities and provides an accurate insight into their cost. In accordance with the Prime Minister's request, we confined ourselves to costs incurred by the whole of the Netherlands government. The report does not consider costs incurred by other parties, nor the personal material or immaterial losses suffered by the next of kin of the crash victims. Nonetheless, the narrow focus on government cannot conceal the great public distress the disaster caused. The Netherlands was deeply affected by the disaster with Flight MH17.

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# 1. Introduction

Malaysia Airlines Flight MH17 was brought down above southeast Ukraine on 17 July 2014. All 298 passengers and crew members, including 196 Dutch nationals, lost their lives. The Kingdom of the Netherlands and Australia hold the Russian Federation responsible for the downing of Flight MH17. They accordingly wish to recover from the Russian Federation the costs they incurred on account of its downing of Flight MH17.

The Netherlands government asked the Court of Audit to provide an insight into the costs incurred by the Kingdom of the Netherlands on account of the downing of Flight MH17. This report presents the findings of our assessment.

## 1.1 The Prime Minister's request and the Court of Audit's response

By letter of 21 June 2021 (Appendix 1), on behalf of the Netherlands government the Prime Minister asked the Court of Audit to, *'provide an insight into all costs incurred by various ministries, local authorities and other public institutions since 17 July 2014 on account of the downing of Flight MH17'*. The Prime Minister also requested that the insight be updated with costs to be incurred until the final application for compensation is submitted to an international dispute settlement body. The costs concerned are specifically those incurred by the Netherlands government, not losses suffered and still being suffered by next of kin.

The government will use the cost assessment in international dispute settlement proceedings. The Prime Minister did not ask the Court of Audit to express an opinion on the regularity, efficiency or effectiveness of the costs or to assess the legal causality between the downing of Flight MH17 and the costs incurred. The government will use our assessment to determine which cost items can be included in an application for compensation. An international dispute settlement body will ultimately decide the matter.

On 3 November 2021, we honoured the Prime Minister's request to assess the costs that the public authorities named by him had incurred since 17 July 2014 on account of the downing of Flight MH17 (Appendix 2).

## 1.2 The Court of Audit's assessment

The Court of Audit is the Supreme Audit Institution of the Netherlands. It is a national public institution but its independence of government and parliament is recognised both constitutionally and internationally. The Court of Audit is tasked under the Constitution with examining the State's revenues and expenditures.<sup>1</sup> It reports on its findings to parliament. The Court of Audit's reports are also made public. The Court of Audit is thus a key link in the constitutional system of the Netherlands.

The Netherlands Court of Audit carries out its audits and assessments in accordance with the international principles and standards applying to Supreme Audit Institutions (the INTOSAI Framework of Professional Pronouncements, IFPP).<sup>2</sup> The IFPP has been adopted by the International Organization of Supreme Audit Institutions (INTOSAI) and is applied by nearly all Supreme Audit Institutions in the world, including by the Russian Federation. The IFPP provides standards for the reliability of the work, the expertise, integrity and responsibility of audit and assessment teams and team managers and for the quality and transparency of the work performed and the process of arriving at an opinion. By applying these standards and principles in this assessment, the Court of Audit guarantees that the assessment meets the highest standards.

The nature of this assessment differs from that of our customary audit work. In our audits we express an opinion on the regularity, efficiency and effectiveness of government policy. We usually also make recommendations for improvement based on our findings and conclusions. According to his letter, the Prime Minister did not ask the Court of Audit to express such an opinion. We confine ourselves to providing

an insight into the amount and nature of the costs incurred by the Netherlands government on account of the downing of Flight MH17.

We performed this assessment in the same manner as we perform our customary work and provide an objective insight into the costs incurred based on a systematic investigation and on our independent position, making use of our knowledge of and insight into public finances, and of the powers vested in us by law.<sup>3</sup> In this respect, this assessment does not differ from our audit work.

Whether certain cost items are included in the application for compensation is a matter for the government. Its decision will be determined by legal and other considerations.

We have not assessed the costs we ourselves incurred to perform this assessment. The Court of Audit's costs for this assessment therefore remain outside the application for compensation.

References in this report to the 'crash of Flight MH17 or 'the MH17 disaster' are neutral terms because many of the activities that entailed costs to the Netherlands government were performed before there was certainty regarding the circumstances. Only where truly relevant do we refer to 'the downing of Flight MH17'.<sup>4</sup>

The Court of Audit carried out this assessment to provide an insight into the amount and composition of the costs incurred by the Netherlands government on account of the disaster. We asked the following questions for the assessment:

- a. What costs did the Netherlands government incur on account of the Flight MH17 disaster?
- b. Were the stated costs correct and can they be traced through the accounting records?

Appendix 4 explains how we operationalised the questions and assessed the costs.

For this assessment we approached 116 Dutch public institutions with a request to provide statements of costs relevant to our assessment. 33 of the organisations informed us they had not incurred costs on account of the Flight MH17 disaster; 83 provided us with statements of the costs they incurred with public money. They were 10 ministries, 10 public institutions, 2 provinces, 59 municipalities and 2 joint arrangements.<sup>5</sup> The provinces, municipalities and joint arrangements took part in our assessment voluntarily.<sup>6</sup> We assessed all 83 cost statements provided and established the costs incurred by each organisation and for each activity.

Our aim is to be as comprehensive as possible. As we based our assessment on the cost statements provided by the organisations we approached, however, we cannot guarantee that the costs are complete.

At the Prime Minister's request, our assessment was confined to the costs incurred by the Netherlands government. These are obviously only part of the overall costs due to the Flight MH17 disaster. Other parties, such as the victims' next of kin, also incurred costs or suffered losses.<sup>7</sup>

### 1.3 Cost to the Netherlands government, 2014-2022: a provisional balance

This report presents the costs incurred by the Netherlands government between summer 2014 and year-end 2022 on account of the Flight MH17 disaster. This is not the final balance of all costs. The Netherlands government also incurred costs in 2023, for instance, to conduct international judicial proceedings, to provide support to next of kin and to maintain monuments and memorial sites.

#### Costs also to be incurred on account of the Flight MH17 disaster in 2023 and subsequent years

In August 2023, the Netherlands government made advance payments to the next of kin in respect of compensation the criminal court had ordered the perpetrators to pay in June 2023. The amount concerned was approximately €16.5 million. This compensation should ultimately be paid by the perpetrators, but it is open to question whether they will. As long as the perpetrators do not pay, the advance payments represent a cost to the Netherlands government. The advance payments were made in 2023 and as such fall outside the timeframe of this assessment (July 2014 to year-end 2022).<sup>8</sup>

The Prime Minister asked us in his letter to update the insight into the costs until a final application for compensation is submitted. This report therefore presents a provisional balance. We will continue with our assessment and update it every year.

### 1.4 Background to the assessment

Several proceedings and cases have been brought since Flight MH17 crashed. There have been technical and accident investigations of the disaster, criminal proceedings at The Hague district court, human rights proceedings at the European Court of Human Rights in Strasbourg and a case on State responsibility before the



International Civil Aviation Organization (ICAO) in Montreal. We briefly consider these cases and proceedings below in order to place our assessment in context.

### **Technical and accident investigation**

A technical and accident investigation into the disaster was conducted by the Dutch Safety Board (DSB). The State in which an aircraft crashes usually conducts such investigations but Ukraine delegated the task to the Netherlands.

### **Criminal case**

A Joint Investigation Team (JIT) carried out a criminal investigation to identify the perpetrators responsible for downing Flight MH17.

The members of the JIT are Australia, Belgium, Malaysia, the Netherlands and Ukraine. The JIT delegated legal power to prosecute the perpetrators to the Netherlands. A criminal trial of 4 suspects was held at the Schiphol Judicial Complex (JCS) of The Hague district court between 9 March 2020 and 17 November 2022.

### **ECtHR: human rights**

Since 6 May 2016, the European Court of Human Rights (ECtHR) in Strasbourg, France, has been hearing a complaint lodged by next of kin against the Russian Federation for its violation of their human rights by downing Flight MH17. The Netherlands government lodged a similar complaint with the ECtHR against the Russian Federation (an inter-State complaint) on 10 July 2021. According to the Minister of Foreign Affairs, the application is intended chiefly to support the next of kin and provide the ECtHR with all relevant documentation.

### **ICAO: State responsibility**

The Kingdom of the Netherlands and Australia submitted a joint application to the International Civil Aviation Organization (ICAO) on 14 March 2021 invoking the Russian Federation's State responsibility for the downing of Flight MH17.

States are responsible for wrongful acts or omissions that breach an international obligation. Where a State has acted wrongfully, States that are disadvantaged can apply for compensation. The United Nations (UN) has adopted international rules on State responsibility.

## **UN: Draft Articles on the Responsibility of States for Internationally Wrongful Acts**

In 2001 the UN International Law Commission adopted the Draft Articles on the Responsibility of States for Internationally Wrongful Acts as the framework for State responsibility.

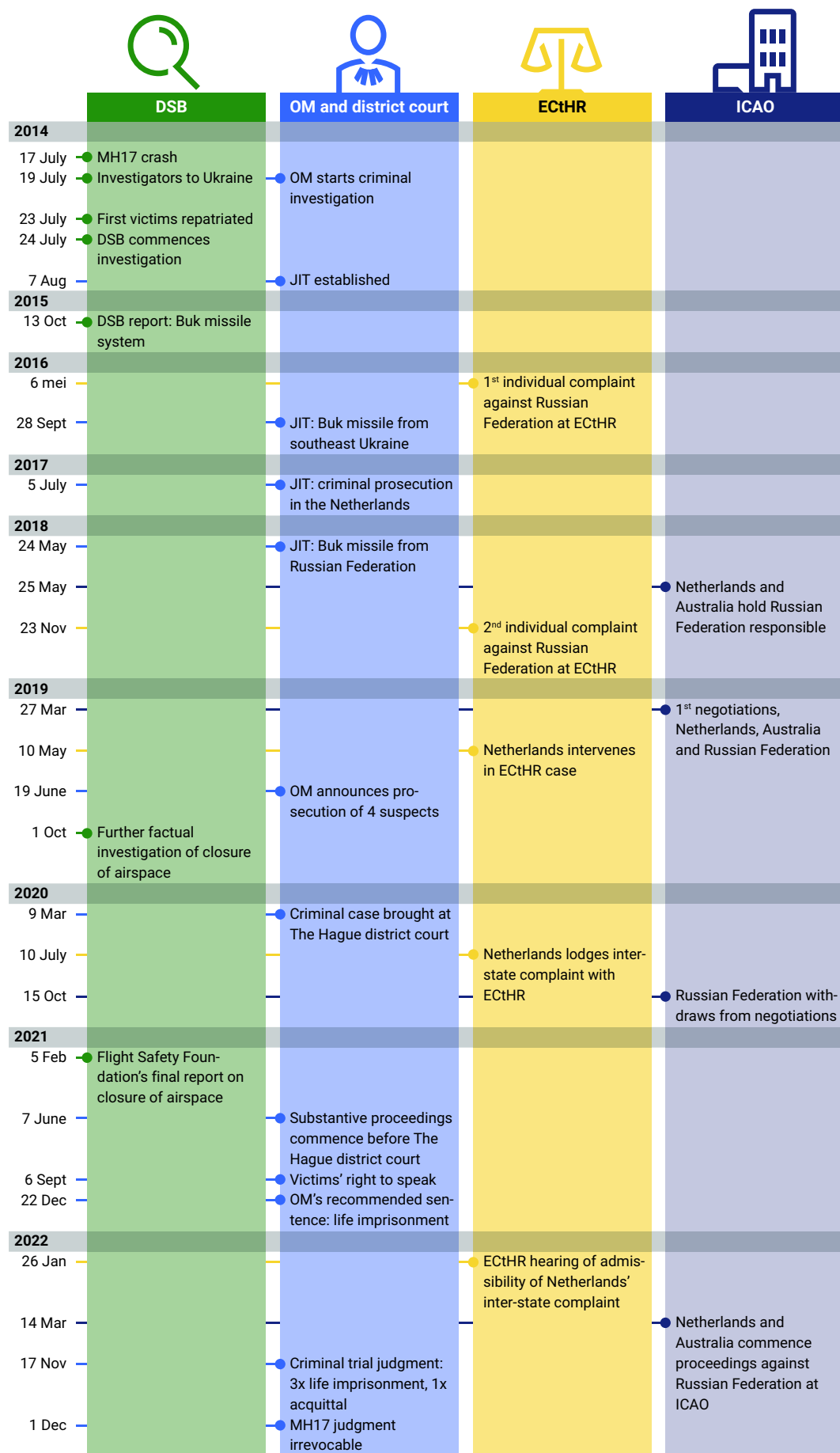
Article 36 - Compensation states:

1. The State responsible for an internationally wrongful act is under an obligation to compensate for the damage caused thereby, insofar as such damage is not made good by restitution.
2. The compensation shall cover any financially assessable damage including loss of profits insofar as it is established.

According to the Kingdom of the Netherlands and Australia, the Russian Federation bears State responsibility for its part in the downing of Flight MH17 on 17 July 2014. The two States have accordingly applied for compensation, among other things, from the Russian Federation. It is in light of this application that the Prime Minister asked the Court of Audit to assess the cost to the Netherlands government of the Flight MH17 disaster.

**Figure 1** Flight MH17 cases and proceedings<sup>9</sup>

MH17 proceedings and cases





## 2.

# MH17 and the Netherlands

The Netherlands was deeply affected by the disaster with Flight MH17. Of the 298 passengers and crew, 196 were Dutch nationals. The overwhelming majority of them also lived in the Netherlands; only 18 lived abroad. Some passengers were not Dutch nationals but lived in the Netherlands. In total, 204 of the passengers and crew who died had a relationship with the Netherlands.

The Netherlands was home to 186 of the MH17 victims. Amsterdam, The Hague and Hilversum municipalities were each home to more than 10 victims. Between 6 and 10 victims had been residents of Den Bosch, Haarlemmermeer, Breda, Eindhoven, Amstelveen, Deurne, Doesburg and Rotterdam.

### **Number of victims per municipality not always certain**

It is not known with certainty in which municipality some of the victims who were Dutch residents actually lived. An official list of victims and their place of residence has never been compiled. Some victims were not registered in the Personal Records Database (BRP) of the municipality where they were living. In some cases, recent changes of address had not been entered in the BRP. This made it difficult to determine which victims came from which municipality.

**Figure 2** Places of residence of MH17 victims in the Netherlands

**MH17 affected the whole of the Netherlands**



**Table 1** Nationality and residence of Flight MH17 passengers and crew

| Nationality         | Residency                        | Number     |
|---------------------|----------------------------------|------------|
| Dutch nationals     | Resident in the Netherlands      | 178        |
| Dutch nationals     | Resident outside the Netherlands | 18         |
| Australia           | 7                                |            |
| Luxembourg          | 3                                |            |
| Singapore           | 2                                |            |
| Indonesia           | 2                                |            |
| United States       | 1                                |            |
| Curaçao             | 1                                |            |
| Malaysia            | 1                                |            |
| Brunei              | 1                                |            |
| Other nationalities | Resident in the Netherlands      | 8          |
| Indonesian          | 3                                |            |
| German              | 2                                |            |
| British             | 1                                |            |
| Filipino            | 1                                |            |
| Malaysian           | 1                                |            |
| Other nationalities | Resident outside the Netherlands | 94         |
| <b>Total</b>        |                                  | <b>298</b> |

The other 94 victims of Flight MH17 were neither Dutch nationals nor Dutch residents. They were from Malaysia, Australia, Indonesia, the United Kingdom, Belgium, Germany, Canada, the Philippines and New Zealand. The home countries of the victims of Flight MH17 are known as grieving nations. Of these countries, Malaysia, Australia, Belgium and the Netherlands, together with Ukraine as the country in which the aircraft crashed, established the JIT to carry out the criminal investigation.



# 3.

# Cost to the Netherlands government

## 3.1 Introduction

This chapter summarises the costs incurred by the Netherlands government on account of the Flight MH17 disaster. In § 3.2 we first consider the total cost of the activities concerned and in § 3.3 we look at the cost per activity. The cost per activity is broken down into out of pocket costs, personnel and equipment costs, loss of income and costs relating to the death of government employees.

## 3.2 Total cost of government activities performed on account of the Flight MH17 disaster

Our assessment found that the Netherlands government had incurred costs on account of the Flight MH17 disaster of at least €166,127,073.13 between July 2014 and year-end 2022.

This amount relates to the cost of activities performed by the Netherlands government and otherwise incurred by it. We have grouped the costs into 13 categories, as shown in table 2.

**Table 2** Costs of government activities on account of Flight MH17

| Government activities on account of the Flight MH17 disaster | Kosten in €                |
|--|----------------------------|
| 1 Crisis management  | 8,589,348.43 + pm          |
| 2 Repatriation   | 22,604,498.88 + pm         |
| 3 Identification   | 8,976,130.07 + pm          |
| 4 MH17 accident investigation                                | 53,346,703.79 + pm         |
| 5 Criminal prosecution and trial in the Netherlands          | 34,100,237.03 + pm         |
| 6 Support for next of kin                                    | 788,865.53 + pm            |
| 7 Commemoration  | 8,145,677.22 + pm          |
| 8 Hotspot MH17 archives                                      | 665,216.54 + pm            |
| 9 Formal government tasks for the deceased                   | 334,746.51 + pm            |
| 10 International proceedings and diplomacy                   | 5,744,962.75               |
| 11 Studies on flights over conflict areas                    | 557,076.27                 |
| 12 Death of government employees                             | 48,790.24                  |
| 13 Cost statements prepared for the Court of Audit           | 9,177.81 + pm              |
| <b>Total</b>   | <b>143,911,431.07 + pm</b> |
| Indexation, 2014-2022  | 22,215,642.06              |
| <b>Total indexed</b>   | <b>166,127,073.13 + pm</b> |

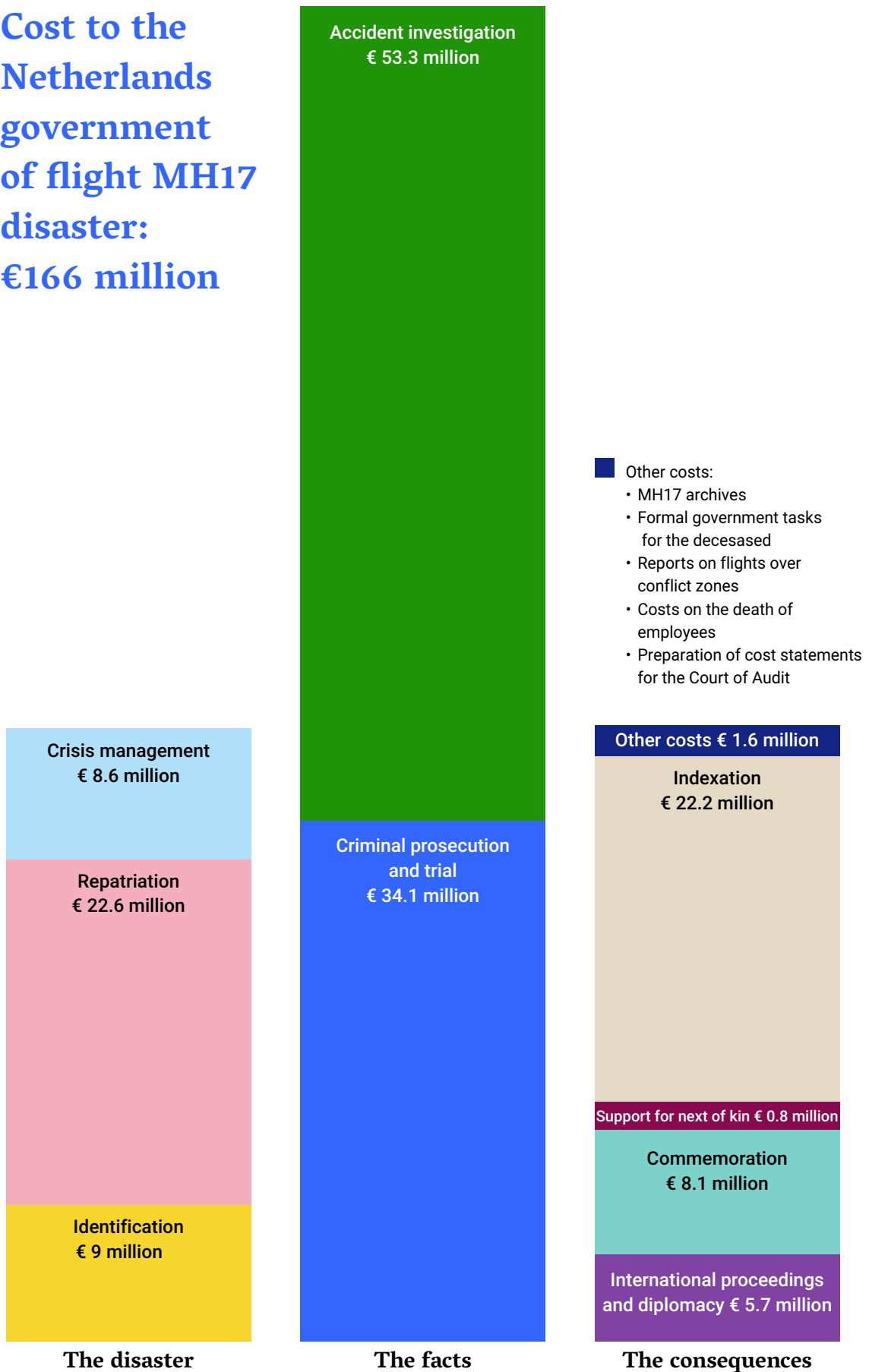
The table gives an impression of the diversity, intensity and cost of the government's activities on account of the MH17 disaster.

### 3.2.1 Accuracy of amounts and pm items

Amounts stated to 2 decimal places indicate a high degree of accuracy. Where we could establish and verify the costs, we could do so with great precision. However, we could not establish or verify the cost of some activities because the necessary accounting records were missing or because activities were stated without costs. This was the case for many activities in various cost items. We recognised these items as 'pm' (without amount). We explain our use of the term pm in more detail in Appendix 3. We cannot express an opinion on the total amount qualified as pm. Reference to pm amounts, however, illustrates that the costs presented are a conservative estimate of the total costs.

**Figure 3** Cost to the Netherlands government on account of Flight MH17

**Cost to the Netherlands government of flight MH17 disaster: €166 million**





### 3.2.2 Price level and indexation

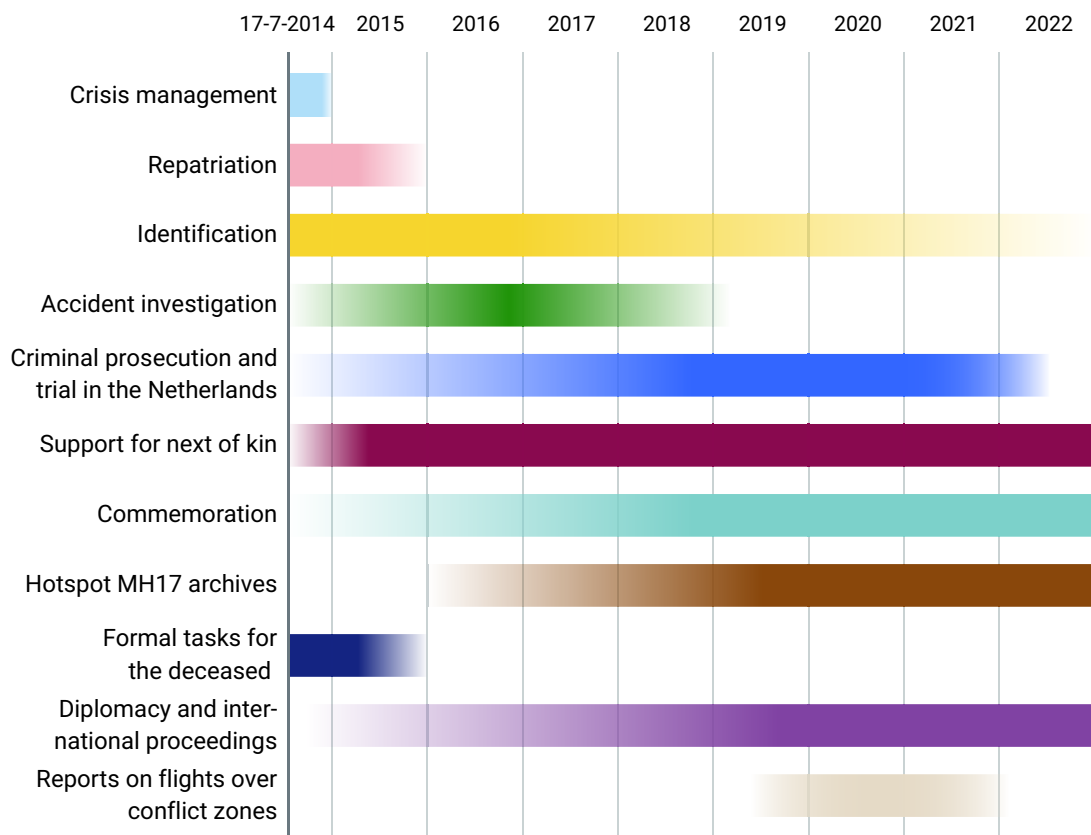
We based our assessment of the costs on historical price levels, i.e. the prices pertaining when the costs were incurred. This is important because the amounts were disclosed at these price levels in the accounts of the public bodies concerned. A euro today, however, is worth less than a euro several years ago. Account must therefore be taken of inflation. This is done by indexing the costs from year to year. We indexed the total amount of the costs using the Consumer Price Index (CPI) calculated by Statistics Netherlands (CBS).

### 3.2.3 Timeline of activities following the MH17 disaster

The government's activities on account of the MH17 disaster were not performed simultaneously but were spread over several years. Some activities will still continue for some time to come. The timeline below shows when the activities took place.

**Figure 4** *Timeline of government activities following the MH17 disaster*

#### Many government MH17 activities still ongoing



### 3.3 Cost per activity

This section takes a closer look at the cost per activity.

#### 3.3.1 Crisis management

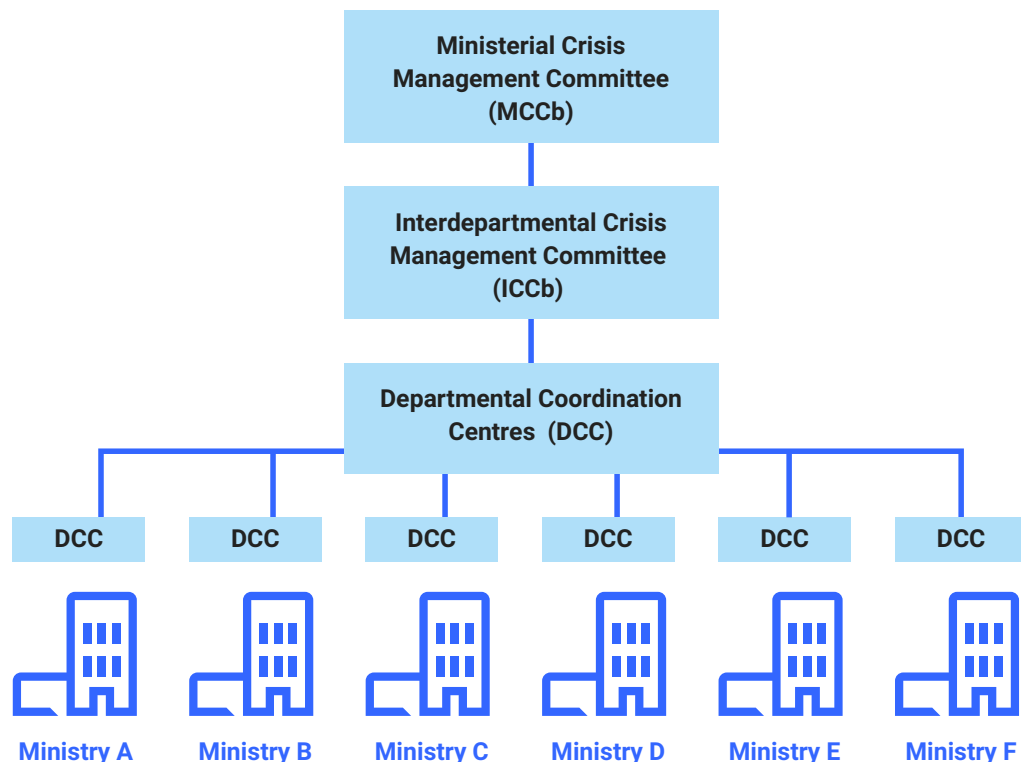
##### Central government crisis management

National crisis management comprises the measures and actions taken by government in conjunction with public and private partners involved in a situation in which national security is or may be at risk or in another situation in which there is or may be a major impact on society.<sup>10</sup>

The National Crisis Centre (NCC) informed the government that a Malaysia Airlines aircraft had crashed in southeast Ukraine just 10 minutes before the NOS public broadcaster announced the news at about 17.30 on 17 July 2014. The NCC is a unit of the National Coordinator for Counterterrorism and Security (NCTV). The NCC itself had learnt at 17.18 that the aircraft had crashed. The national crisis structure was operational just two hours later.

**Figure 5** Key actors in the national crisis structure

##### National crisis structure



The NCTV published The National Handbook on Decision-Making in Crisis Situations in 2013. The key players named in the handbook are the ministries' Departmental Crisis Management Coordination Centres (DCCs), the Interdepartmental Crisis Management Committee (ICCb) and the Ministerial Crisis Management Committee (MCCb).

Crisis response began on 17 July with the activation of the ministries' DCCs and the national crisis management organisation. On the same day, civil servants convened the first informal ICCb meeting and ministers the first MCCb meeting. On behalf of the Ministry of Justice & Security (known at the time as the Ministry of Security & Justice), the University of Twente evaluated the response of the MH17 national crisis management organisation.<sup>11</sup> Its evaluation report details the national crisis teams' activities minute by minute.

Many activities were initiated to manage and assess the supply of information. The NCTV's National Core Team for Crisis Communication coordinated information management and its perception. Frequent consultations with other countries were also held. After a short while, the interdepartmental MH17 Recovery steering group took over operational planning and management of the mission in Ukraine in close coordination with the ICCb and MCCb. The University of Twente's evaluation report lists the main crisis management activities in 6 groups:

1. crisis response in The Hague;
2. international diplomacy;
3. crisis response in the disaster area;
4. crisis response for next of kin;
5. provision of information to the House of Representatives;
6. provision of information to the media and public.

The evaluation report reveals that activities were initially performed simultaneously without clearly defined dividing lines. On 18 July 2014, for instance, teams from the Ministry of Foreign Affairs, the Dutch Safety Board (DSB) and the National Police travelled to Kyiv.<sup>12</sup> On 21 July, the Ministry of J&V organised the first national meeting for next of kin at a congress centre in Nieuwegein, with representatives of the government and Victim Support Netherlands in attendance.<sup>13</sup> As from 23 July, aircraft carrying human remains began landing at Eindhoven Air Force Base every day.<sup>14</sup>

The evaluation report notes that the national crisis management organisation adopted a project-based approach around 8 September 2014. On about the same date, the activities evolved from crisis response to more-specific crisis management projects and activities, such as diplomatic activities relating to Flight MH17, missions in the disaster area, communication and support for next of kin, and the provision of information to parliament, the media and the public.

The ministries' cost statements present the cost of the crisis response but the ministries sometimes use different dates for its duration. For the Ministry of Foreign Affairs (BZ), the entire period from mid-2014 to year-end 2016 was devoted to crisis management, with the ministry participating in all activities both from the Netherlands and through its diplomatic missions. The Ministry of J&V incurred costs to set up workplaces and other facilities for the crisis teams. Otherwise, only the Ministries of Defence; Infrastructure and Water Management (I&W); and Social Affairs and Employment (SZW) reported crisis management costs. Some departments involved in crisis management at the Ministries of J&V and of the Interior and Kingdom Relations (BZK) did not report activity costs specifically for Flight MH17 in the first weeks after the disaster.

Some ministries reported costs for specific crisis management activities, such as verifying personal data, translation work, official travel, policy advice, replying to letters from the public, information management and communications.

### **Crisis management by local authorities**

Local authorities also carried out crisis management activities but only a few included verifiable costs in their cost statements. The activities included crisis control, coordination and consultation. A particular form of crisis control performed by municipal security officers during the first weeks after the disaster was the protection of vacant properties of the victims of Flight MH17. We found no crisis management costs at provinces and other local authorities.

**Table 3** *MH17 crisis management costs*

| Organisation        | Activity                 | Amount in euros          |
|---------------------|--------------------------|--------------------------|
| Ministry of BZ      | Crisis management        | 3,104,979.56 + pm        |
| Ministry of Defence | Crisis management        | 3,500,699.33 + pm        |
| Ministry of J&V     | Crisis management        | 147,384.74 + pm          |
| Ministry of I&W     | Crisis management        | 1,708,428.50             |
| Ministry of SZW     | Crisis management        | 5,175.70                 |
| Ministry of BZK     | Crisis management        | 4,250.00 + pm            |
| Municipalities      | Crisis management        | 118,430.60 + pm          |
| <b>Total</b>        | <b>Crisis management</b> | <b>8,589,348.43 + pm</b> |

### 3.3.2 Repatriation

Repatriation involved the return of the victims' remains to the Netherlands. According to the University of Twente's report the repatriation mission was between 24 July and 8 September 2014. Nearly all these days flights took off from Kharkiv to bring human remains to the Netherlands.<sup>15</sup>

The Ministry of Defence's cost statement suggests that repatriation continued for far longer: until year-end 2015. This is because the ministry also categorised the recovery and transportation of wreckage from the disaster area to the Netherlands as repatriation. In practice, both activities took place largely at the same time and were not strictly separated. So as not to unnecessarily complicate the costs, we follow the Ministry of Defence's example and recognise 4 activities:

- repatriation work in the disaster area (victims and wreckage);
- transportation of victims to the Netherlands;
- transportation of victims in the Netherlands to the identification centre;
- transportation of wreckage to the Netherlands.

#### **Repatriation missions in the disaster area**

The repatriation work in the disaster area initially consisted of searching for the victims of Flight MH17, although wreckage from the aircraft was also recovered. The disaster site covered a large area as the aircraft had broken up into 3 parts. Wreckage and human remains were spread across 50 square kilometres.

Military operations between the Ukrainian army and the separatists meant the repatriation team at first could barely access the disaster area. The mission had to be suspended on several occasions for security reasons. Dutch delegations sometimes had to return to the Netherlands and materials had to be placed in safekeeping in the disaster area after just a few days until the work could be resumed in safety.



*MH17 disaster area*

The repatriation missions were carried out by a Dutch team consisting of members of the National Police and the Ministry of Defence. The team searched chiefly for human remains, luggage and aircraft wreckage in the disaster area. To this end, a search team comprising 40 military personnel from the Royal Netherlands Marechaussee (KMAR) arrived in the area on 25 July. By 1 August 2014, the KMAR had 98 persons in the mission area. Other defence units sent a further 92 personnel to support the repatriation mission with personnel-medical and logistics matters. The Ministry of Defence had established a logistics base for the repatriation mission in Kharkiv and a forward operation base in Donetsk.<sup>16</sup>

### **National Police**

The National Police deployed personnel and incurred out of pocket costs for repatriation. The out of pocket costs related to travel and accommodation, interpreters and translators, vehicle purchases and rentals, communication



equipment, transport containers and other equipment, tents, coffins, the use of mortuaries, specialised equipment, transportation, staff training and courses and staff allowances for working outside the Netherlands.

#### **MH17 also emotionally traumatic for police officers**

According to the National Police, many officers found the Flight MH17 disaster and the circumstances they worked in traumatic. This is reflected in the size of the item 'special leave of absence' in the National Police's cost statement. 43 officers took special leave of absence of between 1 and 162 days as a result of their MH17 work, and the National Police incurred more than €500,000 in non-productive staff costs. We included these costs in our cost assessment.

The repatriation missions were also supported by the Ministry of Foreign Affairs' diplomatic missions, including the Dutch embassy in Kyiv. The Dutch presence in the disaster area counted between 80 and 200 persons. They not only carried out the repatriation missions but also investigated the circumstances of the crash and carried out the criminal investigation. They received a great deal of help from the local population, especially in parts of the disaster area that were inaccessible to the missions. According to the Commissioner of the National Police, more than 800 Ukrainians organised and took part in searches for human remains.<sup>17</sup> Local transport and storage facilities such as hospitals and mortuaries were also used.<sup>18</sup>

#### **Grateful to residents local to the MH17 disaster area in Ukraine**

Local residents and local authorities in Ukraine played an important role in the aftermath of the Flight MH17 disaster. The help they provided to recover human remains and wreckage from the crash site was particularly important when the Dutch were unable to access the area. To thank them, the Netherlands donated aid goods via an international aid organisation to residents of the local villages in the summer of 2015. The aid packages included food, hygiene products and a letter of thanks.

The government promised the House of Representatives that it would seek ways to permanently improve living standards in the neighbouring villages and would provide support to overcome local consequences of the MH17 disaster.<sup>19</sup>

### **Transportation of victims to the Netherlands**

Victims were airlifted to the Netherlands over an air bridge between Kharkiv in Ukraine and Eindhoven Air Force Base using a Dutch C-130 Hercules transport aircraft of the Royal Netherlands Air Force and an Australian Boeing C-17 Globemaster transport aircraft. Repatriation flights carrying the remains of the victims of Flight MH17 were flown to the Netherlands nearly every day between 23 July and 8 September.



*Arrival of human remains at Eindhoven Air Force Base*

### Transportation in the Netherlands to the identification centre

The King, Queen, Prime Minister and other officials were present on the first arrival of the victims' remains in Eindhoven, as were the media. The coffins were taken from Eindhoven Air Force Base to the Korporaal Van Oudheusden Barracks in Hilversum, which the government had designated as a central location for identification purposes. The coffins were carried by hearses hired by the Ministry of J&V. A long cortege of hearses regularly proceeded along the A2 motorway from Eindhoven to Hilversum as from 23 July 2024.

The Ministry of Infrastructure and Water Management (I&W, known at the time as the Ministry of Infrastructure and the Environment, I&M) had Rijkswaterstaat close roads and manage traffic for the corteges. Municipalities on the route also closed roads for the corteges.

### Transportation of wreckage to the Netherlands

Aircraft wreckage was transported from Ukraine to the Netherlands mainly by lorry. The transportation was arranged by the Ministry of Defence. The wreckage was taken to Gilze-Rijen Air Force Base in North Brabant, where it was stored in a hangar.

**Table 4** Cost of repatriation

| Organisation        | Activity                                      | Amount in euros           |
|---------------------|---|---------------------------|
| Ministry of Defence | Repatriation missions in disaster area        | 7,486,081.79              |
| National Police     | Repatriation mission in disaster area         | 2,695,084.34 + pm         |
| Ministry of BZ      | Support for repatriation mission              | 1,528,734.72              |
| Ministry of Defence | Airlift of victims to the Netherlands         | 9,440,943.42 + pm         |
| Ministry of J&V     | Transportation of remains in the Netherlands  | 821,148.71 + pm           |
| Ministry of OCW     | Return flight of minister                     | 891.43                    |
| Ministry of I&W     | Support for corteges in the Netherlands       | 87,974.00                 |
| Municipalities      | Local support for corteges                    | 20,606.12 + pm            |
| Ministry of Defence | Transportation of wreckage to the Netherlands | 523,034.35                |
| <b>Total</b>        | <b>Repatriation</b>                           | <b>22,604,498.88 + pm</b> |

### 3.3.3 Identification

The main players in the identification investigation were the National Police, the Netherlands Forensic Institute (NFI) and the Ministries of J&V and Defence.

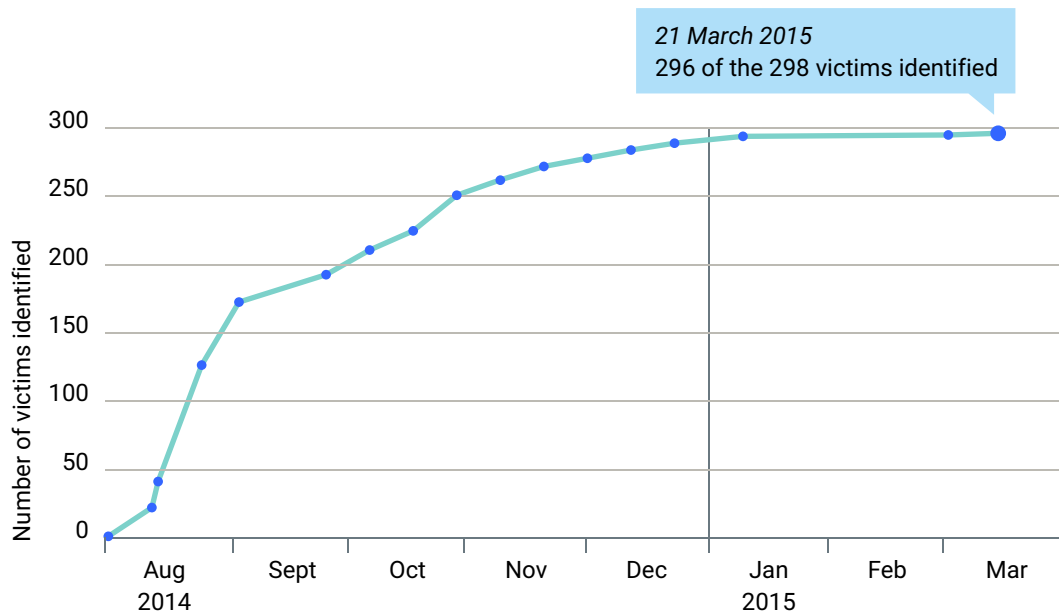
#### National Police

The National Police were involved in the identification investigation from mid-2014 to year-end 2022. The National Forensic Investigation Team (LTFO) of the National Police is a multidisciplinary unit with expertise in forensic investigations and victim identification. External specialists were also engaged for the identification investigation.

The team collected fingerprints, dental records, DNA samples and other antemortem material belonging to the victims, their families and other sources. To identify the victims, a special computer program then compared this material with postmortem material taken from the victims' bodies. After identification, the remains were released to the victim's family for burial or cremation.

**Figure 8** Identification of MH17 victims

#### Victim identification progressively more difficult



By 21 March 2015, the identification team had established the identity of 296 of the 298 victims. When this report was prepared, the remains of 2 Dutch victims had not been matched. The identification investigation is therefore not yet complete.

### **Barracks not prepared for identification investigation**

The Korporaal Van Oudheusden Barracks in Hilversum was understandably ill-prepared for the identification investigation. Suitable working conditions first had to be arranged for this specific purpose. The National Police's cost statement accordingly includes long lists of materials and equipment purchased or hired to identify the victims. They include aerial work platforms, transport containers, stackers and other transportation equipment, electricity generators and distribution panels, an air-conditioned switch unit, extension leads and cable ducts, data connections, work tents, storage racks, office furniture and flip charts.

Once the workplace had been fitted out, the identification team needed personal protective equipment and other materials, such as Tyvek protective disposable clothing, medical gloves, full face masks, hairnets, nail brushes, fine dust masks, safety goggles, safety jackets, boot disinfection basins, hand disinfectants, sterillium, etc.

For the identification work itself, countless items were purchased or hired: refrigeration units, body bags and body scanners, finger scanners, mortuary tables, table trolleys and limb supports, mosquito nets, medical waste bins, thermometers, sample jars, sterile DNA jars, disinfectants, sheets, gauze rolls, alcohol wipes, cotton swabs, P3 filters, absorption material, 70% alcohol, 99.5% ethanol, formaldehyde remover, surface cleaning agents, cotton rolls, disposable knives, tape measures, multifunctional scissors, callipers and tools in the identification kit. Frequent use was made of rented mortuary capacity. The National Police also purchased materials for postmortem care, such as coffins, coffin plates, wreaths, and national flags.

We found that the National Police assigned about 560 officers in total for the repatriation and identification investigation between July 2014 and the end of June 2015. During this period, they together spent 27,101 morning or afternoon sessions on this task (an average of 4 hours per session). From July 2015 to year-end 2022, a further 67 police officers worked for a total of 6,504 sessions on the identification investigation alone. The National Police applied its customary standard fee for police deployment to calculate the officers' costs.



### **Netherlands Forensic Institute (NFI)**

The NFI was involved in 4 tasks following the MH17 disaster:

- victim identification;
- investigation for the DSB;
- on-site disaster investigation;
- criminal investigation.

To identify the victims, the NFI studied the human remains, clothing and the biological traces on them, and the victims' mobile phones. It also examined more than 2,000 DNA samples.

### **Ministry of J&V**

The Ministry of J&V provided financial support for the National Police and NFI's identification investigation. It paid, for instance for visualisations in the identification investigation.

### **Ministry of Defence**

On 28 July 2014, the government designated the Korporaal Van Oudheusden Barracks in Hilversum as the MH17 victim identification centre.<sup>20</sup> The Ministry of Defence's cost statement includes an amount in respect of this facility and for several secondary identification facilities at the barracks.

#### **Soft toys at entrance to Korporaal Oudheusden Barracks find a special home**

Many people laid flowers and soft toys at the entrance to the Korporaal Van Oudheusden Barracks in memory of the MH17 victims. The toys remained there for nearly six months until Hilversum municipality removed them in December 2014. But they were not thrown away. The municipality paid for the toys to be cleaned and placed in storage. In early 2016 they were donated to the *Geef een Knuffel* foundation, which gives soft toys to children in hospital.<sup>21</sup>

**Table 5** Identification costs

| Organisation        | Activity                                  | Amount in euros          |
|---------------------|---|--------------------------|
| National Police     | Identification investigation              | 6,322,225.86 + pm        |
| NFI                 | Identification investigation              | 1,951,188.00             |
| Ministry of J&V     | Support for identification investigation  | 21,614.76                |
| Ministry of Defence | Premises for identification investigation | 680,736.45 + pm          |
| Municipalities      | Cleaning and storage of soft toys         | 365.00                   |
| <b>Total</b>        | <b>Identification</b>                     | <b>8,976,130.07 + pm</b> |

### 3.3.4 Investigation of the MH17 circumstances

The investigation into the circumstances of the Flight MH17 disaster was carried out by the Dutch Safety Board (DSB) and the JIT under the leadership of the National Police. The investigation was supported by the Ministries of Defence, Finance and J&V and by the Ministry of Foreign Affairs' diplomatic missions, including the Dutch embassy in Kyiv.

#### Accident investigation by the DSB

Immediately after Flight MH17 crashed near the village of Hrabove in southeast Ukraine, the Ukrainian authorities commenced an accident investigation in accordance with Annex 13 of the Convention on International Civil Aviation (the 'Chicago Convention'). The sole purpose of an accident investigation is to prevent future aviation accidents. Under the Chicago Convention, the State in which an aircraft crashes (the State of Occurrence) has primary responsibility to investigate the incident. Under the same convention it can delegate the responsibility to another State.<sup>22</sup> During the very first days of the investigation, the Ukrainian authorities asked the Netherlands – as the State with the highest number of victims on board the aircraft – to take charge of the investigation, to which the Netherlands agreed. Ukraine handed the investigation over to the Netherlands on 23 July 2014.

The DSB is an autonomous administrative authority that investigates the causes and consequences of disasters, major accidents and similar incidents. As the official Dutch accident investigation organisation, it took charge of the MH17 investigation. Besides investigators from the DSB, accredited representatives of Ukraine, Malaysia, the United States of America, the United Kingdom, Australia and the Russian Federation took part in the investigation. The DSB also engaged experts from other countries.<sup>23</sup>

Aviation accidents are normally investigated in the disaster area with wreckage being stored safely in the vicinity. In the case of Flight MH17, the wreckage was located in an active armed conflict zone and the opportunity to secure the physical investigation material and carry out a detailed investigation in the disaster area was extremely limited. The DSB therefore initially used photographs taken shortly after the crash by its own investigators who had travelled to the site and by Ukrainian and Malaysian investigators, the Australian Federal Police and the Organization for Security and Cooperation in Europe (OSCE).<sup>24</sup>

The DSB could not secure wreckage until some time later. The wreckage was removed from the conflict area and transported to the Netherlands for storage and examination at Gilze-Rijen Air Force Base. In a hangar provided by the Ministry of Defence, the DSB and international experts reconstructed part of the aircraft from the wreckage in order to establish why it had crashed. With the aid of the reconstruction, the DSB could determine the projectile's precise impact trajectories from the damage patterns in the cockpit and the victims' injuries.



*Reconstruction of the MH17 by the DSB at Gilze-Rijen Air Force Base*

The DSB also examined the flight recorders, radar data, cockpit voice recordings of conversations with air traffic controllers, and satellite images. Some of this information, such as the satellite images, had to be purchased. The DSB examined metal fragments found in the aircraft and in the victims' bodies. From intelligence

gathered on weapons systems and the damage pattern missiles tend to cause on fragmentation, the DSB was able to identify the source of the fragments.<sup>25</sup>

#### Customs helped to scan bodies

The Ministry of Finance's cost statement includes 1 item relating to Flight MH17, work performed by Customs. To assist in DSB's investigation, the National Police had asked Customs to use its advanced scanning equipment to scan the coffins containing the victims' remains for foreign substances as they arrived. Customs' scanning equipment was also used to scan the victims' baggage when it was returned to the Netherlands during the repatriation mission.

On 13 October 2015, the DSB concluded from the investigation evidence that Flight MH17 had been brought down by a 9N314M warhead on a 9M38 series missile as used on a Buk surface to air missile system.<sup>26</sup>

The DSB incurred considerable costs for this investigation. The Ministry of Defence provided a large hangar, an aircraft shelter and a Romney hut at the Gilze-Rijen Air Force Base to store the aircraft wreckage and serve as a workplace for DSB's investigation team. Like the barracks in Hilversum, the hangar and shelter were not initially suitable as an investigation location and like the identification team in Hilversum the DSB first had to organise a suitable workplace for the investigation at the Gilze-Rijen Air Force Base.

Hangar 4.11 at the Gilze-Rijen Air Force Base covers more than 2,500m<sup>2</sup> and consists of a large internal space with several adjoining offices and sanitary and restaurant facilities. The ministry had fitted the hangar out with simple furniture. Energy and climate control/air purification systems were also present. The DSB itself provided ICT and all other office facilities. The DSB needed equipment to reconstruct the MH17, including aerial platforms, tools and other materials, and had a steel construction company erect a framework on which to assemble the aircraft wreckage.

The DSB incurred costs for travel and accommodation in the disaster area, consultation with other experts and investigation centres, for external investigators, project support and technical authors to write the investigation reports, for printing, translation work and graphic design, etc.

Because the DSB works and keeps accounts on a project basis, we could readily establish the costs, both out of pocket costs and staff costs.

### **Criminal investigation by the JIT**

The DSB's accident investigation was based on the Chicago Convention and was aimed at establishing the technical cause of the crash. In accordance with criminal law, the JIT investigated who was responsible for causing the crash and could thus be prosecuted. The JIT's identification of the perpetrators relied in part on the DSB's technical investigation.

The JIT was a joint investigation team headed by the Dutch National Police with participants from the investigation services of the Netherlands, Australia, Malaysia, Belgium and Ukraine. The participating countries contributed to the investigation chiefly in kind, in the form of personnel deployment. The participants did not charge for their contribution to the criminal investigation.

The criminal investigation required many interviews, mostly outside the Netherlands, the examination of images and other materials, and analyses of intercepted telephone conversations. The costs incurred by the National Police related chiefly to travel and accommodation, local transport, interpreters and translators, information gathering, payments for satellite images and other detection work, consultation and communication with experts in other countries, visits to foreign counterparts, and the hiring of forensic analysts, doctors, other experts and personnel. The investigation team also incurred accommodation, equipment and ICT costs.

The NFI, Ministry of J&V and Ministry of Defence facilitated the DSB and JIT's investigations, also through the Ministry of Foreign Affairs' diplomatic missions, including the Dutch embassy in Kyiv. These costs are listed in table 6 below.

**Table 6** *Cost of the Flight MH17 accident investigation*

| Organisation        | Activity  | Amount in euros           |
|---------------------|---|---------------------------|
| DSB                 | Accident investigation of the cause of the disaster | 6,623,435.42              |
| National Police     | Criminal investigation                              | 41,047,038.43 + pm        |
| NFI                 | Investigation work for DSB and JIT                  | 2,385,372.00 + pm         |
| Ministry of Defence | Provision of facilities at Gilze-Rijen              | 497,340.65                |
| Ministry of BZ      | Support for DSB and JIT investigations              | 2,293,102.07              |
| Ministry of BZ      | Flight Safety Foundation investigation              | 419,221.97                |
| Ministry of J&V     | Investigation workspace                             | 51,033.25                 |
| Ministry of Finance | Customs scanning activities                         | 30,160.00                 |
| <b>Total</b>        | <b>Flight MH17 accident investigation</b>           | <b>53,346,703.79 + pm</b> |

### 3.3.5 Criminal prosecution and trial in the Netherlands

On 9 March 2020, The Hague district court began criminal proceedings at the Schiphol Judicial Complex in the municipality of Badhoevedorp against 4 persons suspected of downing Flight MH17. None of the suspects was present; one had himself represented by a lawyer. The trial ended on 17 November 2022 with the court sentencing 3 of the 4 suspects to life imprisonment and ordering the payment of compensation to the victims' next of kin.

#### Criminal prosecution determined by jurisdiction

It was far from axiomatic that the criminal trial of the suspects accused of bringing down Flight MH17 would be held in the Netherlands. The decision depended on whether a Dutch court had jurisdictional competence.

In international law, jurisdiction is determined by internationally accepted principles. Ukraine had jurisdiction in accordance with the principle of territoriality: Flight MH17 had been brought down in its territory. Malaysia had jurisdiction in light of the aircraft's registration. The other JIT countries (the Netherlands, Australia and Belgium) had jurisdiction on the basis of the victims' nationality and universal jurisdiction for war crimes. Other options – the International Criminal Court or an international tribunal – were also explored.

On 5 July 2017, the Ministers of J&V and Foreign Affairs informed the House of Representatives that the JIT countries had together decided to have the Dutch Public Prosecution Service prosecute and try the suspects before a Dutch court. To this end, Ukraine also relinquished its jurisdiction in favour of the Netherlands.<sup>27</sup>

The main government players in the prosecution and trial of the suspects accused of bringing down Flight MH17 were the Public Prosecution Service (OM), the judiciary, the Legal Aid Board and the Ministry of J&V. The JIT was also involved.

#### Public Prosecution Service (OM)

Prosecution began when the JIT completed its criminal investigation and submitted its report to the OM. The OM selected a prosecution team headed by a public prosecutor to prepare the case.

Given the exceptional nature of the case and the scope of the activities, it was necessary to engage additional, often specialised, personnel and set up dedicated



workplaces. To ensure that the case proceeded correctly, the OM sought the advice of experts and organised bespoke training programmes and courses.

In view of the international political situation, the OM was aware that the trial was at risk of cyberattack by State or other actors and accordingly put extensive cybersecurity measures in place.

As the suspects and many of the next of kin did not speak Dutch, translators and interpreters were required. The OM also had to make significant investments in communication and presentations to satisfy the national and international interest in the case.

### **The judiciary**

After the Netherlands accepted the JIT countries' request to hold the trial, the Council for the Judiciary (RvdR) designated The Hague district court as the venue for the criminal proceedings. The RvdR is the coordinating administrative body for district courts, courts of appeal, the Administrative Court for Trade and Industry and the Central Appeals Tribunal (together, 'the judiciary').

The case was heard between 9 March 2020 and 17 November 2022 at the Schiphol Judicial Complex (JCS) in Badhoevedorp. According to the Minister of J&V, the JCS had the necessary facilities and size to hold a trial of this importance. It also met the needs of all next of kin from 17 countries and the security demands and requirements of the international press.<sup>28</sup>

Owing to the international political situation, the RvdR, like the OM, was aware of the risk that the trial might be subject to cyberattacks by State or other actors. It accordingly took extensive cybersecurity measures. Most of the measures were implemented by the Judicial Information Provision Organisation (IVO), established in Utrecht.

#### **Judicial pen test**

One of the security measures taken by the IVO was a pen test. A penetration or pen test is a technique to identify vulnerabilities and exploit them to hack into a digital system. An IT company was engaged to break into RvdR's systems but admitted defeat after several days. The IVO then opened a firewall port and for several days the IT company again tried and failed to penetrate the system. It was then decided to end the pen test.

IVO specialists were present during the trial in order to protect the live streams from cyberattack and to provide immediate assistance if IT support was required.

The staff of The Hague district court were supplemented throughout the proceedings with staff from other courts in the Netherlands. For accounting purposes, the associated costs were charged to the MH17 criminal trial.

The Hague district court engaged the services of security firms, translation agencies, interpreters and the like for the trial. A special international press centre was set up next to the judicial complex. There was space for 15 journalists in the court itself. The press centre could accommodate 450 journalists and was fitted with desks, television screens and a restaurant. The start of the trial on 9 March 2020, however, coincided with the outbreak of the COVID-19 pandemic and the press centre was not taken into use. The whole world, including the journalists for whom the press centre had been intended, could follow the trial via live streams.



*Flight MH17 criminal trial*

### **Legal Aid Board**

Under the Legal Aid Act, the Legal Aid Board (RvR), an autonomous administrative authority, is responsible for organising subsidised legal aid to offset the cost of representation in the Netherlands and on the Dutch Caribbean islands of Bonaire, St Eustatius and Saba. The RvR receives funding from the Minister for Legal Protection for this statutory task.

The RvR issued certificates to offset the legal costs incurred by next of kin for the criminal trial and for a case before the European Court of Human Rights (ECtHR). It also issued 'minor aid certificates' outside these 2 cases, mainly for relatively simple legal advice from a lawyer. Additionally, the RvR provided legal aid certificates to engage experts (for instance on Ukrainian law) and translators. Finally, the RvR incurred costs to implement a special legal aid regulation introduced for the MH17.

The RvR normally takes account of a client's income and assets when an application is made for a legal aid certificate and the client has to contribute towards the costs.<sup>29</sup> In the MH17 case, the government decided to waive such requirements for the next of kin of Dutch victims.

#### **J&V funding of MH17 legal aid regulation did not lead to double counting**

The RvR reclaimed the legal aid granted in respect of the MH17 disaster and the other costs of the special regulation in full from the Ministry of J&V. Where the costs in a cost statement were recovered from another Dutch public body, we assessed them at the most operational level. In this case, this meant that:

- The cost of the RvR's activities was recognised at the RvR. Costs of legal aid claimed at and received from the Ministry of J&V was not deducted from the RvR's cost statement.
- Amounts reclaimed and settled were not recognised as costs at the Ministry of J&V.

This prevented costs being counted twice and ensured that the costs related wherever possible to specific activities attributable to the MH17 disaster.

#### **Ministry of J&V**

Although the Ministry of J&V was not directly involved, it facilitated the criminal trial in a variety of ways. It ensured, for instance, that both Dutch and foreign next of kin were able to attend. It organised meetings to inform the next of kin about legal aid, enabled them to inspect the trial files and provided translators and interpreters.

The Ministry of J&V also played an active part in international consultations with the other JIT countries.

**Table 7** Cost of criminal prosecution and trial in the Netherlands

| Organisation    | Activity  | Amount in euros           |
|-----------------|---|---------------------------|
| OM              | Prosecution; all activities including personnel, hiring and office expenses | 11,979,044.96 + pm        |
| OM              | Press conferences and other communication                                   | 381,039.21 + pm           |
| OM              | Additional ICT facilities   | 1,002,420.14 + pm         |
| OM              | Advice, training and special courses  | 18,730.80 + pm            |
| OM              | Availability fee, etc. for JCS  | 6,044,994.58 + pm         |
| OM              | Security  | 57,255.00 + pm            |
| OM              | Interpreters and translators  | 33,468.77 + pm            |
| OM              | Travel and accommodation, Netherlands and abroad                            | 23,104.95 + pm            |
| RvdR            | Personnel, RA/GA  | 13,426,735.00             |
| RvdR            | Engagement of experts   | 128,373.00                |
| RvdR            | Entertainment   | 22,459.00                 |
| RvdR            | Safety and security   | 4,224,698.00              |
| RvdR            | ICT   | 9,297,671.00              |
| RvdR            | Interpreters and translators  | 892,032.00                |
| RvdR            | Accommodation, JCS, etc.  | 6,251,443.00              |
| RvdR            | Training  | 125,009.00                |
| RvdR            | Other operating costs   | 133,640.00                |
| RvdR            | Travel  | 213,611.00                |
| RvR             | Legal aid for next of kin   | 1,796,789.70              |
| RvR             | Translations  | 80,010.12                 |
| RvR             | MH17 legal aid regulation implementation costs                              | 185,807.00                |
| RvR             | Minor and standard legal aid certificates                                   | 8,335.11                  |
| Ministry of J&V | External personnel for trial and prosecution                                | 31,570.21                 |
| Ministry of J&V | Travel costs for international consultation                                 | 326.80                    |
| Ministry of J&V | Legal aid meeting for next of kin   | 31,503.38                 |
| Ministry of J&V | Inspection sessions for next of kin   | 562,888.98                |
| Ministry of J&V | Facilitation of trial attendance by next of kin                             | 190,088.32                |
| Ministry of J&V | Interpreters, translators   | 1,350.00                  |
| <b>Total</b>    | <b>Criminal prosecution and trial</b>                                       | <b>57,144,399.03 + pm</b> |
|                 | Contribution by other JIT countries   | -23,044,162.00            |
|                 | <b>Cost of prosecution and trial in the Netherlands</b>                     | <b>34,100,237.03 + pm</b> |

### **Contribution by the other JIT countries**

After the JIT countries (Netherlands, Australia, Belgium, Malaysia and Ukraine) had together decided that the case should be prosecuted and tried in the Netherlands, they made agreements on their further cooperation and on the funding of proceedings. On 22 January 2019, the JIT countries signed a Memorandum of Understanding (MoU) laying down the financial aspects of their cooperation.

The Netherlands agreed to hold the trial on condition that the proceedings' independence and impartiality would not be compromised. It therefore assumed all costs inherent in the criminal proceedings in the Netherlands. This was laid down in the financial MoU between the JIT countries. Paragraph 3 of the MoU states:

*"The expenditures for the public prosecutors, the judiciary and witness protection will be solely borne by the Netherlands and will not be subject to any oversight by the Financial Oversight Committee."*<sup>30</sup>

The other JIT countries contributed to matters not directly related to the cases themselves, chiefly for people and media to attend proceedings in the Netherlands. The total amount contributed by the other JIT countries came to €23,044,162.00. The costs borne by the Netherlands therefore amounted to **€34,100,237.03**.

### **3.3.6 Support for the next of kin**

In a disaster such as the one that befell Flight MH17, the government recognises that it has a responsibility to provide fitting support to the victims' next of kin.

#### **Crisis management based on past disasters**

The Netherlands has had to respond to several aircraft disasters in recent decades. They include the disaster at Tenerife Airport on 27 March 1977, the crash of an El Al aircraft in the Bijlmermeer district of Amsterdam on 4 October 1992, the Turkish Airlines aircraft that crashed on landing at Schiphol Airport in 2009, and an Afriqiyah Airways plane that crashed at Tripoli Airport, Libya, in 2010. The Netherlands has also suffered other disasters, such as the firework explosion in Enschede on 13 May 2000 and the café fire in Volendam during New Year's Eve 2000. In response to these tragic events the Dutch government developed a crisis management structure to deal with disasters. Providing support to victims and their next of kin is a key element of the structure.

In the case of Flight MH17, crisis management included support for the next of kin from the outset. It consisted of 4 elements:

- initial reception of the next of kin;
- provision of information;
- psychosocial support;
- financial and other practical assistance.

### **Initial reception of the next of kin**

The next of kin first received support on 17 July 2014, immediately after initial reports came in that Flight MH17 had crashed. Relatives and other concerned persons were received at Schiphol Airport, given emergency numbers and informed about the passenger list.

An important aspect of the initial response to an aircraft disaster is the provision of a *contact number for the next of kin*. They can use the telephone number to ask questions and register themselves as contact persons on behalf of the family. Where a disaster happens outside the Netherlands, the contact number is operated by the Departmental Crisis Management Coordination Centre (DCC) of the Ministry of Foreign Affairs. The ministry arranged an emergency number for the next of kin in the evening of 17 July 2014.<sup>31</sup>

### **Provision of information to the next of kin**

The next of kin received further information about the disaster as from 19 July 2014. On that date a provisional next of kin list was provided to the national family liaison team of the National Police. Liaison officers contacted the next of kin in person or by telephone as from that date.

Besides the liaison officers, municipalities played an important role informing the next of kin. The University of Twente's evaluation revealed that the municipalities were searching for more precise details on the victims during the first phase of the crisis. As the government did not immediately release information, the municipalities had to use the resources available to them: the unverified passenger list from Malaysia Airlines and the municipal records database. Many municipalities were soon aware of which victims had lived within their boundaries.

During the initial phase of the crisis, municipalities where victims had lived undertook many activities on their own initiative. Some set up special project teams for the next of kin to contact.<sup>32</sup> The mayors of 22 of the 59 municipalities concerned visited next



of kin to offer their condolences. Only a handful of municipalities recorded the costs incurred for this activity.

### **Psychosocial support**

On 30 January 2014, i.e. 6 months before the disaster, the National Institute for Public Health and the Environment (RIVM) had presented a new multidisciplinary guideline on the provision of psychosocial support in response to disasters and crises. The guideline had been developed for the RIVM by the ARQ National Psychotrauma Centre. ARQ is an umbrella organisation providing psychotrauma support in the Netherlands. The organisation includes the ARQ Centre of Expertise for the Impact of Disasters and Crises (Impact) and the Institute for Psychotrauma (IVP). The guideline highlights the government's important responsibility to provide psychosocial support following a disaster or crisis.<sup>33</sup> An up-to-date guideline was therefore available for the Flight MH17 disaster.

Psychotrauma support is an important aspect of psychosocial support. Both the Ministry of J&V and the Ministry of VWS engaged ARQ to provide psychotrauma support to the next of kin. The Ministry of J&V concluded a service contract with ARQ on 4 December 2014 for it to set up a digital service desk at the ministry's expense in order to help the next of kin deal with psychosocial issues.

IVP and Impact arranged access services and helped compile an information pack for schools. ARQ took crisis management measures for the next of kin and provided psychotrauma support, assisting and coordinating with Victim Support Netherlands.

The Ministry of VWS awarded ARQ a core funding grant after the MH17 disaster; it recognised a separate MH17 project code within the core funding, from which ARQ could pay for its MH17-related activities.

Besides ARQ, Victim Support Netherlands provided personal and emotional assistance and psychosocial support to the victims' next of kin. On the day after the disaster, for instance, it set up an online Information and Referral Centre (IVC) with information for the next of kin. The IVC was a joint project of Victim Support Netherlands, the government, the National Police, Impact/ARQ and the Public Prosecution Service.

The Amsterdam-Amstelland Regional Health Service / Regional Medical Emergency Service (GGD Amsterdam) was involved in the provision of psychosocial support to the next of kin on several occasions, immediately on the day of the disaster and also

in the ensuing months. GGD Amsterdam helped, for instance, with the operational preparation and conduct of the memorial service at the RAI exhibition and conference centre in Amsterdam and with the provision of psychosocial support to next of kin (through its Safety Net department).

ARQ and GGD Amsterdam believe psychosocial support will still be needed for years to come.

### Financial and other practical assistance

The government also provided next of kin with financial and practical assistance. The Ministry of Social Affairs and Employment (SZW), for instance, dealt with various issues, such as problems with next of kin's benefit payments. Some municipalities provided temporary financial assistance.

Victim Support Netherlands provided practical assistance to help next of kin obtain necessary documents such as certificates of inheritance. Its staff were present to receive next of kin at information evenings and on the arrival of human remains in Eindhoven. During the criminal proceedings, too, Victim Support Netherlands offered emotional and practical assistance to next of kin, including the drafting of impact statements and helping them exercise their right to speak during the proceedings.

**Table 8** Cost of support for next of kin

| Organisation      | Activity                                  | Amount in euros        |
|-------------------|---|------------------------|
| Ministry of BZ    | MH17 contact number for next of kin       | pm                     |
| Ministry of J&V   | ARQ digital service desk                  | 299,293.50             |
| Ministry of J&V   | Psychotrauma support, ARQ/IVP             | 35,000.00              |
| Ministry of VWS   | Psychotrauma support, ARQ/IVP             | 117,638.00             |
| Victim Support NL | Psychotrauma support and other assistance | 296,279.03 + pm        |
| GGD Amsterdam     | Psychotrauma support and other assistance | 13,013.00 + pm         |
| Ministry of SZW   | Assistance with benefit payments, etc.    | 1,092.00               |
| Municipalities    | Support for next of kin                   | 26,550.00 + pm         |
| <b>Totaal</b>     | <b>Support for next of kin</b>            | <b>788,865.53 + pm</b> |

### 3.3.7 Commemoration ceremonies

The Netherlands government undertook several activities to organise and facilitate commemorations of the victims.

More than half of the municipalities where victims had lived opened and managed a book of condolence at a central location in their offices, some with flowers and candles, for the public to express their sympathy and grief. Municipalities also published death notices. On behalf of the Council of Ministers for the Kingdom, the Ministry of General Affairs published a full-page notice with the names of all 298 victims in 14 national and regional newspapers. Municipalities organised and facilitated silent marches, many requiring traffic management.

On 21 July 2014, the Ministry of J&V organised the first national ceremony for the next of kin, at a congress centre in Nieuwegein. In attendance were the King and Queen, representatives of the government and staff of Victim Support Netherlands.<sup>34</sup> A second ceremony was held on 30 January 2015, at which the Ministry of J&V issued a commemorative coin and other items of remembrance. On 10 November 2014, the Ministry of VWS organised a national commemoration ceremony at the RAI exhibition and conference centre in Amsterdam. On 17 June 2015, exactly one year after the disaster, a third ceremony was held in Nieuwegein for next of kin. It was organised by the MH17 Air Disaster Foundation set up by next of kin, but the government bore the costs.<sup>35</sup> Representatives of the government were again in attendance.

The cost statements reveal that the government was closely involved in the organisation and conduct of each of these ceremonies. Venues had to be hired, speakers had to be engaged, media services had to be facilitated, security had to be arranged and traffic had to be managed. Translators and interpreters were also needed because many foreign next of kin attended the ceremonies.

#### Exceptional cost of commemorations

Traffic management for the ceremony in Nieuwegein included an exceptional cost item. The municipality closed several roads for the service. As a result some local businesses could not be reached and had to be compensated for their losses. We included the costs incurred by the Ministry of J&V for this traffic management in our cost assessment.

Other public authorities were also closely involved in the commemoration ceremonies in Nieuwegein and at the RAI in Amsterdam. The National Police, for

instance, were involved in both their preparation and conduct. Not only did the police express their sympathy, they also gave presentations about, among other things, the identification and investigation process.

The Ministry of Foreign Affairs contributed in a variety of ways to the commemoration of the victims. It was represented at the ceremonies in the Netherlands and abroad and funded a symposium in 2019 organised by the MH17 Air Disaster Foundation. It also prepared a graphic timeline of the activities the government had undertaken in response to the disaster.

The cost statements show that municipalities also organised commemoration ceremonies and took measures to facilitate funerals, including traffic management measures.

The government also provided funding and donations to pay for commemorations and other activities. The Ministry of J&V supported, for instance the MH17 Air Disaster Foundation. The foundation had been set up by next of kin in November 2014 in order to represent them to the authorities. Its objectives are to help next of kin come to terms with and commemorate the tragedy and to promote their interests. The foundation is reliant on donations. Owing to the importance of its work, it received funding from the Ministry of J&V in 2018, 2019 and 2020.

The government also funded the National MH17 Monument Foundation in Vijfhuizen, Haarlemmermeer municipality. The monument was created in 2017 on the initiative of the MH17 Air Disaster Foundation.

#### **National MH17 Monument**

The National MH17 Monument, designed by Ronald Westerhuis, is modelled on the black memorial ribbon worn on many occasions following the disaster. The next of kin united in the MH17 Air Disaster Foundation chose the ribbon as a symbol of their grief. 298 trees were planted in the shape of the ribbon, with each tree standing for one of the victims. The tree species were selected in consultation with the landscape architect, the nursery that donated the trees and the MH17 Air Disaster Foundation. 10 species were selected for the passengers. Each group of passengers had the same species. The trees were planted close to each other so that they remained recognisable as a group. An additional species, lime, was planted for the 15 crew members. The ribbon of trees is raised in the landscape and is clearly visible from the air.<sup>36</sup>

Several authorities contributed to the National MH17 Monument. The Ministry of J&V, the province of North Holland and 58 municipalities funded the creation of the monument and Amsterdam Municipality gifted the soil necessary to landscape the site. Maintenance of the monument, which is performed by volunteers and for a large part by the Spaarnwoude Park Board, is paid for jointly by the Ministry of J&V (through Haarlemmermeer municipality) and the province of North Holland.



*Unveiling of the National MH17 Monument on 17 July 2017*

Besides the National Monument, some municipalities created local monuments. For example, a monument was placed in the Memorial Park at Eindhoven Airport, where the repatriation flights had landed. Other municipalities created a variety of sites for next of kin and others to remember the victims. Some municipalities arrange annual commemorations.

#### **Memorial site for employee**

Rijkswaterstaat had a special reason to create a memorial: one of the victims had been an employee of Rijkswaterstaat Sea and Delta. The memorial it created for this employee was a black poplar and a boulder on the bank of the River Maas.

Commemorations and the maintenance of monuments and remembrance sites will continue to entail costs in the years ahead.

**Table 9** *Cost of commemorations*

| Organisation           | Activitu  | Amount in euros          |
|------------------------|---|--------------------------|
| Ministry of AZ         | Death notice in 14 newspapers                           | 188,352.43               |
| Municipalities         | Death notices   | 7,485.88 + pm            |
| Municipalities         | Opening and management of books of condolence           | 1,462.42 + pm            |
| National Archives      | Questions from municipalities about books of condolence | 616.00                   |
| Municipalities         | Organisation/assistance, silent marches                 | 5,267.32 + pm            |
| Ministry of J&V        | Organisation of next of kin meetings                    | 1,234,528.46 + pm        |
| National Police        | Involvement in next of kin meetings                     | 245,919.74 + pm          |
| Ministry of VWS        | Organisation of national commemoration ceremony         | 3,531,555.36             |
| Ministry of SZW        | Reporting on national commemoration ceremony            | 139.50                   |
| Ministry of BZ         | MH17 symposium and website timeline                     | 87,509.16                |
| Municipalities         | Local commemorations                                    | 244,326.43               |
| Municipalities         | Assistance with funerals                                | 5,807.72                 |
| Ministry of J&V        | Funding of MH17 Air Disaster Foundation                 | 177,919.37               |
| Ministry of J&V        | Funding of National MH17 Monument Foundation            | 940,000.00               |
| North Holland province | Funding of National MH17 Monument Foundation            | 25,000.00                |
| Municipalities         | Funding of National MH17 Monument Foundation            | 222,825.88               |
| North Holland province | Maintenance of National MH17 Monument                   | pm                       |
| Spaarnwoude Park Board | Maintenance of National MH17 Monument                   | 900,000.00               |
| North Brabant province | Funding of MH17 monument, Eindhoven Air Force Base      | 50,000.00                |
| Municipalities         | Contributions to local commemoration sites              | 110,902.82               |
| Municipalities         | Annual commemorations                                   | 154,030.18               |
| Ministry of I&W        | Commemoration site for employee                         | 12,028.55                |
| <b>Total</b>           | <b>Commemorations</b>                                   | <b>8,145,677.22 + pm</b> |



### 3.3.8 Hotspot MH17 archives

In March 2016, the House of Representatives passed a motion to preserve and archive all government-held documents relating to Flight MH17 so that they would be accessible for all time rather than destroyed.<sup>37</sup> The government agreed to the motion and implemented it through the Permanently in our memory: national MH17 crisis project.<sup>38</sup>

#### Motion to permanently archive MH17 information

On 1 March 2016, the House of Representatives debated the DSB's report on the Flight MH17 disaster. One of the MPs said, *'It is important that matters relating to MH17 are available later, for example if the government itself wishes to reopen the investigation. ... Is the government willing to ask the State Archivist to draw up an inventory and place it in safekeeping, including interview reports, all of the ministries' logbooks, emails from ministerial and civil service committees, diplomatic emails, documents from the DSB and the WODC and all that the State Archivist considers to be of importance? Many matters can be made public only after the criminal investigation has been completed but they must remain available. Only then can the actions of the government as a whole be properly assessed.'* The MP submitted a motion on the same day calling on the government to, *'order the State Archivist to establish a separate archive and index of all MH17 material; further requesting that the government provide the State Archivist with all available MH17 material, including emails, attendance records and logbooks of both committees, as well as diplomatic memos; further requesting that the government ensure that the DSB and WODC do likewise.'* The House of Representatives passed the motion unanimously.

Rules on the safekeeping or destruction of public records are laid down in the Public Records Act 1995. The rules reflect the importance of the information, the efficiency of its management and the need to protect, for instance, the privacy of the public. Information on critical processes that can be used to reconstruct government actions qualifies as information that must be preserved. Government agencies must prepare selection lists to decide what information has to be preserved and what can be destroyed and when. The retention period for administrative documents is usually 7 years.<sup>39</sup>

Under section 5 (1) (e) of the Public Records Decree, certain information can be excluded from the list of information selected for destruction. This information is kept for what are known as 'hotspots'. Further to the motion in the House of Representatives, the government designated Flight MH17 as a hotspot. This means

that the government must hold all information pertaining to Flight MH17 in safekeeping and release it to the National Archives after 20 years.

The Ministry of J&V is responsible for this. A project group was set up by the National Coordinator for Counterterrorism and Security (NCTV) and the National Archives commenced the *Permanently in our memory: national MH17* crisis project in September 2016 to take stock of and index all relevant documents. The project, also known as *Hotspot MH17*, involves all the ministries and public organisations concerned, 35 in total, including the DSB, the Public Prosecution Service, The Hague district court, the Council for Legal Aid and Victim Support Netherlands.

#### The term 'hotspot'

The term 'hotspot' in relation to archives was coined in the Periodic Hotspot Monitor for Local Authorities, published jointly by the Association of Netherlands Municipalities, the Association of Provincial Authorities, the Dutch Water Authorities and the National Archives. A hotspot is an event or issue that leads to a remarkable or intensive interaction between government and citizens or between citizens. It is about matters that cause a lot of social turmoil, are of special significance to residents and a focus of media attention. From a cultural and historical perspective, information objects that relate to hotspots need to be preserved permanently.<sup>40</sup>

To implement the project, each organisation indexed all documents on Flight MH17 in its possession. The indexes have been posted on the National Archives website. As many questions about Flight MH17 are still unanswered, the documents themselves have not yet been released to the National Archives but are still in the hands of the individual organisations. The indexes state what relevant files and collections, including contextual information, are held by each organisation.

Of the 35 organisations involved in Hotspot MH17, only 2 ministries and 3 public bodies informed us that they had incurred costs for it. The National Archives website shows that 30 ministries and public institutions have been involved in Hotspot MH17. It is known that these organisations assigned personnel for the hotspot but we cannot verify the costs. We therefore include them as 'pm' (without amount) in our assessment.

### Doc-Direkt assists ministries and institutions involved in Hotspot MH17

Doc-Direkt is a central government shared service organisation that is part of the Ministry of BZK. It helps ministries and civil servants organise and implement information management. In this capacity, it assisted in the Hotspot MH17 project. It helped the Ministry of J&V and the Ministry of BZK improve access to MH17 documents in their archives.<sup>41</sup> Doc-Direkt also helped Air Traffic Control Netherlands (LVNL), the Cultural Heritage Inspectorate and the NFI implement Hotspot MH17.

Costs will also be incurred for the Hotspot MH17 archives in the years ahead.

**Table 10** Cost of archiving MH17 information

| Organisation       | Activity                               | Amount in euros        |
|--------------------|--|------------------------|
| Ministry of BZK    | Doc-Direkt activities for Hotspot MH17 | 422,552.10             |
| Ministry of I&W    | Implementation of Hotspot MH17         | 2,928.00               |
| Other ministries   | Implementation of Hotspot MH17         | pm                     |
| LVNL               | Implementation of Hotspot MH17         | 18,711.44              |
| UWV                | Implementation of Hotspot MH17         | 4,500.00               |
| NFI                | Implementation of Hotspot MH17         | 110,357.00             |
| National Archives  | Implementation of project Hotspot MH17 | 106,168.00             |
| Other institutions | Implementation of Hotspot MH17         | pm                     |
| <b>Totaal</b>      | <b>Archiving MH17 information</b>      | <b>665,216.54 + pm</b> |

### 3.3.9 Formal government tasks for the deceased

The government had to perform several formal tasks for those who died in the crash, including the issuance of death certificates and amendments to the population register and other records.

### Solution for the victims' death certificates

Death certificates for the victims were a particular problem. Next of kin need a death certificate to settle a deceased's insurance agreements, subscriptions, mortgages and many other financial affairs. A death certificate is also needed to end rent contracts and to dispose of a deceased's estate. In principle, the municipality in which the death occurred must issue the death certificate.

Before it can do so, a doctor or municipal coroner must issue a declaration of death. The problem with the victims of Flight MH17 was two-fold. Firstly, the municipality in which Flight MH17 crashed was in an armed conflict zone in Ukraine. Secondly declarations of death and death certificates could not be issued until identification had been completed.

On 8 August 2014, the government decided that the Public Prosecution Services (OM) should arrange death certificates for all victims who were Dutch nationals or Dutch residents. With the next of kin's approval, the OM made a collective application for declarations of death to The Hague district court. The application was honoured. It was the first time that a collective application had been made in the Netherlands. A specially appointed taskforce of The Hague municipality then issued declarations of death for all victims and sent them to the municipalities where the victims had lived. The Hague municipality also issued copies of the death certificates to the next of kin without charging the customary fee.

After the identification investigation had been completed, the municipality of Haarlemmermeer, the municipality in which Schiphol Airport is located, drew up a laissez passer to enable remains to be sent abroad. Ukraine issued death certificates for victims who were not Dutch nationals or Dutch residents. The Dutch Ministry of Foreign Affairs translated the certificates and legalised them with an apostille or other form of authentication.

When a large number of people die suddenly in a disaster, as in the Flight MH17 disaster, the government has to perform several formal tasks. It must, for instance, answer questions from the public about the fate of family members and other victims and keep various authorities informed. Further costs are incurred for high-profile delegations to travel to the disaster area and to evaluate the support provided to people.

**Table 11** *Cost of formal government tasks for the deceased*

| Organisatie     | Activiteit   | Bedrag in €            |
|-----------------|--|------------------------|
| Municipalities  | Issuance of death certificates and free copies     | 129,095.00             |
| Municipalities  | Amendment of population register and other records | pm                     |
| Municipalities  | Evaluation of aftercare                            | 65,993.69              |
| Municipalities  | Other formal government tasks                      | 3,310.00               |
| Ministry of BZ  | Translation of death certificates                  | 4,113.00               |
| National Police | Hosting of foreign visitors                        | 117,555.62             |
| Ministry of J&V | Gulfstream flight to Kharkiv, Ukraine              | 14,679.20              |
| <b>Totaal</b>   | <b>Formal government tasks for the deceased</b>    | <b>334,746.51 + pm</b> |

### 3.3.10 International proceedings and diplomacy

The MH17 disaster prompted a great deal of international diplomatic consultation. The aircraft was brought down in Ukraine in an armed conflict zone involving the Ukrainian army, Ukrainian separatists and the Russian Federation. The airline was registered in Malaysia and the passengers came from 14 countries. Diplomatic consultation was necessary with many countries. Repatriation of the victims required diplomatic consultation, consensus-seeking and agreement with many parties. They included the Ukrainian government and local governors, the governments of the other grieving nations, the Organization for Security and Cooperation in Europe (OSCE) and countries that could help in other ways. The accident investigation also required frequent international consultation.

Intensive international diplomacy was necessary to decide on the procedure for the trial of those responsible for bringing down Flight MH17. The Netherlands and several other countries proposed that the UN Security Council should set up an international tribunal. This proposal was vetoed by the Russian Federation.

#### Responsibility of the Russian Federation

When it became clear from the JIT investigation that Flight MH17 had been brought down by a Buk missile belonging to the Russian army, on 25 May 2018 the Kingdom of the Netherlands and Australia jointly held the Russian Federation responsible for the disaster (inter-State responsibility).

After invoking the Russian Federation's responsibility, the two countries tried to negotiate an amicable settlement with the Russian government. Under the Chicago Convention, negotiation is required before proceedings can be instituted to decide a

dispute.<sup>42</sup> The first negotiations between the three parties were held on 27 March 2019.<sup>43</sup> After Russia unilaterally withdrew from the negotiations on 15 October 2020, according to the Minister of Foreign Affairs, the Netherlands and Australia went to protracted and intensive lengths to have the Russian Federation return to the negotiating table. In doing so, the Netherlands worked closely with the 27 member states of the European Union and with the United States, the United Kingdom and Canada.<sup>44</sup>

### **Case before the ICAO**

When it became evident that the Russian Federation was unwilling to negotiate, the Kingdom of the Netherlands and Australia brought an inter-State responsibility case to the Council of the UN International Civil Aviation Organization (ICAO) in Montreal, Canada, on 14 March 2021. Shooting down a civil aircraft in flight breaches Article 3bis of the Chicago Convention, the ICAO's founding convention. Article 3bis states:

*“The contracting States recognize that every State must refrain from resorting to the use of weapons against civil aircraft in flight and that, in case of interception, the lives of persons on board and the safety of aircraft must not be endangered.”*

The Russian Federation's breaching of this article formed the grounds for the Netherlands and Australia's application for compensation.

#### **ICAO decides on breach of Chicago Convention and compensation payable to the Kingdom of the Netherlands**

The Kingdom of the Netherlands and Australia applied to the ICAO Council for a decision on whether Russia had indeed breached the Chicago Convention and, if so, the legal consequences. One of the legal consequences requested was the payment of compensation for the losses suffered.

In response to the Netherlands and Australia's application, Russia contested the ICAO Council's jurisdictional competence. The Netherlands and Australia submitted a response to this jurisdictional defence on 11 November 2022. On 17 March 2023, the ICAO Council dismissed the Russian objections. Russia could have appealed against the decision to the International Court of Justice in The Hague but did not. The President of the ICAO Council must now decide on the further progress of the case.<sup>45</sup>



The proceedings before the ICAO are confidential and, according to the Ministry of Foreign Affairs, will probably take several years. The application for compensation will not be considered until the ICAO's Council has decided on the wrongfulness of Russia's actions. The parties can appeal against the ICAO Council's decision to the International Court of Justice in The Hague. The ICAO's Assembly will suspend a State's voting power in the ICAO's Assembly and Council if it is found in default under the provisions of the convention.<sup>46</sup>

### **Proceedings before the ECtHR**

The European Court of Human Rights (ECtHR) has been hearing several cases against the Russian Federation since May 2016. The ECtHR adjudicates on violations of human rights.

The first complaint against the Russian Federation for the downing of Flight MH17 was brought by a group of next of kin in May 2016. A second complaint was lodged by a group of next of kin in November 2018.

In early 2019, the ECtHR invited the Netherlands to intervene in the case brought by the next of kin, which the Netherlands decided to do on 10 May 2019.<sup>47</sup> The intervention allowed the Netherlands to express its opinion on the complaints and so support the next of kin.

The Netherlands lodged an inter-State complaint against the Russian Federation with the ECtHR on 10 July 2021, which the Court added to the next of kin's complaints. The inter-State complaint enabled the Netherlands to submit all the information held by the Kingdom of the Netherlands, the DSB and the JIT on the downing of Flight MH17 in support of the next of kin's case. The Netherlands' inter-State complaint supports all 298 MH17 victims and their next of kin, regardless of their nationality. The inter-State complaint did not demand compensation on behalf of the Kingdom of the Netherlands.<sup>48</sup> The proceedings before the ECtHR had not been concluded when we completed our assessment and will probably take several more years.

## Netherlands inter-State complaint against the Russian Federation: violation of human rights

Substantively, the Netherlands inter-State complaint concerns the Russian Federation's role in the downing of Flight MH17 and the attendant violation of the European Convention on Human Rights (ECHR). The main violation concerns the right to life of the aircraft's passengers and crew. The Netherlands also accuses Russia of not conducting an effective investigation of the downing of Flight MH17 and of not effectively cooperating in the Public Prosecution Service's criminal investigation. The Netherlands further claims Russia's lack of commitment and cooperation caused unnecessary additional suffering to the next of kin, which is a violation of the prohibition of inhumane treatment. In the Netherlands' opinion, moreover, Russia does not have an effective legal remedy to hold itself responsible for downing Flight MH17. Under the ECHR, the Russian Federation can be ordered to pay compensation to the next of kin.

In the interests of procedural efficiency, the ECtHR decided on 1 December 2020 to add the Netherlands' inter-State complaint against the Russian Federation to two inter-State complaints brought by Ukraine against the Russian Federation relating to event in eastern Ukraine. This was the first time the ECtHR decided to combine inter-State complaints from different States.

Russia first contested the admissibility of the complaint lodged with the ECtHR. The ECtHR, however, dismissed this objection and declared the Netherlands' inter-State complaint admissible. A significant point in this decision was that, in the ECtHR's opinion, the Russian Federation had been in effective control of eastern Ukraine since 11 May 2014 and that the circumstances leading up to the downing of Flight MH17 fell within Russian jurisdiction.

After declaring the complaint admissible, the ECtHR began considering the substance of the case. The proceedings are expected to last for more than a year and possibly even several years.

The work for all these international legal activities was carried out principally by the Ministry of Foreign Affairs and the diplomatic missions in the countries concerned. The Ministry of Foreign Affairs established an MH17 Taskforce in 2018 to consult with other countries involved, negotiate with the Russian Federation and oversee proceedings. It set up a dedicated MH17 workplace for the taskforce. The MH17 Taskforce and the legal team used this space to carry out their work and discuss

international proceedings and negotiations. Special security measures are in place for the workspace. Its video conferencing facilities are used in part for digital consultation with the diplomatic missions and governments of the countries participating in proceedings along with the Netherlands.

**Table 12** *Cost of international proceedings and diplomacy*

| Organisation   | Activity                                       | Amount in euros     |
|----------------|--|---------------------|
| Ministry of BZ | Miscellaneous work for MH17, 2017-2022         | 1,569,195.42        |
| Ministry of BZ | MH17 Taskforce                                 | 1,302,941.67        |
| Ministry of BZ | MH17 activities by the missions                | 1,403,901.42        |
| Ministry of BZ | Cost of setting up MH17 workspace              | 757,124.67          |
| Ministry of BZ | Other costs for MH17 Taskforce                 | 128,789.65          |
| RvR            | Legal aid in MH17 case at ECtHR                | 583,009.92          |
| <b>Total</b>   | <b>International proceedings and diplomacy</b> | <b>5,744,962.75</b> |

### 3.3.11 Studies on flights over conflict zones

Flights over conflict zones became the subject of several studies following the downing of Flight MH17.

The DSB's accident investigation made 11 recommendations on flights over conflict zones in order to prevent repetition of a disaster such as the one that befell Flight MH17. In 2019, the DSB published *Flying over Conflict Zones* on the follow-up to the recommendations in its accident investigation report.

The Ministry of I&W's Human Environment and Transport Inspectorate (ILT) issued a similar report in response to the MH17 disaster, *Overvliegen conflictgebieden*, in 2020.<sup>49</sup>

**Table 13** *Cost of studies on flights over conflict zones*

| Organisation    | Activity                                      | Amount in euros   |
|-----------------|---|-------------------|
| DSB             | Flying over Conflict Zones                    | 534,716.27        |
| Ministry of I&W | Overvliegen conflictgebieden                  | 22,360.00         |
| <b>Total</b>    | <b>Studies on flights over conflict zones</b> | <b>557,076.27</b> |

### 3.3.12 Death of government employees

Public sources reveal that several victims of the Flight MH17 crash had been in government service before the disaster.

An employer suffers a direct loss in the tragic event of the death of an employee. A replacement must be found through a recruitment and selection agency or other channel. The employer also loses capacity until a new employee has been recruited and is working to the same standard as the previous employee.

Under Dutch employment law or regulations, employers are required to pay the next of kin a death benefit equal to 3 months' salary. This is laid down for central government civil servants in article 102 (3) of the General Civil Service Regulations 2014 and for municipal employees in article 3:23 of the 2013-2015 collective labour agreement for municipalities. Furthermore, employers incur costs for the mourning and remembrance activities of and for other employees.

We found that 2 ministries, 1 public institution and 4 municipalities had incurred costs owing to the death of employees. Other government employers will inevitably also have incurred costs owing to the death of employees on Flight MH17 but the amount cannot be established. We included these costs as 'pm' (without amount) in our assessment.

That death benefits were not included as a cost in all cases was sometimes for tragic reasons: under the death benefit regulation, the benefit can be paid only to a partner or children. In 4 of the 7 cases, there were no next of kin as defined by the regulation. In some of these cases, this was because an entire family had lost their lives.

**Table 14** Cost on account of the death of government employees

| Organisation        | Activity   | Amount in euros       |
|---------------------|--|-----------------------|
| Ministry of OCW     | Mourning activities  | 2,985.29              |
| UWV                 | Mourning activities  | 500.00                |
| UWV                 | Recruitment of replacement employee                          | 2,360.00              |
| Municipalities      | Death benefits paid to next of kin                           | 42,944.95 + pm        |
| Other organisations | Costs on account of the death of employees                   | pm                    |
| <b>Total</b>        | <b>Costs on account of the death of government employees</b> | <b>48,790.24 + pm</b> |

A member of the Netherlands Senate also died in the Flight MH17 disaster. Members of parliament are not employees and are therefore not subject to government personnel regulations. Separate legal provisions apply to their legal position. The Remuneration (Members of the Senate) Act does not include provisions on death benefits.<sup>50</sup> Neither the Senate nor the House of Representatives is responsible for appointing a replacement member; the deceased member's political party appoints a replacement. The government therefore did not incur costs for the Senator's death.

### 3.3.13 Cost statements prepared for the Court of Audit

The cost of calculating losses is customarily also recognised as part of the losses suffered. The cost incurred by the government to prepare cost statements is no exception.

Only a few of the organisations included these cost in their cost statements. Other authorities will evidently also have incurred costs to prepare their cost statements but we were unable to establish the amount. We included the costs as 'pm' (without amount) in our cost assessment.

To underline the independence of our assessment, we have not recognised the costs we ourselves incurred for this assessment.

**Table 15** *Cost statements prepared for the Court of Audit*

| Organisation        | Activity   | Amount in euros      |
|---------------------|--|----------------------|
| Ministry of SZW     | Cost of preparing cost statement                       | 1,640.00             |
| Ministry of VWS     | Cost of preparing cost statement                       | 744.50               |
| UWV                 | Cost of preparing cost statement                       | 2,125.00             |
| Municipalities      | Cost of preparing cost statement                       | 4,668.31             |
| Other organisations | Cost of preparing cost statement                       | pm                   |
| <b>Total</b>        | <b>Cost statements prepared for the Court of Audit</b> | <b>9,177.81 + pm</b> |

# 4.

## Epilogue

The long list of activities performed by the Netherlands government, complete with figures and amounts, lays bare the suffering endured to this very day by next of kin all over the world.

Our cost assessment is intended to provide an insight into the diversity, intensity and cost of the many activities the government carried out on account of the Flight MH17 disaster. This report links the harrowing photographic images engraved in our memories to the activities performed following the disaster, and presents the associated costs. The disaster reveals that the government's responsibility extends further than immediate crisis management, repatriation and identification of victims and prosecution of perpetrators. Support for the next of kin and memorials and monuments are also responsibilities that society requires and expects from a caring and conscientious government following a disaster such as the one that befell Flight MH17.

This report presents a provisional balance. Many activities and their costs will continue for many years to come. They include the international legal proceedings in Strasbourg and Montreal. Support for the next of kin will also be needed for many years, as will maintenance of commemorative sites and monuments. The Netherlands will incur costs on account of the MH17 disaster for years to come. For this reason, we will update our assessment annually.



# Appendices

## Appendix 1 Request of the Prime Minister to the Netherlands Court of Audit

Date: 21 June 2021  
Subject: Request for an insight into the costs incurred on account of the Flight MH17 disaster

Dear Mr Visser,

Flight MH17 was brought down above eastern Ukraine on 17 July 2014. All 298 people on board lost their lives, including 196 Dutch nationals. Since Flight MH17 was brought down, the Netherlands has actively sought truth, justice and accountability. The Netherlands took the lead in the repatriation and identification of all the victims and carried out the technical investigation. The Public Prosecution Service has played a leading role in the Joint Investigation Team's criminal investigation and the criminal trial is being held in the Netherlands. On 25 May 2018, the Kingdom of the Netherlands and Australia jointly held Russia responsible for its role in the downing of Flight MH17.

One of the legal consequences of State responsibility is that the State in question is obliged to make full legal redress. One form of legal redress is compensation, a financial settlement for losses suffered. To apply for compensation, it must be known what costs the Netherlands has incurred on account of the downing of Flight MH17. It will then be possible to identify the costs and cost items that qualify for compensation under international law.

Costs were incurred by a variety of ministries, local authorities and other public institutions. Providing an insight into the costs is a demanding, time consuming and complex exercise requiring specialist knowledge. As a Supreme Audit Institution, the Netherlands Court of Audit is an independent institution that is not part of government or parliament. It has the requisite expertise and statutory powers to carry out such an assessment.

Partly in view of the above, on behalf of the government I would ask you to provide an insight into all costs incurred by various ministries, local authorities and other public institutions since 17 July 2014 on account of the downing of Flight MH17. I would also ask you to update the assessment to account for costs that will be incurred until the application for compensation is made to an international dispute resolution body.

At specific issue are the costs incurred by the government, not the losses that the next of kin have suffered or are suffering. As the assessment is intended for international legal proceedings, you are not asked to express an opinion on the policy regarding the costs incurred or to assess causality between the downing of Flight MH17 and the costs incurred. The Netherlands Court of Audit can publish the results of the requested assessment independently in conformity with its legal obligations.

On the basis of the assessment, the government will decide which cost items can be included in proceedings. Ultimately, an international dispute resolution body will pass judgment on the matter.

The Ministry of Foreign Affairs will coordinate fulfilment of the request on behalf of the government. Two contact persons will be appointed to liaise with the Netherlands Court of Audit where necessary, for instance on the definition of certain costs and cost items.

(was signed)

Mark Rutte

PRIME MINISTER

Minister of General Affairs

## Appendix 2 The Court of Audit's reply to the Prime Minister

Date: 3 November 2021  
Subject: Request to provide an insight into the costs incurred on account of the Flight MH17 disaster

Dear Mr Rutte,

On 21 June 2021, on behalf of the government you asked the Netherlands Court of Audit to provide an insight into the costs incurred by the government on account of the downing of Flight MH17.

The Board of the Netherlands Court of Audit has decided to perform the requested assessment. The assessment will provide an insight into and certainty about the costs that ministries, local authorities and other public institutions have incurred since 17 July 2014 on account of the downing of Flight MH17.

We will carry out the assessment in accordance with our statutory and constitutional independence, our existing budget and the international principles and standards of Supreme Audit Institutions (the INTOSAI Framework of Professional Pronouncements, IFPP). As indicated in your letter, we will liaise with the Ministry of Foreign Affairs regarding the expected publication of the first results of our assessment.

(was signed)

A.P. (Arno) Visser  
President

(was signed)

C. (Cornelis) van der Werf  
Secretary-General

Netherlands Court of Audit

## Appendix 3 Organisations that incurred costs on account of the Flight MH17 disaster

The following organisations incurred costs on account of the Flight MH17 disaster.

### **Ministries**

1. Ministry of General Affairs (AZ)
2. Ministry of the Interior and Kingdom Relations (BZK)
3. Ministry of Foreign Affairs (BZ)
4. Ministry of Defence
5. Ministry of Finance
6. Ministry of Infrastructure and Water Management (I&W)
7. Ministry of Justice and Security (J&V)
8. Ministry of Education, Culture and Science (OCW)
9. Ministry of Social Affairs and Employment (SZW)
10. Ministry of Health, Welfare and Sport (VWS)

### **Public institutions**

11. Air Traffic Control Netherlands (LVNL)
12. National Archives
13. National Police
14. Netherlands Forensic Institute (NFI)
15. Dutch Safety Board (DSB)
16. Public Prosecution Service (OM)
17. Council for the Judiciary (RvdR)
18. Legal Aid Board (RvR)
19. Victim Support Netherlands
20. Employee Insurance Agency (UWV)

### **Local authorities**

#### *Provinces*

21. North Holland
22. North Brabant

*Joint arrangements*

23. GGD Amsterdam-Amstelland
24. Spaarnwoude Park Board

*Municipalities*

25. Almelo
26. Almere
27. Amstelveen
28. Amsterdam
29. Apeldoorn
30. Bergen op Zoom
31. Breda
32. Brummen
33. Capelle aan den IJssel
34. Cuijk (since 1 January 2022 part of Land van Cuijk municipality)
35. Delft
36. Den Bosch
37. Den Haag
38. Deurne
39. Doesburg
40. Dordrecht
41. Duiven
42. Edam-Volendam
43. Eijsden-Margraten
44. Eindhoven
45. Enschede
46. Goirle
47. Gooise Meren
48. Groningen
49. Haarlem
50. Haarlemmermeer
51. Helmond
52. Hilversum
53. Hollands Kroon
54. Houten
55. Kaag en Braassem
56. Lelystad
57. Maassluis



58. Maastricht
59. Nieuwegein
60. Nijmegen
61. Noordenveld
62. Oosterhout
63. Opsterland
64. Peel en Maas
65. Pijnacker-Nootdorp
66. Ridderkerk
67. Roerdalen
68. Roosendaal
69. Rotterdam
70. Simpelveld
71. Sint-Michielsgestel
72. Sittard-Geleen
73. Spijkenisse (since 1 January 2015 part of Nissewaard municipality)
74. Stichtse Vecht
75. Tilburg
76. Utrecht
77. Valkenswaard
78. Wijchen
79. Woerden
80. Woudrichem (since 1 January 2019 part of Altena municipality)
81. Zoetermeer
82. Zutphen
83. Zwolle
84. Municipalities without victims that donated to the National MH17 Monument
85. Achtkarspelen
86. Bedum (since 1 January 2019 part of Het Hogeland municipality)
87. Bellingwedde (since 1 January 2018 part of Westerwolde municipality)
88. Bergeijk
89. Bergen
90. Dongen
91. Eemnes
92. Eersel
93. Giessenlanden (since 1 January 2019 part of Molenlanden municipality)
94. Harlingen
95. Leeuwarden
96. Leudal

97. Leusden
98. Loon op Zand
99. Marum (since 1 January 2019 part of Westerkwartier municipality)
100. Oirschot
101. Oldenzaal
102. Oost Gelre
103. Oostzaan
104. Opmeer
105. Reusel de Mierden
106. Sint Anthonis (since 1 January 2022 part of Land van Cuijk municipality)
107. Sluis
108. Stadskanaal
109. Steenbergen
110. Stein
111. Veendam
112. Wierden
113. Wijdmeren
114. Zeist
115. Zuidhorn (since 1 January 2019 part of Westerkwartier municipality)

## Appendix 4 Methodology

### 1. Assessment questions

We carried out our assessment in order to gain an insight into the amount and composition of the costs incurred by the government. To this end, we formulated the following assessment questions:

- a. What costs were incurred by the Netherlands government on account of the downing of Flight MH17?
- b. Were the stated costs correct and can they be traced through the accounting records?

#### Government

There is no official definition of ‘government’ (overheid) in Dutch law. For the purpose of our assessment, we used the summary provided by the government itself at <https://www.overheid.nl/english/about-the-dutch-government/what-government-consists-of>. ‘Government’ consists of central government, provinces, municipalities, water authorities and other public institutions, autonomous administrative authorities (ZBOs), legal persons with a statutory task (RWTs) and cooperating regions.

#### Costs

The Prime Minister asked us to provide an insight into the costs incurred by the Netherlands government on account of the Flight MH17 disaster.

2 accounting systems are in use within the Netherlands government. Ministries use an obligation-cash accounting system whereas other parts of government – provinces, municipalities, ZBOs and RWTs and most of the services and agencies that fall under ministries but operate independently – use an accrual accounting system. The difference between the 2 systems is that the accrual system recognises costs whereas the obligation-cash system recognises expenditures and obligations.

#### Costs and expenditures are not the same

Costs and expenditures are not the same. The use of stocks does not have to lead to expenditure as long as the stocks are not replaced, but it represents a cost. The same is true of staff deployment. Expenditure is incurred when salaries are paid but the costs are incurred when the staff perform the duties they are employed to perform. Asset depreciation is a cost but not an expenditure until the assets are replaced. Conversely, there are expenditures that are not costs. Acquisition of stocks, for example, represents an expenditure but not a direct cost. A cost is not incurred until the stocks are depleted.

Our government-wide assessment takes account of differences in the accounting systems.

In an accrual accounting system, costs are usually attributable directly to specific cost units. If the MH17 disaster is the cost unit, cost attribution is straightforward provided all costs are attributed to the disaster.

An obligation-cost system occasionally also uses cost units. The Ministry of Defence, for example, recognises military deployment costs in article 1 of its budget. The use of Hercules aircraft in Ukraine entailed a budgetary transfer from article 1 (Deployment) to article 4 (Royal Netherlands Air Force).

Our assessment was confined to the costs incurred by the Netherlands government, not by third parties such as next of kin.

### **On account of Flight MH17**

The Prime Minister asked the Court of Audit to provide an insight into the costs incurred 'on account of Flight MH17'. As requested, we did not assess causality between the downing of Flight MH17 and the costs incurred, nor did we express an opinion on the regularity, efficiency or effectiveness of the costs incurred.

### **Timeframe**

This report presents the costs incurred by the Netherlands government on account of the downing of Flight MH17 from the summer of 2014 until year-end 2022. This is not the final balance of all costs that will be incurred. In 2023, for instance, the government incurred further costs for international legal proceedings, support for the next of kin and maintenance of monuments and commemorative sites.

### **Indexation**

We based our assessment of the costs on historical price levels, i.e. the prices pertaining when the costs were incurred. This is important because the amounts were disclosed at these price levels in the accounts of the public bodies concerned. A euro today, however, is worth less than a euro several years ago. Account must therefore be taken of inflation. This is done by indexing the costs from year to year. For simplicity's sake we assumed that the costs were spread evenly over the 9 years between 2014 and 2022.<sup>51</sup> We indexed the total amount of the costs using the Consumer Price Index (CPI) calculated by Statistics Netherlands (CBS).

### **Updates**

The Prime Minister asked us to update the insight until a final application for compensation is made. This report therefore presents an interim balance. We will update our cost assessment annually.

The annual update will in any event add the costs incurred in the past year not yet included in the assessment. The update may also take into account new insights regarding costs assessed in previous years.

The annual update will include indexation based on the index rate for the year in question.

Bij de jaarlijkse actualisatie zullen we de kosten verder indexeren met het indexatiecijfer van het betreffende jaar.

### **Costs statements and their assessment**

For this assessment we, selected 116 public bodies based on an extensive study of the costs they were expected to incur. We requested and assessed a cost statement from each of them. 33 informed us that they had not incurred any costs on account of the Flight MH17 disaster. 83 public bodies sent us a cost statement: 10 ministries, 10 public institutions, 2 provinces, 59 municipalities and 2 joint arrangements.

The Court of Audit's statutory mandate does not extend to local authorities. The provinces, municipalities and joint arrangements took part in our assessment voluntarily.

To assess the cost statements we received we operationalised our assessment questions in 5 tests:

- Test 1 **Are the cost items attributable to the Flight MH17 disaster?** If stated cost items were not demonstrably attributable to the Flight MH17 disaster, they were not included in our assessment.
- Test 2 **Are the cost items factually correct?** Activities, services and the provision of equipment must have actually taken place. This can be verified in several ways. If verification was not possible, the cost items were not included in our assessment.
- Test 2 **Are the cost items mathematically correct?** Mathematically correct means that we could not find any discrepancies regarding the numbers, prices, fees and calculations stated in underlying documents, e.g. contracts, invoices, time sheets, salary scales, etc., and that we could verify the monetary value of the items concerned. If we could not verify the correct cost amount of an item (but the item did pass the other tests), we included the item as 'pm' (without amount) in our assessment.
- Test 4 **Were the costs incurred by the organisation?** Invoiced payments, stock depletion and staff or equipment deployment must have been for the account of the organisation concerned. The use of volunteers was not for the account of the organisation unless the volunteers received some form of

remuneration. Cost items that were not for the account of the organisation were not included in our assessment.

**Test 5 Did the organisations in our assessment receive compensation from third parties?** Where third parties provided the organisations in our assessment with compensation in the form of payments or funding for certain cost items, there was a risk of double counting. In principle, we included such costs at the most operational level.

We sought comprehensiveness in our assessment but did not include it in our tests. Furthermore, we did not express an opinion on the regularity, efficiency or effectiveness of the costs incurred.

### Test results

To be included in our cost assessment, the cost items in the statements we received had to pass all 5 tests. We excluded all cost items that did not pass tests 1, 2 and 4. We included items as 'pm' (without amount) only if there was inadequate information to pass test 3. This means that the activities concerned took place but we could not verify their precise cost.

#### Use of 'pm' to calculate costs

We use the abbreviation pm (standing for *pro memoria*, or without amount) in 3 cases:

- *Incidental lack of adequate documentation*

Lack of documentation sometimes prevented us from establishing or verifying the cost of some individual items. Where this was not due to a systematic problem, we refer to it as 'incidental lack of adequate documentation'. If such an item passed tests 1 and 2 but not 3, we classed it as 'pm'. This group of pm items represented a total cost of about €70,000.

- *Systematic lack of documentation*

Many accounting records are destroyed or are no longer fully accessible on expiry of the statutory retention period or the replacement of accounting systems. We could not establish or verify certain costs incurred over longer periods of time because invoices had already been destroyed. In some cases we could no longer establish the precise number of staff deployed by ministries and other public organisations, even though their deployment was beyond doubt. Such cases of systematic lack of documentation are also included in our cost assessment as pm items (without amount). In total they represented a total costs of nearly €9 million.

- *Unquantified items*

The organisations in our assessment performed and declared some MH17-related activities but did not enter a cost for them in their cost statements. We also included these items as pm items (without amount). As the cost of these items was not stated, the total amount of this group of unquantified items is not known.

Test 5 is relevant to avoid double counting. If a third party provides an organisation in our assessment with a payment, allowance, funding or other form of compensation for the activities it performed, there is a risk of double counting. As a matter of policy, we included costs at the most operational level, i.e. the level at which the activities were actually performed. In most cases this was the organisation that received the compensation. Not including the compensation at the third party avoids double counting. Test 5 therefore does not disqualify a cost item but is necessary to identify the organisation where the costs should be included.

## **2. Assessment of cost items**

We assessed the cost statements we received at the organisations concerned. We held interviews to establish how each organisation had prepared its statement. We then examined each organisation's accounting records and underlying documentation to establish the costs incurred by each organisation and for each activity.

Costs could take the form of out of pocket costs, staff and equipment costs, loss of income and costs due to the death of employees.

### **Out of pocket costs**

Out of pocket costs include invoiced payments, cash payments, reimbursement of costs, funding and donations. We followed out of pocket cost items named in the cost statements through the digital accounting systems. With regard to invoices, we requested underlying documentation, such as orders, invoices, proof of delivery or declarations of performance, and payment records. For cash payments such as those made in the disaster area, we checked entries in the accounting records to determine how payments had been accounted for internally. Regarding funding and donations, we requested the written payment decisions and proofs of payment. We could identify many of the payments from information provided by the recipients. Where possible, we also relied on audits and checks carried out by the Central Government Audit Service (ADR). We could thus determine whether the stated cost items passed our 5 tests.



In some cases, underlying documentation on certain cost items was no longer available as it had been destroyed at the end of the statutory retention period. Furthermore, some financial systems in which costs had been recorded had been replaced with new systems and there was only limited access to the information in the previous systems. Where there was insufficient documentation to verify certain costs and there was no doubt about their existence, we included them as pm items (without amount).

### **Staff costs**

Staff costs were usually based on the formula  $p \times q$ , where  $q$  (quantity) stands for number of staff time units and  $p$  (price) for the fee per time unit. For staff-related cost items, we examined how the organisations had prepared their costs statements and how they had calculated the quantitative investment in time. They did so by means of time sheets and reasoned estimates. Some organisations, those that operate on the market, based the fee per time unit on their own standard fees or used their own method to calculate staff costs. Those that did not have their own method to calculate staff costs used the Central Government Fees Guide (HOT). Published by the Ministry of BZK and updated every year, HOT presents the fee per salary scale, based not only on the salary but also on employer contributions and overhead costs. HOT is intended specifically to clarify and recharge the cost of civil servants seconded to third parties. We verified staff costs using the information underpinning the  $q \times p$  calculations provided by the organisations concerned.

### **Equipment costs**

The Ministry of Defence was one of the organisations that incurred equipment costs. It provided transport aircraft and other materials, such as fuel, stocks and miscellaneous equipment. The ministry usually applies its own methods and fees to recharge equipment costs. We followed the internal calculations to verify the costs.

### **Loss of income**

We determined this form of cost on a case by case basis. We based the cost of providing cost-free copies of death certificates, for instance, on what was normally charged under the applicable fee regulations.

### **Costs due to the death of employees in the disaster**

Employees of some public organisations lost their lives in the Flight MH17 disaster. In their capacity as employers, the public organisations concerned paid a death benefit to the next of kin in accordance with the applicable collective labour agreement (CAO) or the General Civil Service Regulations (ARAR). This category also

includes the cost of recruiting replacement staff and the cost of any temporary loss of productivity.

### **3. Clearance**

We cleared the factual accuracy of our assessment of costs and cost items with the organisations concerned. This is one of the quality assurance measures the Court of Audit applies in its work.

### **4. Aggregation of costs**

We present the costs per activity in this report. We also added up the cost per activity incurred by each organisation and present the aggregate amount. We grouped the activities into categories based on their description. The categorisation of activities by organisation was cleared with the organisations concerned. When the categorisation had been agreed, we aggregated the amounts to produce the totals presented in this report.

### **5. Quality standard**

The Netherlands Court of Audit carries out its audits and investigations in accordance with the international principles and standards applicable to Supreme Audit Institutions (INTOSAI Framework of Professional Pronouncements, IFPP).<sup>52</sup> The IFPP has been adopted by the International Organization of Supreme Audit Institutions (INTOSAI) and is applied by nearly all Supreme Audit Institutions in the world as a standard for their work. The IFPP provides standards for the reliability of the work, the expertise, integrity and responsibility of the investigation teams and team managers and for the quality and transparency of the investigation and the process of arriving at an opinion. By applying these standards and principles in this assessment, the Court of Audit guarantees that the assessment meets the highest standards.

## Appendix 5 Abbreviations

|         |  |
|---------|--|
| ARAR    | General Civil Service Regulations  |
| ARQ     | Netherlands National Psychotrauma Centre   |
| AZ      | Ministry of General Affairs  |
| BIV     | International Security Budget  |
| BRP     | Personal Records Database  |
| BZK     | Ministry of the Interior and Kingdom Relations   |
| BZ      | Ministry of Foreign Affairs  |
| CAO     | Collective Labour Agreement  |
| DCC     | Departmental Crisis Management Coordination Centre   |
| DNA     | Deoxyribonucleic acid, the genetic macromolecule that is essential for all known forms of life |
| DSB     | Dutch Safety Board   |
| ECtHR   | European Court of Human Rights   |
| ERP     | Enterprise Resource Planning   |
| EU      | European Union   |
| GDPR    | General Data Protection Regulation   |
| GGD     | Municipal Health Service   |
| GHOR    | Regional Medical Emergency Service   |
| HOT     | Central Government Fees Guide  |
| ICAO    | International Civil Aviation Organization  |
| ICT     | Information and Communication Technology   |
| I&M     | Ministry of Infrastructure and the Environment   |
| I&W     | Ministry of Infrastructure and Water Management  |
| IFPP    | INTOSAI Framework of Professional Pronouncements   |
| ILT     | Human Environment and Transport Inspectorate   |
| INTOSAI | International Organization of Supreme Audit Institutions                                       |
| IV      | Information management   |
| IVC     | Information and Reference Centre   |
| IVP     | Institute for Psychotrauma   |
| JCS     | Schiphol Judicial Complex  |
| J&V     | Ministry of Justice and Security   |
| JIT     | Joint Investigation Team   |
| KMAR    | Royal Military and Border Police   |
| LAC     | National Advisory and Coordination Team  |
| LOCC    | National Operational Coordination Centre   |
| LTFO    | National Forensic Investigation Team   |

|       |   |
|-------|---|
| LVNL  | Air Traffic Control The Netherlands   |
| MH17  | Malaysia Airlines Flight 17   |
| MoU   | Memorandum of Understanding   |
| NCTV  | National Coordinator for Counterterrorism and Security                      |
| NFI   | Netherlands Forensic Institute  |
| NOS   | Nederlandse Omroep Stichting (national public broadcaster)                  |
| OCW   | Ministry of Education, Culture and Science                                  |
| OM    | Public Prosecution Service  |
| p     | Price or fee  |
| pm    | Pro memoria (without amount)  |
| PPR   | BZ financial accounting system in use to year-end 2016                      |
| PR    | Public Relations  |
| q     | Quantity  |
| RA/GA | Judicial officer / court officer  |
| RAI   | Exhibition and conference centre in Amsterdam                               |
| RvdR  | Council for the Judiciary   |
| RvR   | Council for Legal Aid   |
| RWS   | Rijkswaterstaat (Directorate-General for Public Works and Water Management) |
| RWT   | Legal person with a statutory task  |
| SAP   | Financial accounting system used by various public authorities              |
| SHN   | Victim Support Netherlands  |
| SZW   | Ministry of Social Affairs and Employment                                   |
| UWV   | Employee Insurance Agency   |
| V&J   | Ministry of Security and Justice  |
| VTC   | Video conference  |
| VWS   | Ministry of Health, Welfare and Sport                                       |
| WOB   | General Information (Public Access) Act                                     |
| WODC  | Research and Data Centre  |
| ZBO   | Autonomous administrative authority   |

## Appendix 6 Endnotes

1. Constitution of the Netherlands, article 76.
2. The IFPP can be accessed on the INTOSAI website at: <https://www.issai.org/>.
3. The Government Accounts Act 2016 gives the Netherlands Court of Audit access to all information held by central government and government-level organisations that work with public money or implement a statutory task. The Court of Audit has no powers at local authority level.
4. In citaten hanteren we de originele bewoordingen.
5. An additional 31 municipalities without victims among their residents contributed to the National MH17 Monument. We included these amounts in our assessment.
6. The Court of Audit's statutory mandate does not extend to local authorities.
7. The losses can be included in the application for compensation submitted by the Kingdom of the Netherlands. The Minister of the Interior and Kingdom Relations and the Minister of Infrastructure and Water Management stated so in their letter to the House of Representatives of 14 March 2022 (House of Representatives, session 2021-2022, 33 997, no. 172). The assessment requested of the Court of Audit, however, does not concern these losses
8. Costs incurred in 2023 to prepare cost statements for 2014-2022 are included in 2014-2022.
9. Source, adapted from: <https://mh17tijdlijn.nl/>.
10. Description adapted from NCTV (<https://www.nctv.nl/themas/crisisbeheersing>).
11. University of Twente (2015), Evaluatie nationale crisisbeheersingsorganisatie vlucht MH17, 9 December 2015. Enschede (UT).
12. House of Representatives, session 2015-2016, 33 997, no. 54, blg-642276. The Hague (Sdu).
13. House of Representatives, session 2013-2014, 33 997, no. 1. The Hague (Sdu).
14. House of Representatives, session 2013-2014, 33 997, no. 1. The Hague (Sdu).
15. University of Twente (2015), p. 105.
16. House of Representatives, session 2013-2014, 33 997, no. 18. The Hague (Sdu).
17. House of Representatives, session 2013-2014, 33 997, no. 18. The Hague (Sdu).
18. House of Representatives, session 2013-2014, 33 997, no. 18. The Hague (Sdu).
19. House of Representatives, session 2014-2015, 33 997, no. 49. The Hague (Sdu).
20. House of Representatives, session 2013-2014, 33 997, no. 7. The Hague (Sdu).
21. Algemeen Dagblad, 18 August 2015.
22. ICAO Annex 13, Chapter 5 – Investigation.
23. DSB (2015). Crash van Malaysia Airlines vlucht MH17. The Hague, October 2015.
24. DSB (2015). MH17 - onderzoeksverantwoording. The Hague, October 2015.
25. DSB (2015). MH17 - onderzoeksverantwoording. The Hague, October 2015.

26. DSB (2015). Crash van Malaysia Airlines vlucht MH17, October 2015.
27. House of Representatives, session 2016-2017, 33 997, no. 98. The Hague (Sdu).
28. House of Representatives, session 2017-2018, 33 997, no. 124. The Hague (Sdu).
29. <https://www.rechtsbijstand.nl/mediation-rechtsbijstand/gesubsidieerde-rechtsbijstand/toevoeging/>.
30. Memorandum of Understanding between the Government of Australia, the Government of the Kingdom of Belgium, the Government of Malaysia, the Government of the Netherlands and the Government of Ukraine regarding financial support for prosecuting the perpetrators of the downing of Flight MH17 on 17 July 2014.
31. University of Twente (2015), p. 84 ff.
32. University of Twente (2015), p. 84 ff.
33. ARQ National Psychotrauma Centre (2014), Multidisciplinaire Richtlijn psychosociale hulp bij rampen en crises. Diemen, 2014 (Impact ARQ).
34. House of Representatives, session 2013-2014, 33 997, no. 1. The Hague (Sdu).
35. House of Representatives, session 2014-2015, 33 997, no. 38. The Hague (Sdu).
36. Website [www.monumentmh17.nl](http://www.monumentmh17.nl) and our own observations.
37. House of Representatives, session 2015-2016, 33 997, no. 73. The Hague (Sdu).
38. House of Representatives, session 2016-2017, 33 997, no. 89. The Hague (Sdu).
39. Ministry of OCW, Selection list for archival documents of municipal and intermunicipal bodies (Government Gazette, 25 June 2012, no. 11906).
40. Wulp, A. van der (2017). Handreiking Periodieke hotspot-monitor decentrale overheden [Handreiking]. Archief2020. [https://vng.nl/sites/default/files/publicaties/2017/aido\\_handreiking\\_hotspot-monitor.05-10-2017.pdf](https://vng.nl/sites/default/files/publicaties/2017/aido_handreiking_hotspot-monitor.05-10-2017.pdf). Via: C. Zuiderhoek, Tussen motie en archief (master's thesis Bestuurskunde, November 2023, Radboud Universiteit Nijmegen, in the Court of Audit's possession. In the master's thesis, Zuiderhoek also comments on the way in which the motion and Hotspot MH17 were implemented.
41. The Cultural Heritage Inspectorate (Ministry of OCW) studied permanent access to information on the Flight MH17 disaster in 2020. The cost of the study was not included in the Ministry of OCW's cost statement for 2014-2022. We agreed with the ministry that we would include the costs in a late update.
42. Article 84, Convention on International Civil Aviation, Chicago, 07-12-1944.
43. Cultural Heritage Inspectorate 2018-2019, 33 997, no. 134. The Hague (Sdu) - Blg 872515.
44. House of Representatives, session 2014-2015, 33 997, nos. 154, 159 and 172. The Hague (Sdu).

45. House of Representatives, session 2014-2015, 33 997, nos. 172, 175, 176, 177 and 178. The Hague (Sdu).
46. Article 88, Convention on International Civil Aviation, Chicago, 07-12-1944.
47. House of Representatives, session 2014-2015, 33 997, no. 138. The Hague (Sdu).
48. House of Representatives, session 2019-2020, 33 997, no. 152. The Hague (Sdu).
49. Human Environment and Transport Inspectorate, Overvliegen conflictgebieden. 13 October 2020. The Hague (ILT).
50. The Remuneration (Members of the House of Representatives) Act provides for a benefit on the death of a member (section 3a) that is very similar to the provision in the ARAR for government civil servants.
51. This is a cautious approach because most of the costs were occurred in the first few years.
52. The IFPP can be accessed on the INTOSAI website at: <https://www.issai.org/>.



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