

## Response by The Dutch Safety Board to the Commission's Initiative 'Future of Transport'

### Introduction

The Dutch Safety Board performs independent investigations into the causes of incidents. The Board is authorised to investigate incidents in any conceivable field but is currently active in the following sectors: aviation, shipping, rail transport, road transport, defence, healthcare (human and animal welfare), industry and networks, pipelines, construction and services, water, crisis management and aid provision.

The purpose of the Dutch Safety Board's work is to prevent incidents or to limit their after-effects. The Dutch Safety Board is an autonomous administrative body, established by Kingdom Act.

1.

The Dutch Safety Board welcomes the opportunity to provide its views on 'the Future of Transport' and to participate in the debate on the main challenges and opportunities for the European transport sector in the long term. This debate must prepare the ground for a White Paper to be published in 2010, in which the European Commission is to tackle the challenges of a transport policy until the year 2020.

2.

The White Paper 'European Transport Policy 2010, Time to Decide', published in 2001, established the ongoing need for proper safety investigation of transport accidents and the extension of relevant legislation to all modes of transport. The White Paper quotes Mr Van Vollenhoven, then Chairman of the Dutch Transport Safety Board and since 2005 Chairman of the Dutch Safety Board, as saying: "a permanent independent investigation not only guarantees independence of investigation, it also ensures that its recommendations are followed up by action". (Mr P. van Vollenhoven, 3<sup>rd</sup> conference on accident investigation organised by the European Transport Safety Council.)

In the White Paper 2001, the European Commission acknowledges that investigations conducted by authorities, or by insurance companies, are unable "to stem the growing need felt in Europe and the United States for independent technical investigations geared towards revealing the causes of accidents and ways of improving the law". The White Paper states that independent investigations should be conducted at national level, following a European methodology.

The relevant recommendation in the action programme that is added to the White Paper reads: “Develop a methodology at European level to encourage independent technical investigations, e.g. by setting up a committee of independent experts within the Commission”.

3.

In a letter to chairman Mr Van Vollenhoven, Chairman of the Dutch Transport Safety Board, dated 26 November 2002, Mrs Loyola de Palacio, vice-president of the European Commission and Commissioner for Transport, announced her 'firm intention' to have such a committee of experts up and working in 2003. According to the text of the letter, Mrs de Palacio would like to see the Group of Experts endowed with a twofold task: act as an observatory of the national systems in place, and as an adviser to the European Commission.

On 11 June, 2003, the European Commission decided to set up a Group of Experts to advise the Commission 'on a strategy for dealing with accidents in the transport sector'. According to the text of the decision, “The setting up of this Group will contribute to the advancement of Community policy in the field of independent accident investigations, alongside other appropriate consultation procedures”. At a meeting held in 2004, the members of the Group took the decision to establish a methodology Working Group. The tasks of the Working Group were defined as follows:

“..investigate terms generally used and situations repeatedly encountered to establish performance standards for accident investigation with a view to develop thereupon a common methodology applicable to all transport sectors”.

4.

The report of the Group of Experts ('European methodology for safety investigation of accidents and incidents in the transport sector') was published 3 July 2006. The recommendations in the document are meant as a reference for European and national legislators and administrations when addressing activities related to safety investigations and incidents. Art. 2 of the document reads as follows:

- “Member states shall designate one or more Safety Investigation Authorities, charged with the investigation of accidents or incidents in all transport sectors in order to determine their circumstances and causes and issue safety recommendations, or draw up any other relevant conclusions aiming at improving transport safety. A Safety Investigation Authority shall have unrestricted authority over its conduct and shall be granted the power and the resources to fulfil its tasks independently, effectively and in a competent manner.”

In a letter to the Chairman of the Dutch Safety Board dated 12 September 2007, Mr. Jacques Barrot, vice-president of the European Commission and Commissioner for Transport, acknowledges the importance of the Group of Experts' work. "The two final documents which the group elaborated are of great importance for the future work of the Commission as well as of national bodies charged with safety issues", Mr. Barrot writes.

5.

The Commission Communication 'A sustainable future for transport: Towards an integrated, technology-led and user friendly system' is meant to look further ahead and prepare the ground for the development of the transport policy of the European Commission until the year 2020.

To the surprise of the Safety Board, the Communication places no emphasis at all on independent investigation and developments in that field. The subject matter is not included in the topics discussed in the Communication; the word 'safety' is predominantly mentioned in connection with the necessity to further reduce the number of traffic fatalities. The importance of independent investigation acknowledged by the European Commission was not reconfirmed, there is no follow-up strategy and no objective with regard to investigative commitment for Member States present in the Communication.

Against the background of the preceding outlined developments since the publication of the White Paper in 2001, the Dutch Safety Board finds it highly disappointing that the item independent investigation on the European Commission's transport agenda appears to have vanished. The topic can only be found in the Common Transport Policy (May 2009, D3, final report). Point 5.10 of the report states that "accident and incident investigations must be carried out by an autonomous body, independent from the various actors of the sector". No further addition was made to this recommendation.

6.

In the 2001 White Paper, Directive 93/45/EC establishes the basic principles governing the investigation of civil aviation accidents and incidents, referred to as a 'model for the other modes of transport'. In 2006, the Group of Experts was unanimous about the underlying principles that should be complied with in independent investigation in the European Union member states. However from directives 2004/49/EC and 2009/18/EG, which regulate independent investigation in the respective areas of rail and shipping, it emerges that few lessons have been learned from experiences in the aviation sector. Safety in the transport sectors within the European Union is split and divided and the demands that European legislation makes on independent investigation differ from one sector to another. For constituted councils, such as the Dutch Safety Board, this can lead to unworkable situations.

Response Dutch Safety Board

Despite positive experiences with multimodal safety boards (USA, Canada, Australia, New-Zeeland, the Netherlands), within Europe there is a strong trend to keep on setting up safety boards per sector. This is in part the result of the sectoral approach at European level. In practical terms, not only investigative organisations are set up that are too small and also insufficiently equipped, but on top of that, like this, no lessons can be learned between the different sectors.

7.

Independent investigation into the causes of an accident is the only tool for discovering precisely what happened in a specific situation. By definition, a criminal investigation is aimed at determining the question of who or what is to blame; independent investigation is aimed at finding the truth. It's only possible to learn lessons by discovering the truth thereby prevent the same thing from happening again in the future.

That is why in a democratic society, independent investigation aimed at discovering the truth is essential. It can put an end to potential societal unease/agitation. It can contribute to the knowledge about the actual circumstances of an accident. And it can help victims and next of kin cope with the grief that has befallen them.

In recent years, the European Commission has been constantly aware of the importance of independent investigation. In a transparent, democratic Europe, it is vital to have well-equipped independent safety boards that are enshrined in the legislation of member states. Emphasis on the advancement of independent investigation is therefore an indispensable component in a balanced European transport policy for the coming years.