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NOTE

From: General Secretariat of the Council
To: Delegations

Subject: Concept Note for an assistance measure under the European Peace Facility for the supply to the Ukrainian Armed Forces of military equipment, and platforms, designed to deliver lethal force

1. INTRODUCTION

This Concept Note outlines a possible assistance measure to support the Ukrainian Armed Forces (UAF) with military equipment, and platforms, designed to deliver lethal force in light of the unprovoked invasion of Ukraine by armed forces of the Russian Federation, to contribute to strengthening the capabilities and resilience of the UAF to defend the territorial integrity and sovereignty of Ukraine and protect the civilian population against the ongoing military aggression.

After Council approval of this Concept Note, the High Representative will present a proposal for a Council Decision on an assistance measure under the European Peace Facility (EPF) for the supply of specific military equipment to the UAF.

2. CONTEXT

Since early 2014, Ukraine has been faced with armed conflict on its territory. This provided the background for an EPF Assistance Measure in 2021, which financed the delivery of equipment to strengthen the capacities of the UAF with respect to (i) military medical units (ii) engineering units (iii) mobility and logistics units (iv) cyber defence units. With the further Russian military invasion on 24 February 2022, the needs of the UAF have risen dramatically.

3. PROPOSED ASSISTANCE MEASURE

Ukraine has addressed to the EU a request for assistance, pursuant to an internal evaluation of military requirements in the context of the ongoing international armed conflict.

On this basis, the High Representative intends to propose a package of support for the UAF, comprising an assistance measure for military equipment, and platforms, designed to deliver lethal force, and an assistance measure for military equipment not designed to deliver lethal force. This assistance will comply with relevant legal instruments and best practices based on international and EU rules, standards and policies in the area of the supply of military equipment, and respect for relevant international law, in particular international human rights and international humanitarian law (IHRL/IHL), by the beneficiary.

The proposed assistance measure is intended to provide military equipment and platforms designed to deliver lethal force, notably:

- arms and automatic weapons with a calibre of 12.7 mm or less or smooth-bore weapons with a calibre of less than 20 mm (ML 1 on the EU Common Military List);
- guns of higher calibre, howitzers, cannons, mortars, anti-tank weapons, projectile launchers, etc. (ML 2 on the EU Common Military List);
- ammunition for the abovementioned categories of equipment (ML 3 on the EU Common Military List);
- air defence and anti-missile systems (ML 4 on the EU Common Military List).

The assistance measure will be implemented by the Ministries of Defence of EU Member States. It will foresee funding for relevant support provided by these Member States to Ukraine bilaterally since 1 January 2022.

4. CONFLICT SENSITIVITY AND IMPACT ASSESSMENT

In accordance with Article 57(1) of the EPF Decision, this section provides a preliminary analysis of the conflict sensitivity, context and risks together with initial considerations for an impact assessment, as well as safeguards and mitigating measures. These aspects will be further covered in the proposal for the assistance measure.

4.1 Preliminary observations on conflict sensitivity, context analysis and impact assessment

Since early 2014, Ukraine has faced armed conflict on its territory. In 2014, the Minsk Protocol was signed which endorsed a plan for peaceful solution of the conflict with an agreed ceasefire and a package of measures for the implementation of the Minsk agreements¹ (the “Minsk II” agreement). This agreement refers to the work of the Trilateral Contact Group including through the establishment of working groups on the implementation of relevant aspects of the Minsk agreements. The Minsk agreement also highlights the work conducted by the OSCE Special Monitoring Mission to Ukraine (SMM).

¹ https://peacemaker.un.org/sites/peacemaker.un.org/files/UA_150212_MinskAgreement_en.pdf

The UAF have been engaged in armed conflict for more than seven years, facing several serious challenges stemming from the unresolved conflict in its eastern regions and the illegal annexation of Crimea and the city of Sebastopol by Russia, which seriously undermined peace and security in the region. In September 2021, the non-government controlled areas of Donetsk and Luhansk regions of Ukraine signed an "agreement on the creation of a single customs territory and the development of economic integration". These areas were recognised as independent entities by the Russian Federation on 21 February 2022 in violation of international law, sovereignty and territorial integrity of Ukraine. On 24 February 2022, the Russian Federation launched a large-scale military aggression against Ukraine, in violation of international law and the UN Charter, and the commitments entered into by the Russian Federation in the Helsinki Final Act, the Charter of Paris as well as its commitments under the Budapest Memorandum. The OSCE Special Monitoring Mission to Ukraine (SMM) has been evacuated. The Russian Federation has declared the Minsk Agreements dead.

The proposed assistance measure, like any comparable policy or intervention, carries a general risk of driving violence and conflict. Similarly, there may be a risk of facilitating violations of IHRL/IHL even if there is minimal credible evidence of transgressions by the UAF in the recent period. Against this should be measured the cost of inaction in the face of the severe threat to Ukraine's security, territorial integrity and civilian population.

5. RISKS, SAFEGUARDS AND MITIGATING MEASURES

5.1 Potential risks and benefits

There are various categories of risks linked to the proposed assistance measure:

a) Risks linked to the effects of the assistance:

- 1) Provision of equipment reinforces the cycle of violence and conflict;
- 2) Supported units commit or are accused of violations of IHRL/IHL;
- 3) The equipment provided ends up in the wrong hands;
- 4) The Russian Federation responds to the provision of equipment in a way inimical to the interests of the EU.

b) Potential benefits associated with the provision of equipment:

- 1) The provided equipment responds to the operational needs of the UAF, responding to an external aggression;
- 2) The UAF are better positioned to ensure the protection of civilians on the territory of Ukraine.
- 3) The UA government is in a better position to maintain its internationally recognized sovereignty over its territory.

5.2 Safeguards and mitigating measures

The following measures will be put in place to decrease/eliminate the likelihood and/or impact of the abovementioned risks:

- i) The UAF units equipped through the assistance measure shall be requested to fully respect IHRL/IHL and other relevant international legal instruments;
- ii) Equipment provided will not exceed the necessary operational capabilities of the UAF;
- iii) The Ukrainian authorities shall finance the maintenance and running costs linked to the equipment provided through the assistance measure
- iv) The Ukrainian authorities shall grant access to the EEAS for on-site verification, upon request;
- v) The equipment will neither be transferred to any Ukrainian bodies outside the UAF, nor be re-exported to a foreign country, without the prior approval of the High Representative.
- vi) The provision of equipment may be suspended or terminated in case the Ukrainian authorities are in breach of their obligations under international law, in particular IHRL/IHL.

5.3 Conditions on the beneficiary

The beneficiary will be required to make the following commitments:

- i) Units receiving equipment under the assistance measure shall respect and fully comply with IHRL/IHL. The beneficiary will actively monitor, follow up on and prosecute any violations of IHRL/IHL;
- ii) Secured conservation and maintenance of the provided equipment will be ensured by the beneficiary;
- iii) The beneficiary will agree to the possibility of EU on-site verification;
- iv) Equipment will neither be transferred to any Ukrainian bodies outside the UAF, nor be re-exported to a foreign country, without the prior approval of the High Representative;
- v) The Ukrainian government will grant full exemption from taxes and duties (including VAT) on the equipment, services and supplies provided and assistance measure, and facilitate the import of such equipment and supplies where relevant.

6. NEXT STEPS

In line with the Guidelines for the preparatory and decision-making process for Assistance Measures under the European Peace Facility, the following recommendations are made:

- PSC agreement and submission of the Concept Note to the Council for approval.

- Presentation of a proposal by the High Representative for a Council Decision on the assistance measure on the basis of the Concept Note approved by the Council.

