Cabinet Adopts National Mine Action Authority Framework

Background: Starting from the outbreak of the conflict in 2014, there has been no state body responsible for mine action planning, coordination, and implementation in Ukraine. Respective duties have been divided between the Ministry of Defence, the State Emergency Service (under the Ministry of Interior), and the Ministry for TOT Reintegration, sometimes without the due regulatory framing. As a result, mine action programming suffered from duplication and gaps, but foremost – from the lack of a common vision and sustainable approach to mine action. The Mine Action Law, initially adopted in December 2019 and amended in September 2020, finally envisioned the establishment of a central governmental body to lead the mine action response in both the planning and implementation components – the National Mine Action Authority (NMAA). The establishment of this state body, however, has been delayed for multiply reasons.

In November 2021, the Cabinet issued Resolution No. 1207 ‘On Establishment of National Mine Action Authority’, providing the NMAA framework. Key provisions of the framework are specified below.

i) NMAA Scope, Structure, and Decision-Making

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<th>NMAA Scope</th>
<th>NMAA Structure and Decision-Making</th>
<th>NMAA Composition:</th>
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<td>• Stands as an interagency state body acting on an advisory (see ‘Decision-Making’) and collegial basis under the leadership of the Minister for Defence;</td>
<td>• Minister of Defence, as the Head;</td>
<td>• Deputy Minister of Defence, Deputy Minister of Interior – as Deputies;</td>
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<td>• Coordinates the ministries, local self-government, central and local state bodies, and other organisations (including mine action operators) in their mine action activities;</td>
<td>• Deputy Ministers of Healthcare, Education, Social Policy, Exterior, and TOT Reintegration;</td>
<td>• Deputy Head of the State Emergency Service;</td>
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<td>• Forms and ensures national mine action state policy, monitors/reports on state’s progress in fulfilling its obligations in mine action field taken under international treaties – jointly with the Mine Action Centre (Min. of Defence), Humanitarian Demining Centre (State Emergency Service), and Social-Humanitarian Response Centre (Ministry of TOT Reintegration);</td>
<td>• Representative of the State Security Service.</td>
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1 For details on the initial Mine Action Law adoption, see DRC Special Legal Alert for January, 2019. As for the Mine Action Law Amendment, see DRC Special Legal Alert dated September, 2020.

2 For instance, in regard to the Ottawa Treaty on the Prohibition of the Use, Stockpiling, Production, and Transfer of Anti-Personnel Mines and on their Destruction (Mine Ban Treaty), Geneva Convention on Certain Conventional Weapons and its Protocols II (Mines, Booby Traps, and Other Devices) and V (Explosive Remnants of War). These treaties provide targets not only on clearance and stockpile destruction but also on mine victim assistance.

3 The establishment of the Social-Humanitarian Response Centre is not overseen under the Mine Action Law – however, it is in the development process, led by the Ministry for TOT Reintegration. The supposed purpose of the Centre is to facilitate and conduct provision of mine victim assistance and related activities. For details, see section II below.
### NMAA responsibilities:

- **Regulating:** Reviews and approves national mine action standards;
- **Regulating:** Approves directions of donor funding use (programming) by mine action operators in Ukraine – unless they are fully or partially covered under the state budget;
- **Regulating:** Analyses the efficiency of the state mine action response and suggests policy, planning, and implementation to the Cabinet;
- **Regulating:** Drafts other relevant regulations for the Cabinet’s consideration.
- **Regulating:** Systematises the practice of relevant regulation application by various stakeholders;
- **Coordination:** Assists in organisation and implementation of explosive ordnance risk education (EORE) activities;
- **Coordination:** Contributes to mine victim assistance and rehabilitation provision;
- **Coordination:** Facilitates and finalises drafting of reports on state progress in fulfilling its obligations under the international treaties in the MA field;
- **Communication:** Contributes to growing donor support for the capacity building and other relevant mine action purposes;
- **Communication:** Ensures periodic media coverage of mine action activities under all the pillars.\(^5\)

### NMAA Secretariat:

- To be formed based on one of the units of the Ministry of Defence;
- Fulfils administrative duties organising NMAA sessions and ensures the enforcement of NMAA decisions;
- In between the NMAA sessions, coordinates activities of the Mine Action Centre, Humanitarian Demining Centre, and Social-Humanitarian Response Centre.\(^6\)

#### Decision-Making:

- NMAA is an advisory state body possessing no legal power to issue by-laws obligatory for other stakeholders. Instead, NMAA issues propositions and recommendations;
- Propositions and recommendations of the NMAA are to be submitted to the Cabinet, which can adopt them under binding by-laws;
- NMAA sessions are valid if at least 2/3 of the members are present at the session. The propositions and recommendations are made on a majority vote basis;
- Annual session plan is to be approved by the NMAA Head, with a minimum of four quarterly sessions per year.

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\(^4\) It is not clear how the approval procedure is supposed to look like. If provided that mine action operators have to request the NMAA’s approval of their projects, such requirement will negatively impact MA operations in Ukraine. An attempt to subordinate MA operators was already made under the initial Mine Action Law, and required a timely amendment to prevent deterioration of MA operators activities and withdrawal of the international funding.

\(^5\) As provided under the International Mine Action Standards (IMAS), the five pillars of mine action are: i) Clearance; ii) Mine Risk Education; iii) Victim Assistance; iv) Advocacy; v) Stockpile Destruction. In this regard, it is crucial to acknowledge the basic principle that all the pillars are interrelated and constitute equally important parts of mine action, which should not be limited to either of the five pillars only.

\(^6\) Respective procedure will be developed by the Ministries of Defence, the Interior, and the TOT Reintegration.
ii) Compliance

- **Mine Action Law:** In part on NMAA responsibilities and status, the adopted framework follows the Mine Action Law: it indeed frames the NMAA as an advisory collegial state body. The NMAA has no binding power to impose its decisions on other central governmental bodies – instead, it will act through the Cabinet of Ministers and individual ministries represented within the NMAA;

- **International Mine Action Standards:** Though there is no particular formalised document on the NMAA framework under the International Mine Action Standards (IMAS), the international best practices require the NMAA to be interdependent (depending on various governmental actors) to ensure both the effective coordination and the transparency in mine action programming, planning, and regulation. Under the framework, the NMAA is set as an interagency collegial state body and includes representatives from most of the involved ministries and agencies – in line with the international best practices.

- **Social-Humanitarian Response Centre:** The Resolution refers to the Social-Humanitarian Response Centre (SHRC) multiple times, with the connotation that the Centre will focus on ensuring social protection of mine victims. The Resolution is a by-law and it can only extend on the provisions already introduced under the law – in this case, the Mine Action Law. The MAL, however, does not oversee the establishment of the SHRC, referring only to Mine Action Centre and Humanitarian Demining Centre. However, there is a gap in mine victim assistance component of mine action in Ukraine currently: no governmental agency takes the lead on the matter. The establishment of the SHRC has recently been announced by the Ministry for TOT Reintegration. In such terms, the reference to the SHRC within the adopted NMAA framework can be excused as an intention to facilitate the SHRC development process – which must, however, inevitably include amending the MAL in order to ensure compliance with the basic principles of Ukrainian legislation.

iii) On Significance of the Development and the Future

Adoption of the NMAA framework is one of the milestones of Mine Action Law (MAL) implementation. It is the key to the new stage of state planning, coordination, and implementation in the mine action field. When functioning properly, the NMAA will enable:

- Ensure proper state planning and strategic planning in mine action, including the adoption of the Mine Action Strategy, National Mine Action Programme, and respective action plan(s).

- Regular, effective, and timely national mine action standards review;

- Effective coordination of special mine action state bodies in the Mine Action Centre and Humanitarian Demining Centre as special state bodies in mine action in their implementation activities and regulation drafting;

- Effective coordination of other central/local state bodies – including State Administrations, social protection units, National Police, and healthcare institutions – involved in mine action, in order to achieve better implementation in mine victim assistance, explosive ordnance risk education;

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7 Development of the Social-Humanitarian Response Centre was presented to the international mine action community in Ukraine by the Deputy Prime Minister and the Minister for TOT Reintegration on 18 November, 2021.
• Mainstreaming mine action advocacy to the Cabinet, to achieve further developments in mine victim assistance, documentation (including provision of necessary documents to the victims), information management, mine action planning, dual-use equipment importing and use, and other important matters.

• Regular reporting on state’s progress in fulfilling its obligations in mine action under the international treaties;

• Effective donor communication on the matters of mine action;

• Effective communication with mine action operators on the matters of project planning and implementation, coordination of state/operators activities;

• Effective communication with local self-government in order to increase awareness on mine action matters among the local communities and facilitate the communication between different state bodies.

Some of the terminology used in this issue of the Legal Alert was taken from draft laws or current legislation and does not necessarily reflect the position of DRC.

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