Ambiguous Mine Action Law Comes In Force

**Background:** The Law ‘On Mine Action in Ukraine’ was adopted by the Parliament on 6 December 2018. However, it only came to force on 25 January 2019 as the President delayed his signature till 22 January 2019. Adoption of the law has been long-anticipated as Ukraine previously had no general legal framework for humanitarian mine action operation.

1. **Scope of the Law:**

   - Adoption of the institutional framework
   - Adoption and enforcement of national mine action (MA) programmes
   - Adoption and enforcement of national MA standards
   - State control over the funding of mine action activities
   - Training of mine action personnel
   - Providing accreditation to mine action operators and monitoring their compliance
   - Enforcing controls over the quality of mine action activities
   - Information management including registering information on accreditation, and monitoring of mine action operators; information on contaminated and cleared areas; managing communication between civilians and mine action actors; administering reporting, etc.

2. **Institutional Framework:**

   **General Scheme:** The law introduces a number of new institutions to be specialised in mine action exclusively. The government bodies in red are non-operational and focus on coordination, policy-making, and political functions. The government bodies in aqua are operational. Those in grey execute quality assurance and quality control over the operations.

   i) **The Cabinet of Ministers of Ukraine:**

   The Cabinet executes state regulation and control over mine action directly and through distribution and coordination of related tasks and powers between the ministries and specially-established MA bodies.

   The Cabinet adopts:

   - The procedure for identification, destruction and disposal of mines and unexploded ordnances (UXO)
   - The framework for the establishment and functioning of the National Mine Action Authority, Mine Action Centre, and Commission for Accreditation and Monitoring (see below)
   - The procedure for accreditation of MA operators and monitoring of their activities
   - Operation procedures for MA operators which acquire funding from donors or are donors themselves
   - National MA standards
   - A list of contaminated territories
   - The procedure for recreation and protection of the affected environment

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1 National MA Standards (NMAS) are based on International MA Standards (IMAS), which establish requirements for all aspects of MA: information management, land release, quality control, risk education, management & equipment. Until the adoption of NMAS by the Cabinet, IMAS developed under the United Nations Mine Action Service apply.
ii) National Mine Action Authority (NMAA):
NMAA is created under the control of the Cabinet as an inter-departmental and collegial body consisting of representatives of different ministries and institutions. This is the central MA management authority for coordination of state regulation over mine action activities. NMAA adopts:

- Annual mine action plan
- Annual reports
- Framework for Quality Control Inspection
- Framework for creation, functioning, and access to mine action information management

iii) Mine Action Operations Centre (MAC):
MAC is the central mine action operational body for implementation of the mine action state policy, coordination of mine action activities, communication with the population regarding mine action, and management of the quality of work within mine action.

iv) Accreditation and Monitoring Commission (AMC) and Quality Control Inspection (QCI):
The AMC and QCI are control bodies functioning under the NMAA and MAC respectively. Despite being placed under different authorities, the two bodies both execute control over mine action activities and are highly interrelated in their powers. The AMC executes control mainly through the collection and verification of information and issuing accreditation to operators. The QCI focuses on direct visits to mine fields and is responsible for the assessment of quality of mine action operations.

The powers of the AMC and QCI include:

- Verification of information on the compliance of operators vis-à-vis accreditation requirements
- Carrying out inspection visits which include assessment of operations, equipment, documentation, qualification of personnel, and mine action procedures
- Visits to the fields to inspect the operations and assess if they meet requirements established by NMAS

v) Local state administrations and local councils:
These local bodies provide support to MA operators and involved state bodies by assisting in:

- The running of educational campaigns on MA risks and safety rules
- The provision of medical aid to victims of mine and UXO contamination
- The marking and maintenance of contaminated areas and informing locals
- The adoption of demining plans for related areas

3. Eligibility Requirements for MA Operators:

- Legal entities only: Only legal entities can function as MA operators. Individuals can execute mine action activities only as personnel of such legal entities.

- Obligatory accreditation: MA operators must obtain an accreditation certificate. Accreditation will be granted for a period of one year in the first instance. Subsequent accreditations will be granted for five-year periods. All accredited operators are subject to state monitoring and control. Accreditation is free of charge.

- Insurance requirements: Operators must provide all mine action personnel performing humanitarian demining with insurance. Also, the operators have to obtain insurance covering possible damages dealt to the third parties as a result of demining operations within plus 10 year after the end of land clearing.
OUTSTANDING CONCERNS

**Concern No. 1**

Direct donor funding of mine action operators: The final version of the law excluded the provision for allowing direct donor funding to mine action operators, which had previously been proposed to the Parliament as amendment no. 96. The adopted law directly states that funds provided by donors should be allocated to a specialized fund of the state budget.

Despite the apparent exclusion of donor direct funding, ambiguity was created through provisions in Articles 20 and 28, where the Cabinet is given the responsibility to develop an order for regulating those mine action operators directly funded by donors. In the absence of clarity, the legality of direct donor funding to mine action operators remains questionable.

**Suggested solution:** An amendment of the law would be the preferred method for curing the ambiguity. An interim solution could be for the Cabinet to use its power provided by Articles 20 and 28 in favour of direct donor funding. As for the funding allocated before the amendments take place, please see Concern No. 4 - Transitional period.

**Concern No. 2**

Compensation for adult victims of mine explosion: Victims of explosions\(^2\) are entitled to state assistance including medical, psychological, and social (not specified) assistance. However, the law provides one-time monetary compensation only to children (persons under 18 years old). The eligibility age of the child victim is likely to be considered as of the day of application, not as of the day of the incident. This creates a big scope for many of the child victims to be disqualified from the one-time monetary compensation.

**Suggested solution:** An amendment of the law will be required. All victims, regardless of age, should be entitled equally to the one-time monetary compensation.

**Concern No. 3**

State Funding: Since the law was adopted after the adoption of the 2019 state budget, this law has no funding. The lack of funding is likely to delay its implementation, particularly with regard to setting up the institutional arrangements.

**Suggested solution:** The only way to address a budget-related issue is for Parliament to resolve it through the adoption of a special law. In this case it means amending the law on 2019 state budget.

**Concern No. 4**

Transitional period: Compliance with the law will not be possible until all the institutional settings are in place and bylaws are made. The law does not provide any guidelines for mine action operations in the interim period.

**Possible solution:** It is fair to assume that status quo in mine action operations will be maintained until the institutional arrangements are done. Mine action organizations which currently operate in Ukraine undergo certain authorization procedures involving cooperation with the Ministry of Defence and State Emergency Service. However, an official clarification from the government allowing status quo for the transitional period would be highly preferable.

**Concern No. 5**

Transfer of liability for cleared areas: The law is not clear with regards to the transfer of liability from the MA operators once areas of land have been cleared. It is crucial that if a land is released and operations were conducted according to the requirements of national mine action standard, the state takes the liability.

**Possible solution:** It is preferred to have a provision within the law clarifying who is liable on behalf of the state after the handover of the released land. However, it is also possible to enshrine the provision within one of the bylaws which are to be designed in upcoming months by the Cabinet. In this case the Cabinet would transfer its power to accept liability for the area to a specialised state body – the most probably, MAC.

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\(^2\) The law defines victims of explosions as persons who suffered physical and moral damages, financial losses, or whose lawful interests suffered as a result of the use or presence of explosive objects or (lack of) actions of responsible officials. The definition also includes family members of persons deceased as a result of the related explosion.
**SCOPES FOR CURING THE DEFECTS**

**Perspectives for amending the law**

On 29 January 2019, the Secretary of profile Parliamentary Committee on National Security and Defence responsible for development of the law, joined the meeting of UN Mine Action Sub-Cluster to clarify the law to the humanitarian community.

**The Secretary, inter alia, stated that:**

- A draft law on the provision of state budget funding required to implement the mine action law is under development and is expected to be registered at the Parliament by Monday, 4 February 2019.

- In addition to the state budget funding issue, the draft law can be used to address other concerns by providing amendments to the mine action law.

- **Re Concerns No. 1-3:** Direct donor funding of the operators and monetary compensation for adult victims of mine explosions are most likely to be addressed within the draft law which will address the state budget funding issue.

- **Re Concern No. 1:** Donors are encouraged to continue the direct funding of the operators: until the bylaws and the special institutions are introduced as the previous procedures will continue to apply. Reference is made to the legislative amendments to be introduced to secure the opportunity of further direct funding.

- **Re Concern No. 4:** Mine action organizations currently operating in Ukraine are encouraged to proceed with their operations and use of donor funding as before. Until the special mine action state bodies and related bylaws are introduced, the previous authorization procedures are sufficient to ensure operators’ compliance with the law.

- **Re Concerns No. 1 and 4:** In case of any objection to mine action operators’ or donors’ activities in connection with the mine action law prior to the establishment of bylaws and special institutions, the Committee will actively stand on the side of the operator or donor to protect their interests.

- The international community is strongly encouraged to support the draft law through its advocacy activities. The international community has strong influence on the decision makers, especially on the eve of the elections.

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