

Letter of 18 February 2022 from the Minister for Foreign Trade and Development Cooperation, the Minister of Foreign Affairs and the Minister of Defence to the President of the House of Representatives, providing an update on the situation in Ukraine

This letter is intended to discharge the undertaking given by the Minister of Foreign Affairs on 3 February 2022 to inform the House, in accordance with the accelerated notification procedure, about the supply of military goods to Ukraine (Parliamentary Paper 2022D04105¹). In this letter the government also informs the House about the implementation of the motion submitted by MPs Ruben Brekelmans and Agnes Mulder (Parliamentary Paper 35 925, no. 72 of 3 February 2022) and the motion submitted by MP Olaf Ephraim (Parliamentary Paper 35 925, no. 68 of 3 February 2022) and complies with the motion submitted by MP Theo van den Doel et al. (Parliamentary Paper 22 054, no. 24 of 17 December 1996), in which the government was requested to notify the House in advance of the sale of weapon systems, in so far as this involved surplus Defence materiel. Below, we first briefly discuss the context in which the intended supplies are to be provided, supplementing the information already shared with the House, most recently by letter from the Ministers of Foreign Affairs and Defence, written in conjunction with the Minister for Foreign Trade and Development Cooperation and the Minister of Justice and Security, of 16 February 2022 (reference 2022Z02903).

Situation update

The situation in and around Ukraine remains as tense as ever. Russia announced that some of its troops would be withdrawn from the Ukrainian border. However, at the time of writing there is no sign of any such withdrawal of either military personnel or materiel. NATO Secretary-General Jens Stoltenberg has announced that the measures to strengthen Europe's eastern flank will therefore continue. NATO has increased the readiness of the NATO Response Force. NATO is thus prepared for all possible scenarios involving the defence of the Alliance. Owing to the tense security situation on its eastern flank, NATO must be capable of responding quickly to new developments. This also means that the readiness levels of elements of the armed forces in the Netherlands will be raised.

On 15 and 16 February, various Ukrainian banks and government bodies were the victims of a distributed denial of service (DDoS) attack. This attack has not yet been attributed. Cyberattacks are a regular occurrence in Ukraine, and previous attacks have often been attributed to Russia, which uses this instrument as part of its hybrid warfare strategy.

The Netherlands continues to favour diplomacy and de-escalation, which the government is also actively working to promote. Over the past week, consultations have taken place in a variety of settings, for example the recent telephone call between Presidents Biden and Putin and the visits of President Macron and Chancellor Scholz to Kyiv and Moscow. President Putin has informed President Biden that he is willing to give diplomacy a chance. If that is sincere, it is a positive gesture and the opportunity should be seized. However, the government considers that the core principles of the European security architecture and Ukraine's sovereignty and integrity within internationally recognised borders are not open to discussion. On 17 February, Russia sent a written response to the US proposals, which were in turn a response to the Russian proposals for a draft treaty. The foreign ministers of the United States and Russia have agreed to meet next week for further discussions on this. US Secretary of State Antony Blinken has made this conditional upon Russia not invading Ukraine. Russia's undertaking to withdraw some of its troops from the Ukrainian border has not yet been translated into action; according to the United States and NATO, the number of troops has actually increased in recent days.

The government has taken note of the Russian Duma's appeal to President Putin to recognise the republics of Donetsk and Luhansk as independent countries. This would be completely contrary to the Minsk agreements, to which Russia too has committed itself, and would thus have a very adverse effect on the peace process. President Putin has hitherto indicated that he wishes to give

¹ See the answer to the questions posed by MP Jasper van Dijk about arms supplies to Ukraine (reference 2022D04105) of 3 February 2022.

priority to implementation of the Minsk agreements. The government regards his allegation that genocide is occurring in the Donbas region as unfounded and irresponsible. Russia has provided no evidence whatsoever for this allegation, and these statements are not conducive to the diplomatic process.

Against this background, and in addition to its primary aim of de-escalation and dialogue, the government continues to take account of all scenarios and to work in parallel on measures to deter Russia and provide Ukraine with support, both military and non-military. It is against this background that the government intends to supply military goods in response to Ukraine's request for military support. Below, this letter sets out the process that has been followed since receipt of the Ukrainian request, describes the goods to be supplied and any related displacement effects, and explains the assessment of conformity with the EU criteria for arms exports. Finally, in keeping with the Brekermans and Mulder motion, we discuss the timeline of the intended supplies, the training required for effective use of the goods and how this can best be achieved.

Supply of military goods to Ukraine

On 18 February, the Ministry of Defence obtained licences for the export to Ukraine of military goods with a total value of €7,381,495. The goods in question are:

- 3,000 combat helmets and 2,000 ballistic vests with accompanying armour plates for body protection;
- 30 metal detectors and 2 wire-guided detection robots for land and sea mine detection;
- 2 ground surveillance radar systems and 5 weapon locating radar systems;
- 100 sniper rifles with 30,000 rounds of ammunition.

The recipient of these military goods is the Ukrainian Ministry of Defence. The end-users are the Ukrainian army and navy. The intended supply of military goods is in response to Ukrainian requests for such goods on account of the mounting tensions on the border with Russia. The Ukrainian armed forces intend to use the goods for defence against a possible armed attack by Russia. The goods are being donated by the Netherlands to Ukraine. These goods and the related logistical costs are being paid for out of the International Security Budget.

Description of the goods

The combat helmets and ballistic vests are for personal protection of vital body parts against incoming fire and shrapnel.

The Minelab metal detectors can be used to detect mines, improvised explosive devices and underground weapons caches. The wire-guided robots are remotely operated underwater vehicles (ROVs), which can be used to detect sea mines. Neither the metal detectors nor the ROVs can be used to lay mines; they have a purely defensive function and are used for security-enhancing measures.

The Squire ground surveillance radar systems are capable of detecting moving vehicles, people and groups of people, and low-flying helicopters, thereby enhancing the user's information position. The weapon locating radar systems (type AN/TPQ-36) are used to identify the location of enemy artillery in the event of incoming fire and calculate the expected point of impact. This information allows the user to give troops warning of incoming fire, thereby enabling them to defend themselves effectively against enemy artillery fire.

The sniper rifles are of two types: Accuracy (90 rifles) and Barrett (10 rifles), which can be used to hit special military targets at long range. The Accuracy rifle is an anti-personnel rifle, whereas the heavier-calibre Barrett was developed for use against light armoured vehicles. The rifles are intended as a contribution to Ukraine's capabilities for self-defence against a possible armed attack.

Consequences for operational capability

In deciding what military goods could be supplied to Ukraine, the Ministry of Defence, in accordance with the reasoning behind the Brekermans and Mulder motion (Parliamentary Paper 35

925, no. 72 of 3 February 2022), has assessed how the supply of these goods would affect the operational readiness of the Dutch armed forces. The outcome of this assessment is as follows:

- The metal detectors are not necessary for maintaining the Netherlands' own capability.
- The helmets, ballistic vests and *Accuracy* rifles are surplus equipment and are therefore also not necessary for maintaining the Netherlands' own capability.
- The Barrett rifles and the radar systems come from the Ministry of Defence's operational reserves, and their disposal will have a displacement effect on the Netherlands' capability.
- The ammunition comes from the defence ministry's own stocks and, as this must therefore be supplemented, it will cause displacement in connection with training and instruction.

The proposed training programmes will be given by defence ministry personnel from military training institutes and operational units, and will result in either displacement or an alternative implementation of programmes. As matters stand, the identified displacement effects in relation to both material support and the required training have been assessed as acceptable by the Ministry of Defence. The Ministry of Defence is still examining whether the training will be given in the Netherlands or in the region.

Assessment of compliance with EU Common Position on arms exports

The Ministry of Defence's applications for arms export licences have been assessed by the Ministry of Foreign Affairs against the eight criteria of the EU Common Position on arms exports, with particular emphasis on Criteria Two, Three, Four and Seven.² This assessment took particular account of the security context in Ukraine, as briefly described below.

Security context

In 2014, the pro-European 'Maidan uprising' led to major unrest in the Donbas region of eastern Ukraine, in the Donetsk and Luhansk *oblasts*. At the very time that this conflict was breaking out, Russia invaded and annexed the Crimean peninsula. The unrest in the Donetsk and Luhansk *oblasts* has resulted in a semi-frozen conflict between Russian-backed separatists and the Ukrainian authorities. As a result of the strong Russian involvement, this conflict also has clear regional characteristics and cannot be defined simply as internal. Since the spring of 2021, tensions have also mounted along a large part of the Ukrainian-Russian border as a consequence of a rapid build-up of Russian troops along that border. Since December 2021, there has been a real threat of an armed Russian attack on Ukraine, in contravention of the UN Charter (prohibition of the use of force). In the event of an armed attack by Russia on Ukraine, Ukraine has the right of self-defence (under article 51 of the UN Charter).

Respect for human rights as well as observance of international humanitarian law (Criterion Two)

Under Criterion Two of the EU Common Position on arms exports, a country is required to assess to what extent there is a clear risk that the goods might be used for internal repression or for the commission of violations of human rights or international humanitarian law. Overall, the human rights situation in Ukraine is reasonable. Citizens are able to exercise their rights to freedom of speech and freedom of association and other human rights, subject to a few limitations resulting from the COVID-19 pandemic. Human rights remain a major concern for people living in areas not under the control of the Ukrainian government and in occupied Crimea. There, the population has insufficient access to information, good medical assistance, freedom of movement and freedom of assembly.

The position of women and the LGBTI community in Ukraine is slowly improving, but has met with some resistance from a section of society. At the same time, there have been some advances in this area in recent years, such as legislative changes introducing measures to combat gender discrimination and sexism in advertising. Despite these cautiously positive developments, the security of human rights defenders, especially those involved in anti-corruption, LGBTI rights and environmental protection, is under pressure.

² EU Common Position 2008/944 of 8 December 2008.

The armed conflict in eastern Ukraine between Ukrainian security forces and pro-Russian separatists has resulted in over 14,000 deaths, including a considerable number of civilian victims. Besides conflict-related violence, other threats to the civilian population are arbitrary detention and torture, for which the Office of the High Commissioner for Human Rights (OHCHR) holds all parties to the conflict responsible. To prevent civilian casualties, Ukraine has pledged not to deploy heavy weapons in densely populated cities. OHCHR has noted on various occasions³ that there have been significantly fewer civilian casualties since 2019. This is due in part to an additional package of measures designed to bolster the ceasefire which has been in force since 27 July 2020. However, the most recent OHCHR report (December 2021) mentions an increase in violence and civilian casualties between August and November 2021.⁴ Many of these casualties are due to land mines or unexploded ordnance, but some are also caused by active hostilities, including artillery shelling and incidents involving small arms.⁵ According to OHCHR, 80-85% of these civilian casualties occur in the self-proclaimed 'People's Republics' of Donetsk and Luhansk.⁶ These regions are supported and armed by Russia.

The sniper rifles and radar systems to be provided by the Netherlands will make it possible for targets to be selected carefully. Their precision can help to avoid causing unintended casualties. In addition, there are no indications from reliable independent sources that there have been any Ukrainian violations of international humanitarian law involving the use of sniper rifles. Although it is a matter of grave concern that civilian casualties are occurring in the conflict, including those caused by Ukrainian military action, this is not necessarily indicative of human rights violations or violations of international humanitarian law. In an armed conflict, civilian casualties can also result from lawful attacks. As regards the personal protection goods and detection equipment, no direct link can be established between their future use and the commission of human rights violations or violations of international humanitarian law. The mine detection equipment can help to improve security for both civilians and military personnel in Ukraine. Following consideration of the above concerns about the human rights situation in Ukraine, the result of the assessment against Criterion Two is **positive**.

Internal conflicts (Criterion Three)

The assessment against Criterion Three involves considering the internal situation in the country of final destination, as a function of the existence of tensions or armed conflicts. There has been an armed conflict in eastern Ukraine since the spring of 2014. Although this is taking place entirely on Ukrainian territory, it has a regional character owing to the strong Russian involvement, and therefore cannot be viewed in isolation from the current tensions in the Ukrainian-Russian border area. The conflict is currently in a semi-frozen state, with both sides violating the ceasefire on a daily basis. These violations involve the use of small arms, including sniper rifles. Although the number of ceasefire violations has decreased drastically since mid-December 2021, they have started to increase again in recent weeks.

The OSCE's Special Monitoring Mission (SMM) does not attribute these ceasefire violations to specific parties to the conflict. It is therefore impossible to determine who is responsible for what percentage of the violations.

Although the goods are being supplied for the purpose of self-defence against an external armed attack (i.e. any form of Russian military aggression), the possibility that they may in future be used in the 'internal' conflict in eastern Ukraine cannot be excluded, especially if fighters from the self-proclaimed 'People's Republics' of Donetsk and Luhansk are – or become – involved in the

³ Office of the United Nations High Commissioner for Human Rights (OHCHR). (23/9/2021) Update on the Human Rights Situation in Ukraine, 1 February – 31 July 2021, <https://www.ohchr.org/Documents/Countries/UA/32ndReportUkraine-en.pdf>

⁴ Office of the United Nations High Commissioner for Human Rights (OHCHR), (1/12/2021) Update on the Human Rights Situation in Ukraine, 1 August – 31 October 2021, <https://www.ohchr.org/Documents/Countries/UA/HRMMU-Update-2021-11-01-EN.pdf>

Office of the United Nations High Commissioner for Human Rights (OHCHR), (23/9/2021) Update on the Human Rights Situation in Ukraine, 1 February – 31 July 2021, <https://www.ohchr.org/Documents/Countries/UA/32ndReportUkraine-en.pdf>

⁵ Ibid.

⁶ Ibid.

hostilities. In view of the ceasefire violations, account must be taken in this situation of the fact that some of the goods to be supplied (sniper rifles) have the potential to escalate the conflict. Hitherto, the ceasefire violations have not led to large-scale military confrontations or further escalation. In addition, the scale of the intended supplies is such that it bears no comparison to the support provided by Russia to the 'People's Republics' in the form of military materiel, and Ukraine will not obtain any new capabilities as a result of the proposed transaction. Moreover, the conflict in the Donbas region is taking place on Ukraine's own territory, where it is entitled to take action against the non-state armed groups there that have Russian backing (for example, in the form of arms). The situation is not altered by the political arrangements made in the context of the Minsk agreements.

In view of the above, we estimate that the goods to be supplied will not further exacerbate or prolong existing tensions or an armed conflict in Ukraine. The assessment against Criterion Three is therefore **positive**.

Preservation of regional stability (Criterion Four)

Assessment against Criterion Four would be negative if there is a clear risk that the military goods to be supplied would be used for aggression against another country or for the assertion by force of territorial claims.

The goods to be supplied will very likely be used for defence purposes in the event of a Russian armed attack, and therefore they meet Ukraine's legitimate security needs. Ukraine makes no claim against the territory of a neighbouring country and it is not likely that the goods will be used other than for the legitimate national security and defence of the recipient. The scale of the goods to be supplied should also be viewed in relation to the large Russian military presence on Ukraine's borders. It follows that there is no clear risk that Ukraine will use the exported goods aggressively against Russia or to assert by force any territorial claims. This transaction will therefore not have a negative effect on regional stability. The assessment against Criterion Four is therefore **positive**.

Risk of diversion (Criterion Seven)

The risk of diversion is assessed differently for each category of goods.

Susceptibility of various types of goods to diversion

Despite their relatively small size, the helmets, ballistic vests and mine detection equipment are not regarded as susceptible to diversion, given their purely defensive nature and the fact that they are easily obtainable on the free market.

The AN/TPQ-36 weapon locating radar systems would be relatively hard to divert, owing to their large size and various items of auxiliary equipment. Moreover, the risk of diversion is reduced by the fact that the technical expertise needed to operate the systems means that 'instant use' (as in the case of small arms) is more difficult. The limited size of the Squire radar systems makes them more susceptible to diversion than the weapon locating radar systems, but once again their complex nature would make diversion less likely.

The rifles and their ammunition are susceptible to diversion owing to their limited size and the fact that goods of this kind circulate in the illicit arms trade. Ukraine has one of Europe's largest illicit arms markets.⁷ This market is mainly in easily tradable small arms and ammunition, and not in helmets and ballistic vests, mine detection equipment and radar systems.

Conclusion

There is a risk that any of the above-mentioned goods could end up in the hands of the Russian armed forces and/or Russian-backed separatists as a result of a Russian military invasion. In view of the acute threat of a Russian armed attack, Ukraine's right to defend itself against such an

⁷ Small Arms Survey – *Making the Rounds: Illicit Ammunition in Ukraine* | <https://www.smallarmssurvey.org/sites/default/files/resources/SAS-Report-Illicit-Ammunition-Ukraine.pdf> and Global Organized Crime Index | <https://ocindex.net/country/ukraine>

attack and the contribution that the supply of these goods can make to that, this risk is deemed acceptable.

As the helmets, ballistic vests and mine detection equipment are intended for security-enhancing measures and personal protection, and as there is no indirect connection between their use and the use of force and they are not commonly traded in the illicit arms market, the risk of diversion is assessed as small. The assessment of these goods against Criterion Seven is therefore **positive**.

The risk of diversion to the illicit arms market in the case of the two types of radar system is also small. The assessment of these goods against Criterion Seven is therefore **positive**.

As there is a risk that the rifles and accompanying ammunition might be diverted to an undesirable end-user or for an undesirable end use, the assessment against Criterion Seven is **negative**. In keeping with the EU Common Position on arms exports, a negative assessment against Criteria Five to Eight does not necessarily preclude a positive final assessment. In view of the acute threat of a Russian armed attack, Ukraine's right to defend itself against such an attack and the contribution that the supply of the rifles and ammunition can make, this negative assessment against Criterion Seven is considered as **not decisive** for the final assessment.

The other Criteria (Criteria One, Five, Six and Eight) of the EU Common Position on arms exports do not give rise to any special considerations and have also been assessed positively.

Overview of supply timeline for the military goods

On 19 January 2022 Ukraine requested the Netherlands to supply military goods. After consultation with Ukraine, a new list of requested goods, with priorities, was subsequently received on 25 January. The Ministers of Defence and Foreign Affairs considered this list, to see whether, and if so to what extent, the Netherlands could accede to the request. In accordance with the Brekelmans and Mulder motion, the Ministry of Defence examined what goods could be supplied without adversely affecting the Netherlands' own reserves and deployability. After prior contacts at official level, the Ministry of Defence passed the list of goods available for supply to Ukraine to the Ministry of Foreign Affairs on 8 February 2022. At the same time, the Ministry of Defence formally applied to the Central Import and Export Office (CDIU) for the export licences. Upon receipt of the applications, the CDIU immediately began the official screening process and, in view of the urgency, simultaneously forwarded the applications to the Ministry of Foreign Affairs.

The Ministry of Foreign Affairs then assessed the licence applications against the applicable EU arms export criteria. As indicated above, this involved carrying out a careful risk analysis in relation to the various goods. The Minister of Foreign Affairs issued a positive foreign policy opinion on these transactions to the Minister for Foreign Trade and Development Cooperation, who then approved the issuing of the export licences. On 18 February 2022 the cabinet discussed the proposed export of the military goods to Ukraine and endorsed the positive assessment.

The Ministry of Defence expects the delivery of the goods to Ukraine to take one or two weeks. However, it is dependent for this on external carriers and/or the transport capabilities of the Netherlands' military partners. As a consequence of the export control legislation, the approval of third parties is also being requested for the supply of the Barrett rifles and the weapon locating radar systems and possibly also the Squire radar systems and the Accuracy rifles. Training programmes are necessary for the operators to be able to make effective use of the sniper rifles, radar systems, metal detectors and wire-guided detection robots. In most cases, the training takes two or three days. One of the radar systems requires about three months' training. As Ukraine already uses comparable systems, the Ministry of Defence is studying whether it would be possible to use existing training programmes. As regards personnel numbers, it is expected that, about 15 instructors will be needed to give the training. The Ministry of Defence is still examining whether the training will be given in the Netherlands or in the region.

Deployment of Dutch military personnel to Ukraine

In this connection the government is meeting the House's request for a letter in response to the amended motion submitted by Olaf Ephraim (Parliamentary Paper 35 925 V, no. 67) of 8 February

2022. The motion requests the government not to deploy Dutch military personnel to Ukraine for the purpose of combat operations. As explained during the plenary debate on the situation in Ukraine on 3 February 2022, there is no obligation to render assistance under article 5 of the North Atlantic Treaty, as Ukraine is not a NATO member. There is therefore no question of the deployment of Dutch military personnel to Ukraine for combat operations. The government stands by its previous assessment of the Ephraim motion. Any deployment of Dutch military personnel is subject to careful decision-making procedures, including the House's involvement, which are laid down in article 100 of the Constitution and from which the government cannot derogate in advance.