

President Biden Signs Ukraine Democracy Defense Lend-Lease Act



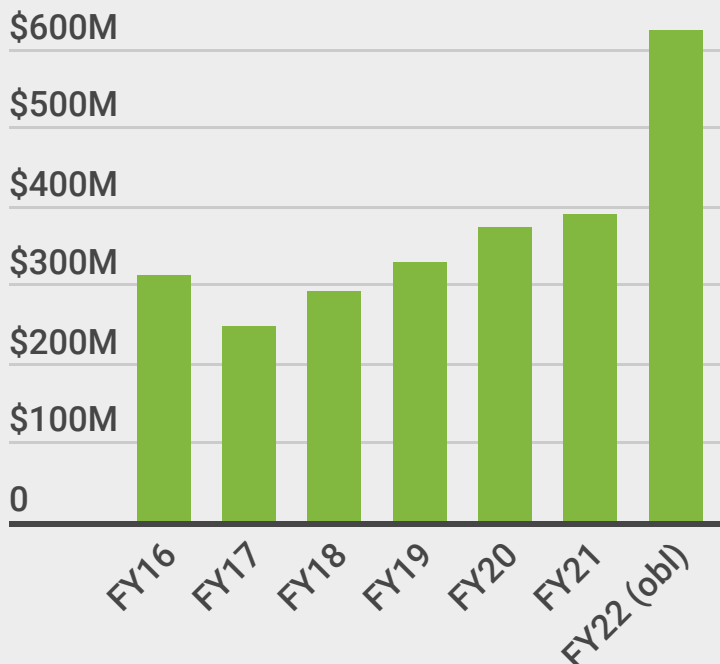
GLEB GARANICH / REUTERS

Lauren Woods, Security Assistance Monitor, May 2022

What's At Issue

On May 9, President Biden signed into law the Ukraine Democracy Defense Lend-Lease Act of 2022, which would expedite the transfer of weapons and equipment to Ukraine. The legislation streamlines the lending or leasing of defense articles to Ukraine or any other Eastern European country impacted by the conflict. The level of US support and involvement in Ukraine has been a source of dispute between the U.S. not doing enough or doing too little. News about the U.S. providing intelligence that helped Ukraine target a Russian warship has only added to the dispute over the extent to which the U.S. is directly involved, through [security cooperation](#), in the war. This legislation will further deepen the U.S. role.

Selected U.S. Security Aid to Ukraine, FY16-22 Provided through Foreign Military Financing and the Ukraine Security Assistance Initiative



Background

The Arms Export Control Act (AECA) already has existing lend-lease authorities that allow the United States to lend and lease defense articles to U.S. partners when it is in the U.S. national security interest. But lawmakers say those authorities are difficult to use in a timely manner for the conflict in Ukraine. This bill would temporarily waive some of the requirements mandated under the AECA and allow the U.S. government to transfer arms more quickly. The law is specifically targeted to articles intended for Ukraine's government, necessary to protect civilians in Ukraine from the Russian military invasion.

Key Provisions

Exempts the lending or leasing of defense articles to the Ukrainian government from certain requirements that typically apply to lend-lease agreements, including

- o A requirement that prohibits a loan period from exceeding five years;
- o A requirement that the United States may recall the loaned defense article at any time;
- o A requirement that the recipient country must pay the United States for costs in leasing the article; and
- o A provision that allows Congress to prohibit certain transfers of defense articles by enacting a joint resolution

Requires the President to establish expedited procedures to deliver loaned or leased military equipment to Ukraine within two months of the bill becoming law.

Remains in effect for two years, with the possibility of extension if needed.

It is also worth noting that under current U.S. law, all defense articles and services sold, leased, or exported under the AECA remain subject to end-use monitoring.

Additionally, cases of leasing equipment are treated like foreign military sales cases in that they are reported by the Defense Security Cooperation Agency (DSCA).

Expediting Weapons Transfers

Since the Russian invasion began in February, Ukraine has repeatedly called for faster transfers of weapons, and in particular, additional Javelin anti-tank missiles and Stinger anti-aircraft missiles. The Defense Department has also set up a task force to expedite arms sales to Ukraine, even as members of Congress call on the administration to do more.

Weapons transfers to Ukraine are already picking up speed. In early March, the United States delivered Javelin missiles, rocket launchers, guns, and ammunition that had been approved just the month before. Other NATO and non-NATO European nations have also expanded weapons shipments to Ukraine, allowing other avenues for expedited shipments.

Reporting Loaned and Leased Weapons

The AECA already requires written certification from the President to the Speaker of the House of Representatives, the Chair of the Senate Committee on Foreign Relations, and Chair of the Senate Armed Services Committee before entering into or renewing a lease agreement for a period of one year or longer—15 or 30 calendar days before agreements, depending on the country in question. However, that same legislation authorizes a waiver of the congressional notification for leases if the President certifies an emergency exists that requires that the lease be entered into immediately in the interest of U.S. national security.

Implications

The legislation, by easing requirements on lending and leasing weapons and equipment, makes it easier for the United States to provide equipment for longer durations and without payment from Ukraine. It also signifies a closer U.S. participation in the war.

Additionally, the legislation moves U.S. policy closer to a country-specific approach to security aid, whereby the Departments of Defense and State follow separate processes for weapons transfers to Ukraine and potentially other countries in the future. Other examples of this country-specific approach include separate funding accounts, such as the Ukraine Security Assistance Initiative, and separate transfers processes, coordinated by the newly appointed coordinator for U.S. security assistance to Ukraine.

By carving out separate processes for weapons transfers to Ukraine the administration is demonstrating that it is willing to transfer weapons more quickly for emergency cases, which could conceivably be expanded to additional cases.

History of the Measure

The Lend-Lease Act was a World War II-era program that allowed the United States to quickly resupply Allies by sidestepping the normal procedures for arms sales. Passed in 1941, the original legislation allowed the United States to lend or lease war supplies to nations it considered “vital to the defense of the United States.” Over time, it also allowed for the transfer of airplanes, tanks and other vehicles, ammunition, and defense equipment. The measure allowed for repayment to the United States “in kind or property, or any other direct or indirect benefit which the President deems satisfactory.” It also allowed then-U.S. President Roosevelt to urgently resupply Britain by providing them with destroyers in exchange for 99-year leases on British bases in the Caribbean and Newfoundland. The legislation was later used to assist China and the Soviet Union, and by the end of the war, to provide defense items to more than 40 countries, amounting to direct aid without repayment, for many of them.