

Freedom of movement across the line of contact in eastern Ukraine

July 2018

General overview

For four years, restrictions on freedom of movement and the transfer of goods imposed by the Government of Ukraine at checkpoints along the contact line have required civilians to expose themselves to security risks, long queues, and other physical challenges, further dividing a once-integrated community.

During January-May 2018, over one million crossings through the checkpoints in the east took place each month on average, or approximately 33,500 unique crossings each day. This is a 31% increase in comparison to the same period of 2017, when daily crossings were at the level of 25,500. In addition, an average of 149,000 crossings occurred over the administrative boundary with the Autonomous Republic of Crimea each month.¹ A monthly survey at the checkpoints shows that more than half of persons crossing the checkpoints are over the age of 60.² The proportion of older persons is so high because persons living in NGCA must register as IDPs and cross the contact line regularly in order to maintain their eligibility for pensions.

The limited number of checkpoints – only five across the entire contact line – in combination with the small number of staff employed to process people crossing, and the complex nature of the procedures, directly contribute to the hardships of civilians crossing the contact line. Of particular concern is Luhansk region, where there is only one crossing point which is limited to pedestrians and requires them to walk a considerable distance across an unstable bridge.

Recent legislative changes require the Government to elaborate new rules on crossing the contact line. On 24 February, the Law of Ukraine on particular aspects of public policy aimed at safeguarding the sovereignty of Ukraine over the temporarily occupied territories of the Donetsk and Luhansk regions (law 2268) entered into force. It states that the Cabinet of Ministers shall elaborate new rules on crossing the contact line and transferring goods and personal belongings. Until the Cabinet of Ministers completes this task, all the previous rules remain in place. On 21 June, the Ministry of Defence published a draft set of rules for public discussion.

¹ Data is updated here on a monthly basis: <https://goo.gl/SS8gS7>

² See, for example, Right to Protection, *Crossing the Line of Contact*, May 2018 at

<https://www.humanitarianresponse.info/en/operations/ukraine/document/report-crossing-line-contact-r2p-may-2018>

Key messages

- The number of crossing routes should be increased and all crossing routes should be in no-fire areas.
- A designated State authority should be directly responsible for maintenance of checkpoints.
- If the system of electronic permits is maintained, then the permits should not have an expiration date.
- The current list of goods permissible for transport across the contact line should be replaced with a list of goods that are prohibited from transport.
- The transfer of cash across the contact line should be specifically regulated to avoid abuse.

Main challenges and recommendations

Number of crossing routes and security concerns

People risk their lives while crossing the checkpoints and undergo lengthy procedures due to the threat of incoming fire and the effects of unexploded ordnance. The intensification of hostilities over May-June have demonstrated several instances of attacks. In the first five months of 2018, one civilian was killed, and four were injured, while traversing the crossing points.³

Recommendation:

- The Government of Ukraine should increase the number of crossing routes, particularly in Luhansk region, where a crossing route for vehicles and pedestrian traffic should be created; ensure that crossing routes and entry-exit checkpoints are in no-fire areas;⁴ and take efforts to minimise the waiting and crossing time (e.g., by provision of public transportation) in areas exposed to mines and possible shelling.

“ *We had to stay overnight in the queue of cars that wasn't moving at all. You can hear the shooting there. I don't care who started it all! I just want to see my daughter!* ”

Elderly resident of a village near Donetsk airport

³ As reported by the UN's Human Rights Monitoring Mission.

⁴ This type of action depends not only on Ukraine, but on the agreement of other actors.

Responsibility for maintenance of checkpoints

The shelters provided for civilians at crossing checkpoints is currently insufficient. While each checkpoint has some water and sanitation facilities, these are temporary measures provided by humanitarian actors. Humanitarian actors are also the main providers of medical assistance at the checkpoints. In particular, older persons and those with medical conditions suffer as a result of these poor conditions. During a heat spell in May, pedestrians fainted frequently at the checkpoints; in the first six months of the year, six people have died from medical conditions while at the checkpoints. To ensure that conditions at the checkpoints are adequate, it is crucial that a co-ordinating body elected by a single state authority provides and maintains the facilities for civilians.

The draft rules published by the Ministry of Defence would authorize the civil-military administrations of Donetsk and Luhansk oblasts to maintain the checkpoints. It would be important to provide them with sufficient budgetary allocations to fulfil this responsibility.

Recommendations:

- Appoint a single state actor to take financial responsibility for the conditions at the checkpoints and to ensure coordination among all the actors working at the checkpoints.
- Allocate sufficient funds to enable facilities at the checkpoints to offer safe and dignified conditions. This means access to basic services like adequate water, sanitation, shelter, medical services and information. The checkpoints must have sufficient staff and timely public transportation in order to ensure a smooth flow of persons through the checkpoints.
- Take similar actions to improve conditions for civilians crossing checkpoints with the Autonomous Republic of Crimea.

“

There were so many people at the EECP today, I have never seen that many people. We had to stay for three hours under the sun as there was no shelter. It was so hot that three people fainted. An elderly woman hit her head on the pavement. The guards called for medical help, but doctors did not show up for a long time. Later I realized they were saving people elsewhere. Next time it can be me. I hope that woman is fine now.

”

Elderly woman at Marinka EECP

Permit system

Citizens must obtain an electronic permit to cross the contact line. The draft rules would maintain this system. The permits create an unnecessary barrier, especially for older persons without access to internet or computers. Despite amendments to the Temporary Order on the control of movement of people across the contact line in Donetsk and Luhansk region adopted on 14 April 2017 that extended the validity of the permits indefinitely, this provision has never been implemented.

Recommendation:

- The Government of Ukraine should review the establishment and implementation of the permit system and its impact on the civilian population. At a minimum, the non-expiry of permits should be implemented.

“

Every time I travel from Donetsk to a hospital in Zaporizhzhia with my disabled husband, his heart aches to see all these restrictions and injustice. He becomes weaker and weaker each time we travel through the contact line.

”

Elderly woman residing in Donetsk

Transportation of goods across the contact line

The restrictions imposed by Order No. 39 of the Ministry of Temporarily Occupied Territories and IDPs, which lists goods and quantities (including life-saving medications) which may be transported across the contact line, negatively impacts civilians. It is not possible to exhaustively list all the goods that civilians may need to bring across the contact line. The State Fiscal Service is obliged to assess all items taken across the line in light of this list, resulting in serious delays and disproportionate restrictions. It is noted that the draft rules would lead to the elaboration of a list of prohibited goods, following the logic of “everything that is not forbidden shall be permitted”.

Recommendation:

- The new rules should ensure that the elaboration of a list of goods prohibited for transfer across the contact line, while all other goods should be permitted.

“

They confiscated my new rock-drill and threw it in a garbage bin because it was not listed in Order No.39. I just wanted to start reconstruction of my house after it was damaged. I spent all my money on it.

”

Elderly man at Maiorske EECP

Transport of cash across the contact line

There is no legal provision determining the amount of money which may be transported across the contact line. As a consequence, officials apply Order No. 39 arbitrarily and confiscate amounts in excess of 10,000 UAH.⁵ As of 28 August 2017, the State Fiscal Service of Ukraine (SFS) had seized cash from persons crossing the contact line on 26 occasions, totalling over 300,000 USD.⁶ In each of these incidents, the SFS opened criminal proceedings under article 285-5 of the Criminal Code (“financing terrorism”) and transferred the cases to the State Security Service of Ukraine (SBU) for investigation.

⁵ The Order provides that a person may transport goods with a total value of 10,000 UAH.

⁶ According to the SFS, it confiscated 3,393,500 UAH, 1,319,700 RUB, 137,300 USD, 8,600 EUR, 100 CAD and 35 GBP during 2017.

Recommendation:

- The Government of Ukraine should ensure that regulatory norms are not applied arbitrarily and that the terrorism-related provisions of the Criminal Code are not interpreted in an overly broad manner.

Annex

International standards

According to Article 12 of International Covenant on Civil and Political Rights (ICCPR), “everyone...within the territory [of a State] shall have the right to liberty of movement and freedom to choose his residence”. This right “shall not be subject to any restrictions except those, which are provided by law, are necessary to protect national security, public order, public health or morals or the rights and freedoms of others, and are consistent with the other rights...” In its CCPR General Comment No. 27: Article 12 (Freedom of Movement)⁷, the UN Human Rights Committee provided further explanation regarding the permissibility of restrictions on the freedom of movement. Such restrictions are evaluated in light of their:

- Legality—restrictions must be provided by law which shall contain precise criteria and may not confer unfettered discretion on those executing it;
- Necessity—restrictions must be necessary for the protection of national security, public order, public health or the morals, rights and freedoms of others;
- Proportionality—restrictions must be appropriate to achieve their protective function. They must be the least intrusive instrument for achieving the desired result; and they must be proportionate to the interest to be protected;
- Consistency—restrictions must not interfere with other rights, including fundamental principles of equality and non-discrimination.

⁷ CCPR General Comment No. 27: Article 12 (Freedom of Movement), 2 November 1999, CCPR/C/21/Rev.1/Add.9, available at www.refworld.org/docid/45139c394.html