

Freedom of movement across the line of contact in eastern Ukraine

December 2017

General overview

For more than three 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 August-October 2017, over one million crossings through the checkpoints in the east took place each month on average, or approximately 30,000 crossings each day. In addition, an average of 200,000 crossings occurred over the administrative boundary with the Autonomous Republic of Crimea each month¹.

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 crossing procedures, directly contribute to the hardships endured by civilians as they attempt to cross the contact line. Of particular concern, there is only one crossing point in Luhansk region, which is limited to pedestrians and consists of a half-ruined wooden bridge.

Key messages

- The number of crossing routes should be increased and all crossing routes should be in a no-fire area.
- An authorized State authority should be directly responsible for maintenance of checkpoints.
- The validity of electronic permits should be indefinite.
- 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.

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

Main challenges and recommendations

Number of crossing routes and security concerns

People risk their lives while crossing the checkpoints and undergoing lengthy procedures due to the risk of incoming fire and the effects of unexploded devices. For example, in August-November 2017, at least seven security incidents occurred at or in the vicinity of the crossing routes, with mines posing a serious threat to civilians crossing the contact line and those living in close vicinity to entry-exit crossing points.

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 a no-fire area;² and take efforts to minimise the waiting and crossing time in areas exposed to mines and possible shelling attacks.

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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

Responsibility for maintenance of checkpoints

The shelter 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 provider of medical assistance 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.

At the end of October 2017, the Prime Minister of Ukraine directed the civil-military administrations in Luhansk and Donetsk regions to identify communal enterprises to maintain decent conditions at checkpoints. However, this order has not yet been implemented.

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,

² This type of actions depends not only on Ukraine, but on the agreement with other actors

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 despite an absence of similar security threats.

Permit system

Citizens must obtain an electronic permit to cross the contact line, which creates 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 the implementation of the permit system and its impact on the civilian population. At a minimum, the Government of Ukraine should ensure that the amendments allowing for the non-expiry of permits are implemented.

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“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.”

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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 Territory and IDPs, which lists goods and quantities (including life-saving medications) which may be transported across the contact line negatively impacts civilians. It is near impossible to exhaustively list all of the potential goods that civilians may need to bring across the contact line, and the burden placed on the State Fiscal Service, which must assess the items to be moved across the line, results in serious crossing delays for civilians and disproportionate restrictions.

Recommendation:

- The Government of Ukraine should amend Order No. 99 of the Cabinet of Ministers (under which the Order No. 39 of the Ministry has been elaborated) so that it provides a list of items prohibited from transport across the contact line (‘Everything not prohibited is permitted’) to replace the current list of permissible goods and quantities (‘Everything not permitted is prohibited’).

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.³ 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.⁴ 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.

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)⁵, 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.

³ The Order provides that a person may transport goods with a total value of 10,000 UAH.

⁴ 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.

⁵ 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