



Freedom of movement across the line of contact in eastern Ukraine



Credit: UNHCR/A.Vlasova

KEY MESSAGES

Efforts shall be made to increase the number of crossing routes in particular in Luhansk region and to ensure they are in no-fire areas.

The civil-military administrations must have full legal authority to maintain checkpoints. Emergency medical assistance should be provided at checkpoints.

The existing system of electronic permits should be eliminated. If it is maintained, then the permits should be of unlimited validity. Access to these permits should be unimpeded and technically simplified.

Following the change to the regulation on crossing the LoC, it is important to monitor the impact of these rules on the transport of personal goods and the movement of children.

Public transport across the contact line should be restored, depending on the security situation

IMPACT ON SOCIAL COHESION

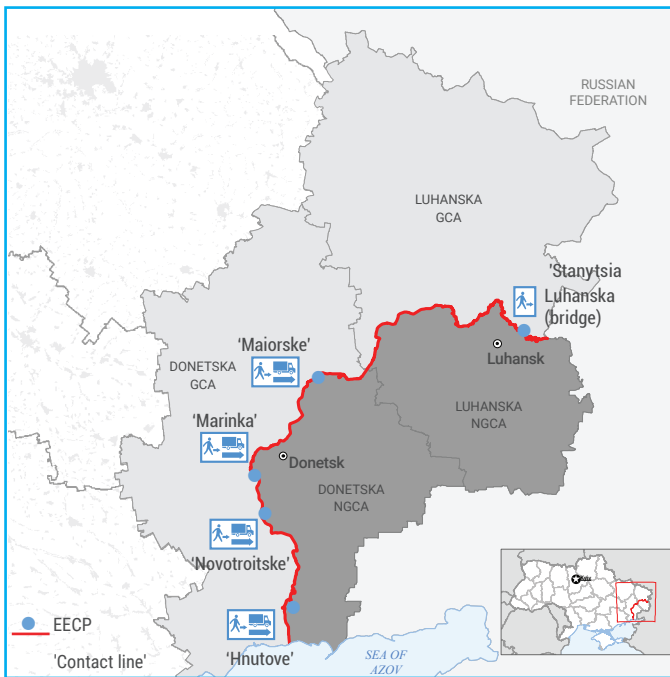
If the Government of Ukraine implements these recommendations, people will be able to travel safely, smoothly and with dignity between government-controlled area (GCA) and non-government controlled area (NGCA). People will visit their relatives and friends; they will attend celebrations and funerals. Some people will live in one area but work or seek services across the line of contact (LoC). Ease of movement through the checkpoints will allow many everyday interactions among people on both sides of the LoC, which will build and enhance bonds of solidarity among citizens, preventing them from weakening. Furthermore, maintenance of improved conditions at checkpoints will make Ukrainian services and public institutions more accessible to citizens residing in NGCA. This will demonstrate the state's concern for the welfare of all its citizens on an equal basis, and thereby build trust between citizens and the state.

GENERAL OVERVIEW

Over five years, restrictions on freedom of movement and the transfer of goods imposed by the Government of Ukraine at entry-exit checkpoints (EECPs) along the LoC have required civilians to expose themselves to security risks, long queues, and other physical challenges, further dividing a once-integrated community. During eleven months of 2019, there was a monthly average of 1.16 mn crossings through the EECPs in the east, or approximately 38,000 crossings daily. This is approximately the same as in 2018, but still is a 49% increase compared to the same period of 2017, when daily crossings were at the level of 25,500. In addition, in 2019 an average of 223,000 crossings occurred over the administrative border with the Autonomous Republic of Crimea each month in 2019, demonstrating a ten per cent increase in comparison to 2018.¹

'Before 2014 I went to my relatives in Kramatorsk and the trip would take one hour. Now I travel for 3-5 hours. No one cares about us.'
60-year old man from Horlivka at Maiorske EECP

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



A monthly survey at the EECPs shows that two thirds of persons crossing them are over the age of 60.² The proportion of older persons is so high because pensioners living in NGCA must register as IDPs whose ongoing eligibility for pensions is regularly verified. These procedures require them to cross the LoC every 60 days in order to maintain their eligibility for pensions.

The limited number of EECPs – only five across the 427 km LoC – in combination with the comparatively small number of staff employed to process people crossing in Majorske, Marinka, Novotroitske and Hnutove, 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 the only crossing point is limited to pedestrians who must walk a considerable distance. An important positive development was the repair of the bridge over the Sieverskiy Donetsk river; pedestrians started to use the bridge in December 2019. Also, the Ukrainian authorities introduced a bus service to take people to the bridge, and an NGO complemented this

with an electric cart to help vulnerable people reach the bridge. Overall, the conditions for pedestrians at Stanytsia Luhanska EECP improved significantly.

On 17 July 2019, the Government of Ukraine adopted Resolution #815 updating the procedure for crossing the LoC. Overall, this is a positive development, since the Resolution changed the rules regarding the transport of goods across the LoC. The new rule states that the transport of goods is allowed with exception being made for a specific list of prohibited goods, which are mainly hazardous and unsafe items, as well as items of a military nature. On 18 November 2019, the amalgamated Ministry for Veteran Affairs, Temporarily Occupied Territories and IDPs adopted Order #92 defining items prohibited and limited for transfer across the LoC. Nevertheless, concerns remain regarding the crossing of the LoC by children between the age of 16 and 18 who do not possess a Ukrainian ID card (see below).

MAIN CHALLENGES AND RECOMMENDATIONS



Number of crossing routes and security concerns

Since there are only five EECPs to accommodate the large numbers of people who wish to cross, long queues form. People must wait for significant periods.

In the third quarter of 2019, 62% person reported spending between two and four hours to cross the checkpoints—in a dangerous environment.³ The checkpoints come under incoming fire and are surrounded by mines and unexploded ordnance. In 2019, there was one security incident (between Novotroitske and Olenivka EECPs) in which two civilians died, and one civilian was heavily wounded while crossing LoC.⁴

Although the Government continued improvements to the conditions at the checkpoints in 2019, the checkpoints lack bomb shelters (except for Novotroitske EECP) and other infrastructure to protect civilians from attacks.



Challenges for children aged 16-18 while crossing LoC

Resolution #815 introduced new rules about which documents children require in order to cross the LoC. The government later provided clarifications about this important matter. At present, children below the age of 14 must have a birth certificate in order to enter GCA. Ukrainian law states that children should obtain their first identity document at the age of 14. Children aged 14-16 may cross the LoC with an identity card or a passport for travelling abroad. There are still challenges with children, especially those aged 16-17, who do not possess ID cards or passports for traveling abroad. According to the rules, children residing in NGCA can enter GCA with a birth certificate for the purpose of applying for a Ukrainian passport and return based on the certificate issued by the SMS confirming the fact of application. However, monitors have noted multiple cases where children aged 16-17 years have been denied entry into GCA or experienced serious delays.

² See, for example, Right to Protection, Crossing the Line of Contact, November 2019 https://www.humanitarianresponse.info/sites/www.humanitarianresponse.info/files/documents/files/r2p_eecp_report_nov_eng.pdf. In November, 66% of persons surveyed were over the age of sixty.



Challenges for persons with debts in GCA

Some NGCA residents have debts in GCA based on court decisions or due to ongoing court proceedings. These debts may concern previously unpaid utility bills, credits taken in banks prior to the conflict, alimony and other liabilities. Such persons are allowed to cross the LoC from NGCA to GCA; however, the State Border Guard Service (SBGS) prohibits them from returning to NGCA until their debts have been paid. Monitors observe that many individuals are not aware of these debts or the fact that these debts would prevent them from returning home to NGCA. It is important that individuals have access to information regarding these debts and their implications for crossing the LoC, so they can make informed decisions about their movements.

Recommendations:

- Increase the number of EECPs, particularly in Luhansk region, where additional EECPs for vehicles and pedestrian traffic should be established; ensure that EECPs are in no-fire areas ; and take efforts to minimise the waiting and crossing time in areas exposed to mines and possible shelling.
- Ensure that children of 16-17 have unimpeded access to cross into GCA for the purpose of applying for a national ID or a passport for travelling abroad.
- Take measures to restore public transport across the LoC. Similar steps shall be taken with regard to the administrative border with Crimea.
- Raise awareness of citizens about how the fact of owing debts may impact on people's ability to cross the LoC.



Responsibility for maintenance of checkpoints

In 2019, the Government finished maintenance and improvement works at the checkpoints, such as installing sturdier shelters in the waiting area, introducing some bomb shelters and additional work stations to expedite the crossing. Nevertheless, harsh weather conditions, sporadic shutdowns of electricity and fuel, long waiting times still make crossings a stressful experience for many, especially elderly persons and persons with disabilities. In some cases, the shelters provided in the waiting areas are not large enough to accommodate the long queues. While each checkpoint has some water and sanitation facilities, there are no sustainable measures for maintenance and upkeep. Humanitarian actors remain 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 ten months of 2019, at least 38 people have died from medical conditions and over 600 required serious medical assistance while at the checkpoints.³ To ensure that conditions at the checkpoints are adequate, it is crucial that a single state authority maintains the facilities for civilians and provides emergency medical assistance. While Resolution #815 authorizes the civil-military administrations of Donetsk and Luhansk oblasts to maintain the checkpoints, the administrations state that this is not consistent with the legislative framework on civil-military administrations. It is important to introduce respective legal provisions and provide the civil-military administrations with sufficient budgetary allocations to fulfil this responsibility.

Recommendation:

- Ensure that the civil-military administrations have full legal authority to maintain dignified conditions at EECPs.
- Allocate sufficient funding 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 to the nearest settlements.
- Take similar actions to improve and maintain conditions for civilians crossing checkpoints with the Autonomous Republic of Crimea.

"I have fifty years of work experience. I worked in school as a teacher. I live in Alchevsk. It is a long way to go. I had a permit, but it expired. I am very tired of war."

86-year-old woman at EECF "Maiorske"



Permit system

In addition to presenting their identity documents at the checkpoints, citizens must show an electronic permit. They apply for the permit via the internet or paper applications to Coordination Centre/Group. Processing of both written and e-applications may take up to 15 working days. The added value of the electronic permit is not clear, since normally Ukrainian citizens cross borders and checkpoints in their own country using only the national passport or identity document. The Government Resolution #815 maintains the system of electronic permits; both single-use and multiple-use permits are available. Prior to 2019, the rules stated that the multiple-use permits expired after one year. Then the

³ This statistical data is not collected by state authorities and presented here as observed and collected by UNHCR.

State Security Service issued instructions stating that if people applied for an electronic permit after 28 March 2019, their permit would be issued without an expiration date. In practice, however, people who renew their documents still receive permits with an expiration date in one year's time. The result is additional administrative steps for persons who wish to cross the LoC.

Recommendation:

- Review the establishment and implementation of the permit system to assess whether this restriction is necessary and proportionate. At a minimum, the non-expiry of permits should be implemented with an unimpeded access to this type of permits.



Transportation of goods and cash across the contact line

In a positive development, Government Resolution #815 changed the approach regarding goods/items transfer from the "list of allowed goods" to the "list of prohibited and limited items" elaborated by the Ministry for Veteran Affairs, Temporarily Occupied Territories and IDPs in its Order #92. However, some limitations appear disproportionate. For example, the Order states that within the overall volume of 75 kg allowed to be transferred from NGCA, a person cannot bring more than 2 kg of the same food item and no more than two of each non-food item. For example, people have been told they cannot cross the LoC with large jars of honey or other home-made products that exceeded the limit of two kilograms. These restrictions are narrow and not linked to security matters.

Government Resolution #815 brought clarity to the question of how much cash persons are allowed to bring across the LoC. An individual can bring 50,000 UAH from NGCA to GCA and 20,000 UAH from GCA to NGCA. People crossing the EECPs report that these limits are too low for their personal needs.

Recommendations:

- Review the restrictions related to transfer of food and non-food items from NGCA, adapting the requirements to people's needs. As a matter of priority, since the movement of food items may be important for family's food security, the limit of two kilograms of the same food item should be increased.
- Monitor the implementation of Order #92 in order to ensure that safety and security-related restrictions are not disproportionate.

"6 hours of waiting in line. Freezing. We were standing there like penguins on a sheet of ice ... The woman behind me asked to bury her face in my winter coat. I did not mind if it kept her warm and it made me feel warmer too. Another woman complained that her back got very cold and someone gave her a backpack. They were wearing that backpack in turns..."

Stanytsia Luhanska EECP

ANNEX

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),⁴ 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.

⁴ 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