



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.
- A designated State authority should be directly responsible for maintenance of checkpoints.
- If the system of electronic permits is maintained, then the permits should be of unlimited validity.
- Instead of a list of goods that are permitted for transfer, there should be shorter, precise list of goods that are prohibited for transfer across the contact line.
- The transfer of cash across the contact line should be specifically regulated to avoid abuse.

IMPACT ON SOCIAL COHESION

If the Government of Ukraine implements these recommendations, people will be able to travel safely, smoothly and with dignity between GCA and 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 contact line. Ease of movement through the checkpoints will allow for many everyday interactions among people on both sides of the contact line, which will build bonds of solidarity among citizens, or at least prevent existing bonds from weakening. Furthermore, an improvement in 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.

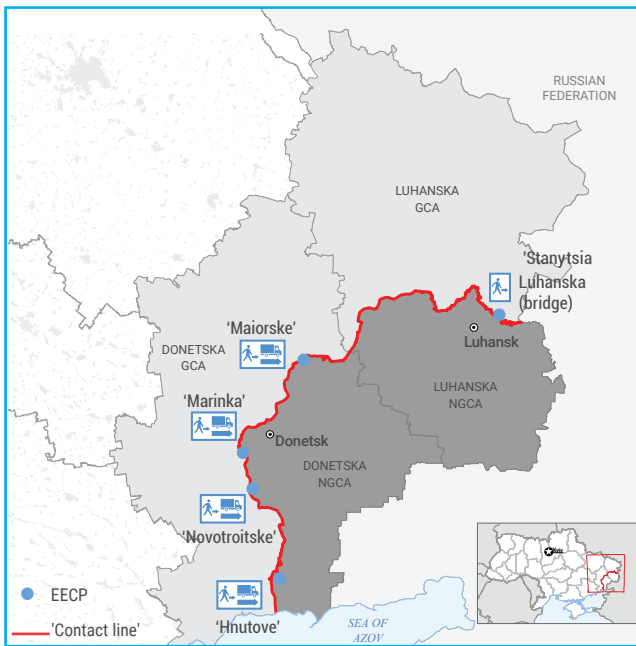
GENERAL OVERVIEW

Over 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 2018, there was a monthly average of 1.1 mn crossings through the checkpoints in the east, or approximately 38,000 crossings daily. This is a 49% increase compared to the same period of 2017, when daily crossings were at the level of 25,500. In addition, an average of 211,000 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

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



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 427 km 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 the only crossing point is limited to pedestrians and requires walking a considerable distance across an unstable bridge.

An update of the regulatory framework regarding the checkpoints remains incomplete. The law “on particular aspects of public policy aimed at safeguarding the sovereignty of Ukraine over the temporarily occupied territories of the Donetsk and Luhansk regions” (No. 2268), which entered into force on 24 February 2018, requires the Cabinet of Ministers to elaborate new rules

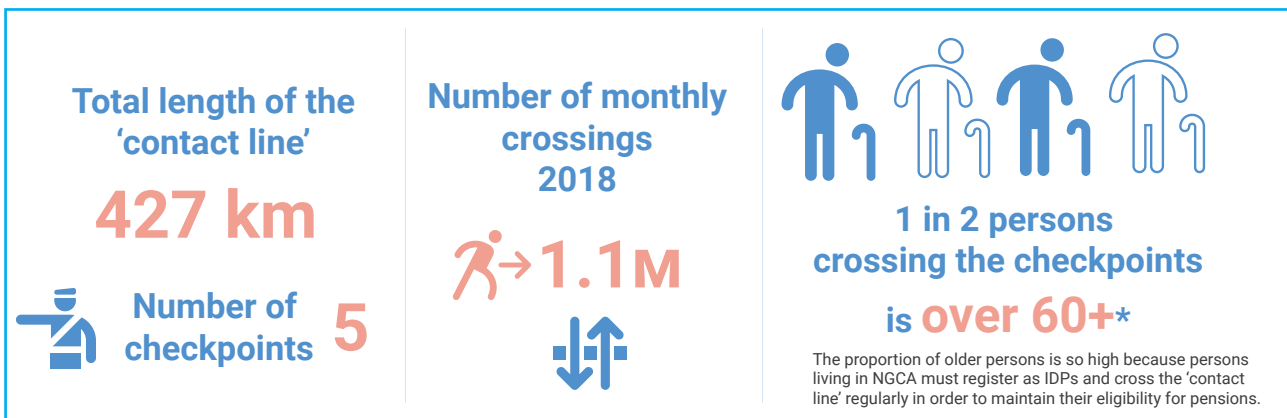
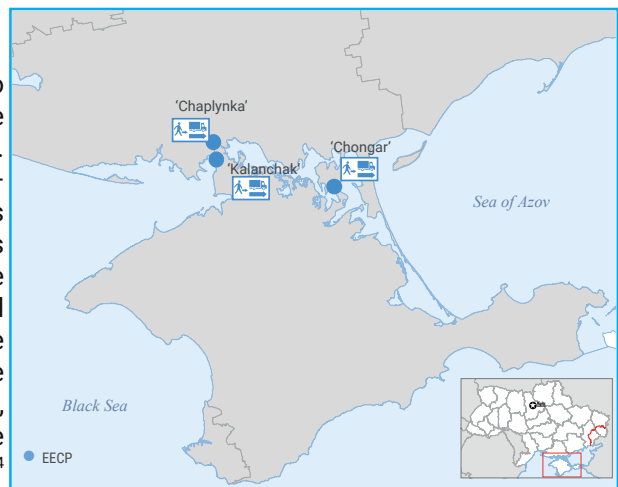
on crossing the contact line and transferring goods and personal belongings. Until the Cabinet of Ministers completes this task, all the previous rules remain in place. Although the Ministry of Defense published a draft text for public discussion in June, the Cabinet of Ministers has not yet adopted the resolution.

MAIN CHALLENGES AND RECOMMENDATIONS

Number of crossing routes and security concerns



Since there are only five checkpoints to accommodate the large numbers of people who wish to cross, long queues form. People must wait for significant periods – in November 2018, the majority of persons reported spending between four and five 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 2018, there were three security incidents (two at Olenivka EECP and one near Marinka EECP) in which one civilian man was killed, and two civilian men and three civilian women were injured by small arms fire while crossing the contact line.⁴



2. See, for example, Right to Protection, Crossing the Line of Contact, November 2018 at https://www.humanitarianresponse.info/sites/www.humanitarianresponse.info/files/documents/files/report_eeep_november_2018_eng.pdf. In November, 63% of persons surveyed were over the age of sixty.

3. Ibid.

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

Although the Government made improvements to the conditions at the checkpoints in 2018, the checkpoints lack bomb shelters and other infrastructure to protect civilians from attacks.

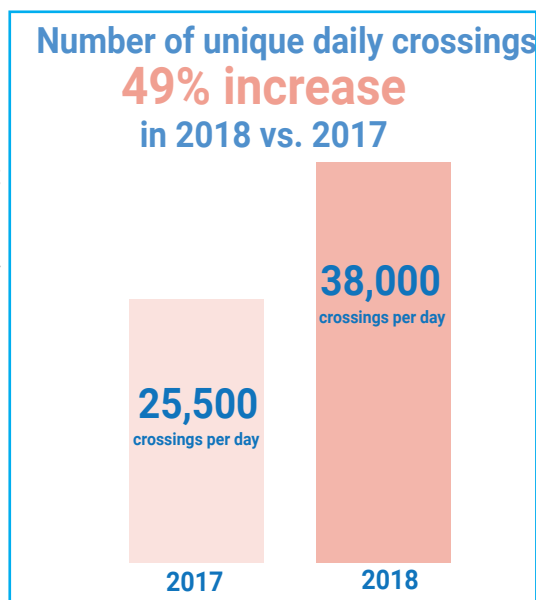
Recommendation:

- 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 areas⁵; 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.

Responsibility for maintenance of checkpoints



In fall 2018, the Government conducted some maintenance and improvement works at the checkpoints, such as installing sturdier shelters in the waiting area and additional work stations to expedite the crossing. This was an important first step, and it is important to continue further improvements in 2019. Harsh weather conditions and 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 2018, at least 14 people have died from medical conditions and over 600 required serious medical assistance while at the checkpoints.⁶ To ensure that conditions at the checkpoints are adequate, it is crucial that a single state authority maintains the facilities for civilians.



The draft resolution shared by the Ministry of Defence authorizes 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 to the nearest settlements.
- Take similar actions to improve conditions for civilians crossing checkpoints with the Autonomous Republic of Crimea.

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. Some persons face challenges in applying for the permit, especially older persons or those without access to internet or computers.

While written application is possible, its processing may take up to 15 working days. The value-added 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 draft rules published by the Ministry of Defense would maintain the permit system.

In 2017, the Temporary Order relating to the checkpoints was amended to allow for the electronic permits

"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 EECP "Maiorske"

5. This action depends not only on the Government of Ukraine, but on the agreement of other actors.

6. This statistical data is not collected by state authorities and presented here as observed and collected by the monitors of the "Right to Protection".

to be issued with an indefinite validity period, rather than annually. This would save hundreds of thousands of persons from the additional bureaucratic hurdle of renewing their permits. Despite this amendment, the authorities continue to require annual renewal of the electronic permits.

Recommendations:

- The Government of Ukraine should 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.

Transportation of goods across the contact line

Under current regulations, civilians are allowed to carry goods across the contact line only if the goods are considered “permissible” as per a list drawn up in a governmental order.⁷ It is not possible to exhaustively list all the goods that civilians may need to bring across the contact line, such as specific medical equipment or food items. The State Fiscal Service (SFS) is obliged to assess all items taken across the line in light of this list, resulting in serious delays and disproportionate restrictions.



The draft resolution proposed by the Ministry of Defense in draft rules of crossing the line of contact would change this approach and instead formulate a list of goods prohibited for transfer. This would be more fair and easier to implement.

On 2 November 2018, the Joint Forces Operation presented an order stating that a person could cross the checkpoint carrying goods only once per day, reportedly in order to preclude cross-contact line trading.

“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 EECF

Recommendation:

- The new resolution should allow persons to cross the contact line with any goods that are not prohibited; the list of prohibited goods should be clearly specified and justified.
- In line with the rule of law requirements, the new resolution should be clear and unambiguous as to its interrelation with other existing regulations and foreseeable as to its effects to allow individuals to regulate their conduct.

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 sometimes apply Order No. 39 arbitrarily and confiscate amounts in excess of 10,000 UAH.⁸ In such incidents, the SFS opens criminal proceedings under article 258-5 of the Criminal Code (“financing terrorism”) and transfers the cases to the State Security Service of Ukraine (SBU) for investigation.



Recommendation:

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

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),⁹ the UN

7. Order No. 39 of the Ministry of Temporarily Occupied Territories and IDPs.

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

9. 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

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.