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COMMUNICATION FROM THE COMMISSION

Providing operational guidelines for external border management to facilitate border crossings at the EU-Ukraine borders

COMMISSION COMMUNICATION

Providing operational guidelines for external border management to facilitate border crossings at the EU-Ukraine borders

Following the start of the Russian military invasion of Ukraine on 24 February 2022, the European Council, in its conclusions issued the same day, condemned Russia's unprovoked and unjustified military aggression against Ukraine in the strongest possible terms, underlining the gross violation of international law and the principles of the UN Charter, and the undermining of European and global security and stability.

The European Union is directly impacted by the war on its external borders, notably through increasing migratory pressure resulting from the many thousands of persons seeking protection in EU Member States. Within a few days, by the beginning of March, more than 650 000 displaced persons have arrived in the European Union through Poland, Slovakia, Hungary and Romania. These numbers are expected to increase even more. The waiting times at the border crossing points are constantly rising while queues and congestions are reported, especially on the Ukrainian side of the border.

The European Union is facing a situation characterised by a mass influx of Ukrainians and other third country nationals residing in Ukraine at the time of the conflict. In this context, the European Council called¹ for taking forward the work on preparedness and readiness at all levels and invited the Commission, in particular, to put forward contingency measures. The extraordinary Justice and Home Affairs Council of 27 February 2022 also commended the Commission's intention to propose recommendations on the conduct of security checks².

This guidance is intended to assist the Member States bordering Ukraine in the current situation at the external borders of the EU resulting from the Russian aggression on Ukraine. The guidance is focused on the measures available to the Member States in order to ensure the effective and efficient management of the crossing of persons fleeing Ukraine through the borders with Poland, Slovakia, Hungary and Romania and to avoid congestions at and around the borders, while maintaining a high level of security for the entire Schengen area.

In particular, the guidance provides a comprehensive overview of facilitation measures concerning border controls which are available under the Schengen rules³, while still ensuring the necessary level of border checks. The Commission recommends to use this flexibility in accordance with these operational guidelines.

¹ <https://www.consilium.europa.eu/en/press/press-releases/2022/02/24/european-council-conclusions-24-february-2022/>

² <https://www.consilium.europa.eu/en/meetings/jha/2022/02/27/>

³ Regulation (EU) 2016/399 of the European Parliament and of the Council of 9 March 2016 on a Union Code on the rules governing the movement of persons across borders (Schengen Borders Code), (OJ L 77, 23.3.2016, p. 1).

These measures include:

- simplification of border controls for certain categories of persons, including vulnerable persons, such as children, and other categories, such as transport workers that find themselves in Ukraine while carrying out their services;
- the possibility to organise border controls outside of border crossing points;
- special arrangements for crossing the borders by rescue services, police, fire brigades and border guards, seafarers regardless of their nationality;
- the establishment of emergency support lanes, in order to ensure access and return of organisations providing humanitarian aid to people in the Ukrainian territory;
- outside the scope of the Schengen rules, the waiving of customs duties and measures to facilitate the entry of pet animals travelling with their owners from Ukraine.

Finally, this guidance strongly recommends that the Member States concerned take advantage of support by European Border and Coast Guard Agency (Frontex) in all activities carried out by the border guards at the borders. In this respect, Frontex should give priority treatment to all the requests of the Member States concerned to the EUROSUR fusion services, in particular for providing regular monitoring with tailor made imagery services, including satellite imagery, covering the adjacent pre-frontier areas of Ukraine to assess the situation and providing tailored multipurpose aerial surveillance service. The Commission also strongly encourages Member States with a common border with Ukraine to request support from Europol.

Technical and operational reinforcement, by migration management support teams (Frontex/EU Asylum Agency/Europol, and other relevant agencies) may be provided to support the Member States faced by disproportionate migratory challenges, in line with Article 40 of the European Border and Coast Guard Regulation⁴. The Commission coordinates that process together with the relevant agencies and the Member States.

In view of the Commission's proposal to trigger the Temporary Protection Directive⁵, Member States should, in liaison with the Commission, cooperate and exchange information to facilitate the implementation of temporary protection. This should be done through a 'Solidarity Platform' whereby Member States exchange information regarding their reception capacities and the number of persons enjoying temporary protection on their territories. This solidarity platform would ensure coordination of these instruments, which could involve EU Agencies and other Union tools or means available to the Member States.

To further support Member States in meeting the current challenges at the external border with Ukraine, the Commission will convene meetings at expert level to discuss the implementation of these guidelines taking into account also possible future guidance that Frontex will issue.

⁴ Regulation (EU) 2019/1896 of the European Parliament and of the Council of 13 November 2019 on the European Border and Coast Guard and repealing Regulations (EU) No 1052/2013 and (EU) 2016/1624, (OJ L 295, 14.11.2019, p. 1).

⁵ Directive 2001/55/EC.

1. Reducing congestion at border crossing points

Legal basis: Article 9 SBC

In order to increase the fluidity of the traffic at the border, the Member States should make use of the support of Frontex and Europol. Frontex can deploy the standing corps to support the identification of the persons wanting to cross the border, including nationality screening and checks of travel documents (as well as COVID vaccination certificates), in particular by providing support with Eurodac equipment, SIS checks and staff supporting registration and fingerprinting of those third-country nationals who are subject to this obligation⁶. Europol, in particular, can deploy guest officers to support Member States in carrying out second-line checks at the border.

To facilitate border crossings, Member States may avail themselves of the provisions in the Schengen Borders Code (Article 9) which provide that border checks at external borders may be relaxed, as a result of exceptional and unforeseen circumstances.

Such exceptional and unforeseen circumstances are met where unforeseeable events lead to such intensity of traffic that the waiting time at the border crossing point becomes excessive and all resources have been exhausted as regards staff, facilities and organisation. The current situation in Ukraine, provoked by the Russian aggression and leading to an intense movement of persons fleeing or returning from the war zone, justifies the temporary relaxation of border controls at the Ukrainian border to the EU.

Border guards may apply relaxation vis-à-vis all or certain groups of travellers. When deciding upon the targeted application of relaxation, the following criteria should be taken into account when deciding whom to check or not to check:

- citizenship of an EU Member State;
- an already existing residence status in an EU Member State;
- the nationality of the traveller (in particular whether the third-country is visa-required or visa exempted);
- the residence status in Ukraine of third-country nationals not holding Ukrainian citizenship;
- the vulnerability and age of travellers, having particular regard to the best interest of the child;
- any available information on security threats, such as terrorism or organised crime, on possible threats to public security and on illegal immigration risks;
- the existence of a biometric passport;
- the existence (or absence) of a valid travel document in general;
- the status as a key worker, such as transport workers (including seafarers), regardless of their nationality, holding valid documents proving their profession.

⁶ Applicants for international protection and third-country nationals apprehended in connection with irregular crossing of external borders.

In any case, attention should be given to the respect of family unity during the border control procedures and it should be assured that children are never separated from their parents or accompanying family members or caretakers.

Where there is doubt as to the identity of the person and/or on a possible threat as specified above, the border guard should not make use of the relaxation possibility but carry out a regular border check, in accordance with Article 8 of the SBC.

In view of the exceptional situation at the external borders of the Union with Ukraine because of the Russian military aggression, and the potential security issues created at the border by a mass influx of Ukrainians and other third country nationals entering the Union from Ukraine, resulting in long queues and gathering of crowds of persons at the border, Member States could alternatively, or cumulatively, i.e. for those categories of persons where border checks are not relaxed, consider carrying out border checks not at the border crossing points but at a different, safe location away from the border. The checks can be carried out during or after the transport of the travellers to that safe location.

This would allow the prevention of any threat to the internal security and public policy of the Member States by ensuring that notably security and identity checks in the Schengen Information System (SIS) and other relevant databases, as well as health checks, are carried out despite the critical situation on the border, whilst at the same time avoiding the security issue which the large crowds gathering at the border could entail. Member States can ask for Frontex to support the identification of the persons, including nationality screening and travel documents checks, in particular by providing support with Eurodac equipment and staff supporting registration and fingerprinting of those third-country nationals subject to that obligation.

2. Derogations from the fulfilment of entry conditions for third country nationals

Legal basis: Article 6(5)(c) SBC

Member State are free to authorise entry of third-country nationals who do not fulfil one or more of the conditions laid down in Article 6(1) SBC (entry conditions for third country nationals) to their territory **on humanitarian grounds**, on grounds of national interest or because of international obligations. This wide derogation may be applied in the current crisis to allow entry to all those fleeing the conflict in Ukraine.

Member States should suspend the application of entry bans/SIS alerts on prohibition of entry and stay in the EU based on migratory grounds (Article 11 of Directive 2008/115/EC). However, due consideration is to be given to entry bans issued on the basis of security reasons.

Member States should ensure that non-Ukrainian third country nationals, other than those covered by the scope of the Temporary Protection Directive⁷ or who have a right to stay in the Union on the basis of other grounds, transit to their countries of origin or usual residence after entry. So as to avoid situations of illegal stay, Member States are encouraged to provide – if needed – assistance for their repatriation or regularisation, as appropriate. The Frontex Standing Corps can be deployed to support these assisted departures.

Where possible, Member States should make available, upon entry, easily understandable leaflets in the languages most frequently used or understood by these third-country nationals, indicating where to receive assistance and explaining the basic procedures to be followed.

In case of lack or insufficient documentation of third-country nationals including children, Member States are encouraged to issue an arrival declaration and/or the (provisional) travel documents listed in:

https://ec.europa.eu/home-affairs/travel-documents-issued-member-states-part-ii_en.

This is particularly important in order to ensure that the onward travel – and the future return – of these third country nationals remains possible.

Some Ukrainian nationals may want to travel further to other EU destinations, to reunite with family or friends in most cases. These potential passengers presenting themselves with expired passports, or only ID cards or birth certificates for children are under the current rules not permitted to travel between Member States. While this is the decision of the carriers to allow such persons on board, Member States are encouraged to support them in this regard. In particular, with regard to connections to or from Member States where internal border controls have not yet been lifted, they could consider providing assurances to the carrier that they will not be fined for carrying passengers who are not adequately documented due to the ongoing conflict in Ukraine. Member States are encouraged to exercise flexibility in facilitating such cases and to exempt carriers from paying such fines.

3. Crossing of external borders outside official border crossing points in unforeseen emergency situations

Legal basis:

- Article 5(2)(b) SBC
- Article 9 SBC

In unforeseen emergency situations, Member States may allow individuals or groups of persons to cross external borders outside officially notified border crossing points as well as outside fixed opening hours. It is suggested that Member States set up

⁷ As set out in Council Implementing Decision (XXX) establishing the existence of a mass influx of displaced persons from Ukraine within the meaning of Article 5 of Council Directive 2001/55/EC of 20 July 2001.

temporary border crossing points, which may be opened for the duration of the emergency situation. The use of such temporary border crossing points may be combined with the flexibility offered under Article 9 SBC (relaxation of border checks). The setting up of temporary border crossing points could be useful in the current situation, for example in case the roads to border crossing points are being blocked by abandoned cars.

4. Facilitation for rescue services

Legal basis: Annex VII, point 7 SBC

Member States may provide for arrangements under national law concerning the entry and exit of members of rescue services, police, fire brigades acting in emergency situations as well as border guards crossing the border in exercise of their professional tasks.

Bilateral cooperation with Ukraine could take place on an ad hoc basis with a view to, for example:

- towing away abandoned cars blocking access to border crossing points, and/or
- providing medical assistance, food, water or other support to people waiting to cross the border.

5. Setting up of emergency support lanes

In order to ensure swift and safe access and return of humanitarian convoys and providers of emergency assistance offered under the Union Civil Protection Mechanism as well as humanitarian aid to people in the Ukrainian territory, Member States should designate special lanes at border crossing points for that purpose marked as “Emergency Support Lane”.

Priority should be given to keep the traffic flow on these lanes fluid at any moment. Member States may also set up such lanes outside or next to already existing border crossing points, ensuring the swift delivery of the assistance and the safety of humanitarian workers.

In case the configuration of a border crossing point allows for, and a sufficient number of customs officers can be deployed by the Member States, the designation of similar lanes for trucks is encouraged, in order to ensure both the continued supply of good and services as well as the return of transport workers from Ukraine.

6. Guidelines to competent authorities acting at the border on personal belongings and valuable items brought by displaced persons from Ukraine.

Articles 4 to 11 of Regulation (EC) No 1186/2009 of 16 November 2009 setting up a Community system of reliefs from customs duty can be used for processing the personal property of displaced persons from Ukraine. According to Article 11 of this

Regulation, the competent authorities may derogate from certain conditions limiting duty relief when a person has to transfer his normal place of residence from a third country to the customs territory of the Community as a result of exceptional political circumstances. As a consequence, personal belongings can be brought by displaced persons from Ukraine into the Union without any customs duties being applied. Customs declarations could also take a simplified form, including oral declaration.

Similarly, Articles 4 to 11 of Council Directive 2009/132/EC of 19 October 2009 determining the scope of Article 143(b) and (c) of Directive 2006/112/EC as regards exemption from value added tax on the final importation of certain goods can be used for the processing of the personal property of displaced persons from Ukraine. According to Article 11 of this Directive, the competent authorities may derogate from certain conditions limiting VAT exemption when a person has to transfer his normal place of residence from a third country to a Member State of the Community as a result of exceptional political circumstances. As a consequence, personal belongings can be brought by displaced persons from Ukraine into the Union without any VAT on importation being applied.

Article 32 of Regulation (EU) 576/2013 on the non-commercial movement of pet animals can be used for facilitating the entry of pet animals travelling with their owners from Ukraine. To ease this process and by way of derogation from the conditions provided for non-commercial movements of pet animals, Member States may authorise, in exceptional situations, the non-commercial movement into their territory of pet animals which do not comply with the said conditions under specific permit arrangements. Veterinary competent authorities in all Member States were already informed about this possibility and started to implement such arrangements at borders.

In the case of cash (currency, bearer negotiable instrument or commodities used as highly liquid stores of value, such as gold), the provisions on cash controls laid down in Regulation (EU) 2018/1672 would need to be applied to the extent possible under the specific circumstances. This could be done by declaring the cash carried of a value of EUR 10 000 or more, either via an incomplete cash declaration or simply via a self-declaration containing the following information:

- Carrier of the cash with contact details, and
- Amount of cash.

An appropriate risk analysis and follow-up should nevertheless be ensured by the competent authorities.

Authorities should be vigilant to the risk that fraudsters may take advantage of the crisis to illegally import dangerous goods (weapons, explosives, etc.).

At the point of entry into the Union, officers in charge of external border controls should enquire and check if a person is in possession of a firearm.

If a person requests to carry a legal civilian firearm with him/her into the territory of the Union, the EU rules on import of civilian firearms apply, notably an import authorisation is needed in line with Regulation (EU) 258/2012 on import/export of

civilian firearms in conjunction with Directive (EU) 2021/555 on control of the acquisition and possession of weapons (codification).

It is recommended that officers in charge of external border controls work, where possible, with their counterparts on the Ukrainian side of the border crossing point to create a possibility for persons carrying a firearm, who do not meet the EU import requirements, to dispose of such firearm in a safe manner before crossing the border.