SOLUTIONS ROADMAP

Current problems
of Ukraine-Schengen border
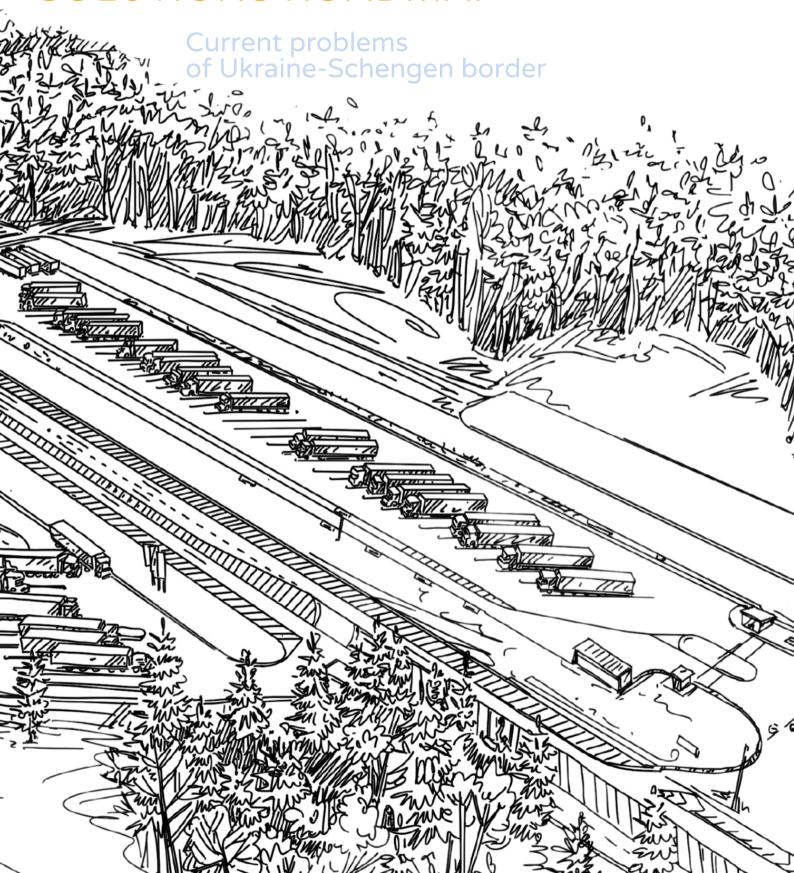
Publication analyses the key issues of functioning of Ukraine's border with Schengen countries – Poland, Slovakia, Hungary. The issues of building new border-crossing points, streamlining of border space via creation of service zones, electronic queue projects, joint control an access to information are in focus.

The publication accompanies analytical report "Border 777. Current problems of Ukraine-Schengen border", being an attempt to respond to challenges revealed during analysis of problems of border management.

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KYIV 2021

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Regulating the Pre-border Area

In Ukraine, the pre-border area is not governed by a specific piece of legislation. Nor is it effectively organized.

As a result, border crossing becomes a chaotic experience that leads to financial losses, harms the environment, jeopardizes road safety, creates social pressure, and paves the way for corruption risks.

Financial losses

The Ukrainian company Modern-Expo estimates that the idle at the border results in yearly losses of $50 million

According to a 2009 British study, the trade-related procedures, including border crossing, make up between 2-15% of the product's cost. The reduction of the idle at the border by one day reduces the cost of imported fruit and vegetables by 0,9%

Environmental detriment

The long auto queues and idles that result from the infrastructural and organizational problems at the Ukraine-Schengen border increase the emission rates

Waste at the pre-border area is a recurrent issue as well

Road safety

The queues, which are sometimes hours or even days-long, violate the drivers' right to rest, increasing the chance of car accidents.

Lack of effective space organizing in the pre-border area also leads to car accidents. Some of them include fatal ones

Social pressure

The negative effect of queues on the pre-border area creates tensions among the locals

Corruption risks

The chaos at the pre-border area serves as a fertile ground for corrupt activities like selling spots in the queues or skipping it altogether.

SOLUTION

To tackle the aforementioned problems, it is necessary to create/institutionalize the pre-border service zones and launch e-queues at the checkpoints.

Necessary Steps

Service zones

To integrate service zones infrastructure into algorythm of crossing the border. Possibility of entry to the checkpoint via service zone should be incorporated into legislation.

To eliminate the conceptual blurriness from the relevant Ukrainian law and have the terms properly defined. At the moment, at least four different terms are being used to refer to "service zones", which could be viewed through the lens of centralized and decentralized models.

To do so, relevant Ukrainian agencies have to develop and approve the Regulation on the Typical Service Zone, which should either update, or replace, the current *Regulation on the Service Area for Persons and Vehicles at the Border Checkpoints for International and Interstate Road Transport*, approved by the Order of the Administration of the State Border Guard Service of Ukraine № 643 of 31.08.2009, and other related regulations.

The new Regulation must clearly allot responsibilities to correspondent agencies at the pre-border areas and define who is in charge of overseeing the infrastructure's development, managing waste, etc.

Since multiple agencies and societal groups are interested in the matters pertinent to the development of the pre-border area, both local and national executive authorities should be engaged in the development of the Regulation.

Necessary Steps

E-queues

Give the green light to the Transcarpathian Regional State Administration's draft of the Cabinet of Minister's Decree on "The Implementation of the Pilot Project on Organizing Traffic Queue Management at the International Automobile Checkpoints "Electronic Border Crossing Queue"

The draft should align its financial proposals, such as the installment of e-queue fees, with Ukrainian law and make sure that the border-related services are not monopolized.

Once the Decree has been approved, the relevant entities must ensure its speedy implementation.

To monitor and support the Decree's implementation, it is necessary to create a dedicated subgroup within the Integrated Border Management's Interagency Group.

Consider the launch of e-queues for passenger cars based on the pilot project's assessment.

Potential Checkpoints

The Ukraine-Schengen border does not have enough automobile and pedestrian checkpoints to handle the real volumes of cross-border movement. The capacity of the existing checkpoints is inadequate as well given how many people use them every day. At the same time, the plans put forward by the Ukrainian authorities are overly ambitious due to limited funding and building options.

Ukraine-Schengen border is home to 15 automobile checkpoints, i.e. 15% of the total number that stands at 100. Although the number is low, these checkpoints handle 38% of Ukraine's land cross-border movement. This means that they are functioning on the brink of their capacity. Sometimes they even exceed it.

Although both the national and local authorities continuously unveil new checkpoint construction plans, the reality looks different. Out of the 26 potential checkpoints mentioned in the official documents at the national and local levels between 2010-2020, only two were constructed. Both are located on the territory of Poland.

Some of the projects financed by the international donors are either being implemented inchmeal or stalled altogether. This circumstance shows that Ukraine is incapable of completing border-relate projects.

SOLUTION

To define priority checkpoints, develop a plan for their construction/reconstruction and thus have a clear focus on several main projects.

To finalize the projects financed by the international donors that are already underway, facilitating the further development of the border.

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Necessary Steps

Potential checkpoints

To approve the 2021-2023 Priority Checkpoints Building Action Plan developed by the State Customs Service of Ukraine. If necessary, the Plan should include the results of research carried out by the Dolishniy Institute for Regional Studies of the National Academy of Sciences of Ukraine and the Y.M. Bilokon Dipromisto Research Institute of Urban Design.

To develop a methodology for prioritizing opening and modernization of the checkpoints. It could include variables like transport corridors, migration flows, the landscape's properties, bilateral relations with the bordering country, and the opinion of local communities.

Regularly review and audit the building and modernization processes in accordance with respective methodology.

To devise ar least 7 year-long governmental programs that aim to build new checkpoints, ensure their implementation, and stable access to funding.

International cooperation projects

To finalize the construction/reconstruction projects that have already been commenced under the auspices of international cooperation. For example, the Rava-Ruska, Shehyni, and Krakivets' checkpoints in the framework of the "Polish loan", Luzhanka at the border with Hungary and Uzhgorod at the border with Slovakia.

Joint Control

Joint control entails either the simultaneous or sequential checks of border crossers by border guards from each country at a checkpoint fully located on the territory that belongs to one of the countries only.

Advantages of joint control

- It facilitates immediate communication and data exchange between the border guards, which in turn speeds up the completion of relevant document and customs procedures
- It is an effective way of countering organized crime, smuggling, and irregular migration
- It makes the border crossing more convenient by speeding up the checking process
- It helps to economize on the border infrastructure's development
- It reduces corruption risks

Current state

Although the goal of implementing joint control at the Ukraine-EU border has been mentioned in all strategic border management documents, to date, no progress has taken place. Joint control checkpoints with sequential checks in the same premises are only available at four automobile checkpoints:

- Smil'nytsia – Krościenko
- Hrushiv - Budomierz
- Uhryniv – Dołhobyczów
- Ustyluh-Zosin (only for leaving Ukraine/entering Poland)

The current Ukraine-Poland agreement on joint control was concluded in 2002, before Poland became part of the Schengen Zone. Hence it requires an update. Yet, the Polish representatives are not currently engaged in talks on the creation of new joint control checkpoints with their Ukrainian counterparts.

At the same time, Ukraine is working on joint control agreements both with Hungary and Slovakia. This process is, however, both difficult and cumbersome as Ukrainian law contradicts the Schengen Border Code. Since the Ukraine-Schengen dialogue is effectively stalled, it is virtually impossible to create checkpoints, mentioned in documents envisioning joint control, which include:

- Velyka Palad'- Nagyhodos at the Ukraine-Hungary border (Ukraine has already built a road leading to the checkpoint)
- Solomonovo – Cierna at the Ukraine-Slovakia border

Joint control negotiations with Romania has never started.

The reason why Ukraine and the Schengen countries have a difficult time signing the joint control agreements is pertinent to the incompatibility of Ukrainian and Schengen law. According to the Schengen Border Code, joint control at border checkpoints refers to a space exclusively governed by the laws and norms of an EU-member-state-in-question.

Whilst EU law provides that the Ukrainian citizens detained in the joint control area by Ukrainian border guards must be handed over to EU border guards, the Constitution of Ukraine stipulates otherwise.

It is thus necessary to ensure that the joint control agreements are compatible with the Schengen Code. Especially when it comes to detaining citizens who have breached the law.

Ukraine has offered a compromise: to exclude Articles 7 and 8, which oblige the Ukrainian border guards to hand over Ukrainian citizens, who are detained or taken into custody, to their EU counterparts, from the joint control agreement's draft. *Although both Slovakia and Hungary accepted the offer, the European Commission refuses to concede due to the proposal's incompatibility with the Schengen Border Code.*

To come out of the cul-de-sac, Ukraine, the bordering EU member states and the European Commission must hold trilateral consultations and agree on a solution that would be acceptable for all parties.

Necessary Steps

Joint control

To hold comprehensive consultations between ministries and agencies that oversee border management issues.

To discuss the matter during the Integrated Border Management Inter-Agency Group's meeting. Likewise, it is necessary to put to work the governmental delegation headed by the Ministry for Foreign Affairs of Ukraine.

As well as shift the focus of responsibilities from the State Border Guard Service, the flagman of the dialogue between Ukraine and the Schengen countries, to the Ministry for Foreign Affairs and the Ministry of Justice, which is in charge of the talks between the bordering states.

To organize trilateral consultations between Ukraine, representatives of the bordering countries, the EU Delegation to Ukraine and the European Commission.

To attract the attention of EU stakeholders, relevant Ukrainian agencies should prepare a report on the joint control problem, have it presented and discussed during the meetings of the EU-Ukraine Association Agreement bilateral bodies: the Association Council and the EU-Ukraine Association Parliamentary Committee.

Together with EU experts, to put forward alternative proposals on how to tackle the incompatibility of Ukrainian law and the Schengen Code.

Access to Information

Border users, researchers, and journalists do not have sufficient access to checkpoints and information about them. As a result, they cannot plan their trips in an informed way, carry out thorough research, or report about what is going on at the border.

If the public finds out more about the border and its running, this will help increase the border's transparency, making its management more effective. It will also enhance the public's demand for the improvement of the border management system.

Current state

Planning the trip

To find out the congestion levels at the Schengen border, the traveler can use the following services:

1. Online maps provided by the State Border Guard Service of Ukraine, which updates them approximately once every 24 hours
2. Video cameras that are available at certain checkpoints only (live streams are connected to the Adobe Flash Video Player that the company ceased to support in December 2020)
3. Facebook page that belongs to the State Border Guard Service of Ukraine office in western Ukraine
4. Independent social media groups

Albeit being available, the State Customs Service's online map is not updated.

Analysis and reports

The State Border Guard Service of Ukraine publishes a database about the border crossing between Ukraine and its occupied territories. It includes data for every checkpoint and month. Yet, to date, the Service has not created a similar database for Ukraine's western border, even though it is available in the bordering countries that publish the relevant statistics regularly.

Likewise, there is a very limited amount of information available online about checkpoints and their running as well as their history, the landscape next to them, availability of certain services, etc.

SOLUTION

To develop and approve a normative document, for example, a Joint order, which would oblige the State Border Guard Service and the State Migration Service to provide up-to-date and accessible information about the state of affairs at the border. This would help travelers to make informed decisions as well as analyze and report about what is happening there, for example, the congestion rates and data on the border crossing.

Necessary Steps

Access to information

To decide on the information's technical parameters (for example, what kind of information should be available?) These parameters may include the regularity of updates, ways of gauging the congestion levels, types of statistical data about border crossing, etc.

To develop a matching proposal, discuss it together with the public, business, local communities and have it subsequently approved

Potential technical parameters for public access

Congestion at checkpoints
- The number of cars in the queue
- The average speed of the queue's movement (every two hours)
- The two closest checkpoints, the distance toward them and the length of queues at them

Data on border crossing:
- Years
- Months
- Days of the week
- Checkpoints
- Parts of the border
- Types of transport

Other data
- Border capacity
- The average volume of cross-border movement in the previous year
- The availability of certain services next to a checkpoint or on the spot such as lavatories, baby changing facilities, car and medical insurance, the internet, ATMs, currency exchange, etc.
- Re-construction/improvement plans (for example, the Rava Rus'ka checkpoint is to launch a pedestrian crossing option in the next two years. The loan provided by Poland to Ukraine enabled its construction)
- The date of the checkpoint's inception
- A concise history behind it

The International Renaissance Foundation is one of the largest charitable foundations in Ukraine. Since 1990 we have been helping to develop an open society in Ukraine based on democratic values. The Foundation has supported about 20,000 projects worth more than $200 million. The IRF is part of the Open Society Foundations network established by investor and philanthropist George Soros.

Site: www.irf.ua

Facebook: www.fb.com/irf.ukraine

Europe without Barriers is a Kyiv-based think tank, founded in 2009, and dealing with issues of mobility, in particular, migration and border management. Activities of the organization are aimed at supporting human rights for free movement and reforms in the sphere of Europen integration, rule of law, countering discrimination, migration policy, and transport.

E-version

https://europewb.org.ua/border-777-dk/

KYIV 2021