



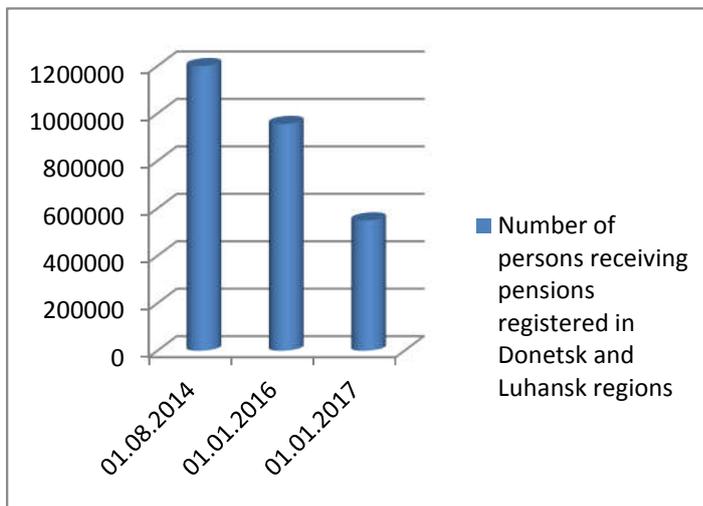
European Union
Civil Protection and
Humanitarian Aid

LEGAL ALERT

July 2017

1. Draft law on restoration of pensions for conflict-affected population was registered in the Parliament

As a result of collective efforts of national and international humanitarian and human



rights actors¹, a draft law enabling IDPs and conflict-affected people to receive pensions without limitations was registered in the Parliament on 12 July². The draft law provides changes to several legislative Acts and removes obstacles for payment of pension to NGCA residents.

Since the beginning of the armed conflict, the Pension Fund of Ukraine has been running an electronic registry of IDP-pensioners. This registry was filled with claimant information and was aimed at facilitating pension payments with

minimum paper forms. Provisions of the draft law will have an impact on the conflict-affected population, including NGCA residents, who are still not being able to obtain pensions.

Highlights of the Draft Law

- It concerns pensions which were accrued but not paid during the period of conflict. It also deals with documentary and information requirement for establishing eligibility. It purports to revoke limitations regarding the period of time for which pensions may be claimed, and pursues the idea of de-linking IDP status from pension.
- The Register. Pensions will be accrued based on documents available at person's disposal as well as information stored in the register.
- It will be an obligation of the local bodies of the Pension Fund to verify documents provided by a pensioner. They will not be authorized to deny pensions on ground of their inability to verify such information.

¹ Norwegian Refugee Council and Donbas SOS leading the group of other actors such as UNHCR, Right to Protection, DRC/DDG, Grupa Vplyvu, Advisers on IDPs issues, Vostok SOS, SVOI

² Draft law No. 6692 as of 12 July 'On amendments to some laws of Ukraine regarding right to receive pension by certain categories of citizens'

- 3-years limitation lifted. The draft law lifts limitation under current law that bars pension payment in cases of claimant's failure to obtain pension in the preceding three years. In some cases, current law allows past pensions for up to 12 monthly payments. The draft law lifts this limitation paving way for retroactive payment without any limitation in the cases of an armed conflict and other force-major circumstances.
- Pensions for people residing in NGCA. The State will form a separate list of pensioners residing in NGCA, including settlements along the contact. It will also permit these pensioners to receive pensions through legal representatives. Payment will be conducted only on bank accounts through the network of authorized banks. It means that those pensioners who are not able to travel or relocate from NGCA, will have to go to GCA once in order to obtain a notarized power of attorney which can later be submitted on their behalf for the pension to be sent to their bank account.

2. Additional reporting for civil society organizations (hereinafter – CSO). On 10 July, the President of Ukraine registered two draft laws³ aiming at introducing additional reporting requirements for CSOs. The Ombudsperson and civil society have already voiced concerns regarding these draft laws.

(i) The drafts pertain to CSOs which:

- Have annual income more than 300 living wages (currently, one living wage equals to UAH 1624 but it changes every quarter) and
- Provide goods/services which are exempt from taxation.

They will be obliged to report on:

- Organizational structure;
- All contracts with entrepreneurs (including beneficiaries) whose annual income received from the CSO is more than 50 living wages;
- Income more than 50 living wages per year received from any contractor (including entrepreneurs, technical assistance projects, etc.);
- Information on CSO's management, parallel management roles in other CSO or legal entities.

(ii) The draft laws provide that entrepreneurs who receive income from donors under technical assistance projects are obliged to report on the income. It also concerns reporting on other third parties who received payments from them in the amount bigger than three living wages. Failure to submit such report shall result in de-deregistration from the unified taxpayers system.

The proposed provisions will lead to double reporting which in case of its non-submission may result in de-registration of CSO as a non-profit, and instead recognizing it as an income tax payer. The decision on de-registration will be taken by

³ (i) Draft law No 6674 on amendments to some legislative acts on ensuring transparency of information for the society regarding financing of civil society organizations and the use of international technical assistance and (ii) draft law No 6675 on amendments to the Tax Code of Ukraine on ensuring transparency of information for the society regarding financing of civil society organizations and the use of international technical assistance

the State Fiscal Service without any court decision or protocol on administrative violation.

The burden is excessive and might be considered as a violation of the right to freedom of association. Excessive burden is often construed when non-profit associations are subjected to greater reporting requirements than for-profit entities⁴.

3. Additional identification of IDPs willing to obtain international and national passports.

In June, two draft laws No 6630 and No 6630-1 aiming at ensuring additional identification of IDPs willing to obtain biometric passports were registered in the Parliament. The text of the draft laws is mainly the same with minor difference with regard to exemption from paying fee for obtaining passports for IDPs and other people not living under Government control. The draft laws fueled criticism from civil society and were further discussed in meetings between NGOs and the State Migration Service of Ukraine (hereinafter – ‘SMSU’).

Main provisions:

- **Identification process is increased from 2-months to 6-months.** The State Demographic Register is run by SMSU and is usually filled with information when people apply for international passport and ID cards. People provide necessary documents and go through identification procedure for the purpose of obtaining international passport or national passport/ID card. The draft allows up to 6 months for the SMSU bodies to conduct identification procedure in case they do not have the required information about the person in their card records (namely, because paper documents are not physically accessible due to the conflict).
- **Provides ground for obtaining confidential bank information.** SMSU will have the power to obtain documents, including those containing photos of person, from banking institutions.
- **Access to different registers and personal data.** The custodian of the State Register Demographic Register will have access to data that is in the possession of tax, customs, pension and social security services as well as the State Register of Civil Acts, and the State Register of Voters.

Concerns:

- Individuals who have lost their national passports and have submitted documents for its restoration will have to undergo lengthy identification procedure and may face increased security risks while travelling through the contact line without passports in their possession.

DRC received inquiries from beneficiaries who applied for adding an updated picture in passport stating that SMSU convinces applicants to obtain ID card instead. For such purpose SMSU requires to submit original of passport. This category also faces increased risk while traveling along the contact line without passports.

- Lengthy identification procedure.
- The draft laws are silent about personal data protection. The law ideally should contain applicant’s consent for handing personal data available in mentioned registers as well as an obligation not to disclose information to the third parties.

⁴ Former UN Special Rapporteur on Freedom of peaceful assembly and association - <http://freeassembly.net/foaa-online/reporting-requirements/>

4. Housing support for IDPs and register of subsidies.

In the previous alert we have mentioned that housing assistance was conditioned to not having ownership in housing or a part of housing by any member of an IDP family. This month the Cabinet of Ministers of Ukraine (hereinafter – CMU) has adopted another amendment to the Resolution No 505 on housing assistance for IDPs, making an exemption for IDP-soldiers participating in ATO and their families. These new group are eligible for IDP housing assistance despite having ownership of property in GCA. Other than that, IDPs, in general, still remain ineligible to access housing assistance if they own housing property or part of it in GCA. In Ukraine, it is not uncommon for people to own fragmented part of housing property due to the method applied for privatization of property after independence.

The amendment has also equaled children with disabilities to adult persons with disabilities in terms of receiving the same amount of assistance – UAH 1312. Previously, they received UAH 884.

On 19 July, CMU has adopted a Resolution⁵ aiming at creating a registry of housing subsidies recipients by 20 December 2017. The registry would contain information relating to all housing subsidy recipients in the country including IDPs. Text of the document is not available yet.

Some terminologies used in this issue of the Alert are taken from the draft laws or current legislation and do not necessarily reflect the position of DRC.

This document is made possible by the generous support of the American people through the United States Agency for International Development (USAID). The contents are the responsibility of Danish Refugee Council and do not necessarily reflect the views of the USAID or the United States Government.

This document covers humanitarian aid activities implemented with the financial assistance of the European Union. The views expressed herein should not be taken, in any way, to reflect the official opinion of the European Union, and the European Commission is not responsible for any use that may be made of the information it contains.

⁵ Resolution of CMU as of 19 July 2017 'On Some Issues Regarding the Assignment and Granting of Subsidies to the Population to Reimburse Expenses for the Payment of Housing and Utilities, the Purchase of Liquefied Gas, Solid and Liquid Fuel for Stoves in Domestic Use'