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SWP Comment

NO. 41 AUGUST 2020

Russia's "Passportisation" of the Donbas

The Mass Naturalisation of Ukrainians Is More Than a Foreign Policy Tool

Fabian Burkhardt

Russia has so far issued almost 200,000 Russian passports to Ukrainians from the "People's Republics" of Donetsk and Luhansk. This undermines the Minsk peace process. The passportisation of the Donbas is part of a tried and tested set of foreign policy instruments. Russia is deliberately making it more difficult to resolve territorial conflicts in the post-Soviet space by creating controlled instability. This demonstrative intervention in state sovereignty exerts pressure on the Ukrainian central government in Kyiv. Domestically, Russia's goal is to counteract its own natural population decline through immigration. Because of the war in eastern Ukraine, more and more Ukrainians have migrated to Russia; this was one of the reasons behind Russia revising its migration strategy in 2018. The liberalisation of citizenship legislation was aimed particularly at Ukraine. By delaying any resolution to the conflict, Russia achieves two objectives simultaneously: it retains permanent influence on Ukraine via the Donbas, and it becomes more attractive to many Ukrainians as a destination for emigration.

Five years after the proclamation of the separatist "People's Republics" of Donetsk and Luhansk in spring 2014, Russia decided to add an additional element to its military, political, economic and diplomatic support for the two secession territories in eastern Ukraine, an element which it considers "humanitarian" in nature. Since April 2019, residents of the separatist-controlled parts of these two regions can become Russian citizens via a simplified procedure. This fast track was made possible by a presidential decree issued by Vladimir Putin, which accelerated the naturalisation process from at least eight years to under three months.

Russia stresses that its passport initiative has humanitarian motives, intended to facilitate the life and mobility of those who do not have a Ukrainian passport or cannot renew it. At the same time, Moscow claims that it is a purely "practical measure" that does not contradict the Minsk Protocol on the pacification of eastern Ukraine. However, the then Ukrainian Foreign Minister, Pavlo Klimkin, categorised passportisation as a violation of state sovereignty and a further step in the "occupation" of his country. In its conclusions of 20 June 2019, the European Council noted that passportisation is contrary to both "the spirit and the objectives" of the Minsk Protocol. In Octo-



ber 2019, the EU Commission issued a guidance to create the basis for the non-recognition of such passports by its member states.

Two circumstances suggest that Russia wants to secure permanent influence over the two separatist territories without directly seeking annexation: previous cases of passportisation — defined as mass extra-territorial naturalisation — in secession territories in Abkhazia, South Ossetia (both Georgia) and Transnistria (Republic of Moldova); and extraterritorial implementation by the Migration Department of the Russian Ministry of the Interior, which has established a cross-border infrastructure for passportisation of the Donbas area. In reality, Russia's aim is to torpedo any resolution of the conflict.

The passportisation decree was published alongside a second presidential decree, which allows accelerated naturalisation for Ukrainians from the Donbas who have a Russian residence permit. Moscow readjusted its migration policy in 2019 and 2020. The Donbas conflict area serves as a source of migration for counteracting, in the long term, both Russia's population decline and shortages in its labour market.

Timing: Ukrainian Presidential Elections

Launching passportisation in the middle of the Ukrainian presidential election campaign was a deliberate move to put the future Ukrainian president under pressure from the outset. In the first round, on 31 March 2019, political newcomer Volodymyr Zelensky (30.24 per cent) was clearly ahead of incumbent Petro Poroshenko (15.95 per cent). In the runoff on April 21, challenger Zelensky scored a landslide victory with 73 per cent of the vote.

It is noteworthy that Zelensky won all the constituencies in eastern Ukraine in which Yuri Boyko, considered a pro-Russian candidate, had the upper hand in the first round (see Map 1). In the election campaign, Zelensky had adopted a more con-

ciliatory tone towards the "People's Republics" than the incumbent president. Peace and reintegration were declared goals in Zelensky's election programme. The Kremlin therefore had to assume that the ex-TV comedian would enjoy more legitimacy in eastern Ukraine than the hardliner Poroshenko. Although no elections were held in the secession territories, Zelensky's electoral success might locally have radiated to the "People's Republics" at least to some degree, and thus undermined Russia's authority there.

Simplified Naturalisation Is Also Motivated by Demographics


On 24 April 2019, only three days after the Ukrainian election runoff, the Kremlin published Decree No. 183, allowing simplified naturalisation for those with permanent residence in the Donbas territories that are not under the control of the Ukrainian central government (non-government controlled areas, NGCA; see Map 2, page 5). Proof of residence must be provided using identity documents issued by the "People's Republics" of Donetsk and Luhansk; Russia has recognised them since February 2017. On 29 April Putin extended the circle of people entitled to the simplified procedure in a second decree (No. 187). Since then, the procedure has also applied to those who had their residence on the present territory of the two "People's Republics" before they were proclaimed in April 2014 and who are in possession of documents that allow them to stay in the Russian Federation. Finally, in mid-July, Decree No. 343 extended the regulations on the original place of residence contained in Decree No. 187. From now on, the entire Donetsk and Luhansk regions, i.e. including those territories that were or are under the control of the Ukrainian central government (GCAs), are considered the original place of residence.

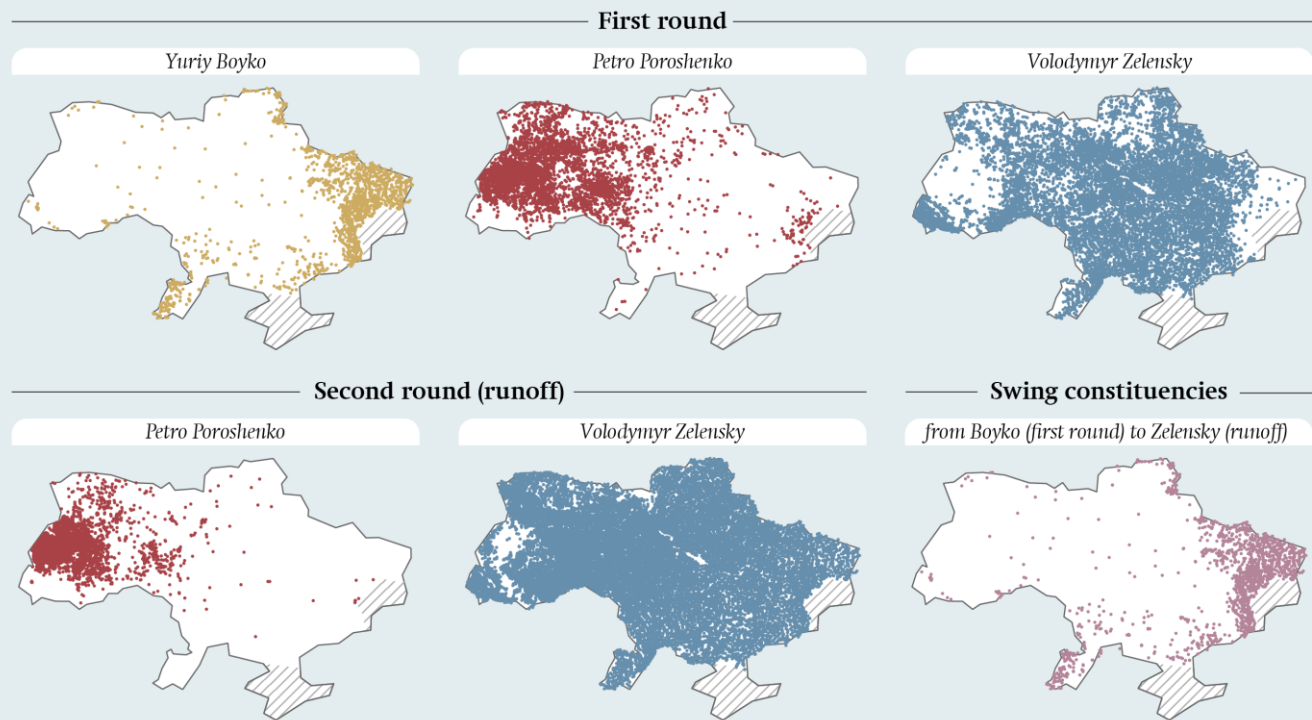
According to the Russian migration authorities, in 2019 more than 136,000 inhabitants of the "People's Republics" of Donetsk and Luhansk and another 60,000

Map 1

2019 Presidential Elections in Ukraine

The electoral geography of the vote demonstrates significant regional differences

 Ukrainian territories where no elections could be held



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Sources: <http://cvk.gov.ua/> and <https://elections.dekoder.org/en/ukraine/presidential/2019/round-1> (accessed 21 January 2020).

people from the Donbas (GCA) received Russian citizenship via the new fast-track procedure. By mid-June 2020, more than 180,000 new citizens from the “People’s Republics” had already been granted Russian citizenship. Although the bureaucratic process is identical in both cases, only the first decree, which allows for mass extra-territorial naturalisation, can be understood as passportisation. The second decree is aimed at people from the Donbas who have migrated to Russia before and have expressed an interest in settling there permanently by formalising their residence status, but who previously had no prospect of speedy naturalisation due to bureaucratic hurdles.

Underpinning the liberalisation of Russia’s citizenship policy is its demographic change. At the beginning of 2020, the population of Russia was 146.7 million.

Since 2016 its natural population decline has been steadily worsening. In 2019 the difference between births and deaths rose to 316,000. Pessimistic scenarios by the United Nations assume that the population could shrink to between 135.8 and 124.6 million by 2050. Both the Action Plan for Demographic Policy and the new catalogue of measures for migration policy published in 2018, envisage that this natural population decline will be offset by migration growth and fast-track naturalisation, with a target of 300,000 new citizens per year.

Ukrainians play a prominent role in this strategy. From the perspective of the Russian state, they represent almost ideal migrants. As Eastern Slavs, they are considered easy to integrate; they bring the necessary skills for the Russian labour market; and they show great willingness to emigrate due

to the ongoing territorial conflict and low levels of income in their country of origin. After the outbreak of war in 2014, it proved bureaucratically difficult to transfer Ukrainian refugees and forced migrants from temporary asylum in Russia to permanent residence status or even citizenship. Under a regional quota system, preference was given to those who had qualifications in demand on the labour market. The Russian state programme, which is meant to promote the resettlement of compatriots, also proved to be of limited suitability for Ukrainians, since it is subject to numerous conditions (age, professional qualifications, region of settlement).

Putin's passport decrees had an immediate effect: the number of naturalisations rose from 269,362 in 2018 to 497,817 in 2019, and the proportion of Ukrainians doubled from around 30 to 60 per cent. On 17 April 2020, President Putin signed another law that makes it much easier for applicants from Belarus, Moldova, Kazakhstan and Ukraine in particular to apply for citizenship. Under the updated legislation, Russian citizenship policy is driven not only by geopolitical and nationalistic motives, but also by the short- and medium-term needs of the labour market and long-term demographic considerations.

Passportisation of Secession Areas: A Comparison

Passportisation is a Russian foreign policy instrument for dealing with territorial conflicts in the post-Soviet space. Previous instances, however, do not allow any clear conclusions to be drawn as to what objective Russia might be pursuing in the Donbas. Initially, there were fears that Russia was distributing passports prior to a military intervention to protect its citizens – as in South Ossetia, where Russia was trying to implement the “Responsibility to Protect” doctrine. Neither this fear nor that of an annexation of the “People's Republics” has so far been validated. Nevertheless, either scenario is possible if the Minsk pro-

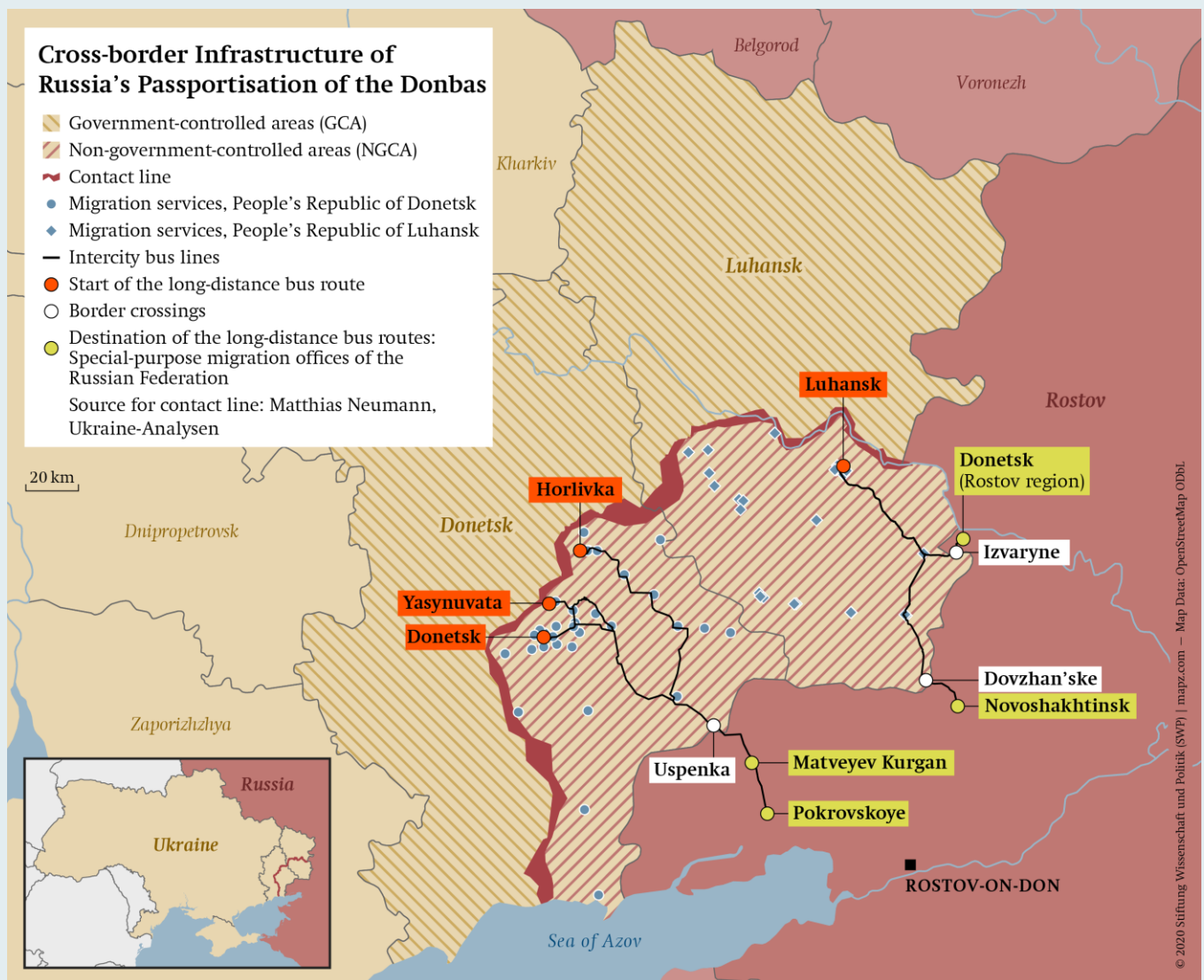
cess fails or the conflict escalates again militarily.

Russia does not pursue a uniform strategy for passportisation. Rather, the Kremlin adapts its foreign policy instruments to the specific circumstances of the secession area concerned and to its own, sometimes changing, objectives. In Transnistria, for example, passportisation began in 2002, long after the hot phase of the territorial conflict; currently, some 220,000 inhabitants (44 per cent) hold a Russian passport.

Two similarities can nevertheless be discerned. *First*, passportisation is normally considered a violation of international law. This was the conclusion reached by the Independent International Fact-Finding Mission on the Conflict in Georgia in its detailed report. The director of the Max Planck Institute for Comparative Public Law and International Law in Heidelberg, Anne Peters, considers the passportisation of the Donbas to be an abuse of rights by Russia.

Second, Russia's extraterritorial naturalisation practice demonstrates a dual understanding of state sovereignty. While Russia claims inviolability of state sovereignty for the international state system and especially for itself, in its eyes post-Soviet states have at best limited sovereignty. This attitude is manifest in the cross-border infrastructure for the passportisation of the Donbas (see Map 2). The Russian Ministry of the Interior has set up migration offices in the Rostov region specifically to process fast-track applications; it has requested additional funds in the 2020-2022 budget for equipment and special payments to the clerks. While passport applications are made in the “People's Republics” themselves, passports for those who are not members of the military or security services are issued exclusively in the Rostov region. The “People's Republics” have put in place long-distance bus lines to make it easier for people to collect their new passports. According to official statistics, the Rostov region alone issued over 160,000 passports in 2019.

Map 2



Secession Conflict and Passportisation as Gerrymandering: Consequences for the Minsk Process

The annexation of Crimea and the war in eastern Ukraine have profoundly changed the country's electoral geography. 3.75 million voters, or 12 percent of those who voted in the 2010 presidential elections, are affected, meaning that the war has also changed the regions' relative electoral importance. The east and south have lost power, the centre and west have gained

accordingly. Simultaneously, regional differences have become less significant, since a large proportion of those who voted for pro-Russian, communist or strongly regional candidates or parties are no longer eligible to vote.

In the meantime, this shift in electoral geography, fuelled by the conflict, has made Ukraine much more homogeneous than before, for example in terms of Ukrainians regarding the country as their homeland or rejecting a customs union with Russia.

The changed electoral geography also affects the incentive systems of the conflict parties. Russia's strategic goal is to exert long-term political influence on Ukraine and prevent its deeper integration with the European Union (EU) and NATO. An unfrozen conflict or a reintegration of the "People's Republics" under the conditions of the Minsk Protocol is more advantageous than two independent mini-states or another two Russian federal regions. For Ukraine, the establishment of territorial integrity and sovereignty is a top priority. However, every member of the Kyiv central government is aware that a reintegration of the Donbas would entail the readmission of hundreds of thousands of voters who, unlike the voters in the rest of Ukraine, are likely to be more critical of Kyiv and more sympathetic to Russia.

President Zelensky's public warnings that a "Plan B" needs to be implemented, which he has been making repeatedly since October 2019, must also be seen in this context. Although the details of this "Plan B" have never been spelled out, it is likely to be a turning away from the Minsk process and thus from reintegration, which would mean temporarily or definitively rejecting the NGCAs. Despite Russia and Ukraine signing the "Steinmeier formula" on October 1, 2019, their contradictory interpretations persist: Russia insists on a literal implementation of the Minsk Protocol, whereas security guarantees are key for Ukraine.

As a vital component of peace agreements, elections normally increase the likelihood that hostilities will not flare up again after the conflict has ended. However, premature elections in secession areas also carry risks. Former rebel parties often garner huge advantages, and elections can serve as catalysts for destructive competition and hate speech, which in turn can lead to violent clashes and, in the long term, prevent peace and democratisation. The close integration of political and military structures in the NGCAs already poses an immense challenge for conducting elections. For several reasons, passportisation

exacerbates this problem, which particularly affects the local elections set out in the Minsk Protocol.

First, the distribution of passports obstructs the negotiation process. Thus, at the meeting of the Permanent Council of the Organisation for Security and Cooperation in Europe (OSCE) on 21 May 2020, the Ukrainian representative presented the Russian passports of the head of the "People's Republic of Donetsk", Denys Pushylin, and the "Foreign Ministers" of the two "People's Republics". These passports, he claimed, were evidence that Russia nominates officials who represent Russia, but not the local population.

Second, passportisation creates potential for division in Ukraine. Whilst its leaders agree that the passports distributed by Russia are not legal and therefore invalid, there is no consensus as to what specific steps the country should take in response. Hardliners have proposed withdrawing Ukrainian citizenship, pensions and other social benefits, or even criminal prosecution by the prosecutor general's office. These proposals have so far remained a rhetorical threat. On 19 May 2020, the issue of passportisation also defeated a bill on the liberalisation of citizenship, which Zelensky had introduced in December 2019. For critics, the introduction of dual citizenship would not only contradict Article 4 of the Ukrainian constitution, but it could also provide a gateway for Russian influence after reintegration, for example if Russian passport-holders resident in the former NGCAs were to stand for election to the Ukrainian Rada.

Third, passportisation is at odds with the local elections to be held under Point 4 of the Minsk Protocol. The current ban on dual citizenship would not allow citizens of the "People's Republics" to stand for election or hold office in state or local governments if they have a Russian as well as a Ukrainian passport. Since Russian passportisation is primarily aimed at members of the civil and military administration, those working in the medical and education sector and de-facto-state-owned enterprises, this would preclude tens of thousands from

being able to exercise their right to stand for election, or taking up state posts in a reintegrated Donbas. In fact, it would result in widespread lustration, which neither the amnesty set out in the Minsk Protocol nor local elections according to OSCE standards allow for, and would be detrimental to a longer-term resolution to the conflict.

Fourth, passportisation intensifies the gerrymandering caused by the war, i.e. the manipulation of borders and constituency composition. In everyday life, which is marked by death, forced migration and expulsion, passportisation creates incentives. It facilitates permanent settlement in Russia for Ukrainians who already have a residence permit there and will make it easier for Ukrainians living in the NGCAs to enter the Russian labour market. By contrast, for those who are socially vulnerable and less mobile, such as parents of several children or pensioners, their Russian passport has so far only had symbolic value. It does not provide automatic entitlement to a Russian pension or state benefits such as child benefit (“maternity capital” for two or more children), since these require proof of being registered in Russia or additional conditions — which the vast majority of people living in the Donbas do not meet even after naturalisation.

The NGCAs are thus losing not only people who have relatives in Russia, but in particular residents of working age and with professions that are in demand on the Russian labour market. In October 2019, a population census was held in the NGCAs for the first time, the results of which have not yet been published. It is estimated that 2 million people live there, about half as many as officially stated (3.7 million). Little is known about their socio-demographic composition. Besides geopolitical attitudes, a significant factor in possible elections is likely to be that the population of the NGCA is less qualified, older, poorer and in less good health than in the rest of Ukraine. Passportisation contributes to the socio-demographic upheaval.

Covid-19 Has Aggravated the Humanitarian Situation in the Donbas

The Covid-19 pandemic has been slowing down passportisation. After a brief closure in mid-March, Russia kept its borders with the “People’s Republics” open, and its special migration authorities continued to work. On 13 April 2020 the “People’s Republics” stopped regular long-distance bus services from the NGCA to the Rostov region. The main delay in the whole process of passportisation is the application for identity documents from the “People’s Republics”, which are required to prove residence. Nevertheless, despite the pandemic, passportisation is expected to continue — according to official figures, there is a backlog of around 98,000 passport applications.

Since 23 March 2020, no passenger traffic has been possible across the contact line between the NGCAs and the GCAs. This has reduced the number of crossings from an average of 550,000 per month to a few hundred, and primarily affects people from the NGCAs who want to draw their pensions, withdraw money, visit relatives, or deal with official business. The pandemic-related isolation of the NGCAs has dramatically worsened the humanitarian situation there.

Outlook and Recommendations

Russia achieves two main goals through its passportisation of the Donbas. By deliberately torpedoing the Minsk peace process, it exerts permanent pressure on Ukraine. Without having to escalate militarily, it thus undermines Ukraine’s sovereignty. Moreover, the delay in conflict resolution contributes to making Russia comparatively more attractive as a country of emigration for Ukrainians. Russia’s demographic change must be considered a driver of its citizenship policy, alongside geopolitical motives.

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Germany and the EU should insist on not recognising any passports issued on the basis of the decree of 24 April 2019. Care must be taken to ensure coherent implementation, since identifying the documents can be technically difficult and time-consuming in certain cases. Since non-recognition is only effective if it is consistently implemented and its causes are clearly communicated, close coordination between the EU consular departments in Russia will be necessary.

With passportisation, Russia is also pursuing a symbolic policy, which has been accepted by parts of the civilian population in the Donbas because of the difficult humanitarian situation. Particularly because of the pandemic, the EU should make efforts to be perceived as a humanitarian actor by the civilian population in the Donbas. The EU should provide additional funding for humanitarian goods. At the same time, pressure is needed on Russia and the de-facto state structures to allow these goods in. The EU should also encourage Ukraine to implement existing plans to simplify crossing of the Line of Contact in the wake of the pandemic, to reduce bureaucracy in processing documents and using social assistance. The isolation of the NGCAs caused by Covid-19 is a massive factor in Ukraine's alienation from them, which inevitably increases Russia's influence.

While the visa-free entry of Ukrainians into the EU is a success, the EU, as an important destination for labour migrants, is also contributing to population decline throughout Ukraine. To counteract this demographic crisis and its social consequences, the EU should develop long-term strategies involving the NGCAs, for example in cooperation with the International Organisation for Migration.

Finally, it should be remembered that in autumn 2019 Ukrainian President Zelensky set himself a deadline of one year for making progress in the east of his country, and

on several occasions referred to a "Plan B". In the absence of alternatives, the Minsk process remains the only viable option. Nevertheless, it is worth considering how a transition period could be inserted into the Minsk process before local elections are held. Basic prerequisites for elections are security and functioning institutions. These take time. After all, gerrymandering, encouraged by emigration and forced migration, has profoundly changed the electoral geography of Ukraine.

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