

## **THEMATIC REPORT**

### **Restrictions to SMM's freedom of movement and other impediments to fulfilment of its mandate**

January to June 2016

#### **Summary**

The freedom of movement of the OSCE Special Monitoring Mission (SMM) to Ukraine is critical to the execution of its mandated tasks and the effective fulfilment of its role foreseen in the Minsk Package of Measures of February 2015 and its Addendum of September 2015, as well as in the Protocol and Memorandum of September 2014. From 1 January to 30 June 2016, the SMM encountered nearly 700 restrictions to its freedom of movement — 80 per cent of which occurred in areas not controlled by the Government. These restrictions undermined the Mission's ability to implement its mandate, including those tasks explicitly requested by the signatories of the Minsk agreements. Areas where high levels of armed violence were observed often coincided with the areas where members of "DPR" and "LPR" and Ukrainian Armed Forces personnel restricted the SMM's freedom of movement. Similarly, on numerous occasions, proscribed weapons were later observed in locations to which the SMM had been denied access.

The Joint Centre for Control and Co-ordination (JCCC) has so far been unable to provide a robust rapid response to these violations. While its intervention was successful in a number of cases, it often appeared ready to accept restrictions and impediments as the norm.

Those responsible for these violations, whatever their actual intent, gave ground for mistrust, thereby increasing tensions and undermining efforts to foster peace, stability and security. Until steps are taken to deal effectively with those responsible and to remedy violations, levels of mutual trust are likely to remain low.

#### **Background**

The SMM continued to monitor and report on developments in line with its mandate (OSCE Permanent Council Decision 1117, dated 21 March 2014). This clearly stipulates that the SMM shall have safe and secure access throughout the country. Additionally, it tasks the SMM to report on any restrictions to its freedom of movement or other impediments to fulfilment of its mandate.

The Package of Measures stipulates that effective monitoring of the ceasefire regime and the verification of the withdrawal of heavy weapons is to be carried out by the OSCE. All signatories of the Addendum to the Package of Measures have agreed that the leadership of the Armed Forces of Ukraine and of the armed formations of "certain

areas of Donetsk and Luhansk regions” should ensure secure and safe access for the SMM. They have agreed that restrictions to the SMM’s freedom of movement constitute a violation of the Addendum. Furthermore, all signatories agreed on the need for rapid responses to these violations. The Addendum to the Package of Measures also stipulates that any interference to the SMM’s use of technical equipment – such as unmanned aerial vehicles (UAVs) and cameras – constitutes a violation as it foresees effective monitoring and verification by the OSCE using all technical equipment necessary.

The Protocol of 19 September 2014 stipulates permanent monitoring and verification on the Ukrainian-Russian Federation state border by the OSCE. Therefore, unrestricted and unconditional access to all areas is essential for maintaining the impartiality and objectivity of the SMM’s monitoring and reporting.

### Categories of restrictions



The SMM’s monitoring is restrained by security threats, including risks posed by mines and unexploded ordnance. Every day the SMM’s freedom of movement is restricted as the sides do not hold to the ceasefire and are unwilling and/or unable to remove mines and other obstacles that restrict the Mission’s movement. Additionally, the sides actively impose various freedom-of-movement restrictions on the SMM. The SMM has consistently reported these obstructions and categorized them as follows: denial of access, conditional access, delay and other impediments.

Denial of access occurs when the SMM is prevented from visiting an area of interest, including an international border area, or when it is prevented from following its planned patrol route and not allowed to pass through a checkpoint or cross the contact line.

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***‘The commander tapped his assault rifle and stated that here, “Mr. Kalashnikov decides who goes where.”’***

*SMM Daily Report 13 March 2015*

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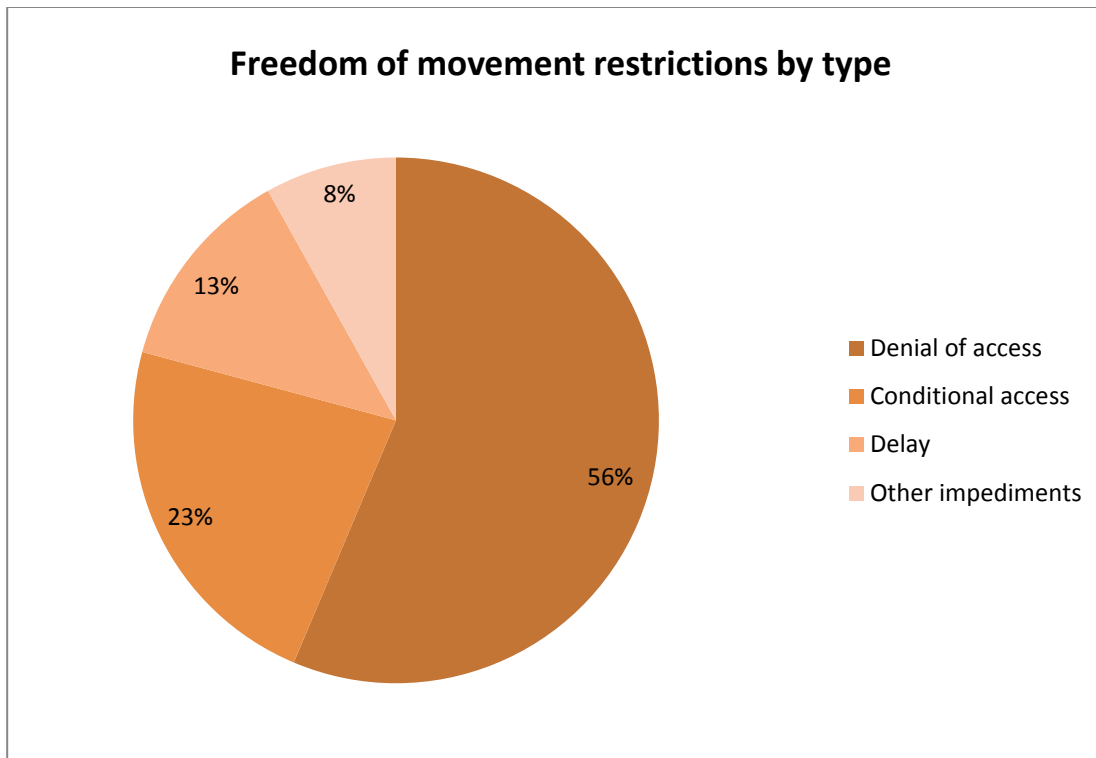
Conditional access is reported when the SMM is granted access to an area only after accepting certain conditions including being escorted, presenting documents (national passports of SMM monitors), or being subjected to vehicle searches.

Delay: The SMM faced frequent routine waiting times, for instance at checkpoints, while those responsible checked the SMM’s documents, noted vehicle licence plate numbers or sought permission from their superiors. However, delays were reported as freedom-of-movement restrictions on occasions when the waiting time was deemed longer than reasonable and therefore unduly limited the SMM’s access.

Other impediments are a form of denied access reported when the functioning of the SMM’s technical monitoring capabilities is obstructed in any way, for example by jamming of its unmanned aerial vehicles (UAV), or interlocutors showing reluctance to interact with the SMM.

During the reporting period, 56 per cent of all violations constituted denial of access, 23 per cent constituted conditional access, 13 per cent were delays, and eight per cent were other impediments.

On a regular basis, the SMM also encounters freedom of movement limitations through denial of access to certain locations by civilian interlocutors, but also through a general reluctance of civilian interlocutors in engaging with the SMM often out of stated fear of repercussions.<sup>1</sup> This type of restriction affects in particular SMM human rights monitoring. It is hardly quantifiable and does not form part of the statistical data in this report.



## Overview of incidents

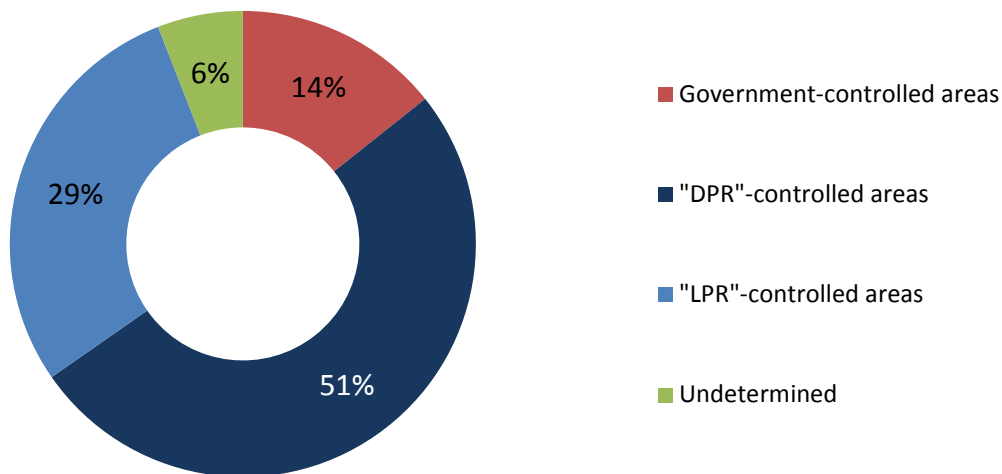
Ukrainian Armed Forces and armed formations restricted the SMM’s freedom of movement on 692 occasions, of which 353 occurred in “DPR”-controlled areas, 199 in “LPR”-controlled areas, and 99 in government-controlled areas. In 41 cases, including some incidents of jamming of UAVs, it was not clear where the act of impeding SMM’s monitoring originated or it originated in areas not under control of either side.

In June the SMM noted greater engagement on the part of the JCCC and a decrease in the number of restrictions to its monitoring. This may be explained in part by measures undertaken by the JCCC and the establishment of a dedicated SMM JCCC liaison team to facilitate more effective co-ordination between the JCCC and the SMM.

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<sup>1</sup> For instance, interlocutors (mostly in areas outside government control) have shown a marked reluctance to converse with the SMM, often citing an order from some “authorities” as the reason. Such obstructions undermined the SMM’s efforts to conduct human rights monitoring and establish contact with local “authorities”, civil society and members of the local population as foreseen in the Mission’s mandate. Examples of this include for instance cases where the SMM was not allowed access to hospitals without prior “authorization”.

## Freedom of movement restrictions by area



Not only have the above-mentioned armed formations restricted the SMM's ability to monitor effectively, at times these restrictions involved threats or use of force. Such incidents have repeatedly forced the SMM to implement risk mitigation measures that



have reduced the Mission's freedom of movement for extended periods. In addition, the lack of information on follow-up action and measures taken to discipline those threatening the SMM has created an environment of impunity, which in turn encourages repeat violations. Significant security incidents occurred during the reporting period.

- On 7 January in Horlivka (39km north-east of Donetsk) armed "DPR" members forced SMM monitors to the ground at gunpoint and detained them temporarily;
- on 16 January an SMM vehicle was hit by small-arms fire;
- on 7 April a bullet hit an SMM vehicle and monitors were threatened at gunpoint;
- on 9 April and 27 May SMM patrols came under small-arms fire (s. photo);
- on 28 May, at a "DPR" checkpoint in Shyrokyne (20km east of Mariupol), an armed man, after firing a burst of shots into the air, pointed his automatic rifle at an SMM vehicle and gestured for them to turn around; and
- on 22 June an SMM patrol was caught in mortar shelling.<sup>2</sup>

<sup>2</sup> See [SMM Spot Report 17 January](#); [SMM Spot Report 7 April](#); [SMM Spot Report 9 April](#); [SMM Spot Report 27 May](#); and [SMM Spot Report 22 June](#).

Overall, armed men restricted the SMM's freedom of movement, using threats, in 14 instances.

### *Passing through checkpoints*

Armed men restricted the SMM's freedom of movement at entry-exit checkpoints along the contact line on a total of 215 occasions, including 87 denials of access. At "DPR" checkpoints in Olenivka (23km south-west of Donetsk) and Verkhnohshyrokiivske (formerly Oktiabr, 29km north-east of Mariupol), "DPR" members frequently demanded to see the national passports of monitors and denied access to the SMM when its monitors refused to comply. This practice significantly increased the rate of freedom of movement restrictions in the period between the end of March and the beginning of May: 50 such restrictions were reported, including 20 denials of access.

Armed men, in particular "LPR" members, demanded to see the SMM's patrol plan and denied passage when the SMM refused to comply. Such restrictions occurred on 68 occasions during the reporting period — 54 times imposed by "LPR" members and 14 times by "DPR" members.<sup>3</sup>

### *Monitoring border areas*

Although the mandate of the Mission stipulates access throughout Ukraine, forces and armed formations continued to restrict the SMM's freedom of movement when it was attempting to monitor border areas, almost exclusively in border areas not controlled by the Government.<sup>4</sup> During the reporting period, the SMM conducted 253 visits to these border areas (94 in Donetsk region and 159 in Luhansk region). "LPR" and "DPR"-members restricted the SMM's access on 82 of those visits (17 in Donetsk region and 65 in Luhansk region), including 65 denials of access (17 in Donetsk region and 48 in Luhansk region). For example, the SMM had been unable to reach the border crossing point in "LPR"-controlled Chervonyi Zhovten (80km south of Luhansk) throughout the time period between March and June due to repeated restrictions imposed by "LPR" members. "DPR" and "LPR" members delayed the SMM in four cases and in another 14 cases insisted on escorting the SMM in the border areas. Delays and escorts in particular, potentially provide members of armed formations with a strong indication of the SMM's movement towards a border area, undermining the effectiveness of the SMM's monitoring. On 19 March for example, "LPR" members escorted the SMM all the way to border areas in Sievernyi, Izvaryne, Voznesenivka (formerly Chervonopartyzansk) and Dovzhanskyi (50, 52, 65 and 85km south-east of Luhansk, respectively).

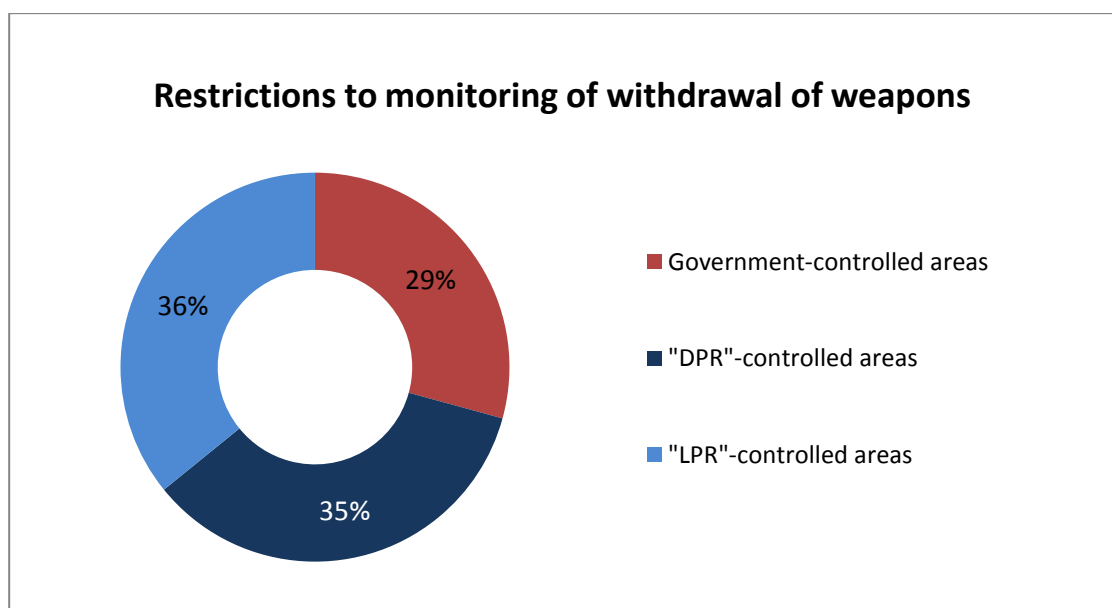
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<sup>3</sup> At the time of writing this report, since 1 July at the "LPR" checkpoint immediately south of Stanytsia Luhanska bridge, armed "LPR" members have consistently denied the SMM access to the bridge.

<sup>4</sup> A single case of freedom-of-movement restriction in government-controlled areas occurred in the district of Shchors (Chernihiv region) on 10 February, when Ukrainian Border Guards personnel escorted the SMM throughout its visit in the border area.

### *Observing withdrawal of weapons*

Ukrainian Armed Forces and armed formations also hampered the SMM's efforts to monitor and verify the withdrawal of weapons - one of its roles foreseen in the Package and Addendum. They restricted the SMM's freedom of movement on 106 occasions when it attempted to access heavy weapons holding areas (32 occasions, including 22 denials of access), permanent weapons storage sites (nine occasions, including seven denials of access) and military-style compounds suspected of being used to store weapons (65 occasions, including 54 denials of access). On 9 May, for example, Ukrainian Armed Forces personnel in government-controlled Dmytrivka (56km south-west of Donetsk) denied SMM access to a military compound where a few days before it had observed and reported six towed howitzers (2A36 *Giatsint-B*, 152mm)<sup>5</sup> in violation of the respective withdrawal lines. On 19 April, in Kuibyshevskiy district of "DPR"-controlled Donetsk city, armed "DPR" members denied SMM access to a courtyard in which the SMM could see from outside five surface-to-air missile systems (9K35 *Strela-10*, 120mm) in violation of the withdrawal line<sup>6</sup>. On 17 February an armed man in "LPR"-controlled Buhaiivka (38km south-west of Luhansk) denied the SMM access to a shooting range. The following day aerial surveillance imagery available to the SMM revealed 12 towed howitzers in violation of the withdrawal line in the shooting range.



### *Technological means of monitoring*

Violators, mostly unidentified, hampered the SMM's remote monitoring ability by interfering with SMM UAVs and remote monitoring equipment on the ground, including shooting and jamming the UAVs and disabling cameras. On at least six occasions the UAVs came under small-arms fire, and on two of those occasions — while flying on 15 January over "LPR"-controlled Kadiivka (formerly Stakhanov, 50km

<sup>5</sup> See [SMM Daily Report 7 May](#).

<sup>6</sup> See [SMM Daily Report 19 April](#).

west of Luhansk) and on 9 March over “LPR”-controlled Novooleksandrivka (65km west of Luhansk), the UAVs sustained damage assessed as caused by small-arms fire.<sup>7</sup>



Violators also jammed SMM UAVs on 30 occasions and on eight occasions prevented the SMM from launching its UAV, sometimes threatening to shoot the UAV down if it was launched. At times the location where monitoring on the ground was restricted matched the location where observation from the air was impeded. On both 6 and 7 May, for instance, Ukrainian Armed Forces personnel denied the SMM access to

the Stanytsia Luhanska railway bridge (16km north-east of Luhansk), and ten days later an SMM UAV was fired at from a government-controlled position in the same area. Moreover, on 2 June, a UAV suffered signal errors (most likely due to jamming), and crashed north of the Stanytsia Luhanska railway bridge.

Violators caused the loss of communication between the SMM and seven UAVs, including three long-range UAVs, while flying in “DPR”-controlled Ozerianivka (35km north-east of Donetsk) on 27 May, in “DPR”-controlled Korsun (31km north-east of Donetsk) on 1 June,<sup>8</sup> and in government-controlled Stepanivka (51km north-west of Donetsk) on 17 June. The incident that caused the downing of a long-range UAV on 27 May occurred only minutes after it had spotted a surface-to-air missile system (9K35 Strela-10, 120mm) in “DPR”-controlled areas. Armed “DPR” members also kept the power supply to the SMM’s repeater in Donetsk city disconnected between 20 May and 13 June, thus disabling the SMM cameras in Avdiivka and at “DPR”-controlled Oktiabr mine (near Donetsk airport), claiming that they had an order to do so. The armed “DPR” members asked the SMM to remove the equipment and threatened to forcefully remove it themselves otherwise, despite the fact that the placement of the equipment had been co-ordinated with the sides prior to its installation. This systematic restriction – yet again in violation of the Package of Measures for the Implementation of the Minsk Agreements and its Addendum – has limited the SMM’s monitoring in areas north and north-east of Donetsk city and Donetsk airport, a major hotspot.

## Response - JCCC

The SMM regularly called on the JCCC to help ensure rapid response to impediments to its monitoring and verification, as stipulated by the signatories of the Addendum. On 16 April the Ukrainian Armed Forces representative to the JCCC told the SMM that he had distributed an information package to instruct the Ukrainian Armed Forces to ensure unfettered passage through checkpoints, and provided a copy to the SMM. On 20 April the Russian Federation representative shared with the SMM draft instructions sent for review to “DPR” and “LPR” members concerning the SMM’s freedom of movement. The SMM JCCC liaison team started operations on 25 April, and is tasked with maintaining daily interaction with the JCCC headquarters in Soledar as well as effective co-ordination between the JCCC officials and the SMM patrols which encounter these violations on the ground. The SMM JCCC liaison team addressed the JCCC daily about the impediments encountered by SMM patrols in order to urge immediate resolution of

<sup>7</sup> See [SMM Daily Report 16 January](#) and [SMM Daily Report 10 March](#).

<sup>8</sup> See [SMM Spot Report 27 May](#) and [SMM Spot Report 3 June](#).

the cases, in parallel with the actions undertaken by the patrol team with the relevant JCCC observation group/point on the ground.

The lack of an effective rapid response by the JCCC to these violations continues to be a matter of concern. Although the JCCC headquarters agreed to provide a written assessment of the follow-up on each freedom of movement incident on a monthly basis, the reports provided so far show a rather passive approach by the JCCC, mostly consisting of letters informing the relevant structures about the cases, reminding them of the Mission's mandate and its freedom of movement.

However, in May and June the SMM's access through checkpoints generally improved after the SMM JCCC liaison team had repeatedly addressed the problem with the JCCC. Intervention by the JCCC was successful in a number of cases and the SMM was able to gain access, with some delay, on at least 15 occasions (ten in May and five in June). In particular, there was an improvement of the situation at the aforementioned "DPR" checkpoints where previously armed men had repeatedly demanded to see the national passports of SMM members and denied access after the SMM declined to show the passports. Since 9 May the SMM has not encountered such cases in "DPR"-controlled areas. Other examples: on 3 June when the SMM intended to launch a mini UAV to fly over "DPR"-controlled Korsun (31km north-east of Donetsk) but was told by a "DPR" member it would be shot down by his colleagues if the SMM launched it, and the JCCC succeeded to influence the "DPR" member and the SMM was able to eventually conduct two flights; and on 9 June, when a Ukrainian Armed Forces soldier stopped the SMM and requested a special permit for entering an area near government-controlled Yurkivka (86km north of Donetsk), the SMM informed the JCCC and after waiting for 12 minutes the SMM was allowed to proceed.

At the same time, the inability of the JCCC to successfully intervene in numerous other cases of violations of SMM's freedom of movement continued to pose challenges.<sup>9</sup> On 29 June, for example, the Russian Federation representative to the JCCC failed to co-ordinate the necessary security guarantees with "DPR" and "LPR" for a planned flight of an SMM mid-range UAV over areas between government-controlled Svitlodarsk and "DPR"-controlled Debaltseve (57 and 58km north-east of Donetsk, respectively).

The lack of effective response and proper follow-up by the JCCC to security incidents affecting SMM monitors and equipment is also a pressing matter. For example, the SMM have not yet received a comprehensive report of follow-up or indication of rapid response by the JCCC regarding both incidents of 27 May, when an SMM foot patrol came under small-arms fire near "DPR"-controlled Yasynuvata (16km north-east of Donetsk)<sup>10</sup> and when it lost a long-range UAV while flying in "DPR"-controlled Ozerianivka (35km north-east of Donetsk). Impunity for such actions could embolden perpetrators and invite more such incidents in the future.

### **Restrictions to the SMM's monitoring as they relate to the situation on the ground**

Freedom-of-movement violations often occurred in areas where the security situation was tense. When the level of ceasefire violations in the Avdiivka/Yasynuvata area began to increase in mid-March, "DPR"-controlled Yasynuvata (16km north of

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<sup>9</sup> After the end of the reporting period, there were some occasions when both Ukrainian and Russian representatives to the JCCC failed to co-ordinate the necessary security guarantees for planned visits from Svitlodarsk toward Debaltseve and from "DPR"-controlled Petrivske (41km south of Donetsk) to government-controlled Bohdanivka (41km south-west of Donetsk).

<sup>10</sup> See [SMM Spot Report 27 May 2016](#).



Donetsk) became an area of frequent restrictions of the SMM's freedom of movement. From 18 March to 4 June the SMM's movement was restricted on 36 occasions, including nine denials of access.

An easing of tension on the ground also coincided with an easing of restrictions imposed by armed formations and the Ukrainian Armed Forces. During the period from 29 April to 9 May, when the SMM observed a relatively low number of ceasefire violations in the area following the sides' renewed commitment to adhere to the ceasefire during Easter holidays, the number of these violations also temporarily decreased with just a single case recorded by the SMM of a mandatory escort.

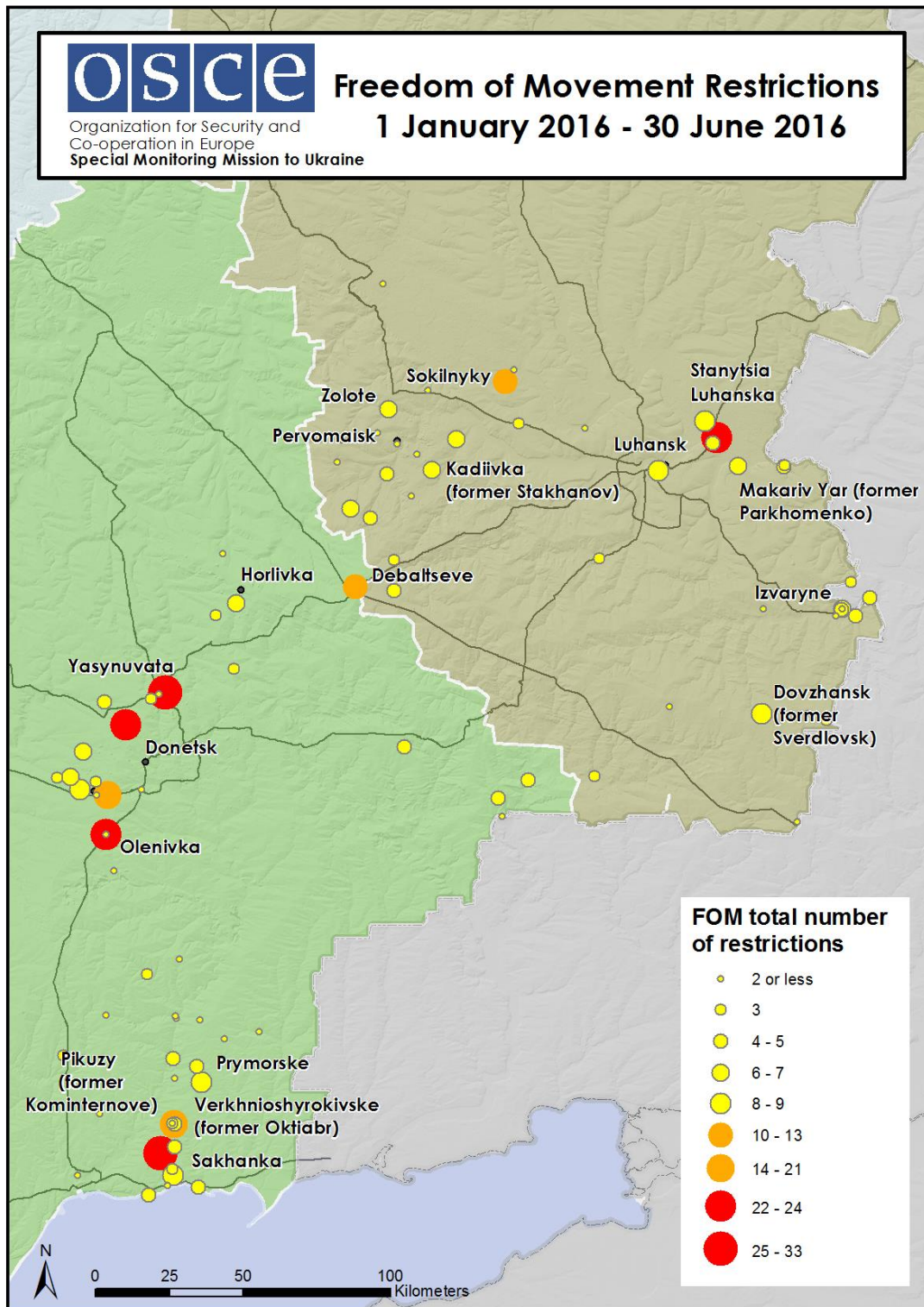
Continued restrictions on the SMM, including interference with its technological means of monitoring, shows that perpetrators take whatever measures they consider necessary to impede the SMM. The sides restrict the SMM when they want and when they have something to hide.

## **Conclusions**

The SMM's monitoring is significantly undermined by the restrictions placed on its movements by the sides. This is particularly problematic in areas not controlled by the Government. The SMM can only assume that any deliberate restriction of its movement is an intentional act to conceal something from the international community. Thus, all facets of the SMM's monitoring (border areas, the withdrawal of weapons, ceasefire violations, movement of positions, human dimension issues, etc.) are tarnished by these restrictions. Furthermore, freedom-of-movement restrictions allow the inflicting parties to pick and choose what they allow the Mission to see. When the SMM reaches the border, it has been allowed to pass through numerous checkpoints in order to reach its destination. The phenomena of armed men choosing when to stop the SMM and when to allow it to pass, allows them to significantly undermine the SMM's observations. Incidents putting the security of monitors at risk constitute intimidation which adversely affects the SMM's operational capacity.

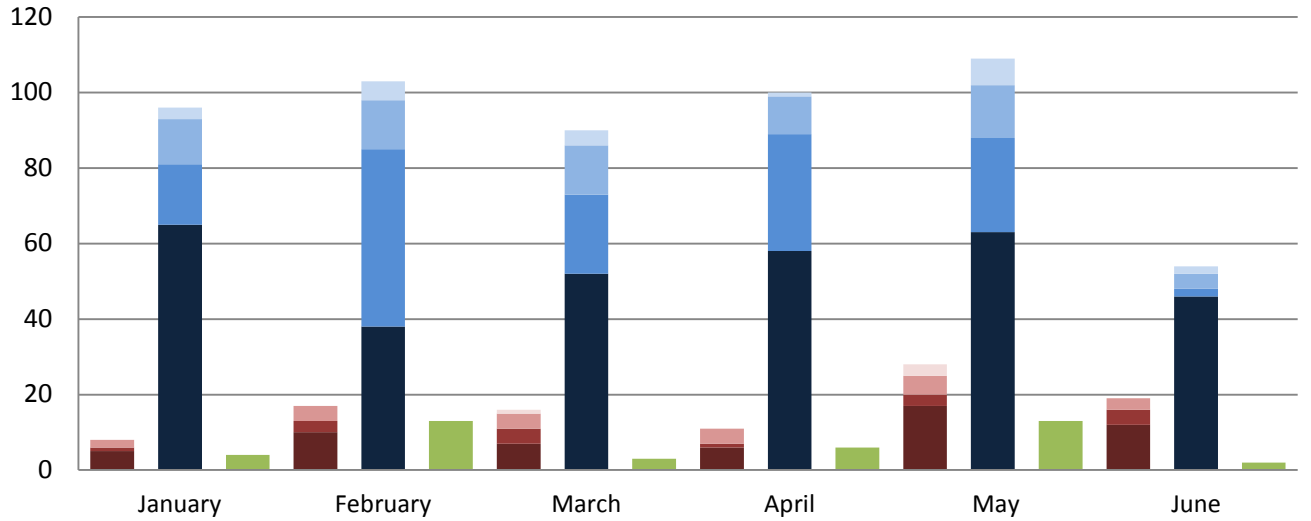
The ongoing nature of such restrictions, 80 per cent of which occurred in areas not controlled by the Government, calls into question the political will of the sides to facilitate de-escalation and normalization. The mixed results of the JCCC's efforts in mitigating freedom of movement restrictions, further reinforces this indication. The SMM's efforts to contribute to normalization and stabilization in Ukraine will continue to be undermined as long as its freedom of movement is restricted.

ANNEXES



## The number of SMM Freedom-of-movement restrictions

- Denial in government-controlled areas
- Delay in government-controlled areas
- Denial in areas outside government control
- Delay in areas outside government control
- undetermined
- Conditional in government-controlled areas
- Other impediments in government-controlled areas
- Conditional in areas outside government control
- Other impediments



## By category

