



## Briefing Note: **Securing access to border crossings for vulnerable LGBTI people in the context of the war in Ukraine**

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LGBTI people in the context of the war in Ukraine, like everyone, have many reasons to stay in Ukraine or to leave the country. Like their fellow citizens, LGBTI people are staying, supporting each other, providing mutual aid, and fighting against the Russian invasion. LGBTI people, however, face additional barriers to fleeing the country, including structural homo- and transphobia, which can occur in many contexts.

Since 24<sup>th</sup> February 2022, due to the Marshall law, all Ukrainian citizens with a male gender marker on their identity documents, including men (cis and trans) and some trans women and non-binary people are not allowed to leave the Ukraine. While some trans people are serving in the armed forces, being professional soldiers or having taking up weapons to defend the country in the current war, others are not in a position to do so, either because of general (mental) health problems making them unfit to fight, or because the threat and/or experience of transphobia, discrimination and violence in the military.

However, with certain diagnoses, category F, such as personality and emotional disorders, eating disorders, non-addictive substance disorder, confirmed by the Military Medical Commission, men who are older than 27 can also receive a white ticket allowing them to leave the country. LGBTI organisations in the Ukraine report that gay, bisexual, trans and intersex men are often scared to seek such a diagnosis that would ensure them the white ticket to leave the country based on their mental health status, as they are afraid of discrimination and rejection based on homo- and transphobia from the medical and military commission. Also in cases where gay men for example did present themselves with valid claims, there are cases of homophobia within institutions resulting in denial of the option to flee.

Additionally, **trans women** face a unique obstacle in that very often, due to lack of access to legal gender recognition, they have legal documents not matching their gender identity and the male gender marker in their documents means they are falling under the Marshall law and refused to leave the country, in a clear display of discrimination on the grounds of gender identity. The fact that trans women are facing severe restrictions while cisgender women can cross the border without restrictions, is a discrimination against trans people. This provision indicates that Ukraine does not accept the right to self-determination and gender identity.

Due to the COVID-19 crisis, pathways to access legal gender recognition (LGR) for trans people have been largely non-functional since early 2020. Given that the only way for a trans woman to flee legally is to have had her legal gender change via LGR, this break in the function of the LGR system has dire consequences; they need to not only obtain a diagnosis of “gender identity disorder” (F64.0 in ICD-10,

which is a requirement for LGR in Ukraine), but all trans women with a male gender marker are also required to present to the Military Medical Commission, who do an independent assessment of the individual's trans identity without any specific expertise in trans healthcare and do then decide whether to issue a white ticket or not based on a personal assessment, often influenced by prejudices of the head of the medical commission and the military commissar.

This means that the Commission could determine that a trans woman who has been on hormone therapy for years does not have severe enough "gender identity disorder" to exempt her from service – a diagnosis from a non-military specialist does not suffice. There are no clear criteria for the diagnosis of 'gender identity disorder' in place and once again transphobia and discrimination too often prevent a proper diagnosis and the issuing of the white ticket.

## Recommendations

- The Ukrainian ministry of defence needs to issues clear guidelines and ensure strict application to prevent mistreatment and unjustified refusals based on homophobia and transphobia, which are established in consultation with trans and LGBTI organisations.
- They also need to ensure that the medical and military commissions are safe places for LGBTI people where they can turn to for assessment and help without fear discrimination and violence.
- Ukrainian Ministry of Health Protection should ensure that there is an accessible and quick pathway to receiving an F64.0 diagnosis for trans women and that this diagnosis will be recognised as sufficient to be allowed to leave the country. The Military Medical Commission should also recognise civilian diagnosis in this process;
- Develop diplomatic corridors that allow for safe passage out of the country for those denied access due to discrimination.

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Transgender Europe <https://tgeu.org/>

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RFSL <https://www.rfsl.se/>

Gender Stream <https://genderstream.org/>

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