

# Diia.pl: Navigating legal, technological and human rights dimensions of an electronic document for Ukrainian citizens in Poland

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## Abstract

The objective of the paper is to present legal aspects of the concept and method of implementing an innovative solution such as an electronic document for Ukrainian citizens in Poland (Diia.pl), including some problems that arise in this context. This document is one of the elements of the Polish response to the arrival of millions of Ukrainian citizens seeking protection against the effects of the Russian invasion of February 2022. The fundamental research question is to what extent Diia.pl should be considered solely through the prism of technology and administration techniques, and to what extent - through the prism of human rights – in the context of real guarantees of respect for them. The study is a continuation of the authors' prior work in the field of migration law and informatization of public services. Research is approached using the dogmatic-legal method; it also includes an analysis of statistical data and positions of various bodies and institutions, as well as problems observed in practice. The result is a diagnosis of challenges related to the use of electronic residence documents, in the context of political and social crises. This, in turn, implies the formulation of guidelines for countries wishing to introduce this type of solutions based on accumulated experience. Implications of the study are of great importance for academics, researchers and practitioners, that is lawmakers, border services, administration, employees and other entities. Considering forecasts of an increase in forced migration in the future, drawing appropriate conclusions from the use of Diia.pl may contribute to efficient responses to inevitable crises in the future and in that sense is of great value for different stakeholders.

**Keywords:** migration law, international protection, electronic documents, Diia.pl.

## 1. Introduction

Movement of people around the world is an immanent feature of the global society. People travel for tourism, work or family; they migrate in search of a better life, and finally – on a huge scale – they flee dangers of wars, various forms of human rights violations or effects of natural disasters. If a foreigner obtains the right to stay in a country for a long period of time, the country usually issues a residence document that confirms the rights obtained. Issuing such documents is particularly complex with regard to beneficiaries of international and national protection, especially refugees. A group with a specific status among the beneficiaries of international protection are those under so-called temporary protection. After Russia's invasion of Ukraine in 2022, this form of protection was granted to millions of people fleeing the consequences of the attack. Among the challenges for the host countries, one must underline the problems related to residence documents for these individuals. To manage this process, authorities of host countries have reached for different tools. An interesting example of such a tool is an innovative solution in the form of an electronic residence document – Diia.pl – issued to Ukrainian citizens who entered Poland after the outbreak of war on 24 February 2022 [1].

The purpose of this article is to present the key legal aspects of the concept of Diia.pl and its implementation in Poland, including some problems that arise in this context. The fundamental research problem that must inherently accompany these considerations is to what extent Diia.pl should be considered solely through the prism of technology and administration policy, and to what extent – through the prism of human rights – in the context of real guarantees of their respect. Given pessimistic predictions of an increase in forced migration in the future, analyzing the experience of using Diia.pl and drawing the right conclusions can contribute to a smooth response to inevitable crises in the future.

To properly present the legal nature and essence of Diia.pl, as well as challenges and problems associated with its implementation, it is necessary to first outline the relevant background and context of its establishment. Thus, the initial part of the paper will present an overview of the migration situation in Poland created by the outbreak of war in Ukraine in 2022, followed by a presentation of the concept and mechanism of temporary protection granted in Poland to Ukrainian citizens and the key legal regulations in this regard. Only then will Diia.pl and the Polish experience with it be discussed, as well as some conclusions and recommendations that can be made.

## **2. Ukrainian citizens in Poland after the Russian attack in 2022**

On 24 February 2022 the Russian Federation attacked Ukraine militarily. The war, as it is well known, continues, with more casualties and destruction practically every day. One of the first consequences of its outbreak was mass displacement of hundreds of thousands, and later millions, of Ukraine's population, both within and outside the country's territory. Poland, as a neighboring country already hosting a significant Ukrainian diaspora for a long time, has become one of the main destinations for those fleeing the war [2].

According to the Polish Border Guard, in 2022 the number of crossings of the Polish-Ukrainian border by foreigners in both directions exceeded 16.8 million, with an increase in crossings of 104% compared to the previous year. Crossings in the “to Poland” direction dominated. More than 9.5 million crossings of persons with Ukrainian citizenship were recorded across all external borders (including airports) in the direction “to Poland” – more than twice as many as a year earlier [3]. The year 2023 saw a further increase in the number of border crossings, although the number of entries declined slightly, while the number of exits to Ukraine increased [4]. In the three quarters of 2024 the numbers of crossings continued to remain very high, although there was a slight decrease in personal border traffic on the border with Ukraine [5].

Of course, the number of border crossings is not equivalent to the number of people who have crossed the border, let alone the number of people who have remained in Poland. Therefore, it should be specified that, according to the Polish Office for Foreigners, from the outbreak of the war until 31 July 2024, more than 1.8 million people were registered as beneficiaries of protection on Polish territory [6]. Eurostat indicates that as of September 2024, nearly 4.2 million people from Ukraine were under temporary protection in the European Union [EU], most in Germany (more than 1.1 million); Poland (almost 980 thousand) and the Czech Republic (nearly 380 thousand) [22]. It means that the Ukrainians under protection in Poland constitute about 23% of the total number of people from Ukraine

granted temporary protection on the territory of the EU and about 65% of the Ukrainian citizens residing in Poland (as of 31 July 2024, a total of about 1.5 million of Ukrainian citizens reside in Poland on the basis of residence permits and protective status related to the war in Ukraine [6]). At the same time, citizens of Ukraine account for 78% of the total number of foreigners residing in Poland on the basis of various residence titles [6].

A characteristic feature of refugeeism related to war is that women and children tend to predominate among those seeking protection. In the above-mentioned number of Ukrainians under protection in Poland, women account for 61% and 74% among adults. This means that about half of the registered Ukrainian citizens are children [6].

Such a large influx of people in a short period of time and their specific needs related to the circumstances of their departure, their gender and age, etc. pose a huge challenge to the host community and to state authorities. In the first instance, of course, it is an organizational, logistical and financial challenge, but in the subsequent stages of managing this type of migration, the challenge is also to establish and implement legal solutions adequate to the situation. It is therefore appropriate to present the legal situation in the subject at the time of the Russian invasion of Ukraine and the instruments adopted after the outbreak of war at the EU and national levels.

### **3. Temporary protection in the European Union and in Poland**

The key act regulating the granting of protection in Poland is the Act of 13 June 2003 on granting protection to foreigners on the territory of the Republic of Poland [Foreigners Protection Act] [8]. This law provides for four forms of protection: refugee status, subsidiary protection, political asylum and temporary protection. From the perspective of the subject matter considered in this article, the most relevant is the last one.

The provisions on temporary protection are a form of implementation in the Polish legal system of the institution provided in the EU law, specifically, in Council Directive 2001/55/EC of 20 July 2001 on minimum standards for giving temporary protection in the event of a mass influx of displaced persons and on measures promoting a balance of efforts between Member States in receiving such persons and bearing the consequences thereof [24]. The directive was adopted in 2001 as a result of the experiences related to the armed conflict in the Balkans in 1990s. The premise was to prepare a mechanism for an efficient response to unexpected crises resulting in the sudden displacement of large groups of people fleeing to the EU territory from significant threats. According to the provisions of the Directive, temporary protection is a special type of procedure, applied in the event of *“the threat of the occurrence or actual occurrence of a mass influx of displaced persons from third countries who cannot return to their country of origin”* [24]. It is noteworthy that the Directive uses the term “displaced persons” to describe those granted temporary protection, distinguishing them from those seeking or already having refugee status. “Displaced persons” are defined as *“third-country nationals or stateless persons who have had to leave their country or region of origin, or have been evacuated, in particular in response to an appeal by international organisations, and are unable to return in safe and durable conditions because of the situation prevailing in that country, who may fall within the scope of Article 1A of the Geneva Convention [10] or other international or national*

*instruments giving international protection, in particular:*

*(i) persons who have fled areas of armed conflict or endemic violence;*

*(ii) persons at serious risk of, or who have been the victims of, systematic or generalised violations of their human rights” [24].*

The rationale for activation of temporary protection is to “*reasonably believe that the asylum system will not be able to bear the burden of such an influx without negative consequences for the operation of the system, to the detriment of those concerned and other persons seeking protection*” [24]. The body competent to determine that the prerequisites for activating temporary protection have occurred is the Council of the European Union. The decision of the Council has the effect of introducing temporary protection in all the member states for those affected. Protection is granted for one year with possibility of extension under the terms of the directive. The directive sets out obligations of the member states towards protected persons in terms of documenting their right of residence, work and economic activities, access to education and health care, housing and social assistance, etc. What is important is that the standard provided in the Directive is a minimum standard, which means that individual states can provide more far-reaching rights for persons under temporary protection. The temporary protection is granted to a person by an EU member state, not the European Union as a whole. Indeed, the person in question enjoys protection on the territory of a single state; the directive does not provide for protection on the territory of more than one member state at the same time. Instead, mechanisms are provided for family reunification or a transfer to another country for another reason. In the event of such a transfer, the right to reside in the member state the person is leaving expires. The state's obligations to the person in question relating to temporary protection also expire and are taken over by the new host state.

Following the provisions of the Directive, the aforementioned Polish Foreigners Protection Act stipulates that temporary protection can be granted to “*foreigners arriving in large numbers in the Republic of Poland who have left their country of origin or a specific geographical area due to foreign invasion, war, civil war, ethnic conflicts or gross violations of human rights [...] regardless of whether their arrival was spontaneous or the result of assistance provided to them by the Republic of Poland or the international community*” [8]. It is granted on the basis of a decision of the Council of the European Union, for a period specified in each case. The law foresees situations in which a foreigner may be denied temporary protection. This applies if there are reasonable grounds to suspect that the person

- has committed a crime against peace, a war crime or a crime against humanity or another crime of a non-political nature (before arriving in the territory of Poland);
- has committed acts contrary to the purposes and principles of the United Nations;
- his/her entry or stay may threaten the security of the state, or
- has been convicted by a final judgment of a crime, the nature of which indicates that his/her presence in the territory of the Republic of Poland could pose a threat to its citizens.

Temporary protection is denied by an administrative decision.

Until the outbreak of war in Ukraine in 2022, the temporary protection mechanism outlined above was in place but was never activated. After the Russian invasion of February 2024, with millions of Ukrainians fleeing outside its borders, the Council found it necessary to reach out for it. On 4 March 2022, Council Implementing Decision (EU) 2022/382 was issued, establishing the existence of a mass influx of displaced persons from Ukraine within the meaning of Article 5 of Directive 2001/55/EC and resulting in the introduction of temporary protection [11].

Polish authorities realized very quickly that the activation of this mechanism and the existing provisions of Foreigners Protection Act were not sufficient in terms of creating necessary legal framework defining rules for the stay of Ukrainian citizens fleeing the consequences of the Russian aggression. It became necessary to establish additional, more detailed regulations [12]. A draft law was prepared at a very fast pace, and then on 12 March 2022, the Act on assistance to Ukrainian citizens in connection with the armed conflict on the territory of Ukraine was passed [Special Assistance Act] [13]. Significantly, this law not only provides for detailed solutions to the issues of ongoing assistance in livelihood matters, performance of work and economic activity, access to education and health care, organization of these activities by the public administration, etc., but it also establishes a specific legal status for foreigners to whom it applies. This status differs from that of a person who enjoys temporary protection as provided by the EU law and the 2003 Foreigners Protection Act implementing it. As such, it is *lex specialis* to the Foreigners Protection Act. The latter was amended in such a way that it states explicitly that the provisions of the chapter on temporary protection apply only in cases not regulated by separate provisions. For this reason, the Special Assistance Act is referred to in colloquial discourse as a “special law.” According to EU law, such a solution is possible as long as the national law provides for a more favorable standard of protection in specific provisions. As a result, there are two regimes of temporary protection in the territory of Poland: one in the form given by Directive 2001/55/EC and the Foreigners Protection Act; the other – under Special Assistance Act [14].

The scope of application of the EU's temporary protection standard set forth in Council Implementing Decision (EU) 2022/382 is relatively broad. In addition to Ukrainian citizens, it also covers other categories of residents of Ukraine affected by the war. In fact, the decision applies to stateless persons or citizens of third countries other than Ukraine who, before 24 February 2022, enjoyed international protection or equivalent national protection in Ukraine. It is also applicable to family members, regardless of their citizenship. This group includes both spouses and unmarried partners in a stable relationship with the above-mentioned persons, if the law or practice of the Member State treats unmarried couples in a manner comparable to married ones. In addition, protection is enjoyed by minor and unmarried children of the named persons, regardless of whether they were born in wedlock, out of wedlock, or adopted, as well as other close relatives who lived together as one family at the time when the circumstances leading to the mass influx of displaced persons occurred, and who were wholly or partially dependent on the eligible person at that time. Moreover, either temporary protection or another form of protection shall be applied by Member States to stateless persons and citizens of third countries other than Ukraine, who are able to prove that before 24 February 2022, they legally resided in

Ukraine on the basis of a valid permanent residence permit issued in accordance with Ukrainian law, and who are unable to return to their country or region of origin in safe and sustainable conditions. This protection may also be extended to other persons who have legally resided in Ukraine and who are unable to return in safe and lasting conditions to their country or region of origin [11].

The Special Assistance Act regime is more favorable in terms of the scope of rights awarded but at the same time it does not apply to all the beneficiaries of the Decision [15]. It primarily covers citizens of Ukraine who came to the territory of Poland from the territory of Ukraine in connection with the hostilities conducted on the territory of that country, as well as citizens of Ukraine holding the Pole's Card who, together with their close family, came to the territory of Poland (not necessarily from Ukraine) because of those hostilities. The Pole's Card is a document confirming membership in the Polish Nation, issued under a special procedure to foreigners who declare an affiliation to the Polish Nation [16]. In addition, the Special Assistance Act is also applicable to some family members of citizens of Ukraine who are not Ukrainians themselves. This group includes spouses of Ukrainian citizens, their minor children and minor children of their spouses, if they have arrived in the territory of Poland from the territory of Ukraine in connection with military operations conducted on the territory of that country and are not Polish citizens or citizens of other EU member states. However, the provisions of the Act do not provide a legal basis for residence of those citizens of Ukraine and their family members:

- who already have a residence permit in Poland, or
- who are under another form of protection (international or national) in Poland or are applying for one, or
- who enjoy temporary protection on the territory of another EU member state granted due to hostilities conducted on the territory of Ukraine.

In other words, the Special Assistance Act does not abrogate or invalidate the existing legal grounds for residency, but only supplements them.

No matter which regime is applicable to a particular person, they need documents to confirm it. Diia.pl is a document issued exclusively for those Ukrainians whose status is regulated by the Special Assistance Act. Persons enjoying temporary protection under the Foreigners Protection Act receive, upon request, a special certificate confirming their status. Of course, it is the persons residing in Poland on the basis of the status granted by the Special Assistance Act who constitute the overwhelming majority of those enjoying protection. After all, as indicated above, their number is currently approaching one million, while – for comparison – only 35 certificates of international protection were issued between January and July 2024 [6]. As Diia.pl is in fact the primary subject of this article, further consideration will be given only to its holders.

#### **4. Legalization of stay of Ukrainian citizens according to the Special Assistance Act**

According to the Special Assistance Act the stay of Ukrainian citizens is considered legal if they arrived legally in Poland on 24 February 2022 or later, and they declare their intention to stay. The stay of a child born in Poland to a mother who was granted protection



is also considered legal. The original wording of the Act established the legality of residency for a period of 18 months counting from 24 February 2022. Due to the prolonged military operations, this deadline has been systematically postponed; currently until 30 September 2025.

The first step a person residing in Poland on the basis of the Special Assistance Act should take is obtaining a PESEL number. PESEL number is the identification number of the Universal Electronic Population Registration System. It is assigned to persons whose data is collected in the PESEL register, which is a central collection of data of Polish citizens residing in Poland (and outside its borders, if they apply for a Polish identity document) as well as foreigners residing in the country. It is an eleven-digit numeric symbol that uniquely identifies an individual. In the cases of foreigners, basic information about their legal status is recorded in the register. It is marked with a special abbreviation added to the PESEL number. The status of a citizen of Ukraine enjoying protection under the Special Assistance Act is marked with the symbol UKR [17].

A PESEL number under the procedure regulated in the Special Assistance Act is generally assigned on the basis of an application that can be submitted to any municipal office in Poland. If a citizen of Ukraine received a PESEL number in the past (in connection with a previous stay in Poland) and is currently residing on the basis of the Special Assistance Act, they should apply exclusively for the UKR status.

When leaving one's country and is prompted by a sudden need to save lives, rather than a considered decision to migrate, displaced persons may often change their place of residence, undertake further migration to another country or decide to return to their country. This instability of the situation is immanent to the temporary nature of protection discussed. For these reasons, it is important to regulate and record changes in UKR status smoothly. From this perspective, it should be pointed out that a Ukrainian citizen is free to leave Poland but leaving for a period of more than 30 days deprives them of the protection under the Special Assistance Act. This does not apply only to persons directed to perform work or services outside Poland by entities operating in its territory. Also, the use by a citizen of Ukraine of temporary protection on the territory of another EU member state deprives them of the right to stay on the discussed basis. In such cases, the UKR status is automatically changed to the status referred to by another abbreviation: NUE, meaning "a foreigner who is neither an EU citizen nor a family member of an EU citizen", i.e. one to whom general principles of the law on foreigners apply. The status is also changed if a citizen of Ukraine obtains the right to stay in Poland on another basis (a residence permit) or has been granted or applies to be granted another form of protection. This data is provided by the Commander-in-Chief of the Border Guard from other registers. In the case of departure from Poland for a period exceeding 30 days within the internal borders of the Schengen area, the status of UKR may be changed based on a statement made by the person to whom the status was granted, or a person representing them. The legislation also regulates the restoration of UKR status and its re-granting [13].

Those Ukrainian citizens who received their PESEL number and UKR status can download and use a Diia.pl document.

## 5. Electronic residence document Diia.pl

Under the Special Assistance Act, the first electronic solutions for Ukrainian citizens were introduced in Poland, including Diia.pl. Notably, the Special Assistance Act allows the minister responsible for informatization to use Poland's existing mObywatel application to launch an electronic service for Ukrainian citizens. The name “mObywatel” can be translated as “mCitizen” – it is intended to be *“a citizen's assistant, which will make dealing with official matters simpler and more convenient”* [18].

More specifically, mObywatel is a software designed for mobile devices, in which services provided by public and non-public entities (e.g. for electronic payments in the future) are made available to citizens. As a part of the application, an mObywatel profile is created. It uses mObywatel mobile documents stating the identity and Polish citizenship of the application user on the territory of Poland in the relationship of mutual physical presence of the parties. Mobile documents are electronic documents [19]. The basic and most widely used document is Polish identity card. According to recent estimates (October 2024), more than 8 million Polish citizens already possess their electronic IDs. [35]. To a certain extent, the application can also be used by people between the ages of 13 and 18, that is, those with limited legal capacity, for example to use a school ID card. As of 30 June 2024, the mObywatel application has been installed more than 14 million times in Poland (12,004,105 installations were made for Android and 2,457,728 were made for IOS). This was almost double the increase from 2022, when the application was installed 7,970,052 times [21].

With the mObywatel application, a citizen of Ukraine whose stay in Poland is considered legal, after authentication, can:

- download, store and present an electronic document containing data downloaded from the register of Ukrainian citizens who have been assigned a PESEL number, and
- verify the integrity and origin of the electronic document.

The above also applies to the data of a child remaining under the parental authority of a parent. In such a case, a citizen of Ukraine is allowed to download an electronic document if their PESEL number appears in the PESEL register in connection with the child's data. This possibility has been launched, but in practice it only started working on 5 June 2023 [22]. If for some reason the parent's PESEL number does not appear in the PESEL register for the child's data, an appropriate municipal office is competent to complete these data, which, after documenting who the child's father or mother is, will add the parents' PESEL numbers to the child's data. In such a case, downloading the child's electronic document depends on the Ukrainian citizen submitting, under penalty of criminal liability, a declaration that the child remains under his or her parental authority.

Diia.pl users can only be those who:

- reside legally in Poland on the basis of the Special Assistance Act and declare their intention to stay here,
- entered the territory of Poland and their entry was registered by the Border Guard,



- have been assigned a PESEL number,
- have a trusted profile.

It has to be explained that a trusted profile is a mean of electronic identification containing a set of data identifying and describing a natural person who has full or limited legal capacity, issued to an applicant after confirming the data from the application with the actual status [23]. Services that Ukrainian citizens can use by having a trusted profile include access to electronic patient registration, electronic settlement of tax liabilities or electronic registration of economic activity. In the application for a PESEL number, a Ukrainian citizen must provide an e-mail details and a mobile phone number and agree to confirmation of a trusted profile. Then the Minister of Digital Affairs automatically confirms the trusted profile for the applicant. There is no need to take any additional steps. The profile will contain a telephone number, e-mail address and an identity confirmation mark. In standard mode, obtaining a trusted profile is a two-step process. The first stage is to assign the foreigner a PESEL number, and the second stage is to obtain a trusted profile. These are two separate proceedings [24]. In a situation in which a Ukrainian citizen did not give their consent in the application for a PESEL number to enter the data into the contact data registry or to confirm the trusted profile, or it was not possible for technical reasons, he or she may submit to any municipal office a separate application covering such consent. It includes a request to enter the PESEL number, name, email address and cell phone number into the contact data registry and to confirm the trusted profile.

In order to implement the principle of speed of proceedings, data obtained for the creation of a trusted profile of Ukrainian citizens can be entered on the basis of documents not translated into Polish. The principle of speed of proceedings is expressed in the Polish Code of Administrative Procedure [25], which stipulates that public administration bodies should act in a case thoroughly and quickly, using the simplest possible means leading to its settlement, and cases that do not require collection of evidence, information or explanations should be settled immediately. It has to be mentioned that the use of documents in a foreign language in administrative procedures is a major exception to the general rule set forward in the Act of 7 September 1999 on the Polish Language [26]. According to the latter, the entities performing public tasks in Poland shall perform all official acts in the Polish language.

Diia.pl in the mObywatel application can be used by Ukrainian citizens in Poland in any situation that is subject to the Polish law, except when the law requires presentation of other documents stating the user's identity, stating the user's right to reside in Poland, or other rights to which the user is entitled. An example of a situation requiring the presentation of an additional document may be the need to show the Pole's Card (the document mentioned in the earlier part of the study) whenever its holder wants to make use of the rights it entails.

Importantly, Diia.pl, in addition to confirming the identity of a foreigner, entitles them, to a certain extent, to cross state borders. Diia.pl, together with a travel document, entitles a Ukrainian citizen to cross the external border multiple times as well as to travel within the Schengen Area for 90 days within each 180-day period. On 12 July 2022, the Ministry of Internal Affairs and Administration forwarded to the European Commission the notification

of the temporarily used Diia.pl document as certifying the legality of residence in Poland, authorizing travel. The solution is in fact extraordinary because the mObywatel application on its own does not entitle Polish citizens using it to cross the state border, while the entitlements granted to the Ukrainian citizens by the Special Assistance Act, already do.

However, it has to be mentioned that not all the solutions relating to Diia.pl are commendable. Although the mObywatel application is available in Polish and in Ukrainian, the Regulations on the use of mObywatel are only available in Polish. The current document, together with appendices is 122 pages long. It is also interesting that, according to Appendix No. 8 of the Regulations, the user's failure to accept the Regulations prevents the activation of Diia.pl [27]. Although Ukrainian citizens can find information presented in a comprehensible way on official governmental websites, the long formal document in a foreign language might well cause a feeling of insecurity, especially in a situation when one is vulnerable due to their displacement. As it is going to be presented in the following part, it has not been the only problem identified after the introduction of Diia.pl.

## **6. Problematic issues**

The implementation of Diia.pl document has been associated with several key problems. Specific groups of problems can be distinguished in this regard.

Firstly, they concern conditions and rules set for minors. A certain legal dualism that exists in Poland at the moment is related in part to the failure to include in the original wording of the Special Assistance Act solutions that take into account minors under the age of 13. This resulted in the fact that for a long period of time these persons were deprived of the possibility of confirming their legal residence in Poland with the use of Diia.pl, or actually their parents were deprived of this right. Appropriate solutions were introduced by an amendment to the Act in 2023 [22]; the Polish Ombudsman was also active in this regard and as a result documents for minors under 13 can be downloaded by their parents as described earlier in the paper [28]. In comparison, minors with limited legal capacity (over 13 years of age) have always been entitled to have a trusted profile. This solution has been maintained which resulted in the current legal status where children between 13 and 18 years of age can both have a trusted profile (and therefore their own Diia.pl document) and can be added to their parents' document.

The second issue concerns digital exclusion. Digitally excluded people are those who do not have intellectual or material means to take advantage of electronic solutions, such as those who are poorly educated, unemployed, economically inactive, living in rural areas, the elderly, difficult youth, immigrants or national minorities [29]. In other words, the phenomenon of digital exclusion refers to systematic differences in access to and use of computers and the Internet between people of different socio-economic status (education, income, occupation), people at different stages of their lives, men and women, and living in different regions [30]. The term implies a new social division based on access to new information and communication technologies, information society services, and competencies and qualifications to participate in the process of change [31]. Digital exclusion is a factor that overlaps with the existing social structure, contributing to its deepening [32].

Elderly people, people with disabilities and people without digital competence deprived of the possibility to use the mObywatel application in order to have their Diia.pl are in practice digitally excluded. The above, in turn, raises questions of the implementation of the principle of equality before the law, as expressed in the Polish Constitution [33], which is a principle that applies to all individuals residing on its territory, not just Polish citizens. Article 32(1) stipulates that everyone is equal before the law and that everyone has the right to equal treatment by public authorities. What is more, Diia.pl is not just a document that proves a person's identity. Of course, this is its primary function, but it also serves to confirm a certain legal status. This status, in turn, entails a number of rights. The right to cross the border with the document has already been mentioned above, but it is not the only entitlement of Ukrainian citizens under protection based on the Special Assistance Act. They may benefit from a number of other rights, in particular of a social nature. The digital exclusion due to which a person is unable to benefit from mObywatel is a barrier to the use of these rights. This implies that a solution such as Diia.pl should be only optional, as indicated in a request addressed to the Ministry of Internal Affairs and Administration by the Polish Ombudsman [34]. It was indicated that there should be an alternative traditional document provided for those who – for some reasons – cannot use the electronic document or some special solutions for digitally excluded.

Another group of problems is related to the issue presented above. These are technical problems. In order to use the mObywatel application correctly, the user should possess a smartphone that meets certain requirements regarding the operating system and free memory. Thus, although Diia.pl is issued free of charge, using it requires a certain financial outlay. After all, the fact that smartphone use is currently widespread does not mean that it is compulsory. Like any technological solution of this type, mObywatel discussed in this paper requires access to the Internet. One can use documents added to the application regardless of Internet access and offline documents can be freely viewed and shown for inspection by displaying them on a phone screen but without Internet access it is not possible to update or confirm a document. In a situation of limited accessibility, which is not difficult in wartime conditions, a Ukrainian citizen can be in some cases *de facto* deprived of the possibility to confirm his rights. This is also related to another situation, that is, a technical problem with the operation of the application itself, which may be temporary, but again may prevent a Ukrainian citizen from exercising the rights. Transmission of data between electronic databases can provide further problems. Practice shows that failure to remove a foreigner's data from the EU platform of temporary protection beneficiaries in another EU country prevents them from obtaining such status in Poland, and thus from using the electronic document. Such a solution should be considered contrary to EU regulations, that is, Council Implementing Decision (EU) 2022/382. This type of a problem, of technical nature, also concerns the issue of merging data stored in electronic registers. For example, a Ukrainian citizen returning to his country of origin for the issuance of a new travel document crosses the border on two different bases: using the previous document while leaving and using the new one while returning. Thus, when returning to Poland, they lose the previously assigned UKR status and the associated entitlements (e.g. to parental benefits). The updated data should be visible after the Ukrainian citizen duly reports this fact to the municipal office competent for his place of

residence. In practice the new data is not visible in the register of Ukrainian citizens, because the data on crossing the border on the basis of different documents has not been merged. The aftermath of such problems is, of course, the loss of the Diia.pl electronic document, and thus the lack of access to the child's digital document.

The problems identified here lead, as in the previous situation, to postulate only the optional nature of the electronic document. The differentiation of the status of Ukrainian citizens with or without a Diia.pl document is illustrated by the situation of their border crossing, even if it is not related to the need to obtain a new travel document, but simply a short return to the homeland, for example, for family purposes. Thus, a Ukrainian citizen returning from such a visit may again cross the Polish border in one of the following ways:

- if a citizen of Ukraine has a biometric passport, but does not have an electronic document Diia.pl, it will be possible to re-cross the border on the basis of the passport as long as the border crosser has not yet used up the period of stay in visa-free travel in the Schengen area of 90 days in each 180-day period,
- if a citizen of Ukraine has an electronic Diia.pl document and a valid passport, it will be possible to re-enter on the basis of the above-mentioned electronic residence permit together with a valid travel document (passport) - in such a situation it is possible to freely cross the border during the period of temporary protection in Poland,
- if none of the above cases occurs (e.g. a citizen of Ukraine has an ordinary passport and does not have an electronic Diia.pl document) then - although in theory a person subject to the Special Assistance Act should be able to freely cross the border in practice there are problems that may occur. In such a case, the safest thing for the border crosser is to apply for permission from the Commander of the Border Guard to enter on humanitarian grounds. Although this consent is granted without a specific procedure, the prerequisites for its granting are, so to speak, general clauses (they are very broad and allow for considerable freedom of interpretation), and the nature of the consent is optional, i.e. the commandant may or may not give consent.

Last but not least, in the context of data protection, the need to store a large amount of data on a single mobile device is certainly a concern. Its theft or loss will cause legitimate concern for the owner. Hence, attention should be paid to the quality of security systems and adequate preparation of effective response systems. According to the Regulations of use of the mObywatel application, several of its safeguards can be distinguished [27]:

- the application is not designed to run on certain devices, e.g. those modified and capable of hiding device manufacturer's or software manufacturer's security breach (e.g. rooting, jailbreaking),
- the application cannot be run in a specific environment, e.g. one that is generally considered unsafe,
- launch by the Ministry of Digital Affairs of a special phone number (help desk), where the certificates downloaded to the device can be cancelled, e.g. if the phone is stolen,
- the application is protected by a password, which is not stored in public form in the user's phone, and no password recovery service is provided, so if the password

- is lost, it is necessary to uninstall the application and reinstall it,
- the application's password is given each time the application is launched, and also after the user stops using the application for at least 5 minutes, entering an incorrect password three times results in temporary blocking of access to the application,
- it is also envisaged to use biometric identification on devices supporting such verification.

## **7. Conclusions and recommendations**

A sudden and massive influx of displaced persons poses a major and multifaceted challenge for the administration of the host country. One of these aspects is the need to issue appropriate documents to those benefiting from any form of protection. Of course, in the first moments after the outbreak of a given crisis, this may not seem to be the most important issue in the face of the challenges of saving lives and health, ensuring fundamental security and a decent existence in the new conditions. However, failure or even postponement of efforts to document the status of individuals risks legal and organizational chaos that can be difficult to manage. Any state that provides in its legal order some forms of protection in the event of unexpected crises, such as temporary protection, should therefore be prepared to keep appropriate records and issue appropriate documents to those granted such protection.

The simplest form that lends itself to use without prior preparation is the issuance of traditional paper certificates. In the modern world, however, such a solution can only be regarded as supplementary. Such a document is inherently perishable, and with the need for frequent presentation to various institutions and authorities, it can quickly deteriorate. More importantly, in the absence of adequate security features, the document can easily be forged or used by someone who is not its holder. The application of security features (e.g. watermarks, holograms, micro-perforations etc.) makes this form no longer simple and cheap to use, and its use requires coordinated organizational efforts, appropriate technical and financial resources. In this situation, a solution that can compete with this form is the use of a document in a more permanent form, such as a booklet or card. In this case, however, the procedure becomes complicated, since, as a rule, it will involve ordering the production of the document, sending finished copies, organizing a system for collection of the documents etc. This is not a fundamental problem when it comes to issuing identity cards, passport documents, residence cards etc., but in view of the need to urgently prepare a huge number of documents, this solution may prove to be completely inoperative. At the same time, it is known that the digitization of public administration opens new possibilities in the analyzed area. The preparation of documents in digital form, of course, requires a certain amount of preparation, especially in technical and IT terms. However, modern states, as a rule, have some solutions in this regard, and it may be sufficient to use and adapt them to the needs of an emergency. Documents in this form do not need to be printed, mailed, issued – they are available to the holder directly in the information system or application. The security features of the latter reduce the risk of unauthorized use and should prevent forgery. Thus, the use of electronic documents appears to be a solution that is convenient, secure, inexpensive and, above all, allows efficient handling of the mass influx of displaced persons.

At the same time, it is a solution that is in line with the EU's assumptions on the development of electronic identification. It is important to point out the importance of the mObywatel application, and by extension Diia.pl, in the context of the European Digital Identity Wallet (EUDI Wallet). EUDI Regulation aims to revolutionize digital identity in EU by enabling the creation of a universal and secure European digital identity wallet. The idea of introducing a European identity wallet, and consequently the development of mObywatel and the introduction of a new catalog of data and documents available online raises concerns about the security of personal data and privacy on the one hand, and on the other is a response to public expectations related to the current threats of war in Ukraine [35]. Therefore, further development of the mObywatel application, and consequently its Diia.pl functionality, should be postulated. It should be noted that the application itself still has some limitations in its functionality, primarily, regarding the services that can be implemented through it. Further development will remain in line with the EU's assumptions indicating the inclusion of entire societies in the digital identification system, in a manner not limited only to public services and with assured access also to services in other countries. Therefore, it seems that Diia.pl, introduced in Poland, which pursues this goal on a scale never seen before, acquires special significance in this context. As mentioned in Digital Decade Country Report 2023 for Poland, the country still has a room for improvement as far the digitalisation of public services is concerned [36]. In 2022 63% of Internet users relied on eGovernment services, which was below the EU average of 74%. Thanks to the mObywatel application, Poland excels in mobile friendliness with the score of 93%, which is the same as EU average. However, when it comes to digital services for citizens and for business, the country is still below the EU average with scores 77% and 84% respectively. And even though mObywatel is growing into strength with 2 million users in December 2020 and over 14 million users in 2024, it is still far from the EU goal of 100% of citizens with access to digital ID by 2030.

At the same time, as the Polish experience shows, electronic residence document for refugees or displaced persons would not be a solution without drawbacks and risks. Therefore, in order to avoid those risks to the greatest possible extent, it is recommended that:

- an electronic residence document is not considered as the only available solution to verify identity and entitlements of a person under protection; there are alternative solutions for the digitally excluded;
- possible financial and technological constraints are taken into consideration to avoid a situation when a lack of resources deprives a person of a document or a possibility to use it;
- the issuing of electronic residence documents to children is well planned in order to ensure their security (to prevent unauthorised access to the document) and, at the same time, to guarantee access to the document for parents and persons in whose custody the child is placed;
- infrastructure within which an electronic residence document is used functions efficiently in order to ensure both security of the data and their required flow between national and international institutions.



The importance of these issues goes beyond technology and administration policy. This is because the right to a residence document is one of the conditions for the full exercise of the personal freedom to which everyone is entitled and to the rights connected with a particular residence status. Besides, from the point of view of the state and the international community in general, it is advantageous that each person has appropriate documents which are easily accessible and verified. In view of the above, the exchange of experience between different countries on the subject seems to be a key issue. This is what this study largely serves.

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