

Information for the next monitoring cycle on Poland — differential treatment on grounds of citizenship in residence-permit procedures (draft law UD408; open-ended suspension of deadlines and remedies for all third-country nationals)

TO: Secretariat of the European Commission against Racism and Intolerance (ECRI), Council of Europe

DOCUMENTED INFORMATION FOR THE NEXT MONITORING CYCLE ON POLAND

1. SUBMITTING PERSON

[Personal data of the author removed for publication.]

2. STANDING — HONEST DISCLOSURE

[Paragraph with the author's personal circumstances removed for publication.]

3. FACTS

(a) The Act of 12 March 2022 on assistance to citizens of Ukraine ("specustawa") suspends, through its art. 100d, the processing deadlines in residence proceedings before voivodes for ALL third-country nationals — an act titled "on assistance to citizens of Ukraine" thus freezes the clocks for Ukrainians and every other foreigner alike, including long-settled applicants with no link to the 2022 displacement. The suspension has run continuously since 1 January 2023 and has been extended five times, currently to 4 March 2027 — effectively no deadline at all.

(b) The national average wait for a residence decision stood at 341 days in the Interior Ministry's October 2025 data; the Silesian Voivodeship Office (Katowice) averaged 637 days in 2025 and 658 days as of 6 July 2026 — the Ministry's own table, annexed to its reply to Sejm interpellation no. 18089 — against the 90-day deadline of Directive (EU) 2021/1883, Article 11(1); since 22 May 2026 the single-permit Directive (EU) 2024/1233 sets the same 90-day ceiling for the main mass channel (Article 5(2), replacing the repealed Directive 2011/98/EU). This is not a recent crisis: the Supreme Audit Office's 2019 audit (covering 2014–2018) already recorded growth of average legalisation times from 64 days (2014) to 206 days (2018), with extremes over three years, naming the same causes — understaffing and underfunding; the Ombudsman has intervened since 2018, and a problem diagnosed a decade ago has not been fixed but deepened.

(c) Draft law UD408 (Ministry of the Interior and Administration; public consultations closed 22 August 2026, RCL file 12412103) would introduce tacit approval — a positive decision after 60 days of administrative silence — only for citizens of states to be designated by a Council of Ministers regulation (draft art. 112b(3)); the explanatory memorandum names Australia, Japan, South Korea, the USA and the UK as the states currently meeting the criteria. Ukrainians are not among the intended beneficiaries: a US citizen would wait 60 days; a Ukrainian, up to 2 years. In the official consultations, Polish civil-society organisations independently made the same point (submissions published on the RCL file; own translations): the Helsinki Foundation for Human Rights calculated that the mechanism would cover "little over 1% of applicants" and found no substantive justification for differentiating a foreigner from a highly developed country and a citizen of a less affluent state; Fundacja Ocalenie called the design a system keyed to "the affluence of the country of origin"; the Instytut na rzecz Państwa Prawa noted the draft ignores "the remaining 99% of residence proceedings before voivodes".

(d) During the wait, the MOS confirmation of a pending application is not recognised by border guards of other Schengen states, blocking lawful work travel.

(e) Since 27 April 2026 applications may be lodged only electronically via MOS 2.0. E-filing itself works; decisions do not come: the same 6 July 2026 ministerial table shows average processing times worsened versus 2023 in 15 of 16 voivodeships after MOS became mandatory (Mazowieckie 153→394 days), while the law mandating MOS (Sejm print no. 1630) allocated no funds and no posts — its impact assessment states costs 'will not constitute grounds for requesting additional funds', and the voivodes' written staffing requests were rejected ('Uwaga nie została uwzględniona'). The resale of appointment slots for PLN 200–500 (packages up to PLN 1,500 — Forsal) occurred under the previous booking system, per 2023–2024 reporting.

(f) The Act of 12 September 2025 (Dz.U. 2025 item 1301, art. 9; in force 1 February 2026) makes the child benefit for foreign parents — including EU Blue Card holders — conditional on month-by-month economic

activity, and waives the test where the child holds Polish citizenship: a citizenship distinction on the face of the statute. The same Act removed eleven categories of healthcare (reimbursed medicines, dental care, rehabilitation, drug programmes including oncology) from uninsured adult refugees with one day's *vacatio legis* (art. 10 pkt 16); since 5 March 2026, once the *specustawa* provisions expired, publicly funded care without an insurance title remains only for the narrow art. 112c groups, the RPO having flagged interrupted dialysis and chemo-/radiotherapy to the Health Ministry on 10–16 March 2026 (V.7013.120.2026, V.7013.122.2026), which confirmed on 24 March 2026 access only for those groups, while an appeal by 55 organisations of 30 March 2026 (SIP, Polish Migration Forum, HFPC, Fundacja Humanitarni) documented interrupted chemo-/radiotherapy, refusal of clotting factors in haemophilia, denial of anastrozole after mastectomy and lost dialysis, arguing a breach of Directive 2001/55/EC. The same Act also orders retrospective Border Guard photo verification of everyone who ever held UKR protection status, feeding families' border-crossing records into benefit decisions (art. 17; new art. 1 ust. 2f–2g) — checks applied to no Polish claimant.

(g) The CUKR card — a Ukrainian's sole exit from temporary protection — which the Polish special act winds down by 4 March 2027, although at EU level protection has been extended to 4 March 2028 by Council Implementing Decision (EU) 2026/1912 of 30 July 2026 — carries a statutory 180-day deadline (Article 42I of the *specustawa*, as amended by Dz.U. 2026 item 203, art. 17 pkt 27), against 60 days in the ordinary regime (Article 112a of the Act on Foreigners): three clocks in the same offices, tiered by citizenship.

(h) For foreigners — and only foreigners — the ordinary remedies against administrative inaction are rendered ineffective. The *ponaglenie* (art. 37 of the Administrative Procedure Code) and the complaint for administrative inaction/excessive length before the administrative court remain available in form, but art. 100d of the special act (in force through this mechanism since 15 April 2022; the suspension window extended to 4 March 2027 by Dz.U. 2026 item 203, art. 17 pkt 50) suspends the statutory decision deadlines (art. 100d(1)), disapplies the provisions on administrative inaction (art. 100d(3)(1)), bars any fine on the silent authority (art. 100d(3)(2)) and provides that the delay 'may not be the basis' for any remedy for inaction or excessive length (art. 100d(4)) — so the authority is not in legal default and the remedy cannot succeed. (A separate provision, art. 100da, which expressly disapplied these remedies in international-protection cases, was repealed with effect from 5 March 2026.) Poland's own Supreme Administrative Court refuses to apply the provision: in II OSK 2940/24 (13 June 2025) it held — verbatim from the published reasons, own translation — that extending the suspension beyond 30 June 2024 "occurred in manifest breach of the principle of proportionality", because "a sufficient period of over two years" had passed "in which the public authorities should have adapted the staffing and organisational capacity of the migration services" (II OSK 1087/25 of 16 February 2026 rules to the same effect), and the Ombudsman speaks of foreigners being deprived of 'real and effective' remedies. The scheme is pending before the CJEU as Case C-254/25, *Wojewoda Śląski* (reference from the WSA w Gliwicach in a complaint for administrative inaction, II SAB/GI 19/25; Opinion of AG Spielmann of 16 April 2026, ECLI:EU:C:2026:320, proposing that such legislation is precluded absent force majeure; judgment pending). Three further official confirmations that the remedies are a dead letter: the Interior Ministry itself wrote to the Ombudsman on 29 June 2026 (ref. BMP.0790.3.7.2026(6), published on the Ombudsman's case page, file XI.541.22.2025.DB) that there is a "high probability" that administrative courts will refuse to apply art. 100d — yet the provision had been extended for a further year in January 2026, five months before that written admission; the Office for Foreigners announces on gov.pl that voivodes "will not forward" urgency motions to its Head; and the Silesian Voivodeship Office — the slowest in Poland — states on its own website that a complaint against its inaction is unfounded under art. 100d, offering instead a non-statutory "request for acceleration" with no criteria, register or statistics.

(i) A presidential bill criminalising 'public propagation of the ideology of OUN-B/UPA' with up to 3 years' imprisonment — a vaguely defined offence capable of covering Ukrainian symbols and commemorations — passed first reading and has been in committee since 17 July 2026, with a chilling effect on the expression of one national community (Article 10 ECHR).

(j) Context of documented rising hostility (relevant to ECRI's hate-speech and hate-crime monitoring). Police-recorded notifications of hate crimes filed by Ukrainian citizens: 267 (2024), 275 (2025), 180 in H1 2026 alone — over 30% above last year's pace (KGP data: rp.pl, 17.07.2026; euronews.com, 20.07.2026); Ukrainian victims of art. 257 of the Criminal Code (public insult/assault on national grounds) nearly doubled, from 103

(2023) to 188 (2024) and 193 (2025), with 126 in H1 2026 (KGP data: wiadomosci.wp.pl, 28.07.2026) — while overall victimisation of Ukrainians stayed flat, i.e. the rise is specific to bias-motivated categories. The police's own statement of 23.08.2025 records 543 confirmed bias-motivated crimes in Jan–Jul 2025 versus 384 a year earlier (+41%) (policja.pl); ODIHR's 2024 country report finds racist/xenophobic incidents 'particularly' targeted Ukrainian or Russian-speaking people and that Poland's hate-crime recording 'does not sufficiently distinguish' hate crimes (hatecrime.osce.org/poland). In political discourse: MEP Grzegorz Braun publicly ordered the removal of the Ukrainian flag from the Biała Podlaska city hall during a presidential-campaign rally on 30.04.2025 and is under criminal investigation for it (EP report A10-0075/2026), and on 6.08.2026 the deputy leader of the largest opposition party announced plans to deport Ukrainian men of conscription age who are not legally employed in Poland — 'They will have an opportunity to fight for their homeland' (rp.pl, 6.08.2026). I present this as documented context, not the core complaint: the joint RPO–OSCE/ODIHR study (2019, fieldwork 2016–2017) found only ~5% of hate crimes are reported to police, and persons kept for years without a residence card — deadlines suspended, remedies disabled — are those least able to report; prompt, equal card issuance is itself an enabler of hate-crime reporting. The institutional response is also incomplete: while a specialised hate-crime prosecution network was created in February 2026 (49 district offices plus Warsaw, 280+ indictments to date), Poland's National Prosecutor's Office refused in writing — letter to the Ombudsman of 17 June 2026 — to publish hate-crime prosecution statistics, stating that 'applicable regulations do not specify the procedure or scope for publishing these data' (bip.brpo.gov.pl); the volumes Poland reports to ODIHR show prosecutions falling from 440 (2022) to 211 (2024) even as anti-Ukrainian notifications rose; and Poland has had no comprehensive national action plan against racism, its last full CERD review dating to August 2019 (CERD/C/POL/CO/22-24).

(k) Naturalisation — the systemic endpoint (relevant to ECRI's integration and participation monitoring). Under the law in force, a typical Ukrainian's statutory path to Polish citizenship is at least 8 years: 5 years' continuous residence to EU long-term resident status (Art. 211, Act on Foreigners) plus 3 years holding that status before recognition as a citizen (Art. 30(1)(1), Act on Polish Citizenship), with Polish at B1 — in practice some 10–12 years once procedures are counted. Three stretch-proposals are pending, none in force: a presidential bill (Sejm print no. 1759, in committee) extending the 3 years to 10, which would set the statutory minimum at 15 years; a PiS bill (print no. 1888: 10 years, C1 Polish, a state civic examination) rejected at first reading on 9 January 2026 by 240:200; and a government (MSWiA) proposal announced on 10 October 2025 (8 years, a B2-level civic test, an act of loyalty). The outcome of the present system is already among the lowest naturalisation rates in the EU: fewer than 40,000 Ukrainians acquired Polish citizenship in 2015–2024, out of roughly 1.7 million residents (Nasz Wybór, 'Bezgłośni'; figures confirmed by Notes from Poland, 15 May 2026) — a community effectively without political voice. The de facto freeze is now documented by the Chancellery's own figures: in reply to my information request (BPU.0605.335.2026, 24 August 2026; the Chancellery labels its table 'working and auxiliary'), it disclosed that between August 2025 and 19 August 2026 the President granted citizenship to **61 persons** and refused 64 — against 1,718 grants in 2023 and 1,512 in 2024 — while pending naturalisation cases grew from 5,082 to 9,522; the Chancellery adds that no legal provision sets any deadline for the President and that it keeps no record of processing times at all. As documented political discourse (reported speech, not attributed intent): MP Sławomir Mentzen wrote on X on 6 October 2025 (per TVN24): 'Ukrainians in Poland want to have an ever-greater influence on our politics! ... they plan to win representation in the Sejm, as early as 2027! ... We must defend our country and its identity!'. The same system that keeps people waiting years for a residence card thus also entrenches their status as persons without political rights — which is why prompt, equal card issuance remains the core request of this submission.

(l) Political discourse of August 2026: deportation of one nationality, announced from the podium of the largest opposition party and defended on national television. On 6 August 2026, at the programme convention of Law and Justice (PiS), the party's vice-president and Member of the European Parliament, Tobiasz Bocheński, announced: 'one of the first, more important decisions of the [future] government will be the decision to deport men, Ukrainians of conscription age, who are not legally employed in Poland. They will have the opportunity to fight for their homeland' (Rzeczpospolita, rp.pl, 6 August 2026; Polsat News, 6 August 2026; Wprost, 6 August 2026 — identical wording in all three). Polsat News describes the proposal as covering men aged 25–60.

The party's leader framed the measure explicitly as a means of supplying recruits to a foreign army's mobilisation. Speaking to journalists on the same day, 6 August 2026, Jarosław Kaczyński, President of Law and Justice, said: 'After all, this is not the deportation of everyone, only of those who are here and do not work. In any case do not work legally and are of conscription age. This is help for Ukraine as regards mobilisation, because if the other side, reportedly after the elections in Russia, is planning to carry out a mobilisation, then people have to be taken from somewhere, and there is a big problem with that' (reported by PAP; quoted by Polityka, Do Rzeczy and Rzeczpospolita, 6 August 2026; no recording or stenographic record is publicly available, and the remark was made in conversation with journalists, not from the podium).

On 11 August 2026, in the 'Graffiti' programme of Polsat News (host Marcin Fijołek), PiS MP Andrzej Śliwka, a member of the Sejm's National Defence Committee, defended the proposal. Verbatim, from the broadcaster's own record: responding to the Deputy Interior Minister's assessment that non-working Ukrainians are 'a handful of people, maybe 5 percent' — 'In our conviction, if that is even 5 percent, that is at least a brigade, if not a division of people who can be formed up and who can fight for their country.' Asked who would identify and 'catch' such persons: 'That is what the Polish services are for. (...) we would like (...) to know who is staying in Poland illegally, or is in Poland and does not work. Such persons should be identified, and this knowledge is necessary even for our security.' On the motive: 'I say it brutally, there is a large deficit of soldiers there.' On the reason for the measure, the same MP invoked 'the increasingly frequent sight of gangs of foreigners who do not work legally', adding that they 'came to Poland not in order to support the Polish economy, but came to Poland precisely in order to return to the standards of the 1990s in Poland'. Asked whether the measure would extend to other nationalities (Russians, Belarusians, Georgians, Germans), he confirmed it targets Ukrainian citizens exclusively: 'If the situation were similar with Georgia or with other states, then the proposal would probably be extended.'

The Government rejected the proposal on the basis of its own data: Deputy Interior Minister Maciej Duszczyk called it 'very much ill-considered and in fact impossible to implement' (Polsat News, 7 August 2026), stated that the number of non-working Ukrainian men of conscription age is about 3,000 — 'Three thousand is a small brigade. Let me remind you that 900,000 people have been mobilised in Ukraine, so this is no help at all' — and that those who do not work are 'people who care for their children with disabilities or persons wounded at the front who are undergoing rehabilitation in Poland' (Polsat News, 'Gość Wydarzeń', 11 August 2026). The MSWiA spokesperson stated on 8 August 2026 that '95 percent of men from Ukraine who are of conscription age work legally in Poland and pay taxes normally' (RMF24). An IBRIIS poll for Rzeczpospolita nonetheless recorded 67.2% public support for deporting Ukrainian men without legal work.

I submit this item because it is precisely the kind of public discourse ECRI monitors: a proposal of forced removal defined by nationality alone, publicly justified by the receiving state's interest in supplying soldiers to a foreign army, accompanied by a call for state services to 'identify' members of that nationality who do not work, and by the characterisation of foreigners as 'gangs' returning Poland 'to the standards of the 1990s'. It is directed at the same national group that the administrative measures described above already single out — and it lands on people whose legal status the same state keeps suspended for up to 658 days.

4. WHY THIS FALLS WITHIN ECRI'S MANDATE

Discrimination on grounds of citizenship is expressly within ECRI's remit: General Policy Recommendation No. 7 (revised) lists nationality among the prohibited grounds. Draft law UD408 differentiates between third-country nationals in identical legal situations solely by citizenship; the *specustawa* suspension — enacted in an act titled "on assistance to citizens of Ukraine" — freezes deadlines and remedies for all third-country nationals, Ukrainians included, while draft UD408 would lift that burden only from the citizens of a handful of wealthy states designated by regulation. Under the Court's case-law on Article 14 ECHR (and, for States bound by it, Protocol No. 12 — which Poland has not ratified), distinctions based on nationality alone require very weighty reasons. The underlying administrative failure is a documented decade old and originally hit all foreigners; but the burdens added since 2022 — suspended deadlines, exclusion from tacit approval, the longest statutory clock, benefit conditionality waived for children holding Polish citizenship, retrospective verification, and a criminal bill aimed at symbols of national identity — fall on one and the same national group. This concentration of burdens along the line of one nationality is a pattern, not an accident, and merits assessment

as such. The group bearing these burdens is, on the official record, a net fiscal contributor: the state development bank BGK (11 March 2025) found Ukrainian migrants contributed about PLN 15.21 billion to the 2024 budget (about PLN 15.1 billion of it in taxes and social contributions), against roughly PLN 2.8 billion of 800+ for refugee children, and a Deloitte/UNHCR report of 10 June 2025 assessed their contribution at 2.7% of GDP and PLN 47 billion of public revenue.

5. PRIMARY REFERENCES

- Directive (EU) 2021/1883 of 20 October 2021, Article 11(1) (90-day Blue Card decision deadline) — EUR-Lex.
- Act of 12 March 2022 on assistance to citizens of Ukraine (specustawa) — deadline-suspension provisions, extended to 4 March 2027 — Dziennik Ustaw.
- Draft law UD408 — Government Legislation Centre (RCL) file 12412103; public consultations closed 22 August 2026; submissions of the Helsinki Foundation for Human Rights, Fundacja Ocalenie and Instytut na rzecz Państwa Prawa published on the file.
- Letter of the Polish Commissioner for Human Rights (RPO) to MSWiA of 1 June 2026, ref. XI.541.22.2025.DB, the latest in a years-long series, and the Ministry's reply of 29 June 2026, ref. BMP.0790.3.7.2026(6), published on the same case page — bip.brpo.gov.pl.
- MSWiA reply to Sejm interpellation no. 18089 (27 July 2026), with the table of average processing times as of 6 July 2026 — api.sejm.gov.pl.
- Infringement complaint to the European Commission, lodged 10 August 2026, registered on 13 August 2026 under reference CPLT(2026)02766 (DG Migration and Home Affairs; preliminary assessment due within two months).
- Bank Gospodarstwa Krajowego (BGK) report of 11 March 2025 on the fiscal balance of Ukrainian migrants (2024 budget) — bankier.pl; Deloitte/UNHCR, 'Analiza wpływu uchodźców z Ukrainy na gospodarkę Polski', 10 June 2025.
- Appeal of 55 organisations of 30 March 2026 on the withdrawal of healthcare from uninsured adult refugees (SIP, Polish Migration Forum, HFPC, Fundacja Humanitarni); RPO letters V.7013.120.2026 and V.7013.122.2026 (10–16 March 2026) and the Health Ministry reply of 24 March 2026.

6. REQUEST

Please take this information into account in ECRI's next monitoring cycle on Poland, assess the UD408 nationality carve-out and the open-ended specustawa suspension as citizenship-based differential treatment, and recommend: (1) 60-day tacit approval for all third-country nationals, including Ukrainians and Blue Card holders; (2) ending the open-ended suspension of deadlines in residence proceedings; (3) compliance with the 90-day deadline of Directive (EU) 2021/1883; (4) repeal of the citizenship-conditioned benefit, healthcare and surveillance provisions of the Act of 12 September 2025 (Dz.U. 2025 item 1301).

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