



SURVIVOR'S PENSION FROM ZUS SUBJECT TO COMMUNITY COORDINATION

S o c i a l I n s u r a n c e I n s t i t u t i o n

Survivors of a deceased person who has been employed and covered by social insurance in the territory of Poland may acquire the right to survivors' pensions payable by ZUS if they satisfy the requirements under the Law of 17 December 1998 on pensions from the Social Insurance Fund (hereinafter called „the Pension Law”). Information on qualifying conditions for ZUS survivors' pensions as well as the rules governing calculation of benefits may be found in a separate leaflet titled: *Survivor's pension*, which is available in each ZUS unit.

If the deceased person has been also employed – beside Poland – abroad in other Member States of the **European Union, European Economic Area or in Switzerland**, or if a survivor's pension claimant resides in the territory of one of those States, the principles of Community coordination of social security schemes are applicable to the described benefit.



Who is the leaflet addressed to?

The leaflet is addressed to the following persons:

- pension claimants being the survivors of a person who has accumulated employment (insurance) periods under the legislation of Poland as well as insurance or residence periods completed abroad under the legislation of Member States (see: p. 2),
- pension claimants residing abroad in the territories of Member States, being the survivors of a person who has completed employment (insurance) periods only under the legislation of Poland,
- persons residing abroad in the territories of Member States who are interested in receiving the survivor's pension awarded by ZUS in the State of residence.

¹ Journal of Laws /Dz.U./ of 2004 No 39, Text 353 with further amendments.

Information contained in the leaflet does not relate to survivors' pensions in respect of accidents at work or occupational diseases because coordination of these benefits is based on different rules.



Which states are covered by the Community coordination of the social security schemes?

Community coordination of the social security schemes covers **EU Member States**, that is: Austria, Belgium, Bulgaria, Cyprus, Czech Republic, Denmark, Estonia, Finland, France, Greece, Spain, the Netherlands, Ireland, Lithuania, Luxembourg, Latvia, Malta, Germany, Poland, Portugal, Romania, Slovakia, Slovenia, Sweden, Hungary, United Kingdom and Italy.

For coordination purposes also **the non-EU States belonging to the European Economic Area**: Iceland, Liechtenstein and Norway, as well as **Switzerland** are regarded as EU Member States. They have been covered by the Community regulations on coordination.

The aforementioned States are further referred to as „Member States”.



Who takes advantage of the Community coordination in the field of survivors' pensions?

Beneficiaries of the Community coordination of survivors' pensions include, in particular, **persons entitled to survivors' pensions** pursuant to the Pension Law – including children, spouse, parents – who satisfy the following requirements:

- are the nationals of Member States, or refugees or stateless persons (i.e. persons not being nationals of any of states) residing in the territories of Member States and claim survivors' pensions after the death of migrants for employment moving within the territories of Member States (irrespective of the nationality of migrants),
for example a Pole claiming a survivor's pension after the death of an Ukrainian who prior to his death has been employed and insured successively in Poland, Sweden and Ireland;
- claim survivors' pensions after the death of nationals of Member States (including Polish nationals) and after the death of refugees or stateless persons residing in the territories of Member States, migrating for employment within the territories of Member States (irrespective of the nationality of pension claimants),
e.g. a Russian man claiming the survivor's pension after the death of a Polish national who prior to her death has been employed and insured successively in Poland, in the Netherlands and in the United Kingdom;

- reside in the territory of a Member State and claim survivors pensions after the death of nationals of third States, i.e. non-Member States (e.g. nationals of Ukraine), migrating for employment within the territories of Member States and residing before their death in the territory of one of UE Member States, excluding Denmark (irrespective of the nationality of pension claimants),
e.g. a Canadian residing in France claiming a survivor's pension after the death of a national of Israel who before her death resided in France and has been employed and insured successively in Poland, in Spain and in France.

Regulations on coordination concern pension claimants being the survivors of persons who have been subject to insurance in Member States, pursuing widely conceived occupational activity – in particular as employees and self-employed persons, persons performing work on a basis of civil law contracts – or on a basis of other social insurance titles.

Thus, the Community coordination in the field of survivors' pensions covers e.g. a widow claiming the pension after the death of her husband who has been subject to social insurance: in Ireland as a worker, then in Poland as a freelancer, and later in Spain as a self-employed person.



Equal treatment

In accordance with the principle of equal treatment, a person covered by the Community coordination of social security schemes should be treated in each Member State as if he or she were a national of that Member State – both when claiming the survivor's pension in that State and while receiving the awarded benefit.

It means that e.g. discrimination of a Polish national who claims the survivor's pension in the United Kingdom, France or Sweden is prohibited.



Survivor's pension after the death of a person who has completed periods of insurance under the legislation of Poland and foreign insurance or residence periods under the legislation of other Member States

The European Union has not yet established any supranational scheme that would guarantee survivors' pensions. Each of Member States independently defines persons eligible for a survivor's pension after satisfying the qualifying conditions.

A survivor of a person who has been employed and insured in Poland and in other Member States **may acquire the survivor's pension both from Poland and from another Member State** where the deceased person has been insured, after satisfying the qualifying conditions for the acquisition of the right to the pension under the legislation of those States. Information on qualifying conditions for ZUS survivors' pensions may be found in a separate leaflet titled: Survivor's pension, which is available in each ZUS unit.

If the deceased person has been employed before his or her death also abroad in the territories of Member States, his or her survivors claiming the pension are covered by the Community coordination of social security schemes.

► **Establishment of the pension entitlement
in each of Member States where the deceased person has been insured or has resided**

If the deceased person has been employed and covered by social insurance before his or her death in the territory of Poland and in the territories of other Member States, the right to the survivor's pension may be acquired by his or her survivors **both in Poland and in other Member States** where the deceased person has been covered by social insurance, after the qualifying conditions for the award of the pension under the legislation of those States have been met.

Thus if a survivor's pension is claimed by a widow of a person insured (or ZUS pensioner) who has completed employment (insurance) periods under the legislation of Poland and of Spain and Norway, the pension entitlement is established in parallel by insurance institutions of each of these States.

To acquire the right to survivor's pension from ZUS, the following qualifying conditions laid down in the Polish legislation must be satisfied:

- regarding the deceased person – it is required that the deceased person's entitlement to an old-age or disability pension has been established before his or her death or that he or she has satisfied the qualifying conditions for the award of one of these benefits²,
- regarding the survivor's pension claimant – the pension claimant should satisfy the qualifying conditions e.g. of age, incapacity for work or other requirements related to the family member, listed in the Pension Law and described in the aforementioned leaflet titled: *Survivor's pension*.

► **Aggregation of foreign periods of coverage
(insurance or residence)**

As mentioned above, the survivors' pension is awarded if the deceased person's entitlement to an old-age or disability pension has been established before his or her death or if he or she has satisfied the qualifying conditions for the award of one of these benefits.

² The survivors' pension is also awarded to entitled family members of a person who – on the day of death – was a recipient of the pre-retirement benefit or the pre-retirement allowance; however these benefits are not covered by the Community coordination of social security schemes, and for this reason this case is not discussed here.

Where the deceased person did not have sufficient periods of insurance (residence) to satisfy – under the legislation of a given Member State – the qualifying conditions for the entitlement to the benefit (old-age or disability pension), which served as a basis to establish the survivor's pension, the competent institution also takes into account (aggregates) foreign periods of insurance (residence) completed by the deceased person under the legislation of all other Member States.

Aggregation of insurance or residence periods completed by the deceased person is necessary to investigate his or her entitlement to benefits which depends on the length of the period of coverage. It means that to award the survivor's pension we aggregate Polish and foreign periods only where the person concerned or deceased satisfied the qualifying conditions for:

- the old-age pension, dependent on the length of contributory and non-contributory insurance periods (the pension from the earlier pension scheme for persons born before 1 January 1949, or early retirement pension for persons born after 31 December 1948 but before 1 January 1969), or
- the disability pension (excluding a disability pension in respect of accident at work).

Thus if e.g. a widower and a child claim a survivor's pension from ZUS after the death of a woman who has not accumulated any insurance period in Poland (contributory and non-contributory) to be awarded the disability pension, ZUS will take into account (aggregate) also foreign periods of insurance (residence) completed by the deceased woman under the legislation of other Member States (e.g. of Spain, Germany, Sweden or Portugal) and will check if, after aggregating foreign insurance (residence) periods, she satisfies the qualifying conditions for the entitlement to the disability pension, and in result – if the widower and the child may be awarded the survivor's pension in Poland.

It should be born in mind that foreign residence periods may be taken into account by ZUS for pension purposes only if the legislation of a State where such person has resided makes pension entitlement dependent on the period of residence in the territory of that State (as for example in Denmark or in Sweden).

► **Calculation of amount of a pension established with consideration of foreign periods of coverage (insurance or residence) of the deceased person**

Where entitlement to a pension under the legislation of a given Member State is established taking into account foreign periods of insurance (residence) completed by a deceased person under the legislation of other Member States, the amount of the benefit is calculated in the following way:

- first, a competent institution of the State which has established pension entitlement must determine a theoretical (full) amount of the benefit which would be

awarded to a person concerned if all periods of insurance (residence) were completed by the deceased person under the legislation of that State,

- subsequently, based on the theoretical amount, the competent institution must determine the actual amount of the pro-rata benefit based on the ratio of periods of coverage accumulated under the legislation of the State which has established the entitlement to the sum of all periods of coverage under the legislation of all Member States concerned.

The pro-rata pension, calculated in this way, is the benefit which is due to the person concerned.

When establishing the survivor's pension for a widow ZUS confirmed that the deceased husband at the moment of death satisfied the qualifying conditions for the award of the disability pension, based on the insurance periods completed in Poland (3 years) and in Spain (4 years). In such case the survivor's pension will be calculated in the following way:

- *first, ZUS will determine a theoretical (full) benefit which would be awarded to the widow if all periods of insurance of the deceased person (7 years under the legislation of Poland and of Spain) were completed under the legislation of Poland,*
- *subsequently, based on the theoretical amount, ZUS will determine the actual amount of pro-rata benefit corresponding to the ratio of Polish periods of insurance to the sum of periods of insurance under the legislation of Poland and of Spain; in the described case it will be 3/7 of the theoretical amount, because the deceased husband has accumulated 3 years of insurance periods under the legislation of Poland, and a total of 7 years of insurance periods under the legislation of Poland and of Spain. In effect ZUS will award such pro-rata survivor's pension.*

► **Calculation of amount of a pension established without consideration of foreign periods of coverage (insurance or residence) of the deceased person**

Where the deceased person's entitlement to an old-age or disability pension, or to the old-age pension from the earlier functioning pension scheme (dependent on the length of contributory and non-contributory periods) has been established before his or her death, or where he or she has satisfied the qualifying conditions for the award of one of these benefits, based on the insurance periods completed under the Polish legislation, which means that to acquire the right to the survivor's pension no foreign insurance or residence periods completed by the deceased person in other Member States were needed – the amount of the survivor's pension is calculated only on the basis of insurance periods completed under the Polish legislation (national pension), without consideration of foreign periods of coverage accumulated in other Member States.

However, in this case the competent institution also determines pension amount that would be awarded on the basis of aggregated periods of insurance (residence)

completed by the deceased person (a pro-rata pension). If it is higher than the amount of the national pension calculated only on the basis of insurance periods completed under the legislation of Poland (national pension) – the person concerned will be awarded the pro-rata pension.

For example if ZUS awards the survivor's pension to a child of a deceased woman who has accumulated a 21-year period of insurance under the legislation of Poland, but also a 4-year insurance period under the legislation of Austria and 3-year insurance period in Germany, it will determine the benefit amount in the following way:

- *on the one hand it will determine the national pension – based only on the periods of insurance of the deceased woman under the legislation of Poland, equal to 21 years,*
- *on the other hand it will determine a pro-rata pension – on the basis of aggregated insurance periods of the deceased woman in Poland, in Austria and in Germany, equal to 28 years, i.e. first it will calculate a theoretical amount of the pension on the basis of aggregated 28-year period of insurance of the deceased woman completed under the legislation of three mentioned Member States and subsequently it will calculate the pro-rata pension, which in the described case equals to 21/28 of the theoretical amount,*
- *finally ZUS will compare amounts of benefits calculated in both variants and will award the pension in amount, which is more favourable to the child.*

The described rule concerns the situation where the deceased person has been receiving or has satisfied the qualifying conditions for the receipt of the disability pension or the old-age pension from the earlier functioning pension scheme, where the right to benefit and its amount depended on the length of contributory and non-contributory periods. The situation is different where the deceased person has been receiving or has satisfied the qualifying conditions for the so called „new” old-age pension from the reformed scheme. This case will be described at page 00 of the leaflet.

► **Calculation of amount of the survivor's pension after the death of the entitled person or a person who has satisfied the qualifying conditions for the so called „new” old-age pension – from the reformed scheme**

As mentioned above, the survivors' pension is awarded if the deceased person's entitlement to an old-age or disability pension has been established before his or her death or if he or she has satisfied the qualifying conditions for the award of one of these benefits.

In the case of the deceased person who has been covered by the reformed old-age pension scheme, the qualifying conditions for the acquisition of the right to the pension from ZUS do not include the necessity of completing contributory and non-contributory periods of specified duration. In the „new” old-age pension scheme – covering persons born after 31 December 1948 who do not qualify for the early

retirement pension – the period of coverage of specified duration is not required to acquire the right to benefit.

The amount of such pension will be the quotient resulting from dividing the calculation basis of the benefit by average life expectancy³ for persons in the age equal to the retirement age of the person insured.

The old-age pension will be calculated on the basis of the amount of the indexed initial capital (established for periods of insurance in Poland completed before 31 December 1998) and the amount of contributions paid to the old-age pension insurance in Poland after indexation, recorded on individual account of the person insured by the end of the month preceding the month from which the pension is payable.

It means that if the survivor's pension is established after the death of the deceased person who has satisfied the qualifying conditions for the „new” old-age pension, there is no need to aggregate Polish and foreign insurance (residence) periods. In these cases no pro-rata pension is established, as earlier described. A pension for a survivor of such person is established on the basis of the old-age pension that would be payable to the deceased person, based on the resources accumulated on the pension account of the insured person in ZUS.

The old-age pension for some insured persons born after 31 December 1948, who acquire the right to the old-age pension from the reformed scheme, not joined the Open Pension Fund or have applied for the transfer of resources collected on account in the Open Pension Fund, via the Social Insurance Institution, to the State budget incomes and who reach the retirement age – 60 years for women and 65 years for men – in the years 2009-2013, will be established under the so called mixed rules, i.e. it will be calculated partly under earlier and partly under the reformed rules⁴. Such old-age pension is composed of two parts, namely:

- (relevant for a given year) percentage of the old-age pension calculated under earlier rules (i.e. using the base amount, the basis for benefit calculation and calculating parts depending on contributory and non-contributory periods),

³ Life expectancy tables – taking into consideration average life expectancy, the same for women and men expressed in months for the insured person's age – are published on an annual basis by the President of the Central Statistical Office in the Official Journal, in a form of an announcement.

⁴ Proportion of bouth parts of the old-age pension – i.e. calculated under earlier rules (old) and under the reformed rules (new) – depends on the year when a given person will reach the retirement age. And so, such old-age pension amounts to:

- 80% of old and 20% of new old-age pension if the retirement age is reached in 2009
- 70% of old and 30% of new old-age pension if the retirement age is reached in 2010
- 55% of old and 45% of new old-age pension if the retirement age is reached in 2011
- 35% of old and 65% of new old-age pension if the retirement age is reached in 2012
- 20% of old and 80% of new old-age pension if the retirement age is reached in 2013.

- (relevant for a given year) percentage of the old-age pension calculated under the reformed rules (i.e. using the quotient resulting from dividing the resources accumulated on the pension account by average life expectancy for persons in the age equal to the retirement age of the person insured).

If the survivor's pension is established after the death of the deceased person who has satisfied the qualifying conditions for the old-age pension in mandatory retirement age⁵, calculated under the mixed rules, or who has been a recipient of such pension, and the deceased person has also completed insurance or residence periods under the legislation of other Member States, pension amount is calculated – according to the principle of advantage – in two variants:

- on the one hand the survivor's pension is calculated based on the mixed old-age pension, in the so called national variant – which means that when calculating a relevant percentage of the old-age pension of the deceased person, determined under earlier rules, only Polish insurance periods are taken into consideration,
- on the other hand the survivor's pension is calculated based on the mixed old-age pension, in the so called pro-rata variant – which means that when calculating a relevant percentage of the old-age pension of the deceased person, determined under earlier rules, beside Polish insurance periods there are also taken into consideration foreign insurance or residence periods completed in territories of Member States, and subsequently this part of the old-age pension of the deceased person is calculated as a pro-rata pension, taking into consideration the ratio of Polish insurance periods to the sum of Polish and foreign periods of coverage completed by the deceased person,
- subsequently amounts of the survivor's pension calculated in this way are compared, to award the benefit in amount more favourable to the person concerned.

For example if ZUS awards a survivor's pension to a child of a woman who was born after 31 December 1948, hasn't been a member of any Open Pension Fund, and has satisfied the qualifying conditions for the award of the old-age pension under the reformed rules, and reached the age of 60 years in 2009, after having completed 9-year insurance period in Poland and 10-year insurance period in Austria, it will determine the benefit amount in the following way:

- *on the one hand it will calculate the national survivor's pension based on the mixed old-age pension, composed of:*
 - *a part of the survivor's pension calculated on the basis of 80% of the old-age pension established under earlier rules⁶, taking into consideration only Polish insurance period of the deceased woman, equal to 9 years (i.e. the old-age pension calculated on the basis of*

⁵ The mandatory retirement age is 60 years for women and 65 years for men.

⁶ Percentage of the old-age pension calculated under earlier rules and percentage of the old-age pension calculated under the reformed rules – 80 and 20 respectively – which means that the deceased person reached the retirement age in 2009 (see footnote 4).

the base amount, the basis for benefit calculation and parts depending on contributory and non-contributory periods),

- *a part of the survivor's pension calculated on the basis of 20% of the old-age pension established under the reformed rules (i.e. the old-age pension being the quotient resulting from dividing the resources accumulated on the pension account of the deceased person by her average life expectancy);*
- *on the other hand it will calculate the pro-rata survivor's pension based on the mixed old-age pension, composed of:*
 - *a part of the survivor's pension calculated on the basis of 80% of the old-age pension established under earlier rules, taking into consideration Polish and Austrian insurance periods of the deceased woman in pro-rata amounts i.e. first ZUS will calculate a theoretical amount of the pension on the basis of aggregated 19-year period of insurance of the deceased woman completed under the legislation of both Member States and subsequently it will calculate the pro-rata pension, which in the described case equals to 9/19 of the theoretical amount,*
 - *a part of the survivor's pension calculated on the basis of 20% of the old-age pension established under the reformed rules (i.e. the old-age pension being the quotient resulting from dividing the resources accumulated on the pension account of the deceased person by her average life expectancy);*
- *finally ZUS will compare amounts of benefits calculated in both variants and will award the pension in amount, which is more favourable to the child.*

► **Calculation of amount of the survivor's pension after the death of a person who was entitled to or satisfied the qualifying conditions for the award of earlier retirement pension calculated in accordance with the so called mixed rules (Article 184 of the Pension Law)**

The insured persons born after 31 December 1948 are entitled to the old-age pension in earlier age – provided for in Articles 32, 33, 39 and 40 of the Law on pensions from the Social Insurance Fund – if:

- 1) on the day of entry into force of the Pension Law, i.e. on 1 January 1999 they accumulated:
 - a period of employment in special conditions and special character, required in earlier legislation in order to acquire the pension entitlement in age lower than 60 years for women and 65 years for men
 - the contributory and non-contributory period of at least 20 years for women and 25 years for men, and
- 2) they have not joined the Open Pension Fund or have applied for the transfer of resources collected on account in the Open Pension Fund, via the Social Insurance Institution, to the State budget incomes, and
- 3) they have terminated the employment relationship – in the case of the insured person being an employee.

If a person who satisfies the qualifying conditions for the award of such old-age pension reaches the earlier retirement age in the years 2009-2013, his or her benefit will be calculated, following the mixed rules, as: ● relevant for a given year percentage of the old-age pension determined under earlier rules ● relevant for a given year percentage of the old-age pension determined under the reformed rules.

If the survivor's pension is established after the death of a person who – to be awarded the aforementioned earlier retirement pension calculated in a mixed way – **needed foreign insurance or residence periods** or foreign periods of employment in special conditions, the pension is calculated in the so called pro-rata variant. It means that when calculating a relevant percentage of the old-age pension of the deceased person, determined under earlier rules, beside Polish insurance periods there are also taken into consideration foreign insurance or residence periods completed in territories of Member States, and subsequently this part of the old-age pension of the deceased person is calculated taking into consideration the ratio of Polish insurance periods to the sum of Polish and foreign periods of coverage completed by the deceased person.

For example if ZUS awards a survivor's pension to a child of a man who was born after 31 December 1948 and reached the earlier retirement age of 60 in 2009 (he satisfied the qualifying conditions for the award of the old-age pension in lower age pursuant to Article 184 of the Pension Law), and who has accumulated 15-year period of insurance under the legislation of Poland and 10-year period of insurance under the legislation of the Netherlands, the survivor's pension after his death (equal to a relevant percentage of the benefit of the deceased man) will be established based on:

- 80% of the old-age pension established under earlier rules, taking into consideration Polish and Dutch insurance periods of the deceased man in pro-rata amounts (i.e. first ZUS will calculate a theoretical (full) amount of the pension on the basis of aggregated 25-year period of insurance completed under the legislation of both Member States, and subsequently it will calculate the pro-rata pension, which in the described case equals to 15/25 of the theoretical amount,
- 20% of the old-age pension calculated under the reformed rules (i.e. the old-age pension being the quotient resulting from dividing the resources accumulated on the pension account of the deceased person by his average life expectancy).

However, if the survivor's pension is established after the death of a person who has accumulated foreign periods of insurance or residence, but to award the old-age pension **no foreign periods of coverage were needed**, the pension amount is calculated – according to the principle of advantage – in two variants:

- on the one hand the survivor's pension is calculated based on the mixed old-age pension, in the so called national variant – which means that when calculating a relevant percentage of the old-age pension of the deceased person, determined under earlier rules, only Polish insurance periods are taken into consideration,
- on the other hand the survivor's pension is calculated based on the mixed old-age pension, in the so called pro-rata variant – which means that when calculating

a relevant percentage of the old-age pension of the deceased person, determined under earlier rules, beside Polish insurance periods there are also taken into consideration foreign insurance or residence periods completed in Member States, and subsequently this part of the old-age pension of the deceased person is calculated as a pro-rata pension, taking into consideration the ratio of Polish insurance periods to the sum of Polish and foreign periods of coverage completed by the deceased person,

- subsequently amounts of the survivor's pension calculated in this way are compared to award the benefit in amount more favourable to the person concerned.

If the insured person reaches lower age required to be awarded the above mentioned (earlier) retirement pension after 31 December 2013, the amount of such pension will be calculated as the quotient resulting from dividing the resources accumulated on the pension account of the deceased person by his or her average life expectancy. The survivor's pension – determined after the death of a person who has satisfied the qualifying conditions or was the recipient of such old-age pension – will be calculated as a relevant percentage of the benefit of the deceased person. In this case even if the deceased person accumulated periods of insurance or residence abroad, completed under the legislation of Member States, the pro-rata pension will not be established.

► **Periods of insurance (residence) of less than one year**

Where a deceased person has accumulated in one of Member States where he or she was employed the insurance (residence) period of less than one year, no survivor's pension entitlement is established in this State if the legislation of this State does not provide for awarding the pension in respect of so short insurance (residence) period. However, this period is not lost because if a competent institution of other Member State awards the pension, it will be obliged to aggregate also such short foreign period when calculating the amount of own benefit.

Thus if e.g. a given person claims the survivor's pension after the death of a person who – beside employment (insurance) periods under the legislation of Poland, has also completed a period of insurance of less than one year under the legislation of the Netherlands, not giving any entitlement to the benefit under the national legislation of the Netherlands, in the event of awarding the survivor's pension under the legislation of Poland ZUS will take into consideration also the Dutch insurance period to calculate the amount of the benefit (without calculating the pro-rata pension).

The situation is different where the deceased person has satisfied the qualifying conditions for the acquisition of the right to the so called „new” old-age pension from the reformed scheme. In this case the foreign period of insurance of the deceased person of less than one year, not giving any entitlement to foreign benefit, is taken into account only to determine the initial capital of a given person (thus it

concerns only foreign periods completed before 1 January 1999). The initial capital is subsequently taken into consideration while calculating the benefit of the deceased person, that is the old-age pension from the reformed scheme or an appropriate part of the mixed old-age pension of the deceased person, calculated under the reformed rules.

► **Receiving foreign pensions by ZUS pensioner**

The fact that a person with established entitlement to ZUS survivor's pension is also a recipient of the pension from a Member State other than Poland does not result in reduction in or suspension of the right to pension from ZUS.

► **Awarding benefits for orphans, if the deceased person has accumulated periods of insurance under the legislation of Poland and in the State whose legislation does not provide for survivor's pensions for orphans**

Differently from Poland, legislation of some Member States does not provide for survivor's pensions for orphans in respect of the death of a parent (guardian), only family allowances or special allowances for orphans. Such allowances are provided for in the legislation of Belgium, Denmark, France, Ireland and the United Kingdom.

EU regulations provide special rules for establishing and paying benefits to orphans being the survivors of a person who has completed insurance (residence) periods in Member States, including at least one Member State where only family allowances or special allowances for orphans are provided for. Under the aforesaid special regulations the payment of benefits to orphans is the responsibility of an institution of only one of Member States where the deceased person has completed qualifying periods.

The institution of the Member State of orphan's residence is responsible for payment of the benefit if the entitlement to benefits is acquired under the legislation of that State.

If the deceased person has not been subject to social insurance scheme in the State of orphan's residence, benefits are payable by the institution of the State where the deceased person has completed the longest insurance periods, and if the qualifying periods in various Member States were of equal duration – the institution of the State where the deceased person last completed the qualifying periods.

Thus, if the deceased person has completed insurance periods in Poland and in a Member State where only family allowances or special allowances for orphans are provided for (e.g. in France or Belgium), and the orphan claiming the benefit resides:

— in Poland – the orphan is awarded the survivors' pension calculated in accordance with the Polish legislation,

— abroad in another Member State – the orphan is awarded the survivors' pension or the family allowance/special allowance for orphans under the legislation of the State of residence.

Nevertheless, institutions of other Member States where the deceased person has completed insurance periods will be responsible for the award of benefits under the legislation of their respective States and then they will have to suspend these benefits in part equal to amount of benefits for orphans awarded in the State responsible for their payment. The aforesaid institutions pay orphan supplementary allowances in amount equal to a difference between the amount of their own benefit and the amount of benefit awarded in the State responsible for payment.

Where the deceased person has accumulated insurance periods in Poland and in France, and an orphan being his or her survivor resides in the territory of France, the orphan will receive only French allowance for orphans if he or she satisfies qualifying conditions for the award of such allowance in accordance with the French legislation. Having established the orphan's right to the Polish survivor's pension ZUS will check if the amount of the survivor's pension, awarded to the orphan under the Polish legislation is higher than the amount of the French allowance. If yes, ZUS will pay a supplement equal to a difference between the amount of the Polish survivor's pension and the amount of the French allowance for orphans.

These rules are applicable only to benefits for orphans. They are not applicable to survivor's pensions for other survivors, such as: a widow, widower or parents of the deceased person.



Survivor's pension for persons residing in the territory of Member States other than Poland after the death of a person who has accumulated only Polish insurance periods

The Community coordination of the social security schemes also covers cases where the deceased person has accumulated only Polish insurance periods (before his or her death has been employed only in Poland), and the survivor's pension claimant (e.g.a spouse, a child) resides in a Member State other than Poland.

Where the survivor's pension claimant after the death of a person who has accumulated only insurance (employment) periods in Poland, resides abroad in another Member State, only a Polish institution will be competent to establish the right to the pension, i.e. the institution which is in Poland obliged to investigate a given claim (ZUS or KRUS respectively or a pension body of the so called uniformed services).

The mentioned person may be granted the survivor's pension in Poland if he or she satisfies the qualifying conditions under the Polish legislation.



Evaluation of incapacity for work for pension purposes

Where the award of the survivor's pension from ZUS depends on incapacity for work, evaluation of such incapacity, determination of the degree of disability, date of its occurrence, permanency or expected duration as well as other circumstances related to incapacity for work affecting the right to the pension, falls within the competence of ZUS evaluating doctor, and if the decision of ZUS doctor is appealed against – within the competence of the medical board of the Social Insurance Institution.

ZUS evaluating doctor issues a decision also when the pension claimant is permanently resident in other Member State. In such cases ZUS evaluating doctor evaluates incapacity for work on the basis of medical opinion drawn up by a competent institution (medical practitioner) in the place of residence of the person concerned or on the basis of documentation supplied by the pension claimant.

A person incapable of work means – for pension purposes – a person who has lost, completely or partly, earning capacity due to disturbance of body fitness and retraining does not promise the restoration of his or her earning capacity.

In accordance with the Polish legislation the following degrees of incapacity for work are distinguished:

- complete incapacity for work – certified in a case of a person who has lost capability for any work, or
- partial incapacity for work – certified in a case of a person who has lost – to a considerable degree – capability for work corresponding to his or her level of qualifications.

The inability for independent existence is certified in a case of body impairment which requires permanent or long-term care and assistance of other person in satisfaction of primary living needs.



The basis for assessment of the survivor's pension in a case where the deceased persons has accumulated – apart from the Polish periods of insurance – also foreign periods of insurance or residence

Where the survivor's pension is calculated on the basis of disability pension or the old-age pension established under the earlier rules (dependent on the length of contributory and non-contributory periods), to which the deceased person was

entitled, it is necessary to establish **the basis for assessment of the pension** of the deceased person.

The survivor's pension from ZUS, established to survivors of a person who has accumulated – apart from the Polish periods of insurance – also foreign insurance or residence periods under the legislation of other Member States – is calculated based on an average basis for assessment of a contribution to pension insurance (before 1 January 1999 – to social insurance), pursuant to the Polish legislation, from the period of 10 consecutive calendar years selected by the person concerned from the recent 20 calendar years directly preceding the year when the person concerned filed the pension claim. The mentioned 10 calendar years are determined without consideration of years when the deceased person has been covered (for the full year) by insurance abroad in Member States.

If in the period of 20 years directly preceding the year when the person concerned filed the pension claim, the deceased person was not covered by insurance under the legislation of Poland, an amount of the pension is based on an average basis for assessment of a contribution to pension insurance (before 1 January 1999 – to social insurance) pursuant to the Polish legislation, from the period of 10 consecutive calendar years directly preceding the year when the deceased person for the first time joined insurance abroad in a Member State.

On the request of the person concerned an amount of the pension may be also based on an average basis for assessment of a contribution to social insurance, pursuant to the Polish legislation, from the period of 20 calendar years, preceding the year when the person concerned filed the pension claim, selected from the whole period of coverage of the deceased person by the social insurance in Poland.



The basis for calculation of the survivor's pension in a case where the deceased person has accumulated – apart from the Polish periods of insurance – also foreign periods of insurance

Where the survivor's pension is calculated on the basis of the old-age pension established under the reformed rules (independent of the length of contributory and non-contributory periods), to which the deceased person was entitled, it is necessary to establish **the basis for calculation of the benefit** of the deceased person.

The old-age pension due to the deceased person will be calculated on the basis of the amount of the indexed initial capital and the amount of contributions paid

to the old-age pension insurance after indexation, recorded on individual account of the person insured by the end of the month preceding the month from which the pension is payable. Amount of the old-age pension due to the deceased person is calculated to assess the survivor's pension as a relevant percentage of the benefit of the deceased person. This amount corresponds to the quotient resulting from dividing the calculation basis by average life expectancy for persons in the age equal to the age reached by the deceased person.



Special rules for establishing pensions under the Polish-German Convention of 1975

In Polish-German relations, beside the Community regulations governing the coordination of social security schemes, the Polish-German Convention of 1975 on old-age and work-injury provisions is still in force.

In result of application of this Convention, survivors' pensions in respect of insurance periods completed by the deceased person in Poland and in Germany before 1 January 1991 are financed by a social insurance institution of the claimant's State of residence (German institution or Polish /ZUS/ institution respectively), and in respect of insurance periods completed by the deceased person after 31 December 1990 – a social insurance institution of the State where the periods have been completed.



Where to file a pension claim?

A person who claims a survivor's pension after the death of a person who has completed periods of insurance (residence) under the legislation of more than one Member State, should file a pension claim with an insurance institution of **one Member State**. It means that it is not necessary to file a separate application in each State.

Such application automatically triggers off **the procedure of pension entitlements' investigation** in all Member States, where the deceased person has been covered by insurance, and the date of the application is binding upon the institutions of all concerned Member States.

- If a person concerned **resides in the territory of Poland** and the deceased person has accumulated periods of insurance in Poland and in other Member States, the person concerned should file his or her survivor's pension claim with the Polish social insurance institution (ZUS, KRUS or a pension body of the so called uniformed services).
- If a person concerned **resides abroad in the territory of a Member State** and the deceased person has accumulated periods of insurance in Poland and in other Member States, including the State of residence, the person concerned should file his or her pension claim with the social insurance institution competent for pensions in the State of residence.
- If a person concerned **resides abroad in the territory of a Member State** where the deceased person has not accumulated periods of insurance but has accumulated periods of insurance in Poland and in other Member States, the person concerned should file his or her survivor's pension claim with the social insurance institution competent for pensions in the State where the deceased person was last insured. The pension claim may be also filed through the social insurance institution of the State of residence of the person concerned, which will send it to the competent institution.
- If a person concerned **resides abroad in the territory of a Member State** and the deceased person has completed periods of insurance only under the legislation of Poland, the person concerned should file his or her application with a Polish institution competent to examine his or her claim. The pension claim may be also filed through the social insurance institution of the State of residence of the person concerned, which will send it to the relevant Polish institution.

The date of filing the application with a foreign institution will be in each case binding upon the Polish institution.

Where a claim for a survivor's pension subject to Community coordination is filed with a foreign institution of a Member State, the said institution is obliged inter alia to complete the application for a pension to be awarded under the Polish legislation and to transmit it to the competent institution in Poland.

Where a claim for a survivor's pension subject to Community coordination should be investigated in Poland, it is necessary to identify a Polish institution competent for a given case.

The pension claim **is examined by ZUS** if the deceased person has been **employed or self-employed (ran a business outside agriculture)** in the territory of Poland.

But ZUS is not always competent to examine the application. It is not competent to investigate claims for survivors' pensions if the deceased persons were covered in Poland by the social insurance scheme for farmers, pension schemes for uniformed

services or judges and public prosecutors. However, ZUS investigates survivor's pension claims:

- if the deceased persons have accumulated periods of insurance in Poland as persons employed and self-employed outside agriculture and as farmers, if the last Polish period was the period of insurance as a person employed and self-employed outside agriculture,
- in some cases where the deceased persons were officers of the so called uniformed services (e.g. professional soldiers, officers of the Police, State Fire Service), if the last period of coverage completed before the death in Poland was e.g. the period of employment or self-employment.

If ZUS is recognized as the competent institution, pension entitlement is established by one of local ZUS bodies designated to deal with pension issues subject to Community coordination, i.e.:

- **I ZUS Branch in Łódź** – Division for Implementation of International Agreements (Zamenhofa 2, 90-431 Łódź, tel. +48 42 638 29 67) – competent if the deceased person has accumulated Polish and foreign insurance (residence) periods, of which last completed under the legislation of Cyprus, Greece, Spain, Malta, Portugal or Italy, or has completed only Polish insurance periods and the pension claimant resides in the territory of one of the mentioned States;
- **ZUS Branch in Nowy Sącz** – Division for Implementation of International Agreements (Węgierska 11, 33-300 Nowy Sącz, tel. +48 18 443 78 48 ext. 3315, 3314) – competent if the deceased person has accumulated Polish and foreign insurance (residence) periods, of which last completed under the legislation of in Czech Republic or Slovakia, or has completed only Polish insurance periods and the pension claimant resides in the territory of one of the mentioned States;
- **ZUS Branch in Tarnów** – Division for Implementation of International Agreements (Kościuszki 32, 33-100 Tarnów, tel. + 48 14 621 43 71 to 74 ext. 306, 362, 458, 459, 461) – competent if the deceased person has accumulated Polish and foreign insurance (residence) periods, of which last completed under the legislation of Austria, Liechtenstein, Slovenia, Hungary or Switzerland, or has completed only Polish insurance periods and the pension claimant resides in the territory of one of the mentioned States;
- **ZUS Branch in Opole** – Division for Implementation of International Agreements (Wrocławska 24, 45-701 Opole, tel. + 48 77 451 16 81, +48 77 451 17 58, + 48 77 451 17 61) – competent if the deceased person has accumulated Polish and foreign insurance (residence) periods, of which last completed under the legislation of Germany, or has completed only Polish insurance periods and the pension claimant resides in the territory of Germany;

- **ZUS Branch in Szczecin** – Division for Implementation of International Agreements (Matejki 22, 70-530 Szczecin, tel. +48 91 459 65 24, + 48 91 459 65 42, + 48 91 459 65 35) – competent if the deceased person has accumulated Polish and foreign insurance (residence) periods, of which last completed under the legislation of Denmark, Estonia, Finland, Iceland, Lithuania, Latvia, Norway or Sweden, or has completed only Polish insurance periods and the pension claimant resides in the territory of one of the mentioned States;
- **I ZUS Branch in Warsaw** – Division for Implementation of International Agreements (Kasprowicza 151, 01-949 Warszawa, tel. +48 22 569 36 04, +48 22 569 36 13, + 48 22 569 35 93, + 48 22 569 36 50) – competent if the deceased person has accumulated Polish and foreign insurance (residence) periods, of which last completed under the legislation of Belgium, Bulgaria, France, the Netherlands, Ireland, Luxembourg, Romania or United Kingdom, or has completed only Polish insurance periods and the pension claimant resides in the territory of one of the mentioned States.

A person concerned who resides in the territory of Poland may file the pension claim **directly** with one of aforementioned ZUS bodies which is competent in a given case, **or through the nearest ZUS body in his or her place of residence.**



How to draw up a survivor's pension claim addressed to ZUS?

If the pension claim is filed with ZUS (e.g. a person concerned resides in the territory of Poland), it must be drawn up pursuant to the Polish legislation. It may be filed on form ZUS Rp-2 (*A claim for a survivor's pension*), which must be accompanied with:

- EU form E 207 PL (*Certificate concerning the insured person's insurance history*) – completed in item 7 (information relating to all insurance and residence periods completed by the deceased person under the legislation of individual Member States) and legibly signed by the claimant,
- documents justifying the right to Polish benefits and enabling calculation of their amount (such as: insurance cards, employment certificates, certificates ZUS Rp-7, excerpts of registry office records, relevant medical documentation related to the deceased person),
- documents proving insurance (employment) periods of the deceased person under the legislation of Member States other than Poland, numbers of his or her foreign insurance, names and addresses of employers and other information helping to identify foreign institutions where the deceased person has been insured.



Appeals against ZUS decisions in survivor's pension issues filed by persons residing in the territory of Member States

Appeals against ZUS decisions in pension issues are filed with a competent Court for Labour and Social Insurance through ZUS pension body which has issued the decision, within one month from the day of receipt of the decision.

Persons who reside abroad in the territories of Member States may file an appeal against ZUS decision – within the above mentioned time limit – also through the social insurance institution of the State of residence, which will transmit the appeal to a competent ZUS unit.



Granting survivors' pensions to a person who resides abroad within the territory of a Member State

Survivor's pension from ZUS for an eligible person who resides abroad in the territory of a Member State may be transferred, depending on instructions given to ZUS:

- in Poland (to bank account of the pensioner or to an authorized person who resides in the territory of Poland), or
- in the State of residence (to pensioner's foreign bank account).

A pension awarded by ZUS may be transferred to the person residing in the territory of other Member State, at his or her request, to pensioner's place of residence. An application for pension transfer to the State of residence may be filed with ZUS branch which has awarded or has been earlier paying the benefit. The case is transmitted to **one of six local ZUS bodies designated to deal with pension issues subject to Community coordination**. The application for pension transfer may be also filed with a competent, designated ZUS body.

A pension is payable on a monthly basis on a day fixed in ZUS decision as the date of benefit's payment. If the pension amount transferred abroad to the pensioner's place of residence in the territory of a Member State is lower than the minimum pension under the Polish legislation, its payment may be carried out on other than monthly basis (e.g. on a quarterly basis). If the Polish pension is transferred to another Member State, the date of bank transfer is considered as the date of payment.

Pensions are transferred to beneficiaries who reside abroad without deduction – pursuant to the tax legislation – of advance payment to the personal income tax

in Poland (in gross amount) or after deduction of advance payment to the personal income tax in Poland (in net amount) subject to the provisions of an international agreement to avoid double taxation concluded by Poland with the beneficiary's State of residence.

Should the National Health Fund issue to a pensioner residing in the territory of other Member State a certificate on form E 121 PL, confirming his or her right to health care benefits in this State at the expense of the National Health Fund, the pension is transferred after deduction by ZUS of the health insurance contribution. The mentioned contribution is transferred to the National Health Fund, and the person concerned has the right to take advantage of health care benefits in the State of residence at the expense of the NHF. More detailed information in this regard is available in a competent NHF branch or in NHF headquarters.



Impact of earnings from activity pursued abroad in the territory of Member States on the entitlement to and amount of the survivor's pension received from ZUS

Pensioners are obliged to notify ZUS of earnings and other incomes from activity pursued abroad. The level of such incomes may affect the due amount of ZUS pension. If the amount of foreign incomes exceeds:

- 70% of average monthly earning under the Polish legislation but is not higher than 130% of this earning – the pension is subject to reduction,
- 130% of average monthly earning under the Polish legislation – the pension is suspended.

Pensioners are obliged to notify ZUS unit which pays their benefit of incomes from activity pursued in Poland and abroad.



Pensioners' obligations towards ZUS

Pensioners are under obligation to notify ZUS body which is the payer of their benefits of any circumstances affecting their pension entitlement or payment. These circumstances include in particular: changes in personal data (e.g. name, surname) and address data, change in place of residence, changes in a number of bank account, undertaking employment or other gainful activity, the fact of

receiving income resulting in benefit reduction or suspension (applicable both to income from activity pursued in the territory of Poland and abroad), school graduation by a child.

ZUS pensioners are under obligation – on demand of the pension body – to certify with their own signature further entitlement to the benefit. ZUS body which pays benefits to persons who reside abroad periodically sends to pensioners a form titled *Certificate of life and residence of the pensioner* to be completed and sent back to ZUS (form ZUS Rp-3a).

The form should be completed and signed by the pensioner him/herself. Should the pensioner be not able to sign it personally, the form should be signed by a person who actually takes care of the beneficiary. In both cases the signature should be certified by a competent body or an authorized person in the place of residence of the mentioned persons or by an authorized person in a Polish diplomatic or consular post.



How to obtain more information?

This leaflet has a general character. More detailed information is available at:

- the nearest local body of ZUS,
- ZUS website: www.zus.pl,
- local ZUS bodies designated to deal with pension issues subject to Community coordination, i.e. in I Branch in Łódź, Branch in Nowy Sącz, Branch in Tarnów, Branch in Opole, Branch in Szczecin and I Branch in Warsaw,
- Foreign Pensions Department in ZUS Headquarters, playing the role of the liaison body in pension issues subject to Community coordination, which cooperates with foreign liaison bodies of Member States (Senatorska 10, 00-082 Warszawa, tel. +48 (22) 826 05 53, e-mail: drz@zus.pl).



Basic EU legal acts governing the co-ordination of social security schemes

- Council Regulation (EEC) No. 1408/71 of the Council of 14 June 1971 on the application of social security schemes to employed persons, to self-employed persons and to members of their families moving within the Community (OJ No. L 149 of 5.07.1971, with further amendments).

- Council Regulation (EEC) No. 574/72 of the Council of 21 March 1972 fixing the procedure for implementing Regulation (EEC) No. 1408/71 on the application of social security schemes to employed persons, to self-employed persons and to members of their families moving within the Community (OJ No. L 74 of 27.03.1972, with further amendments).
- Council Regulation (EC) No. 859/03 of 14 May 2003 extending the provisions of Regulation (EEC) No. 1408/71 and Regulation (EEC) No. 574/72 to nationals of third countries who are not already covered by those provisions solely on the ground of their nationality (OJ No. L 124 of 20.05.2003).

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