

Implementation of the Polish-Ukrainian Agreement on Social Security by the Social Insurance Institution. The experience of the first years of applying this regulation

Conclusion and implementation of the Agreement

On 1 January 2014, the Agreement on Social Security between the Republic of Poland and Ukraine, signed on 18 May 2012,¹ and the Administrative Arrangement on the application of this Agreement entered into force.² Their entry into force was preceded by a negotiation process. Representatives of the Social Insurance Institution took part in the negotiations as experts of the governmental team led by the Ministry of Family, Labour and Social Policy (former Ministry of Labour and Social Policy).

Negotiations of the Agreement and of the Administrative Arrangement took place first in Warsaw (8-11 December 2009), and subsequently in Kiev (13-16 July 2010).

The procedures for the implementation of the agreements and the liaison forms used in contacts between the Polish social security administration (*i.e.*, Social Insurance Institution [Zakład Ubezpieczeń Społecznych, ZUS] and the Agricultural Social Insurance Fund [Kasa Rolniczego Ubezpieczenia Społecznego, KRUS]) and the Pension Fund of Ukraine were agreed upon during the implementation meetings held in Warsaw (17-20 June 2013) and in Lviv (4-5 February 2014). During the meetings agreement was reached on the following matters:

- organisation of the implementation of the Agreement – the designation of competent institutions, *i.e.*, institutions to be responsible for the implementation of the Agreement, including for awarding of pension benefits under the Agreement;
- case handling processes under the Agreement between the two countries;
- model forms for customers and the liaison forms to be used between institutions under the Agreement;
- the scope of data mutually certified by the institutions on liaison forms,
- the rules and scope of compiling applications and documents for the partner country based on the Agreement.

The substantive implementation of the Agreement in ZUS involved a wide range of activities:

- elaboration of changes in procedures and the processes followed in the area of insurance and benefits, mainly pension benefits;
- development and introduction of model forms to be used between the insurance institutions;
- introduction of model forms to be used by customers when applying for pension benefits and in the realm of applicable legislation;
- development of legal and procedural instructions concerning the performance of the Agreement and model forms and their forwarding to local ZUS units to be applied;

1 Agreement on Social Security between the Republic of Poland and Ukraine, signed on 18 May 2012 (Journal of Laws of 2013, item 1373).

2 Administrative Arrangement on the application of the Agreement on Social Security between the Republic of Poland and Ukraine, signed in Kiev on 18 May 2012 (Journal of Laws of 2013, item 1375).

- development of information materials for the website and brochures;
- modification of ZUS IT systems;
- entrusting local ZUS units with the implementation of the Agreement;
- initiating the transfer of pensions from ZUS to the bank accounts of beneficiaries residing in Ukraine;
- delivering substantive training sessions for the employees of ZUS branches.

The main role in these activities was played by the relevant departments of ZUS Headquarters, *i.e.*, the Foreign Pensions Department, Insurance and Contributions Department, Medical Certification Department and Allowances Department.

Polish liaison bodies and competent institutions in the field of general social insurance

The Polish-Ukrainian Agreement provides for the functioning of liaison bodies and competent institutions. The task of the liaison bodies is to provide for arrangements related to the implementation of the Agreement, including specification of the procedures and model forms to be used for its implementation, as well as supervision over its subsequent implementation by local units.

The function of a liaison body in Poland in the field of general social insurance is performed by ZUS Headquarters, and the following units are involved:

- Foreign Pensions Department – for pensions, long-term benefits in respect of accidents at work, occupational diseases and funeral grants, also acting as the coordinator of the implementation of the Agreement,
- Insurance and Contributions Department – for insurance and contributions,
- Allowances Department – for short-term benefits,
- Medical Certification Department – for certifying incapacity for work.

The so-called competent institutions have a responsibility to implement the Agreement by handling individual customer cases within the scope of the applicable legislation, including the certification of employees' postings to the partner country, and within the scope of the determination of benefits for persons who have been working in Poland and in Ukraine.

In ZUS, the function of the Polish competent institution under the Polish-Ukrainian Agreement is performed by:

- Insurance and Contributions Divisions in ZUS branches, as regards the tasks related to the determination and certification of the applicable legislation;
- Allowances Divisions in ZUS branches – within the framework of activities related to granting cash benefits in respect of sickness and maternity from sickness insurance and benefits in respect of sickness from accident insurance, as well as funeral grants (excluding benefits handled by Divisions for the Implementation of International Agreements);

- The ZUS Branch in Rzeszów, the Division for the Implementation of International Agreements. This branch has been designated as the competent institution for the determining of pensions based on the Polish insurance periods for persons residing in Ukraine and persons who are able to prove a period of insurance in Ukraine during the course of their employment abroad (irrespective of their place of residence). This branch also issues decisions on the transfer of Polish pensions to persons residing in Ukraine and on the determining of initial capital; it also cooperates in the granting of Ukrainian pensions by the Pension Fund of Ukraine.

On the Ukrainian side, the liaison body and the competent institution responsible for the implementation of the Agreement is the Pension Fund of Ukraine, the Department of International Cooperation with its headquarters in Kiev. The function of the Ukrainian institution competent for the determining of pension benefits administered by the Pension Fund of Ukraine is performed by the Main Board of the Pension Fund of Ukraine in the Lviv Region – The Foreign Pensions Department based in Lviv.

The objective of the Agreement on Social Security

The objective of the social security agreements concluded by Poland is to protect people migrating for employment between countries and their family members.

The following are the specific objectives of concluding such agreements:

- to prevent double payment of social insurance contributions (in both countries simultaneously) and to avoid a lack of insurance coverage, *i.e.*, a situation in which contributions are not paid for a migrant worker in any country and he/she is not covered by the social insurance system;
- to establish legal rules for determining in which country social insurance contributions should be paid;
- to guarantee equal treatment in social insurance for persons covered by the Agreement;
- to facilitate the acquisition of the right to benefits under the Agreement, mainly to old-age and disability pensions, through mechanisms for insurance periods aggregation, equal treatment of events and circumstances;
- to introduce the transfer (export) of benefits – benefits payment from one country to the bank accounts of eligible pensioners residing in another country;
- to recognise a pension claim submitted to the insurance institution of one state as being submitted to the institution of the other state (and to recognise the date of the claim submission);
- to maintain the cooperation between insurance institutions of both countries and facilitate procedures for benefits determination.

The material and personal scope of the Polish-Ukrainian Agreement

The material scope of the Polish-Ukrainian Agreement defines the social security branches covered by the Agreement.

On the Polish side, the Agreement applies to legislation governing compulsory insurance, unemployment benefits as well as benefits from social insurance and farmers' social insurance: sickness and maternity benefits, old-age, disability and survivors' pensions, benefits in respect of accidents at work and occupational diseases, funeral grants.

On the Ukrainian side, the Agreement applies to the legislation governing general state social insurance, which covers:

- sickness (temporary incapacity for work), pregnancy and childbirth (maternity);
- accidents at work, occupational diseases and/or death due to these causes;
- unemployment;
- old-age pensions and pensions in respect of: disability, the loss of the breadwinner, seniority, in accordance with the legislation on the general state pension insurance;
- funeral grants.

As regards the personal scope of the Polish-Ukrainian Agreement, it covers persons who were or are subject to the legislation of one of the parties or both parties to the Agreement, and other persons (*e.g.*, family members) if they derive their rights from the above mentioned persons. It should be emphasised that the Polish-Ukrainian Agreement does not apply only to Polish and Ukrainian nationals: it applies to “persons” irrespective of their nationality (including third-country nationals and stateless persons). Thus, the Agreement has a wide personal scope.

In addition, the Agreement covers persons irrespective of their place of residence. Therefore, it does not apply only to persons residing in Poland or in Ukraine, but also to third-country residents. Of course, certain provisions of the Agreement, such as the principle of benefits export, are associated only with the territories of the states that are parties thereto.

The principles of social security systems coordination resulting from the Agreement with Ukraine

The Agreement implements the basic principles of social security systems coordination. They include:

- The principle of single legislation (*lex loci laboris* and exceptions, including posting to the other country), whereby a person coming from one country and working in

the other country is subject to social insurance only in the country of employment. This principle is restricted by the rule of the so-called temporary posting of workers to work in the other state, with the contributions still being paid in the posting state.

- The principle of equal treatment of persons covered by the Agreement, whereby insurance institutions must deal with persons covered by the Agreement in the same way in terms of rights and obligations under the social insurance system (more broadly – within the social security branches covered by the Agreement).
- Rules for determining the eligibility for and amount of benefits for persons who have been working in both states – parties to the Agreement. The following may be mentioned:
 - The principle of granting pensions by each of the states, in which the person concerned was subject to insurance – whereby the right to pensions is established separately by the social insurance institutions of both parties to the Agreement, *i.e.*, ZUS (or KRUS) and the Pension Fund of Ukraine.
 - The technique of aggregating insurance periods and determining pensions *pro rata temporis* for aggregated periods – for the award of pension rights, account is taken, where necessary, of insurance periods completed in the other country, and the benefit thus determined is calculated in proportion to the share of the own insurance periods in total insurance periods completed in both countries (Poland and Ukraine).
 - The technique of the equal treatment of events and circumstances, according to which insurance episodes and circumstances as well as benefits from one state are taken into account in the other state in appropriate situations, where they are of legal significance, *e.g.*, in order to have the Polish old-age pension paid, it is also necessary to terminate the employment relationship with the Ukrainian employer.
 - Special rules for the protection of acquired rights for repatriates – according to which, if after entry into force of the Polish-Ukrainian Agreement, the benefit granted before its entry into force is converted, the person concerned is entitled to a supplement from the Polish system to the amount of the earlier benefit. In practice, this regulation applies to repatriates, whose benefit granted before the entry into force of the Agreement on the basis of Polish and Ukrainian employment periods of repatriates, may be converted by excluding the Ukrainian periods from the benefit and determining two separate benefits: from Poland and from Ukraine. If, after such a conversion, the total amount of these benefits is lower than the earlier amount of the Polish pension, the person concerned is entitled to a supplement paid by ZUS.
 - The principle of transferring pensions acquired in one country to the pensioner's bank account in another country. According to this principle, upon the request of the pensioner residing in one country, the benefit from the other country is payable at the place of residence of the beneficiary. In such cases, benefits' transfer is made by ZUS in the form of transfers to beneficiaries' bank accounts in Ukraine.

Application of the Polish-Ukrainian Agreement on the example of the disability pension determination by ZUS

It is worth looking at how the Polish-Ukrainian Agreement works in practice when ZUS determines the disability pension. The Agreement generates a number of advantages by facilitating people migrating between countries to obtain benefits. Particularly important are the mechanisms for the recognition of periods, which facilitate the acquisition of the right to benefits dependent on the eligibility period.

A good example to discuss the manner of applying the Agreement could be the case of a person claiming a benefit. A man born in 1973 claims a disability pension, and may prove the periods completed, before the occurrence of the incapacity for work, in Poland (including a 3-year contributory period and a 1-year non-contributory period) and in Ukraine (including a 1-year insurance period and a 4-year equivalent non-contributory period).

The person concerned may prove a total of four years of Polish periods, which is insufficient to meet the condition of completing the eligibility periods in accordance with Polish law. It is therefore necessary to take into account the Ukrainian periods, *i.e.*, five years (a 1-year insurance period and a 4-year equivalent period). For the purposes of assessing the right to a Polish pension, the man shows the required contributory and non-contributory period of nine years (four years in Poland and five years in Ukraine). Thus, after applying the Agreement, the insured person meets the required condition to be granted the Polish pension, *i.e.*, at least 5-year eligibility period completed during the last decade. Thanks to the application of the Agreement, the person concerned will receive a pension from ZUS which he would not have obtained in the absence of such a legal act.

The amount of the pension in respect of aggregated insurance periods is determined in two stages. The first step is to calculate the theoretical amount of the benefit after aggregating the insurance periods completed in Poland and in Ukraine. In this example, the theoretical amount of the pension was calculated for nine years of contributory and non-contributory periods completed in both countries (with also so-called hypothetical periods). The actual pension amount is then calculated based on the share of the insurance period completed in Poland in the total Polish and Ukrainian insurance period (proportional pension).

In this example, the actual amount of the benefit due to the person concerned will be calculated according to the formula:

$$\text{Proportional (actual) pension} = \text{Theoretical pension} \times \frac{\text{duration of Polish insurance periods}}{\text{total Polish and Ukrainian periods}}$$

The proportional (*pro rata*) benefit thus obtained is the pension due (gross amount).

Parallel application by ZUS of EU regulations on coordination and the Agreement with Ukraine

With regard to persons who can prove the insurance periods in Poland and abroad, both in EU Member States and in Ukraine, the right to benefits is determined in two ways, or in two variants. On the one hand, the pension rights of such a person are determined, in accordance with EU regulations on the coordination of social security systems (Regulation [EC] No. 883/2004), on the basis of insurance in Poland and in other EU/EFTA Member States, on the other hand, these rights are determined in accordance with the Polish-Ukrainian Agreement, taking into account Polish and Ukrainian insurance periods.

It is worth analysing this situation on the next example. In the case if a person claiming an old-age pension who has completed the eligibility periods in Poland (EU), Austria (EU) and Ukraine (bilateral agreement with Poland), pension rights will be considered by ZUS in parallel:

- under EU Regulations (aggregation of the Polish and Austrian periods), as well as
- based on the Agreement with Ukraine (aggregation of the Polish and Ukrainian periods). A very important issue should be raised here. Namely, if the Polish and Ukrainian periods are insufficient to be granted the right to benefit under the Agreement, the Polish-Ukrainian Agreement also provides for taking into account the insurance periods completed in third countries with which Poland and Ukraine have concluded social security agreements.

Then the more favourable option for the person concerned is selected, *i.e.*, the one in which the right to the benefit is acquired (based on EU Regulations or the Agreement with Ukraine), and if in both variants the benefit is acquired – the one in which the amount of the calculated benefit is more favourable (based on EU Regulations or the Agreement with Ukraine).

Status of Ukrainian nationals under Regulation No. 883/2004 and in accordance with the Polish-Ukrainian Agreement on social security

EU Regulation No. 883/2004 applies to third-country nationals (non-EU/EFTA), including Ukrainian nationals, provided that they reside legally in a European Union Member State and are in a situation that involves at least two Member States.

There are exceptions to these provisions. The United Kingdom applies to third-country nationals Regulation (EC) No. 859/2003, which extends the application of the Regulation (EC) No. 1408/71 to them. However, Denmark does not apply EU regulations in

this respect to third-country nationals – those from outside the EU (including Ukraine) – similarly as EFTA (European Free Trade Association) Member States (Norway, Iceland, Liechtenstein, Switzerland).

To summarise the status of Ukrainian nationals under EU law and under the bilateral agreement, it should be noted that EU Regulation No. 883/2004 provides for the aggregation of insurance and residence periods completed in EU Member States, but does not provide for the aggregation of insurance periods from third countries (*e.g.*, from Ukraine). Ukrainian nationals are not covered by regulations on coordination in relations with Denmark, Norway, Iceland, Switzerland and Liechtenstein (the United Kingdom applies Regulation No. 1408/71).

Furthermore, in accordance with EU regulations, benefits are not exported outside the EU.

On the other hand, the Agreement with Ukraine provides for taking into account Polish and Ukrainian insurance periods, as well as periods completed in third countries (other than Poland and Ukraine), with which both Poland and Ukraine have agreements on the aggregation of these periods. This currently applies to: Bulgaria, the Czech Republic, Estonia, Lithuania, Latvia, Spain, Portugal and Slovakia. The Agreement covers persons irrespective of their nationality and provides for the export of benefits from Poland to Ukraine (*i.e.*, transfers of pensions to bank accounts in Ukraine).

Therefore, it can be assumed that the Agreement is quite advantageous for those Ukrainian nationals who have migrated not only to Poland, but also to other EU Member States (with the above mentioned exceptions).

Cooperation between the Social Insurance Institution and the Pension Fund of Ukraine

Since the coming into force of the Polish-Ukrainian Social Security Agreement, there have been temporary problems with the implementation of the Agreement by ZUS. These resulted from the armed conflict in a part of the territory of Ukraine (in Donbass and Crimea). These problems related to contact with customers when considering the pension claims of persons residing in Crimea, the prolonged time of obtaining pension documentation that was kept in the Pension Fund unit in Crimea, as well as handling the applications of persons who had the established entitlement to Ukrainian benefits in the Donetsk and Lugansk region. These problems have been resolved and at present the Foreign Pensions Department of ZUS does not have any other problems related to the implementation of the Agreement in this respect.

Since the beginning of the Polish-Ukrainian Agreement, inter-institutional cooperation under the Agreement has run smoothly.

Implementation of the Agreement by the Ukrainian side (Pension Fund) should be considered as very good. Pension claim forms under the Agreement are correctly completed. The Ukrainian side forwards the documents without delay. Applications sent by

ZUS to Ukraine are also considered on an ongoing basis. The Ukrainian institution tries to comply with all the formalities and procedures agreed upon during the implementation meetings and liaison meetings.

The Division for the Implementation of International Agreements at the ZUS Branch in Rzeszów deals with the granting of pensions in Polish-Ukrainian relations and maintains constant contact with the Ukrainian institution in Lviv, which, if necessary, provides the necessary information immediately.

It is planned to further strengthen the mechanisms of ZUS cooperation with the Ukrainian social administration, including the extension of the scope of services for customers under the Agreement, joint knowledge and competences building in ZUS and in the Ukrainian institution. It is also proposed to exchange experience and good practices, to automate cooperation between the organisations through the introduction of electronic solutions, software, systems or applications, while servicing pension issues, in order to accelerate their handling.

The current scale of the implementation of the Agreement with Ukraine by ZUS

The number of PL/UA 1 certificates concerning the application of Polish legislation which ZUS confirmed for the period from 2014 to the second quarter of 2018, is presented in Table 1.

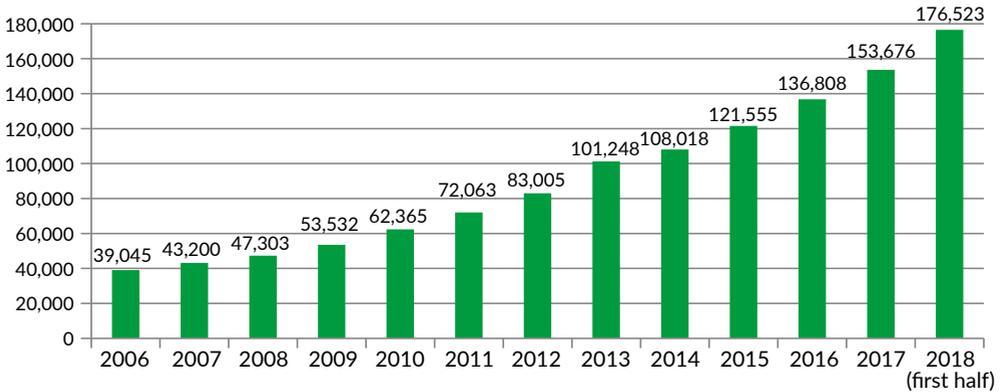
Table 1. Number of certificates concerning the application of Polish legislation PL/UA 1 from 2014 to the second quarter of 2018

Year	Number of PL/UA 1 certificates
2014	114
2015	79
2016	288
2017	236
I-II quarter 2018	124
Total	841

Source: own study based on ZUS data

From 2014 to the second quarter of 2018, ZUS branches, under the Polish-Ukrainian Agreement, have confirmed a total of 841 PL/UA 1 forms, the so-called insurance certificates. 873 persons receive pensions paid by ZUS under the Agreement with Ukraine, of which pensions for 111 persons are transferred by ZUS to their place of residence in Ukraine. These are very low numbers when compared to the total number of pensions that ZUS pays on average monthly under all international agreements and EU law (international pensions) – see Table 2.

Table 2. Average number of benefits paid by ZUS Divisions for the Implementation of International Agreements per month under international regulations from 2006 to the first half of 2018



Source: own study based on ZUS data

The importance of the Agreement in the context of social protection

The Polish-Ukrainian Agreement on social security plays a very important role in the protection of benefits for both Polish employees coming to Ukraine and their family members, as well as Ukrainians and their relatives employed in Poland. Posting is scarcely used, so most of the hundreds of thousands of Ukrainian national working in Poland are covered by the Polish social insurance system in accordance with the basic principle of *lex loci laboris*. As a consequence, employees pay contributions to the Polish Social Insurance Fund and may receive part of the benefits from this fund. Most of these persons also have completed an insurance (employment) period in Ukraine, which means that once they become eligible for pensions, the coordination mechanisms resulting from the Social Security Agreement will be applied (now and in the future). At present, the Polish-Ukrainian Agreement applies only to a limited extent in the area of pension benefits, although the number of pensions granted under the Agreement is constantly growing. Cooperation between the Polish and Ukrainian social security administrations is very good, and contacts are strengthening. Legal mechanisms contained in the Agreement help migrants to receive pension benefits, and thus provide them and their families with social protection in the field of social security.

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