

Social security

Migrant access to social security in Poland

Report produced by the National Contact Point to the European Migration Network in Poland



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The granting of social benefits to foreigners (both under the programmes of social assistance, family benefits and selected insurance programmes) is not a common occurrence in Poland. In May 2014 changes in the eligibility rules for selected social benefits and programmes became binding. As a result, the category of people entitled to the unemployment benefits, family benefits and social pension was extended and foreigners holding time-bound residence permits were given access to those benefits.

Executive summary

The social security system in Poland includes: social insurance and security system, health insurance system, social assistance, unemployment benefits and family benefits (subsection 2.1).

In the context of the model of migrants' access to the benefits under the social security system in Poland (subsection 2.3), one has to conclude that it is mostly based on the insurance system. This means that the vast majority of social policy programs operates in Poland on the principle of insurance – i.e. the employees and/or employers pay appropriate contributions, which entitle employees to receive benefits. Only such benefits as social assistance, family benefits, long-term care are of non-contributory character (financed by state budget).

Accessibility to social benefits in Poland by third-country nationals varies (subsection 2.4). As for the benefits paid to foreigners from social insurance (sickness, accidents at work and occupational diseases, maternity, paternity, disability benefits, old-age and survivors pensions), access to them is granted on the same basis as in case of Polish citizens (it does not depend on possession of Polish citizenship, place of residence in Poland or residence title), which means that the access to these benefits is given to nearly all foreign employees legally employed in Poland and also persons conducting business activity. Access to the unemployment benefits, healthcare and non-contributory benefits (social assistance, family benefits and long-term care) is much narrower as only foreigners with shortlisted residence titles are entitled to them.

It is worth mentioning the planned changes in the eligibility rules for social security benefits and programmes (following the entry into force amendments to Act on social pension, Act on family benefits and Act on employment promotion and labour market

institutions) which become binding on 1st May 2014. As a result, the category of people entitled to the unemployment benefits, family benefits and to social pension will be extended and foreigners holding time-bound residence permits will be given access to those benefits (subsection 2.6).

Analysis of the wording of strategic documents on migration delimiting areas of future actions in the area of foreigners' access to social benefits shows that the solutions adopted by Poland will continue to be based on the assumption that foreigners staying in Poland (except for particularly vulnerable groups) should be economically self-sufficient, both at the stage of their arrival in Poland and during their stay within its territory (subsection 2.5).

The conditions that apply to foreigners in order to qualify for the given benefits (section 3) may relate to minimum employment periods/contributions, migration specific conditions and indirectly - minimum residence periods in Poland. Social benefits are transferable to foreigners' country of origin only if bilateral agreements on the co-ordination of social security schemes reached by Poland with third countries stipulate it.

In case of most benefits, the criteria concerning determination of a foreigner's eligibility to a given benefit are of a non-discretionary nature (subsection 4.1), therefore deciding officers who make decisions on the granting of benefits are not expected to carry out individual assessments for the purpose of which they would take into account specific life situation of a given applicant. Only the granting of benefits under social assistance is characterised by a kind of discretionary approach (both towards Polish citizens and foreigners).

The very fact of applying for social security benefits, including social assistance benefits, does

not affect the possibility to apply for a subsequent residence permit, naturalization or family reunification (subsection 4.2).

An undisputable weak point of the Polish social security system is its external dimension, namely the question of coordination of social security systems with migrants' countries of origin (section 5). Poland is the party to only eight bilateral agreements on the coordination of social security systems.

The granting of social benefits to foreigners (both under the programmes of social assistance, family benefits and selected insurance programmes) is not

a common occurrence in Poland. This means that non-insurance programmes (financed by the state budget) whose beneficiaries are foreigners, do not generate large costs in Poland (section 7).

In order to better understand the entitlements and access to Polish social security by third-country nationals, in the report three hypothetical case studies were presented. For each of them the decision making procedure was described as well as it was indicated whether the social security claims made by the third-country nationals concerned would ultimately be successful (section 6).

1

Introduction

1.0 Introduction

The study on migrant access to social security in Poland was produced by the National Contact Point to the European Migration Network in Poland (PL NCP EMN), in relation to Poland's EMN¹ membership. The study constitutes a national contribution to the EMN main study whose objective is to provide an overview of the policies and practices that determine access to social security benefits by migrants in the EU countries plus Norway.

The main contribution was provided by the Migration Policy Department of the Ministry of the Interior, in co-operation with the Ministry of Labour and Social Policy (Department of Labour Market, Department of Co-Ordination of Social Security Schemes, Department of Social Assistance and Integration and Department of Social Insurance), the Department of Health Insurance at the Ministry of Health, the Office for Foreigners and with the Statistics and Actuarial Forecasts Department at the Social Insurance Institution.

The overall objective of the study is to map the policies and administrative practices that shape third-country nationals' access to social security, including healthcare, in Poland, review the reciprocal agreements that exist between Poland and third countries that affect the entitlement to social security and healthcare of certain groups of immigrants as well as examine the scope of actual take-up of social benefits by the third country nationals.

Among the recipients of this report are the National Contact Points of the European Migration

Network, the European Commission, national as well as European policy-makers, national executive institutions and the society – non-governmental organizations, research institutes and other stakeholders.

The report follows the common specifications and methodology adopted by the European Migration Network.

Methodology applied

The report is largely based on desk analysis of existing documents that were provided by public bodies in charge of shaping policy on migrant access to social security as well as institutions putting those regulations into practice. The existing literature and conducted researches on the subject migrant access to social security to Poland were reviewed.

The information included in the national report relate to the Polish legal framework as at 1 April 2014, in particular the Act of 13 June 2003 on Foreigners², Act of 13 October 1998 on social security system³, Act of 20 April 2004 on employment promotion and labour market institutions⁴, Act of 28 November 2003 on family benefits⁵, Act of 12 March 2004 on social assistance⁶, Act of 27 August 2004 on health care benefits financed from public funds⁷, Act of 27 June 2003 on social pension⁸ as well as to bilateral agreements on social security concluded by Poland with the third countries. Considering the fact that the Act of 13 June 2013 on Foreigners on 1 May 2014 will be replaced by the new Act of 12 December 2013 on Foreigners⁹, the reference to the new

1. The Polish NCP currently comprises the representatives of the Ministry of the Interior (National Coordinator), Ministry of Labour and Social Policy, Office for Foreigners, Border Guard and the Central Statistical Office.

2. Dz. U. [Journal of Laws] of 2011, No 264, item 1573, consolidated text.

3. Dz. U. [Journal of Laws] of 2013, item 1442, consolidated text.

4. Dz. U. [Journal of Laws] of 2013, item 674, as amended.

5. Dz. U. [Journal of Laws] of 2013, item 1456, consolidated text.

6. Dz. U. [Journal of Laws] of 2013, item 182, consolidated text.

7. Dz. U. [Journal of Laws] of 2008, No 164, item 1027,

consolidated text.

8. Dz. U. [Journal of Laws] of 2013, item 982, consolidated text.

regulations was made.

The report makes reference to strategic documents – crucial in terms of migration perspective – such as inter alia 'Migration Policy of Poland – current state of play and further actions'.

The following up-to-date statistics were used in the report:

- number of third country nationals registered with the social security,
- take-up of selected social benefits by third country nationals,
- data on the extent to which third-country nationals have invoked their rights under the bilateral social security agreements reached between Poland and third-countries.

Due to the way data generated by the Social Insurance Institution and the National Health Fund are aggregated, data on the take-up of old-age pensions and benefits, occupational disability and survivors' pensions, social pensions and healthcare benefits were not included in the report.

Considering the fact that the significant variations in the way social security and healthcare systems are structured in each (Member) State make comparative analyses in this area challenging, in the context of this study, a broader definition of social security is used, encompassing all of the branches listed in the guide produced on each Member State⁹ for the European Commission's Mutual information System on Social Protection (MISSOC). These branches include guaranteed minimum resources (social assistance).

In section 2, the study provides an initial overview of third-country nationals' access to all of the benefits covered by all 11 'branches' in the MISSOC national guides¹¹. In sections 3 and 4, the study presents more detailed analysis of the eligibility

rules and the administrative practices that affect access by third-country nationals to a sub-set of the benefits covered in the MISSOC national guides, focusing on those benefits that are deemed particularly relevant to third-country nationals, including healthcare, sickness cash benefits, maternity and paternity benefits, old-age pensions and benefits, family benefits, unemployment benefits and guaranteed minimum resources.

The study will focus on the rules, institutions and administrative practices that affect access to social security and healthcare of third-country nationals only. The social security and healthcare entitlements enjoyed by tourists and mobile third-country nationals, including cross-border workers and those who have been posted and transferred from one Member State to another as well as asylum seekers, persons granted international protection (refugees and people covered by subsidiary protection), temporary protection or national form of protection (tolerated stay permit, as of 1 May 2014 – permit granted for humanitarian purposes), international students, irregular migrants and victims of trafficking of human beings, are excluded from the scope of the study.

The study concentrates on two over-arching categories of third-country nationals in particular: third-country nationals holding time-bound (or fixed-term) residence permits (including workers, self-employed and family members of third-country nationals) long-term residence permits (long-term residents as provided for under Articles 4 to 7 of Council Directive 2003/109/EC, and persons granted permit to settle).

More detailed definitions used in the study can be reviewed in the specifications for the EMN study¹².

maternity and paternity benefits, invalidity benefits, old-age pensions and benefits, survivors' benefits, benefits in respect of accidents at work and occupational diseases, family benefits, unemployment benefits, guaranteed minimum resources, long-term care benefits. Specifications for the study are available at the European Migration Network website: www.emn.europa.eu.

2

Overview of the national social security system: access by migrants from third countries

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9. Dz. U. [Journal of Laws] of 2013, item 1650, consolidated text.

10. The MISSOC national guides are drafted in order to provide information to mobile EU nationals about their rights granted under Regulation No 883/2004 on the coordination of social security systems. The MISSOC national guides are accessible here: <http://ec.europa.eu/social/main.jsp?catId=858&langId=en>.

11. The eleven 'branches' are: healthcare, sickness cash benefits,

2.0 Overview of the national social security system: access by migrants from third countries

2.1 Description of social security benefits and schemes in Poland

The social security system in Poland includes:

- social insurance and security system¹³,
- health insurance system,
- social assistance,
- unemployment benefits and
- family benefits.

Polish social insurance and security system covers all the residents. They are obliged to pay regular contributions on account of the following types of insurances:

- old-age insurance – old-age pensions are paid out of that insurance;
- occupational disability insurance – possible disability pensions are paid out of that insurance in case of temporary disability or death of the one who provides for family maintenance,
- sickness insurance and maternity insurance – sickness and maternity allowances are paid out of that insurance, including child-minding allowance,
- accident insurance – benefits due to accidents at work and occupational diseases are paid out of that insurance.

Thus, the aim of the system (excluding old-age insurance) is to protect people against the conse-

quences of random events which might negatively affect the working capacity of an insured person (situations which make it impossible to work and earn money, such as: sickness, disability, parenthood, childcare etc.).

The system covers almost all the employees (including Polish nationals and foreigners from the EU/EFTA as well as from third countries) as well as self-employed persons operating a non-agricultural business. Social security insurance may be mandatory or voluntary, which depends inter alia on the character of a job and a type of an employment contract concluded with an employee concerned.

Social security insurance is mandatory for all those engaged in some gainful activity. Employees (i.e. those working based on a contract of employment) must contribute to all the four insurances, referred to above (i.e. old-age insurance, disability insurance, sickness insurance and accident insurance). Self-employed persons are obliged to make contribution to mandatory old-age insurance, disability insurance and accident insurance; sickness insurance is voluntary and subject to filing a relevant application to this end. Similar solutions apply in case of persons who work based on agency agreement¹⁴, mandate

¹³. In Poland, apart from a common social insurance system there is a separate insurance system dedicated to farmers (KRUS – Agricultural Social Insurance Fund), as well as a separate retirement pension system for uniformed services, i.e. army soldiers, policemen and firemen (administered by the Ministry of National Defence and the Ministry of the Interior) as well as for correction officers, judges and prosecutors

(administered by the Ministry of Justice).

¹⁴. A civil law agreement based on which a Contractor (agent) undertakes to act as an agent when entering into contracts with clients on behalf of a contracting party. The contracting party undertakes to pay an agreed fee (commission) to the contractor.

contract¹⁵ or a service contract¹⁶.

Persons who are not listed in the list of mandatory insurance contributors, including persons working based on a contract for a specific task¹⁷, can decide by themselves whether to pay contributions to: the old-age and occupational disability insurance, and by virtue of law they are not subject to sickness and accident insurance (neither obligatory nor voluntary one).

The principle of equal treatment of all those insured regardless of gender, marital status, family status or nationality is the fundamental principle which the social security system in Poland is based on. The requirements to be fulfilled in order to be awarded and paid social security benefits are the same for migrants and for the Polish citizens.

Social security benefits are awarded and paid only if the insured individual has kept paying insurance contributions for a certain period defined by law.

General health insurance is a part of social insurance, but, unlike the social security system, the health insurance system is to protect the life and health of the insured regardless of work disability consequences. The health insurance system features a broad range of individuals covered, including those who do not have any income (e.g. unemployed individuals who are not eligible for unemployment benefits, and students of all grades).

Health-care services funded from the state budget are available to all those who are insured within the National Health Fund (NFZ). As in the case of social security insurance system, health insurance can be mandatory or voluntary. Those who can become insured voluntarily include only people who live in the territory of Poland and are not subject to a statutory obligation of contributing to the health insurance fund as well as those who cannot be registered in the health insurance fund as members of a family of the insured individual. In the case of mandatory health insurance, the health insurance contribution is usually paid on behalf of the insured individual (also a foreigner) by another entity, such

as employer, contracting party, Labour Office, school or university, etc., and in case of voluntary health insurance – the contribution is paid by the insured individual. The self-employed (i.e. individuals who conduct non-agricultural business) pay health insurance contributions by themselves.

The list of individuals who must be insured (i.e. must contribute to the health insurance fund) is quite long and includes i.a.: almost all people who are engaged in gainful activity in Poland, farmers, priests, uniformed officers, members of the Polish parliament, pensioners, judges and prosecutors; children until they start education at school, students, including PhD students, those unemployed, individuals who benefit from a welfare benefits and family benefits; foreigners covered with international protection who stay in Poland – if they are subject to individual integration programme in cooperation with poviát centres for family assistance – and individuals who are on parental leave. Public health-care benefits can be claimed freely also by members of the family of those listed above (children, spouses, parents and grant parents, as long as they fulfil statutory requirements), who are reported to the health insurance fund by the individual insured mandatorily or voluntarily (in Poland there is an obligation to report family members to health insurance).

Moreover, health-care services are available for free for those who are not insured (only Polish nationals) who:

- generate insufficient income (the income criterion has been defined in legislation on social,
- are below 18 years old,
- women during pregnancy, delivery and post-delivery period.

Foreigners who are insured are entitled to the same health-care benefits as Polish nationals. Also, the formal procedures which define the access to particular health-care services (general practitioner/primary health care, special care procedures, hospitalization) are uniform for all those insured regardless of nationality.

Welfare in Poland is defined as assistance (in the form of money, in kind or professional advisory assistance) aimed at overcoming difficult life situations, extended to those who are unable to cope with the situations independently (by using their skills, opportunities and assets¹⁸). Welfare system supports such people in their efforts to cater for their needs and enables them to live in dignified conditions. Welfare also prevents such situations by taking actions in order to make those people and their families become independent and feel socially included.

Welfare benefits in Poland are granted if one fulfils two criteria: the first one is income criterion¹⁹ (called: social intervention threshold) and the other criterion involves a person or a family suffering from one of 15 social risks²⁰, as listed in the Act on social assistance of 12 March 2004.

Unemployment benefits²¹ are granted to those who have a status of the unemployed individual and who have been registered in a Poviát Labour Office having jurisdiction over the individual's permanent or temporary residence. Unemployment benefits include i.a.:

- **unemployment allowance** – paid to an unemployed individual for each calendar day following 7 days²² of the registration at the relevant Poviát Labour Office, if he/she can certify to have worked for at least 365 days during the last

18-month period before the registration qualifying to the "allowance entitlement period"²³. The amount of allowance²⁴ depends on the length of the allowance entitlement period (currently the amount of allowance ranges between PLN 517.40 to PLN 988.40²⁵), and the allowance can be taken for a period of 6 or 12 months;

- **scholarship** – paid out when taking part in a training course, vocational training for adults, post-graduate studies, internship and when studying at a high-school or a university (extramural studies);
- **job rehabilitation supplement** – granted to a person who has become engaged in gainful activity on his/her own or as a result of an intervention by the Labour Office.

Unemployment benefits for foreigners registered as the unemployed and entitled to stay in Poland are granted under the same terms and conditions as to the Polish nationals.

Family benefits are an important measure of the governmental family policy in Poland, by means of which the state provides support to families who raise children. This results i.a. from the fact that despite the declining trend, the number of children and youth at risk of poverty is still greater than in case of the adults and in comparison to the other EU Member States²⁶ Poland demonstrates a high rate of

15. A civil law agreement for performing a certain action, where no emphasis is put on the final result of the action.

16. Service contracts are governed by the legislative provisions concerning mandate contracts.

17. A civil law agreement whereby a contractor undertakes to produce a specific result, for which the contracting party undertakes to pay a fee defined in the contract.

18. Asset is interpreted in financial terms, but also as property and chattels, real estate, education, skills possessed, etc.

19. Income per a single individual may not exceed PLN 542.00, and per an individual within a family – PLN 456.00.

20. The risks (reasons for granting assistance) include: poverty, orphanage, homelessness, unemployment, disability, long-term or serious disease, family violence, protection of maternity or large family, helplessness in raising children and running household, especially in single-parent or large families, difficulty in the social integration of youths who have left foster homes, difficulties in the integration of refugees, difficulties of social integration after leaving prison, alcoholism or drug addiction, a random event or crisis situation, natural or environmental disaster.

21. The issues concerning the list of entities and types of unemployment benefits are regulated by the Act of 20 April 2004 on the promotion of employment and labour market institutions (Journal of Laws of 2013 item 674, as amended).

22. According to the Act of 14 March 2014 amending the Act on the Promotion of Employment and Labour Market Institutions and some other acts (Dz. U. [Journal of Laws] of 2014, item 598) entitlement to benefit will be possible from the date of registration at the employment office.

23. The time which qualifies for the required 365 days includes the

time of work for consideration, the amount of which equals to at least a minimum amount of a salary due to which one is obliged to pay a contribution to the Labour Fund; the time also includes rendering services based on agency agreement or diligent work agreement or any other service agreement, to which, pursuant to the Act – Civil Code of 23 April 1964, provisions concerning diligent work apply, or the time during which one cooperated by the execution of those agreements, whereas the assessment basis for contributions to be paid to social security fund and Labour Fund was equal to not less than a minimum remuneration for work as calculated per full month.

24. The amount of allowance is higher during the first 3 months. Then it is being decreased.

25. According to the Notice of the Minister of Labour and Social Policy of 16 May 2014 on the amount of unemployment benefit (Monitor Polski [Official Gazette of the Republic of Poland] of 2014, item 367), the benefit will increase to the amount of between 522.10 zlotys and 997.40 zlotys.

26. According to Eurostat figures, in 2012 29.3% children under 18 were at risk of poverty while the average for the 28 EU Member States amounted to 28.1%.

27. B. Kłos, Świadczenia rodzinne w latach 2004-2011, Sejm Bureau of Research, p. 1.

child's poverty²⁷.

The system of social benefits targeted at families has been operating in its current shape since 1 May 2004²⁸, when it underwent an overhaul. Since that date family benefits have been administered by municipal government (mayors) as the tasks commissioned by the government administration, rather than being handled by numerous entities and institutions (i.e. employers, ZUS, KRUS, welfare services) which establish regulations and paid family benefits and other family allowances, as it was in the past.

The system of family benefits has thus become visibly separated from welfare and has become its complementary nexus²⁹. At the same time one has to notice that exclusion of family benefits from the welfare system increased their access to those families whose incomes exceeded the income criteria defined by the welfare system.

Family allowance is the basic benefit offered by the system; the benefit is closely linked with the income criterion; it is granted to families raising children, including the families in difficult financial situation, and its purpose is to partially cover the cost of a child maintenance. This allowance is complemented by various types of family allowance supplements (granted depending on individual family situation) in respect of:

- child birth,
- raising a child in a large family,
- child care during a parental leave,
- bringing up the child as a single parent and losing the right to unemployment benefit as a result of the statutory deadline for receiving the benefit concerned,
- bringing up the child as a single parent,
- training and rehabilitating of a disabled child,
- commencing a school year,
- starting education at school which is away from the child's place of residence.

The supplements are not, however, independent benefits, which means that the right to receiving them results from the right to a family benefit.

The allowances feature obligatory character (upon application) provided that a uniform income criterion and other criteria stipulated by the law are fulfilled. In case of nursing and medical care benefits the criteria have been given up.

Considering the character of support offered and a "selective" nature of the income criterion, one has to note that the Polish system of family benefits is currently supporting mainly poor families and to a very small extent the families which are simply not wealthy, with special support being received by single-parent families and families raising disabled children.

the Labour Fund and Guaranteed Employment Benefits' Fund – to the Ministry of Labour and Social Policy. At the same time, the general mandatory old-age pension system in Poland comprises also open old-age pension funds managed by private financial institutions. The funds are, however, strictly monitored and supervised by the state. The contributors do not pay their contributions directly to old-age pension funds, but rather to ZUS, along with other social insurance contributions. ZUS is responsible for transferring the part of the pension insurance contributions to

a pension fund selected by the insured individual concerned;

- **Regional social policy centres, poviats centres for family assistance and gmina centres for social assistance**³⁰;
- **Local and regional labour offices** which provide unemployment benefits;
- **State Fund for the Social Rehabilitation of the Disabled Persons** (PFRON), which controls the

access of those disabled to employment and rehabilitation;

- **National Health Fund** together with voivodeship branches, which manages the health-care system under the health insurance and provides for health-care benefits from the health insurance. NFZ signs contracts with health-care services providers to provide health-care services. NFZ finances the services and covers the cost of refunded medicines from its own budget.

2.3 Funding mechanism

The Polish social security system, depending on its segment, is funded in various ways, i.e. by means of contributions (system based on contributions paid by employees/employers), a non-contribution system (funded by the state budget) as well as mixed funding mechanism.

In case of the **social insurance system**, a contribution paid by employees and employers is a dominant source of funding the services/benefits, but does not have to be the only one. Social pension is funded by the state budget. Apart from this, in some cases social insurance contributions are neither paid by employers nor employees, but by other entities. Thus, the state budget funds contributions for old-age and disability pensions for those unemployed who are paid unemployment benefits, for those who are paid maternity allowances and for those who decided to take a child care leave. On the other hand, the local authorities pay contributions for individuals who receive nursing benefits.

The amount of contributions for particular types of insurance are the same for all those insured and amount to:

- **19.52%** of the assessment basis³¹ in respect of old-age insurance (paid in equal portions by employee and by employer);
- **8.00%** of the assessment basis in respect of occupational disability insurance (paid by employer in the proportion of 6.5% of the assessment basis,

and by the employee in the proportion of 1.5% of the assessment basis);

- **2.45%** of the assessment basis in respect of sickness insurance (paid entirely by the employee);
- **from 0.67% to 3.86%** of the assessment basis in respect of accident insurance (paid entirely by the employer).

Open pension funds administered by private financial institution also operate within the framework of the common and mandatory old-age pension funds. Pursuant to the recent reform of the pension system, as of August 2014, open pension funds will be voluntary (since 1999 it has been mandatory for all those listed for pension insurance purposes). Those who, between April-July 2014, decide to remain the members to open pension funds or will join the funds later, will be able to collect their pension entitlements from ZUS as well as from the account operated by the open pension fund. ZUS is responsible for forwarding a portion of pension insurance contributions to open pension funds elected by the insured. If a given individual is not a member to an open pension fund, the entire sum of pension insurance contribution will remain at ZUS. In the case of open fund members, 10 years before a given individual has acquired the pension age, a transfer process will start whereby the money collected by open pension funds will be gradually transferred to ZUS. Consequently,

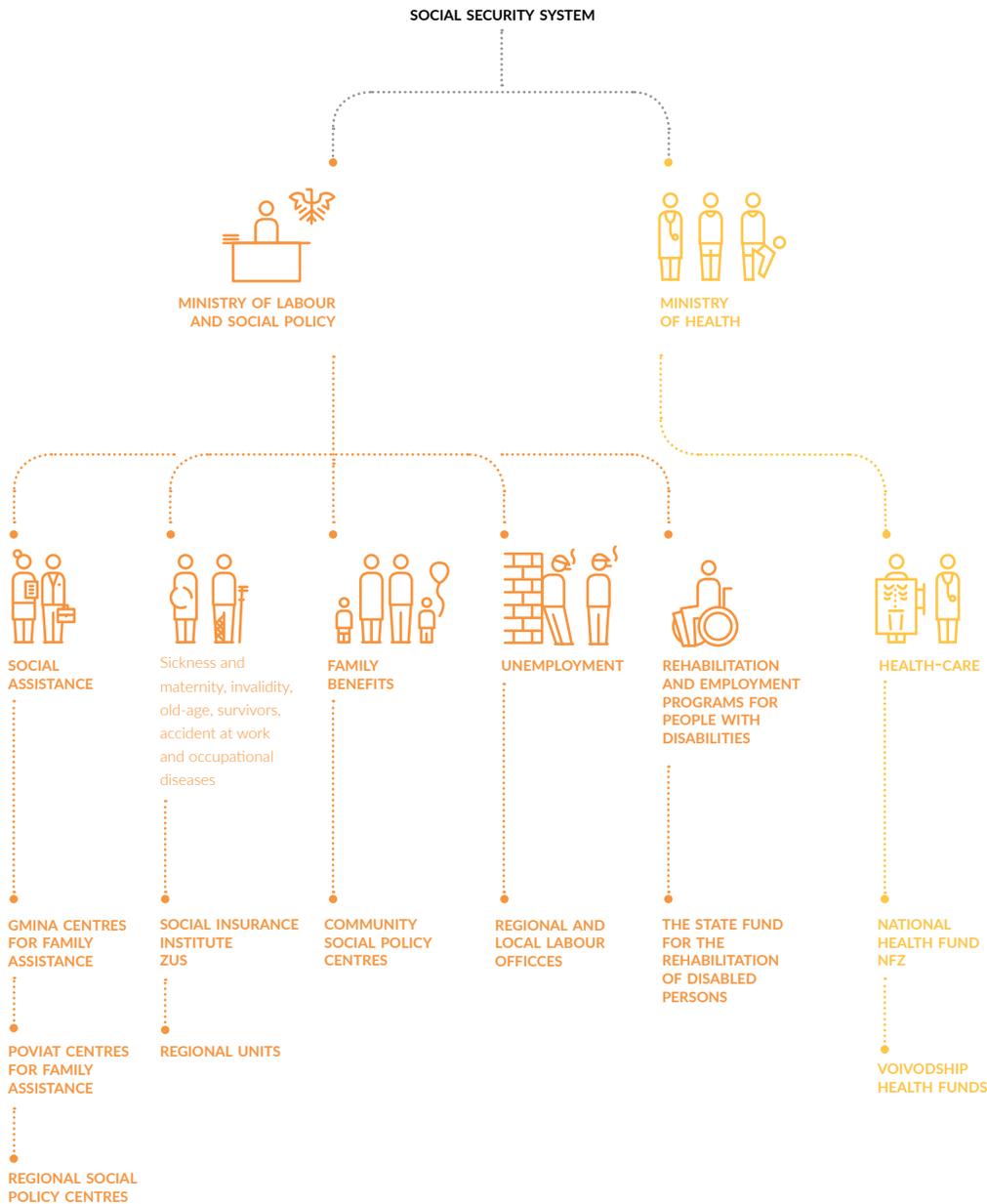
associations as well as with individuals and entities.

³¹ The assessment basis, in case of social insurance, depends in principle on the worker's earning capacity (i.e. his/her income).

²⁸ Based on Family Benefits Act of 28 November 2003 (Journal of Laws of 2013 item 1456).

²⁹ B. Kłos, Świadczenia rodzinne..., op. cit., p. 1-2.

DIAGRAM 1.
The organisation of social security system in Poland
Source: MISSOC



regardless of participation in open funds, ZUS will be the institution responsible to pay out the entire amount of pension out of the common system resources.

Unemployment benefits are funded from contributions paid to the Labour Fund which are paid by employers in the amount of 2.45% of the assessment basis. These monies are disposed of by Labour Offices in the form of unemployment benefits, salaries in respect of intervention works, public works, training for the unemployed, and for the development of vocational advisory services, IT systems and carrying out labour market research.

Health-care benefits are funded from contributions to health insurance and from the state budget, but the state budget funds only: certain

highly specialized benefits, benefits in the scope of addiction treatment, emergency rescue service (pre-hospital services), infection and contagious disease treatments and well as benefits granted to people who suffer from psychiatric diseases or mental deficiencies. The state also pays health insurance contributions on behalf of certain groups of people covered by mandatory health insurance³².

A monthly contribution to health insurance fund currently amounts to 9% of the assessment basis³³, while 7.75% of the contribution is deducted from the income tax advance paid by natural persons.

Both family benefits as well as social assistance benefits are funded by the state.

2.4 Access of third country nationals to social security benefits

TABLE 1.
Overview of the national social security system (presented in the MISSOC national guides³⁴) as it applies to third-country nationals

'Branch' of social security	Benefits and programmes included in each branch	Financing mechanisms (contributory/ non-contributory/ mixed)	Accessibility by third-country nationals
 Healthcare	<ul style="list-style-type: none"> Primary healthcare Specialist out-patient care Hospital treatment Dental treatment Rescue and medical transport services Medicines and medical devices 	mixed (benefits are usually funded from health-care contributions and from the state budget)	Yes, third country nationals who are mandatorily or voluntarily insured within NFZ and who reside in Poland on the basis of: <ul style="list-style-type: none"> a work visa, a residence permit for a fixed period³⁵ except for a permit granted to irregular migrants (Article 53a(2) of the Act of 13 June 2013 on foreigners),

³². Inter alia on behalf of: soldiers in compulsory military service, children and students who are placed in correction institutions, foster care institution or medical institution or a nursing home; students of all school levels; unemployed who are not entitled to benefits or scholarships; persons who are paid welfare benefits on continuous basis; homeless people who are in the process of inclusion and people covered with individual social employment programme; war veterans and victimized individuals; individuals on child care leave.

³³. Assessment basis may include e.g. employee's remuneration, the amount of retirement or disability pension, the amount of continuous welfare benefit, the amount of unemployment benefit, etc.

³⁴. The EU's Mutual Information System on Social Protection (MISSOC) produced the classification of various benefits and programmes that exist in Member States.

³⁵. According to the new terminology to take effect as of 1 May 2014 - "who hold a temporary residence permit in Poland granted due to circumstances, referred to in Article 127, Article 151. 1 or 151.2 or Article 186.1(3) of the Act on foreigners of 12 December 2013 (Journal of Laws of 2013, item 1650)". The same applies to information included in the table and concerning unemployment benefits, family benefits, guaranteed minimum resources and long-term care benefits.

			<ul style="list-style-type: none"> • a permit to settle³⁶, • a residence permit for a long-term European Union (EU) resident issued to a long-term EC resident and members of their families (registered with National Insurance Fund) who reside in Poland, if they are not covered by mandatory health insurance (they do not have their own title to health insurance benefits). 		 <p>Survivors' benefits</p>	<ul style="list-style-type: none"> • Survivors' pension • Funeral allowance 	<p>contributory (funded from contributions, and in case of shortages in the Social Insurance Fund it is complemented by the state budget funds)</p>	<p>Yes, all insured third-country nationals, including researchers, labour migrants, seasonal workers and self-employed migrants.</p>
 <p>Sickness cash benefits</p>	<ul style="list-style-type: none"> • Sickness allowance • Compensation allowance • Rehabilitation allowance • Maternity allowance • Child-minding allowance 	<p>contributory (funded from contributions, and in case of shortages in the Social Insurance Fund it is complemented by the state budget funds)</p>	<p>Yes, all insured third-country nationals, including researchers, labour migrants, seasonal workers and self-employed migrants.</p>		 <p>Benefits in respect of accidents at work and occupational diseases</p>	<ul style="list-style-type: none"> • Invalidity pension due to inability to work • Lump-sum compensation • Training pension • Survivors' pension • Sickness benefits (sickness allowance, rehabilitation benefits, compensation allowance) • Covering the costs of dental treatment, preventive vaccinations and orthopaedic articles 	<p>contributory (funded from contributions, and in case of shortages in the Social Insurance Fund it is complemented by the state budget funds)</p>	<p>Yes, all insured third-country nationals, including researchers, labour migrants, seasonal workers and self-employed migrants.</p>
 <p>Maternity and paternity benefits</p>	<p>Maternity allowance granted to people on maternity leave, additional maternity leave and parental leave (also granted to the father of the child)</p>	<p>contributory (funded from contributions, and in case of shortages in the Social Insurance Fund it is complemented by the state budget funds)</p>	<p>Yes, all insured third-country nationals, including researchers, labour migrants, seasonal workers and self-employed migrants.</p>		 <p>Family benefits</p>	<ul style="list-style-type: none"> • Family allowance • Childbirth-lump-sum supplement • Childcare allowance paid to people on parental leave • Bringing-up-a-child-alone supplement • Large-family supplement • Training-and-rehabilitation-of-a-disabled-child supplement • Commencement-of-a-school-year supplement • Medical care allowance • Nursing benefit • Special attendance allowance • Child-education-out-of-the-place-of-residence supplement 	<p>non-contributory (state budget)</p>	<p>Yes, third country nationals³⁷:</p> <ul style="list-style-type: none"> • if it results from bilateral social security agreements to which Poland is a party³⁸, • foreigners who live in Poland with their families and who hold: <ul style="list-style-type: none"> ◦ a permit to settle or ◦ a residence permit for a long-term European Union (EU) resident issued to a long-term EC resident or ◦ a residence permit for a fixed period granted to a foreigner who was granted a residence permit for a long-term European Union (EU) resident by another EU Member State³⁹.
 <p>Invalidity benefits</p>	<ul style="list-style-type: none"> • Invalidity pension due to inability to work • Training pension • Survivors' pension 	<p>contributory (funded from contributions, and in case of shortages in the Social Insurance Fund it is complemented by the state budget funds)</p>	<p>Yes, all insured third-country nationals, including researchers, labour migrants, seasonal workers and self-employed migrants.</p>					
 <p>Old-age pensions and benefits</p>	<p>Old-age pension</p>	<p>contributory (funded from contributions, and in case of shortages in the Social Insurance Fund it is complemented by the state budget funds)</p>	<p>Yes, all insured third-country nationals, including researchers, labour migrants, seasonal workers and self-employed migrants.</p>		 <p>Unemployment benefits</p>	<ul style="list-style-type: none"> • Unemployment allowance • Early Retirement benefit 	<p>contributory</p>	<p>Yes, third country nationals who⁴⁰:</p> <ul style="list-style-type: none"> • hold a permit to settle, • hold a residence permit for a long-term European Union (EU) resident issued to a long-term EC resident,

36. According to a new terminology to take effect as of 1 May 2014 – "who hold a permanent residence permit in Poland" (change of terminology results from entry into force of the Act on foreigners of 12 December 2013 (Journal of Laws of 2013, item 1650). The same

applies to information included in the table and concerning unemployment benefits, family benefits, guaranteed minimum resources and long-term care benefits.

37. On 1 May 2014 the Act on foreigners of 12 December 2013 (Journal of Laws of 2013, item 1650) will come into force, as a result of which the terminology concerning the residence types will change, including the extension of the number of residence titles which entitle to family benefits (see: subsection 2.6).

38. It is currently regulated by the agreements concluded with former Yugoslavia and Macedonia. The first one covers all family benefits, whereas the latter one – only family allowances and supplements (it does not cover child-minding allowance, nursing benefit and special

attendance allowance).

39. I.e. due to the circumstances, referred to in Article 53:1(13) of the Act on foreigners of 13 June 2003.

40. On 1 May 2014 the Act on foreigners of 12 December 2013 (Journal of Laws of 2013, item 1650) will come into force, as a result of which the terminology concerning the residence types will change, including the extension of the number of residence titles which entitle to unemployment benefits (see: subsection 2.6).



Guaranteed minimum resources

- Permanent allowance which supplements the income of people who are totally unable to work because of their age or disability
- Periodic allowance for individuals and families without income, or whose income is lower than the legal threshold and whose cash resources are too low for basic subsistence
- One-off special needs allowance and special personal allowance
- Allowance and loan to attain financial independence
- Assistance to foster families
- Assistance to attain self-dependence and to continue education
- Cash benefit for refugees towards living costs and expenses connected with learning the Polish language (granted to refugees and beneficiaries of subsidiary protection)
- Support in an in-kind form, such as credit tickets, contributions to health insurance, contributions to social insurance, organisation of a funeral and specialist guidance

non-contributory (municipal budget, state budget on auxiliary basis)

- hold a residence permit for a fixed period granted to a foreigner who was granted a residence permit for a long-term European Union (EU) resident by another EU Member State⁴¹.

Yes, third country nationals who:

- hold a permit to settle,
- hold a residence permit for a long-term European Union (EU) resident issued to a long-term EC resident,
- hold a residence permit for a fixed period granted to a foreigner who was granted a residence permit for a long-term European Union (EU) resident by another EU

- Permanent allowance
- Periodic allowance
- Special needs allowance
- Support in an in-kind form
- Social pension⁴⁷

non-contributory (municipal budget, state budget on auxiliary basis)

non-contributory

Union (EU) resident issued to a long-term EC resident or

- a residence permit for a fixed period granted to a foreigner who was granted a residence permit for a long-term European Union (EU) resident by another EU Member State⁴⁵.

Yes, third country nationals who:

- hold a permit to settle,
- hold a residence permit for a long-term European Union (EU) resident issued to a long-term EC resident,
- hold a residence permit for a fixed period granted to a foreigner who was granted a residence permit for a long-term European Union (EU) resident by another EU Member State⁴⁶.



Long-term care benefits

- Nursing benefit
- Medical care allowance
- Medical care supplement

non-contributory (state budget)

Yes, third country nationals⁴³:

- if it results from bilateral social security agreements to which Poland is a party⁴⁴,
- foreigners who live in Poland with their families and who hold:
 - a permit to settle or
 - a residence permit for a long-term European

to family benefits (see: subsection 2.6).

44. At present, none of the agreements concluded by Poland regulates his type of benefits. However, medical care supplement is granted to people who are entitled to Polish old-age and disability pensions which means that if a person concerned is granted Polish old-age or disability pension, s/he can be granted medical care supplement, provided that s/he fulfils conditions stipulated by the law.

TABLE 2.

Additional social security benefits that are not included in the MISSOC national guide

'Branch' of social security	Benefits and programmes included in each branch	Financing mechanisms (contributory/ non-contributory/ mixed)	Accessibility by third-country nationals
 Healthcare	<ul style="list-style-type: none"> • Psychiatric care and addiction treatment • Medical rehabilitation treatments • Treatment in health resorts • Provision of medical devices on request of a person entitled • Palliative and hospice care • Highly specialized services • Health-care schemes 	<p>mixed (benefits are usually funded from health-care contributions and from the state budget)</p>	<p>Yes, third country nationals who are mandatorily or voluntarily insured within NFZ and who reside in Poland on the basis of:</p> <ul style="list-style-type: none"> • a work visa, • a residence permit for a fixed period⁴⁸ except for a permit granted to irregular migrants (Article 53a(2) of the Act of 13 June 2013 on foreigners),

45. I.e. due to the circumstances, referred to in Article 53.1(13) of the Act on foreigners of 13 June 2003.

46. I.e. due to the circumstances, referred to in Article 53.1(13) of the Act on foreigners of 13 June 2003.

47. It is granted to people are 18 years old or more and are unable to work. On 1 May 2014 the Act on foreigners of 12 December 2013 (Journal of Laws of 2013, item 1650) will come into force, as a result of which the terminology concerning the residence types will change, including the extension of the number of residence titles which entitle

to social pension (see: subsection 2.6).

48. According to the new terminology to take effect as of 1 May 2014 – "who hold a temporary residence permit in Poland granted due to circumstances, referred to in Article 127, Article 151. 1 or 151.2 or Article 186.1(3) of the Act on foreigners of 12 December 2013 (Journal of Laws of 2013, item 1650)". The same applies to information included in the table and concerning unemployment benefits, family benefits, guaranteed minimum resources and long-term care benefits.

- Medicines' provision schemes
- Foodstuffs for special dietary purposes, including those imported from abroad and available for prescriptions at pharmacies

- Release from payment for benefits in the scope of alcohol abuse treatment for alcohol addicts
- Release of drug addicts from payments for treatment, rehabilitation and reintegration
- Release of people suffering from psychiatric diseases or mental deficiencies from payments for:
 - health-care benefits in the scope of psychiatric health-care,
 - medicinal products, medical devices, medical devices and active medical devices for grafting, to which those patients are entitled while staying in psychiatric hospital,
 - selected medicinal products and medical devices, foodstuffs for special nutrition purposes⁵⁰
- Health-care services guaranteed within common health insurance which are granted to uninsured people:
 - whose income is low (income criterion is defined in welfare regulations),
 - who are not 18 yet,
 - women during pregnancy, delivery and post-delivery period

non-contributory (state budget)

non-contributory (with regard to selected categories of Polish citizens financed by the state budget)

- a permit to settle⁴⁹,
- a residence permit for a long-term European Union (EU) resident issued to a long-term EC resident and members of their families (registered with National Insurance Fund) who reside in Poland, if they are not covered by mandatory health insurance (they do not have their own title to health insurance benefits).

Yes, foreigners who are not insured within NFZ.

No.

long-term care benefits.

^{50.} Defined in lists, referred to in Article 37 of Act on the reimbursement of medicines of 12 May 2011 and in the category, referred to in Article 6.1(1b) of that Act, qualified as available against payment pursuant to Article 6.2 of that Act.



Unemployment benefits

- Scholarship⁵¹
- Job rehabilitation supplement⁵⁴



Long-term care benefits

Elderly care benefit within the framework of long-term care



Old-age pensions and benefits

Elderly supplement

contributory

mixed (benefits are funded from health-care contributions and from the state budget)

contributory (funded from contributions, and in case of shortages in the Social Insurance Fund it is complemented by the state budget funds)

Yes, third country nationals who⁵²:

- hold a permit to settle,
- hold a residence permit for a long-term European Union (EU) resident issued to a long-term EC resident,
- hold a residence permit for a fixed period granted to a foreigner who was granted a residence permit for a long-term European Union⁵³.

Yes, third country nationals who are mandatorily or voluntarily insured within NFZ and who reside in Poland on the basis of:

- a work visa,
- a residence permit for a fixed period⁵⁴ except for a permit granted to irregular migrants (Article 53a(2) of the Act of 13 June 2013 on foreigners),
- a permit to settle⁵⁵,
- a residence permit for a long-term European Union (EU) resident

and members of their families (registered with National Insurance Fund) who reside in Poland, if they are not covered by mandatory health insurance (they do not have their own title to health insurance benefits).

Yes, all insured third-country nationals, including researchers, labour migrants, seasonal workers and self-employed migrants.

^{49.} According to a new terminology to take effect as of 1 May 2014 – "who hold a permanent residence permit in Poland" (change of terminology results from entry into force of the Act on foreigners of 12 December 2013 (Journal of Laws of 2013, item 1650). The same applies to information included in the table and concerning unemployment benefits, family benefits, guaranteed minimum resources and

^{51.} The amount paid to an unemployed individual or to other eligible individual during his/her training, vocational preparation of adults, post-graduate studies, internship and during the education at high school or university where he/she pursues extramural studies.

^{52.} On 1 May 2014 the Act on foreigners of 12 December 2013 (Journal of Laws of 2013, item 1650) will come into force, as a result of which the terminology concerning the residence types will change, including the extension of the number of residence titles which entitle to unemployment benefits (see: subsection 2.6).

^{53.} I.e. due to the circumstances, referred to in Article 53.1(13) of the Act on foreigners of 13 June 2003.

^{54.} According to the new terminology to take effect as of 1 May 2014 – "who hold a temporary residence permit in Poland granted due

to circumstances, referred to in Article 127, Article 151. 1 or 151.2 or Article 186.1(3) of the Act on foreigners of 12 December 2013 (Journal of Laws of 2013, item 1650)". The same applies to information included in the table and concerning unemployment benefits, family benefits, guaranteed minimum resources and long-term care benefits.

^{55.} According to a new terminology to take effect as of 1 May 2014 – "who hold a permanent residence permit in Poland" (change of terminology results from entry into force of the Act on foreigners of 12 December 2013 (Journal of Laws of 2013, item 1650). The same applies to information included in the table and concerning unemployment benefits, family benefits, guaranteed minimum resources and long-term care benefits.



Family benefits

One-off payment due to child-birth

non-contributory (state budget)

Yes, third country nationals⁵⁶:

- if it results from bilateral social security agreements to which Poland is a party⁵⁷,
- foreigners who reside in Poland with their families and who hold:
 - a permit to settle or
 - a residence permit for a long-term European Union (EU) resident issued to a long-term EC resident or
 - a residence permit for a fixed period granted to a foreigner who was granted a residence permit for a long-term European Union (EU) resident by another EU Member State⁵⁸.



Guaranteed minimum resources

In kind benefits (i.e. social work, crisis intervention, shelter, meal, necessary clothes, care services in the place of stay, in support centres and in family support homes, specialized care services, protected apartment, stay and services at a nursing home, support in finding appropriate apartment, including a protected apartment, support in finding a job, support for the purposes of social inclusion)

non-contributory (municipal budget, state budget on auxiliary basis)

Yes, third country nationals who⁵⁹:

- hold a permit to settle,
- hold a residence permit for a long-term European Union (EU) resident issued to a long-term EC resident,
- hold a residence permit for a fixed period granted to a foreigner who was granted a residence permit for a long-term European Union (EU) resident by another EU Member State⁶⁰.

56. On 1 May 2014 the Act on foreigners of 12 December 2013 (Journal of Laws of 2013, item 1650) will come into force, as a result of which the terminology concerning the residence types will change, including the extension of the number of residence titles which entitle to family benefits.

57. It is currently regulated by the agreements concluded with former Yugoslavia.

58. I.e. due to the circumstances, referred to in Article 53.1(13) of the

Act on foreigners of 13 June 2003.

59. On 1 May 2014 the Act on foreigners of 12 December 2013 (Journal of Laws of 2013, item 1650) will come into force, as a result of which the terminology concerning the residence types will change, including the extension of the number of residence titles which entitle to unemployment benefits.

60. I.e. due to the circumstances, referred to in Article 53.1(13) of the Act on foreigners of 13 June 2003.

2.5 Nexus between policies in relation to social security and to immigration

The analysis of regulations concerning the scope in which migrants from the third countries may benefit from social security system in Poland, as well as the analysis of strategic documents concerning migrations which define further objectives in that area indicate that the model adopted by Poland provides for a marginal support of a foreigner provided by the state and is based on an assumption that foreigners staying in Poland should be self-sufficient, both at the upon their arrival to Poland as well as during the stay in Poland.

This strategy is going to be pursued in the future as results from the strategic document adopted in 2012 by the Council of Ministers entitled: "Migration Policy of Poland – Current State of Play and Further Actions", in which the recommended actions should „aim at the foreigner's achievement of economic self-sufficiency so that they can maintain themselves and their families without the resort to public funds”⁶¹.

The self-sufficiency at the stage of applying for a residence permit for a fixed period as well as residence permit for a long-term EU resident (the first one as well as the subsequent ones) is checked by means of verifying the amount of funds which are at the foreigner's disposal for the purposes of covering the costs of maintaining him/herself and his/her family. The funds concerned depend on the amount of income which entitles an individual concerned to be granted welfare benefits in cash (the amount of the funds must be higher than the income amount based on which the benefits are granted).

Criteria for issuing time-bound residence permits are therefore structured in such a manner that foreigners do not need to resort to the services provided by social security centres. Income criterion is not taken into account only for the purpose of permit to settle applications⁶².

It is worth underlining that the group of foreigners entitled to social assistance is relatively narrow and it does not cover foreigners holding time-bound residence permits (except for foreigners who granted

a EU long-term EU resident status on the basis of which they were granted a residence permit for a fixed period).⁶³

Nowadays, a situation in which a foreigner applying for a time-bound residence permit is refused to be issued the permit in question due to the fact that he receives social assistance benefits, is strictly theoretical.

However, it is worthwhile to point out that the legal structure applied, which consists in taking into account the income criterion to prove entitlement to receiving social assistance benefits for the purpose of assessing a foreigner's financial standing, is also a procedure designed to prevent possible abuses in the future, when social assistance will become for example more accessible to foreigners staying in Poland on the basis of time-bound permits.

Regulations which should be regarded as favourable from the point of view of foreigners (providing support whenever social risk i.e. disease, invalidity old age or death occurs) include regulations concerning their access to the Polish social security system benefits which do not depend on a Polish nationality, domicile in Poland or type of residence permit (it is important to work in Poland in order to be covered with that type of insurance); due to this fact almost all foreigners who work or run their own business in Poland pay social insurance contributions and, following the fulfilment of certain requirements, they are entitled to e.g. old-age pensions.

One should note, however, that due to a small number of bilateral agreements concerning coordination of social security systems signed by Poland with the countries of origin of international migrants, a huge number of foreigners working in Poland may encounter a problem of too short contribution periods (contributory and non-contributory periods) to be entitled to a disability pension.

Another problem may be encountered by foreigners applying for the old-age pension. According

61. Polityka migracyjna Polski – stan obecny i postulowane działania [Migration Policy of Poland – Current State of Play and Further Actions], p. 36.

62. According to a new terminology which will enter into force on 1

May 2014 – permanent residence permit.

63. According to the information provided by the Ministry of Labour and Social Policy, approx. 5-10% of social assistance benefits annually is granted to foreigners who are not entitled to receive them.

to the revised rules of the old-age pension scheme (introduced in 1999, rules apply to most of the people born after 31 December 1948), any period of insurance gives a foreigner a right to a old-age pension after reaching a common pension age (Polish old-age pensions are not calculated proportionally to the number of insurance periods – no aggregation of insurance periods principle applies,⁶⁴ it means that the amount of old-age pension depends solely on the amount of contributions paid in the past). As a result, it may occur that the amount of the pension paid out of Polish social security system will be very low. This relates mainly to those foreigners who came to Poland as older people who – for the major part of their working lives – worked in the country of origin/ other third country rather than in Poland, foreigners who take up work in Poland of temporary character (including under simplified scheme, according to which it is possible to work in Poland without a work permit for a maximum of six months within the period of 12 consecutive months).

Similar situation may occur in case of persons born before 1 January 1948 (to whom old rules of old-age pension scheme apply, according to which the

main criteria for the granting of old-age pension are: reaching pension age and being insured for reasonably long period of time – the so-called contributory and non-contributory periods) and who originate from countries with which Poland has not concluded social security coordination agreement. In case of those persons it is impossible to add up all the insurance periods (i.e. insurance coverage provided in Poland and in the country of origin), which significantly limits their right to receive an old-age pension in Poland.

In conclusion, such a system of foreigners' access to social insurance benefits, in relation with a low (in comparison to other EU member States) amount of some of the benefits (including i.a. social assistance, family benefits and unemployment benefits) should be regarded as a factor which will hardly influence the social inclusion of a foreigner whenever he/she find himself/herself in a difficult situation.

It is worth noting, however, that the coming changes in the scope of foreigners' access to family benefits, unemployment benefits and to social pension (see: sub-section 2.6) will contribute to easing the restrictions on the foreigners' access to social benefits.

scientific research⁶⁸ will be entitled to be granted the status of unemployed (there was no such a possibility before), if only directly prior to the registration they were employed in Poland for the period of at least six consecutive months and they fulfil other requirements which are necessary for being granted an unemployed status. These foreigners will have access to labour market services (i.e. Labour Office services, vocational advisory services and job information, support in active job seeking and participation in training organized by Labour Office), and they will also be subject to health insurance, i.e. they will be able to benefit from free health-care services. They will also be entitled to unemployment benefits if they fulfil the requirements for being granted the entitlement (in principle they must work and pay contributions to the Labour Fund for the total number of 365 days within the period of 18 months prior to registration).

Access to both the benefits will be granted to foreigners who hold temporary residence permit issued for the purpose of employment of high skilled workers and to those who hold temporary residence permit and are entitled to work in Poland or not required to have a work permit (there was no such a possibility before). While no exceptions to the rule are provided in case of social pension, certain foreigners will be excluded from the right to family benefits, namely those who:

- have been granted a permit to work in an EU Member State for not longer than 6 months,
- have been enrolled at the university,⁶⁹
- hold a visa which entitles them to perform work.

The amendments, referred to above, have been taken account of in the new Act on foreigners of 12 December 2013, which enters into force on 1 May 2014.

2.6 Planned changes in the eligibility rules for social security benefits and programmes

A major change to be made in the future in the access of foreigners to social security schemes and benefits involves the extension of the category of people who will be entitled to the **unemployment benefits**, **family benefits** and to **social pension**. The change is correlated with the implementing of the so called Framework Directive⁶⁵ which obliges the Member States to ensure equal treatment in the scope of social security of at least those third country nationals who are employed or who were registered as unemployed having worked for a minimum period,

Council Directive 2005/71/EC on a specific procedure for admitting third-country nationals for the purposes of scientific research as well as so-called "Blue Card" directive.⁶⁶

According to the planned modification, foreigners who stay in Poland based on a temporary residence and work permit⁶⁷ (including for the purpose of working in Poland) or a work visa, temporary residence permit issued for the purpose of employment of high skilled workers, temporary residence permit for the purpose of carrying out

64. This principle is characteristic for systems which provide pensions irrespective of a number of insurance periods. The principle is applied with regard to coordination of social security systems in the EU.

65. Council Directive 2011/98/EU of 13 December 2011 on a single application procedure for a single permit for third-country nationals to reside and work in the territory of a Member State and on a common set of rights for third-country workers legally residing in a Member

State (OJ L 343, 23.12.2011).

66. Council Directive 2009/50/EC of 25 May 2009 on the conditions of entry and residence of third-country nationals for the purposes of highly qualified employment (OJ L 155 of 18.6.2009).

67. Article 1.3 point 2 ha of the Act of 20 April 2004 on employment promotion and labour market institutions Dz. U. [Journal of Laws] of 2013, item 674, consolidated text.

68. Article 151.1 or 2 of Act of 13 June 2013 on Foreigners.

69. In Poland foreigners who hold a residence permit for a fixed period

for the purpose of taking up or continuing 1st, 2nd or 3rd degree full-time studies are not required to hold a work permit.

3

National rules on access to selected social security benefits by third-country nationals

3.1. Minimum residence period attached to the benefits that are accessible by third-country nationals
> 35

3.2. Possibility to export the benefits once the third country national returns to his/her country of origin
> 36

3.3. Minimum employment period / minimum contribution period attached to the benefits that are accessible by third-country nationals
> 37

3.4. Migration-specific conditions attached to the benefits that are accessible by third-country nationals
> 38

3.0 National rules on access to selected social security benefits by third-country nationals

3.1 Minimum residence period attached to the benefits that are accessible by third-country nationals

'Branch' of social security	Is a minimum residence period attached to the benefits that are accessible by third-country nationals?	Comments
Healthcare	No/Yes	Polish regulations concerning third-country nationals' access to social security benefits do not expressly impose an obligation on a foreigner to reside in Poland for a certain period. The entitlement to be provided with that benefits depends, however, on a certain residence title held by the foreigner (including a residence permit issued for an indefinite period), for which the foreigner can apply only after certain period of staying in Poland (in case of the permit to settle, the period varies from 3 years to 10 years, and in case of a residence permit of a long-term EU resident – at least 5 years).
Sickness cash benefits	No	
Maternity and paternity benefits	No	
Old-age pensions and benefits	No	
Family benefits	No/Yes	Polish regulations concerning third-country nationals' access to social security benefits do not expressly impose an obligation on a foreigner to reside in Poland for a certain period. The entitlement to be provided with that benefits depends, however, on a certain residence title held by the foreigner (including a residence permit issued for an indefinite period), for which the foreigner can apply only after certain period of staying in Poland (in case of the permit to settle, the period varies from 3 years to 10 years, and in case of a residence permit of a long-term EU resident – at least 5 years).
Unemployment benefits	No/Yes	As of 1 May 2014, when the Act on foreigners of 12 December 2013 enters into force, certain foreigners will have to demonstrate that they worked (and resided) in Poland for six months.

Guaranteed minimum resources	No/Yes	Polish regulations concerning third-country nationals' access to social security benefits do not expressly impose an obligation on a foreigner to reside in Poland for a certain period. The entitlement to be provided with that benefits depends, however, on a certain residence title held by the foreigner (including a residence permit issued for an indefinite period), for which the foreigner can apply only after certain period of staying in Poland (in case of the permit to settle, the period varies from 3 years to 10 years, and in case of a residence permit of a long-term EU resident – at least 5 years).
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3.2 Possibility to export the benefits once the third country national returns to his/her country of origin

'Branch' of social security	Are the benefits that are accessible by third-country nationals exportable once the third country national returns to his/her country of origin?	Comments
Healthcare	Yes	The right to healthcare benefits (funded by the state) may be exported to the country of origin/residence of a third-country national/members of his/her family only if the procedure is regulated with a bilateral agreement signed by Poland. ⁷⁰ The same principle applies in relation to the Polish nationals.
Sickness cash benefits	Yes	The benefits may be transferred only based on international social security agreements. ⁷¹
Maternity and paternity benefits	Yes	This principle applies to all those entitled regardless of nationality.
Old-age pensions and benefits	Yes	The benefits may be transferred only based on international agreements. ⁷² Old-age and disability pensions for individuals residing in countries with which Poland has not signed a bilateral social security agreement may be paid out to a bank account in Poland or personally to a person entitled who resides in Poland. This principle applies to all those entitled regardless of nationality.

^{70.} Currently this is possible in case of the Republic of Macedonia, as well as in case of an agreement with the Socialist Federal Republic of Yugoslavia – enforceable with respect to Bosnia and Herzegovina, Serbia and Montenegro.

^{71.} At present, transfer of sickness benefits is possible on the basis of agreements with Macedonia, former Yugoslavia (enforceable with respect to Bosnia and Herzegovina, Serbia and Montenegro) and Ukraine.

^{72.} It is currently regulated by all agreements concluded by Poland which means that it is possible to transfer old-age and disability pensions to: Canada, Australia, USA, South Korea, Ukraine, Macedonia, Bosnia and Herzegovina, Serbia and Montenegro (based on agreement with former Yugoslavia). It will be possible on the basis of agreement with Moldova, whose ratification is pending.

Family benefits	No	Family benefits may be transferred only based on international social security agreements ⁷³ . This principle applies to all those entitled regardless of nationality.
Unemployment benefits	No	The benefits are not subject to export also with respect to Polish nationals.
Guaranteed minimum resources	No	

3.3 Minimum employment period / minimum contribution period attached to the benefits that are accessible by third-country nationals

'Branch' of social security	Is a minimum employment period/ minimum contribution period attached to the benefits that are accessible by third-country nationals?	Comments
Healthcare	No	Requirements to be fulfilled for granting the benefits are the same for all those insured, regardless of nationality.
Sickness cash benefits	Yes	30 days in case of obligatory insurance and 90 days in case of voluntary insurance. Requirements to be fulfilled for granting the benefits are the same for all those insured, regardless of nationality.
Maternity and paternity benefits	No	Requirements to be fulfilled for granting the benefits are the same for all those insured, regardless of nationality.
Old-age pensions and benefits	No	Under "new" pension scheme (which applies to people born after 31 December 1948), any period of insurance gives entitlement to a old-age pensions after reaching a common retirement age. In case of the old-age pension system based on the old rules (applicable to persons born before 1 January 1949), the insured are entitled to the old-age pension, among others, if they have contributory and non-contributory periods amounting to at least 20 years for women and 25 years for men.

^{73.} At present, it is possible to export family benefits to Bosnia and Herzegovina, Serbia and Montenegro (based on agreement with former Yugoslavia).

A similar requirement applies when a minimum amount of old-age pension is not reached. Only those who can document insurance periods of at least 25 years are entitled thereto⁷⁴.

Requirements to be fulfilled for granting the benefits are the same for all those insured, regardless of nationality.

Family benefits	No	Requirements to be fulfilled for granting the benefits are the same for all those insured, regardless of nationality.
Unemployment benefits	Yes	Requirements to be fulfilled for granting the benefits are the same for all those registered as unemployed, regardless of nationality, provided that a foreigner must also hold a relevant residence title. Unemployment benefit may be granted to an unemployed who is registered at a Poviát Labour Office, following 7 days ⁷⁵ of registration and who – within 18 months preceding the day of registration at the Office as an unemployed, was – for an aggregate period of at least 365 days – employed or worked based on an employment contract or rendered services based on a relevant contract and received at least a minimum remuneration on which there is an obligation to pay contributions to the Labour Fund, as well as paid contributions for social insurance due to conducting non-agricultural business or cooperation, if the assessment basis for social insurance and Labour Fund contributions amounted to at least a minimum remuneration.
Guaranteed minimum resources	No	Requirements to be fulfilled for granting the benefits are the same for all those insured, regardless of nationality.

period⁷⁶ except for a permit granted to irregular migrants (Article 53a(2) of the Act of 13 June 2013 on foreigners),

- third country nationals who hold a permit to settle⁷⁷,
- third country nationals who hold a residence permit for a long-term European Union (EU) resident issued to a long-term EC resident and members of their families who reside in Poland, if they are not covered by mandatory or voluntary health insurance.

Family members of the above mentioned foreigners who reside in Poland may also benefit from health-care services if they are not subject to mandatory health-care insurance (i.e. they do not hold their own title to mandatory health insurance in Poland).

Sickness cash benefits	No	
Maternity and paternity benefits	No	
Old-age pensions and benefits	No	
Family benefits	Yes	Family benefits are accessible by third country nationals ⁷⁸ : <ul style="list-style-type: none"> • if it results from bilateral social security agreements to which Poland is a party,⁷⁹ • foreigners who live in Poland with their families and who hold: <ul style="list-style-type: none"> ◦ a permit to settle or ◦ residence permit for a long-term European Union (EU) resident issued to a long-term EC resident or ◦ a residence permit for a fixed period granted to a foreigner who was granted a residence permit for a long-term European Union (EU) resident by another EU Member State⁸⁰.

Unemployment benefits	Yes	The unemployment benefits are accessible by third country nationals who ⁸¹ : <ul style="list-style-type: none"> • hold a permit to settle, • hold a residence permit for a long-term European Union (EU) resident issued to a long-term EC resident, • hold a residence permit for a fixed period granted to a foreigner who was granted a residence permit for a long-term European Union (EU) resident by another EU Member State⁸².
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76. According to the new terminology to take effect as of 1 May 2014 – “who hold a temporary residence permit in Poland granted due to circumstances, referred to in Article 127, Article 151. 1 or 151.2 or Article 186.1(3) of the Act on foreigners of 12 December 2013 (Journal of Laws of 2013, item 1650)”. The same applies to information included in the table and concerning unemployment benefits, family benefits, guaranteed minimum resources and long-term care benefits.
77. According to a new terminology to take effect as of 1 May 2014 – “who hold a permanent residence permit in Poland” (change of terminology results from entry into force of the Act on foreigners of 12 December 2013 (Journal of Laws of 2013, item 1650). The same applies to information included in the table and concerning unemployment benefits, family benefits, guaranteed minimum resources and long-term care benefits.
78. On 1 May 2014 the Act on foreigners of 12 December 2013 (Journal of Laws of 2013, item 1650) will come into force, as a result of which the terminology concerning the residence types will change,

including the extension of the number of residence titles which entitle to family benefits.
79. It is currently regulated by the agreements concluded with former Yugoslavia and Macedonia. The first one covers all family benefits, whereas the latter one – only family allowances and supplements (it does not cover child-minding allowance, nursing benefit and special attendance allowance).
80. I.e. due to the circumstances, referred to in Article 53.1(13) of the Act on foreigners of 13 June 2003.
81. On 1 May 2014 the Act on foreigners of 12 December 2013 (Journal of Laws of 2013, item 1650) will come into force, as a result of which the terminology concerning the residence types will change, including the extension of the number of residence titles which entitle to unemployment benefits.
82. I.e. due to the circumstances, referred to in Article 53.1(13) of the Act on foreigners of 13 June 2003.

3.4 Migration-specific conditions attached to the benefits that are accessible by third-country nationals

'Branch' of social security	Are migration-specific conditions (e.g. requirement to hold a particular residence permit, authorisation of stay or visa, a fixed domicile, requirement to participate in an integration course, etc.) attached to the benefits that are accessible by third-country nationals?	Comments
Healthcare	Yes	The following (insured) foreigners can benefits from the public healthcare: <ul style="list-style-type: none"> • third country nationals who hold a work visa, • third country nationals who hold a residence permit for a fixed

74. The required length of insurance periods applies to men; however, starting from 2022 it will apply to women as well. Until then, in case of women, the number of documented contributory and non-contributory periods will continue to increase - starting from 2014 - by one year every two years, from the presently applicable period of 20 years.

75. According to the Act of 14 March 2014 amending the Act on the Promotion of Employment and Labour Market Institutions and some other acts (Dz. U. [Journal of Laws] of 2014, item 598) entitlement to benefit will be possible from the date of registration at the employment office.

Guaranteed minimum resources Yes

A third country national who hold⁸³:

- a permit to settle,
 - a residence permit for a long-term European Union (EU) resident issued to a long-term EC resident,
 - a residence permit for a fixed period granted to a foreigner who was granted a residence permit for a long-term European Union (EU) resident by another EU Member State⁸⁴.
-

⁸³. On 1 May 2014 the Act on foreigners of 12 December 2013 (Journal of Laws of 2013, item 1650) will come into force, as a result of which the terminology concerning the residence types will change, including the extension of the number of residence titles which entitle

to unemployment benefits.

⁸⁴. I.e. due to the circumstances, referred to in Article 53.1(13) of the Act on foreigners of 13 June 2003.

4

Administrative practices that affect third-country nationals access to selected social security

4.1. Discretionary criteria applied within the administrative law/rules when assessing an individual claim for social security
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4.0 Administrative practices that affect third-country nationals access to selected social security

4.1 Discretionary criteria applied within the administrative law/rules when assessing an individual claim for social security

In case of most benefits, which were analysed in chapter 3,⁸⁵ the criteria concerning determination of a foreigner's eligibility to a given benefit are of a non-discretionary nature, therefore deciding officers who make decisions on the granting of benefits are not expected to carry out individual assessments for the purpose of which they would take into account specific life situation of a given applicant.

Only the granting of benefits under social assistance is characterised by a kind of discretionary approach (both towards Polish citizens and foreigners). They are always granted on the basis of a community interview conducted by a social worker at the place of residence or the place of stay of the applicant or his family. The purpose of the interview is to establish the personal situation and financial standing of the person or family applying for social assistance benefits and reasons for applying for these benefits. As far as possible, a social worker fully examines all aspects of the person or family's life status (i.e. establishes total family monthly income and fixed expenses, describes the housing,

health and family situation as well as how the person functions in the community), with a special focus on the reasons for the difficult situation. On the basis of the knowledge obtained, a social worker analyses and assesses the situation of a given person or family and draws conclusions which serve as basis at the stage of assistance planning.

In addition, an obligatory criterion for the granting of social assistance is meeting by an applicant of a requirement to reside and stay within the territory of Poland. Therefore, community interview may be also used to verify whether a given person meets this requirement.

In this context, it should be noted that community interviews are also conducted in certain situations in case of family benefits (obligatorily in case of a special attendance benefit and optionally in case of attendance allowance). Thus, the fact of taking care of a disabled person is usually verified through community interview. However, the fact whether a given person resides with his family members during the benefit period, which is one of the conditions to receive family benefits by a foreigner, is not verified.

⁸⁵. Healthcare, sickness cash benefits, maternity and paternity benefits, old-age pensions and benefits, family benefits, unemployment benefits and guaranteed minimum resources.

4.2 Effect of application for social security on third-country national's access to a residence permit renewal, application for naturalisation, or for family reunification

The very fact of applying for social security benefits, including social assistance benefits, does not affect the possibility to apply for a subsequent residence permit, naturalization or family reunification.

In some cases a foreigner who applies for a subsequent residence permit for a fixed period⁸⁶ or for a permit for a purpose of family reunification must certify that he/she generates a stable and regular source of income which is sufficient to cover the cost of maintenance of him/herself and his/her dependants. However, the title or source of such income are not verified, therefore the fact of being (or not being) a beneficiary of the social security benefits is not taken into account when a subsequent residence permit for a fixed period is issued (irrespective of the purpose for which a given foreigner intends to stay in Poland). What is important is the share of income per each dependant or a foreigner concerned or per a foreigner him/herself (if he/she is single); the shared amount of income (after a deduction of rent⁸⁷) must be higher than the threshold amount of income due to which welfare benefits are granted (i.e. PLN 542 if the foreigner is a single person or PLN 456 per the foreigner's dependant).

The same requirements are applied if a foreigner applies for residence permit of a long-term EC resident.

In this context, it should be noted that in accordance with the adopted practice which takes into account well-established case-law of administrative courts, foreigner's income has the meaning compliant with the definition of income included in the Act on social assistance, i.e. it comprises a sum of monthly revenue from the month preceding the filing date of the application or in case of loss of income, from the month in which the application was filed, irrespective of the title and source of income, unless the law provides otherwise, reduced by:

- **monthly personal income tax burden**,
- **health insurance contributions** specified in the provisions on health care services financed from public funds and social insurance specified in separate regulations,
- the amount of **maintenance** paid to other people.

Therefore, in Poland there exist no provisions that would prohibit it to take into account, when the amount of income achieved by a foreigner is assessed, such social security benefits as e.g. retirement benefits acquired in another EU country, maternity benefit or family benefits received in Poland, etc. In connection with the essence of the income criterion adopted, social assistance benefits should not be taken into account because qualifying for such

assistance a foreigner would have a lower income than required.

It is worthwhile to point out here that a group of foreigners entitled to receive social assistance benefits is relatively small at present and, as a rule, it does not include persons staying in Poland on the basis of time-bound permits (except for persons who obtained long-term resident status in another EU country and on this basis apply in Poland for a permit for a fixed period). Nowadays, a situation in which a foreigner applying for a time-bound residence permit is refused to be issued the permit in question due to the fact that he receives social assistance benefits, is strictly theoretical.

However, it may happen that a foreigner (sponsor) entitled to be reunited with his family receives social assistance benefits in Poland and applies for a member of his family member for a fixed period residence permit to reunite the family (this would apply to foreigners having a permit to settle, residence permit of a long-term EU resident or a permit for a fixed period obtained in connection with having a long-term resident status in another EU country). In such a situation, it can be concluded that income of the foreigner is lower than the legal threshold from which cash social assistance benefits are granted, thus, if a member of his family has no other own income, the fact that the sponsor receives social assistance benefits has an indirect negative impact on his application to be reunited with his family - not because of the fact of receiving social assistance benefits itself, but due to failure to meet the condition of having income in excess of the social assistance threshold.

As for naturalisation procedure, a possibility to acquire Polish nationality (pursuant to all the three procedures⁸⁸) does not depend on the foreigner's being (or not) a beneficiary of any type of social security benefits.

Despite the fact that, when applying for Polish nationality to be granted by the President of Poland (which is the basic method of acquiring Polish nationality by a foreigner), foreigners must provide attachments to their application, to certify i.a. their income sources, having such an income source is not prerequisite for acquiring the Polish nationality. The President of Poland is not restricted in his constitutional competencies by any prerequisites and he may grant Polish nationality to any foreigner applying for it, regardless of whether such a foreigner is able to maintain him/herself or not.

The proof of having a stable and regular source of income in Poland (not to be confused with "regular and stable income") is prerequisite when applying for being acknowledged a Polish national⁸⁹ (however, exclusively in certain cases⁹⁰). The regulations do not, however, oblige a foreigner to certify a source of income which is sufficient to maintain him/herself and his/her family dependants. The "source of income" is verified only based on the attributes of "stability" and "regularity". It is obvious that - due to a rule-of-law principle - the source should also be legal. In particular the source may include a contract of employment, a contract to perform a specific task, a mandate contract, retirement/disability pension, income due to copyright or other property rights as well as running own business.

It is also worth to emphasise that in no circumstances does the requirement for a foreigner to have a regular and stable source of income exclude an adult who depends on his/her parents to apply for being acknowledged as a Polish national. This group of foreigners is, in fact limited to those continuing education (e.g. students, but without age or level of education limits) and to disabled people as far as they make a statement that they depend for income on

86. This regards the following situations (pursuant to Article 53b.2 of the Act on foreigners of 13 June 2013):

- performing a job,
- running own business,
- holding a permit for residence of a long-term EC resident issued by another EU Member State or being a member of a family of such a foreigner, accompanying him/her or wishing to reunite with him/her,
- family reunification,
- being a spouse or a child (of age) of a foreigner who is entitled to reunite provided that those people have stayed in Poland for at least 5 years based on residence permits for a fixed period granted due to family reunification,
- starting or continuing vocational training,
- a foreigner, due to family ties, wishes to reunite with a Polish

national or EU, EFTA national residing in Poland or stay with him/her,

- staying in Poland based on a permit granted for a period of a criminal proceedings pending against an entity who has hired a foreigner who intends to continue his/her stay in Poland until receiving due remuneration from the entity concerned or an entity, referred to in Article 6 or Article 7 of the Act of 15 June 2012 on the consequences of hiring foreigners whose stay in Poland is illegal, if this is dictated by a vital interest of the foreigner,
- a foreigner proves the existence of other circumstances than the ones defined in the Act on foreigners.

87. Pursuant to the new act on foreigners (Act of 13 December 2013 on foreigners), as of 1st May 2014 the rent will no longer be deducted when applying for temporary residence and long-term EU residence.

88. The Act on the Polish nationality of 2 April 2009 provides for three administrative procedures to acquire Polish nationality, i.e. a competent authority issues a decision on: granting Polish nationality, acknowledging a person as a Polish national or reinstatement of Polish nationality.

89. The procedure of acknowledgment as Polish national is available to foreigners who, in the course of a long-term legal stay in Poland, have become integrated with the Polish society, have a competence of Polish language, have an apartment and sources of income (in certain cases), respect the Polish law and do not pose any danger to the national security or defence.

90. Cases described in Article 30.1(1) and (6) of the Act on the Polish nationality of 2 April 2009, i.e. in case of:

- a foreigner who has been continuously staying in Poland for at least 3 years based on a permit to settle down, a residence permit for a long-term EC resident or based on a permanent residence permit, who has a stable and regular source of income in Poland as well as a title to an apartment;
- a foreigner who has been continuously staying in Poland legally for at least 10 years and who fulfils the following requirements:
 - holds a permit to settle down, a residence permit of a long-term EC resident or a permanent residence permit,
 - has a stable and regular source of income in Poland and a title to an apartment.

their parents (i.e. they do not have their own source of income), and their parents confirm the statement by means of separate statements.

As far as a reinstatement of nationality is concerned, during that procedure, a competent admini-

strative body does not verify the ability of a foreigner to maintain him/herself, neither is such information presented by the foreigner in the application for reinstatement of Polish nationality.

The applicable regulations do not charge the state

4.3 Availability of translation, interpretation or other forms of support to third-country nationals wishing to access a social security benefit or programme

bodies with an obligation to provide foreigners with support in the form of translating or interpreting of available information. However, a lot of institutions handling social security benefits provide short information in foreign languages or translate information on their websites, chiefly into English. Thus, the greatest amount of information in foreign languages (English and German) is provided by ZUS (apart from the most important information, foreigners may access on-line brochures on the structure and granting of benefits in Poland, which are updated every year and published in English under the title „Social insurance in Poland”⁹¹, as well as brochures concerning the coordination of social security benefits in the EU). Foreigners may, however, encounter problems when reading the information due to its method of presentation and specialised terminology used, which is not always understood by a foreigner. This, however, results to the greatest extent from a highly complicated nature of social security regulations.

ZUS operates a call-centre and an e-platform for making various administrative arrangements via the Internet (it is possible to have a look at the amount and regularity of contributions paid to a personal insurance account). However, both tools are operated only in Polish.

Key information in foreign language concerning social security (mainly in English) is provided on the websites of the Ministry of Health, Ministry of Labour and Social Policy and National Health Fund (NFZ)⁹².

Thus, in the vast majority of cases (mainly at the

local level) there is no precise information targeted at foreigners.

A range of initiatives aimed at providing foreigners with advisory services/legal aid and with clear and comprehensible information on their access to social security system have been undertaken in recent years by NGOs the International Organization for Migration – office in Warsaw (the initiatives mainly include: managing multilingual Web portals, hotlines, legal consultations and producing flyers/handbooks).

This was possible thanks to a broad access of the EU funds intended for measures aimed at foreigners’ integration.

Under a number of initiatives implemented in this respect one has to point i.a. to training/conferences/study visits abroad intended for social service workers (including social integration services, employment services, district nurses) concerning the most important aspects of foreigners’ integration, which are raised by foreigners when meeting the above mentioned service workers as well as issues concerning intercultural communication. These meetings are organized usually via NGOs operating for migrants, and their purpose is to increase the qualifications of those workers in their professional encounters with third-country nationals. They often contribute to the integration of different groups of people working with foreigners, making it easier for them to develop and maintain professional links which may be helpful when dealing with matters related to foreigners.

⁹¹. See: http://www.zus.pl/files/social_insurance.pdf (access on 11 Feb. 2014).

⁹². Information available in foreign languages on NFZ website relates, however, mainly to the use of EHIC (European Health Insurance Card) and is addressed to EU/EFTA nationals.

5

External dimension of social security

5.1. Bilateral agreements on the co-ordination of social security schemes reached by Poland with third countries

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5.0 External dimension of social security

5.1 Bilateral agreements on the co-ordination of social security schemes reached by Poland with third countries

According to the principle adopted in the Polish law, all social security benefits, except for social assistance and unemployment benefits, are transferred abroad to the domicile of a person (a foreigner or a Polish national) who is entitled to those benefits only if Poland has signed a bilateral social security agreement with the country of domicile of the pensioner concerned.

In other cases the benefits are not subject to transfer and the way they are taken up depend on the type of benefit. For example, as for old-age pensions and disability benefits are paid out in Poland in the following way: bądź do rąk osoby upoważnionej przez świadczeniobiorcę do odbioru emerytury lub renty,

- personally to a person authorized by the pensioner concerned to collect his/her pension or,
- to a bank account of the pensioner concerned.

Poland has hitherto entered into only a few international bilateral agreements concerning the coordination of social security schemes between Poland and a given country of origin of a migrant concerned. The majority of those agreements were signed during the last decade. It is worth noting that recently Poland has signed such an agreement with Ukraine, i.e. the country of origin of the biggest population of migrants staying in Poland. Bilateral social security agreements with third countries to

which Poland is a party have been listed in Table no. 3.

Applicable regulations

All the agreements concluded by Poland enable the selected groups of workers from the third country to work in Poland while remaining subject to the social security legislation of his/her country of origin (however certain time limitations apply). This applies, depending on the agreement, to posted workers, civil servants, administration and technical staff of diplomatic missions/consular offices, travelling personnel of transport companies, drivers, ship crew and self-employed.

Equal treatment

The principle of equal treatment is the core of all the agreements, thus, when the legislation of one party to the agreement is applied, the second party nationals are subject to obligations and benefits on the same terms and conditions as the nationals of the hosting country. What is important, the equal treatment principle refers to the issue of acquiring the right to benefits, but only those benefits which are included within the scope of a given agreement (the scope of the majority of social security agreements do not cover in kind/healthcare benefits - only the agreement with Macedonia and the former Yugoslavia provides for such benefits).

TABLE 3.
Binding bilateral social security agreements entered into by and between Poland and third countries

SOURCE: Ministry of Labour and Social Policy

Agreement	Date of signing	Date of entry into force ⁹³
Social Security Agreement between the Government of People's Republic of Poland and the Government of the Socialist Federation of the Republic of Yugoslavia ⁹⁴ (currently refers to: Bosnia and Herzegovina, Serbia and Montenegro)	16.01.1958	1.01.1959
Social Security Agreement between the Republic of Poland and a Republic of Macedonia ⁹⁵	6.04.2006	1.07.2007
Social Security Agreement between the Republic of Poland and Canada	2.04.2008	1.10.2009
Social Security Agreement between the Republic of Poland and the United States of America	2.04.2008	1.03.2009
Social Security Agreement between the Republic of Poland and the Republic of Korea	25.02.2009	1.03.2010
Social Security Agreement between the Republic of Poland and Australia	7.10.2009	1.10.2010
Social Security Agreement between Poland and Ukraine	18.05.2012	1.01.2014
Social Security Agreement between the Republic of Poland and the Republic of Moldova	9.09.2013	Pending ratification

⁹³. Due to the fact that the date of ratifying the agreement by Poland does not in practice translate to its entering into force or does not make it enforceable, the date of entry into force of a given agreement

has been provided as a more important reference.

⁹⁴. Journal of Laws of 1959 No. 19, item 114.

⁹⁵. Journal of Laws of 2007 No. 229, item 1686.

Export of social security benefits

The principle of benefits' transfer (export) applies to all the agreements. According to the principle, the benefits paid out according to the regulations of one party to the agreement must not be decreased, modified, suspended, withheld or confiscated because of a fact that the beneficiary entitled to them is domiciled in the territory of the other party to the agreement. Restrictions on the transfer of benefits regard those benefits which have been granted as a result of a special procedure or exceptionally.

Depending on the scope of the agreement, it is possible to transfer the following benefits:

- **healthcare benefits** – funded by the state budget (under agreement with Macedonia and with the Socialist Federation of Yugoslavia which applies to Bosnia and Herzegovina, Serbia and Montenegro)
- **family benefits** (agreement with former Yugoslavia),
- **sickness cash benefits** (agreement with Macedonia, former Yugoslavia and Ukraine),
- **maternity and paternity benefits** (agreement with Macedonia, former Yugoslavia and Ukraine),
- **old-age pensions and disability benefits** (all agreement reached by Poland).

Other provisions

All the agreements entered into by Poland provide also for the application of the principle of summing up of the periods of insurance (according to the principle, the periods of insurance coverage in the hosting country and the country of origin, which are

required for acquiring or maintaining the entitlement to social security benefits, and to calculate their amount, are summed up).

The extent to which third-country nationals have invoked their rights under the bi-lateral social security agreements

Third country nationals may claim their rights in the area of social security in the scope provided for in a given agreement. All the agreements provide for regulations concerning old-age and disability pensions (including retirement benefits and disability benefits as well as family pensions). Depending on the agreement they also provide for:

- in-kind benefits paid out of insurance fund in case of disease or maternity – agreements with Macedonia, former Yugoslavia,⁹⁶
- cash benefits due to disease and maternity – agreements with Macedonia, Ukraine, former Yugoslavia,
- benefits due to accidents at work and occupational diseases – agreements with Macedonia, Australia, Ukraine, former Yugoslavia, Canada, the USA,
- family benefits – umowy z Macedonią, b. Jugosławią,
- świadczenia z tytułu bezrobocia - agreements with Macedonia, former Yugoslavia,
- funeral allowances – agreements with Australia, Canada, Republic of Korea, the USA, Ukraine
- healthcare benefits – agreements with Macedonia and former Yugoslavia.

⁹⁶. Those benefits granted to people who stay in a given country as tourists, may be restricted only to such benefits which are indispensable for such people. In such a case it is necessary for a potential beneficiary to demonstrate that he/she has the right to such benefits in his/her country by producing a certificate issued by a competent

social security body or another document to certify such entitlement (e.g. a valid passport or another document based on which it is possible to identify the person, and a certificate which certifies the entitlement to insurance benefits in case of illness which are valid in Bosnia and Herzegovina, Serbia and Montenegro).

TABLE 1.

Old-age pension and disability benefits subject to coordination under bilateral agreements which were paid off by foreign institutions to eligible persons residing in Poland in 2009-2013

Year	Country	Number of benefits	Amount and currency
2009	USA	8 148	47 847 935,10 \$
	TOTAL	8 148	
2010	Australia	411	5 438 966,00 \$
	Macedonia	18	28 563,54 EUR
	USA	10 552	54 290 216,10 \$
	TOTAL	10 981	
2011	Australia	465	6 317 038,00 \$
	Canada	84 (agreement)	253 394,00 \$
	Canada	1 033 (outside the agreement terms)	3 388 838,00 \$
	South Korea	6	83 902 290,00 won
	USA	12 934	61 325 041,90 \$
	TOTAL	14 522	
2012	Korea Południowa	8	106 584 630,00 won
	Macedonia	19	36 580,08 EUR
	TOTAL	27	
2013	Belarus	43	30 600 \$
	Montenegro	1	300 \$
	Serbia	40	111 200 \$
	Ukraine	57	38 400 \$
	TOTAL	141	

6

Case-studies

In order to better understand the entitlements and access to Polish social security by third-country nationals, in this section three hypothetical case studies were presented. For each of them the decision making procedure was described as well as it was indicated whether the social security claims made by the third-country nationals concerned would ultimately be successful.

6.0 Case-studies

6.1 Case-study 1

Tho and Lien, a married couple holding Vietnamese citizenship, aged 28 and 30, moved to your (Member) State 10 years ago. They hold long-term residence permits. Tho has worked in a car manufacturing company for the last 8 years, paying obligatory insurance contributions throughout this time. Lien has worked as a chef in the restaurant of a large hotel, also paying obligatory insurance contributions, for the last 2 years. Tho and Lien are expecting the birth of their first child in 6 weeks' time. Last week, the car manufacturing company where Tho works announced that they were making him redundant. Faced with the loss of Tho's income at a time when Lien would need to take time off work, following the birth of their child, Tho decided to apply for unemployment benefits while Lien applied for maternity benefits.

Comment

Tho is entitled to an unemployment benefit, i.e. he can register as the unemployed and he may receive the unemployment benefit if, within the period of 18 months before registration, he was employed and earned at least a minimum remuneration for work for 365 days.

Lien, as a person having a job and paying contributions due to mandatory insurance, may benefit from:

- **maternity leave** (20 weeks)⁹⁷ and additional maternity leave (6 weeks)⁹⁸, during which she can collect a maternity allowance in the amount of 100% of her remuneration, and
- **parental leave** (26 weeks)⁹⁹, during which she can collect a maternity allowance in the amount of 60% of her remuneration.

However, if - during 14 days following the delivery of a baby - Lien applies in writing to be granted - after the maternity leave - an additional maternity leave and a full period of parental leave, the maternity allowance to which she is entitled will amount to 80% of the contribution assessment basis for the whole period of leaves granted to her.

In addition, within 12 months following delivery of a baby, Thi and Lien may apply for a one-off allowance in respect of a childbirth, so called baby bonus in the amount of 1 thousand zlotys per child.

As of 1 May 2014, i.e. after the new regulations come into force concerning the entitlements of foreigners to unemployment benefits, the situation in the case discussed will not change.

⁹⁷. This is an obligatory leave, but after taking at least 14 weeks of that leave following the delivery of the baby, the mother of the baby can resign from taking the remaining portion of the leave by providing her employer with a relevant application in writing, provided that the remaining portion of the leave will be taken by the baby's father.

⁹⁸. She can take the leave in whole or in part, or in two portions. The leave can be taken also by the baby's father or both parents may share the leave.

⁹⁹. The leave can be taken directly after the use of the additional maternity leave in the full period prescribed. It can be taken as the

whole period prescribed or as a portion thereof, or in one, two or three portions. The portions do not need to be equal, but each of them must last for a minimum of 8 weeks and follow directly after the portion preceding it. Parental leave may be taken by mother and by father. They have to decide how to use the leave. Legislation provides for a number of possibilities: the whole or a portion of the leave may be taken by one parent or mother and father may share the leave or take it at the same time. In the last case the duration of such a leave may not exceed 13 weeks.

6.2 Case study 2

Jasmine is a single parent, aged 29, holding Filipino citizenship, who moved to your (Member) State 2 and a half years ago. She has a 2-year old child (also holding Filipino citizenship) that lives with her and another child aged five that lives in the Philippines with Jasmine's mother. She holds a temporary/salaried worker residence permit that has been renewed once. Jasmine has worked as a nurse in a residential day-care unit in your (Member) State for 2 and a half years. She sends a small amount of money every month to the Philippines to help support her daughter. Last month, Jasmine's employer announced significant cuts in staff salaries in response to budget reductions. Faced with a significantly reduced income, Jasmine has moved into a hostel as she can no longer afford to rent private accommodation. She has also been forced to halve the amount of money she sends to her family in the Philippines every month. She has decided to apply for family benefits and guaranteed minimum resources.

Comment

Jasmine is not entitled to social assistance nor to family benefits because her residence permit is issued for a fixed period for the purpose of performing work. Jasmine would be entitled to social assistance only if

her residence permit for a fixed period were issued based on Article 53.1(13) of the Act on foreigners of 13 June 2003: ("(...) holds a long-term resident's EC residence permit granted by another Member State of the European Union and is going to take up employment or carry out economic activity in conformity with the regulations of the law in force in the Republic of Poland, to take up or continue studies or professional training, or demonstrates that there are circumstances that justify his/her residence on the territory of the Republic of Poland").

Moreover, Jasmine would be entitled to family benefits only if she held one of two long-term residence permits, i.e. a permit to settle or a residence permit of a long-term EC resident.

As of 1 May 2014 (i.e. after the new regulations enter into force concerning the entitlements of foreigners to family benefits), the situation in that case will change and Jasmine will have the right to receive family benefits (she will be entitled to claim family allowance and, depending on her family situation, a given supplements)¹⁰⁰.

As of 1 May 2014, the situation will not change and Jasmine will still not be entitled to social assistance.

6.3 Case study 3

Senghor is a high-skilled worker from Senegal. He arrived in your (Member) State six years ago with a temporary residence permit arranged through the IT company that employed him. Senghor is single and does not have children, but has recently succeeded in bringing his elderly mother to the country on the basis of family reunification. Aged 80, his mother is entirely dependent on Senghor's income. Last week, Senghor suffered an accident at work that left him incapable of carrying out the work for which he was employed for a period of 3 years. He decided to apply for invalidity

benefits, cash sickness benefits, benefits in respect of accidents at work and occupational diseases and family benefits.

Comment

Senghor has the right to receive from his employer remuneration for the period of incapacity to work for the first 33 days following the day of the accident, and then the right to receive sickness benefit in the amount of 100% of baseline amount, however for a period not longer than 182 days. In the event

Senghor is still incapable to work after the period of receiving sickness benefit, he will be entitled to rehabilitation benefit (for the period necessary to restore the ability to work, however for not longer than 12 months) in the amount of 100% of baseline amount for sickness benefit. In addition, Senghor will be paid a one-off compensation allowance, if the bodily injury that he suffered in consequence of the accident at work proves permanent or long-lasting.

Senghor will be also entitled to apply for invalidity pension due to inability to work¹⁰¹, which amounts to a sum of:

- 24% of baseline amount¹⁰²,
- 1,3% of contribution assessment basis¹⁰³ per each year of contribution periods – account taken of full months,
- 0,7% of the contribution assessment basis per each year of non-contribution periods – account taken of full months,
- 0,7% of the contribution assessment basis per each year of a period missing to complete 25 contribution and non-contribution periods calculated from the date of filing pension claim until the date on which the pensioner would turn 60, the so called mortgage period.

Moreover, a pension due to an accident at work or occupational disease must not be lower than:

- 60% of the pension assessment basis – for a person who is partially incapacitated,
- 80% of the pension assessment basis – for a person who is totally incapacitate,
- 100% of the pension assessment basis – for a person entitled to training pension¹⁰⁴.

Pension assessment basis for the invalidity to work due to accident at work or occupational disease may be fixed with the use of the pension assessment basis amount ratio which is higher than 250%¹⁰⁵. In such a case the guarantees providing that the pension must not be lower than a certain percentage of its assessment basis are not applicable.

Senghor is currently not entitled to family benefits. He would be entitled if he held one of the following residence permits:

- a permit to settle,
- a residence permit of a long-term EC resident, or
- a residence permit granted for a fixed period to a foreigner who was granted a residence permit of a long-term EC resident by another EU Member State.¹⁰⁶

As of 1 May 2014 (following the entry into force of new regulations concerning the foreigners' entitlements to family benefits), the situation will change and Senghor will be entitled to family benefits, especially if his mother is disabled.

If Senghor has a certificate of high-level of disability and will not be entitled to nursing allowance, he can apply for nursing benefit (which amounts to 153 zł monthly), which is granted in order to partly cover the costs relating to a need for a permanent or long-term care or help of another person due to significantly reduced possibility to live independently.

Moreover, Senghor will be able to claim a nursing benefit due to giving up his job (620 zł monthly¹⁰⁷ due to the need to provide help to a disabled member of a family (in this case – the mother). The benefit will be granted if mother's disability started not later

¹⁰⁰. Due to lack of detailed information about her family situation, it is not possible to define a specific supplements she will be entitled to.

¹⁰¹. The pension provision in the event of incapacity to work caused by accident at work or occupational disease is due irrespective of the length of the period during which accident insurance contributions were paid and regardless of the date of occurrence of the incapacity.

¹⁰². I.e. 100 % of average remuneration less the deducted social insurance contributions, in the previous calendar year.

¹⁰³. Assessment basis is the average assessment basis in respect of social insurance contributions in the period of 10 calendar years selected by the insured person from the last 20 years, or within 20 calendar years selected from the whole insurance period. As all the annual remunerations are admitted for calculation not as amounts but rather as indicators which serve as references to average remuneration, the result is also an indicator by which we multiply the applicable baseline amount, and the result is the assessment basis used for the calculation of the benefit.

¹⁰⁴. Training pension may be paid out to an insured person who fulfils

the requirements for being granted a disability pension and provides a document certifying that he/she has to change his/her vocational qualifications due to incapacity of performing the hitherto job.

¹⁰⁵. A given individual may have the indicator higher than 250%, because in relation to the accident insurance contribution there is no annual 30 average monthly salaries ceiling on the assessment basis – as it is in case of retirement and disability pensions. While calculating a disability pension which results from an accident, ZUS will check which variant of calculation is more favourable to the insured person: with the guarantees or with the assessment basis amount indicator exceeding 250%.

¹⁰⁶. I.e. due to circumstances, referred to in Article 53.1(13) of the Act on foreigners of 13 June 2003.

¹⁰⁷. From 1 May 2014 until 31 December 2014 nursing benefit amounts to 800 zlotys - which together with the government program implemented in 2014 in the amount of 200 zlotys a month, gives the

than by the time he became 18 or during the period of her education at school or university, however not later than by the time he became 25. It is crucial for Senghor not to have a certificate of high-level of disability.

If Senghor does not fulfill the said conditions, he can then apply for a special attendance allowance, the monthly amount of which is PLN 520.00 (receiving two kinds of benefits jointly is impossible). The preconditions for receiving the benefit are as follows:

- There is a need to take permanent care of his mother, which must be proved by a document certifying a significant degree of mother's disability,
- Giving up employment (starting from 1 January 2015 – not taking up employment) due to the need to provide help to disabled mother,

- Income criterion must be fulfilled, i.e. the total income of Sengor and his mother must not exceed the net amount of PLN 623 per one person (until 1 November 2014 - 664 zł after tax),
- Senghor can not have a certificate of high-level of disability.

Besides, if Senghor's mother had one of the long-term residence permits, she could apply for nursing benefit (in the amount of 153 zlotys a month), which is granted in order to partly cover the costs relating to the need to ensure care or help of another person due to the inability to live independently. In this case, disability of the mother would not be a decisive condition for the granting of the benefit, because Senghor's mother is 80 (the condition of disability applies only to people aged under 75).

total amount of benefit paid out monthly at the level of 1,000 zlotys. From 1 January 2015 until 31 December 2015 nursing benefit will amount to 1,200 zlotys a month. On the other hand, from 1 January 2016 nursing benefit will amount to 1,300 zlotys a month (the

equivalent of the minimum wage net). From 1 January 2017 nursing benefit will be subject to annual indexation consisting in increasing the amount of the benefit on an annual basis by the same percentage rate by which the minimum wage will be increased.

7

Statistics on social security payments related to migration

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7.0 Statistics on social security payments related to migration

7.1 Data on employment of third-country nationals in Poland

Basic data on employment of foreigners in Poland are data on the number of work permits issued, registered in the poviats labour offices employers statements of the intention to entrust work to a foreigner¹⁰⁸ and the number of foreigners registered with social security.¹⁰⁹

Available data on employment of third country nationals in Poland are fragmentary and do not apply to a number of categories of foreigners capable of performing work. This is mainly due to the fact that a huge percentage of foreigners working in Poland do not have work permits (Polish regulations enable several dozen categories of foreigners - singled out because of their residence status, type of work performed and country of origin - to perform work without the need to obtain a work permit) or quasi-legally (also in the statement-based system). Data relating to the number foreigners registered with social security may not be considered exhaustive either. There is a number of categories of persons who are not subject to notification to the Social Insurance Institution (ZUS). In the register maintained by the Social Insurance Institution there are also persons who have not been de-registered although

they are no longer covered by social insurance. Besides, sometimes declarations about citizenship of the insured are not made in the course of registration with the Social Insurance Institution.

In order to make possible a more precise estimation of the scale of legal economic migration to Poland, the above data must be compared with the number of work-related visas issued (visas – type 5-7). The year 2013 was the second consecutive year in which there was a decline in the number of visas of this type (a drop by 6.7% in comparison with 2012, from 196,047 visas in 2012 to 182,840 visas issued in 2013). The largest drop among them (although smaller than in 2012) was noted in case of visas issued to foreigners intending to perform work on the basis of employer's declaration on the intention to entrust work to a foreigner - a drop by nearly 7.5% in relation to 2012 (from 148,546 visas in 2012 to 137,487 in 2013).

Foreigners also constitute nearly 0.5% of the total number of insured persons (persons reported to old-age and disability insurance).

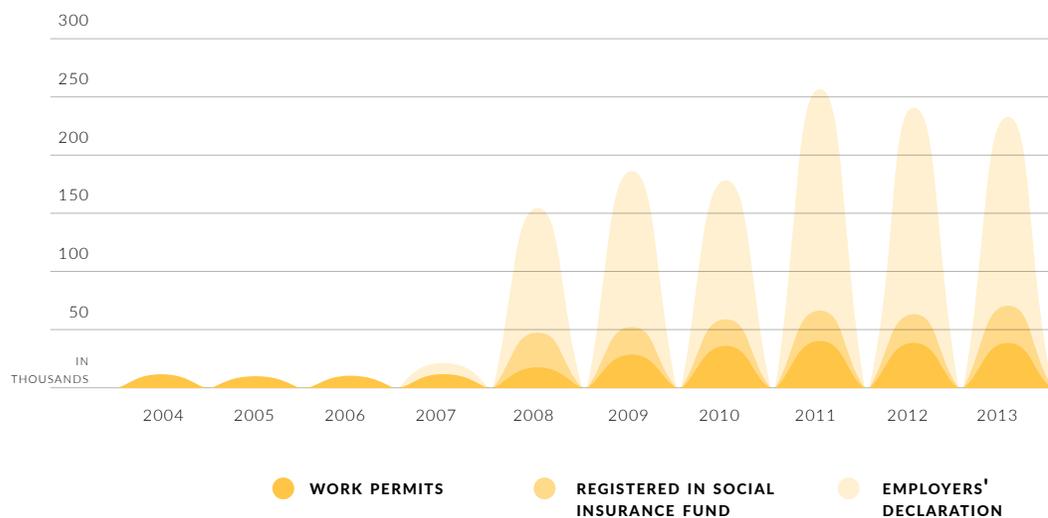
¹⁰⁸. The number of registered statements is not the same as the number of foreigners who take up work in Poland (the main reasons are as follows: resignation from coming to Poland, refusal to grant a visa, arrival inconsistent with the content of the statement or registration of two or more statements per foreigner).

¹⁰⁹. The number of registered statements is not the same as the number of foreigners who take up work in Poland (the main reasons are as follows: resignation from coming to Poland, refusal to grant a visa, arrival inconsistent with the content of the statement or registration of two or more statements per foreigner).

GRAPH 1.

Foreigners working in Poland in 2004-2013¹¹⁰

Source: Own elaboration based on data provided by the Ministry of Labour and Social Policy and Social Insurance Institute



Year	Work Permits	Registered in Social Insurance Fund	Employers' Declaration
2004	12 381	–	–
2005	10 304	–	–
2006	10 754	–	–
2007	12 153	–	21 797
2008	18 022	48 020	156 713
2009	29 340	52 939	188 414
2010	36 662	59 584	180 073
2011	40 808	67 174	259 777
2012	39 144	64 008	243 736
2013	39 078	71 480	235 616

¹¹⁰. No data on foreigners registered for social security in 2004-2007.

GRAPH 2.

Number of foreigners registered in poviats labour offices as unemployed¹¹¹

Source: Own elaboration based on data provided by the Ministry of Labour and Social Policy and Social Insurance Institute

Work permits		Employers' declaration		Registered in social insurance fund	
UKRAINE	20 416	UKRAINE	217 571	UKRAINE	32 989
CHINA	3 089	MOLDOVA	9 248	BELARUS	6 387
VIETNAM	2 230	BELARUS	5 194	VIETNAM	5 267
BELARUS	2 004	GEORGIA	2 343	RUSSIA	3 832
INDIA	1 300	RUSSIA	1 260	CHINA	3 298
TURKEY	967	TOTAL	235 616	ARMENIA	1 922
UZBEKISTAN	948			TURKEY	1 843
RUSSIA	822			INDIA	1 380
MOLDOVA	699			MOLDOVA	1 217
USA	545			USA	1 008
OTHERS	6 058			OTHERS	12 337
TOTAL	39 078			TOTAL	71 480

¹¹¹. Data on employers' declarations do not cover declarations registered for citizens of Armenia (the regulations on simplified access

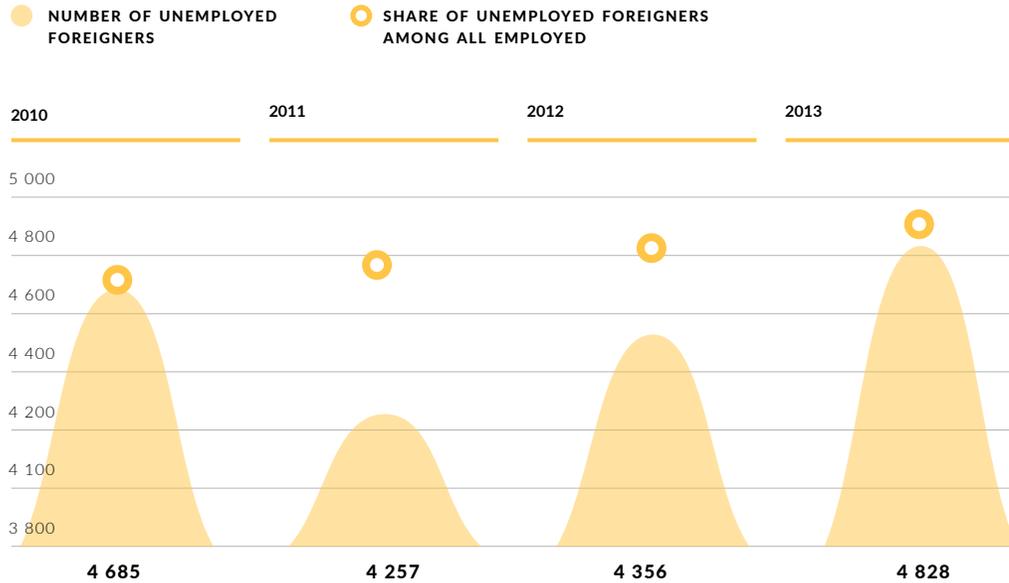
of nationals of Armenia to the Polish labour market became binding only on 1st January 2014).

7.2 Data on unemployment among third-country nationals

GRAPH 3.

Number of foreigners¹¹² registered in poviats labour offices as unemployed¹¹³ (granted unemployment allowances and not)

Source: Own elaboration based on data provided by the Ministry of Labour and Social Policy



¹¹² Data cover also EU/EEA and Swiss nationals.

¹¹³ In accordance with the definition stipulated in the Article 2.1 point 2 of the Act on employment promotion and labour market

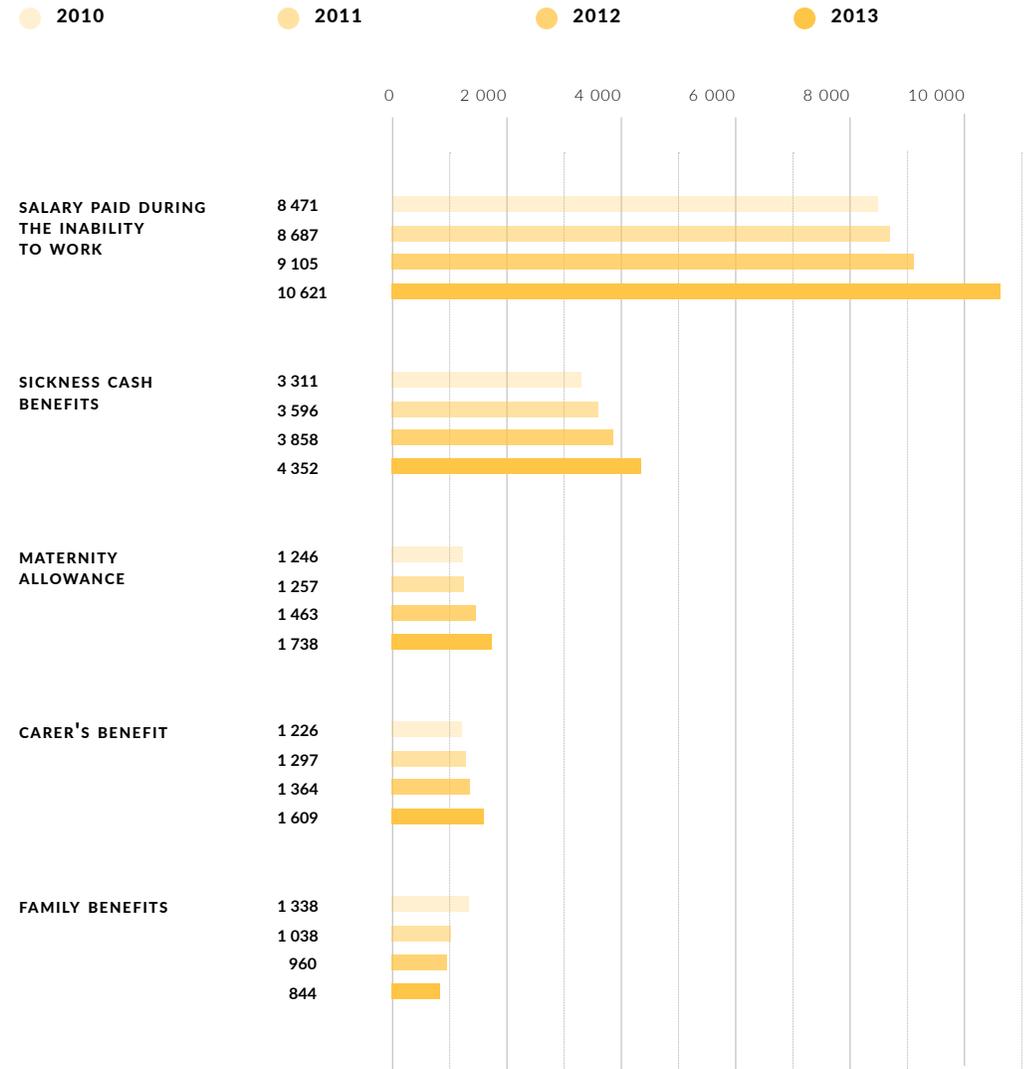
institutions (Dz. U. [Journal of Laws] of 2013, item 674 and 675, consolidated text).

7.3 Data on the take-up of social security benefits by foreigners

GRAPH 4.

Number of foreigners receiving selected social security benefits in 2010-2013

Source: Own elaboration based on data provided by the Ministry of Labour and Social Policy and Social Insurance Institute



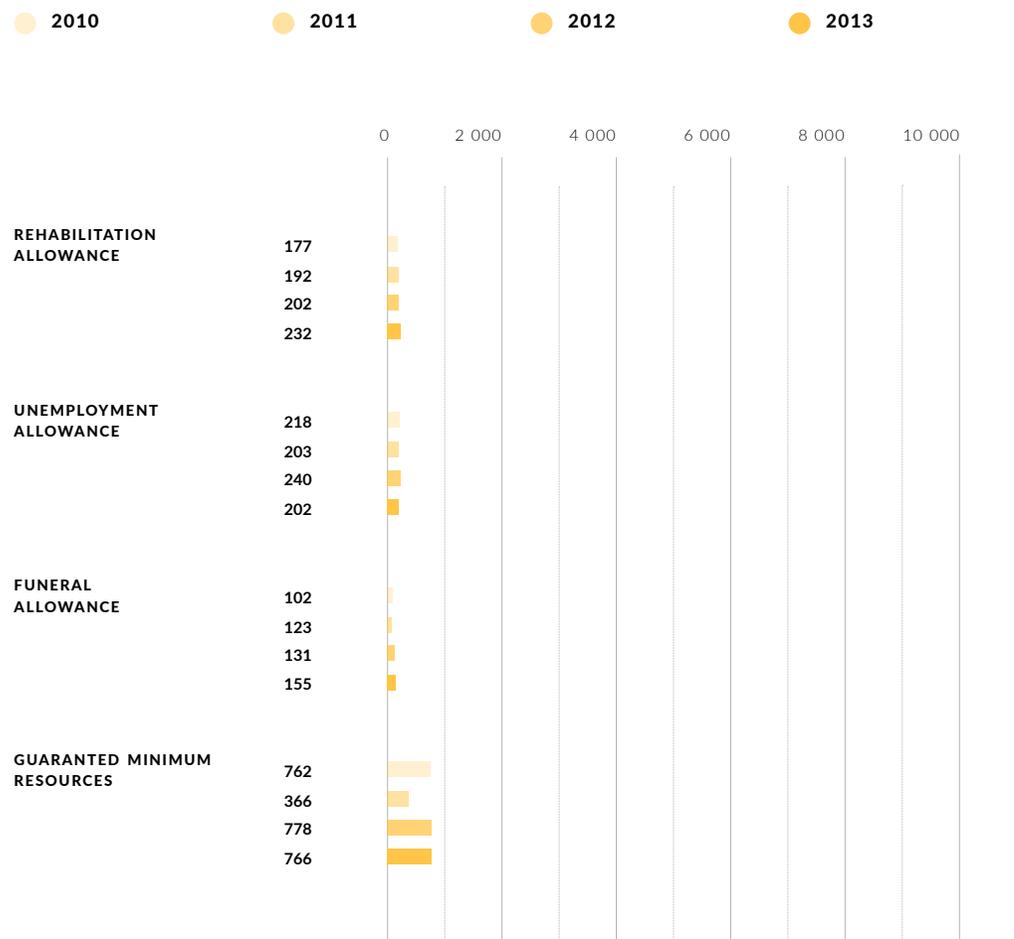


TABLE 5.

Number of foreigners receiving salary paid during the inability to work in 2010-2013, by citizenship

Source: Own elaboration based on data provided by the Social Insurance Institute

Country	2010	2011	2012	2013
Ukraine	3 750	3 786	4 007	4 714
Belarus	1 045	1 030	1 142	1 315
Russia	968	965	987	1 059
Armenia	248	251	291	352
Kazakstan	243	234	246	292
other	2 217	2 315	2 432	2 889

TABLE 6.

Number of foreigners receiving sickness allowance in 2010-2013, by citizenship

Source: Own elaboration based on data provided by the Social Insurance Institute

Country	2010	2011	2012	2013
Ukraine	1 427	1 555	1 707	1 957
Belarus	364	354	385	450
Russia	389	422	418	436
Armenia	255	302	326	335
China	41	67	82	102
other	835	896	940	1 072

TABLE 7.

Number of foreigners receiving maternity allowance in 2010-2013, by citizenship

Source: Own elaboration based on data provided by the Social Insurance Institute

Country	2010	2011	2012	2013
Ukraine	509	507	610	700
Belarus	172	167	194	203
Russia	113	131	125	162
Vietnam	69	87	107	132
China	42	67	81	91
other	341	298	346	450

TABLE 8.

Number of foreigners receiving **carer's benefit** in 2010-2013, by citizenship

Source: Own elaboration based on data provided by the Social Insurance Institute

Country	2010	2011	2012	2013
Ukraine	590	628	626	779
Belarus	591	629	233	243
Russia	592	630	167	162
Kazakhstan	593	631	48	58
Armenia	594	632	29	39
other	595	633	261	328

TABLE 9.

Number of foreigners receiving **family benefits** in 2010-2013, by citizenship

Source: Own elaboration based on data provided by the Social Insurance Institute

Country	2010	2011	2012	2013
Russia	950	593	517	418
Ukraine	200	225	223	201
Belarus	53	56	57	59
Armenia	39	40	41	39
Vietnam	6	6	12	13
other	90	118	110	114

TABLE 10.

Number of foreigners receiving **rehabilitation allowance** in 2010-2013, by citizenship

Source: Own elaboration based on data provided by the Social Insurance Institute

Country	2010	2011	2012	2013
Ukraine	67	79	73	106
Armenia	20	24	29	27
Belarus	22	14	20	25
Russia	24	29	26	23
Georgia	2	2	6	6
other	42	44	48	45

TABLE 11.

Number of foreigners receiving **funeral allowance** in 2010-2013, by citizenship

Source: Own elaboration based on data provided by the Social Insurance Institute

Country	2010	2011	2012	2013
Ukraine	42	60	50	69
Armenia	12	7	10	23
Russia	14	20	23	22
Belarus	7	14	15	12
Vietnam	1	2	6	4
other	26	20	27	25

TABLE 12.

Number of foreigners receiving **social assistance** in 2010-2013, by citizenship

Source: Own elaboration based on data provided by the Social Insurance Institute

Country	2010	2011	2012	2013
Ukraine	156	78	432	442
Armenia	15	14	75	43
Russia	33	13	70	72
Belarus	27	3	78	69
Georgia	0	3	7	12
other	37	19	116	128

8

Key findings

8.0 Key findings

Social security systems, including access to health care, are one of the key instruments of social policy, whose main objective is to reduce poverty, inequality and ensure social inclusion.

While all EU member states are obliged to ensure the well-being of its citizens through effective social security systems, the rules and conditions under which those states grant the right to benefit from social security to citizens of third countries are subject to national regulations and are characterized by a great diversity across the European Union. The degree to which foreigners are integrated within national systems of social policy is in fact largely derived from historical conditions of immigration policy¹¹⁴, as well as the model of social policy and integration policy pursued by given countries.

The issue of migrants' access to social services in the member states of the European Union is becoming an increasingly important topic of public debate in these countries. This is mainly due to the perceived or imagined problems associated with the abuse by foreigners of programs of social policy, mainly social assistance benefits.¹¹⁵ What is important, recently the discussion has been to a relatively large extent dominated by the issue of too wide - according to some EU politicians - social entitlements of EU citizens (including citizens of Poland) exercising their freedom of movement within the territory of the European Union.

In Poland the issue of migrants' access to social security benefits has not yet been tackled in the context of the public debate on the social policy.

The model of migrants' access to the benefits under the social security system in Poland is mostly based on the insurance system. This means that the vast majority of social policy programs operates in Poland on the principle of insurance - i.e. the employees and/or employers pay appropriate contributions, which entitle employees to receive benefits.

When it comes to the benefits paid to foreigners from social insurance (sickness, accidents at work and occupational diseases, maternity, paternity, disability benefits, old-age and survivors pensions), access to them is granted on the same basis as in case of Polish citizens, which means that the entitlement to these benefits is given to nearly all foreign employees legally employed in Poland and also persons conducting business activity and is contingent on such conditions as length of employment (sickness and unemployment benefits in cash), insurance period (disability and old-age pensions paid out from the pension system based on the old rules) or the amount of contributions paid (old-age pensions paid out on the basis of the new rules). Therefore, the fact of being subject to Polish social insurance does not depend on the possession of Polish citizenship, place of residence in Poland or residence title (the performance of gainful activity in Poland is what matters in order to be covered by this insurance).

Insurance programmes also include unemployment benefits and health care benefits. However, a group of foreigners entitled to receive such benefits is much smaller (despite a significant liberalization of this access as regards benefits granted to

¹¹⁴ M. Polakowski, *Imigracja z krajów trzecich a system ubezpieczeń społecznych w Polsce* [Immigration from third countries and the social insurance system in Poland], Series „Integration”, Centre for International

Relations, p. 11.

¹¹⁵ *Ibidem*, p. 8.

unemployed foreigners which comes into force on 1 May 2014), due to the fact that the entitlement covers only foreigners who hold selected residence titles.

The other categories of benefits (social assistance, family benefits, long-term care) are non-contributory (with the exception of the in-kind form of health benefits - nursing and attendance benefits granted to the insured within the obligatory/voluntary health insurance) and are only granted provided that a foreigner meets the income criterion and other statutory requirements. Until recently, the group of foreigners entitled to receive this category of benefits has been very small and included mainly persons who have settled in Poland and persons with a history of migration in another EU country¹¹⁶ (having a long-term resident status there), who have nevertheless decided to live in Poland.^{117 118} Therefore, for many years the vast majority of foreigners immigrating to Poland, including migrants taking up short-term employment, were not entitled to receive the above mentioned benefits. Since 1 May 2014, following statutory changes (the entry into force of the new immigration law), a significantly larger number of categories of foreigners has been entitled to family benefits and social pensions (see sub-chapter 2.3).

Summing up, until recently Poland was characterized by a two-pronged approach to the issue of foreigners' access to social security benefits, which manifested itself in an extensive access among foreigners to a vast majority of insurance benefits, but a limited access to the supply programmes and social assistance (only a very narrow circle of foreigners was eligible to receive selected benefits). However, since 1 May 2014 Poland has been experiencing a qualitative change in this respect, as a result of which, among others, persons staying in Poland on the basis of time-bound work-related permits were given a chance to apply for family benefits, unemployment benefits and social pension.

This change is closely linked to the implementation, inter alia, of the provisions of so called "single permit" directive, which provides for the granting of certain groups of foreigners additional rights in the field of social security.

Analysis of the wording of strategic documents on migration delimiting areas of future actions in the area of foreigners' access to social benefits shows that the solutions adopted by Poland will continue to be based on the assumption that foreigners staying in Poland (except for particularly vulnerable groups) should be economically self-sufficient, both at the stage of their arrival in Poland and during their stay within its territory.

The granting of social benefits to foreigners (both under the programmes of social assistance, family benefits and selected insurance programmes) is not a common occurrence in Poland. According to the data of the Social Insurance Institution (ZUS),¹¹⁹ the total number of foreigners receiving insurance benefits (including remuneration for the period of incapacity for work, sickness benefit, maternity benefit and attendance benefit) reached in 2013 nearly 20 thousand (18,707¹²⁰, which constitutes an increase by 16 percent in comparison with last year), thus approx. 26% of foreigners entitled to benefits of this type, i.e. reported to the social insurance in Poland and paying relevant contributions. Because of that, they are de facto net payers to the Polish social insurance system.

An insignificant number of foreigners also receives unemployment benefits. Over the past five years, this number has remained at a stable level and amounts to approximately 200 persons a year, which constitutes a mere 4-6 percent in relation to the total number of foreigners registered as unemployed at labour offices. Interestingly, it is estimated that due to the recently foreseen changes in the access of foreigners to unemployment benefits, the number

of persons who may acquire the right to unemployment benefits will only slightly increase (approx. 700 persons).¹²¹

A similarly small number of foreigners receives in Poland family benefits, and what is very important, their number steadily decreases every year (the number of foreigners receiving family benefits has declined over the last four years by nearly half¹²²). This is all the more interesting as the number of persons potentially entitled to receive such benefits (i.e., among others, persons who have relevant residence permits¹²³) significantly increased at the turn of 2012/2013 (by approx. 10 percent¹²⁴).

A similar tendency was noted in the years 2008-2011 in the area of social assistance benefits. In 2012 the number of beneficiaries of social assistance doubled and now it oscillates at the level of over 700 persons a year. However, the number of foreigners who are provided with social services in social security centres should still be considered relatively low.

This means that non-insurance programmes, i.e. social assistance and family benefits, whose beneficiaries are foreigners, do not generate large costs in Poland.¹²⁵

Given the above, as well as the generally low level of immigration to Poland, it is therefore not surprising that no animated discussions are conducted in Poland on issues of foreigners' access to the benefits offered under the social security system. Interestingly, in accordance with the survey of ARC Rynek i Opinia for Puls Biznesu magazine, more than half of surveyed Poles (58%) holds an opinion that foreigners should be entitled to the same social benefits as Polish citizens, while only 24% believe that these benefits should be limited.¹²⁶ It seems, however, that if the immigration to Poland continues to grow in the future and in the event of possible

abuse in the use of migrants' social benefits, including so-called "social tourism", the Poles' opinions in this regard may potentially become less liberal.

An undisputable weak point of the Polish social security system is its external dimension, namely the question of coordination of social security systems with migrants' countries of origin. Each of individual EU member states has on average concluded 12 bilateral agreements on the coordination of social security systems, while Poland is the party to only eight of them.¹²⁷ As a result, most of the professionally active foreigners are deprived of any kind of insurance guarantees upon their departure from Poland, because most of the benefits that they are entitled to may not be transferred to their countries of origin and the periods of social insurance in Poland are not included in the periods required for the acquisition/retention/restoration of the right to old-age or disability pension and are not taken into account to calculate the amount of these benefits in the foreigner's country of origin (provided that the pension system in the foreigner's country of origin makes the possibility of receiving old-age benefits dependent on meeting the condition of having a minimum number of periods of insurance).

What is more, foreigners may experience a problem of lack of the required length of insurance period (contributory and non-contributory periods), necessary to receive disability benefits in Poland.

Lack of bilateral agreements on the coordination of social security systems may be also unfavourable for employers who delegate foreign employees to work in Poland, because they may be required to pay social insurance contributions for their employees both to the Polish system and the system of the country in which the employer's registered office is located.¹²⁸

116. Having a permit to settle or a permit for a long-term EU resident.

117. Foreigners who obtained in Poland a fixed period residence permit in connection with the fact that in another EU country they obtained a permit for a long-term EU resident (i.e. in connection with the circumstances referred to in Article 53 section 1 point 13 of the Act of 13 June 2003 on Foreigners).

118. It is clear from the information provided by the Ministry of Labour and Social Policy that every year 5-10% of social assistance benefits are granted to foreigners who have no entitlement to them.

119. Note: data of the Social Insurance Institution include all categories of

third country citizens together with beneficiaries of international protection.

120. With the proviso that the number of persons receiving remuneration for the period of incapacity for work partially overlaps with the number of persons receiving sickness benefit, because sickness benefit is paid out to those who received remuneration for the period of incapacity for work for 33 days (in case of employees aged over 50 - for 14 days), but their incapacity to work continues to exist after this period. Remuneration for the period of incapacity for work is financed by an employer, while sickness benefit is financed by the Social Insurance Institution.

121. Statement of reasons to the draft Act on foreigners (the Act of 13 June 2013).

122. But it also has a direct link with the low-income criterion, which determines the entitlement to family benefits. This criterion had remained unchanged for almost 10 years, and indexation carried out in 2013 had little impact on increasing the number of persons entitled to family benefits.

123. This number was estimated on the basis of data from the Office for Foreigners, including data relating to valid residence cards at the end of the year.

124. This increase is most relevant for the number of people who have valid settlement permits, including citizens of Ukraine, Russia and Belarus.

125. For example, in the years 2008-2011 approx. 900 thousand zlotys were designated for the provision of social assistance to foreigners. To compare, in 2011 nearly 3 billion zlotys was spent on social assistance

all over the country.

126. Puls Biznesu, J. Kowalczyk, <http://www.pb.pl/3575600.90823,tu-bimy-imigrantow-byle-nie-w-nadmiarze> [accessed 13 March 2014].

127. These are agreements with Australia, former Yugoslavia (at present applicable towards the citizens of Bosnia and Herzegovina, Serbia and Montenegro), Macedonia, Moldova, Canada, South Korea, Ukraine and USA.

128. This happens in case of so-called positive conflict of laws. Burdens on the employer on account of hiring a delegated employee increase in such a situation. In case of so called negative conflict of laws the situation is different, i.e. when an employee is not subject to insurance either in the sending country or in the host country. In consequence, the employer saves by hiring such an employee but the employee is deprived of insurance cover. In such situations the employer typically provides the employee with private insurance (mostly health and accident insurance).

In practical terms, these problems affect more than half of foreigners reported to social insurance in Poland. At the end of 2013 the possibility of exporting old-age and disability benefits (including old-age¹²⁹, disability pensions on account of incapacity to work and family pensions)/aggregation of insurance periods potentially concerned only 35,377 among 71,480 of those reported to the Social Insurance Institution, while the transfer/aggregation of insurance periods in case of other types of benefits (including benefits granted on account of sickness, maternity, accidents at work and occupational diseases, unemployment and also family benefits, funeral allowances and health care services) was guaranteed to a significantly smaller number of people, because not all international agreements provide for such a possibility.

This leads to a situation in which a significant proportion of third country nationals working in Poland pay social security contributions without any guarantee that insurance periods for old-age and disability insurance that accumulate during their stay in Poland will be recognised in their country of origin. What is extremely important, when the foreigners return to their country of origin (or another country outside the European Union), they will continue to be, however, entitled in Poland to a key benefit, i.e. old-age pension (this applies to persons covered by the old-age pension system based on the new rules). If there are no bilateral regulations concerning the coordination of the social security systems, these benefits are paid to a bank account in Poland or to the authorised person residing in Poland.

It is worthwhile to mention the fact that one of recently concluded agreements is an agreement with Ukraine, i.e. the country of origin of the largest in

Poland group of labour migrants. However, there are still no bilateral regulations concerning the coordination of the social security systems concluded among others with Belarus¹³⁰, Vietnam, Russia and China, i.e. with countries whose nationals are the largest, after Ukrainians, group of foreigners subject to social insurance in Poland. Due to the fact that the Ministry of Labour and Social Policy treats with priority the need to conclude agreements on social security/insurance with states that appeared after the collapse of the Soviet Union, in the coming years we are likely to see an improvement in the coordination of social security systems between Poland and foreigners' countries of origin.¹³¹

Another problem is a relatively insignificant proportion in Poland of foreigners who are subject to social insurance and who, in consequence, may receive social benefits when an insurance risk occurs (mainly old age, disability, but also maternity, disease, etc.). This is mainly due to the character of economic migration to Poland, which for years have predominantly been of temporary migration - mostly seasonal in the agricultural and construction sectors (within so called declaration-based system). The practice of hiring foreigners in these sectors, but also in households, shows that foreign workers are often employed illegally^{132 133} (in a situation when illegal work is often accepted by both employer and employee)¹³⁴, which by definition places them outside the insurance-based system of social benefits. In a similarly disadvantaged position are persons employed under contracts for specific work, which concerns the agricultural sector in particular.¹³⁵

Although Poland has concluded the above mentioned bilateral agreements, foreigners applying in Poland for the old-age pension may encounter

significant problems. According to the new rules of a pension system (introduced by the reform of 1999 and applicable to most persons born after 31 December 1948), the amount of old-age pension depends exclusively on the amount of previously paid contributions (the higher the contribution assessment basis the higher the contribution paid and, therefore, the future old-age pension) and on life expectancy for persons at the same age as the retirement age of the insured.¹³⁶ It is estimated that a person (both Polish citizen and foreigner) who did not earn a minimum of 2.6 thousand zlotys gross for 25 years according to the new rules applicable to the calculation of old-age pensions, has no chance to generate a minimum pension¹³⁷ (which starting from 1 March 2014 amounts to nearly 850 zlotys). As a result, the amount of old-age benefits received from the Polish social security system by selected categories of foreigners will be relatively low, and sometimes even lower than the minimum old-age pension. This may mostly affect foreigners who came to Poland at an older working age and for the most part of their lives worked in their country of origin/another third country, persons who take up in Poland mainly seasonal work (including work under declaration-based system, which provides for the possibility

to work in Poland under the simplified procedure for 6 months in a year) and also persons who worked in Poland for the most part of their lives but whose remuneration was relatively low.¹³⁸

In a much worse situation may find themselves now (or in the nearest future) persons born before 1 January 1948 (they are subject to the old rules of old-age pension calculation, under which the main criteria for the granting of old-age pension is achieving the retirement age and having an insurance period of appropriate length - so called contributory and non-contributory periods) and also persons who come from countries with which Poland has not signed the agreement on the coordination of social security systems. Aggregation of insurance periods for work performed in their country of origin and in Poland is not possible in case of such persons, which to a significant extent limits their possibilities of acquiring the right to old-age pension in Poland.

As a consequence of the above-mentioned conditions, on the one hand, one may record a higher risk of poverty among these groups of migrants, and on the other hand, an increase in government expenditure on subsidies to minimum old-age pensions for people who have not generated a minimum level on their own.¹³⁹

129. With the proviso that old-age pensions and old-age benefits granted to foreigners from countries with which Poland has not signed the agreement on the coordination of social security are paid to a bank account in Poland or to the authorised person residing in Poland.

130. The opening of negotiations has been scheduled for 2014.

131. The conclusion of the agreement in question is not contingent only on actions taken by the Ministry of Labour and Social Policy. The will of both parties is needed to conclude any bilateral agreement; however, the countries that the Ministry of Labour and Social Policy approaches in order to negotiate the agreement, sometimes do not demonstrate this will. It may happen that the conclusion of such an agreement is not always in the country's interest. Some countries, despite efforts made by the Ministry of Labour and Social Policy, are not interested in entering into negotiations.

132. For example an employer registers a statement but does not

establish with a foreigner a formal employment relationship that would among others lead to registration with the Social Insurance Institution or the Agricultural Social Insurance Fund.

133. Illegal employment in these sectors is a common phenomenon in Poland and concerns both foreigners and Polish citizens. This is due to the specific nature of work in agriculture, construction or cleaning, in which - among other things, due to the short period of employment and a frequent change of principals - both sides often avoid formalization of employment (payment of taxes and insurance) - Report on the activities of the State Labour Inspectorate for the year 2012, Warsaw 2013.

134. J. Segeš Frelak, M. Bieniecki, Czy wprowadzić mechanizmy integracyjne dla cudzoziemców pracujących w Polsce sezonowo? [Should we introduce integration mechanisms for foreigners working in Poland seasonally?], The Institute of Public Affairs, Warsaw 2012, p. 7.

135. In accordance with the data from statements registered in powiat

labour offices, average percentage of contracts for specific work in agricultural sector, used as basis to delegate work, is much higher than average percentage of contracts for specific work in case of all the statements registered.

136. Any insurance period gives a foreigner the right to old-age pension after reaching the common retirement age (proportional calculation of the benefits based on the principle of aggregation of insurance periods is not applicable to old-age pensions in Poland, thus the number of contributory and non-contributory periods does not affect the amount of old-age pension or the right to retire). To compare, under the old-age pension system based on the old rules, the amount of old-age pension depended on the level of remuneration from selected years of work, insurance period and the level of average remuneration in Poland.

137. Calculations made by Łukasz Waclawik, social insurance specialist, senior lecturer at the Faculty of Management, AGH University of Science and Technology in Cracow. The calculations do not take account of the rate of inflation or GDP growth rate.

138. The situation of Polish employees is exactly the same.

139. However, to receive a minimum old-age pension, one must have an insurance period of a certain length: 20 years - women, 25 years - men (starting from year 2022 the same 25-year period is to be applicable to both sexes). Contributory and non-contributory periods, e.g. parental leaves, periods of study are considered insurance periods. However, non-contributory periods may not amount to more than a third of contributory periods.

